VERIFIED VERSION

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into budget estimates 2013–14

Melbourne — 16 May 2013

Members

Mr N. Angus
Ms J. Hennessy
Mr D. Morris
Mr D. O'Brien
Mr C. Ondarchie
Mr M. Pakula
Mr R. Scott

Chair: Mr D. Morris
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Witnesses

Mr R. Clark, Attorney-General;

Mr G. Wilson, Secretary,

Mr G. Hill, Executive Director, Courts and Tribunals Service,

Ms M. De Cicco, Executive Director, Strategic Policy and Legislation, and

Ms C. Gale, Executive Director, Community Operations and Strategy, Department of Justice.

The CHAIR — I declare open the Public Accounts and Estimates Committee hearing on the 2013–14 budget estimates for the portfolios of Attorney-General, finance and industrial relations. On behalf of the committee I welcome the Honourable Robert Clark, MP, Attorney-General and minister for the remaining portfolios. From the Department of Justice, I welcome back Mr Greg Wilson, Secretary; Mr Graham Hill, Executive Director, Courts and Tribunals Service; Ms Marisa De Cicco, Executive Director, Strategic Policy and Legislation; and Ms Carolyn Gale, Executive Director, Community Operations and Strategy. Members of Parliament, departmental officers, members of the public and of the media are also welcome.

In accordance with the guidelines for public hearings, I remind members of the gallery that they cannot participate in any way in the committee's proceedings. Only officers of the PAEC secretariat are to approach PAEC members. Departmental officers, as requested by the minister or his chief of staff, can approach the table during the hearing to provide information to the minister, by leave of myself as Chair. Written communication to witnesses can only be provided via officers of the PAEC secretariat. Members of the media are also requested to observe guidelines for filming or recording proceedings in the Legislative Council committee room. Cameras should remain focused on the persons speaking. Panning of the public gallery, committee members and witnesses is strictly prohibited. Filming and recording must cease at the completion of this hearing. All evidence is taken by the committee under the provisions of the Parliamentary Committees Act, attracts parliamentary privilege and is protected from judicial review. Any comments made outside the precincts of the hearing are not protected by parliamentary privilege, including any comments made on social media from the hearing itself. This committee has determined that there is no need for evidence to be sworn; however, witnesses are reminded that all questions must be answered in full and with accuracy and truthfulness.

All persons found to be giving false or misleading evidence may be in contempt of Parliament, and subject to penalty. All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript for fact verification within two working days of the hearing. Unverified transcripts and PowerPoint presentations will be placed on the committee's website immediately following receipt, to be replaced by verified transcripts within five days of receipt.

Following a presentation by the minister, committee members will ask questions relating to the inquiry. Generally, the procedure to be followed will be that relating to questions in the Legislative Assembly. Sessional orders provide a time limit for answers to questions without notice of 4 minutes, while standing orders do not permit supplementary questions.

It is my intention to exercise discretion in both matters; however, I do request that the minister answer each question as succinctly as is reasonable, recognising that many responses may include a degree of complexity. I ask that all mobile telephones be turned off or turned to silent.

I now call on the Attorney-General to give a brief presentation of no more than 10 minutes on the more complex financial and performance information relating to the budget estimates for the Attorney-General portfolio.

Overheads shown.

Mr CLARK — Thank you, Chair, and it is good to be able to join the committee again this year to discuss the performance of the Attorney-General's portfolio. I should apologise in advance if I am coughing or spluttering during the course of my presentation or if my voice gets croaky because, as I gather with some members of the committee, I have been laid low by a winter bug over recent days. The slide presentation covers some key aspects of the portfolio. The first slide simply lists the different output areas related to the portfolio for completeness. We move on to the second slide that shows the breakdown of the entire justice portfolio budget, and the yellow segment at the bottom indicates the proportion that relates to the Attorney-General's portfolio — approximately 20 per cent of the entire justice department budget.

I turn to the budget initiatives. They fall into the key areas that are listed there: support for victims of crime, support for courts and Victoria Legal Aid, strengthening confiscation of proceeds of crime and reforms to ensure that people meet their legal debt obligations. I should say in relation to the latter that 'legal debt' refers to fines, infringements, civil judgement debts and the like.

If we move to the next slides, they present some more detail on each of those. The reform to services for victims of crime is one of the key initiatives in this budget as far as the Attorney-General's portfolio is concerned. It provides a boost to those services which will allow a substantial extension of the operation of the victims of

crime helpline from 8.00 a.m. until 11.00 p.m. over weekends as well as during weekdays. It will ramp up to provide a substantially increased number of support packages for victims. More than 6000 additional victims of crime are expected to receive support. This links in with other reforms that have been under way, such as Victoria Police introducing their SupportLink e-referral system whereby police can take details of a victim and their circumstances, pass those on to the helpline and the victim can be contacted. I am happy to elaborate on that during questions if members would like.

The next area of budget initiative relates to supporting the courts and Victoria Legal Aid. There is a package of funding for the courts which will meet a range of court needs. It will provide some additional funding for the County Court, it will provide funding for the continuation of the Neighbourhood Justice Centre and in the ARC list funding and a range of other areas of the court service provision besides. In relation to VLA, as the slide indicates, there is additional funding of 13.7 million over four years — 3.5 million per annum thereafter. I emphasise that that is on top of the substantial increase to Victoria Legal Aid's base funding of around $26 million a year ongoing that was made in the previous budget. That provides Victoria Legal Aid with additional resources to meet growing demands.

In relation to the next slide, making offenders pay, this strengthens the asset confiscation scheme. Members, I am sure, will know of the operation of that scheme, which has worked over a number of years to target tainted property and proceeds of crime. We are committing additional resources to go after more offenders to seek to retrieve their ill-gotten gains, and in particular to focus on that as part of the war against serious and organised crime. That is expected to yield significant returns in terms of extracting ill-gotten gains from offenders.

If we move onto the next slide, this gives some more detail about the reforms to how legal debt is collected and enforced. Again, I am happy to go into more detail during questions if members would like. The regime for collecting infringement amounts, court fines, orders for victims compensation, civil judgement debt and the like has long been in need of reform. There has been a growing level of uncollected debt, despite the best efforts of the sheriff's office and despite many innovations, such as the joint operations between the sheriff's officers and Victoria Police using automated number plate recognition technology.

In essence the problem is that the system has for many years been based around tracking individual infringements and fines rather than focusing on individuals who owe money to the state. This reform is to restructure the system to pay for IT and other changes so that it can better keep tabs on who owes what. The advantage of that is that those who are trying to evade payment can be more effectively brought to account but also where you have vulnerable people who for whatever reason have been racking up large numbers of infringements there can be intervention earlier to work out what is going wrong and to help them sort out their situation. Again, I am happy to elaborate during questions if members would like.

If we move onto the next slide, this lists some of the key achievements in the portfolio over the past year and some of the things that have been done with the money that Parliament provides to the portfolio. Again, I am happy to elaborate on any of them during questions. A top priority has been the targeting of criminal bikie and similar organised crime gangs. The Parliament has across-the-board supported the criminal organisations control legislation. We have fortification removal legislation currently before the Parliament. As I mentioned, asset confiscation strengthening will be another line of attack on serious and organised crime.

Regarding the abolition of suspended sentences, as members will know there is legislation before the Parliament at the moment to complete the abolition of suspended sentences for all crimes so that jail will mean jail. If a judicial officer does not think jail is appropriate in a particular case then, as members will know, we have a community correction order regime in place which puts some real teeth back into community-based sentences.

We have legislation before the Parliament to crack down on those who abuse bail and keep better tabs on people's compliance with bail conditions and avoiding reoffending while on bail. Our gross violence legislation, which the Parliament has passed, will commence shortly. We have implemented a new Aboriginal Justice Agreement, AJA 3, which builds on previous agreements. We have established the courts and tribunals service, which has been operational since 1 July last year and provides a freestanding unit within the Department of Justice to provide administrative support for the courts. Again, I am happy to elaborate on that during questions if members would like me to because it has provided some substantial benefits.

The jury direction reforms legislation has also been passed by the Parliament and will commence shortly. The judiciary is expecting that that will have a dramatic effect in simplifying jury directions, leading to not only more just but more expeditious outcomes in trials. We have also enacted journalist shield laws and reformed working-with-children check legislation.

If we move onto the next slide, we can see some additional achievements over recent times, including reforms to civil procedure, particularly relating to expert evidence and costs laws; criminal procedure to simplify appeal processes to allow greater use of aggregate sentences and reform of some of the procedures for taking evidence in sexual offence matters. We have simplified and strengthened victims compensation law to make it a more automatic part of sentencing, particularly for property damage offences in the first instance and also to ensure victims have a say in relation to sentencing indications in the court.

Family violence reforms include stronger penalties for repeated and serious breaches of intervention orders, an extension of the operation of police safety notices and the legislation for the establishment of reserve judicial officers, abolishing the much-criticised regime of the previous government for acting judges, who could be people who were not previously tenured judicial officers, and confining it to tenured judicial officers, which has led to the Supreme Court for the first time in years having reserve judicial officers serving on it.

If we can move onto the next and final slide, which is simply in relation to a new part of the Attorney-General's portfolio — ongoing responsibility for the Victorian integrity system. Members would be familiar with the various elements of that. This slide draws together those elements. The columns in blue represent the officers of Parliament. IBAC is newly established of course, the Auditor-General, the Ombudsman, the public interest monitor, the FOI commissioner, the Victorian Inspector, with oversight roles in relation to a number of those bodies, and the roles of the new parliamentary committees with accountability for the various integrity officers and the reporting to them by the Victorian Inspector.

Chair, I hope that gives a brief overview of the portfolio and some of its activities and budget initiatives. I am happy to respond to questions.

The CHAIR — Thank you, Minister, you were right on 10 minutes. If I could ask the first question: in the context of the 2013–14 budget, can you outline to the committee examples of any capital infrastructure projects in the Attorney-General's portfolio that will be either commenced or completed in the coming year?

Mr CLARK — Certainly, Chair. There has been a lot happening with infrastructure within the portfolio, particularly in regional areas. In Wangaratta I have recently had the honour of opening the new justice centre that has been established there. That does not only relate to the Attorney-General's portfolio; it relates to all the different functions of the Department of Justice, including consumer affairs, dispute resolution, community correction officers and the sheriff's office, but it centralises all those services in one location.

That is next door to the Wangaratta courthouse, where the government has put in funds to remedy some very serious deficiencies that had developed under the previous government. The police cells there have now been refitted. There is more secure access for prisoners into the main courtroom and better security within the courtroom. Work is about to commence on restoring what is referred to as the west wing of the Wangaratta courthouse, which had been allowed to become disgracefully run down and unusable. That will be completely refurbished and will provide substantial additional capacity for ancillary use such as jury pool rooms and use by prosecutors or other services related to the court.

At Bendigo we are about to commence construction works on a new integrated justice centre there, which will consolidate Department of Justice functions within Bendigo, but will also provide a new secure Magistrates Court at Bendigo, which will end the shuffle that has had to take place over recent years as a result of the police station being rebuilt on the outskirts of Bendigo and inadequate secure prison facilities at the Bendigo courthouse. That will be a substantial boon to the efficiency and expeditious resolution of cases.

We have been rolling out CCTV cameras around a number of country Victorian courthouses. This is something the Auditor-General criticised very strongly, the lack thereof, several years ago, and the previous government did not act on it. We are acting to ramp up security. I must say, having seen it in operation in several courts, it is working very well indeed.

Work is progressing on the new Children's Court at Broadmeadows, finalising design there to get a facility that will provide much-needed facilities for a Children's Court in the northern suburbs and ensure that they are efficiently and effectively co-located with the existing Magistrates Court at Broadmeadows.

In Melbourne we have seen the construction over the last year of the mega-trials courtroom in the William Cooper Justice Centre. If members have not had a chance to see that, I can strongly recommend that they visit it and see the facility. It is currently being used as the venue for bushfires litigation, and from all accounts it is working very well for that. One senior judicial officer has described it as the best mega-trials courtroom she has seen anywhere in the world, which is a very fitting tribute to what has been done, which was a result of very fine work by officers in the Department of Justice and their contractors. I pay tribute to Hansen & Yuncken, the builders. That courtroom was constructed effectively over the summer period, when much of the building industry was on summer vacation, under very tight time lines, with an outstanding result. I should say, Chair, that that replaces a facility under the previous government's auspices that was completely unusable because of a range of design defects, such as the bar table not being visible from the bench and the slide projector screen descending on the heads of the judicial officers when it was lowered. So it is a huge boost there.

We have recently opened the new model conferencing facilities for the Children's Court at 436 Lonsdale Street, and, again, they have been greatly acclaimed by everybody involved with them. They should have a very substantial effect on improving the operation of the Children's Court new model conferencing reforms.

Other funding in the budget will provide for court IT and facilities upgrades, and that will, amongst other things, improve the operation of the County Court's IT. I would be more than happy, if members wanted, to elaborate on some of the IT difficulties we have inherited and what we have been doing to tackle them.

The CHAIR — Thank you Attorney-General.

Mr PAKULA — Attorney-General, looking at the questionnaire and the total expenditure on employee benefits under DOJ — which, interestingly, is about $100 million more than the budget last year suggested it would be — there is also, as you would be aware, the most recent DOJ annual report, which indicates that in terms of ex gratia payments the expenditure was just under $13 million, as against $194 000 the previous year. You would also be aware that I wrote to the Ombudsman about that, and the Ombudsman commenced an investigation into those payouts after media reports about the level of payout to the former DPP and the former chief commissioner. The Ombudsman's investigation was thwarted by your issuance of a conclusive certificate refusing to give the Ombudsman access to the information he required in order to properly conduct that inquiry. My question is: when you are looking at something like $13 million as ex gratia payments, why did you issue that conclusive certificate and effectively end any chance of the Ombudsman getting to the bottom of those payments?

Mr CLARK — Chair, that is a very multi-stranded question — —

Mr PAKULA — It is a single question. Why did you issue that conclusive certificate — —

Mr ANGUS — Just let the Attorney-General answer!

The CHAIR — Order! The Attorney-General has the call.

Mr CLARK — Mr Pakula, if that is the single question you want to ask, then the answer is simple. The Ombudsman Act as it then stood established a regime to give efficacy to the principle that cabinet documents and documents that relate to the deliberation of ministers were not documents appropriate to be made available to the Ombudsman. That has been a longstanding provision in the legislation over many years, and the purpose of the certificates — which at that stage, under legislation as it then stood, were to be issued by the Attorney-General — was to designate which documents that applied to, given that otherwise public servants would be in the difficult position of having to engage with the Ombudsman as to whether or not particular documents were ones they were entitled to or obliged to make available to the Ombudsman. That is the simple answer to your question, Mr Pakula, and, as I say, this is legislation that had been in place for a substantial time. I might point out to you that it has subsequently been changed so that matters such as this are dealt with by the Secretary of the Department of Premier and Cabinet.

Mr PAKULA — You say this has been in place for a long period of time. Let me read to you from the Ombudsman's correspondence:

> In the history of the Ombudsman's office, this is only the second occasion that the Attorney-General has issued such a certificate …
>
> I have been unable to reach a conclusion regarding the appropriateness of ex gratia payments made to Mr Rapke and Mr Overland.

It might have been in place for a long time, but it has only ever been used twice and, I think, both times by you. Minister, in an environment where it would have been equally open to the government to make the claim of cabinet in confidence and take its chances in VCAT, like in all other FOI applications, why have you taken this extraordinary step when we are looking at such a large payout and such public interest?

Mr CLARK — Mr Pakula, you are confusing two aspects; you are confusing certification under the Ombudsman's Act, and you are confusing FOI procedures.

Mr PAKULA — I am reading to you from the Ombudsman's correspondence.

Mr CLARK — As I said, those provisions have been in place for a number of years, and the — —

Mr PAKULA — You are the only Attorney to have ever used them.

Mr CLARK — The certification provision is there so that public servants do not have to engage in dispute with the Ombudsman about what may or may not be documents that fall under the provision. Regardless of whether or not a certificate is issued, the substantive provision was that documents relating to cabinet or deliberations of ministers would not be available. This is simply delineating which documents the substantive provision applied to, to provide certainty to avoid public servants having to engage in those debates, particularly around documents with which they might not be familiar. I should say further to that that this can apply not only to documents relating to the government of the day; it can also apply to documents relating to previous governments. Cabinet documents of the government before the current government, for example, are as entitled to protection as cabinet documents of the current government.

Mr ANGUS — Minister, I refer you to budget paper 3, pages 184 to 187, in the area of supporting legal processes and law reform. Can you update the committee on the funding and activities of Victoria Legal Aid?

Mr CLARK — Yes. Thank you, Mr Angus. Victoria Legal Aid is currently receiving record funding from the Victorian state government in terms of base funding from the budget. Victoria Legal Aid has, I must say, been doing an outstanding job in the time that I have been familiar with it, both in opposition and in government. It is seeking to be proactive in how it makes funding available and the basis on which it structures funding, not only for its own purposes but with an eye to supporting the more effective operation of the legal system as a whole. It has been work that I have been very pleased to support.

The current government's provision of funding to legal aid on a stable, ongoing basis is in stark contrast to the situation under the previous government, where it was given stop-start funding, which gave it no assurance as to the financial basis on which it would be operating going into the future. The additional funding that was in this year's budget was on top of substantial previous contributions to the base funding and means that Victorian government funding for legal aid is far in excess of that being provided by the commonwealth government.

I have to say it is unfortunate that the commonwealth has allowed its share of contribution to legal aid to decline over the years. Prior to the most recent state and commonwealth budgets, calculations were that about $400 million over the next four years would be provided to legal aid by the Victorian government compared to just 236 million from the commonwealth government. We are still trying to ascertain exactly what the commonwealth government's announcement on Tuesday means in respect of funding to legal aid. I think on the most optimistic assessment they have been given some modest levels of additional short-term funding, continuing the problem of stop-start funding that previously existed with the state budget funding.

As I said, VLA has been doing excellent work to ensure that the money it has available to it is spent as wisely and effectively as possible. While the precise guidelines determined by legal aid are a matter for the Victoria Legal Aid board, the government has been very supportive of the work that VLA has been doing to seek to ensure that the money that is available to it is spent as wisely and effectively as possible.

There has been one aspect of that, which you have probably read about in the newspapers, relating to the availability of instructing solicitors in the higher courts. Victoria Legal Aid has, I think quite rightly, been asking whether or not it is necessary for instructing solicitors to be available in criminal matters in the higher courts in all or most trials in Victoria, when that is not needed in other jurisdictions such as Western Australia, South Australia or Tasmania, where many trials in the higher courts are conducted by counsel alone. I have still not received a satisfactory answer to the question as to why it is argued that Victorian barristers are not able to do that when their interstate counterparts have been able to. It has been particularly concerning to see the law institute leadership, for example, suggest that Victorian barristers are not up to what their interstate colleagues are able to do. Victoria Legal Aid is going to be continuing, as I understand it, to look to the potential for reforms to how legal aid funds are made available as effectively as possible for trials in the higher courts to ensure that the money that is available to them is spent as wisely and effectively as possible.

I might add that there has also been some debate about how commonwealth funding for legal aid impacts on Victorian areas of responsibility. It impacts on criminal law and family violence matters. I think that is something which, as far as I know, enjoys bipartisan recognition at a state government level — namely that if there is inadequate commonwealth government funding for family law matters, that can have a flow-through effect into Victorian areas of responsibility, particularly in relation to family violence matters coming before our courts. That has got to be one of the few things that I am in agreement with the previous Attorney-General in relation to, because he made that point very forcefully just a few years ago, and unfortunately it remains the situation.

Ms HENNESSY — The Attorney-General would be aware of an OPI report that the previous director of the Office of Police Integrity transmitted to the Ombudsman just prior to IBAC essentially formally taking over the jurisdiction of the OPI. As you would be aware, it is a report that comes off the back of the *Crossing the Line* report, which disclosed some serious leaking involving members of the government. Ordinarily when the Ombudsman gets such a report he would use his powers under section 103 of the previous Whistleblowers Protection Act to table that report in the Parliament. As you would be aware, we now are in the regime of the Protected Disclosure Act, and the Ombudsman has been advised, and has now publicly confirmed, that he is prohibited by the transitional provisions in the Protected Disclosure Act from tabling that report in the Parliament — —

Mr ANGUS — Is this a speech, Chair?

The CHAIR — This is a complex matter.

Ms HENNESSY — And my question: is when the government introduced the Protected Disclosure Act were you aware that this report was coming?

Mr ANGUS — On a point of order, Chair, I am just querying the relevance of the lengthy question in relation to the specific budget matters that we are looking at today.

Ms HENNESSY — On the point of order, Chair, the Attorney-General made a presentation outlining the structure of the Victorian integrity system. Given that there have been some changes in the Victorian integrity system the impact of the transitional provisions in all of the legislation is indeed relevant. He is also the minister responsible for the Protected Disclosure Act.

Mr O'BRIEN — On the point of order, Chair, I listened to the question very carefully, and in Ms Hennessy's answer to the point of order she went to a different matter, which was budgetary impacts. But the question asked, as per Mr Angus's point of order, did not have a budgetary impact.

The CHAIR — I do not uphold the point of order. It was a long and complex question because this is a complex matter, and I was happy to allow that to make sure that the Attorney-General was fully informed of the aspects that Ms Hennessy was seeking to address. The hearings relate to the Attorney-General's portfolio, and as these matters in terms of IBAC certainly now come under the Attorney-General's portfolio it is a relevant question, so I am going to allow it.

Mr CLARK — I do not propose to comment on any specific matter that may or may not be before IBAC. Ms Hennessy would be aware that the IBAC commissioner is an independent officer of the Parliament and IBAC operates independently of government, and how IBAC conducts its affairs is a matter for IBAC.

Ms HENNESSY — A brief follow-up question: could you advise the committee what the IBAC commissioner's salary is?

Mr CLARK — In broad terms the IBAC commissioner's remuneration is equivalent to that of a Supreme Court judge.

Mr O'BRIEN — Following on from Mr Angus's question, I would like to return to the budget papers. In relation to budget paper 3, chapter 2, pages 184 to 187, under the heading, 'Supporting Legal Processes and Law Reform — and the Attorney-General touched upon this in his outline — I ask: what measures is the government taking to make victims of crime assistance more accessible and effective?

Mr CLARK — The government is doing a lot to provide better support and assistance for victims. We consider that for too long victims had not been given the consideration and respect that they are entitled to when coming into contact with the legal system. For too long lip-service has been paid to victims' rights. We have been acting not only to strengthen legal rights but also to provide victims with greater support. I touched on legislation that we have had before the Parliament, which the Parliament has supported, which puts in place arrangements so that victims will be consulted before the judicial officers give a sentence indication, such as — as you would be aware — where an offender seeks a sentence indication before deciding whether or not to plead guilty. In the past there has been no provision for the input of victims at that point, whereas of course the effect of an offence on a victim may be highly relevant to what would be an appropriate sentence for the offender to receive. We have legislated in respect of that.

We have also legislated to provide for more automatic making of compensation orders against offenders, particularly in relation to property damage offences where it would be possible for victims to make receipts, quotation documents or other material available to prosecutors. They can be handed up to the bench and made the basis of an order for compensation against an offender, which a victim can then have enforced. We have those legislative measures. I am pleased to say we have also recently commenced the Victims of Crime Consultative Committee, which I am delighted that the Honourable Philip Cummins has agreed to chair, and that brings together both victim representatives and those with close personal experiences of crime as victims with a range of professionals — the police, the Office of Public Prosecutions, the Adult Parole Board of Victoria and various members of the judiciary. I think that is going to be a very fruitful forum for tackling many of the problems that victims experience in their encounters with the justice system.

On top of that, we are moving to strengthen the victims helpline, as I referred to in the presentation earlier. That is a service that has done remarkable work over many years. It has been able to assist far more victims than the service providers have been funded to assist and it has been able to respond to growing calls to the victims helpline. But we want to ensure that the helpline can operate more effectively for more victims, so as I have mentioned in the slides, the funding that we are providing will enable the helpline to operate from 8 a.m. to 11 p.m. over weekends as well as during the week. Naturally, crime does not stop at weekends, and if you are a victim of crime over a weekend you will want immediate help as quickly as if you were a victim of a crime during the week. So the helpline is the initial and central contact point for victims. It can provide immediate information; it can also provide referrals to providers who can assist with counselling, can assist with preparation of VOCAT applications and can provide support as the matter with which the victim is concerned approaches trial.

We are supporting a substantial number of additional packages of support for victims as a result of this additional funding, and that will put the help providers network, who are non-government agencies who have been contracted by government and have been doing a pretty good job — it will provide them with a substantial injection of funds to assist more victims. As I mentioned in relation to the slides, that is going to be particularly beneficial because it will fit in with the expansion by Victoria Police of their SupportLink service. The SupportLink service is an electronic referral, so that when police attend a crime they can take details of the victim and the circumstances of the crime, they can then provide that to the helpline and the helpline can contact the victim and offer support. And having that integrated service is clearly far more beneficial for victims as well as making it far easier for police to tell victims and make sure victims are informed about the help that is available to them.

So that is a key initiative in this budget, and it reinforces the wide range of things the government has been doing to help victims, in addition to the things that I mentioned earlier — other things such as ensuring that

there are spaces at courtrooms wherever possible for victims, where victims can retreat to if they need some quiet time away from the stresses of what is going on at the trial, and indeed the provision of safe spaces for victims of family violence who are coming to court, where that is possible, such as has recently been opened at the Ringwood court.

Mr O'BRIEN — Just by way of supplementary, one of your very first acts at the start of 2011 was the addition of the victims representative on the Sentencing Advisory Council. That is an important addition as well.

Mr CLARK — Yes, sure. You are quite right, Mr O'Brien; that was the expansion of the Sentencing Advisory Council — to ensure that there was an additional victims perspective brought to the council, and I was delighted that Ms Kornelia Zimmer accepted appointment to that position. She is a young person who has had direct firsthand experience of crime through her brother being killed in very tragic circumstances. I have to say she has made a remarkably astute and perceptive contribution to victims' issues across the board.

Mr O'BRIEN — As have you. Thank you, Attorney.

Mr PAKULA — Minister, page 188 of budget paper 3 contains the performance measures for the Victorian human rights and equal opportunities commission. It was August 2011, 21 months ago, when Helen Szoke resigned as the commissioner. Ten months ago you vetoed the board's unanimous recommendation, a decision which caused three of those board members to resign, and today we still have no commissioner. Minister, for the record can you tell the committee who it was you vetoed and why?

Mr O'BRIEN — On a point of order, again — —

Mr PAKULA — It is absolutely germane — —

Mr O'BRIEN — It is not question time.

The CHAIR — Order!

Mr O'BRIEN — Mr Pakula has just arrived in the lower house and he had plenty of opportunity to ask ministers questions at question time.

Ms HENNESSY — What would you know about the lower louse?

Mr O'BRIEN — I am in the upper house, Ms Hennessy.

Ms HENNESSY — I rest my case.

The CHAIR — Order. It does not put any weight on your point of order.

Mr O'BRIEN — I do not know what case you are trying to make, Ms Hennessy.

Ms HENNESSY — Don't invite me, Mr O'Brien.

Mr O'BRIEN — But we will see what case Mr Pakula makes when he arises. But it is a question about the budgets that is relevant to this committee's inquiry.

Mr PAKULA — Yes, I have referred to the budget.

Mr O'BRIEN — You referred to the budget paper, but you did not ask a question about the budgets.

Mr PAKULA — On a point of order then, Chair.

The CHAIR — No.

Ms HENNESSY — Do we need to?

The CHAIR — No, you do not. There is a clear reference to the budget paper. The matter is clearly related to the portfolio. The Attorney-General can choose how to answer the question — that is entirely in his province — but the question is appropriate.

Mr ONDARCHIE — It is as far away as his home is to his previous electorate.

The CHAIR — I have ruled, and I will call the Attorney-General.

Mr CLARK — Chair, I do not propose to canvass the names of people who have been put forward for appointment. When people apply for positions they apply in the expectation that their applications will be treated in confidence, and unless the committee were to insist, I do not think it would be appropriate that I disclose the name of the person concerned. I do make the point that the reforms that this government put in place to the arrangements for the appointment of the equal opportunity commissioner for the first time gave the board of the commission a role in the appointment process. Under the previous government they had no say at all in the commissioner, who needed to work to a board.

Mr PAKULA — They make a unanimous recommendation — —

Mr ANGUS — Just listen to the attorney and you will learn something.

The CHAIR — I will take that as a supplementary.

Mr CLARK — Under the reforms that this government put in place the process was that the board put forward a nominee, which required the approval of the minister. And under the operation of the legislation it requires the minister to turn his or her mind to the appropriateness of that nomination. So it is a role in which both the board and the Attorney-General had their respective says in terms of who gets appointed. The primary — —

Mr PAKULA — When might we see one appointed?

Mr CLARK — The primary responsibility for conducting the recruitment process rests with the board, and I can inform you that the board is well advanced in that process.

Mr PAKULA — It is not advanced; it has been almost two years.

Mr ONDARCHIE — Minister, I want to talk to you about court services. As you are aware, I have had direct experience in the court services, when my 72-year-old uncle was murdered in his home, innocently, by a drug-affected man who broke in for no reason. I refer you to budget paper 3, chapter 2, page 181, and I ask you what action the government is taking with the courts to assist in making the courts operate more efficiently and effectively?

Mr CLARK — Thank you, Mr Ondarchie. I am very pleased to be able to say that we have been doing a lot in conjunction with the courts to help courts operate more effectively. I pay tribute to the work of the various jurisdictions involved for what they have been respectively achieving.

You may be aware that prior to the election we placed great emphasis on giving the courts greater control over their own administration. As you may know, under the regime as it has stood up until recently, while judicial officers were independent of executive government, the staff who carried out their administrative functions in fact were nominally employees of the Secretary of the Department of Justice. That was bad and undesirable in principle, because it detracted from the independence of the judiciary, but it was also undesirable in practice, because it meant judicial officers did not have as full as possible control over how their administrative functions and operations were carried out.

One of the key reforms that we are putting in place — and we got the first stage up and running from 1 July last year — is to give judicial officers control over the administrative support that is provided to the courts. The first stage of that was to establish the courts and tribunals service as a freestanding part of the Department of Justice. There is an advisory council consisting of the heads of each of the jurisdictions, which I must say is doing an excellent job in gearing up for taking on the role of running a fully freestanding agency, which is the ultimate stage of the reforms, but in the meantime the heads of jurisdiction have been giving a lot of consideration both collectively and individually to opportunities to improve how the courts operate. They have had a very clear

message from the government that we are willing to back that with legislation where legislation can help and with administrative initiatives and measures as well.

I cite by way of an example an item I touched on in the presentation — changes to jury directions. Obviously I cannot comment on your particular family experience with the justice system, but in many, many trials Victoria has some of the longest times taken for jury directions in Australasia. It is the time when the judge tells the jury about the evidence and about the law before they go off to consider their verdict, and that has been a source of huge frustration. The law has become very complex. That has not only led to delays; it has also led to the generation of numerous appeal points, which many would regard as being very technical.

The jury directions reforms were recommended by a 2009 report of the Victorian Law Reform Commission. They were not acted on under the previous government. We have acted on them. The content of that legislation has been put together with the very close involvement of key judicial officers experienced in that area, and it is going to give very good guidance to judges about what is expected of them in relation to jury directions. It is going to require the prosecution and the defence to make submissions to the court about what should be included in the jury directions. It is going to make it clear that judges are expected only to give a targeted and succinct summing up of evidence and not give a precis of all the evidence that has gone before them. It is going to encourage judges to give what are called integrated directions, where instead of giving jurors a mini lecture on the law and then telling them the facts, the law and the facts are embodied in the one piece of direction. It is going to allow them to answer questions from juries about what does 'beyond reasonable doubt' mean, which believe it or not has been something they have been forbidden to give any explanation of to jurors to date. This commences operation very soon. It is very exciting, and it should have a very beneficial impact on how courts operate, but that is just one of many things that have been happening.

There has been widespread examination within the Magistrates Court about how they can improve various aspects of their operations. They have been getting some of their most experienced magistrates to visit different courts in order to improve listing practices. The new state coroner, Ian Gray, has led a very substantial piece of work on potential reforms to the Coroners Court which are very exciting. They are currently in consultation with the affected unions, but they would expect to be finalised soon, and they should allow the Coroners Court to substantially improve how it operates.

The County Court has been piloting next-day mentions following committals in the Magistrates Court to tackle the problem that otherwise you have a committal concluded and you then wait weeks or months before the matter comes on to the County Court. By then the lawyers can change and people have forgotten what has happened. Under this reform, the day after someone is committed, the parties front up at the County Court and directions are given as to how the trial is to be conducted there, and that is going very well.

The Supreme Court Venne Reforms to the Court of Appeal, which require many applications for leave to appeal to be lodged more quickly after a trial, many more of them to be determined on the papers. That has had a dramatic effect in reducing waiting lists and backlogs in the Supreme Court.

In short, right across the board the courts are doing a huge amount, and the government is giving them all the support that we can.

The CHAIR — Thank you, Attorney, for that comprehensive answer.

Mr PAKULA — Attorney, budget paper 3, page 31, has your supporting courts initiative. Last year you gave the committee an assurance that the government was 'very keen to ensure' that the systemic investigatory work of the Coroners Court, including the Victorian systemic review of family violence deaths, would continue. In light of the courts 2011–12 annual report and recent reports — I think which you have just in fact commented on yourself, that the court is to be restructured — can you tell us how much of the supporting courts initiative will be allocated to funding case investigators into deaths that are not health care related?

Mr CLARK — Sure. I am not sure what the best point is to start disentangling that question, Mr Pakula.

Mr PAKULA — I want to know what you are spending, Attorney, on the family violence deaths.

The CHAIR — Order!

Mr CLARK — To go back and repeat, perhaps, some of the things that I said last year and certainly things that I have said publicly in the intervening period, the government is very supportive of the work of the Coroners Court in relation to the systemic investigation of family violence deaths. As you would know, it was funded by the previous government. It was provided with short-term funding until 2010. Beyond that point, the work of the systemic review of family violence deaths continued within the Coroners Court as part of the overall Coroners Court budget. That is not unusual, as you would know. In many instances initial funding for a program is provided on a freestanding basis. If the program is successful it becomes incorporated into the overall funding for the part of government or the part of the court concerned.

Under the previous government the work of the Coroners Court on the systemic review of family violence deaths was undertaken out of the general funding that was provided for the Coroners Court, and that has been the situation that has continued under the current government. Despite all of the concerns that have been raised publicly and were referred to last year, that work has continued subsequent to last year's hearing. There is a very considerable report of the systemic review of family violence deaths that has been published, and as part of the reform of the court that is being led by the state coroner, the work of the systemic review of family violence deaths is to continue. It will continue as part of the work of the Coroners Court.

The CHAIR — Supplementary?

Mr PAKULA — Yes. It would be good to put everybody's mind at ease, including the stakeholders who are very concerned about this. In terms of the forward estimates — in terms of the 13–14 budget year — post the review of the Coroners Court, is it your evidence to the committee that the systemic review of family violence deaths work will continue in the Coroners Court, and if that is your evidence, what resources are going to be dedicated towards it?

Mr CLARK — The state coroner has made clear in the reform proposals that he has announced that the systemic review of family violence deaths will continue, and it will be a matter for the state coroner as to the configuration of how that work is done. The Coroners Court has a dedicated unit that looks at these systemic aspects of deaths of various sorts, including family violence deaths. As I said, it will be a matter for the state coroner as to how that work is done going forward. I can say, from the government's point of view, we are committing significant additional resources to the Coroners Court to support the reforms the state coroner has been undertaking.

Mr ANGUS — Attorney, I refer you to budget paper 3, page 181, entitled court services, and there is a range of matters contained therein. Can you advise the committee what steps the government has taken to help to ensure that parties in civil litigation can have their disputes resolved quickly?

Mr CLARK — Mr Angus, you have raised a very important issue, because while understandably there is considerable attention paid to the criminal aspects of the court's jurisdiction, civil litigation is also very important. When parties have disputes, they need to get those disputes resolved. To help the courts achieve that efficiently and effectively is a very important objective. We have been taking a number of steps since coming to office to tackle that issue. You may recall that very soon after coming to office we brought legislation to the Parliament that removed the mandatory prelitigation requirements in civil procedures that would have come into effect otherwise as a result of legislation under the previous government. We believe that would have caused enormous and unnecessary complication among parties who were trying to get recalcitrant parties to honour their legal obligations. Since then we have brought to the Parliament, and secured the Parliament's support for, further reforms to civil procedure, in particular in relation to costs orders and the use of expert evidence in trials.

Experts can of course be a vital part of a trial in terms of providing expert testimony about factual matters that are in dispute. But you can too readily end up with litigation turning into duelling experts, where the court is overwhelmed with different experts called by different parties giving contradictory and conflicting evidence, and making it very difficult to work out what the true facts of the matter are. Our reforms are giving the courts far greater power to control the use of experts by parties and ensure that expert evidence is provided to the court in a way that assists in resolving and determining disputes. Courts are going to be able to make orders about what expert witnesses or evidence can be led; they will have the capacity, if they think it appropriate in particular cases, to require experts from different sides to collaborate to provide a joint report; and they will be able to require the parties to appoint a single expert. Indeed, the court can appoint an expert as well. There is also provision to encourage the courts to have a number of expert witnesses give their evidence concurrently, so

that you do not have one expert one day and another expert contradicting them the next. Instead, you put a range of experts into the witness box at the one time, and then their evidence can be tested one against the other. These are very important reforms.

I might mention that the mega-trials courtroom at the William Cooper Justice Centre, which I touched on earlier, has a facility to enable exactly that to happen; it has capacity for a substantial number of witnesses to be put in the box at the one time and for the necessary audiovisual material, so all the different documents can be displayed. The same legislation deals with costs orders to give the courts power to make costs orders in a more flexible manner — not to undermine the normal principles of costs following the event, but to avoid what can be the very tedious and expensive item-by-item taxing of legal costs, and to allow block orders to be made for costs. That, I think, will simplify the costs orders.

The same legislation also dealt with another absurdity in the previous government's legislation, where every time a party issued proceedings in civil litigation they had to certify that they understood the overarching obligations of the parties, and that was the case even if the particular party was issuing in numerous disputes. We have changed that so certification only has to be once every two years, and so the insurers and other third parties having carriage of litigation can certify on behalf of the parties.

We are not ending there, Mr Angus. We are continuing with work on potential reforms to the law of discovery, which is the law about when parties need to make documents available to the other side, which can generate millions of dollars of cost, and while several attempts have been made at that and some improvements have been achieved, there is further work being done together with the Chief Justice's Civil Procedure Advisory Group. Similarly, we are continuing to work on potential legislation to reform the law in relation to vexatious litigants — very much based on the work of the Victorian parliamentary Law Reform Committee, which I had the privilege of being deputy chair of in the previous Parliament and which recommended a graduated range of orders to restrain vexatious litigants rather than a single order at a very high threshold, which is what applies at present.

The CHAIR — Thank you, Minister.

Mr PAKULA — Minister, you would be aware, I imagine, that Victoria Legal Aid recently defunded the Mental Health Legal Centre and that the Mental Health Legal Centre has been providing specialised legal assistance and advocacy to Victorians with mental illness for about 26 years; it helps about 1500 people per annum. You have made reference to additional funding for legal aid, and I am wondering whether you are going to take any steps to ensure that some or any of that funding will be used to preserve the Mental Health Legal Centre.

Mr CLARK — The decisions about funding for individual community legal centres are made by Victoria Legal Aid, and that has been the practice for many years. I think it is appropriate for that to be done because Victoria Legal Aid is an independent entity, and they are best placed to judge what funding should be made available to what community legal centres. Mr Pakula, you refer to the government's support for community legal centres, and you rightly refer to that because we are very supportive of their work. We provided more than $9 million in a previous state budget to continue funding for family violence work and the operation of CLCs in regional Victoria that was otherwise going to lapse because of the short-term funding that was provided under the previous government. So we are very strong supporters of the work of CLCs, but decisions about the funding of individual CLCs such as the Mental Health Legal Centre are a matter for the Victoria Legal Aid board.

Mr PAKULA — So as a supplementary then, I take it from that you are clearly not going to step in and exercise any influence over how VLA spends their money. If that is your attitude towards the Mental Health Legal Centre, would I be right in assuming that it is also your attitude in regard to the legal aid office in Preston, which has been closed down?

Mr CLARK — In relation to the legal aid office in Preston, that is part of VLA's core operations as an entity, and indeed it was their decision to cease operations out of Preston because they believed that service could be provided more effectively out of other of their offices and through other of their services. That was a decision that they made after considering all the circumstances and the pros and cons. It is very important that legal aid and indeed any other service provider have appropriate geographical coverage, but VLA are very

conscious of that, and they are satisfied that they can provide appropriate geographical coverage more effectively without continuing their Preston office.

Mr PAKULA — Not more effectively for people at Preston.

Mr O'BRIEN — I refer to budget paper 3 in relation to page 179 and 'Infringements and enhancing community safety'. I note it is the federal government who have walked away from providing legal aid support for vulnerable Victorians, according to the chair of the bar council, Fiona McLeod, but I would like to ask you, Attorney, to update the committee on what this state government is doing to tackle serious and organised crime?

Mr CLARK — Thank you, Mr O'Brien. It is another very important issue. You will recall the previous government was very dismissive of the threat posed to Victoria by criminal bikie and similar gangs, and they refused to — —

Mr PAKULA — You are saying that today of all days?

Members interjecting.

The CHAIR — Order! The Attorney-General has the call.

Mr CLARK — The previous government failed to act during their 11 years in office. Now under this government we are acting, and I should say also that under the chief commissioner Victoria Police are acting. They have recognised the problems that need to be tackled, and they have been doing a lot of their own initiative. But we are determined to ensure that there is proper legislative support and that from a government point of view we do what we can to give the police the tools they need to be able to tackle organised crime.

As the committee would know, the Parliament has passed the Criminal Organisations Control Bill last year. That is now in operation, and that gives Victoria Police the power to go to the Supreme Court to seek declarations and control orders against organised crime gangs. Orders are obtained on the basis of evidence laid before the court, and the court being satisfied on the basis of that evidence, those orders are made. They can impose a range of bans and restrictions on organisations and on their members, and the legislation also allows for the registration of orders from other jurisdictions as well. We believe that legislation that will sit alongside similar legislation that many other jurisdictions adopted earlier but which, as I said, the previous government did not adopt here in Victoria, will help tackle organised crime gang activity.

We also, of course, have before the house fortification removal legislation, which again is similar to what has been in place in other states for some time. It will allow police to apply to the Magistrates Court for an order requiring the owner or occupier of premises to remove fortifications from those premises. That is another tool that will be available to Victoria Police to take action against criminal organisations.

In addition to that, as I have touched on in my presentation earlier, we are committing additional funds under the current budget to further ramp up asset confiscation operations including to target proceeds of serious and organised crime, and clearly if you can take away the ill-gotten gains of offenders, that is a very strong deterrent. We believe there is capacity to do a lot more of that and therefore to deter and prevent a lot more serious and organised criminal activity. I should say the Victorian government is very strongly of the view that these powers are appropriately and effectively used at a state government level, and it has been regrettable that the commonwealth government has been suggesting that they should take over some of these powers, because that threatens, given the constitutional principles, to undermine the capacity of state legislation and state police forces to operate against these gangs.

The state and territories have been collaborating to ensure that there is, so far as possible, national coverage of these laws to ensure, as I referred to earlier, the registration of interstate orders, and we believe that any attempt by the commonwealth to step into this area would not be effective, and indeed would risk being counterproductive by undermining the operation of state laws in this area.

Mr O'BRIEN — Don't give them any more responsibility. They can't handle what they've got very well. They certainly can't handle the budget.

The CHAIR — Order! I call on the Deputy Chair.

Ms HENNESSY — The intellectual blancmange!

The CHAIR — I believe I called the Deputy Chair.

Mr PAKULA — The presentation that you gave, Attorney, referred to your responsibility for the FOI commissioner, and I note the sort of historic responsibility that DOJ and the Attorneys have for whole-of-government FOI in any case. Can you advise the committee of how much the Victorian government has spent in this financial year on FOI legal fees in VCAT and in the courts? That is, what has been spent on legal fees in government attempts to prevent material being released under FOI?

Mr CLARK — Mr Pakula, that is not a matter that comes within my portfolio responsibility. I am responsible for the FOI commissioner. Individual agencies will respond to individual FOI requests as they believe is appropriate. My responsibilities, as I say, are for the commissioner and for guidelines of the overall operation of the legislation.

Mr PAKULA — Minister, I note your answer in regard to individual agencies. Can you tell the committee what the Department of Justice has spent on defending FOI applications in the court and in VCAT in this current financial year?

Mr CLARK — I am not in a position to tell you that at this hearing. I can make inquiries as to what information we might be able to provide to the committee in that regard. I do enter the caveat that often there is not a disaggregation of legal expenses for different matters, but let me make inquiries and see what information we are able to provide.

Mr PAKULA — I take it he is taking it on notice?

The CHAIR — Take it on notice, yes.

Mr PAKULA — I would be amazed if you could not disaggregate that.

Mr ONDARCHIE — Attorney-General, I refer you to budget paper 3, chapter 2, page 179, the area that talks about infringements and enhancing community safety, and I wonder if you could tell us what the government is doing to improve the operations of the fines and infringement system and how they help ensure that disadvantaged Victorians are not unfairly dealt with.

Mr CLARK — Thank you very much, Mr Ondarchie. This is a crucial area in several respects, as I referred to in my opening presentation. The current system for collection of fines and infringements has been built up over many years. It has long been in need of fundamental reform. That reform has not occurred under the previous government. There are a number of piecemeal measures, some of which have had some benefit, but what it fundamentally needs is a restructuring of the entire system of how fines and infringements and victim compensation orders and other legal debts are recovered.

The essence of it is to move from a transactions-based approach to an approach based on individuals, so that you track the obligations of individuals rather than treating each infringement or each fine on a free-standing basis. That will enable a much better picture to be gained of what people owe. It will allow much more effective pursuit of people who owe money, and it will also encourage and facilitate people coming to arrangements to clear their debt as a whole rather than making piecemeal arrangements to deal with some infringements or fines and then finding there are others that need to be dealt with.

It will also strengthen the capacity of the sheriff to pursue people who owe money and are trying to renege on their obligations, and clearly it is an affront to law-abiding citizens who, when they do incur an infringement pay up out of respect for the law, if some people think they can get away with it. As I mentioned earlier, the sheriff and his team have been doing some excellent work within the framework of the existing law. Some of their use of automated numberplate recognition technology has been excellent, and they have been able to nab substantial numbers of people who did think they could get away with it and force them to cough up significant amounts of money. But more extensive reform is needed. Part of that is legislative, but a large part of it is the IT systems that will underpin legislative reform, and that is what the funding in the current budget is designed to do.

You rightly touched on disadvantaged Victorians. One of the problems of the current regime is that when people who are suffering from mental illness, cognitive impairment or some other serious issue which has resulted in them incurring large numbers of infringements — many of them may be automatically generated, or many may be issued in ignorance of the person's broader circumstances — they can very quickly incur a large amount of legal debt to the point where it is then very difficult for them to resolve that. One of the very strong and consistent items of the feedback that I receive from those who work with people with disadvantages is that one of their challenges is trying to help people who have incurred large numbers of infringements when they have mental health or other problems to resolve those. There are mechanisms in the current regime that are designed to do that, but they can take time and they are not as effective as they can be.

With these reforms it will be possible to keep tabs on what levels of legal debt people are incurring, and where people are starting to incur large numbers of fines or infringements or other legal debt, for that person to be brought before a human being, a real live judicial officer or someone within the sheriff's office — someone who is an individual who can say, 'What is going on here?', 'What are we going to do to resolve your issue?' and 'Should we establish a payment plan, or what is going to be done?'. At the moment that often happens far too late. So this is a major piece of reform. I might add it will complement other things that we have done in recent times to strengthen the protections in the court system for people with intellectual disability or other cognitive impairment.

There have been cases in the Court of Appeal, the Taha and Brookes cases, which lay down the law about the obligation of magistrates courts to be aware of the potential for people coming before them to have cognitive impairments, but the legislation also makes clear that in those situations there can be a review initiated of a decision that might have been made in ignorance of the fact that a person did have a cognitive impairment. That deals with that particular problem, but the main objective is to undertake more fundamental reform of the system so that the system as a whole can operate across the board and so that money that is owed to the Victorian community through unpaid fines and infringements can be recovered.

Mr PAKULA — Attorney, you have already spoken today about the initial decision of the VLA to cut back on instructing solicitors in criminal trials. You made some supportive comments in the media about a week or two ago, and you seem still recently supportive of the initial VLA stance today. As you would know, a number of Supreme Court judges and the Court of Appeal took a different view, and so legal aid have relented and they have reversed that decision, but in doing so they have described the situation as interim and as ultimately unsustainable. So in regard to the funding that you have provided legal aid, I am just wondering whether it comes attached with the requirement that they will over the 13–14 year provide instructing solicitors in criminal trials in accordance with the Court of Appeal's decision.

Mr CLARK — The short answer, Mr Pakula, is no. The funding does not come with any such condition as you refer to. The fund is to add to the resources available to Victoria Legal Aid on top of the $26 million a year that we provided in the previous budget and to give them additional capacity to respond to demand as demand increases over time.

The issue about instructing solicitors in higher court trials is an issue about the effective use of taxpayers money. As I indicated earlier, the Victoria Legal Aid board members are the ones who set the guidelines and they are the ones responsible for determining the basis on which legal aid dollars will be made available in accordance with those guidelines. But, as I said earlier, I strongly support the work that the legal aid board does to seek to spend taxpayers money more wisely and to ask and probe about opportunities to get better value for money.

To me the question remains unanswered as to why it is being argued that instructing solicitor and counsel are needed in all or most criminal trials in the higher courts in Victoria when that is not the case in other jurisdictions. Other jurisdictions have operated in many criminal trials in the higher courts with counsel alone, and legal aid very fairly and reasonably are asking why can that not occur in many trials here in Victoria. Some of the suggestions that have come from the law institute leadership and others imply that they believe that Victorian barristers are not up to it and are not capable of doing as good a job as their interstate counterparts have been doing for many years. I would reject that suggestion. I believe the Victorian Bar is of very high calibre. So to me that question remains unanswered.

My understanding is that Victoria Legal Aid, as they have indicated publicly, are intending to continue to examine ways in which they can get better value for money, ways in which they can ensure that better preparations are made for trials by instructing solicitors. Because as you will be aware, instructing solicitors are funded for preparation for trials, are funded to prepare the brief to go to counsel, and one of the concerns that the VLA has had has been as to whether in many instances that brief has been done to an appropriate standard and that the taxpayers are receiving value for money. So this is about improving quality and improving the effectiveness of the delivery of legal services. As I mentioned in my introductory remarks, VLA has a record under this government and under the previous government of asking questions about how the overall operation of the legal system can be improved, and that is what they are doing here. I support them in continuing to ask those questions and look for opportunities to ensure that taxpayer funds are spent more wisely and more effectively.

Mr PAKULA — Just quickly, I am very interested in your response, Minister. You talk about the way legal aid spends money. You would equally be aware that the law institute — not just the institute but others also — have actually raised significant concerns about how they see money being spent on things like publications, websites, admin staff and the like. But you would also know that before the Court of Appeal decision there had been a number of trials delayed and adjourned, and it is probably only a matter of time before someone is let out on bail as a result of those delays. I take it from your answer that, despite the budget funds that you have injected, it is still possible that in the next year we will revert to a situation where legal aid no longer funds the instructing solicitors, by your evidence?

Mr CLARK — I am not going to pre-empt the decision of the Victoria Legal Aid board in that respect. I certainly reject the suggestion that people are likely to be let out on bail. That certainly has not occurred to date and I do not think anybody in the legal system — —

Mr PAKULA — Trials keep getting adjourned.

The CHAIR — Order!

Members interjecting.

Mr CLARK — I do not think anybody would support people being released on bail where that was not justified on the merits of the case simply because of issues such as this. As you will be aware, Mr Pakula, a number of trials have been proceeding with single counsel. The decision of the Court of Appeal related to one particular case and the views of the trial judge in that particular case and, strictly speaking, the decision of the court was based primarily on the timing of the appeal that was made by the DPP. But, in any event, there have been a number of trials that have proceeded with solely one counsel.

I think as a general principle there is recognition that there are some cases where it is appropriate to have two lawyers and some cases where only one lawyer is necessary. The challenge is to work out what is the appropriate level of personnel and therefore of funding in each particular case, but also how the different case parties — in the sense of solicitors, counsel and others — work together in the most effective way possible. The Court of Appeal laid down some fairly clear expectations of what they believed were responsibilities of instructing solicitors. Where instructing solicitors are present in trials, it is important to ensure that they live up to the expectations that were referred to by the court.

Mr ANGUS — Attorney, I refer you to budget paper 3, pages 184 to 187, 'Supporting Legal Processes and Law Reform'. In relation to support for legal process, can you inform the committee about instances where you, as Attorney-General, intervene in court cases and the justification for such interventions?

Mr CLARK — One of the responsibilities of an Attorney-General is to intervene in a range of different types of cases. It is part of the first law officer responsibilities of the Attorney-General, and that is something that I am involved in quite often. The reasons can be quite varied. A number of them are constitutional matters, where it is important that Victoria's position is represented, particularly in cases before the High Court. We have taken part in a number of key High Court decisions — in recent times, the Williams case, relating to direct funding by the commonwealth for the school chaplaincy programs, which led to some very clear guidance of the High Court not only about it commonwealth-state relations but about appropriation arrangements at a commonwealth level. We have been involved in cases involving the use of Australia Post to send threatening

and abusive communications. We have been involved in cases about the validity of local council by-laws about street preaching and public advocacy.

Generally we have become involved in those cases where there have been arguments raised that would detract from the capacity of a state Parliament to legislate as the Parliament thought appropriate on behalf of the community. We have not been seeking to buy into the policy merits of particular laws, but to uphold the right of Parliament on behalf of the community to legislate and as part of that be accountable to the community for the manner in which it legislates. There have also been cases generated by the Charter of Human Rights and Responsibilities Act, seeking to ensure that there are sensible interpretations of the operation of that legislation.

Apart from that, from time to time I have become involved in contempt proceedings before the courts. There are occasions when it is necessary for somebody to present the case about a contempt because one of the parties involved is a court itself and it is difficult for a court when it is being subjected to judicial review to go along and argue a position. For example, there was a recent case involving a criminal proceeding where someone refused to give evidence and they were dealt with by the court for contempt and then judicial review was sought of that. So I intervened to uphold the decision that was made by the initial court. Proceedings can also be brought in relation to other contempts of the court where the court is not in a position to bring it themselves.

There were also proceedings, that received some publicity, in relation to seeking to uphold the authority of the court and to have parties dealt with for contempt in defiance of orders issued by the court. There is a strong public interest in that in cases where the alleged contempt involves substantial public disruption and inconvenience. One particular case related to the blockade of the Emporium site by the CFMEU in recent times. That proceeding is still ongoing before the Supreme Court, so I am somewhat limited in what I can say about it, but I intervened as Attorney-General on an application by Grocon to have the CFMEU dealt with for what is alleged to be contempt and defiance of orders that were made by the Supreme Court. The judgement is reserved on whether or not the CFMEU is in contempt. If it is found to be in contempt, we would expect the court to then proceed to assess what quantum of penalty is appropriate. At that stage I would certainly be arguing, putting evidence before the court as to the appropriate level of penalty that should be imposed, assuming that contempt is found by the court, having regard to the disruption that was caused.

Ms HENNESSY — Just wait until there is a finding by the court before the Attorney-General starts to intervene.

The CHAIR — Order!

Mr CLARK — That gives you some illustration of the range of matters that I am involved with in the first law officer role in terms of proceedings before the courts.

Mr PAKULA — I am happy to do a double-barrelled question, so that there is no supplementary. I just want to talk about the FOI commissioner again, and your election commitment that you would:

> Ensure that the independent FOI commissioner will … set enforceable professional standards which departmental FOI officers will be required by law to meet, similar to the accounting standards applying to financial officers.

As minister Mr McIntosh gave that power to himself. You are in a slightly different role as Attorney-General. Will you acquit the election promise and transfer that responsibility to the commissioner? The double-barrelled bit is: will you release those standards?

Mr CLARK — I will take that on notice, Mr Pakula. You are going into a degree of detail there, and I will give you a considered answer on it.

Mr PAKULA — Thank you.

The CHAIR — Thank you, Minister, that concludes the hearings for the portfolio of Attorney-General. I thank Ms Gale, Mr Wilson, Ms De Cicco and Mr Hill for their attendance this afternoon. We will have a 5-minute break and resume with finance.

Witnesses withdrew.