Division 53: Attorney General, $307 707 000 —

Mrs L.M. Harvey, Chairman.

Mr C.C. Porter, Attorney General.

Ms C.M. Gwilliam, Director General.

Mr W.E. Hewitt, Executive Director, Corporate Services.

Mr P.E. Robinson, Manager, Business Planning and Budgeting.

Mr P.J. Mitchell, Sheriff.

Mr R. Warnes, Executive Director, Court and Tribunal Services.

Ms P.M. Bagdonavicius, Public Advocate.

Mr J. Skinner, Public Trustee.

Mr G. Turnbull, Director, Legal Aid Commission.

Ms L. Baker, Finance Manager, Legal Aid Commission.

Mr G. Hamley, Executive Director, Office of Native Title.

Mr D. Creedon, Chief of Staff, Office of the Attorney General.

The CHAIRMAN: This estimates committee will be reported by Hansard. The daily proof *Hansard* will be published by 9.00 am tomorrow.

The estimates committee's consideration of the estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. This is the prime focus of the committee. Although there is scope for members to examine many matters, questions need to be clearly related to a page number, item, program, or amount within the volumes. For example, members are free to pursue performance indicators that are included in the budget statements while there remains a clear link between the questions and the estimates. It is the intention of the Chairman to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point.

The Attorney General may agree to provide supplementary information to the committee, rather than asking that the question be put on notice for the next sitting week. For the purpose of following up the provision of this information, I ask the Attorney General to clearly indicate to the committee which supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the Attorney General's cooperation in ensuring that it is delivered to the committee clerk by Friday, 5 June 2009, so that members may read it before the report and third reading stages. If the supplementary information cannot be provided within that time, written advice is required of the day by which the information will be made available. Details in relation to supplementary information have been provided to both members and advisers and accordingly I ask the Attorney General to cooperate with those requirements.

I caution members that if the Attorney General asks that a matter be put on notice, it is up to the member to lodge the question on notice with the Clerk's office. Only supplementary information that the Attorney General agrees to provide will be sought by Friday, 5 June 2009. It will also greatly assist Hansard if, when referring to the program statements volumes or the consolidated account estimates, members give the page number, item, program and amount in preface to their question.

[Witnesses introduced.]

The CHAIRMAN: The member for Kingsley.

Ms A.R. MITCHELL: I refer to the line item for court and tribunal services on page 701. Constituents in my electorate have expressed some concern about the support they perceive that they receive as victims of crime. Within that line item, is there any change to the support available to these people?

Mr C.C. PORTER: There is no change in the provision of victim support services from last financial year to this financial year, as indicated in that line item. The next step that is likely to be taken in supporting victims in that respect will be a significant change, and that will be a matter for future budgets. A review was undertaken under the previous government that looked at formalising a range of matters, which I summarise as reporting procedures. Instead of casting the good service obligations that exist informally at the moment on a range of organisations such as the courts, the Director of Public Prosecutions and so forth, it would cast those obligations as mandatory requirements, so there would be stipulated time frames in which victims would have to be notified of certain matters. At the moment, they exist fundamentally as protocols. The previous government's view on

that matter, which I share, was that there would no doubt be significant budgetary implications for the kind of shift that that might bring about. Those expenditures have not been included in this budget, but they are certainly under active consideration by the government. I have travelled and met the South Australian Commissioner for Victims' Rights and examined the way in which that state structures and funds its victim support services. It is done there through, in effect, an addition to fines levied on people who commit crimes. A 25 per cent levy on all fines collected in South Australia goes into a separate account for compensation and funding of victim support services. It is worth noting in relation to that line item that the department delivers victim support and child witness service in the metropolitan area and in 12 regional centres across Western Australia.

[5.10 pm]

It is often the case that the physical location of the services is in the court precinct in the buildings themselves. The majority of the regional services operate on a part-time basis. Bunbury and Geraldton are the only regional centres that have separate child witness staff. I can say that the demand for services in the regional areas has increased significantly in recent years. My information is that, from the four years 2004-05 to 2007-08, there was a 206 per cent increase in the number of child witnesses who were assisted. In the past 12 months alone, there has been a 36 per cent increase in the number of victims of crime seeking assistance, and a further five per cent increase in the number of child witnesses. It is certainly the case that there is not a massive change in the way in which services are delivered from last year to next year, but it is something that is ripe for change over the next four years.

Ms J.M. FREEMAN: The Attorney General says that he wants to include it. Has he included it in the forward estimates?

Mr C.C. PORTER: No.

Ms J.M. FREEMAN: At this point in time, is it something that the Attorney General —

Mr C.C. PORTER: We are working on it. Much will depend on how we structure the funding of such a service. As I said, one option is the South Australian model.

Ms M.M. QUIRK: I refer the Attorney General to the last dot point on page 701 of the *Budget Statements* that relates to the over-representation of Indigenous people in the criminal justice system. What strategies are the government putting in place to address that very vexed issue?

Mr C.C. PORTER: I thank the member for her question. As the member knows from her previous position, it is a much vexed issue. The starting point is the rate of Indigenous incarceration and the need to give them at least some attention as they relate to the issue of over-representation. It is often said that Western Australia has the highest percentage of Indigenous incarceration anywhere in Australia. I think it is worthwhile noting that that is not correct if we count the Northern Territory.

Ms M.M. QUIRK: The rate seems to have miraculously dropped from 43 to 40 per cent in the past couple of months. Well done if that has happened, but I do not know quite how.

Mr C.C. PORTER: It is a percentage that might mean little else other than a lot of non-Indigenous people have been apprehended and convicted recently.

Ms M.M. QUIRK: Exactly.

Mr C.C. PORTER: I will look at the imprisonment rates. The two documents I use are the "Kings College London World Prison Population List", which gives comparative data from Australia to other jurisdictions, and the Western Australian imprisonment rates are set out in 2005 and 2008 figures from the Australian Bureau of Statistics. They are the ones I rely on for comparative data. The imprisonment rate for Western Australia in 2008 was 41.2 per cent, and for the Northern Territory it was 83.2 per cent, so that was considerably higher than our rate. It is interesting to look at the comparisons. There is no doubt that the situation in Western Australia is far from acceptable. Interestingly, the rates in New South Wales are 24.4 per cent; Victoria, 5.8 per cent; Queensland, 27 per cent; South Australia, 20.6 pre cent; Western Australia 41.2 per cent; Tasmania 12.6 per cent; the Northern Territory, 83.2 per cent; and the ACT 9.9 per cent. It is certainly a problem—one that we share with other states that have comparatively high Indigenous populations. I have been careful, I think, not improperly, to manage expectations about what the two agencies I manage can do about this situation. I consider that it is intergenerational and has to do with welfare policies and a range of other matters. There have been successive—"failures" is the wrong word—valiant attempts for improvement that have not lived up to expectations. The Department of the Attorney General recognises the difficulties. Over the past year, we have looked at a range of measures in this area. Some of them are to do with partnership agreements, dispute resolution, alternative court and alternative service models and improved provision of services to remote areas. We have tried also to specifically focus on juvenile justice. The alternative court model is a very important area because, at the moment at least, one of them is under consideration in terms of its statistical effectiveness in

Kalgoorlie. We are awaiting the report for that alternative model. My view on these matters is that that model, as well as the family violence model that is working in Geraldton, should stay if they can be proven to give us value for service delivery. All the anecdotal evidence from Geraldton and Kalgoorlie is that the people who go through this process have reduced recidivism rates compared with individuals who do not. Those matters are continuing.

The other point to factor in here is that 80 per cent of non-Aboriginal youth are diverted away from the criminal justice system. Recent statistics show that only 55 per cent of Aboriginal youth are diverted. It is my aim to try to close that gap between 55 and 80 per cent. Significant resources have been provided over the past year and will continue to be over the next four years to try to increase that rate of diversion. The other point to note is the unfortunate fact that Aboriginal people in Western Australia, as a statistical matter, are more likely to be the victims of crime than any other group. Unfortunately, they are more likely also to be the victims of Aboriginal-on-Aboriginal crime. What has crept into the public debate about this matter is a view that somehow there is an easy fix to it, which, unfortunately, there is not. We are certainly alive to those issues. I think the ability of the Department of the Attorney General to impact—it is not as great, frankly, as that of the Department of Corrective Services—is through juvenile diversion and by supporting alternative court models.

Ms M.M. QUIRK: One area I think the Attorney General mentioned in his initial answer relates, for example, to video links and the use of technology in remote communities and courts. I was in Kalumburu in the middle of last year and the court video link was not working so a 15-year-old was remanded to Kununurra, some hundreds of kilometres away. Maybe the answer can be provided by supplementary information. How extensive is that video link network now? How many are actually functioning and how many magistrates are proving to be recalcitrant?

Mr C.C. PORTER: It is certainly something I have been alive to in my travels around the state. The information I have might obviate the need for any information to be provided on notice. I have statistics for the appearances from prison in person and via video link. In the Children's Court, it was 27 per cent in 2007 and up to 31 per cent last year. We would like to see that trend increase. In the Magistrate's Court, it was 35 per cent to 44 per cent—travelling in the right direction—the Supreme Court, 39 per cent to 47 per cent; and this very curious percentage of appearances from prison via video link in the District Court is two per cent in 2007.

Ms M.M. QUIRK: I think I know the answer to that, but I will tell the Attorney General after this session.

Mr C.C. PORTER: Yes. There is a range of answers to that but that figure could be considerably improved on. My intention, with the assistance of the District Court, is to increase that considerably. It also decreases the need for travel, which carries with it its own difficulties. That is another important way in which there can be an impact on the Indigenous person's experience in the criminal justice system.

Ms J.M. FREEMAN: I may have missed the answer but can the Attorney General tell me whether that includes his strategies and any further Aboriginal justice agreements, in particular, regional Aboriginal justice agreements?

[5.20 pm]

Mr C.C. PORTER: I understand that we will have exactly 21 Aboriginal justice agreements in place at 30 June. This government's intention is to not wind that number back, but to progressively increase it as we can.

Ms J.M. FREEMAN: Out of those 21, how many are in the regions?

Mr C.C. PORTER: My preliminary advice is that all but about two are in the regions. The vast majority are regional.

Mr P. ABETZ: I refer to the seventh dot point on page 701 and to the line item "Proceeds From Fines Enforcement Registry Fees" on page 718. In light of the recent media reports of substantial numbers of people not paying their fines, what does the Attorney General intend to do about fine enforcement?

Mr C.C. PORTER: I thank the member for his question. It is one of those issues that looks easy in opposition, but is considerably harder in government. My overwhelming concern with fines now is the same as it was when we were in opposition. It is intriguing to go through the statistical analysis with the sheriff on how the situation has developed since that office has existed. The total value of fines that have been registered with the sheriff since 1995 and, therefore, are on the Fines Enforcement Registry, is $867 million. The problematic figure is that $216 million, which is labelled as "currently under active enforcement". That is money that we are finding very difficult to get. We have successfully completed full payment of $511 million. There has been some considerable success. An amount has been either written off or referred back to court.

In the case of perennial non-payment, somebody might find that that constitutes a breach of a sentence and they will find themselves back in court. To 30 April this year that figure was $116 million. I have mentioned

$216 million, which is currently subject to active enforcement. An amount of $9 million is about to be written off. There is a system of time to pay, and under that system to date we have received $15 million.

A lot of very good initiatives of the previous government were designed to ensure that fewer people as possible spend as little time as possible in prison paying off their fines. That has a flow-on benefit to those people as well as to the prison system. One way in which we can further achieve that is to get as many people as possible on time-to-pay arrangements. A range of things can be done to try to get that $216 million figure down. The two major things that we can do are to try to reach an agreement with the commonwealth whereby welfare payments are garnisheed at a very moderate and minor level or, alternatively, have people voluntarily enter into time-to-pay arrangements. Providing an incentive for people to enter into time-to-pay arrangements is, again, a difficult matter. What I have been looking at, and intend to pursue, is a range of legislative measures. We have literally gone across every state and territory, and New Zealand, to see what sort of legislative and regulatory measures they institute to try to present an incentive for people to enter into time-to-pay arrangements. There are a lot of them, many of which are quite creative. I have not settled on exactly which ones we will adopt here.

Significant incentives must be allowed to exist so that people enter into time-to-pay arrangements. One that I have highlighted is wheel clamping and another is the physical removal of registration plates from vehicles. At the moment people's licences can be taken from them if they have outstanding fines; however, that will still allow somebody to physically drive and, indeed, so will physically taking vehicle registration plates off a vehicle. Of course, it is far more difficult to drive the vehicle because one becomes observable to law enforcement. That $216 million figure is a very important one and one that I do not think will be decreased without significant legislative changes, which we are looking at.

Ms M.M. QUIRK: Is wheel clamping something that the Attorney General is currently exploring?

Mr C.C. PORTER: Yes, it is.

Ms M.M. QUIRK: Is it the proposal that the government would contract out to a private provider to undertake that service?

Mr C.C. PORTER: Generally where that has been done, there is a mix. On some occasions it is privatised and contracted out; on other occasions the relevant agency equivalent to the Sheriff's Office undertakes that service. Frankly, I do not have a philosophical view on which it should be. Sometimes with measures of that kind it might be easier for it to simply be done by the government because it has such a strong enforcement flavour to it. My moderate leaning is for it to be undertaken by the Sheriff's Office.

Ms M.M. QUIRK: The mechanism would be that, for example, a car is seen somewhere and it comes up on the computer that a person of interest is driving it, and, therefore, the wheel would be clamped. Is that the general scenario?

Mr C.C. PORTER: Correct. For somebody who had reached the point in the fines non-payment cycle whereby they had their licence taken from them, at that point, hopefully, we would know where they live and what vehicle they might have had registered to them. It would be best if we could achieve that in a driveway of a private residence rather than in the Polly Farmer tunnel. Obviously some discretion and intelligence would need to be used in terms of where vehicles would be wheel clamped. We would be looking to wheel clamp vehicles in a range of places where it is safe, to simply provide incentive for the person to enter into a time-to-pay agreement.

Ms M.M. QUIRK: Therefore, the vehicles that the Minister for Police is not crushing will be clamped. Is that a simplistic way to look at it?

Mr C.C. PORTER: I would think that the legislative regime that the police minister has indicated he will bring to bear is obviously related to hooning offences.

Ms M.M. QUIRK: Sorry; I was being facetious.

Mr C.C. PORTER: I know. Leaving aside the facetiousness, there is a crossover between some of the people who might otherwise be committing those offences. One of the factors that occurs in hooning offences is loss of licence, and it may well be that some of those people end up on our list.

Mr J.R. QUIGLEY: When I look at page 697 of the *Budget Statements* and the summary of appropriations across the agencies within the Attorney General's portfolio, I notice that the budgeted cost of delivering the service this financial year is between $840 million and $841 million. I realise this is across the portfolio. In division 53, the total cost of services budgeted is $411 million, as opposed to $401 million last year, as rounded out. There does not appear to be any diminution of service. However, when we go to the three per cent efficiency dividend, there is a dividend saving of $3.926 million, without any particularisation. How will the three per cent savings be achieved and where?

Mr C.C. PORTER: They will be achieved in three ways. Firstly, through savings on salaries; secondly, goods and services —

Mr J.R. QUIGLEY: First of all, I am dealing with goods and services The figure would be $9 million if we call in salaries. I will come to that in a moment. It is the line item above goods and services. The allocation for goods and services is $3.926 million.

Mr C.C. PORTER: I was explaining that the three per cent efficiency dividend applies to salaries, goods and services and the repeat drink-driving strategy. If there is a particular order the member would like me to deal with them in, I will do so.

Mr J.R. QUIGLEY: I am trying to isolate the services that will be cut back.

Mr C.C. PORTER: That is correct. I will deal with goods and services first.

Mr J.R. QUIGLEY: It is the second line item on page 700.

Mr C.C. PORTER: I will deal with each of them in turn. I will start with salaries. The total savings we require in 2009-10 is $9.182 million, which represents three per cent of the total budget. For salaries, we have predicted a savings of $4.256 million. The way in which that occurs is that we harvest $4.256 million from salaries. The salary savings will comprise full-time equivalent savings of approximately 54 positions. In other words, 54 positions through vacancy management will not be renewed.

Mr J.R. QUIGLEY: Are we talking about judicial officers or further down the chain?

Mr C.C. PORTER: It is further down the chain. They are administrative positions. We can tell the member where they are at the moment. A question that is often asked about savings in salaries is: can the exact position be identified?

There is a difficulty when it is a vacancy management position in that the strategy is based on not filling vacancies for administrative services, as opposed to front-line services, when they occur. The positions that will not be filled for the next 12-month cycle depends on which vacancies occur; however, vacancies that will not be filled have been identified already. I have mentioned that there are 33.4 full-time equivalent employees, 21 of whom have been identified in court and tribunal services, 6.4 in corporate services, four in the Public Trust Office and two in the State Solicitor's Office. In the view of the director general, and I agree, they are not front-line services. They are not judges or positions of that nature. They are positions at the administrative level, and I think further savings of an additional 20.6 FTEs, which are yet to be identified, will be some of the larger items that I think are more to do with middle management, but there will also be some low-paid FTEs in that figure of 20.6 as well.

[5.30 pm]

I will head now to the last of the savings; that is, the program saving of $1 million. That has been identified in the cancellation of the repeat drink-driver strategy. As I understand the position, the previous government proposed to introduce a range of legislative measures for repeat drink-drivers that would have centred around the concept of interlock systems for vehicles and vehicle-based sanctions such as immobilisations, impounding and confiscation. Funds were allocated for additional judicial costs and administrative support and changes to information technology that would have been required to follow through and fund the legislative changes to effect immobilisation and so forth. Those measures did not occur during the period of the last government. They are mooted during the period of this government, but have not yet occurred; therefore, they have been removed from the budget as there is no legislative trigger to require the services to be provided.

Ms M.M. QUIRK: Just on that point, although the repeat drink-driver legislation on the use of interlocks has been contemplated by government, it is not imminent; would that be correct?

Mr C.C. PORTER: I think the member for Girrawheen would have to ask that question of the Minister for Police. However, I can say that the money was budgeted under the previous government on the basis that it was imminent but it did not occur. It is certainly the case, as I understand it, that the police minister intends to bring in legislation of that type, but I am not familiar with its timing. However, the timing of it is not so urgent that it must be in the budget this year.

Mr J.R. QUIGLEY: I am sorry, the Attorney General has not answered the question yet.

Mr C.C. PORTER: Yes, we are getting to goods and services.

Mr J.R. QUIGLEY: We are only getting to the answer.

Mr C.C. PORTER: The goods and services—that is, $3.926 million in 2009-10—comprise consulting, legal administrative audit and human resource services of $613 000, project contracting and services of $2.917 million.

Mr J.R. QUIGLEY: Project contracting and services? Under that heading, could the Attorney General be a bit more specific and tell the committee what that is about?

Mr C.C. PORTER: To get that level of detail, I might resort to one of my advisers.

Mr J.R. QUIGLEY: It is a fairly large hunk of it.

The CHAIRMAN: Minister, Mr Hewitt, is it?

Mr C.C. PORTER: That is correct.

Mr W.E. Hewitt: The $2.917 million is a combination of projects that we had anticipated doing, including the computing regime, but have actually cut back on. A significant amount of infrastructure costs in our networks supporting online ICMS and videoconferencing technology has also been put on hold. As some buildings have not being built by government or not renovated, there have been savings in those areas. This is the majority of that $2.917 million.

Mr J.R. QUIGLEY: The videoconferencing?

Mr W.E. Hewitt: No. ICMS is part of the reduction in some of the projects that we are going to do in the ICT area. Obviously in relation to ICT in prisons and other areas that we support we have to coordinate the expenditure. When projects do not go ahead, we earmark that expenditure to be deferred.

The CHAIRMAN: Excuse me, Mr Hewitt, could you please explain the acronym ICMS for Hansard.

Mr W.E. Hewitt: ICMS is integrated courts management system—sorry for that.

Mr C.C. PORTER: There are two more items, and they are consumables, $247 000, and equipment upgrades, $149 000. Again I will rely on the director general to provide the detail on the consumables.

Ms C.M. Gwilliam: Consumables would be expenses such as decreases in travel through better airline purchasing bookings; decreases in issues to do with car management or fleet management, moving to four-cylinder cars and smaller four-cylinder style vehicles at a lower cost; and also issues in relation to laptops and using more of a pool arrangement as with mobile phones.

Mr J.R. QUIGLEY: I have a further question in relation to the answer given about the integrated courts management system. I am told by Mr Justice Blaxell that there are 36 outstanding murder charges of which only 10 have got past committal to the Supreme Court, and that a big hold-up in relation to the other 26 is tracking forensic exhibits through PathWest or other forensic agencies for which he says the court will need further computer management systems. Is it not a fact that having such a heavy cutback in the court management system will only lengthen the delay in managing cases, criminal cases especially, within the court system?

Mr C.C. PORTER: The first point is that the savings areas affecting courts have been agreed to by the judiciary, so I take it from that that the cutbacks will not have a direct impact on the area identified by the member for Mindarie. As to the 26 out of 36 outstanding murder charges, the first thing is that the time to trial, obviously, in the Supreme Court and matters like that have been greatly reduced under the previous government and have continued under this new government. However, I think the answer would be that a significant amount of budget has been allocated to the Office of the Director of Public Prosecutions to update its computer and IT systems—I understand that may be answered when the director is here—to allow, at least in part, the tracking of documents, exhibits and items such as forensic exhibits. I think therefore that there are some significant improvements in the investment to the DPP which will contribute to the betterment of the situation mentioned by the member for Mindarie. I add that my understanding from my own conversations with members of the judiciary, with whom I have had several formal meetings on this issue, is that there is a difficulty in PathWest having something of a bottleneck in the time it takes to finalise matters of forensic pathology that are evidentiary in nature. PathWest services a range of government agencies and also some private sector interests, but law enforcement is a very large part of it and there are some difficulties there no doubt.

Mr J.R. QUIGLEY: I have a further question. As explained by His Honour at a recent re-qualification weekend, a particular exhibit has up to five exhibit numbers, including a brief number and an IMS—incident management system—number. A particular forensic exhibit has up to five exhibit numbers, all discrete to the host computer that they are being held on, and there is not one overarching computer system so that a judge, a prosecutor or an investigator can track immediately where an exhibit is up to. One of the problems is that if the court contacts PathWest, PathWest does not know the number that the court is referring to and vice versa. That then needs more investment in computer hardware and I am worried that the cutback on this computer system in computer services that the Attorney General is talking about will have a further adverse impact on that list.

Mr C.C. PORTER: I think the answer to the member for Mindarie's concern is no, this cutback does not make that situation any worse. However, to the extent that the member has identified an area in which further investment additional to that which has occurred historically could make that situation better, the answer is yes.

Nevertheless, it is also a case of some management issues, and it is not merely with respect to exhibit items and their numbering by police, the DPP and so forth; it is even to the extent that there are different police charge numbers that go through to a District Court number, which then changes when they go to the Supreme Court.

Mr J.R. QUIGLEY: Exactly.

Mr C.C. PORTER: These are not matters that are not provided for in this budget. I agree they are matters that require investigation and perhaps greater investment in the future; however, there is nothing in these three per cent cuts that make the situation any worse.

The CHAIRMAN: Does the member for Girrawheen have a further question on this topic?

Ms M.M. QUIRK: No, I was just trying to get my name on the list, Madam Chair.

The CHAIRMAN: There are three more questions from members. I give the call to the member for Jandakot. I am mindful of the time, members. We need to get through the division on the Commissioner for Equal Opportunity.

[5.40 pm]

Mr J.M. FRANCIS: I refer the Attorney General to page 701 of the *Budget Statements*. Under the heading "Significant Issues Impacting the Agency", the sixth bullet point refers to the adoption of innovative approaches in delivering court services "to meet evolving community demands for better justice outcomes". I specifically refer the Attorney General to statements he made following the McLeod trial about changing the jury selection process. Does the sixth bullet point reflect the Attorney's comments about amending the jury selection process?

Mr C.C. PORTER: In part, it does. My concern with the jury selection process is that 65 per cent of the people requested to come onto a jury pool are excused. That has meant, effectively, a de facto system of self-excusal, as no real stringent investigation is undertaken into the reasons that people excuse themselves. A Law Reform Commission report is due on that issue. Independent of that process, I have been liaising with the department to look at potential changes to the system. At the moment, I favour collapsing all of the present potential reasons for excuse into one or perhaps two broad excuses, which are only to be accepted in extreme circumstances. Where they are accepted, some degree of investigation will have to be undertaken into the basis of the excuse, for instance, on a sample size system, so that if 100 excuses are made, 15 or 20 of them are tested. I also favour a system that decreases the number of people with criminal records who appear on jury pools. That is a delicate balancing act because I do not want to unfairly exclude people from an important civic duty based on minor convictions of one type or another. That can be achieved in different ways, and several options have been put to me for consideration.

The budget line item to which the member for Jandakot refers contains other innovative approaches to delivering court and tribunal services, including significant upgrades to audiovisual facilities, which is a matter that has been raised already. The online lodgement facility is also being increased. The District Court building, which is a public-private partnership building, appears to be working relatively well after some teething problems, and significant efficiencies will be derived from that. Also, there has been a $52 million refurbishment of the Central Law Courts, which is where magistrate activities are undertaken. We hope that the significant upgrades made to our facilities will drive efficiencies into the system.

Mr J.M. FRANCIS: I have a further question to the Attorney General about ruling people in and out of eligibility for jury selection. Is the Attorney General looking at increasing the maximum age criteria?

Mr C.C. PORTER: That is one thing we are looking at. At present the age cap is too low. This excludes a range of people, and it is my view there is no valid reason for their exclusion.

Ms J.M. FREEMAN: I refer the Attorney General to page 710 of the *Budget Statements* under the heading "Asset Investment Program". The third paragraph on that page refers to a new courthouse for Kalgoorlie. On the same page under the heading "Works in Progress" is the line item for the Kalgoorlie court upgrade, and I cannot see an allocation for the purchase of the post office building in 2009. Where is the budget allocation for that in 2009-10?

Mr C.C. PORTER: I ask the member for Nollamara to look at page 710 of the *Budget Statements*. Under the heading "Works in Progress", the very last item is "Kalgoorlie Court Upgrade", which shows the estimated expenditure to 30 June 2009 is $3.552 million. The purchase of the post office is included in that amount.

Ms J.M. FREEMAN: It is not included in 2009-10; is it using current funds?

Mr C.C. PORTER: There is an urgency on the purchase to do with Australia Post obligations. I will clarify the issue with the Kalgoorlie courthouse. I have had several meetings with representatives of local government and others in Kalgoorlie. The Department of the Attorney General had originally approved $30.7 million of capital

funds for that courthouse. There was some level of concern in the community about the way in which the courthouse would be located and developed. Whatever view one takes about those concerns and whether they were over or understated, there was a parameter change in the term of the last government that meant that to design and complete the building in a way that was thought to be conducive to community support would require another $17.9 million. That occurred in the life of the previous government. The member for Nollamara will appreciate that is a fairly significant increase. That $30.7 million is still in the budget; however, that is one of the capital audit projects that has been deferred. It is still included in the out years. The project has been deferred for two years, so the funding will flow in 2010-11.

Ms J.M. FREEMAN: The question related to the purchase of the post office building, and the minister is saying that the purchase is current and it is in here.

Mr C.C. PORTER: It will happen very soon. I point out that that additional money still needs to be found.

Ms J.M. FREEMAN: Really, it is not fully funded yet.

Mr C.C. PORTER: Like under the previous government.

Ms J.M. FREEMAN: The Liberal-National budget will have to increase to fully fund this purchase.

Mr C.C. PORTER: As with the previous government, that $17 million is not contained in the out years.

Ms J.M. FREEMAN: In other words, $17 million is missing from this budget.

Mr C.C. PORTER: That is correct.

The CHAIRMAN: Member for Mindarie, do you have a further question on this topic?

Mr J.R. QUIGLEY: Not on this.

Mr C.C. PORTER: Madam Chair, an hour is scheduled to discuss the Department of the Attorney General, and also the Equal Opportunity Commissioner is here.

Mr J.R. QUIGLEY: And Legal Aid?

Mr C.C. PORTER: Legal Aid is within this division.

The CHAIRMAN: Thank you, minister and members, this portfolio is scheduled to go through until 10 o'clock this evening. We are not obligated to deal with the Commissioner for Equal Opportunity before the meal break at six o'clock, but we can choose to do so if that is the will of the committee. Shall we continue with division 53?

Ms M.M. QUIRK: I refer the Attorney General to page 708, and I know that he needs to defer to Mr Turnbull. I am interested in the provision of legal aid assistance and whether it is the experience of the Legal Aid Commission, certainly in our remote communities, that the non-availability of interpreting services is causing some impediment. I know that the Aboriginal Legal Service does a lot of work in remote areas. Is any state government policy being developed for the broader provision of interpreter services, and have there been discussions with the commonwealth about that matter?

[5.50 pm]

Mr C.C. PORTER: The two components to this question are the overall level of funding that legal aid has and how that might be presently distributed.

Ms M.M. QUIRK: It was more a forensic question about the lack of interpreters causing issues when defending clients.

Mr C.C. PORTER: As it presently stands—I will ask Mr Turnbull to add to this—for legal aid to fund further interpreting services would mean cuts to existing services of one type or another. Much depends now on the extent to which Western Australia will receive a larger slice of the legal aid grants funding from the commonwealth. I understand from the discussions that we have had that we have put to the commonwealth the need for interpreter services and the need for a greater amount of grants. As it presently stands, Western Australia is the second lowest per capita receiver of federal grants for legal aid. It was anticipated that the draft terms of the new legal aid commonwealth grants funding agreement would be available in May. They have not yet been available. At the most recent Standing Committee of Attorneys-General, there was no indication as to when that information might be available. As it stands, we realise the need for it. That will not occur from present legal aid funding without a decrease from other areas. Our preference would be to have that funded through the federal grant process. That is now looking to be behind schedule. I will see if Mr Turnbull can add to that.

Mr G. Turnbull: It is true that the commonwealth government has currently allocated a slight increase to our base funding through the budget process over the last year. It remains to be seen whether any additional funding

will arise out of the negotiations that will shortly take place for the new funding regime. The current agreement has been rolled over for 12 months. It is due for completion on 31 December this year. I was advised yesterday that the figure that has already been allocated in the budget may vary depending on the outcome of negotiations. We live in hope in terms of additional funding being available through commonwealth allocations.

Ms M.M. QUIRK: Are there any plans to have a statewide strategy or a strategy for translation services and the law? Not all people in that position are legal aid clients.

Mr C.C. PORTER: I understand that. It is not a matter that I have given significant thought to at this relatively early stage. My inclination is that that would be a likely area for attention and for a statewide strategy, particularly if we do not consider that the legal aid funding that may or may not come from the commonwealth will be sufficient to increase the service and decrease the gap between service and need. If it is the case that we do not get what we are expecting to get, which will be of assistance, it will be back to the drawing board in terms of a state plan.

Mr J.R. QUIGLEY: Is the Coroner's Court properly funded?

Mr C.C. PORTER: In my view, it is short of FTEs.

Mr J.R. QUIGLEY: This year's budget provides for funding of $7.156 million, does it not?

Mr C.C. PORTER: That is correct.

Mr J.R. QUIGLEY: That is said to be about the same as last year's budget.

Mr C.C. PORTER: That is correct.

Mr J.R. QUIGLEY: I am referring to the fourth from last line on page 702 relating to the time to trial in the Coroner's Court, which still remains at 128 weeks. In relation to the same amount of funding last year, the coroner said that some inquests would have to be cancelled or postponed because of insufficient resources. In response to that situation, the Attorney General was quoted as saying that the court was at the apex of the criminal justice system and "it's trying to work out whether or not we need to investigate and prosecute a human's death. If you can't fund that properly, then you've given up the ghost." Is it not true that the Attorney has given up the ghost?

Mr C.C. PORTER: That is a very colourful way of putting it.

Mr J.R. QUIGLEY: I was just quoting the Attorney's language.

Mr C.C. PORTER: I understand that.

Mr J.R. QUIGLEY: The Attorney General said that if we cannot do better than $7.156 million, we have given up the ghost. Has the Attorney given up the ghost?

Mr C.C. PORTER: No. I think we can do better than that. Much of the issue is to do with timing and the way in which we structure the Coroner's Court and how we fund it. Over the period of the last financial year, 2007-08, approximately $600 000 was reallocated from the Department of the Attorney General to the Coroner's Court, which was a temporary alleviation of some of the difficulties that the coroner is experiencing at the moment. In answer to the member's question, there is some history to this that I consider needs to be understood.

Ms J.M. FREEMAN: Where is the line item in the budget that shows me how much the Coroner's Court is funded?

Mr C.C. PORTER: That was part of the question. It comes under "Court and Tribunal Services" on page 701. It is contained within that line item. It is not delineated as a separate line item.

Ms J.M. FREEMAN: So it is just under "Court and Tribunal Services"?

Mr C.C. PORTER: Yes.

Mr J.R. QUIGLEY: But it said by press release by the Attorney General.

Mr C.C. PORTER: Yes. There has been no hiding the fact that the funding for the Coroner's Court provided in the budget is very similar to its funding over the past financial year. The Coroner's Court has steadily faced an increasing workload. The Coroners Act came into force in 1996. By way of comparison, there were 995 investigated deaths in 2003-04 and 1 275 in 2007-08. That is an increase of 28 per cent. The funding to the Coroner's Court over that period was relatively steady. It has been facing more work with effectively the same number of FTEs. At the moment there is obviously a sustained increase in demand for services. There is a backlog of unfinalised files. "Unfinalised" is defined as not finalised after 26 weeks. That backlog has increased from 232 files in 2003-04 to 507 in 2007-08. The difficulty about timing with this matter is that a Law Reform Commission report is due in 2010. There was a Barnes report as well, which indicated the pressures that the

Coroner's Court and the coronial staff are under. Quite clearly, it is facing an increasing workload with essentially the same resources it has had for quite some period. I would envisage that the Law Reform Commission report will not merely give the data that I have given, which is about the fact that it is facing an increasing workload, but will give a pretty fulsome view about how it will need to be structured going into the future to adequately undertake its duties.

I refer to the 128-week figure that the member mentioned. Even with additional FTEs, that figure will be reduced, but the figure for a Coroner's Court in terms of finalisation will always be much different from that —

Mr J.R. QUIGLEY: It is an investigative court.

Mr C.C. PORTER: Yes, that is right. It will, in effect, be longer. It has a range of bottlenecks in the system, which is sometimes created by clients as well as PathWest and a range of other matters. For instance, in some instances, the family of the deceased may require independent medical views about the circumstances of death and the coroner waits on those, quite properly. It will always have time-to-completion rates that are longer than the courts.

In terms of decreasing that 128-week time limit, which I agree is too long, it will need further FTEs. I do not believe that we will have a proper picture as to precisely how the Coroner's Court should be structured in terms of FTEs, where they should sit, at what level they should be and how the coroner should be supported administratively until this final report comes down in 2010. What I think would be a retrograde step is having budgetary line items for increments for the Coroner's Court put in before we have that information. I do believe that the Coroner's Court needs further funding in the interim to ensure that it gets further FTEs. For instance, funding between $600 000 and $800 000 can produce something like five to six extra FTEs for the coroner. I am in discussions with the Treasurer and Treasury at the moment about achieving that. I believe it can be achieved. Unfortunately, we will not see fundamental changes, other than those interim-type changes to the coroner's budget, until that report is received. I stand by everything I said previously. I think it is incredibly important. I believe that we can achieve extra funding but unfortunately it will only be interim funding to effectively get it over the hump that it is experiencing at the moment until the Law Reform Commission's report is ready and there is a fundamental restructure of the Coroner's Court.

Meeting suspended from 6.00 to 7.00 pm

The CHAIRMAN: We are on page 702 and dealing with the Coroner's Court.

Mr J.R. QUIGLEY: The Attorney General referred to two factors of the Coroner's Court. Does the Attorney General agree that the funding was insufficient last year and is insufficient this year?

Mr C.C. PORTER: I do.

Mr J.R. QUIGLEY: We will have to wait for legislative reform, which will not be before the next budget because the report will not come down until 2010. Is that correct?

Mr C.C. PORTER: It is not a matter of legislative reform. Let me put it in this way: it is very difficult to go to the Treasurer and Treasury in or about May 2009 and argue a consolidated business plan for the restructuring and refunding of the Coroner's Court for the following year and the next four out years, when the pivotal report and review upon which one has based the business plan is to be handed down in 2010. Any increments in funding that occur—I am very hopeful they will occur—will be interim. The big budget and the important budget for the Coroner's Court will be the 2010-11 budget, because it is at that time that an appropriately drafted business plan based on the Law Reform Commission's report can be put to Treasury to fundamentally restructure and re-fund the Coroner's Court into the future.

Mr J.R. QUIGLEY: I do not want to be smart here, but the Attorney General is quoted in *The West Australian* of 30 June 2008 as having said that there was 0.8 per cent of a prosecutor assisting the Coroner's Court to determine the circumstances of the death of a variety of Western Australians. That is not good enough. Why do we have to wait for a report before the Attorney General appoints a full-time prosecutor at the Coroner's Court?

Mr C.C. PORTER: I think the member is misquoting me. I never said, "Why do we have to wait for a report", did I?

Mr J.R. QUIGLEY: That was the question. The quote was that there was 0.8 per cent of a prosecutor assisting the Coroner's Court to determine the circumstances of the death of a variety of Western Australians. That is not good enough. My question is: why do we have to wait for a report from the Law Reform Commission before we can throw some staff in there to bring this court a little up to date?

Mr C.C. PORTER: As I say, I am hopeful that some staff will be able to be thrown in there, as the member puts it, in the interim, but in terms of a budgetary analysis and business plan that will budget for the Coroner's Court

in the year after that budget and for the four out years—I understand 0.8 per cent of a prosecutor is too little—I cannot tell the member without the benefit of that quite important review into exactly how many there should be. The 2009-10 budget is not the time to prejudge what the outcome of that report might be and to, in effect, bind for the next four years the structure and funding arrangements for the Coroner's Court. I am hopeful that in my discussions with the Treasurer we will come to some interim arrangement to get the Coroner's Court over the next 12 months, but, as I say, next year's budget will be the important budget because that is the budget when a proper business plan can be presented based on the commission's report.

Ms J.M. FREEMAN: On page 700 under the heading "Economic Audit" there is a reference to civil court fees. I am not entirely sure whether this pertains, but in the Attorney General's letter to the Joint Standing Committee on Delegated Legislation, which is now a public document, reference was made to agreeing to reduce fees. Will that have an impact on the court fees that are listed in the budget?

Mr C.C. PORTER: When I first came to Parliament, I sat on that very committee. Without disclosing my role in the deliberations of that committee, I was involved from the very outset in the consideration of this issue. What I agreed with the joint standing committee was that I would accede to its requests in respect of several fees. They were reducing probate fees by implementing a single flat fee for a grant of probate, reducing the fee for a certificate under the hand of the registrar from $49.50 to $26, reducing the fee for an extraordinary licence application from its current level of $183 to $149, reducing the application for a practitioner's licence fee from its current level of $246 to $207, and also reducing photocopying fees in the Supreme and District Courts from $3 per page to $1.50 per page. What is proposed for the next year's budget is in effect a 14 per cent average increase in civil court fees. Originally, it was anticipated that would involve some of the changes there, which I have recently reversed. One of the reasons I reversed those is that, having been involved in the deliberation from the outset—again without going into the deliberations of the joint standing committee—I was open-minded about the correct legal answer to the ability to allow those fees at the time when I left that committee. Of course, Mr O'Connor, QC, provided some advice for the committee. Mr Mitchell, SC, provided some advice from my department to me. My view is that those fees are not ultra vires. I am going to give some consideration to exactly how they should be formulated. My primary concern, I must say, was with the extent of over-recovery for the probate fees, particularly given the history that surrounds probate and it being very much a public and political issue and very important to many people. Will it be the case that that will put a significant dent in that fee recovery? Because only four of a great number of fees are being increased, the answer is no.

Ms J.M. FREEMAN: Will the other fees be under question as well?

Mr C.C. PORTER: It is possible, but the extent of over-recovery for those fees is nowhere near the amounts that were over-recovered with those four fees.

Ms J.M. FREEMAN: So it may make a dent but at this point it will not be a significant dent in the income; is that correct?

Mr C.C. PORTER: No, that is the financial advice that I have got. Those fees, which fell foul of the delegated legislation committee's consideration of whether they were ultra vires, were the highest level of recovery and quite higher than all the other fees that have been proposed. The fee proposal for the increase in civil court fees of 14 per cent I think is relatively moderate.

Mr I.C. BLAYNEY: With reference to page 701 and the first dot point, does the government's law and order reform agenda include clamping down on the illegal activities of outlaw motorcycle gangs?

Mr C.C. PORTER: The issue of outlaw motorcycle gangs is obviously one that has come to prominence by virtue of the incident that occurred at Sydney Airport. We did not go to the election with any specific promises to institute the types of legislation that we have seen in some of the other states for outlaw motorcycle gangs. However, at the Standing Committee of Attorneys-General the matter was considered in some detail. I think there is some merit in the types of legislation that we have seen in New South Wales and South Australia. I am proceeding with some caution in that respect because the merit is in part to do with what the legislation can achieve and in part with what it will not achieve if such legislation is enacted in the other states whereby we open Western Australia up for, in the long run, something in the nature of forum shopping by outlaw motorcycle gangs that might look to set up trade and engage in their activities in jurisdictions where it is easier to do so. Nevertheless, very, very serious legislation has been instituted in South Australia and New South Wales, and I have some misgivings about some forms of that legislation. In particular, I am not terribly keen about the idea of the Attorney General being the authority by which an outlaw motorcycle gang can be prescribed. I think that the legislation in other states whereby that decision is made by a court is the better version of the legislation. However, I am considering those matters at the moment, and I am discussing them with the Minister for Police. The next stage will be a submission to cabinet for approval to draft, but we are not yet quite at that point insofar

as I want to get the police minister's agreement as to what might conceivably be the best form of that legislation in this jurisdiction.

[7.10 pm]

Mr J.R. QUIGLEY: It is true, is it not, that in neither the South Australian legislation—in which prescription is by the Attorney General—nor the New South Wales legislation—in which, interestingly enough, prescription is by a Supreme Court judge selected by the Attorney General—is it certified by the Attorney General? Only certain Supreme Court judges can prescribe, but that is beside the point; it is not the real point of my question. In both the South Australian and New South Wales legislation, is it not true that the words "bikie" or "outlaw motorcycle gang" do not appear anywhere in that legislation?

Mr C.C. PORTER: There are two issues: as I understand it, New South Wales judges may self-exclude from the process.

Mr J.R. QUIGLEY: No; the Attorney General has to certify and the judge can then exclude.

Mr C.C. PORTER: Is that the case? That is the exclusion process. I am fairly certain that the word "bikie" is not used in the legislation.

Mr J.R. QUIGLEY: Nor are the words "outlaw motorcycle gang".

Mr C.C. PORTER: That may well be the case. In fact, "outlaw motorcycle gang" is a phrase used perennially in law enforcement and colloquially by many individuals, including me. However, it is not a legislative term that has any specific meaning.

Mr J.R. QUIGLEY: I raised it only because the Attorney General spoke about the issue of the displacement of bikies from other jurisdictions. The whole community thinks this legislation is about bikies, and when the Attorney General referred to displacement from other jurisdictions, he referred to bikies or outlaw motorcycle gangs being —

Mr C.C. PORTER: I see the point the member is making.

Mr J.R. QUIGLEY: My concern is that the Attorney General is starting to think about casting a very dangerously wide net, as has been done by other jurisdictions. If the Premiers or the Attorneys General from those other jurisdictions were asked about the matter, they would immediately point to bikies.

Mr C.C. PORTER: Yes; I understand the point the member is making. Certainly, the way the South Australian and New South Wales legislation has been drafted, and the way it is mooted to be drafted in Queensland, is that it would conceivably apply to the prescription of organisations that are other than outlaw motorcycle gangs—triads for one, or whatever the member wants to call them. It is not exclusively —

Mr J.R. QUIGLEY: It could be, for example, an antinuclear group deciding to sit on the railway tracks and cause danger to a railroad. That is a serious offence.

Mr C.C. PORTER: As a matter of practical effect, I would dispute that. However, let me say, with respect to the member's original question —

Mr J.R. QUIGLEY: It is probable.

Mr C.C. PORTER: It is not inconceivable, but that organisation would have to involve itself in some incredibly serious and repetitiously serious offences of a prescribed type and the type of —

Mr J.R. QUIGLEY: They would be offences of a 10-year prescription.

Mr C.C. PORTER: That is the way in which the legislation operates in South Australia and New South Wales.

Mr J.R. QUIGLEY: And which could include endangering a railway.

Mr C.C. PORTER: Yes; that is why I am proceeding with some care and caution in the way we go about drafting this legislation. With respect to the idea that the legislation could conceivably be used against organisations of the type noted by the member for Mindarie, in its present form it has been used exclusively against outlaw motorcycle gangs, as we might colloquially term them.

Mr J.R. QUIGLEY: That is right. That is why I am saying the legislation could perhaps be directed at outlaw motorcycle gangs.

Mr C.C. PORTER: I am sorry; I am not taking that point.

Mr J.R. QUIGLEY: I am sorry; perhaps that is an argument for another day.

Mr C.C. PORTER: I do not understand the member's point.

Mr J.R. QUIGLEY: The prescription of the legislation could be aimed with more precision at bikies and outlaw motorcycle gangs.

Mr C.C. PORTER: I take that point. I think it is very much about the issue of prescribing the types of offences that would need to be repeatedly committed. Indeed, if we believe the intelligence about outlaw motorcycle gangs, we would want a specific focus on drug-related offences. The types of organisations identified by the member for Mindarie that conceivably could commit an offence such as sitting on railway tracks could well find themselves specifically excluded from the effect of such legislation by, as the member points out, tailoring the offences that count towards prescription to the sorts of activities that are conducted by the sorts of organisations to be captured by the legislation. I think the key is drugs and conspiratorial-type drug offences.

The CHAIRMAN: I call the member for Girrawheen.

Ms M.M. QUIRK: Attorney General, I refer to the "Outcomes and Key Effectiveness Indicators" and the Coroner's Court line item on page 702 about which the member for Mindarie has already asked questions. After these reforms are initiated, what is the perceived optimal time in which a case is to be handled by the Coroner's Court? I know that resolution of each case through the Coroner's Court will vary.

Mr C.C. PORTER: Yes; that is a difficult question. The 26-week figure is the time to finalise non-trial matters: it is without hearing, if I may put it that way. The Coroner's Court time to trial is currently 128 weeks. For a variety of reasons, the Coroner's Court time to hearing will be longer than that of the District or Supreme Courts, and in some cases considerably longer. I do not think that it would be conceivable, even with conceptually limitless funding, to get the Coroner's Court down to the 32-week mark because a whole range of other factors play into the way in which the Coroner's Court is delayed. The Coroner's Court has provided me with a list of potential delays. Often a considerable degree of time is taken to obtain the cause of death or body organs need to be sent away for further analysis. Sometimes neuropathological services are required, and there is only one neuropathologist in Western Australia at the moment. Thankfully, not every District Court trial will involve that level of expertise. Sometimes complex and lengthy investigations are required, in particular in the case of motor vehicle crashes, and often investigations can involve organisations such as WorkSafe and the air transport safety board—this often happens. Often delays are caused by related court matters, and it may be the case that the coroner cannot start to investigate until a criminal trial has been completed. As I said previously, families will often have an impact on how long these matters will take to get to inquest because the family may seek its own medical or legal opinions before being ready to proceed.

If I had to hazard a guess, I think we could hope—I am being shown a figure that is not terribly wonderful—to see that figure decrease commensurate with funding increases. If we increase funding by 10 or 15 per cent, I would imagine that, as a benchmark, we would like to see the time to trial come down by 10 or 15 per cent. That is the way in which I would approach it, but I do not know whether that is terribly scientific. I would take further advice from the Coroner and from the Law Reform Commission's report. However, I think we could expect commensurate increases in efficiency based on increases in the number of full-time equivalent staff and translatable funding.

Mr M.W. SUTHERLAND: I refer to the first dot point on page 701 of the *Budget Statements*. My question is: are the government's actions on journalistic shield laws related to the timely implementation of legislative reform?

Mr C.C. PORTER: Yes, they are. One of the promises the Liberal Party took into the last election was the provision of shield laws for journalists. That project is well and truly underway. I expect to have an approval-to-draft submission to cabinet very shortly. I think it is probably one of the most complicated and important pieces of legislation that Parliament will face over the next term of government. It is very interesting to see what has happened with the federal Parliament's attempts to deal with this legislation. The federal Labor Attorney-General has bought in some legislation which is of a model that was not favoured by the states. On one level the states saw that model as going too far, and then the commonwealth shadow Attorney-General, Mr Brandis, has said that he may well oppose the Labor model federally because he takes the view that it does not go far enough. He would like to see a presumption instituted legislatively to the effect that a journalist is to be presumed not to be able or not to have to give up a source unless it can be proved by the institute or litigant that there is a good reason to do so. With that legislation, we waited for the Standing Committee of Attorneys-General process to run its course.

[7.20 pm]

The commonwealth government asked the states to go through an evidence working party process in conjunction with the commonwealth government to come up with a model that all parties could agree upon. It was seen as very important that if we were to have shield laws for journalists, they should be consistent amongst the states,

and between the states and the commonwealth. The model that the states agreed on was effectively the model that exists under the New South Wales version of the Evidence Act, with some additions. Under this model, a privilege would grow out of the nature of a relationship that would be judicially determined and investigated. A privilege would therefore exist not merely for journalists, but also potentially for priests or doctors—anyone to whom information had been given in circumstances in which it was intended that the information was given on a secretive basis. All the states agreed that, prima facie, the shield or protection would be negated if the transmission of the information from the source to the journalist, priest or doctor itself constituted a criminal offence. In such circumstances, the benefit of that model was seen to be that it was not necessary to define "journalist". After that quite long process, the commonwealth government simply decided that it would prefer its own model, which is what occurred. The states each proceeded to institute legislation of the type that I have just described, and that should be before cabinet shortly.

Mr P. ABETZ: I refer to the second dot point towards the bottom of page 735.

Mr C.C. PORTER: I think we are not quite at the Director of Public Prosecutions yet.

Mr J.R. QUIGLEY: I refer to the first two dot points on page 701, under "Significant Issues Impacting the Agency". Both dot points allude to the possibility of more people in jail for longer. The first dot point makes reference to a statutory framework for discounts for a plea of guilty, and changes to parole. Does the Attorney General expect that that will effect what he did not want to do with the transitional provisions sentencing laws, which is to have an overall increase in minimum sentences across the board?

Mr C.C. PORTER: I think I understand what the member means by that question; he is basing the question on his presumption that the recent decision in The State of Western Australia v BLM, respondent, will prohibit or prevent any real increase in sentences at the low to medium range, and then he asked as a secondary point —

Mr J.R. QUIGLEY: I made the observation from BLM.

Mr C.C. PORTER: The member's question is based on the observation I have just related, so we are firm on that. He then asked whether it is the case that the government intends to legislate in this area to make up for something that we have not been able to achieve through —

Mr J.R. QUIGLEY: No, because quite frankly, when the government introduced the transitional provisions legislation, it said that it was not its intention to dramatically increase them. Is the government now contemplating legislation that will, presumably by having a statutory regime for the mitigating circumstances of an early plea and by making changes to the parole regime, increase the number of people who will spend longer in jail?

Mr C.C. PORTER: The two policy platforms referred to by the member relate, firstly, to the sentencing discount regime. As the member will be well aware, precedent in this state effectively creates a situation in which it would be a very unusual thing for someone who had pleaded guilty—even if the guilty plea had not been made at what is commonly known as the earliest opportunity—to receive a sentence discount of less than 30 per cent. Authorities have established over a number of years that it would be very unusual for that to be the case. I also seem to recall that in the case of Farmer, His Honour Justice Heenan said—I may be mistaken, but I will paraphrase—that he would give the 30 per cent discount for an early plea of guilty because that was the precedent that existed and that in those circumstances, even though it was a very strong prosecution case, had that discount not been given it may well have founded the basis of an appellate point for the defence. It was interesting in the Farmer matter that the prosecution submitted that the discount, in those circumstances—given the strength of the prosecution case, the severity of the offence and the criminal record of the offender—should have been something more in the order of between 12 per cent and 15 per cent. The prosecution cited some New South Wales precedents in that regard. My legal reading of that decision is that the presiding Supreme Court Justice took the view that anything under 30 per cent would be appellable.

The Liberal Party determined in opposition, and will follow through in government, to legislate to give greater discretion for judges to take into account a range of factors in determining what the discount should be for a plea of guilty. The factors to be taken into account will include matters such as the strength of the prosecution case and the existence or otherwise of real and tangible cost savings to the benefit of the state by virtue of an early plea of guilty. The member will well know that, in a rather quirky legal sense, these things are the basis for giving discount pleas, but we cannot say that they are.

Mr J.R. QUIGLEY: Also the absence of further trauma for the victim.

Mr C.C. PORTER: That is correct. The way in which it is characterised is that it facilitates the administration of justice, which is meant to be code for saving the state considerable resourcing. That is one of the things that

will be taken into consideration, along with a range of other matters. It will result in some changes to the length of time an offender spends in prison, because it is clearly designed —

Mr J.R. QUIGLEY: To hit the minimum.

Mr C.C. PORTER: No, it is clearly designed to give courts the discretion to discount from 25 per cent downwards, rather than be fixed at the 30 per cent rate. However, my expectation is that for a great number of offenders, if a plea is made at the earliest opportunity and other circumstances can be readily seen, including cost savings to the state, such offenders will get something akin to the 25 per cent discount, which is what happens at the moment. However, there is no doubt that there will be other cases, such as the Farmer matter, for which I would expect the discount to be much less. We have not yet done the modelling on what that might translate to with respect to prison beds and time served in custody. That is something that we are working on as we speak, and I want to get it right. It is one of the things that will have to be done before the legislation is drafted.

Mr J.R. QUIGLEY: When the Attorney General refers to significant issues impacting the agencies, is he talking about the time it takes to prepare all this, or the extra costs of incarceration?

Mr C.C. PORTER: A bit of both, but primarily the former, because the cost impacts of longer periods of incarceration will be cost impacts that are largely borne by the Department of Corrective Services. This is delicate legislation, and I want to make sure that we do not jump into it without adequately costing what is about to occur by getting some kind of idea, amongst all the pleas of guilty in the system, of what effect it will have on the costs of incarceration, and of the costs that may have an impact on the number of matters that go to trial, by undertaking some modelling that will have some bearing on the way in which the legislation is drafted. It is quite a complicated exercise in modelling to make sure that we are drafting it in quite the right way. Effectively, with this legislation we are trying to give back to judges their discretion. It is a bit like turning on a tap with legislation.

Mr J.R. QUIGLEY: I have no difficulty with giving judges discretion.

Mr C.C. PORTER: To calculate exactly how that will pan out, we have to take into account the fact that there will no doubt be a decrease in early pleas because the discount will not be as great, although I would imagine it would still be a considerable number.

[7.30 pm]

Mr J.R. QUIGLEY: That could impact upon the Legal Aid Commission.

Mr C.C. PORTER: It could impact on all the agencies here, which is why we want to do the modelling before we finalise the drafting.

Mr J.R. QUIGLEY: I have another question on Legal Aid, but I will get back in the queue.

Mr P. ABETZ: I refer to the last dot point on page 701 of the *Budget Statements*—the over-representation of the Indigenous community in prison. It is stated that the agency wants to continue to improve and review the delivery of services to Indigenous people and communities. Just before that, victims and offenders are mentioned. In light of the reasonably successful domestic violence advocate trials in some metropolitan police stations—including one in my own electorate—are there any plans to widen that or provide additional services to help keep people out of the judicial system?

Mr C.C. PORTER: It is a bit difficult for me to comment on that service, which is provided in police stations. It is a service provided by police and falls within the ambit of the Minister for Police; however, I will give an answer that goes to the crux of the question. In Geraldton there was a pilot program that in effect was a domestic violence court. The magistrate dealt exclusively with Indigenous domestic violence cases. He tried to ensure, within the proper parameters of sentencing, that an Aboriginal offender, if at all possible, did not receive a term of imprisonment at first instance but was diverted from that course by a range of other sentencing mechanisms.

Under the previous government there were similar courts—when I say "courts", they are not physical courts but they "sit"—rolled out in Fremantle, Rockingham, Midland, Armadale and Perth. I visited the Geraldton court, or the Barndimalgu court, and spoke to the people involved there. They are very worthwhile projects. Those courts have a very impressive success rate in terms of the recidivism rates of Indigenous offenders compared with similar Indigenous offenders in the general division of the Magistrates Court. The number of victims assisted by court locations—that is, the people who have gone through the process that I have just described—in the March quarter 2008-09 was 92 in Armadale; 377 in the Central Law Courts; 180 in Fremantle; 244 in Joondalup; 69 in Midland; and 113 in Rockingham. One thing I noted about the Geraldton court is that it is very resource intensive. The throughput of that court is considerably less. I do not want to give what my recollection of the figure in Geraldton was, for want of inadvertently misleading the house, but it was significantly less than the

throughput we get in a court. That means that a magistrate, in a very busy regional centre, will deal with three or four matters at the same time, whereas, in the general division of the court, he might deal with 30 or 40 matters. I have no plans to roll these courts back. I plan to put them through a somewhat more rigorous analysis of exactly what they are achieving and whether we are getting value for the expenditure, but anecdotally it appears that we may be.

Mr P. ABETZ: Is there anything that the Attorney General's department is working on to prevent Indigenous people getting into crime?

Mr C.C. PORTER: To not put too fine a point on it—obviously I am also the Minister for Corrective Services and no doubt there will be some discussion on these issues later—the Department of the Attorney General becomes involved when someone becomes involved, or is about to become involved, in the criminal justice system. Alternative court models—the Kalgoorlie-Boulder Community Court, the Aboriginal court liaison officers and the Barndimalgu court—are for people who already find themselves, in one way or another, in the system; if I can put it that way. Our reach is not outside that. This is one of the points that I continually make publicly—the expectations on any single agency have to be reasonable on how they can impact on a problem that, at its output, is about rates of Indigenous imprisonment as a comparative figure to rates of non-Indigenous imprisonment. There are programs that occur, but inside the Department of the Attorney General they occur very much within the ambit of the court system itself.

The CHAIRMAN: Members, we are still on division 53. Are we going to keep going through at a snail's pace or will we move on? We have seven more divisions to go.

Mr J.R. QUIGLEY: I am concerned about the Legal Aid Commission and its grant. I refer to page 708 of the *Budget Statements*. If we look at the years gone by, we see that the 2007-08 actual total cost of service is $22.8 million. In the next year, the 2008-09 estimated actual is up just under $3 million to $25.5 million. Then there is no increase, so to speak, in the following year—that is, 2009-10, the current budget—except for $300 000. Would the Attorney General agree with me that his proposed mandatory sentencing laws are likely to significantly increase applications for Legal Aid given that one criterion in determining whether a grant in the criminal jurisdiction should be made is whether the person is likely to face a term of imprisonment? We know that anyone charged with assaulting public officers definitely faces a term of imprisonment. Is this not likely to push up the costs of Legal Aid? If there is not a significant increase, is that not likely to be at the expense of every other person applying for Legal Aid?

Mr C.C. PORTER: Yes; I understand the point that the member makes. I listened attentively to the member for Mindarie in Parliament several days ago and it appeared that the point he was attempting to make was that, because of an inability to show an instance in which someone did not already go to jail for the offence that we now intend to apply mandatory sentencing to, no-one would be affected. On his original logic it will not have any impact on the Legal Aid Commission, but if I accept my position that I think there will be offenders, who, under the mandatory regime —

Mr J.R. QUIGLEY: That was not my position. The Attorney General has included a lot of other public officers —

The CHAIRMAN: Member for Mindarie, let the Attorney General finish.

Mr C.C. PORTER: If I accept the position of the government, which is that there will be offenders who would otherwise not be likely, given present sentencing practices, to be incarcerated by virtue of an assault of bodily harm on a police officer or other nominated category of public officer, I think there could be some truth in the notion that they may apply for, and thereby increase the demand on, Legal Aid services. I do not think we are talking about overwhelming numbers of people. In comparison with the increases in Legal Aid funding demands that would arise by factoring in things like an economic downturn, we are talking about what I consider would be a relatively small percentage of the total increase in demand for Legal Aid. As I perceive the funding issue, it is one of those very difficult Hobson-type choices that the state faces. At the moment we have the second most underfunded jurisdiction for Legal Aid based on a per capita calculation anywhere in Australia. I would have very much liked to have come to this budget with some certainty about what the commonwealth was proposing and whether we would fare better into the future. The Legal Aid Commission of Western Australia currently receives $7.06 in commonwealth funding per head of population, the second lowest rate of funding; with Victoria being the lowest at $6.26 per head of funding. The very unfortunate position that Mr Turnbull finds himself in is that if we in a budget, pre-empting what the commonwealth may do, give a large increase in funding to the Legal Aid Commission through state funds, that creates a significant disincentive for the commonwealth, in the coming months, to reverse the situation that presently exists. I am not minded to do that in this budget. I will give Mr Turnbull the opportunity to add to that in any way that he might see fit.

[7.40 pm]

Mr J.R. QUIGLEY: Can I clarify one thing? Is it not true, however, that commonwealth funding is tied to commonwealth grants?

Mr C.C. PORTER: Absolutely, but it is the grant system advice that we are waiting on, which we thought we would have some indication of in May but which we do not yet have.

Mr G. Turnbull: The funding situation is tied to the policy. They are both linked together. The commonwealth has indicated that it is prepared to consider a change of the policy. As the member is probably aware, it has a fairly strict divide as things stand at the moment, so the commonwealth funds can be directed only towards commonwealth law matters. There have been a series of indications from the federal Attorney-General that he is prepared to relax that, and the government's position is to move forward to open up the areas in which commonwealth funds can be utilised. However, to give practical effect to that, there needs to be a further injection of commonwealth funds. Therefore, there will be no movement on the policy front until the commonwealth settles its position on the funding situation. The agreements, as I mentioned earlier, are due to expire at the end of this calendar year, and it is hoped that negotiations will take place during the course of this year leading to the setting up of the new arrangement from 1 January. That may be wishful thinking. The commonwealth budget did not give us much joy, I have to be honest in saying. But, certainly, the indication is that the money that has already been indicated as allocated to WA may be adjusted from 1 January, subject to the negotiations that take place over the course of the next few months.

Ms J.M. FREEMAN: Just on that issue, the Attorney General's comment was that he could not increase the amount because he did not want to prejudice himself with the commonwealth funding, yet he increased the number of full-time equivalents. He could have held the FTEs down, could he not? They have gone from 281 up to 293.

Ms M.M. QUIRK: What is the page number?

Ms J.M. FREEMAN: I am sorry; it is the same page, page 708, dealing with legal aid. It seems strange that the Attorney General says that he would not significantly increase the amount in the 2009-10 budget, but he has quite significantly increased the number of FTEs.

Mr C.C. PORTER: I will ask Mr Turnbull to comment on that. However, I understand that that might be from a separate and discrete source of funding through the country lawyers program. Is that the case?

Mr G. Turnbull: That is correct. The reason for the increase in numbers is largely that we have established a program, in collaboration with other service providers—the Aboriginal Legal Service and the non-government-based community legal centres in particular, and also one of the programs that the commonwealth has introduced to deal with providing legal assistance to Indigenous women—that we call the country lawyers program, which is designed to get lawyers into very hard to fill positions in regional WA. What also comes with that program is a great deal of professional development and personal support for the people who are placed in those remote locations. The reason why it has increased our FTE numbers is that we are the employer for that program. Although we are responsible for the salary arrangements and so on, those funds are reimbursed by the service partners, and the commonwealth has also put in a significant amount of funding to set up the infrastructure for that program to exist. I think there are 12 FTEs as part of that. Six are explained by the establishment of a new regional office probably close to two years ago now, I think, in Kununurra.

The appropriation was recommended.