

**STANDING COMMITTEE ON  
UNIFORM LEGISLATION AND STATUTES REVIEW**

**PRISONERS (INTERSTATE TRANSFER) AMENDMENT BILL 2007**

**SENTENCE ADMINISTRATION (INTERSTATE TRANSFER OF  
COMMUNITY BASED SENTENCES) BILL 2007**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
TUESDAY, 29 APRIL 2008**

**SESSION ONE**

**Members**

**Hon Simon O'Brien (Chairman)  
Hon Matthew Benson-Lidholm  
Hon Sheila Mills  
Hon Donna Faragher**

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**Hearing commenced at 9.51 am****TOWNSEND, MRS MAY****Manager, Commonwealth Parole and Interstate Transfers,  
Department of Corrective Services,  
sworn and examined:****KENWORTHY, MS ALMA****Manager, Sentence Management,  
Department of Corrective Services,  
sworn and examined:****The CHAIRMAN:** On behalf of the committee I welcome you to our hearing this morning.

[Witnesses took the oath.]

**The CHAIRMAN:** I ask the witnesses to state the capacity in which they appear before the committee.**Mrs Townsend:** I am the manager for commonwealth parole and interstate transfers in the Department of Corrective Services.**Ms Kenworthy:** I am the manager of sentence management in the Department of Corrective Services.**The CHAIRMAN:** You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?**The Witnesses:** Yes.**The CHAIRMAN:** Thank you. These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard please quote the full title of any document that you refer to during the course of this hearing for the record. The hearing is also being recorded so you need to speak into the microphones please, and try not to cover them with any papers. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence has been finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

We are dealing with two bills in this morning's hearing. The first is the Prisoners (Interstate Transfer) Amendment Bill 2007.

**Ms Kenworthy,** can you make an opening statement or give us an overview of the general purpose of the bill?**Ms Kenworthy:** My understanding of the amendments to the legislation is that they are for the benefit of clarification and expansion on appropriate points of consideration for the ministers in either of the jurisdictions where the prisoner may be from or being transferred to. It hopes to, I guess, enhance the current legislation's format and make it more obvious that considerations other than welfare need to be taken into account.

**The CHAIRMAN:** Was this amending bill prompted by the unsuccessful argument by a prisoner in the Federal Court case, Attorney General for the Australian Capital Territory v Heiss?

**Ms Kenworthy:** I am not actually aware of that case, sir, no.

**The CHAIRMAN:** Has it been the past or is it the current practice in Western Australia that a prisoner's welfare is the sole factor relevant to an interstate prisoner transfer?

**Ms Kenworthy:** Not to my knowledge. I have been in this position for more than a year now, and my predecessor's instructions have come along with that position, and it has always been that we have taken into consideration numerous aspects of a prisoner's incarceration in this state or the other state — everything from their behaviour, what their sentence translation will be in either jurisdiction, their programs and their community support. It is quite broad ranging covering everything from their psychological state and medical condition, so it is definitely not about only the welfare. However, at the same time, all those aspects can come down to that as well.

**Hon DONNA FARAGHER:** Obviously, we are talking about the prisoner in this instance. Currently does the relevant minister take into account, for example, the fact that the family lives in another jurisdiction and mum is very ill or something like that, and the prisoner wants to return to his or her original home state?

**Ms Kenworthy:** All those factors are presented. What the minister makes the decision on is, of course, up to the minister. Everything is presented and that is considered certainly by me in preparing documentation as part of the welfare of the prisoner. It comes down to the mental condition in that regard.

**The CHAIRMAN:** Proposed new section 8A, for example, will permit the minister to have regard to a range of matters, including the welfare of the prisoner or person concerned such as the security and good order of any prison in this or any other state, the safe custody of the prisoner or person concerned, the protection of the community, the administration of justice and so on. Are they the sorts of things the minister currently has regard for as well?

**Ms Kenworthy:** We would certainly brief the minister on those issues — whatever is relevant. It is just not clarified as clearly as it is in the new amendment. I believe it also enables a little more leeway on the state receiving the prisoner to actually give greater regard to this other than just the welfare conditions.

**Hon DONNA FARAGHER:** Both ministers have to agree, do they not?

**Ms Kenworthy:** They do. It cannot be done without general written agreement.

**The CHAIRMAN:** I understand that you were going to be joined at the table this morning by another policy advisor and that person was not able to make it.

**Ms Kenworthy:** I was not aware that they had asked that but I did ask whether that person was also going to be in attendance, and was told there was no requirement for that. I understand she is away today.

**The CHAIRMAN:** I asked the question simply for the record — that is, if another policy officer or an instructing officer may be required to assist us but is not able to be here today, you may wish to take on notice one or two of these subsequent questions and we will get a response in writing later on, rather than put you on the spot of having to speculate.

**Ms Kenworthy:** Okay, thank you.

[10.00 am]

**The CHAIRMAN:** I will just put this question: firstly, what consultation took place with stakeholders with regard to the legislation before it was introduced into Parliament?

**Ms Kenworthy:** I am aware that the Corrective Services Ministers' Council put the resolution forward; I am not aware of what other consultation occurred. My knowledge of the new legislation coming in began in about October or November of 2007, and it was pretty well drafted by then. That is my first knowledge of that, and perhaps the policy officer may be able to provide further advice about that.

**The CHAIRMAN:** My next question is: does the government propose to make any amendments to the bill that has been placed before the house?

**Ms Kenworthy:** Not to my knowledge—again, unless the policy officer knows otherwise.

**The CHAIRMAN:** Okay. It is a pretty brief bill, dealing with a single dimension.

**Hon DONNA FARAGHER:** Which other jurisdictions have adopted this legislation? Are we the first?

**Ms Kenworthy:** No, we are definitely not. The Tasmanian and Northern Territory governments have legislation in a similar format to ours. All the other states have adopted the new legislation. The one difference is the Australian Capital Territory legislation, which has marginally different wording, but it has a slightly different transfer issue in that New South Wales holds many of the ACT's prisoners, so therefore it has slightly different wording. It appears to be more about suiting its situation rather than being any great difference to the new wording.

**Hon DONNA FARAGHER:** What about the commonwealth? It obviously deals with federal prisoners.

**Ms Kenworthy:** Yes, it has welfare areas within its legislation that basically provide for looking at the same aspects.

**Hon DONNA FARAGHER:** It already has that?

**Ms Kenworthy:** Yes, it is already in the commonwealth legislation.

**Hon DONNA FARAGHER:** Okay. It does not need to make changes?

**Ms Kenworthy:** No, it already considers welfare provisions, and there is the ability under this legislation to effect a joint transfer of prisoners; all it requires is commonwealth agreement.

**Hon DONNA FARAGHER:** Okay; that is interesting.

**The CHAIRMAN:** Noting what you have been able to tell the committee, together with the information we have received from Commissioner Ian Johnson in response to our written questions, I do not think we have any other questions about this bill at this time. Are there any other observations you want to make?

**Ms Kenworthy:** No. I think it is an added benefit to the legislation we have, and provides some clarity around what we currently do.

**The CHAIRMAN:** Thank you for that. Let us move on now to the Sentence Administration (Interstate Transfer of Community Based Sentences) Bill 2007. Ms Townsend, I wonder whether you could provide a brief overview of the purpose of the bill for the committee, please?

**Mrs Townsend:** Primarily it is to formalise what is already happening and has been happening for years—that is, formalising it in terms of having legislation enabling interstate court orders to be registered in Western Australia. Once they are registered in Western Australia, we have the ability to breach these people if they do something wrong, whether by reoffending, by not reporting or by whichever condition. Ultimately it enhances community safety. We do not have interstate transferees in this state who have breached, and we cannot do anything about it. Right now, for example, if a person comes over from New South Wales and arrangements have been agreed upon, and the person initially responds appropriately but later breaches the arrangements, unless the person returns to New South Wales, he will not be taken to task about it. We cannot do anything in

Western Australia because the order has not been formally transferred here. We cannot formally breach the person. Unless New South Wales issues extradition orders, the person will not go back to New South Wales or will not be picked up. To my mind, the bill primarily and ultimately enhances community safety. That is the brief overview.

**The CHAIRMAN:** Thank you. It is an interesting subject. I want to clarify a few things for the benefit of members reviewing the transcript. If someone was sentenced to a community based order in New South Wales, to use the example you gave—let us say it was 100 hours of community service—and the person simply left New South Wales to come to Western Australia without reference to the authorities there or here, what would currently be the consequences for that person of doing that?

**Mrs Townsend:** For a start, we would not even know about it. If the person came here without getting permission to come here and be supervised—perhaps if I explain how it works, it would clarify things for the committee. Right now, if somebody wants to come to Western Australia from New South Wales to, say, join his family, New South Wales will contact me and tell me the circumstances, the reasons for the move and the address the person wants to move to. New South Wales will furnish me with a court order, court record, reports—everything relating to the offender. I will then request a report or a home assessment for that offender. Say the offender wants to live in Fremantle; I will get the Fremantle office to furnish me with a report including a recommendation as to whether this person should be accepted for supervision in Western Australia. If that is all right, we will say to New South Wales, “Yes, he can come here; we have approved it,” so this person will come over. That is called a transfer of supervision; we accept supervision. Anyone with community service hours outstanding will not be accepted. They have to finish their community hours before they can think about transferring for supervision.

**The CHAIRMAN:** To take my hypothetical example, 100 hours would have to have been served in New South Wales.

**Mrs Townsend:** That is correct.

**The CHAIRMAN:** What other conditions might there remain in that person’s community based order?

**Mrs Townsend:** There could be a program to attend—alcohol counselling, for example. In that situation, if the person had not commenced the program in New South Wales, or he is halfway through the program, we can still accept him, and he can attend counselling here. When we consider transfer of supervision for offenders, we also consider the likelihood of reoffending. If they are without support in the other state and their family lives in Western Australia, having community support and family reduces the likelihood of reoffending. We take the total picture into account. Sometimes we may insist that they have to complete a certain portion of the program before they come here, especially if their response has not been very good in their own state. We want to see some progress before they come here.

**The CHAIRMAN:** For example, if it was anger management or some other counselling of that sort, you would want to see some progress before accepting them here, because otherwise they would be more of a threat to Western Australians.

**Mrs Townsend:** Exactly. We want to see that they are responding. If a person who had not been reporting and who had been doing all the wrong things wanted to come here, we would say no.

**The CHAIRMAN:** Are you able to give an indication of how many applications have been made, and of those, how many have been successful?

**Mrs Townsend:** It is only since 2006 that we have taken statistics. In 2006 there were 32 people coming into Western Australia and there were 13 going out. In 2007, there were again 32 coming in and 19 going out. Those are the figures; they are not very high.

**The CHAIRMAN:** They were the ones who were actually accepted and progressed.

**Mrs Townsend:** Yes.

**The CHAIRMAN:** How many unsuccessful applications were there, would you know?

[10.10 am]

**Mrs Townsend:** I cannot account for that. I have also just taken over this position since late January, so, no, I do not know.

**Hon SHEILA MILLS:** If you accept these people over here, is there any transfer of resources from the originating state to Western Australia to accommodate these people under our particular department, given what I have been reading lately about the resource implications that corrective services is already having with supervision?

**Mrs Townsend:** Not that I know of. The situation is this: we are benefiting from a reciprocity of services. Our people go to Victoria, say, and we provide services for the people transferred here whom we have accepted, and they give services to our people who have gone there. No; to my knowledge, there is no transfer of resources.

**The CHAIRMAN:** If we quantify that, 32 prisoners came in, say, in 2007 and 19 went out, so we were a net importer in that year. To put that in perspective, how many people in Western Australia in total would be on community-based orders and under the supervision of the department? It would be vastly more than that 32 or 19, would it not?

**Mrs Townsend:** Vastly.

**The CHAIRMAN:** What sort of numbers are we talking about, Ms Townsend?

**Mrs Townsend:** I am sorry; I cannot really answer that question. I have not looked into that.

**The CHAIRMAN:** Would it be hundreds?

**Mrs Townsend:** Thousands I would say.

**The CHAIRMAN:** Thousands? Okay. Would you say that the disparity is a drop in the ocean?

**Mrs Townsend:** Yes, I would say so. Plus, with our boom in Western Australia, we can expect more people to want to come here than to leave.

**The CHAIRMAN:** Do different subjects of the community-based orders have widely different resource needs? Are some much more difficult and labour intensive to supervise than others?

**Mrs Townsend:** Yes, they are; for example, a mentally ill person who is coming back to join the family would make use of our mental health services and would probably require more of our own services as well. However, that is across the board. It is not necessarily for transferred offenders; it could be offenders in Western Australia as well.

**Hon DONNA FARAGHER:** You have been talking about a situation in which you are aware, from the other jurisdiction, that a person wants to move to WA and you know all the particulars. Obviously, as we mentioned at the beginning, there are circumstances in which an offender will just come over here without advising the New South Wales authorities that that is what he is intending to do. If by chance the offender, on arriving here in WA, breaks the law or does something like that, will you still be able to deal with him under this legislation even though he is not registered here, or would you have to take him back to the jurisdiction because you have not actually agreed to him being here? What would be the circumstances in that situation?

**Mrs Townsend:** If he is not registered, and he belongs to, say, New South Wales—as in, the order originates from there—there is not much that Western Australia can do because the court order is not registered here. We cannot breach that person. For a start, we would not even know that that person had come over here with a court order because New South Wales would not have asked us about that person transferring here.

**Hon DONNA FARAGHER:** I suppose I want to determine what the outcome for those people will be if they break the law here? If they are under an order, even with this new legislation, will you not be able to do anything with them?

**Mrs Townsend:** Because they would not be registered. From what I have been reading, the registration requires the consent of the offender. Yes, that is the situation.

**Hon DONNA FARAGHER:** What would you do?

**Mrs Townsend:** It is not different from the current situation, except that the registration and this legislation will capture the majority of transferred community-based order offenders.

**Hon DONNA FARAGHER:** However, it will not capture those who are –

**Hon SHEILA MILLS:** Doing a runner.

**Hon DONNA FARAGHER:** –doing a runner, which is unfortunate?

**Mrs Townsend:** We are not capturing them now.

**Hon DONNA FARAGHER:** No.

**Mrs Townsend:** I suppose we can make a parallel here. Let us say that it has nothing to do with court orders. If a person commits an offence in New South Wales and he comes to Western Australia, there is not much the police can do unless there is an extradition.

**Hon DONNA FARAGHER:** I suppose that was my next question. In effect, if the person is caught here and is not registered, the only way that he can be dealt with is via extradition.

**Mrs Townsend:** The police will have to look into that, yes.

**Hon DONNA FARAGHER:** Extradition is the only –

**Mrs Townsend:** Yes.

**Hon SHEILA MILLS:** Would that be granted only if it were a serious offence?

**Mrs Townsend:** That is right; yes. You are right to say that, but this bill will formalise the transfer of the majority of court orders so that we have the ability to breach them when they do something wrong. At the moment, when people are informally transferred here and we are supervising and they reoffend or do something wrong, unless they return to New South Wales, there is not much we can do about it. They float around. This bill allows them to be monitored and registered, allowing us to take action.

**The CHAIRMAN:** At this stage, if an offender on a community-based order originates from Western Australia and breaches the terms of that order in some way, shape or form, will he face whatever sanctions apply?

**Mrs Townsend:** Yes.

**The CHAIRMAN:** And that is not going to change?

**Mrs Townsend:** No.

**The CHAIRMAN:** If an offender receives a community-based order in, for example, New South Wales, and disregards that order and comes to Western Australia, he will have to answer, if he ever does answer, to the New South Wales justice system, and that is the same as happens now?

**Mrs Townsend:** Yes.

**The CHAIRMAN:** The bill actually contemplates—I think it is alluded to in the second reading speech, and correct me if I am wrong—that limited scenario whereby if one of the 32 imported community-based offenders from 2007 fails to discharge his obligations under his transferred community-based order, we here in Western Australia can take some action. Is that correct?

**Mrs Townsend:** Yes, that is correct.

**The CHAIRMAN:** It is a very limited number of people in the vast scheme of things.

**Mrs Townsend:** Yes.

**The CHAIRMAN:** What action would your department take in that event?

**Mrs Townsend:** I would suggest that he/she would have to go to court, because at the moment if a person breaches an order, it goes back to court and he is dealt with for the original offence, whether it is burglary or whatever it may be, so he is given another penalty by the court. Our department would be in a position of informing the court, saying that this is registered here and these are the documents. When you say “limited number”, it is better than what we are doing now. We cannot do anything about an informal transferee committing another offence and not returning to New South Wales.

**The CHAIRMAN:** I am not trying to downplay it when I say “limited number”. I am just trying to establish the scope, and it is restricted in the case of the people we received in 2007. They numbered 32, and, of that pool, if any of them breach, we understand that the provisions of this bill will then apply to that small group of people.

**Mrs Townsend:** Yes.

**The CHAIRMAN:** When a community-based sentence is given, presumably as an alternative via the court to, say, a prison term, how successful is it in terms of being observed and respected by the convicted person? Do we have many breaches overall?

**Mrs Townsend:** I do not have statistics for that.

**The CHAIRMAN:** I am not asking for specific figures, but, in general terms, are most community-based orders worked through by the offender?

**Mrs Townsend:** I would say that most of them are completed. However, when I say “most”, I do not know in what proportion. The majority would be completed, let me put it that way.

[10.20 am]

**The CHAIRMAN:** When one listens to the news, reports highlight people failing to complete their orders.

**Mrs Townsend:** Yes, they do, but you never hear success stories in the news either. I do not know the exact proportion. I would say that the majority complete their order.

**The CHAIRMAN:** When someone fails to complete—it might be an incomplete failure to complete, if that makes sense, or someone is tardy and does not fulfil all of his obligations—is it correct that the department then has to make a decision on how it responds to that breach? You would not just go racing off to court, would you?

**Mrs Townsend:** No. That is the supervision regime we have. There are policies and rules about when to breach, and senior officers review before breach. It goes to the manager. They are not breached when they do something wrong to begin with. We look at their overall performance and the reasons behind their tardiness, their lateness. A person could have rehabilitated from alcoholism after 30 years and then fail to report on two occasions. We are not going to breach that person if he has completed a program and has his own reasons - that sort of thing.

**Hon SHEILA MILLS:** Are all community-based sentences for what we would consider in the scheme of things to be minor offences?

**Mrs Townsend:** There are community-based orders, which are for less serious offences than intensive supervision orders. Then there are conditional suspended imprisonment orders. The latter would be for the most serious offences.

**Hon SHEILA MILLS:** This captures all those different —

**Mrs Townsend:** Community orders.

**The CHAIRMAN:** Would it be possible by supplementary information to get some statistics on how many of those orders were given by the courts in, say, the last full year for which figures are available and how many of those were successfully completed?

**Mrs Townsend:** Yes, that can be provided at a later stage. What you have asked is: in Western Australia when a court order is made, how many court orders were made in the last year -

**The CHAIRMAN:** Community-based orders.

**Mrs Townsend:** Yes, and how many were breached.

**The CHAIRMAN:** Yes.

**Mrs Townsend:** We will have to look at a situation in which the period that we are capturing allows that person to complete the order, because somebody that was put on an order in January may not have completed.

**Hon DONNA FARAGHER:** You are looking at a different set of figures.

**Mrs Townsend:** Yes.

**Hon SHEILA MILLS:** Is it possible to divide those into the categories you mentioned?

**Mrs Townsend:** Yes, I am sure.

**The CHAIRMAN:** If you take that on notice, it will help inform the house and will be useful.

**Mrs Townsend:** Yes.

**Hon DONNA FARAGHER:** With respect to the order itself, is there a capacity and is there ever a need under this new regime, to vary the order if - I think it is highly unlikely - for example, a prisoner is participating in a program in New South Wales that is not available here in Western Australia? Is there a capacity in the negotiation of the agreement that the order be varied?

**Mrs Townsend:** Once we register that, we can amend the orders. Once there is registration, we can do as we can do with our own orders.

**Hon DONNA FARAGHER:** The registration comes first and then there is a variation?

**Mrs Townsend:** Yes.

**The CHAIRMAN:** I have just a couple of other questions of a general nature that we apply in relation to bills that reflect an intergovernmental agreement. What consultation took place with stakeholders in respect of this legislation?

**Mrs Townsend:** I understand from the person who was in my position that in November 2006 there was a meeting of people in my position of all the jurisdictions and there was an agreement that we would go back to our states and recommend that such legislation be enacted.

**The CHAIRMAN:** Are there any other stakeholders, say, in the Western Australian community that may have had an interest?

**Mrs Townsend:** To be honest, I do not know who of the other stakeholders have been contacted. What I have said is what I know.

**The CHAIRMAN:** I am trying to think of who the other stakeholders might be, but I think perhaps a community drug service team might be involved in one type of community-based sentence. We were just wondering if there has been any consultation with those groups about the implications of the bill. Apart from service providers, that is probably the main one.

**Mrs Townsend:** I do not know that answer.

**The CHAIRMAN:** Would you be able to take that on notice and let us know subsequent to this hearing?

**Mrs Townsend:** Yes.

**The CHAIRMAN:** Thank you. Do you know whether the government proposes to make any further amendments to the bill that is currently before the house?

**Mrs Townsend:** Not that I know of; to my knowledge, no.

**The CHAIRMAN:** Is it proposed that juvenile offenders will be able to transfer their community-based sentences interstate in the future?

**Mrs Townsend:** I am not aware of any such moves at this stage.

**The CHAIRMAN:** Most certainly juveniles are specifically excluded from this bill.

**Mrs Townsend:** This is an adult bill, yes; that is to say, people on adult orders. Some juveniles—17-year-olds—can be on adult orders.

**The CHAIRMAN:** My colleague Hon Sheila Mills alluded to staffing and resource allocation. Although this bill does not add to the burden in any significant way—for example, you mentioned the reciprocal nature between states—is there stress in the system at the moment in making sure that people the subject of community-based sentences are adequately supervised? Is that always a feature of the operation?

**Mrs Townsend:** I cannot answer that. I would have to speak to the various managers of the centres to be able to answer that, but from what I am looking at, it looks like with the officers, yes, there are issues regarding overwork or workload issues that are being worked out.

**The CHAIRMAN:** I asked the question because if we are assuming the responsibility for supervising sentenced people from interstate and we do not have the resources to cover it, it makes it difficult, but as we have already discussed, it is not a significant extra workload in the scheme of things anyway.

**Hon DONNA FARAGHER:** I have a similar question on the other bill. Which jurisdictions have adopted this legislation already?

**Mrs Townsend:** The ACT and New South Wales are the two jurisdictions.

**Hon SHEILA MILLS:** Are there any plans, do you know, for the other ones?

**Mrs Townsend:** I think the other jurisdictions are considering.

**The CHAIRMAN:** I do not think we have any other questions. Do you have any other matters you want to bring to our attention?

**Mrs Townsend:** I wish to clarify the information you asked for just now. You said you wanted statistics for 12 months on people who were placed on orders and breached.

[10.30 am]

**The CHAIRMAN:** What we would like is some statistics that would give us an understanding of the scale of the community-based sentence program overall, and in a way that is convenient.

For example, if you have the last calendar year or the last financial year, that would be a good snapshot for our purposes.

**Mrs Townsend:** With a view to seeing the proportion being breached?

**The CHAIRMAN:** Being breached or, conversely, being satisfactorily completed. I appreciate that to get up-to-date statistics and finalise statistics, it may be necessary to go back a year or two or three, but it is just to give us an understanding of that. Of course, this is being recorded by Hansard so what we have specifically asked for will be in your transcript. I think there was another matter.

**Hon DONNA FARAGHER:** In relation to consultation.

**Mrs Townsend:** With services or with other stakeholders for transferred people; yes.

**Hon DONNA FARAGHER:** Consultation with other stakeholders such as service providers in relation to the bill.

**The CHAIRMAN:** Did you have anything else you wanted to add or clarify, Ms Townsend?

**Mrs Townsend:** No, not really. Just to say that it is a good idea to have this bill passed. It will allow for greater supervision of transferred offenders and basically enhance community safety.

**The CHAIRMAN:** I would like to thank you, and also Ms Kenworthy, for your assistance here this morning. This hearing is now concluded. We wish you a good morning.

**Hearing concluded at 10.31 am**