

LAW REFORM COMMITTEE
Warrant Powers and Procedures Subcommittee
Inquiry into warrant powers and procedures
Perth — 2 September 2004

Members

Mr R. Dalla-Riva
Ms D. G. Hadden

Mr R. J. Hudson
Mr N. J. Maughan

Chair: Mr R. J. Hudson

Staff

Executive Officer: Ms M. Mason
Research Officer: Mr J. Cina

Witnesses

Mr J. Calleja, director, court support services;
Mr P. Mitchell, sheriff; and
Mr G. Ferguson, executive officer, Supreme Court of Western Australia; and
Mr D. McCormack, manager, sentence information unit;
Mr A. McKeown, manager, justice of the peace branch; and
Mr J. Klarich, director, magistrates courts and tribunals, Department of Justice, Western Australia.

The CHAIR — I ask everyone to state their names and where they are from for the purposes of Hansard and for us as well.

Mr CALLEJA — I am Joe Calleja, the director of court support services in the Department of Justice. We have representatives from three directorates within the Department of Justice today: mine, which covers the sheriff, victim and counselling services and justices of the peace, so we work across courts; the higher court directorate, and we have a representative from the Supreme Court; and the magistrates courts directorate to the lower courts, and that is John Klarich. Each of us will introduce ourselves.

Mr MITCHELL — My name is Peter Mitchell, I am the sheriff of Western Australia. I work under Joe, as has been delineated. I was appointed in about 2000 as the sheriff, and have had a career of 30-odd years in courts administration, et cetera.

Mr FERGUSON — My name is Graeme Ferguson, I am the executive officer of the Supreme Court of Western Australia. I report to the Department of Justice in the higher courts directorate and also to the Chief Justice of Western Australia.

Mr McCORMACK — My name is Darren McCormack, and I am separate again. I am part of the prisons directorate with the Department of Justice. We are basically the end line user. All prison warrants end up in our office for recording, et cetera.

Mr McKEOWN — My name is Ashley McKeown, I am the manager of the justice of the peace branch under the court support services directorate. I report directly to Joe.

Mr KLARICH — I am John Klarich, I am the director of the magistrates courts and tribunals. I report directly to the executive director of courts services and have been in the job about 30-odd years.

The CHAIR — Thank you very much. I will indicate that we are governed as a committee of the Parliament of Victoria by the Parliamentary Committees Act, and therefore parliamentary privilege extends to the work of this committee, although I am not sure how it operates extraterritorially. But certainly any evidence you give to us which we take back to Victoria is subject to parliamentary privilege. You will have the opportunity to receive and review a transcript of what you say. Unlike our contributions to *Hansard*, you will have an opportunity to amend and delete those bits that you want to, and you can also indicate to us whether or not you wish what you say to be on the public record. That is our preference, but there may be part of what you have to say that you would prefer to be in camera rather than on the public record, and we understand that. That can be indicated when the transcripts are returned. As a general rule we make available all evidence presented to the committee through our web site. We use that for the purposes of compiling our final report, and obviously we quote from various witnesses, but again subject to that caveat that you want it to be on the public record.

Joe had a suggestion for opening with each of the areas that are represented here today, and we appreciate the fact that you have come and given us such extensive representation across the court system. The whole process of issuing warrants and so on will be incredibly useful to us. We will start with each of you and get an overall summation of your experience with warrant powers and procedures, and then we will get into some more detailed questions. We will start with you, Joe.

Mr CALLEJA — I will just flag an overview issue, and Peter will talk in more detail around the warrants. The Sheriff's Office covers both civil and criminal enforcement. Over the last two years we have undertaken a major review of the fines in force in the system and have looked at the ways in which, as an organisation, we can particularly respond to vulnerable groups, people in regional and remote areas, and in particular indigenous people. We are happy to table the outcome of that review. There are costings associated with the review which we would have to say are in some respects ballpark figures, because it is very difficult to cost some of the recommendations of this review. But we feel the way we have approached the whole issue to do

with fines enforcement is with a big picture view and interconnections with other parts of government. Our view is that an issue like enforcement has to be looked at from a whole-of-government perspective, and our concerns have been that people often get caught in the territorial or boundary issues of various government departments. I would like to table that. We would certainly be happy to elaborate on any of the recommendations in this at a later stage.

The CHAIR — Thank you, that would be very helpful.

Mr MITCHELL — Thank you, Joe. I am responsible for four particular areas as sheriff. A couple of those I do not think are of any interest to you, with respect to security for the courts in Western Australia and also juries. But I also have responsibility for civil enforcement in the higher jurisdictions at the moment, and for criminal enforcement for execution of warrants and the fines enforcement registry in this state. I say ‘at the moment’ with respect to civil because we are very close to some new legislation which I do not know whether you are aware of and which will affect the magistrates court jurisdiction, with the Civil Judgments Enforcement Bill, which will basically see all enforcement actions taken in those jurisdictions being dealt with exactly the same, which does not apply at the moment.

As I said, I am responsible only for the warrants, et cetera, that come out of the higher courts, and they total about 400 or 500 a year, whereas there are 10 000 warrants that get issued out of the lower jurisdiction, which is referred to over here as the local court, which is the civil jurisdiction for up to \$25 000. That will take me up to 10 000 warrants that will come through the sheriff which I will be responsible for, and the 120 bailiffs right across the state who execute those, many of whom are police officers and there are 11 entrepreneurial-type bailiffs who are privately employed. This legislation is going to change certain elements about things like forced entry and so on. You might want to ask questions about that later, but I will take your guide on those sorts of things.

In the criminal area different pieces of legislation determine that. It is referred to as the Fines, Penalties and Infringements Notices Enforcement Act, or FPINE. The reporting line is that the registrar in charge of the fines enforcement registry reports to me. She also forwards warrants of execution for the sheriff to execute for debt through to myself and I have a contract for the south west portion of the state which probably takes care of 80 to 90 per cent of all the warrants that are issued with a company called Repcol, which executes those warrants on my behalf. The police deal with the other 10 per cent or so in the remote areas of the state. I do not know whether there is much point in going any further. Rather, I would like to hear what it is you want me to talk about specifically.

The CHAIR — Shall we just keep going? We would find it useful to get an overview from each and then we will come back and ask questions.

Mr FERGUSON — I think at this stage, too, from the Supreme Court point of view probably I do not have a lot to contribute because we are not actively involved in the issue and execution of warrants, but I think what I can do is provide support with my experience across other jurisdictions to any of the questions or inquiries that you may have.

The CHAIR — Thanks for that, Graeme.

Mr McCORMACK — I am a bit similar to Graeme. I am not too sure how much input I can have into it. I am with the sentence information unit. We are responsible for recording all imprisonment warrant details that are issued. It does not matter which court it is, every imprisonment warrant ends up in our office, and obviously we then have a close working relationship with the courts if we need to check back with them if details on warrants are not clear or if we have queries on matters — those sorts of things.

The CHAIR — Thanks, Darren. Ashley, you are dealing with the JP service.

Mr McKEOWN — The JP service. Any input from our area into this inquiry would probably only be the limited powers of JPs to issue warrants. There is a justice of the peace bill before Parliament at the moment which puts some restrictions on JPs in certain circumstances to issue warrants, and I suppose my experience comes from being the instructing officer to parliamentary counsel for that bill. I also have experience in relation to warrants issued from the fines enforcement registry to the sheriff, as in a previous position I was a customer service manager of the fines enforcement registry and also acted in the position of registrar issuing the warrants.

The CHAIR — John, did you want to make any further comments?

Mr KLARICH — I guess I could just add that I am responsible for the magistrates courts within the state, so we possibly issue the majority of warrants that Peter indicated he will be looking after in the near future, or does so now, apart from the fines enforcement registry, which is the responsibility of Joe. We are currently looking at processes with regard to the issue of warrants under the new legislation that is coming in. We have not drafted the rules and regulations for that as yet, but I guess there is not much more I can add, apart from what Peter Mitchell, the sheriff, said.

The CHAIR — We are only into our second or third day of hearings, but in talking to people in New South Wales where they have an overarching Search Warrants Act, there were a number of issues that came out of those discussions. Perhaps I could just table some of those issues and you could indicate whether they have been the subject of discussion here. There have been matters raised with us about the issuing authority for warrants, at what level should warrants be authorised, and in what circumstances.

That has been one issue. Certainly there has been an issue around the time limits on warrants — for what period they will be able to be executed and what should be done about extensions if required. There have been issues in relation to the times in which a search can be conducted and whether it is a day or night, and what happens if a warrant starts to be executed in the course of a day and then the time it takes to execute the warrants extends over into the night-time, do you have to go back and get a further authority for that warrant; issues about what can be done before executing a warrant, such as when you are dealing with drug traffickers and fortified premises, such as pacifying dogs and cutting alarms, diverting sewerage pipes — all of that sort of thing; in what circumstances an application can be made for a telephone warrant. In New South Wales it has to be both urgent and not practicable to get a warrant directly from a judicial officer, but I would be interested in what the situation is here. The videotaping of searches, the training of authorised officers, and such things as the review of the execution of warrants, whether or not there is any monitoring review, recording and oversight, questions of legal professional privilege, and, of course, warrantless entry. There are other issues, and that is quite a lot. But I wondered if perhaps any of you would like to comment on any of those issues as things that have come up to date in terms of our inquiry.

Mr MITCHELL — From my perspective it is quite interesting because, to be honest, this is not an area of anything that we really control. For search warrants and the issuance of search warrants and so on, it is justices of peace or magistrates, I would think, who are determining the issue of a search warrant as such. We as court administrators do not have anything much to do with that particular process.

Ms HADDEN — Do you oversight the warrant process or does it come to you at the end of the day?

Mr MITCHELL — Not the search warrant process.

Mr DALLA-RIVA — Perhaps we should go back a bit. The call or application is made by the police officer. The processes and the procedures that are applied within the court system to

record — how is that managed? How do you avoid the situation of shopping around to get a warrant so that if one justice was not good they will go to another justice, and are there any procedures within the court system that manage that? The training programs within the court system in terms of registrars — I think you call them registrars — —

Mr McKEOWN — Registrars. The registrar of the fines enforcement registry.

Mr DALLA-RIVA — Clerks of courts, the training that is attached thereto, at what level is the JP or the authorising officer applied to depending on the circumstances of the warrant. There is a lot of administrative stuff that we need to find out because on the evidence that we have there appears to be some evidence of shopping around to get a warrant. There appears to be the issue of lack of training,. There appears to be the issue of concern about management of the warrant system itself, not just purely execution, but the processes that lead up to the execution and then the processes that lead subsequently to the execution of the warrant. What oversight is there by the court system such that there is a record kept, for example, of the execution of the warrant? Is it only discovered — the execution of the warrant — once it goes to court? Is there a follow-up procedure that is applied once the warrant is executed? Is there a feedback into the court system to say it has been consulted — either it has been discovered or found et cetera? We probably were not clear in what we were trying to say, but I understand the execution issue is not relevant to you. We are getting evidence, I assume, from other people in that respect, but it is the before and subsequent that we are interested to hear.

The CHAIR — Generally what are the policy and administrative issues that are of concern to you in terms of the role you play in the system?

Mr FERGUSON — I think the legislation dictates who can actually issue the warrants. We have a Justices Act which empowers certain people to issue — that is, judicial officers. You mentioned clerks of courts. Throughout this state most clerks of courts are also appointed as justices of the peace. They do not necessarily sit on the bench. They are mainly for the purpose of administrative functions, which can include the issue of warrants, although that is not encouraged by the department that clerks of courts get involved in that aspect of it because there could be some conflict of interest later down the track. Things like shopping around by people seeking to have the issue of a warrant certainly is an issue in this state. From my knowledge there is nothing that governs that, and it is certainly open to police officers or others to actually do that. There is essentially no recording of the issue of warrants — —

Mr MITCHELL — By courts.

Mr FERGUSON — By courts.

Mr MAUGHAN — So you cannot give us any idea of how many warrants have been applied for and how many of those have been rejected?

Mr FERGUSON — No, because the only scrutiny of a warrant will be during a court trial about the actual issue of it or the legitimacy of it and what have you. That will only happen at trial. There is no process or mechanism beforehand to actually audit the issue, the numbers, the types of warrants and all the different things that make up the issue of a warrant. It has been looked at many years ago — and I am going back 10 to 15 years ago — and it was considered at that time because of lack of computerisation and other technologies that were not available then of the court recording and tracking of the warrants and the getting of results of warrants. It was never pursued any further except for some preliminary inquiries being made.

Mr MAUGHAN — Is it reasonable to assume that practically all applications for warrants are then granted?

Mr FERGUSON — No, I cannot answer that one. Primarily though the warrants are sought from justices of the peace.

Mr McKEOWN — In respect of the issuance of warrants, could I just comment? In relation to justices of the peace prior to being officially appointed, they are required to undertake a university-based training course which has a fairly in-depth section in relation to the issue of warrants. There is certainly some training provided to JPs in relation to the issue of warrants. Given that training I would probably comment that not every warrant that is applied for — and I suppose I am making a bit of assumption here and this is from my experience in dealing with JPs throughout the state as well — is granted. I have certainly had discussions with JPs who have spoken to me before about rejection of search warrants and things like that.

The CHAIR — Would it be principally on the form of the warrant or the substance of the warrant?

Mr McKEOWN — I suppose it is, from my experience speaking to the JPs, in assessing whether to issue a warrant there is nothing in place that explains to a JP what they should do. I have had comments from JPs that if they feel a bit funny about whether a warrant should be issued or not, if there is something there that does not seem right, then they obviously will not issue the warrant. There is nothing strictly in place to guide a JP in terms of assessing whether to issue a warrant or not.

Mr MITCHELL — In my previous role as a clerk of courts, and also as a JP, I recall down at Esperance on occasions being requested to do urgent search warrants; they could not find other JPs and so on. I do recall refusing a police one myself because what is required — from memory and my friends will correct me if I am wrong — is that the police officer needs to swear a complaint justifying the grounds for the issuance of the warrant. I used to take that job very seriously and be quite rigorous. If I did not feel satisfied with them, I would refuse the issuance of the warrant. I am sure that is the line to which Ashley is referring. It is not just based on the actual draft warrant that is prepared by the police officer; it is the really thorough interrogation with respect to the complaint that accompanies it.

Ms HADDEN — Is it sections 711 and 714 of the Criminal Code? Are they the only sections that cover your search warrants that give you the grounds?

Mr MITCHELL — I would be guessing at the numbers myself, but that is as I understand it to be.

Mr FERGUSON — There is also commonwealth legislation — the Australian Tax Office legislation — that makes provision for the issuance of its warrants as well.

Ms HADDEN — I have family over here so I keep up with what happens in Perth quite a bit. I usually come over here every second year. We have a very famous case at the moment on allegations of exceeding warrant powers. That might lead to some legislative change, I would have thought, but Mr Slater is going to have a go at you all in relation to the Ora Banda entry, so I would have thought that would have sent some alarm bells through.

The CHAIR — What were the issues in that case?

Ms HADDEN — Gypsy Jokers and money being allegedly removed under a warrant that was found to be — and I am not sure of the phrasing of the warrant — illegal or over jurisdiction or over power; something like that.

Mr CALLEJA — The moneys were confiscated under the confiscation of the proceeds of crime.

Ms HADDEN — They are bartering at the moment as to how much is to be given back.

Mr CALLEJA — The offer of 50 per cent was made.

Ms HADDEN — No, they want the lot.

Mr FERGUSON — I think the allegations made by Mr Slater, though, with respect to the warrants, still have to be tested in the court. The press and media are picking up on it because it is topical at the moment, as you mentioned.

Ms HADDEN — It is very topical; it hits our headlines in the east too.

Mr DALLA-RIVA — The warrant is issued by the JP and it is then executed by the police officers at a time specified within the warrant. What happens subsequent to that? Are there any procedures subsequent? I ask that because in Victoria there is a requirement that came out of case law that was in place — I do not know if it was in legislation or current police procedures — that the items seized, or the document seized or the drug seized, are to be returned to the nearest magistrate. The magistrate is then to release those items back into the custody of the seizing officers — in other words, the police. So there is that check in place that allows it. Is there any case where this occurs in Western Australia, or is it that they are taken straight from the premises back to the police station property office, and then it falls into the courts?

Mr FERGUSON — That is correct, yes. Once a seizure is made then it remains in the possession of the executing police officer until such time as whatever has been seized is required to be produced as evidence. The only one that comes to mind where there is some reporting back, and the JP does not necessarily see the goods that were seized, is under the Misuse of Drugs Act. I understand that where a warrant has been issued under that piece of legislation, and goods have been seized, the executing officer must report back to the justice of the peace the actual items that were seized. But they remain in the possession of the police service.

Mr DALLA-RIVA — How do they record that, though?

Mr FERGUSON — Again, I understand there is provision on the warrant for the justice of the peace to endorse that there has actually been a report back of goods seized and what those goods are.

Mr DALLA-RIVA — So there is a list?

Mr FERGUSON — Predominantly, yes.

Mr DALLA-RIVA — Presumably that is required to be presented at the court, obviously at the trial or whatever.

Mr FERGUSON — If it forms part of any evidence that is being provided, yes it would be. It would depend again on the prosecution and how it presents its case.

Mr DALLA-RIVA — Do you know whether it requires notice or if a copy of the warrant is left at the premises? I just want to know if, where is no occupant at the house, a copy of the warrant is left on the premises. There has been evidence to suggest that on occasion there could be access to houses or premises, knowing that the occupants are not home, to search or inquire into the premises, then they tightly close the door, re-pacify the dog and leave unbeknownst to the occupier that any warrant was in fact executed — primarily done as a bit of a discovery. Some issues were discussed about covert warrants being introduced to remove that sort of thing.

Mr FERGUSON — I do not think this panel is qualified to comment on that aspect of it.

Mr DALLA-RIVA — No, I am just asking if there are any procedures available in the court system to deal with that.

Mr MAUGHAN — Do you have video surveillance of the execution of warrants, and if not, are you considering it?

Mr MITCHELL — Again, I would suggest it is the same as Mr Ferguson said: that is a part that is really the responsibility of the police; it is not governed by us, as such, as court administrators.

The CHAIR — Just going back to what is in your Criminal Code in relation to warrants, there does not appear to be any reference to time limits. What is the general acceptable time within which a warrant would be executed, and is any particular time limit put on it by the issuing judicial officer?

Mr MITCHELL — Again, are you confining this to search warrants? Other warrants are a lot different. We are talking about 12 months as a period of execution for a warrant against goods, for example. A warrant against somebody for non-payment of fines stays in existence for life, basically. So there are those sorts of things. Search warrants are usually much more confined in their application, but I must confess I do not know the time limit on them.

The CHAIR — In regard to the discussion paper which Mr Calleja and I think some others have referred, were there particular issues arising from that discussion paper that you would particularly like to contribute to the inquiry? Having looked at the range of issues this committee has under consideration, do you have anything from your point of view that you would like to talk to it about?

Mr CALLEJA — I have to confess that this arrived in my office yesterday afternoon, so I have been able only to skim through a section. In fact I was reading up on something else last night for a meeting late this morning. I understand, from skimming the sections between 25 and 72, that some of the issue is covered. The letter from your committee's legal research officer — which was dated way before 1 September, I might add, but there were obviously just some logistical problems — referred to the fact that the committee is also interested in an overview of the use of warrants to enforce judgments and infringement notices, including statistics about cases proceeding to warrant stage and so on. Having already indicated it, we can table the fines review.

What we have seen in Western Australia over the past 10 years or so is a significant reduction in the number of people going to prison for non-payment of fines, and that corresponds with the establishment of the fines enforcement registry and the Fines, Penalties and Infringement Notices Enforcement Act, as the sheriff, Peter Mitchell, has outlined. Certainly in the past four years we have been much more active in moving away from a system which simply allows fines and infringements to float through in a totally automated process. We have been trying to intervene at particular points, such as prior to the suspension of a licence, in order to stop people moving further into the system. The key strategy we have used is around the introduction of more flexible payment options at the fines enforcement registry end. What we are finding is that two-thirds of the people who are on a time-to-pay arrangement are paying via direct debit, for example. We are negotiating with the commonwealth at the moment for the introduction of Centrepay, which is the direct debit arrangement from a Centrelink payment. There are some contractual issues that we are just on the verge of tidying up.

I guess what I am flagging is that in relation to your query around the enforcement of fines and infringements, we are taking a very active approach to trying to reduce the numbers of work and development orders (WDOs) and people going to prison. We need to do some more work at the front end in terms of the magistrates courts, for example, and work closely with those courts in relation to early intervention and more flexible payments at that stage as well. I do not know whether Mr Mitchell has anything to add.

Mr MITCHELL — I am sure there is plenty I can add to it. Just to give the committee a bit of the flavour of what Mr Calleja was referring to, the imprisonment rate before we went down the path of the fines enforcement registry was around about 6800 or thereabouts per annum — although the figures were a little bit difficult to collect — and it dropped down to about 700. It has

plateaued out now at about 1400 or so per annum of people defaulting on their fines or warrants, if you like.

Mr MAUGHAN — What was the initial figure?

Mr MITCHELL — Six thousand and eight hundred, or thereabouts.

Mr MAUGHAN — For non-payment of debts essentially?

Mr MITCHELL — No, they are only for fines on debts. I have page 61 of the committee's discussion paper that was sent out and I have made a few notes on there to try to address the dot points under the heading of 'Powers of the sheriff'. That sets out what I understand applies in Victoria at the moment, and I thought I would just give the committee a bit of an idea of what happens here in Western Australia for the relevant ones.

I agree with the first dot point, which was the desirability or possibility of increasing the consistency of powers and procedures between Victoria and other states. I think that is good for a host of different reasons. As to the second dot point about the efficiency of the sheriff's office in executing civil warrants and whether civil warrants issued by judgment creditors are accorded the same priority as other warrants executed by the sheriff, I can advise that our FPINE legislation, to which I referred earlier, has a provision in it which suggests that these warrants would take priority over warrants issued in a civil arena. Interestingly, that has never been challenged because other pieces of legislation like the District Court of Western Australia Act and the Local Court Act have their own view of priority. But, as I say, it has never been challenged yet. As to warrants that are issued under FPINE through the fines enforcement registry, again they are time dated as such, and that is the priority that is accorded to them.

In the civil arena the Supreme Court is based on the time it arrives with the sheriff; in the District Court it is the time that it is issued from the court; and in the local court it is the date and the time at which the application is made at the court. So you can see three different things. That difference will be remedied by the proposed new Civil Judgments Enforcement Act, to which I referred earlier, and that is dealing with priority.

We employ three sheriff's office field officers who go out executing civil warrants in the sheriff's office. They deal with only the metropolitan area and do an effective job in respect to civil judgment recovery. On the sheriff's powers of seizure being curtailed, I am not too sure what was meant by that, I must confess, because that is under your legislation. On the next dot point, which is the desirability and possibility of giving the sheriff a power of entry on civil warrants, at the moment we do not have any power to enter a home, the same as seems to be inferred there, only to enter the property and any outhouses, if you like. It will be provided for in the new civil judgments enforcement legislation, and it will be given over to the sheriff to control that. I can indicate to you that it will be afforded in only extremely necessary circumstances — it will be heavily governed, the same as applies under the FPINE act that I referred to for criminal warrants.

The CHAIR — What sorts of circumstances?

Mr MITCHELL — It would depend on the particular things that are brought to our attention, but it generally would be that somebody is being evasive to the max and stopping a creditor from legitimately getting their recovery. That, as I said, would be heavily looked at by our own officers, and if it were put to us by a bailiff, who could be an entrepreneurial bailiff or a police bailiff, they would have to justify very clearly that they had very good grounds to believe that there was something inside the house that could be claimed and that the house was in fact owned by the individual who was the execution debtor. To give you an example, the FPINE legislation has been in existence for nearly 10 years. I think there have been less than half a dozen instances where I have been requested to basically break in to a property. There are 50 000 registrations a year from the courts to the fines enforcement registry that could end up down that path, so it is a lot. We would be issuing 15 000 warrants in the fines area. I can delegate

that authority if I am approached by, for example, the bailiff at a country location, but again I would be exercising great rigour in ensuring that it was the only way we could actually go.

Ms HADDEN — Has that legislation been tabled yet in the Parliament?

Mr MITCHELL — Yes. It is on its way through. I am not too sure of its passage. It is called the Civil Judgments Enforcement Bill. It is tied in with the rest of the Magistrates Court reform legislation. I think it has actually got through but because of its tie with that other legislation it cannot have effect until the rest is passed. That could be possibly early in the new year as the indicator. As I say, we cannot determine how the parliamentary process will flow but it seems likely that that will be when that will come in place.

Ms HADDEN — Does that set out the rigorous criteria, as you have just said? Does it spell it out?

Mr MITCHELL — No, I do not believe that it does but that will be governed by myself, putting in place policy and so on.

The CHAIR — Will the frameworks for those kinds of warrants be principally governed by regulation rather than by the act itself?

Mr MITCHELL — I believe so, yes — and practice and procedures before the sheriff.

Ms HADDEN — The sheriff is going to be given new powers, I understand, to enter?

Mr MITCHELL — That is right.

Ms HADDEN — Whereas he never had them.

Mr MITCHELL — Under civil, that is right. It will be an extension of what is applied in the criminal arena. As I said, it has been rigorously applied there, and I would expect it to be exactly the same in respect of the civil.

The CHAIR — Just looking at that legislation prospectively, what would be some of the issues that you as the sheriff would want to take into account in framing some of those regulations? Having seen the draft bill, what are the things that spring to mind for you in terms of the regulations that would govern it?

Mr MITCHELL — In a practical application I would imagine it would be justification by somebody saying, ‘I’ve been into the house; I’ve seen this person’s porcelain collection’ — or something like that — ‘that’s worth considerable amounts of money’ or ‘I even have a photograph’, or some pretty legitimate if not proof indication that there is some validity to the claim, rather than a wish-list sort of thing of ‘Get in there and you’ll find out that he’s got goods that can be seized’. As I say, it is difficult to indicate until you see it on a case-by-case basis but it would not be taken lightly and on just a sort of a whim.

Mr DALLA-RIVA — Is it on reasonable belief?

Mr MITCHELL — There would still be protection afforded to the sheriff if a mistake were made, of course.

Mr DALLA-RIVA — The requirement would be reasonable belief that there were items of value?

Mr MITCHELL — Particularly a specific, nominated item, I would suggest, rather than, ‘I think he’s got goods in there because he had a win a couple of weeks ago’, or something like that.

The CHAIR — But these are items to be seized for the purposes of recovering a civil —

Mr MITCHELL — To put a seizure on them and to, if necessary, go to sale.

The CHAIR — I am not sure what the threshold amounts for this are, but would it matter whether one knew what they had? Presumably if you are trying to enforce a civil judgment you are saying, ‘In order to give effect to that judgment I want whatever goods of value seized, whether it is jewellery or the fine china porcelain, to recover the money that is owed to me’?

Mr MITCHELL — That is what I am saying. It is not on a whim or a general statement of ‘I believe they’ve got goods in there and I want you to get in there and find out what they might have that could be seized’. It has to be specifically nominated as to items that would be highly likely to be found in that particular premises.

Ms HADDEN — Why the sudden change, or is it sudden, or what is the policy decision behind giving sheriffs the power to enter properties when they never had it?

Mr MITCHELL — I suppose based on the public’s view that it is unfair that an execution creditor cannot use reasonable means available under execution to get what is rightfully theirs or get reinstated. They have seen that it has worked by having it in the fines area and it has not been abused.

Ms HADDEN — Do some of the statistics back up that massive change in direction of legislation?

Mr MITCHELL — I would suggest that it is like an undercurrent of people’s belief that they should be afforded opportunities to get what is rightfully theirs. This is only one element of it. Of course the other aspect of the whole of the Civil Judgments Enforcement Bill is to do with getting people before the court and examined as to their means and putting in orders against their income and the like. So it part of a big package of issues.

The CHAIR — So there is something like garnisheeing of wages, is there? Is that part of the legislation?

Mr MITCHELL — Yes, and it has basically existed in the past in its antiquated form, but I think it is going to be much more streamlined and better coordinated following this legislation.

Mr MAUGHAN — I am interested in exploring the very significant reduction in the number of people in prison because of non-payment of fines. Can you give me an indication whether it is because there are not so many fines imposed in the first place or there is a more lenient attitude to payment of those fines? If so — you have mentioned Centrelink — what other measures are in place? That is a huge reduction, from 6800 to 600 or 800 a year.

Mr MITCHELL — It has actually balanced out now, at about 1400. In essence what happened prior to 1995, when the legislation was introduced, was that if fines were not paid in basically 28 days or three months, if that is the time the magistrate gave the person to pay, we would issue a warrant of commitment against the person for an equal number of days — at the moment it is \$150 a day; I do not know what it had been at that particular time — and warrants would be issued to the police. They would go around and knock on the door and that is why you ended up with so many of those people.

With the introduction of the new system we go through a staged process. I have a handout here that Joe has agreed I give to you, which gives you a good idea of the percentage of people whose matters get dealt with at different stages. In summary, it gets registered by the court after 28 days because of non-payment. A notice of intention to suspend their drivers licence is sent out to the

individual; 28 days later if no action is taken, a licence suspension is given effect to and so they are no longer able to drive and a notice is sent out to advise them that that has taken place. If, after 6 or 12 months that licence suspension has not realised any dividend, as far as the person not coming in and paying it to uplift that licence suspension or not coming in to see us and applying for time to pay to uplift that licence suspension, the registrar can then proceed to an alternative means of enforcement.

Generally the sequence is that she would issue a warrant of execution against the goods of the particular person, or land if they had land. That goes through, as I explained a little earlier, to either the contractor that we have in the south-west region of Western Australia or out to the police and they try and execute that against goods. If there is no success with that or if they have no goods to seize, they can apply to have a work and development order issued so they can cut out the fine at around about \$150 for 6 hours work at that rate.

The CHAIR — Like community work?

Mr MITCHELL — Community work, exactly. That is where we work in conjunction with the community justice services people. If they breach that — do not perform the work — a warrant will be sought by CJS against the person for the balance of the time, or for the whole time if they have never fronted for them to serve time in jail for that figure. All the way through this particular process the registrar has authority under the FPINE act to go to any of those particular phases. It could be, because of the recidivist nature of a lot of our people that it has never worked to issue warrants against the goods or that work and development orders have been breached the previous 10 times, and it is feasible for the registrar to go straight to a warrant; or, if the person is in prison, it goes straight to the warrant and they end up cutting out the warrant cumulative with whatever term of imprisonment they are serving at the particular time.

The CHAIR — Just on the cumulative point, what are the cumulative elements in relation to the either the costs of the court or the sheriff's office and/or interest in relation to those fines?

Mr MITCHELL — That gets added to it — and \$150 or part that thereof is one days imprisonment. So if it were \$151 it would be at this stage such that you would do two days imprisonment.

The CHAIR — The concern often with low-income groups is that if you have a penalty or costs associated with the fine it adds to the burden. Is there anything in the legislation that seeks to address that or is that still an important part of the regime?

Mr MITCHELL — It is a part of what is picked up in the fines review that has been addressed as far as dealing with those sorts of issues. That is a fact.

Mr CALLEJA — I could perhaps add to that. We are very concerned that low-income groups and a cross-section of groups who are particularly vulnerable are being picked up in the fines system. We do not have hard research to support that but I guess we all know that that happens. As people come in to the fines enforcement registry, as Peter outlined, they do as they go through each stage thereafter accumulate more debt. The fines review has recommendations which would seek to amend the various acts to avoid a situation where if a person owed \$151 or whatever that they would not necessarily do two days. We are trying to recommend amendments to the act to overcome some of that rigidity. The issue around vulnerable groups from our perspective is that some of the most vulnerable groups — people with intellectual or mental impairments — receive correspondence and have absolutely no idea about that correspondence, so it sits in a drawer, or it just collects.

The CHAIR — Hoping it will go away.

Mr CALLEJA — I hope it will go away. The government has written ‘That is very nice’ sort of thing. Part of the future strategy for the fines enforcement area is for us to be working with community agencies and networks in a way that will increase their awareness of the fines system, so in their interventions with those groups they might routinely check around issues to do with fines when they are looking at bills. It is very basic, pedantic stuff but is such a reality, particularly when you look at the rate of imprisonment of women and the fact that the connection between their imprisonment and fine-related matters is quite strong. Part of the fines review has a very strong social justice element to it which in no way compromises the need to enforce a fine, the need to enforce a penalty — nothing in it compromises that at all — but it recognises that there are real-world scenarios for a lot of people who cannot cope with the system as it is and maybe that is partly because the system is rigid in its processes.

The CHAIR — So if the correspondence goes out in English and you are a newly arrived migrant who does not speak a words of English, what is their first recall when they get a notice like this? Do they just find out that they have got a speeding fine because they did not know the limit on the St George’s Terrace was 60 or whatever? What happens then?

Mr McCORMACK — Can I just bring one thing to attention—I am pretty sure it is still in the legislation — that it can only be a court fine if it turns to an imprisonment warrant; so your normal traffic fines and all that that are given cannot go to an imprisonment warrant unless the person elects to have it heard before a court. If they are then found guilty, it could become a warrant.

Mr MITCHELL — Traffic infringements or any other infringements for parking et cetera only go to the stage of licence suspension. The sanction does not go any further than that.

Mr DALLA-RIVA — If I do not pay it, what happens?

Mr MITCHELL — If you do not pay a traffic infringement notice, for example, we suspend your drivers licence. If you ignore that, it is basically such that it would be written off after a period of time — written off is probably the wrong phraseology because it always remains on the system and the minute you come back under attention in respect of a court or a further infringement notice it will be reactivated and we will chase you for both.

Mr CALLEJA — However, the prosecuting authority does have the option of withdrawing that infringement and taking it back to court and converting it into a fine.

Mr DALLA-RIVA — A very simple solution would be not to get a fine, if you want to be pragmatic about it.

The CHAIR — So the court situation that you are talking about, in the case of someone who was from a background where they did not readily understand the processes or procedures of the court or did not speak good English, how would they have that communicated to them?

Mr McCORMACK — I am not too sure of the process at the court. I know there are translator services on different things. I am not too sure if that is included in the documentation sent out from the court or not.

The CHAIR — Would they get it in their own language, for example?

Mr McCORMACK — The documentation sent out from the fines enforcement registry, which is post the period where a person has had the opportunity to pay the court fine, does have some brief information in several languages on the back.

Mr MITCHELL — And we do facilitate access to the TIS, which is the translating interpreting service, so we pay for that for people to contact; and we can do that by telephone preferably, or by personal appearance at the registry or a court if the issue needs it.

Mr MAUGHAN — What about people who have no fixed address, who are transient, moving around, and when they are finally caught up with the original penalty has escalated?

Mr MITCHELL — That is a big issue, there is no doubt about that, and it is one of the things that is picked up in this particular document here. It applies particularly to Aboriginal people in remote locations.

The CHAIR — What do you recommend?

Mr MITCHELL — Some of the initiatives we have put in place are things like Centrepay, heavier access on front-end collections, work with the Department of Planning and Infrastructure (DPI), which deals with the issuance of notices for things like failure to return licence plates and so on to try to make sure that the rigidity is broken down a little bit to try and put in place strategies. They visit some of these communities and collect the plates and so on. We are chipping away, but it is not such that there is a very easy panacea to it. It is working in conjunction with other government departments to try and come up with those sorts of things.

Mr CALLEJA — One of the key recommendations that came out of the fines review and which was endorsed by cabinet earlier this year but has not reached the stage of drafting is a requirement for prosecuting agencies to offer flexible payment options. You can imagine that that would be strongly resisted by prosecuting agencies because it places more pressure on them in terms of a service perspective, but our argument was that in an electronic age, particularly an e-commerce age, it is a reasonable expectation that government, irrespective of the individual prosecuting agencies, should be able to provide options for payment at the front end, and by making it easier for a person, irrespective of their socioeconomic background or whatever, government should be able to rely on a higher collection rate early in the piece and fewer people should be moving through the system and therefore accumulating extra penalties because they have been able to pay a parking fine or a court fine earlier in the piece. The reality for many people is that if they are going to make a choice between paying a parking fine and paying their electricity bill or the water rates, they are going to pay utilities. They are going to pay what is going to keep them going. The issue was that we well and truly felt we needed to connect with that reality by requiring government to be more flexible at the front end.

Mr MAUGHAN — With regard to Aboriginal people, do you have in this state the Aboriginal tribe, clan — whatever it is called — in that particular area paying penalties on behalf of individuals, and if so, do you believe the individual gets the message that they have breached a law of the state and been let off their penalty because overall the group pays on their behalf? Does that happen, and if so, what do you believe are the consequences of that?

Mr CALLEJA — This is an issue that we are trying to grapple with in regional areas. We are aware that many Aboriginal people in remote regional areas are in receipt of the CDEP payment, which is not a payment made by Centrelink. It is a payment by another agency. The problem we have experienced is we cannot access that payment voluntarily by the person because we have no mechanism. I am not aware of any community paying on behalf of Aboriginal people in communities. John, are you?

Mr KLARICH — We are pretty proactive in that area, particularly up in the north of this state where our clerks of courts go out to the communities and talk to the administrators on how to collect the fines, and through DPI, and things like that. I am not aware that any community actually pays the fine for an individual, but certainly the community collects money for the courts in relation to the fines and ensures that we collect them in that way and that the individual is aware that the fine is outstanding. We also have Aboriginal liaison officers who travel with our magistrates in the remote communities and also by themselves to talk to the communities and the people in them informing them of the system and the process. That works fairly well, but it needs improvement. I guess we have a long way to go, but we are getting there.

Ms HADDEN — That payment you are talking about, what is it called— CEP?

Mr KLARICH — CDEP.

The CHAIR — It is a community development employment program payment. It is basically work for the dole, is it not, and it is paid to the agency? The agency then employs Aboriginal people on a community basis and they get paid by the agency.

Mr CALLEJA — By the time the person reaches the fines enforcement registry, it goes past the good work that the magistrates court staff in remote areas are doing. They come in to us and it is probably two years since they have committed the offence. It is probably something they do not even remember — that is the reality — so what we are needing to do is to try and make it as easy as possible for any payment to be made. What I have discovered recently, only because I have never really had much exposure to CDEP, is that Centrelink does pay a CDEP supplement. It is only small, but it is a Centrelink payment. It is not a Department of Labour payment, and we will be able to, through a voluntary process, deduct from that payment something towards payment of a fine. In regional areas there is a possibility of that occurring once we sign our contract with the commonwealth and, as I said, there are a couple of contractual issues that we are tidying up. We are hoping by the end of this year that we will offer Centrepay generally across the state and that will be part of a strategy for dealing with the regional remote issues.

Ms HADDEN — You would also have a big problem here with workers going from mine to mine and big contractors throughout your state's remote areas, so I assume what you call front-end options would be most important because it is not just Aboriginal people that are hunter-gatherers who move around in transit, but you have mining people who move from operation to operation and who would not have a fixed address. They might have a PO box in Perth that they only access every time they fly down on their week off.

Mr MITCHELL — A lot of these people, though, do pay because they are big earners. Having a drivers licence is pretty important for them using machinery and so on, so I do not think they usually are such a big problem.

The CHAIR — In your report on fines you talked about the option of easy-way time payments or regularly paying off the fines. You have talked about community orders and working off the fine. What other options were canvassed in assisting people to meet their legal obligations and avoid either escalating penalties or imprisonment? What other things are being canvassed as options?

Mr CALLEJA — One of the options considered in the fines review but not yet put to government because of internal issues within the justice department at this stage was a reduction in the community service order hours from 40 hours down to 20. We are recommending that on the basis that a magistrate is more likely to offer a community service order if it is for 20 hours in place of a fine than 40 hours. It is not that the Department of Justice is reluctant to do it. What it needs to do is model the cost of that in terms of staffing in community justice and so on, so we are still modelling some of the cost of that, but that is another type of working development order.

Ms HADDEN — Is that per week, that 40 down to 20?

Mr CALLEJA — That would be total. I do not know whether others want to comment on that. There are others who are much more familiar with the operational side, but what we are trying to do, I guess, is make it easier and look at as many alternatives as possible because of escalating the cost to the state or to the person having to pay the fine.

The other comment I would like to make is that Peter has made mention of Repcol, which is the external contractor that executes warrants on behalf of the sheriff and undertakes collections. The debt collection industry has undergone something of a transformation over the last few years. Your stereotype debt collector is not necessarily the person who exists today. We have found that

as a contractor they have done their absolute utmost to negotiate with the person who owes money — the collection of any money at all — and in fact they have been quite significant in contributing to the reduction of both warrants of commitment, going to prison, and the reduction in numbers of working development orders basically because our contract means no success, no fee for them, so there is an industry change also that we are able to work with in a very effective way that has a social benefit.

Mr MAUGHAN — We would be very interested in following up on that particular initiative, which, from what you say, seems to be working very well.

Mr MITCHELL — By way of example, in the couple of years before converting, we had a team of people within the sheriff's office and we collected somewhere in the order of \$250 000 a year. In the first year or so of operations Repcol collected nearly \$5 million, from memory. Whilst they had more resources and so on associated with it and it cost more, it was certainly a lot better return on the investment than before when it was within our office.

The CHAIR — Do you have a publicly available contract with Repcol containing the framework in which they are expected to operate?

Mr MITCHELL — I do not know. I suppose the request for tender would be such that you could get a hold of that readily, because it was on the Web for people to tender for it and it was not that long ago. We let it in March of this year for the second time.

The CHAIR — Its essential element was that they got paid on the basis of the number of fines they successfully collected?

Mr MITCHELL — Yes. No success, no fee, is the structure of it. Even when they execute warrants to the extent that they do a work and development order, they get a return on their investment as far as tracking the person down, contacting them and signing them up. But the focus is on collection, and depending on what they collect there is obviously much, much more for them by way of commission.

The CHAIR — Under the new act, will it be only the sheriff's office that will be empowered to enter and seize goods for the purposes of collecting on a fine?

Mr MITCHELL — That is not affected. The new act applies only to civil matters. The power to collect a fine has been in place forever and a day, and only by the sheriff, but I can delegate it.

The CHAIR — I am conscious of the time. It took us a while to get on to the various elements of your expertise, but it has been incredibly interesting. In closing, is there anything that anyone feels they have not had an opportunity to contribute that they would like to say in relation to our reference?

Mr FERGUSON — There is just one thing I would say, following on from what Joe mentioned about the various options that are now being made available for people to actually clear fines, debts and what have you. It is also happening at the front end, where courts are now looking at options other than imprisonment and fines. There are no statistics available at this stage because it is only a very recent initiative, but they are opening up other sentencing options. Traditionally the sentence was a fine or imprisonment, but we are certainly moving away from that. As well as what is happening with collections after the event, before the event the judiciary are certainly looking at and being provided with other options in sentencing. As I said, there are no statistics available on that just yet because it is too early and it is too new. This work is being done with the community justice service, which is a part of the Department of Justice, to provide those alternative sentencing options to the judiciary.

Ms HADDEN — What is your imprisonment rate at the moment in the state?

Mr McCORMACK — Per head?

Ms HADDEN — How many people in custody?

Mr McCORMACK — We have about 3000 people in custody at any one time.

The CHAIR — Is that figure stable or increasing?

Mr McCORMACK — It does fluctuate a bit, but it is relatively stable. Coming back to the fines issue, probably 80 per cent of people in prison on fines are there for another matter. They actually have their fines brought in while they are doing a substantial term for a burglary, a robbery or something like that. That estimate is just from experience, and that is just a ballpark figure, but probably only 20 per cent of people coming in for fines are there for just their fines only. It is very few. It goes back to that initial development of the fines enforcement registry when they were given those extra options of time to pay, work and development orders, and seizure of goods. That whole range of processes was introduced to avoid imprisonment.

Ms HADDEN — How many beds are available in your prisons?

Mr McCORMACK — Tongue in cheek, I would say 2800.

Ms HADDEN — Real beds, not stretchers between beds?

Mr McCORMACK — Basically they are at maximum capacity. That was why the FPINE act and this whole range of other sentencing options have been looked at over the last half a dozen years. It was a targeted scheme to try to reduce imprisonment rates, and it led back to development of fines and things like that. Just going back to the rate, when the fines enforcement registry was first set up, a \$50 fine was one day of imprisonment, and after two years they looked at that and said, 'We are still getting such a high number of people', so they increased that to \$150 a day.

Ms HADDEN — Victoria is still at \$100. We have been at \$100 a day for years.

Mr MAUGHAN — What proportion of that population is Aboriginal?

Mr McCORMACK — In custody for all matters? I do not know precisely. I would say around about 15 to 20 per cent. Western Australia has the highest rate of Aboriginal imprisonment per head, apart from maybe the Northern Territory.

Ms HADDEN — What is your population here?

Mr MITCHELL — Two million, I think, or 1.8 million.

Ms HADDEN — That is for the whole state?

Mr MITCHELL — I think there are 1.4 million people in Perth.

Mr McCORMACK — That was another initiative that was part of this strategy. They identified that the indigenous population was coming into prison for relatively minor matters such as fines, and they looked at a range of options that could be given to them to keep them out of prison.

The CHAIR — Are there any other comments?

Mr MITCHELL — I have that chart that I referred to, and I have run off 10 copies which I will leave with you to give you a bit of a snapshot of the flow of the court fines and some of the issues that we have talked about, so that you can understand it pretty well. Joe indicated that

there are dollar values associated with some of these things, and it may not be disseminated further.

Mr CALLEJA — From our perspective this document — the smaller one, which gives the two tables — is literally hot off the press. It was produced for our executive director to provide a briefing to our minister.

The CHAIR — We will treat it as confidential until you tell us otherwise.

Mr CALLEJA — That is certainly for your information.

The CHAIR — Thank you very much for your attendance, your time and your input. It was most interesting.

Witnesses withdrew.