Technology and the Law Subcommittee

Inquiry Into Technology And The Law

Minutes of evidence

Melbourne – 23 December 1997

Members Present: Mr Victor Perton (Chairman), Mr Florian Andrighetto, Mr Neil Cole and Mr Carlo Furletti.

Staff Present: Mr Douglas Trapnell (Executive Officer), Ms Padma Raman (Research Officer).

Witnesses: **Project Pathfinder** - Mr M. Thomas, Director, Business Improvements, Department of Justice; Mr J. Dinsdale, Team Leader, Courts, Department of Justice; and Dr L. Trudzik, Partner, KPMG.

The CHAIRMAN — I welcome you to this public hearing. Please give your full name and business address for the purposes of the transcript.

Mr THOMAS — Mark Thomas, Director, Business Improvements, Department of Justice.

Mr DINSDALE — John Dinsdale, working with project Pathfinder, team leader for courts. I am located at level 5, 452 Flinders Street.

Dr TRUDZIK — Les Trudzik. I am a partner with KPMG out of 161 Collins Street. I was the director of the KPMG team that assisted the department with project Pathfinder.

The CHAIRMAN — Mark, perhaps you could give a general description of Pathfinder and its purpose.

Mr THOMAS — I will circulate a document that will perhaps help you to understand the issues. I should say at the outset that my colleagues and I are delighted to have the opportunity to talk with the committee. The introduction of technology to any environment, let alone the courts, is a daunting task. If it is not introduced properly we face the possibility of dire consequences. I am also pleased to present the committee with a copy of the draft stage 2 report. The Attorney-General only recently released the draft report for public comment. I will take the opportunity to leave it with you. I encourage you to look at it and come back to us. It will assist us in finalising the recommendations.

We propose to provide the committee with a general overview of Pathfinder, in particular where we are at currently with stage 2 and the recommendations. We will then perhaps move to more detail of particular aspects of interest to the committee. If you have any issues that you wish to ask about as we move through, feel free to do so, but in the knowledge that the recommendations form an integrated package of reform and are interdependent to that extent.

Foil 3 gives a little detail as to how Pathfinder originated. Essentially, the technology plan for the Department of Justice identified the need for some fairly serious investment in the information technology area across the criminal justice system. The secretary of the day was keen to ensure we did not build any existing or inherent inefficiencies, duplication or redundant processes into that technology base. He set up a project, referred it to Business Improvements and asked us to look at how the criminal justice system operated — in fact to map the processes — and suggest any areas which might require improvement and which would be worth looking at for improvement.

I stress that we are looking at administrative processes and procedures — we are not looking at the administration of justice per se but the processes and procedures that support the operation of the system. The four objectives are contained on foil 3. The first is to take a systemic view across all agencies. We are looking at an integrated process. We are not concerned to look just at police, courts or corrections, the stovepipes of activity; we want to look across the criminal justice system as to how a matter progresses.

The next objective is to question and challenge existing processes, practices and procedures. The third objective is to consider all aspects that affect performance. We are not looking at just technology; we are looking at how the process operates, the people and skills that are necessary to support it, the policy and legislative issues and the physical facilities. It is fairly wide ranging. One of the features has been the fairly wide consultation processes we have pursued. We have gone out of our way to make sure we involve all the stakeholders in the process.

There is a challenge inherent in examining the criminal justice system — that is, there are core principles of justice that must be upheld. We were made very much aware of that early on in the piece by the Attorney-General and others in the profession. We came down to saying that there are two core principles that we must test ourselves against — on the one hand, the recognition of the need to balance individual and state rights and, on the other hand, the importance of making sure that justice is seen to be done as well as being done. We support that by the core principles listed on foil 4:

natural justice

— the right to a fair hearing

— proceedings should be free from bias

independence

— judicial, executive and legislative (doctrine of separation of powers)

— prosecutorial independence

— constabulary independence

— decision making free from political influence

due process

— adversarial procedure

— based on the presumption of innocence

— administered publicly

— acknowledging individual, civil and victim rights

creation or extension of powers

— justified in the public interest

— clearly defined

— subject to appropriate accountability controls.

We also need to recognise that a number of apparent inefficiencies in the system serve a purpose. We have to be careful about saying that something is very inefficient when it has a purpose in law. That has been a challenge for us.

At the start of the process, we needed to get something as complex and as large the criminal justice system into manageable proportions. We did not want to fall into the trap of saying, ‘Let's look at police, courts and corrections’ — the stovepipes of activity. We built a business model, which is on foil 5. It sets out the steps that a person proceeds through in the criminal justice system. It is very simple: a crime is reported and investigated, a charge is laid, the status is determined — how it will progress — the matter is heard, the outcome is prescribed and the sentence is enforced. There is a range of support activities, such as custodial care. That is the model we worked to in trying to break it up into manageable proportions.

Stage 1 ran for some six months from the beginning of 1996 and in July of that year we delivered our report to the Attorney-General. Stage 1 was essentially the identification of opportunities for improvement across the criminal justice system. I will come back to these on how we develop stage 2, so I will be run through them briefly. During stage 1 the messages we heard were about needs in six fairly clear areas. The first was earlier and better case preparation. Something like 40 per cent of all cases before Magistrates Courts were being adjourned on at least one occasion, and of those some 13 per cent were adjourned on at least three occasions.

The reasons behind the adjournments were twofold. One was that people had not prepared when they got to court and the prosecution and defence used the court appearance as a trigger to start discussions, so there was an adjournment. Another was that quite often the accused had not sought legal aid or representation, or had only just

sought representation, and on that basis there was an adjournment. We are suggesting there is a need for earlier and better case preparation.

Mr COLE — You gave only two reasons for adjournments.

Mr THOMAS — They were the major two reasons.

Mr COLE — Is there another?

Mr THOMAS — There was a range of other reasons. One was witnesses failing to show up. I think those two accounted for something like 42 per cent of adjournments.

Mr COLE — How many cases were adjourned?

Mr THOMAS — Something like 40 per cent of all cases.

Mr COLE — So for another 60 per cent there were other reasons?

Mr DINSDALE — The figures in the higher courts were similar.

Mr COLE — Was it tactics, too?

Mr DINSDALE — It is hard to identify tactics but we certainly heard evidence of that from the people we interviewed. In the main it got back to preparation and legal aid problems.

Mr THOMAS — I think something like 40 per cent were for reasons of lack of preparation and a further percentage was for lack of legal representation. We were covering more than 60 per cent of the adjournments.

The CHAIRMAN — We will come back to this.

Mr ANDRIGHETTO — What percentage of the adjournments were applied for by the prosecution as compared with those applied for by the defence?

Mr DINSDALE — I do not know whether we have that figure here. It is probably one of the figures we sought and we were probably unable to get it. It is probably data that is not kept.

The CHAIRMAN — It is probably done by agreement and magistrates or clerks would not have figures as to who sought adjournments by consent.

Mr ANDRIGHETTO — The court coordinator would have the figures to the final number.

Mr THOMAS — The second area was the need for stronger case progression. Our stakeholders were talking about stronger case management by the judiciary in particular. There is a range of issues we will discuss in the next stage, but one is perhaps being a bit tougher on adjournments and perhaps taking an interest in cases before they get to the courtroom. Our scarcest resource is the courtroom, and we do

not require the parties in the courtroom to justify why they need access to it. Many matters could be rectified outside the courtroom if judges were to take it as a case-management issue. We will come to that.

The third area of need is planned custodial arrangements. We have a very complicated system of managing custodial arrangements, with mixed responsibilities between the police the and corrections areas. We saw the need to try to address those mixed responsibilities. The issue of transportation is tied up in that — the police responsible for some transportation of prisoners and corrections is responsible for other aspects of the transportation of prisoners. Again, I will come back to discuss that. The fourth area is electronic evidentiary material. We are looking for systematic handling of evidentiary material. There is a good deal of confusion around exhibits getting to court and the need to present them at court. There is a lot of scope for the use of digital imaging, and video conferencing — that type of thing.

The fifth area is convenient information exchange. I think one of the most telling things we found during stage 1 was that a plethora of small systems and eight major systems operate across the criminal justice system. Each system creates, reads and updates its own information base without having an impact on any other system — they do not talk to each other. We saw the need to try to somehow integrate and exchange information. The sixth area was the rationalisation of prosecutorial services. The Victoria Police are still responsible for the prosecution of summary matters in the Magistrates Court. It was suggested that we might look at the possibility of the Office of Public Prosecutions taking over responsibility for all prosecutions in the state.

In a fairly small nutshell those are the identified opportunities out of stage 1. We had an opportunity to look at some overseas experience and found that certainly we are not alone in the areas that we identified as the major opportunities, which is heartening for us.

Stage 2 looked at possibilities for design around the improvement initiatives. We went out of our way to consult widely, including conducting extensive collaboration with Victoria Police, the courts, corrections, the judiciary and the legal profession. We held a large number of workshops that went for three days with a challenge session on the evening of the middle day. These were exceptionally well attended and well received, with senior members from the judiciary and the police in attendance.

We were able to thrash out the issues and find what opportunities existed in the design context. As a result we have specified new revised processes for five of the six areas discussed.

One area that fell away concerned prosecutions. From the point of view of the Pathfinder team there was no criticism of the standard of police prosecution, no apparent process issues of concern, and no apparent cost imperatives. Basically the best way to phrase it is to say that if there are independence issues associated with Victoria Police prosecuting in summary matters, it required wider terms of reference than those available to Pathfinder. On that basis we recommend that we take no further action under our terms of reference.

Mr ANDRIGHETTO — It makes commonsense. The cost of shifting it over would have been horrendous, and I suppose that came out.

Mr THOMAS — There are some costings in the report that will be available to you, but there is a significant establishment cost associated with it as well as a higher recurrent cost.

Mr COLE — Could it have been more efficient?

Mr THOMAS — We don't believe so.

Mr COLE — What about at the committal stages?

Mr THOMAS —The committals are undertaken by the Office of Public Prosecutions, so it would not have mattered.

Mr ANDRIGHETTO — You are talking about the metropolitan area?

Mr THOMAS — Yes, and regional Victoria is also going across to the OPP currently.

Mr COLE — How big a fight would the police have put up to stop it?

Mr THOMAS — In the appendix, and it might even be in the main report, it stated that the police would cooperate with it going across, but they would need to be satisfied that they would get the standard of service they were currently receiving and a number of other provisos.

Mr COLE — Were there also issues for the police such as career structure? A certain number of people can move into the area of being prosecutors, and you would not want to take that away from them.

Mr THOMAS — There was a strong view that the police prosecuting role was an important part of police training. They needed to understand how it worked and to be comfortable going into court and giving evidence. That was thought to be enhanced by the police prosecutor's role remaining with the police.

In terms of the detail of the redesign in five areas, I should emphasise that these are interrelated opportunities — they rely on each other to a certain extent, and in some instances to a large extent. They support each other.

The first area is case preparation, and we identified four projects around which we have an implementation plan. The following are the draft recommendations at present: the first one is progressive disclosure by informant and prosecutor to defence from the date the charge is laid.

One of the main causes of delay is that essentially defence lawyers do not get their briefs and other material until the police prosecutors have put it all together. There is little evidence that they progressively disclose information as it becomes available.

There are two features here: one is that where prosecutors are used at the earliest possible time we tend to get better charges and we should get fewer charges. There is some evidence of a 'hamburger-with-the-lot' mentality and that the police are criticised if they do not lay the right charges, so they lay a lot of them so that there are more for the prosecutor to pick from.

The second part is that the defence spends a lot of time chasing police informants, in particular, to get information on their briefs. The reason is that the police have a different structure of leave arrangements. They work shifts and are not always available to defence parties. If it is your file, it is difficult for someone else to work out what should go to the defence.

To support that point, the second area is an electronic document exchange to minimise paper flow. As information becomes available from the police informant or the police prosecutor they would, as of right, release it to the defence practitioner or defence parties if they were asked for it. They could mailbox it into a database where it could be accessed by the appropriate defence practitioner.

Mr ANDRIGHETTO — Is that a two-way street or can it be just one way?

Mr THOMAS — The issue of defence disclosure is outside the scope of the administrative processes and procedures we are looking at. They are law reform issues which were clearly placed outside the scope of the terms of reference.

Mr COLE — We are only trying to make more efficient the process that already exists. There is no question that the information cannot be released; it is just the fact that they are either on holidays or night shift or whatever — is that what you are saying?

Dr TRUDZIK — Defence disclosure aside, the facilities should be available to the defence to enable it to lodge its own information or return information or to - communicate with the prosecutor. The facility should be two-way from the point of view of interaction, but defence disclosure is something that was not within the scope of Pathfinder to address.

Mr ANDRIGHETTO — I thought disclosure was covered by schedule and had to be handed over at a certain time before the return date. What is the issue? If the return date is three months away and the regulations or the schedule are complied with, are you saying set the hearing date earlier?

Mr THOMAS — Yes. Where I started from was to say that these are interrelated opportunities and it will become clearer as we work our way through them. The evidence obtained from our practitioners was that the earlier we can identify a case direction, the greater the likelihood of much of the work not having to be completed.

Perhaps you do not have to take as many witness statements. If they receive their first disclosure of information and they are prepared to go for a guilty plea or whatever, maybe you do not need to complete a full brief of evidence around it, and we can bring it to court earlier.

Mr ANDRIGHETTO — They have been trying to bring that about for many years. I know it is not part of your terms of reference but could you comment on it? If the defence disclosing some of the facts on which they were to rely would have a bearing on negotiations and on whether the case could be resolved or the directions were set earlier, would it not be commonsense for them to do that instead of holding all their cards close to their chest?

Mr THOMAS — That is a good call. We have provided to the Attorney-General and the Minister for Corrections a list of opportunities and a briefing note around each of them. As a result of these deliberations we have pulled huge numbers of people together from a diverse range of activities across the criminal justice system. A number of aspects were discussed, such as the right to silence and a range of others, that we felt obliged to report back on to the minister. We have done that, and defence disclosure is one of them. The second part is that as a result of this and other recommendations we have made we believe there will be some incentive for the defence to disclose information. We believe there will be a better balance of cooperation.

Mr DINSDALE — We actually learnt, in one of the workshops with practitioners who practise in the criminal area specifically around metropolitan Melbourne that they believe on rough numbers that if the information was available within 48 hours from the police probably 25 to 30 per cent of their clients would plead guilty and get their cases over and done with. We are about to commence a pilot project concerning how many exercise the right to have their matter dealt with earlier.

The CHAIRMAN — In theory, therefore, when the punter arrives in the office, if the practitioner could download the videotape of the record of interview and say, 'You have acknowledged everything; there is nothing we can do but plead and put a good case on your behalf on sentence' we could actually reduce costs substantially.

Mr ANDRIGHETTO — They already have that.

The CHAIRMAN — But if it is available to you in your office — —

Mr ANDRIGHETTO — It is. They have it with them when they walk out of a police station. That is not an issue. We are talking about other issues whereby the defence naturally want to see the case that is put up against their client, and I totally agree. This is a tremendous step.

Mr THOMAS — The pilot initiative has been given approval by the Attorney-General. We have some dollars to establish the pilot project around progressive disclosure and we will be doing that with five private practitioners, with Legal Aid, the Office of Public Prosecutions and the Footscray Police Station. We are putting in the electronic links between those parties and hope to have it up and running by February.

Mr COLE — In cases where there is evidence other than a videotaped confession what sort of evidence are we looking at having available to be disclosed by the prosecution?

Mr THOMAS — If the charge sheet and the witness statements were made available to the defence as they became available we would hope the defence would be in a position to make an earlier call as to what they would propose to do , and if there were as much damning evidence as quite often there is could say, 'We do not want you to do any more'.

Mr COLE — We are hoping to pre-empt the need for the call-over system arrangement — whether you are to plead guilty or not guilty you turn up on the day and then ask for the police. We will do something to pre-empt that. While it was a great system when first introduced, it is a bit inefficient.

Mr THOMAS — We will pick this up as we move through it. The next point under case preparation concerns earlier and improved access to legal advice services. The earlier we can get people some sort of legal advice the better it is for the progression of the case. The report recommends the establishment of a phone service to the accused at no charge. At the time of being charged an accused person could ring up and get some quality legal advice from a practitioner. We have had some extensive discussions in the workshops around how good the advice might be. We do not want people saying, 'Don't say anything' — that would be disastrous. You do not get guarantees in this area but we certainly hope we might get some sensible advice to accused persons at the time of their being charged as to what they might and might not say.

In terms of more time for informed legal aid assessment, we are looking for a greater level of partnership arrangement with Legal Aid and the providers, and we see significant scope — I hasten to say that there has been dramatic improvement in legal aid over the past 12 months — or at the very least some scope for practitioners to approve legal aid to certain clients as they come through, subject to some very strict and stringent guidelines. That can then be audited. If there is any departure from the guidelines perhaps those people would be taken off the list for providing legal aid services.

The CHAIRMAN — If the whole system is integrated why do you have to delegate the authority? Could not the computer-generated program allow for a much faster rate of approval by legal aid?

Mr DINSDALE — What happens is that the client goes in and sees his or her lawyer of choice, normally. They have some interview sessions and in 95 per cent of cases the lawyer can tell within minutes of such a session whether the person will get legal aid or not. They are saying that if they could make a decision under delegation from the Legal Aid Commission they could make the decision there and then, knowing full well that the person had legal representation, and could then progress further with the prosecution. It would be a case of making an instant decision. They would electronically download information with the Legal Aid Commission, which ultimately would fund the case, but would have the delegated authority to make the decision and deal with the matter there and then.

Mr COLE — What would happen if the person did not get legal aid because he or she was ineligible, it went over the limit or the case did not attract legal aid, which applies to just about everything these days?

Mr THOMAS — They would be in precisely the position they are in now, which is something we will address. We are saying that if there is an assessment process, bring it closer to the first port of call and encourage people if they are eligible for legal aid to seek it at the earliest possible time; because when people get into court with no representation they are told, 'Go and seek legal aid' and there is an adjournment.

The CHAIRMAN — In theory, will the system deliver? Let us say, for instance, that I am a person on $20 000 a year. I am charged with a criminal offence and I go to a solicitor. He has a look at the case and says, 'You will not qualify for legal aid' and yet I do not have the personal resources to pay for a defence. Is the system capable of saying, 'You are being charged with X. Here are the sheets with explanations of the charge and its elements. If you are preparing your own case, this is what you need to do.'?

Mr DINSDALE — We have looked at that and it depends on the magnitude of the offences. We consider there is a large opportunity for many people to be referred to the duty lawyer in respect of the smaller ranges of offences. At present the duty lawyer works under a lot of stress because no real process is in place. The police or whoever it is tell you to roll up to the court and see the duty lawyer to see what they can work out for you. This puts the duty lawyer under enormous pressure, and in many cases the lawyers adjourn the case because of the pressure — they may be seeing 15 people that day. Hopefully, with better information being exchanged through technology, the duty lawyers will be aware of the demand put on them and the types of cases involved well before the day they go to court so that it can be worked out better prior to the day.

We are also looking at a number of cases at the lower end where people could represent themselves by completing, with a duty lawyer, a form including who they are and what they earn. They could hand that to the magistrate to assist with communication between the defendant and the magistrate. Instead of the duty lawyer having to stand on his or her feet and say nice things about the defendant for 20 minutes it could be over in about 5 or 10 minutes in cases where it is known the penalty would be a minimal fine and so forth.

The CHAIRMAN — Let us say it is a case of a blood alcohol level exceeding .05, with the likelihood of a loss of licence. There is a possibility that the case could end up with a bond being issued and the person being told, 'If you are doing it yourself you need to bring character references, your employer statement and the like.' Is that the type of incident you are referring to?

Mr DINSDALE — We want to establish that for those types of offences if at the end of the day you want to plead guilty and go through the system we want the duty lawyer to at least give you some basic advice as to how you might represent yourself.

Mr ANDRIGHETTO — Why should we wait until we reach the duty lawyer stage? Surely it can be done earlier.

Dr TRUDZIK — In the report we talk about court information sheets aiding accused persons to better understand their entitlements and requirements, particularly with

respect to legal aid and any time limits that might apply, and ensuring they are aware of their obligations, but also assisting them in the process, if they need it.

Mr THOMAS — Some recommendations in the report escalate the level of advice or assistance accused persons are given. Under the recommendations, at the time a person is charged the police will be required to give that person a sheet telling the person he or she needs to seek legal representation, and prior to the case the Clerk of Courts would send out a sheet saying as much. We would be prompting them the whole time. If they get to court and have not done those things they still have access to a duty lawyer.

Mr ANDRIGHETTO — They are already given an information sheet with their charge papers, whether they are charged at the time or through the mail. They receive an information sheet in various languages. Are you looking at changing that around and possibly making it more relevant, or at some totally different way of doing it?

Mr DINSDALE — Hopefully, with the obligation on the police to contact a lawyer prior to an interview, when they are brought to the police station — and we have not gone into how that may be set up — that would be the first contact with the lawyer. If you do not nominate a lawyer the police would ring a telephone number where legal advice would be available. That could put you in contact with a lawyer. Failing that, the police would send you on your way with yet another piece of paper, saying, 'Go and see a lawyer'. That would include legal aid and a duty lawyer; some of that is done now.

There will always be an obligation on lawyers that once they start to act for defendants they will have to notify the court, hopefully electronically. If the court realises that a defendant does not have a lawyer registered as acting for him or her, a notice would be generated to the defendant saying, 'We are reminding you that should you seek legal advice you can do it this way. Contact these numbers or a duty lawyer on this number'. The court would prompt them before the hearing date. Then the defendant would probably have had about three or four prompts to get the legal advice. Today people are walking in and saying to the clerk of courts or prosecutor, 'I have done nothing about it. I want to see the duty lawyer', and the duty lawyer says, 'You are charged with serious offences'. Then they need to have the case adjourned. That is happening repeatedly.

Mr COLE — On the question of lawyers being allowed to have some delegated authority to decide whether legal aid is available, we run the risk of it being driven by demand rather than by need, which is what happened in England. They introduced 24-hour legal aid shops alongside police stations. It was a financial disaster. That is not to say it was not great for civil rights, but there must be somewhere in between where we can provide the sort of legal assistance actually needed. It should not be related to legal aid because there are so many people ineligible for it anyway. We are talking about a small percentage of cases that attract legal aid. The legal aid cases will be efficiently handled but the bulk will not be.

Dr TRUDZIK — Legal aid is a topic that was discussed by us strongly and often. It was an issue of scope we had to work with carefully. As Mark said, we had to make the current provisions work as best they could without fundamentally restructuring the

whole legal aid process. It was always on the border of our scope — that is, just how much we could do with it. We have focused on how the process can be improved, with better planning and notification of not being represented, earlier assessments and easier access to advice. Beyond that, we really could not go into making recommendations about legal aid.

Mr COLE — But what about issues of certainty, though? One of the things we were looking at is the concept of a kiosk where you can press a button to find out what will happen to you — whether the charge will lead to you going to gaol, and so on. A person who is charged with, say, a .08 driving offence could press the button and find out he could lose his licence for eight months. In the old days you could argue in court for a bond but that cannot happen now. Would you envisage something like that, the one-stop kiosk shop resolving a lot of those problems?

Mr DINSDALE — Certainly it could give the information.

Mr COLE — It would be immediate legal advice.

Mr THOMAS — To the extent you can have some certainty around the likely sentencing issues, a range of mitigating circumstances may lead to higher or lower penalties.

Mr DINSDALE — The act provides for it. I have been a clerk of courts for 25 years. A person will say, 'I have been charged, what will happen to me?'. I say, perhaps, 'You are up for a fine of $1000, you could lose your licence for up to six months'.

Mr THOMAS — Most practitioners say, 'The most likely outcome is this or that'.

Mr DINSDALE — If they do not have a practitioner they say, 'What will happen?' and I say, 'This is the act, this could happen' They sometimes say, 'That will do me'.

The CHAIRMAN — At the time you are charged is there not a possibility that the sheet you get from the policeman or, later, the prosecutor, would have the terms of the charge and then two or three information sheets saying, 'These are the statutory provisions, the leading cases are X, Y and Z. It is a complex area, you will probably need a lawyer'?

Mr THOMAS — That would introduce a horrific amount of work for all the charges that exist. But if we had a telephone service at the point of a person being charged that is the sort of information we would like to have available when the person contacts the police. We hope the legal adviser would say, 'At the first offence if you enter a guilty plea you may get this or that'. That is where that sort of advice could be made available.

Mr DINSDALE — A lot of clients have problems at the police station. They could be intoxicated or not really understand what is happening at the time. A lot take their pieces of paper and their audio tapes and throw them over the fence hoping it will all go away — until it suddenly reappears! We should try to improve the communication between the defendant, the court and all the players. I hope technology will help in that regard.

The CHAIRMAN — What about 'judicial control' in your report?

Mr THOMAS — I mentioned time standards. They should be used on a far greater scale than they are at the moment; they are now used in sex cases.

We would like to see time standards introduced at all stages across the system. We think there is sufficient merit in that. We would like to see a time standard for initial hearing dates, say, within 14 days of people being charged. We hope the other supporting infrastructure to be put in place will make that target achievable. A lot of what we are doing is prompting identification of case correction. If we could do that as early as possible we could take matters into court earlier.

The second area of that aspect concerns confirmation of hearing intent in return for time and/or date certainty. We now have a situation where everybody rolls up to the Magistrates Court at 9.45 a.m. We propose we should put certainty into the lives of practitioners and others, to get them there are at, say, 11.00 a.m. knowing what they should then use the court for. You can get towards that fine line in tuning by making appointments with the court. The confirmation of hearing aspect is critical in that we would require practitioners to advise the court, in the case of the Magistrates Court, 48 hours before the hearing date what they intend to use the court for so we can schedule the court. If there is to be a guilty plea, less time would be needed than for a contested matter. In return for that confirmation of dates and times we would give them date certainty; there is something in it for the practitioners.

In the upper courts we would need to have counsel briefed 30 days prior to the trial when he or she could give an indication how the matter would proceed. This would be supported, as I suggested earlier, through increased judicial supervision of lists and management of cases, which is the next recommendation. We would need to book a minimum of judges rather than overbooking as happens now in the magistrates and other courts. Earlier I mentioned that the scarcest resource is the courtroom. We must ensure we optimise the use of our courtrooms.

Dr TRUDZIK — The reason is that 40 per cent of cases are adjourned. That leads to a self-reinforcing level of overbooking that increases the uncertainty for the practitioners and provides less incentive for them to be prepared.

The CHAIRMAN — It is a long time since I attended a civil, not a criminal, directions hearing, but it seemed to be an awful waste of people being paid thousands of dollars a day to hang around for the pleasure of a judge, and then all you are doing is agreeing on a date for interrogatories. Do you see that increasing with the use of e-mail?

Mr ANDRIGHETTO — The same thing happens in the criminal jurisdiction.

Mr DINSDALE — In the criminal jurisdiction we are looking at a judge taking a more supervisory role of the list. At the moment the chief judge of the County Court supervises the total crime list. It is too big for one person to have control of all the different issues in different cases. If they were broken down into manageable cases a judge could entertain counsel before or after court about particular problems in

conducting a trial, in raising arguments, listening to submissions and things like that. It is a matter of applying more case management.

Mr COLE — What has been the effect of the criminal trials legislation?

Mr DINSDALE — We heard in loud and clear terms that it had no teeth. Lawyers, to our surprise, were saying it should be given more teeth.

Mr COLE — I am surprised; it was one of the few things on which I supported the Attorney-General .

Mr DINSDALE — The lawyers said they are certainly looking for more teeth in it.

Dr TRUDZIK — Part of this question involves the judiciary having time scheduled out of court to manage cases, if required — that is, to follow directions, to supervise the parties and so on. Not all cases require it.

Mr DINSDALE — About 40 per cent would require active management.

Dr TRUDZIK — The remainder require some form of supervision. That involves the judiciary having time out of court. The concept of a courtroom being empty is not necessarily a bad thing in the context of progressing a case.

Mr THOMAS — The report recommends a minimum number of judges, so there is certainty of cases getting on. The lights being turned off in the courtroom phenomenon would be supported appropriately by a number of listing judges — and the report recommends five for metropolitan and three for country areas ; they would cooperatively be responsible for listing cases and identifying cases because 30 or 40 per cent of all cases require individual case management by a member of the judiciary. They would be assigned that case at any point in time, preferably the earlier the better; they could pull the parties together and get matters of law or other arguments out of the way and focus minds on the issues that are to be debated or proven before the court. We have some models that we will turn to further in our presentation which suggest we can work to a minimum number of judges provided the other time is used in appropriate case management.

The final aspect on ‘judicial control’ in our report concerns the court environment being supported with services for assessment and orders. We have extensive infrastructure in place through community-based corrections where they do a lot of assessments for the court at the request of the judiciary. A number of community groups are involved in this. We will be suggesting we need to take a far more pro-active approach in relation to the assessment services, that they should not be run by the court but should provide a service to the court so we do not get adjournments while people are being assessed.

People at the court would make a call on whether an assessment was required on individuals and try to pre-empt the fact that the judge is likely to want an assessment made. With their concurrence or perhaps at the request of the defence practitioners we would do it up front.

Mr ANDRIGHETTO — If you are looking for that as a disposition, it is your responsibility as the defence practitioner to organise it beforehand.

Mr THOMAS — As a disposition, yes.

Mr ANDRIGHETTO — It is always the defence that asks for that disposition. If they ask for it they should be prepared; they should not hold up the court and say, 'I am asking for that, Your Honour' so that His Honour says, 'I will adjourn to another date until that assessment can be conducted'. Had that already been done, if successful he could say, 'Okay, I will agree to that. Show me the assessment'.

Mr THOMAS — Precisely. Also, the magistrate or judge may deliberate on an appropriate course a person may be placed on. That could come through up front. It could be a violence management course.

Mr TRAPNELL — You would need to increase the resources because everybody would be hoping to get one of those orders. When you ring them the organisations say, 'We will not do anything until the court orders it'. Otherwise they are carrying out the assessments for every successful one.

Mr ANDRIGHETTO — They may change their minds if they have to pay for them.

Mr THOMAS — We call the person a court program coordinator; he or she would assess whether it is warranted. If it is undertaken at the request of the defence or defence practitioners and the coordinator does not agree, that could well be a user-pays system.

I move to the custodial care aspect of our report. We have a rather complex mix of responsibilities in the custodial area. The report recommends we need to establish a continuum of care and operate within principles around that. We see the need for a single integrated view of an accused — an electronic view, if you like, of details of the accused and other information as he or she moves through the system. Certainly one person should manage the movement of that person rather than police and the corrections division being responsible with the inherent problems that has caused in the past.

We also see the need for a consistent and progressive assessment of the accused, that they should have their assessments commence while they are in the custody centre. There should be five or more custody centres, perhaps the major police stations across the state, where the accused can be taken and held on remand prior to being moved to a central remand centre. The assessment of those persons could be undertaken consistently across the state by the agencies responsible for the individuals as they move through the system.

The last point regarding custodial care concerns an overall systemic view of the capacity and demand for transportation and accommodation, to get away from the fact that police are responsible for prisoners in police cells and the contracts for movement of prisoners. Corrections is responsible for them in their institutions and for their movement in various circumstances. Let's try to rationalise that down to a single responsibility.

Dr TRUDZIK — Which can often lead to empty trucks heading in different directions. If they were handled through a single transportation plan you could optimise the use of the vehicles.

Mr THOMAS — That leads us to the system logistics section. That is precisely the point just made, that the coordinated planning and management of prisoner transportation needs to fit with the continuum of care and responsibility, that we have long-term contracts operating out of the corrections division and more recently Victoria Police with outside contractors. If we are to rationalise them and have a single responsibility, contract work is to be done around that if it is to happen in anything other than the long term.

The custody centres should service the needs of the police, the courts and the corrections division. This is a long-term recommendation. We suggest that the collocation of police facilities and the provision for defence practitioners to see their clients should be given thought when new complexes are being. That long-term recommendation would help cut down on transportation costs.

Mr ANDRIGHETTO — We are really breaking away from the 1970 views, are we not?

Mr THOMAS — Yes. The next recommendation under 'System logistics' concerns electronic storage and management of the brief and evidentiary material. It is now all paper-based; we cart our exhibits into court. There is an enormous scope for that practice to be exposed to technology. Knives and guns need not be taken into court; we would never say they cannot be taken in if a practitioner wishes to have a weapon there for the jury's examination. But we don't need to take a car into court. There is significant scope to store such images digitally and move the information around the state electronically rather than in paper form.

The CHAIRMAN — Douglas and I have seen a number of exhibitions of material such as animation and the like that is used in civil cases. Has that started to be used in the criminal system at all, by either defence or prosecution?

Dr TRUDZIK — We saw one very good example of that in the Martin Bryant case in Tasmania. All of the evidentiary material is basically on one CD-ROM, which is linked to pictures and videos of the exhibits with cross-references to names and witness statements. Fortunately or unfortunately it never got to see the light of day in court but from all the reports from Tasmania it helped in the management of the whole of the brief and evidentiary preparation process.

Mr THOMAS — The other aspect of the electronic storage and management that we would be proposing is associated with the fact that currently with the paper-based system there are no triggers for action. We believe that with the use of electronic movement of information we could have triggers in place — flags would come up that say 'This should have been done by now; has it occurred?' or 'A new piece of information is available on this case'. That simple flagging does not happen currently and it would be simple to make it happen on an electronic system. The final point is that physical exhibits should be recorded, imaged, tracked and stored at regional facilities.

Information management is the last area we are going to touch on. I mentioned the need for the electronic exchange of information. Currently a huge number of systems operate across the criminal justice system. Earlier I mentioned that there are eight major systems and that each of the systems creates, reads and updates its own information. So there is significant scope to look at how we might interlink them to at least let them share information. In the next couple of foils we will show you our views on that.

That would need to be supported by standards for consistent recording and representation of information. We have some work going forward under another project. I think you are looking at the data improvement project, which will be looking at a unique identifier for the accused and for the brief. That will be a very important piece of infrastructure to support any information exchange in the future — that is, that we are in fact talking about the same person and the same charges.

Next is the automatic dissemination and notification of documents as appropriate to the parties. As I said, as information is available for release to the defence it should just be released and appear electronically. Again it should be notified that the document is available, and that comes back to the flagging I was talking about.

Mr ANDRIGHETTO — That ties in with a note I made earlier that I wanted to question you about. You are talking about getting this information to the other party as soon as it becomes available. That all makes good sense but we are dealing with an archaic practice in the police force in which it could be six months before a brief is completely finished, tied up with a yellow ribbon and sent through firstly to the shift supervisor and then to the officer in charge of the station, who will say, ‘This is okay’ and send it to the prosecutor's office. The delay is caused by virtue of the fact that the informant has been unable to obtain who the witnesses are from the relevant party and has does not submitted the statements. The officer in charge will say, ‘You have to put this in, and don't put the brief in until you have it all’. That is where the hold-ups are coming from. We have to break down a long-established archaic precedent because all that is needed is the summary brief and to be able to say, ‘Let's start talking, fellas’.

Mr THOMAS — I do not think anybody around the table would underestimate the cultural issues that we are going to come up against in moving forward on some of this. I mentioned earlier the pilot on disclosure. We have working with us a very senior member of the police prosecutions branch, Inspector Smith, who is second in command down there. He has been working with us since stage 1 as a member of our reference group but as of the new year he will be joining us as the police team member. He is working with us on disclosure. We have five private practitioners who are very keen to participate. The support for this concept has been staggering. Recently I have received a letter from a deputy commissioner congratulating the team on the progress made in the area.

Mr COLE — This is a major project and one would not want to rush it. I think that sometimes the police should think about whether they should prosecute, and have checks and balances within that. The great bulk of cases must be matters of rush them in, rush them out, stamp them, charge them, do other things to them, and then send

them out the door. For example, do cases such as simple .05 cases in which the prosecution is beyond dispute make up a lot of the problems?

Dr TRUDZIK — The current practice is that a full brief is always prepared, and that is a major contributor. It is an average 42 days before the first hearing and a lot of that is brief preparation time. The time standard that Mark mentioned — 14 days to the first hearing — certainly needs to be supported by a change in that practice by doing only the summary brief — or not the full brief. It is definitely part of the recommendation that obviously not every case in that 14-day period will have a full brief — to get some better level of matching of brief to charge.

The CHAIRMAN — Let us run through the rest now without questions and then have questions at the end.

Mr THOMAS — The final point on that foil is the issue of security, which is foremost in all our minds, I am sure. A range of security measures have been examined by the technocrats. When we talk about security and people worrying about hacking into the system we have to keep in mind how many physical hands, locations and kilometres a brief covers already. I do not know that the problem is any bigger just because we are putting it on a computer.

We have fully costed all the recommendations in the report and all the costings are contained in the report for your information. The benefits have been calculated using computer simulation techniques. In conjunction with the University of Melbourne, our criminal justice statistics research unit and some of the Pathfinder resources skilled in such matters we have built a model of the criminal justice system. To our knowledge - it is the only one that has ever been developed. We ran a base-case scenario which was modelled over five years and stabilised the system so that it approximated what is happening today. We introduced the sorts of changes that we believed would be achieved through the recommendations. The figures speak for themselves.

We are looking at a considerable reduction in the elapsed time to get matters through the system, a considerable reduction in the pending lists, a considerable increase in the capacity to complete cases which could be converted to a reduction in task effort and may result in fewer persons; and definitely reduced paper-based costs. Court waiting time for victims and witnesses is huge. Wasted preparation in court waiting time for solicitors and barristers — and Victoria police, I could add — is quite significant. They are all detailed in the report.

In terms of the technology support required, we have done a loose version of the business model.

Foils 14 and 15 as follows:

Mr THOMAS — Around detection the report has identified the need for a computer system for investigation management. We need to track incidents. Around charging

we need offender processing. We need a brief management system. A huge range of systems will be required across the system. We need to get a feel for the types that we think need to be developed. I do not propose to talk about each of them. Across the bottom are the ones that extend across the criminal justice system.

The challenge to the team is: in the knowledge that we require all these information technology systems to support the flow of the cases through the criminal justice system, how best can we configure it?. If we go to the next foil, the recommendation in the report envisages a justice information exchange. The feature of that is that we are not proposing to build one large computer system to support the operation of the administrative processes and procedures of the criminal justice system. Rather we are looking at information technology supporting each of the discrete systems or components that we see necessary to function across the criminal justice arena so that we would have, for example, brief management, investigation management, prisoner logistic support — all the functions supported by dedicated computer systems but all feeding into a central exchange.

Foil 15 details the type of information needed by a cross-representation of parties in the system. For instance, the charge information is collected by the police. Currently it is re-entered by courts and it is re-entered again and again as it progresses. We would see that information being entered once, going into the justice information exchange and then the next person would have it all downloaded from the justice information exchange into their system. As they update their system it would feed automatically back into the justice information exchange and anyone with authorisation and requiring access to that information would get the view that they are authorised to receive. It is a fairly simple notion and fairly expensive to build, but that is our preferred view.

Dr TRUDZIK — It would not be as expensive as a single system covering all of the agencies' needs.

Mr THOMAS — There would be another problem if we were to look at one system. We went down this track many years ago in other areas, not in the criminal justice system. When you need to update information and upgrade you are looking at a very expensive investment. By leaving individual systems with the agencies that are responsible for them — and where they are cross agencies they need some sort of management tool around them — they are able to upgrade and vary to suit their requirements at any stage that they require and at their cost without seeking to prioritise all the requirements for upgrading or other aspects of changes required. That is a preferred view of the report recommendations.

The last foil is a few of our thoughts around technology having regard to your terms of reference. Those four points confirm our thinking that certainly technology can enable significant improvements throughout the entire system. The key word is 'enable'. We are trying to get the processes right. There is a lot of scope to achieve efficiencies and certainly improve effectiveness through the use of technology in enabling changes to those processes.

On the benefits of electronic management and presentation of material in court, we also have a lot of support for pre-court activities relating to police investigations and

case preparation. We need to look across the criminal justice system. I would encourage the committee in thinking about technology and the courts to recognise that it all starts with the police. You need to make sure that you do not confine your thinking just to the time at which a matter arrives in court. I am not trying to teach you how to suck eggs. A lot of the infrastructure and investment is required at the front end with the police. We can process matters through and save a lot of resources in the courts by getting it right at the police station.

Dr TRUDZIK — That applies also to the preparation — communication and discussion during case preparation prior to court. That is the pilot that Mark has talked about that is under way.

Mr THOMAS — The third point is that currently the environment appears to be right. We have done a lot of work between 1996 and the present working with the key stakeholders in the criminal justice system. I have worked in the justice arena for some eight or nine years and in my view at least we are enjoying an unprecedented level of interest and support from key stakeholders across the system. By all accounts they have had the opportunity to sit down with a range of other stakeholders and discuss issues like they never have before. I suggest that a highlight of this project has been to get the stakeholders together so that they could have a free, open and lengthy interchange and exchange of information. As a result of that — and we would not want to downplay personalities — I think the environment is ripe for the types of changes that you and we are considering.

The final area is that we know that technology works. We have the civil jurisdiction as an example. A lot of what we are talking about is significantly ahead of what is in the criminal justice arena. Another feature around that is that although we are talking at the leading edge of a lot of this stuff, it is all proven technology. There is no great risk associated with the technology — we know that it all works. The major risks, which are acknowledged are the cultural issues that were raised earlier. I think the environment is as good as it has ever been.

The CHAIRMAN — You are saying that in the civil justice area things have moved ahead faster. Can you just elaborate on that a little?

Mr THOMAS — We have electronic data interchange in the civil jurisdiction. The Estate Mortgage case is probably the best example of the setting up of an electronic court room.

The CHAIRMAN — To what extent are processes in the preliminary stages involving the lodging of the writ, the summons, the terms of interrogatories, discovery — all of those processes —happening electronically in the civil justice system?

Mr DINSDALE — Certainly the lodging of writs is happening electronically in the County Court and the Magistrates Court. I am not so sure about the interlocutory proceedings, but they are certainly working through those if they have not already got there.

The CHAIRMAN — To what extent are the two projects proceeding separately? It seems to me that the central database you are talking about there would be as applicable to the civil system as to the criminal system. Is it envisaged that there would be the same data exchange for both the civil and criminal jurisdictions?

Mr DINSDALE — That is a possibility.

Mr THOMAS — The parties are clearly different. But certainly our brief originally was to focus on the criminal jurisdiction because that is where the major opportunities were seen to reside. Most definitely whatever we put in place will be translated in the civil jurisdiction, where that is appropriate.

The CHAIRMAN — Who should drive that process of saying, 'There is awesome waste in the community on the civil side as well'? It would seem to me terrible if we did all this re-engineering of the criminal justice system where there is separate re-engineering of the civil system, and duplication of what is expensive work.

Mr THOMAS — The lessons we have learned are significant. The reports are available, as other people are working on them. Peter Solomon has a brief and is working out of the Department of Justice on this matter, and we have liaised with him around what we are doing to build on his work.

Dr TRUDZIK — From an infrastructure point of view there is certainly the opportunity to share it across the jurisdictions. From a process point of view there are also some changes in the civil arena that are at least half a step ahead of some of the criminal recommendations put forward.

One example would be mediation in the civil jurisdiction, where there is an attempt to use the resources of the court better and to have decisions made earlier. There are some issues around the use of mediation at present, in terms of backlogs in the County Court, but that certainly shows an alignment in both jurisdictions.

There are, however, also some major differences in the process so, as Mr Thomas said, it has not really been within our scope to go beyond the criminal jurisdiction, except to say that the infrastructure could be shared. There is no reason why it could not be.

The CHAIRMAN — One of the things that has been exercising our minds is how we can add value to this as a parliamentary committee. Clearly you have a great deal of expertise working with you in this process, and obviously the things we are looking at are the cutting edge of video linking and technology. To what extent would you see us adding value in our interaction with your work?

Mr THOMAS — I mentioned at the beginning that I see importance to us in having as many people as possible look at the report, not just for assessing the work done by the project team and the stakeholder input, but for drawing together other opportunities.

From where I sit, you people are certainly in a position to gain a wider perspective of the work going on across the criminal justice system. It might be of interest to the

committee that at the beginning of this process one of the first tasks I assigned to one of the team was to pull together all the linked projects operating across the system. Focusing just on the criminal justice system we ended up with some 57 projects with the capacity to impact on or influence the outcome of Pathfinder, so a huge amount of work is going on.

Some of it may just be video conferencing, where there was an analysis going on in each of the agencies, but that is something we have to make ourselves aware of — how far along the development is.

One example is the question of prisoner transportation. The police were looking at outsourcing the transportation of police prisoners, and this means looking at a fairly high level of work across the jurisdiction. That puts you in a more informed position than other people to assist us.

The CHAIRMAN — Obviously we are an imaginative group of people here, and through my work on the multimedia committee I get to see a lot of the cutting-edge technology. Do you have a vision? Is it in the report? How would the criminal case of the year 2000 operate if it were up and running?

Mr THOMAS — Have you got another 2 hours?

Mr COLE — The year 2000 is not that far ahead. Do you have something we can look at, say, for the year 2010 or 2020?

The CHAIRMAN — That is too far ahead.

Dr TRUDZIK — A plan was actually made into a placemat for the project team. It is an A3-sized flow-chart of the system. It may actually provide the sort of one-page view you are looking for.

At the same time part of the reaction is still, ‘Why are there so many steps?’ That is part of the challenge with the criminal justice system. It is big and complex and there will not be a single-image view of how it will work. That would be oversimplifying it, but a lot of what Mr Thomas has gone through paints the picture of more judicial control, time standards and monitoring of the progression of the case enabled by technology so that there is no Australia Post or a phone call required to exchange information. In other words, that information is automatically deposited.

One of the earliest names for the justice information exchange was a bank. There was an information bank at which parties could deposit their information and others could withdraw as they needed to. All of these are changes in emphasis and result in people not having to request information but having it made available through the use of technology.

Video conferencing certainly removes much of the transportation needed in the system today, both of the accused and of evidentiary material.

For example, in part of stage 2 we visited other jurisdictions. In New York each of the police precincts is connected to the Assistant District Attorney through a video link,

so there is no transportation involved now in New York in agreeing on the accusatory documents, and that happens basically within 24 hours to enable the arraignments to occur.

The prosecutor or the arresting officer and the Assistant District Attorney agree on that information, using technology, and that has had a dramatic impact for them, and that vision of the application of technology is quite strong.

Mr THOMAS — The report goes into considerable detail as to how we arrive at our conclusions and recommendations. It runs to about 140 pages, but there are about 500 pages of appendices supporting the view.

The CHAIRMAN — Is it on your web site?

Mr THOMAS — We are about a week off that.

Mr COLE — Are there other jurisdictions we could look at with respect to high technology, criminal trials and the legal system not only in Australia but overseas?

Mr THOMAS — Perhaps the best example of the electronic courtroom was in Victoria in the Elliott trial, where progress was made towards that end, and there was also the Estate Mortgage trial, but the best example in Australia of the electronic courtroom was the royal commission in New South Wales.

Every brief was scanned into a machine; everyone had a computer on his or her desk and the judge could see stuff that other people in the court ought not or could not see, and it was basically a paperless court. That was well worth the experience.

The concept of integrated justice is being pursued in a number of venues around the world. Much work is being done in Singapore: I have not yet got my head around a lot of it, but we had a phone link-up last week with some people doing work across the United States and in parts of Canada, and in New York, as I mentioned before, they have a constitutional obligation to take people from charge to arraignment within 24 hours, which is no mean feat considering the volume of people they are working with.

There were some examples of the use of video technology, where a prosecutor would have to get to the police or the informant as quickly as possible and they used video conferencing to do that, and very successfully too, even though the police try to rort it so they get overtime by pretending the machine is broken on the odd occasion. Funnily enough, it seems to come good after 4 o'clock!

The whole notion of integrated justice is something with which I am not all that comfortable in terms of the word 'integrated'. Work is going on in Ontario across the entire criminal justice system, and it is a partnership arrangement with IBM and others. Nova Scotia is undertaking some serious work in the area also. They did that as a result of a visit that we paid to them earlier in the year.

The CHAIRMAN — Yes, we read some material the other day indicating that Toronto was fully integrating its court systems with solicitors and attorneys so that everyone was producing a consistent type of document and lodging the same.

Mr COLE — Would it be worthwhile seeing the New York system?

Dr TRUDZIK — It is as important as the electronic courtroom, on which there is a lot of focus. It does receive a high profile. It is what happens before it gets to the court that is important. That is where the New York example is very good. They are using their Citynet to link the various agencies. They have a community court pilot in New York, which provides the judge with good access to information about the accused, particularly drug offenders, their history, urine samples and so on, which is important for the judge to see. As the case proceeds through court there is no delay in the system. The judge is made fully aware of the relevant information and the use of technology. It is a good application.

Mr THOMAS — I found the New York example particularly useful from my point of view because they have in place technology which is ahead of ours. We sat on the bench with a couple of judges, and it struck me as curious that with all the work the criminal justice coordination commission puts together — and they have the same cultural problems as we have and the same problem of police wanting to run ahead and build their own system with everyone else trying to keep up with their technology — having watched the punters being processed and getting the arraignments done in such quick time we saw that once the sentence was handed down, the judge signed a bit of paper and put it in a wooden tray and it slid down to a clerk and he actioned it, so we lost the technology. It got to the court very high-tech, but that was the end of it.

The CHAIRMAN — Whereas our magistrates are keying it in themselves!

Mr FURLETTI — I would like to return to something you mentioned earlier. We will be talking to those organising the civil justice side of things. I am always concerned when we get involved in this area as to who is really picking up the threads and linking it all together. Thank you for your presentation, it is terrific, and I look forward to reading the report, but there are a large number of overlapping areas, the most obvious being videos and audio linkage and that sort of thing. Are you satisfied that somebody is sitting at the top and putting it all together?

The CHAIRMAN — To supplement that question, are you satisfied that someone is ensuring there is no interstate overlapping with South Australia, Western Australia, New South Wales and so on?

Mr THOMAS — I think so. There is no interstate overlapping. That would be a long bow to draw. There is a lot of activity going on in other states. Tasmania has started a re-engineering project across the police jurisdiction, and we are so far ahead of them that they just fell into a hole 12 months ago.

A lot of similar work is going on not only around Australia but throughout the world. It is heartening because when we have discussed this aspect with overseas people —

and we get a steady stream of people through the place — we can identify with it quickly.

The CHAIRMAN — We are using law reform in our use of the web. We try to tie up our consultation on the web pages with the Australian Law Reform Commission, Queensland and Western Australia. You have a number of issues that overlap with ours. As you put up your document on the web, on individual issues you could use the model we are using, where we are trying to put in a submission with an attachment for the person who wishes to use it.

Is that a way in which we can integrate our effort with yours so that as you get a submission, we can facilitate it so we also are getting the benefits of new technology? You might take that on notice. We see that as a means of accumulating best-practice information. You may have a series of issues that could be answered.

Mr THOMAS — We aim to have public comment on this by 20 February.

The CHAIRMAN — Perhaps I could ask Ms Fiona Hanlon, Deputy Secretary (Legal and Policy), Department of Justice, who is in the room, to comment.

Ms HANLON — As to public submissions, we have no objection in principle to sharing that with you, but we do not know what the submissions will be; some may be confidential. The other thing about linkages is I will be chairing two of the Pathfinder project recommendations on the civil justice side of things. People could make linkages and ensure we are not working at cross-purposes.

The CHAIRMAN — As to feedback, the commonwealth committee on technology sent me a paper letter the other day. It said, ‘Here is our full report, send us your submission’. I wrote back and said, ‘Sorry, I am busy, I don't have the capacity to write a submission on all the terms of reference. Here are three speeches I have made in the past month; if you want further from me, talk to me’. Lots of busy people will read this and say, ‘I have a good idea on this or that’.

My suggestion is maybe we could have a feedback form that facilitates one paragraph of the submission, or perhaps it could be e-mailed. If they want to submit a 40-page document, they can e-mail it to you.

Mr THOMAS — That is a good suggestion. As to coordinating the activity across the department, we have a structure within the department of which Ms Hanlon is an important part. It keeps an overview, if you like, of the activities that are occurring within each reporting function. The report also proposes a criminal justice coordination unit be established to oversee the implementation of these recommendations and to bring intelligence to a central forum about what is happening across the system more generally.

We would see that involving the likes of the Chief Commissioner of Police and judicial persons, with the secretary of the department heading it. We would draw in the appropriate people who know what is happening within their agencies or responsibilities. That is how we envisage it being coordinated.

The CHAIRMAN — Perhaps on appropriate occasions we could have a person there to listen; it could be a committee researcher or me. He or she could advise when I should come along to sit in.

Ms HANLON — Or regular briefings. We certainly could find a way to keep the communications open.

Mr THOMAS — The coordination board has not been established yet. It depends on how the recommendations go forward.

Mr ANDRIGHETTO — Thank you for the report. I am glad to see this sort of investigation is currently under way. My view is that information technology is certainly not exploited to the extent it should be in this state when it comes to criminal justice processes. I suppose we can say that will always be the case because as we come up with a reasonable finding, the whiz kid down the road from Microsoft will come up with something that will blow us out of the water and make us obsolete.

I am sure what is currently available is not being used to the best advantage to streamline the system. We have inherent problems that no doubt you have come across. There is a reluctance on the part of the prosecution to water down any of their evidentiary provisions because the *Latoudis v. Casey* judgment in the High Court, which involved costs, has had a greater effect on the administration of criminal justice in this state, if not in Australia, than has any previous judgment. When you look at some of the archaic practices of the police department preparing prosecutions, you see the shadow lurking in the background — that is, 'If we lose, it will cost us heaps'. There is no point in starting to negotiate if charges have not been issued because there is nothing to negotiate about. But if you want to issue before the brief is completed so we get this advice early, you have to waive this notion of , 'We could be in for a lot of money here when we go down in a big way'.

In some cases that I have been involved in it was certainly profitable for the defence to keep the case running, knowing that they had the goods and they would win because we do not have a scale in the criminal jurisdiction at the moment although we do have it in the civil area. That allowed for barristers to charge $2000 a day and to stretch a case out for five days when it should have been over and done with in three hours. These underlying problems associated with costs are a major consideration. If we can address that issue, a lot of these things will start to fall into place.

I have seen certain things happen in the call-over court; for example, when there has been no appearance and the magistrate insisted that the police informant be present in the courtroom when the prosecutor could have presented a hand-up summary to the magistrate. Those sorts of things are simple, but costly and time-consuming, and have not been examined.

Your comment, Mark, in relation to entering the information once and then you simply add to it — you don't need to repeat the information in another mask on another profile — only once and it is done. I have been hearing that for years. Everybody has been working towards it, but it never seems to happen. I suppose the best person to be involved when you look into criminal justice, if you are to have a person who can control it and be aware of the progress of a particular case, must be

the court coordinator because he or she will have a direct link to the prosecution, the informant, to the defence and to the court. That is the logical centre of this monitoring of the progress of a case. Unless those links are created, it will make it difficult for people to talk to each other.

That is all I want to say except for one other thing that I know was obviously not part of your terms of reference but is intricately involved in the whole criminal justice process — that is, the very old and no longer suitable rules of evidence such as rules of evidence relating to documents, photographs, identification and the like. Those things have not kept pace with modern technology. The recent amendment to the legislation about DNA testing means suddenly people realise the rules of evidence have not kept pace with modern technology. I know that is not part of the terms of reference but that comment could be made, that if we are to review and upgrade the criminal justice process we also cannot do that in isolation. It must be done by looking at the complete process. The most important parts of the rules of evidence have grown over time and are now no longer suitable.

The CHAIRMAN — Perhaps that is a job for the committee.

Mr ANDRIGHETTO — We mentioned that a while ago, but thought it was too big a job.

Mr TRAPNELL — The Scrutiny of Acts and Regulations Committee has brought out a report on the model evidence code which, no doubt, touches on what has been said.

The CHAIRMAN — Perhaps those portions of the report could be discussed with Mr Andrighetto to see if we or SARC could follow up.

Mr TRAPNELL — I attended some of your sessions. I thought some of the people at workshops had folders of material provided before the course started. Did they get reading material?

Dr TRUDZIK — Each workshop had a pack of material including background reading, research results and things like that.

Mr TRAPNELL — Perhaps the technology workshop background papers would be of assistance.

Mr THOMAS — You can have whatever was available. The workshop findings and the challenge session would probably be of more benefit. I will make that available.

The CHAIRMAN — Is there anything we should have asked you?

Mr DINSDALE — The Australian Institute of Judicial Administration is running a conference next year. I hope that will be an avenue to find out what is happening throughout the states.

The CHAIRMAN — Thank you for your attendance.

Committee adjourned.