

VERIFIED VERSION

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into budget estimates 2012–13

Melbourne — 11 May 2012

Members

Mr N. Angus

Mr P. Davis

Ms J. Hennessy

Mr D. Morris

Mr D. O'Brien

Mr M. Pakula

Mr R. Scott

Chair: Mr P. Davis

Deputy Chair: Mr M. Pakula

Staff

Executive Officer: Ms V. Cheong

Witnesses

Mr R. Clark, Attorney-General,

Ms P. Armytage, Secretary,

Ms G. Moody, Executive Director, Strategic Projects and Planning, and

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

**Necessary corrections to be notified to
executive officer of committee**

The CHAIR — I declare open the Public Accounts and Estimates Committee hearing on the 2012–13 budget estimates for the portfolios of Attorney-General and finance. On behalf of the committee I welcome the Honourable Robert Clark, MP, Attorney-General and Minister for Finance, and from the Department of Justice: Ms Penny Armytage, secretary, again; Ms Gail Moody, executive director, strategic projects and planning; and Ms Carolyn Gale, executive director, community operations and strategy. Members of Parliament, departmental officers, members of the public and the media are also welcome.

In accordance with the guidelines for public hearings I remind members of the public gallery that they cannot participate in any way in the committee's proceedings. Only officers of the PAEC secretariat are to approach PAEC members. Departmental officers, as requested by the Attorney-General or his chief of staff, can approach the table during the hearing to provide information to the Attorney-General by leave of myself as chairman. Written communication to witnesses can only be provided via officers of the PAEC secretariat. Members of the media are also requested to observe the guidelines for filming or recording proceedings in the Legislative Council committee room, and no more than two TV cameras are allowed at any one time in the allocated spaces. I remind TV camera operators to remain focused only on the persons speaking and that panning of the public gallery, committee members and witnesses is strictly prohibited. As previously advised to witnesses here today, I am pleased to announce that these hearings are being webcast live on the Parliament's website.

All evidence taken by this committee is taken under the provisions of the Parliamentary Committees Act, attracts parliamentary privilege and is protected from judicial review. However, any comments made outside the precincts of the hearing are not protected by parliamentary privilege. This committee has determined that there is no need for evidence to be sworn; however, witnesses are reminded that all questions must be answered in full and with accuracy and truthfulness. Any persons found to be giving false or misleading evidence may be in contempt of Parliament and subject to penalty.

All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcripts to be verified and returned within two working days of this hearing. Unverified transcripts and PowerPoint presentations will be placed on the committee's website immediately following receipt, to be replaced by verified transcripts within 5 days of receipt.

Following a presentation by the Attorney-General, committee members will ask questions relating to the inquiry. Generally the procedure followed will be that relating to questions in the Legislative Assembly.

I ask that all mobile telephones be turned off.

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

Overheads shown.

Mr CLARK — Thank you for the opportunity to give evidence to the committee about the budget and its implications for the Attorney-General's portfolio. I have a number of slides available, which I will refer members to. The first simply indicates the proportion of the entire Department of Justice budget that is relevant to the Attorney-General's portfolio this year just over \$1 billion, representing 22.2 per cent of the justice budget.

I will next say a few words about some of the key initiatives in the budget that relate to my portfolio. One that is worth a separate mention is the justice and Attorney-General's related components of the government's response to the Protecting Victoria's Vulnerable Children Inquiry. The budget has provided funds for two important matters relating to the protection of children — namely, the expansion of new model conferences and a new Broadmeadows Children's Court facility. The figures on the slide indicate the \$19.4 million provided for the Department of Justice outputs, the new model conferencing, \$1.3 million for assets, the \$10 million asset contribution for the Children's Court and \$7.1 million over four years for the related recurrent expenditure.

There are other initiatives within the portfolio, which I will move to now. I am very pleased to be able to inform the committee that the budget includes funding for Victoria Legal Aid of \$107.2 million over the next four years, and that secures the base funding for Victoria Legal Aid out of the budget. There is just over \$20 million over four years for improving dispute resolution services, and that will go to two matters in particular: the mediation for personal safety intervention order applications and also to continue mediation in selected civil

matters within the Magistrates Court. Both of these matters help ensure speedy resolution where possible of these disputes and also take pressure off the Magistrates Court.

There is additional funding for language services to continue to support the availability of language services for those Victorians from a non-English-speaking background, which of course is vital for the proper provision of justice and justice-related services to people who are in need of language support. There is also \$3.2 million towards reducing court delays, and that puts on an ongoing basis funding particularly to the Supreme Court for work within the Court of Appeal — the so-called Venne reforms, which have been very successful in reducing Court of Appeal waiting lists to date. I am happy to elaborate on it later on if members would like me to, but that is a very worthwhile initiative which had up to date only short-term funding, and this puts the funding on an ongoing basis.

I turn to update the committee on some of the work that has been going on in the Attorney-General's portfolio up to date. One of the key responsibilities of the Attorney-General is of course the responsibility for large aspects of the statute book and the law relating to the operation of the courts and the criminal and civil law systems. The government came to office committed to a wide range of reforms, and we have been moving progressively to implement those. As the slide indicates, from May last year the first stage of the abolition of suspended sentences commenced, which abolished suspended sentences for serious offences and a range of other significant offences.

I am pleased to inform the committee that the community correction order, which is one of the most far-reaching reforms to community-based sentencing over many years, commenced on 16 January, and that has proved very successful. The slide there indicates some of the figures that relate to the community correction order, in terms of how the new conditions attached to it are being used effectively by the judiciary both to better protect the community and to attach conditions that seek to get the offender back on the straight and narrow.

Other reforms that the previous slide lists include reforms to double jeopardy laws, which allow a fresh trial to be ordered by the Court of Appeal when there is new and compelling evidence; reforms to public prosecutions legislation; the long-awaited Commercial Arbitration Act, which applies internationally accepted approaches to commercial arbitration to domestic arbitration; and reforms to pro bono corporate lawyers' ability to render those services under the Legal Profession and Public Notaries Amendment Act.

As we touched on earlier, the next slide deals with community correction orders, the matters that I have touched on earlier. The slide following that gives some indication of the work program ahead, which is being supported by some of the outputs in this year's budget. Statutory minimum sentences for gross violence: the Sentencing Advisory Council has provided a very thorough report to the government on that, and we are now having legislation prepared which, save in genuinely exceptional circumstances, will set a statutory minimum sentence of four years for adult offenders who inflict gross violence on their victims. Baseline minimum sentences is a very far-reaching reform to the sentencing regime which allows Parliament, on behalf of the community, to specify the median or mid-range minimum non-parole period that is expected to apply to various serious offences. At present Parliament only sets the maximum penalty that applies to offences on the statute book.

Legislation to allow the courts to make orders that will outlaw criminal bikie and similar gangs is also well advanced and an important initiative both at a Victorian and at a national level. Accompanying that is legislation relating to a court's capacity to order the removal of fortifications. The government is committed to greater recognition for victims in the justice system, including in particular allowing an opportunity for victims to have input at the sentence indication stage in matters before the court and also to make compensation for victims a more integral part of the sentencing process for criminal offences.

Reform for jury directions is absolutely vital. Victoria has some of the longest jury direction times of any jurisdiction in Australasia. That creates a wide range of problems. We are very pleased that the courts and the Department of Justice are working in collaboration on a major project to simplify jury directions. Last but certainly not least are reforms to criminal investigation powers relating to the use of DNA evidence and other matters.

I move to the next slide to indicate some other reforms that are under way and on which work will proceed in the year ahead. The establishment of the courts executive service is a fundamental reform to give courts control over their own administration. Many people would be unaware that while of course members of the judiciary

are completely independent of government, under arrangements that have existed for many years, court administrative staff are employed through the Department of Justice, and we have committed to give courts control over their own administration.

A judicial complaints commission is also very important. The previous government had some legislation on that matter before the Parliament when the Parliament was prorogued. But there were a number of defects in that legislation, and we are having a revised version of that legislation prepared — similarly, to introduce a judicial appointments advisory panel a bit akin to the commonwealth model for an expert panel to advise the government in relation to judicial appointments.

Guardianship is a very significant area of law. The Law Reform Commission reported on that recently, with a very far-reaching report, and we want to pick up on key aspects of that and move forward with them quickly in order to give families and people who might in future be in need of guardianship support greater flexibility and scope and to enable the OPA to perform its duties as a protector of last resort of people who are not in a position to make legal decisions for themselves. And the final item that I have listed there is continuing civil procedure reform, and again I would be happy to elaborate to the committee on any aspect of that.

That concludes my introduction. I hope it gives the committee an overview of the activities within my portfolio.

The CHAIR — Thank you, Attorney-General. The remaining time, which is now just under 50 minutes, will be given over to questions for the Attorney-General's portfolio. I ask: given the key growth and efficiency initiatives announced in the budget, can you please outline for the committee the likely impact of the budget on enhancing service delivery, promoting productivity and achieving efficiency gains within your portfolio? In responding, could you please indicate also how you intend to monitor the portfolio's effectiveness in maximising improvements in these areas?

Mr CLARK — There is a wide range of activities within my portfolio that relate to the topics that you have mentioned. I have referred briefly to some of them in my introductory remarks, and I am happy to elaborate. In terms of improving both service delivery and efficiency, one of the leading examples is the Venne reforms in the Court of Appeal that I referred to earlier, which have had a very significant effect in reducing court backlogs and improving clearance rates. The average clearance rate in the four financial years prior to the implementation of the Venne reforms was 90.4 per cent, and that has increased the clearance rate to 156.1 per cent in 2010–11. As I indicated earlier, that is an initiative that was undertaken by the Court of Appeal, but it has been supported, originally on a short-term basis funded within the Department of Justice, and now funded on an ongoing basis.

Another improvement to service delivery is the establishment of the new Children's Court facility at the Broadmeadows court complex. That adds to the Children's Court facility that is in the southern metropolitan region, at Moorabbin, and will provide much better accessibility for members of the public across particularly the northern and western suburbs and relieve pressure on the main Children's Court in Melbourne.

Similarly, the funding I referred to to expand what I referred to as new model conferencing and other forms of improved dispute resolution within the child protection system should have very significant effects in improving service delivery and doing so in a more effective manner. I touched earlier on the funding to support language translation services in the court, and obviously that is key to effective service delivery to the community for people for whom English is not their first language and who have difficulties with it.

Needless to say, the legal aid funding that I referred to is also vital both to enhancing services to those who are in need of legal assistance and ensuring the courts operate more effectively, because if people do not have legal representation and have to represent themselves, that tends to add to the time taken for trials. Likewise the dispute resolution services that I referred to provide better resolution of those disputes that are able to be resolved through mediation and ensure that the justice system is operating more effectively. Similarly, some of the civil law reforms I mentioned in my presentation are designed to ensure that the civil courts are operating more effectively. A lot of attention is paid to criminal law matters, and understandably because of its importance for community safety, but effective civil justice is vital both to ensure that individuals and entities can obtain justice and also for strengthening confidence in Victoria as a place to do business.

I can also mention the jury directions reforms that I touched on earlier as another way of ensuring that the courts are operating more effectively and that we are getting more just outcomes, because the last thing you want is

points being taken in the Court of Appeal that lead to retrials being ordered which are unfair to victims, witnesses and indeed accused persons as well.

In terms of monitoring and enhancing accountability, there are a range of ways in which the effectiveness of these reforms can be monitored. Obviously clearance rates in the courts are a key indicator that I touched on earlier. To a fair degree one relies on user feedback; in these complicated areas it is the experience of practitioners and others. Indeed the observations of jurors is a very important way of understanding whether or not these reforms are working. Also time taken for matters to come to trial. For some reforms, such as reforms to discovery laws which are the laws about making available documents to the other side in a civil dispute, you can put dollar figures on some of the benefits that are achieved through those. Likewise you can look at figures such as the average length of jury directions and the number of appeals that end up in the Court of Appeal as a result of points being taken about adequacy or otherwise of jury directions.

In relation to legal aid you can keep tabs on the number of people who are receiving assistance, and matters such as access to Victoria Legal Aid's website, which is becoming an increasingly important source of legal information for Victorians. I hope that addresses your question, Chair, but I am happy to respond to anything further.

The CHAIR — Thank you, Attorney. Very briefly could you please inform the committee what you consider to be the likely impact on the community stakeholders in this portfolio of the initiatives you have outlined.

Mr CLARK — I think the initiatives that I have outlined should, hopefully, have a very beneficial effect for all involved with the justice system to whom those reforms relate. Clearly in relation to the Cummins inquiry reforms, we want to ensure that Victorian children are better protected and to have new model conferences at which the parties sit around the table, talk through the issues and hopefully come up with an agreed way forward. To ensure that parents have a better understanding of their obligations, to ensure that children are protected is very important. Obviously getting fewer retrials and more effective jury directions will be very important for all participants in the criminal justice system and likewise those who have access to legal aid through the increased funding that the budget provides. I am expecting the initiatives that I have canvassed will have very positive benefits for the stakeholders concerned.

Mr PAKULA — Minister, I want to ask you about the reference to the Family and Community Development Committee inquiry into the handling of child abuse by religious and other organisations. We heard from the presiding officers last week in regard to resourcing issues for parliamentary committees — the cut in the overall committee budget. Even though there are two new joint investigatory committees and three new upper house committees the total budget has been reduced and the presiding officers were very clear about the pressures that will be putting on parliamentary committees.

What I want to know about this particular reference is the level to which that committee will be resourced, whether that will be via a separate appropriation or through the overall committee budget, which is in the budget papers, and whether the resourcing will be sufficient to allow that committee to have appropriately legally qualified staff, counsel assisting, a travel and accommodation budget for victims and their families and the like, if you could take us through that, please.

Mr CLARK — This is a very important parliamentary inquiry. It is one that the government committed at the time to ensure appropriate resourcing for. You have been in Parliament for a while. You would know what the normal procedures are that apply in instances such as this. Where a committee believes that the resources that are available to it are inadequate to conduct a major inquiry, the committee will assess the requirements it may have and through the Parliament will make an approach to the government for additional resources that it may seek to conduct its inquiry.

It is an issue that was raised with the government at the time. I responded to it in a media conference I gave and indeed, I think, in a number of media interviews at the time. The government is committed to ensuring that the committee is properly resourced to undertake its important function, and it is expecting that it will be approached by the Parliament in relation to the resourcing of that committee. We have indicated that we will ensure that appropriate resources are made available to the committee to undertake its inquiry.

Mr PAKULA — Minister, the inquiry is due to report not too far away. We are talking about less than 12 months from now. The government is going to need to make those decisions about resourcing. I would be interested if you could indicate to the committee the level of resourcing that you have in mind. Are you talking about just resourcing out of the normal appropriation for committees — out of the \$6.7 million that is spread across all committees — or are you talking about a properly funded major allocation which will allow counsel assisting, legally qualified staff and travel to Melbourne for victims so that their stories can be heard?

Mr CLARK — As I have already indicated, the government made clear at the time that we are expecting that we will be approached to provide additional resourcing to the committee, and we are prepared to provide appropriate additional resourcing to the committee. As I indicated in my previous answer, the normal process that occurs on these occasions is that the committee will convene and consider the available resources, consider how it intends to conduct the inquiry and consider what resources it may need, and then there will be an approach to the government and a dialogue about it. We are committed to providing additional resources to the committee to ensure that it can carry out its reference effectively and to achieve the objective of the inquiry, which is to understand what has happened in the past and to come up with recommendations that will ensure that in future children are better protected.

Mr MORRIS — Minister, I refer you to budget paper 3, pages 186 to 189, in particular the heading ‘Dispensing justice’. Can you provide the committee with any further information on the new policy initiatives in your portfolio that relate to the protection of vulnerable children?

Mr CLARK — Thank you for that question. As I indicated in my opening remarks, the government has provided additional resources across the board in this budget to respond to aspects of the Cummins inquiry report, but in particular in relation to the Attorney-General’s portfolio it has provided additional funds to support the Children’s Court through establishing a new Children’s Court facility at Broadmeadows and also to trial a variety of ways of better handling issues within the family division and to fund the introduction of expanded new model conferencing services.

There have been severe limitations on the infrastructure at the Melbourne Children’s Court, and it is important to both relieve the pressure on the Melbourne’s Children’s Court and to continue the process of providing more accessible Children’s Court facilities. Having that facility located at Broadmeadows will obviously make it accessible for families across the northern and western suburbs in particular. Broadmeadows is a good location next to the existing Magistrates Court. There are good public transport links there, and there are good supportive services both in and around Broadmeadows and further afield. Broadmeadows was the location that was determined, having regard to all of those factors, and it should prove to be a very effective location.

The new model conferences — I think it is worth telling the committee a bit about those because they do offer enormous potential benefits for families that are caught up in these matters. They are conferences that are conducted by trained convenors. They often, indeed where possible, take place away from a court environment after a protection application has been lodged. They aim to avoid a contested hearing. They involve the families and the professionals who work together to develop a case plan to address the concerns that have led to the intervention in the first place, and if that plan is developed and agreed to, it can then be endorsed by a court, and it then becomes an order of the court with which families need to comply.

New model conferences were started in August 2010, but they have not been fully available across all parts of the state, and this funding will expand their availability and hopefully will reduce the number of cases that need to proceed to a contested hearing. On the figures to date, only about 18 per cent of cases that have been to a new model conference end up being listed for a final contest before the court. They are more effective in protecting children and more effective in helping families come to an understanding of what their responsibilities are. They help identify the relevant issues and hopefully achieve clearer agreements and enhanced relationships among the parties going forward, which obviously can only be for the benefit of the children concerned. We believe it has been a key initiative in the budget, and it should have a significant benefit.

The CHAIR — Before calling the next question I should advise the committee that I understand the opposition questions will be taken by the Deputy Chair.

Mr PAKULA — I just want to stay with the reference to the Family and Community Development Committee, Minister. The Premier indicated in the house a couple of weeks ago that if we had questions about

the running of the committee, you as Attorney would be happy to explain it to us, and I will take him up on that offer. My question is about the appropriateness of it being handled by a parliamentary committee rather than by an independent authority. I ask the question because of the issue of parliamentary privilege. Can you just explain to us how privilege will work in regards to this committee — in particular, whether any evidence that is uncovered by the committee or anything that is said in the committee hearings can be used as the basis for a future criminal or civil action?

The CHAIR — Before I ask the Attorney to respond, I do have to indicate that my view is that this line of questioning is a matter which is certainly appropriate for the examination of the Attorney-General. I do not have any issue with that. My concern is the appropriateness of this forum, which is about budget estimates, for this examination.

Mr PAKULA — I indicate that there is no line. I am not intending to ask further questions about it, but this committee is subject to an appropriation in the budget, and I think questions about how it is going to work are quite appropriate.

The CHAIR — I am advising the Attorney that it is certainly the Chair's view that it is a matter for the Attorney-General to determine how to respond. I will not be directing the Attorney-General to respond on this question.

Mr CLARK — Thank you, Chair. I am happy to give a brief response to Mr Pakula's question, even though insofar as it relates to estimates it is more of a matter for the parliamentary estimates than for the Attorney-General's estimates.

But, Mr Pakula, you would be familiar with the rules relating to how parliamentary committees operate and the way in which evidence is given before parliamentary committees. The government, in announcing the inquiry, reaffirmed the position that investigations and prosecutions of any offences in relation to individual cases remain matters for the relevant authorities, for the police, for the coroner and for the other courts that may be involved. I can tell you that this committee can receive evidence relevant to its terms of reference, and it is important that the committee understands what has happened in the past in order to formulate recommendations for the future. But if there is an issue about the ongoing investigation or the commencement of the investigation and prosecution of an individual case, that is a matter that will need to be taken up by the police.

The police will be able to, obviously, as with anybody else, have regard to the evidence that is given at the parliamentary committee, and then if they believe that adds to the information available to them, they will be able to act on it accordingly. There may well also be a matter for the committee; there may be some discussion between the committee and the police about how they will interface and whether the police will sit in on hearings et cetera, but that will be a matter for the committee to determine. I finish by reiterating the point that the inquiry is about understanding what has happened in the past in relation to the handling of allegations of abuse and the formulation of recommendations based on that. The committee will need to understand and take evidence of what has happened in the past, but it is focused on the handling of abuses, and it is focused on coming up with recommendations for the future.

Mr PAKULA — Just for clarification, it is right to say that the evidence will all be privileged and nothing can arise from that evidence that could be used in a court of law, whether it be a civil matter or a criminal matter, is it not?

Mr CLARK — You are asking me for a legal opinion there, Mr Pakula.

Mr PAKULA — You are the Attorney-General.

Members interjecting.

The CHAIR — I think we all need to be clear that this is about an estimates process and it is not about legal opinion.

Mr PAKULA — As I said, I will not go on.

Mr CLARK — Chair, if I may, I think the key thing, regardless of the legalities, is that evidence that may become available in the course of the committee's hearings, that is taken at public hearings, will be evidence

that the police along with everybody else in the community will be able to have regard to, and if they believe that evidence is helpful in renewing or commencing criminal investigations and prosecutions, they will be able to have regard to that evidence in the conducting of their activities.

Mr ANGUS — Minister, I refer you to budget paper 3, pages 179 and 180, under the output performance measure entitled ‘Legal policy, advice and law reform’. Minister, can you please advise the committee what initiatives are being implemented to cut red tape and reduce the regulatory burden for legal practitioners in Victoria?

Mr CLARK — There have been a number of initiatives that have been and are being undertaken in that respect. I think they are probably a very good illustration of what can be achieved when there is a focus on red tape reduction. While red tape reduction for lawyers is something that proves to be primarily and initially to the benefit of the legal profession, obviously anything that can reduce the cost of lawyers in doing their business will flow through to the benefit of their clients. So I am very pleased to be able to say that at the instigation of the Legal Services Board the government included in legislation last year amendments to the legal profession legislation that would enable the Legal Services Board to allow practitioners to renew their practising certificates online.

It was a relatively modest and focused amendment to deal with the issue of statutory declarations, but the making of that change meant that the Legal Services Board could allow renewal of practising certificates online, which they commenced on a trial basis last year. They have rolled it out fully this year, and I am pleased to be able to say that the Legal Services Board tells me that around 85 per cent of the legal profession have renewed their practising certificates online this year, and the feedback that the Legal Services Board has received, I understand, has been very supportive of that. That is a particular and niche area, but I think it is a good illustration of what can be done when there is a combination of the necessary changes to legislation and proactive work by regulatory agencies and others.

There is another aspect I might mention as well, which was something that the current government took up. I understand that it had been raised with the previous government but they had not acted on it, and that was to free up corporate lawyers to be able to undertake pro bono legal work outside of the community legal centres. They have been allowed to date to undertake pro bono work in the community legal centres, but the practising certificates for those lawyers that held them did not allow them to undertake work outside of the CLCs, so the legislation has now been amended. It is on the statute book to make that change. I understand the Legal Services Board is now finalising insurance arrangements that would cover corporate lawyers conducting pro bono legal work. This is insurance similar to those insurance arrangements that apply in New South Wales through the National Pro Bono Resource Centre, and once that insurance arrangement is in place, then corporate lawyers will be able to provide pro bono services outside of CLCs.

Corporate lawyers in this regard include lawyers working for government. So, for example, if the corporate legal department of a large corporation wanted to respond to a crisis, like bushfires or floods or whatever, and set up an ad hoc team providing legal advice in a regional centre, up until now they would not have been able to do that — the practising certificate and other arrangements would not have allowed it — but in future those corporate lawyers who hold a practising certificate will be able to do that. So that is another example of how a targeted amendment to the legislation can remove an obstacle and open up the way for very good, improved service to the community.

Mr PAKULA — Minister, budget paper 3, page 186 and following, has the performance measures for the courts, which the chief justice has in the last 48 hours described as misleading, meaningless and inappropriate. Given the rhetoric from you before the last election about the independence of the courts I am wondering why those performance measures were devised without consulting the chief justice or, it seems, the heads of any other jurisdiction and whether you plan to change that practice for the following budgets?

Mr CLARK — You ask about the relationships between the courts and the executive in relation to budgeting and performance measures, and that simply reinforces the importance of the reforms that the government is committed to in relation to giving the courts independent control of their administrative services. You may well remember in the times of my predecessor the issues that arose from time to time in relation to the independence of the courts and some remarks that were made from time to time about the judiciary. This has been a longstanding issue in terms of the relationship between the executive and the courts, and for many years

the judiciary have rightly sought to have their administrative arrangements on the basis of more independence from the executive.

There were a range of debates, discussion papers and other papers delivered in the last decade about it. They fell on deaf ears at that time, but we committed in opposition and we are now proceeding in government to move to provide the courts with greater independence and control of their own administrative resources. We indicated that would be based on a model that used South Australia as the starting point, and you may be familiar with the courts administrative authority there and how that operates. As I say, we are taking that as the starting point for the reforms that are being used here in Victoria.

In relation to performance measures in the budget, you may also be aware of the fact that for many years those measures were reported on a disaggregated basis. Under my predecessor those measures were aggregated for the first time in the 2007–2008 budget, so what is in this year's budget papers moves back to a disaggregated basis. I should say also that it is not only the government but it is the courts themselves that are committed to an increased focus on performance measurement and accountability, and the Supreme Court in particular, under the chief justice, has been doing some excellent work drawing on international practice in terms of court accountability and performance assessment frameworks. Indeed if you care to have a look at the Supreme Court website, you will see a considerable amount of material that the Supreme Court has recently placed on their website about improving performance measurement. So I am looking forward to working with the courts to see how we can achieve even better and more effective reporting on what the courts are achieving, because the Supreme Court is rightly very proud of the reform initiatives that it has been undertaking over recent years, and it is in the interests of justice and the interests of the entire community that that work be supported and advanced.

Mr PAKULA — You talked about the court executive service. We are 18 months in; when we are sitting here next year, will that court executive service actually be up and running and funded in the budget? And when you talk about their independence, will that executive service still rely on you to get it funding or will they be able to make their own submissions to BERC and actually be truly independent of government for funding?

Mr CLARK — Mr Pakula, you asked effectively asked two questions in relation to the timing and the establishment of the courts executive service. We are moving progressively to establish the court executive service. As you would appreciate, it requires both a statutory legislative model for the courts executive service, and I have referred to us using the South Australian model as the starting point for that. But as well as legislation it requires substantial administrative restructuring and reorganisation, and we are certainly not going to rush into the establishment until we have got the administrative structure right.

Mr PAKULA — And until you get agreement.

Mr CLARK — So we are moving progressively to introduce administrative restructuring to make various realignments within the Department of Justice so that those aspects of the Department of Justice that service the courts are contained within a freestanding unit which is able to operate as autonomously as possible. Just to give you one example of the sort of change that needs to be made, at the moment most building and facilities work for the courts is undertaken within a different part of the Department of Justice, and there is often an extended chain of responsibility and accountability for how that work is taken out. One of the very important aspects of the administrative restructuring that we are undertaking is to ensure that the court support unit itself has that facilities capability within it, that it has the core capacity that it needs so that in future the courts will be a client for court-related facilities work rather than simply receiving a product of which the carriage has largely been done elsewhere. So that is a key component of the changes we are making. We want to make sure that those operate correctly, so we are moving progressively to do that.

In relation to the second aspect of your question, at the end of the day the appropriations and the funding for the courts are appropriations that are made by the Parliament, and that has to be the case. The Parliament is the source of appropriation authority, and that is a longstanding and fundamental constitutional principle. Obviously the government brings recommendations to the Parliament for appropriations for which it seeks the Parliament's endorsement. For example, if the government wants to propose to Parliament an initiative to provide particular funding for a particular court to strengthen its capacity in a certain respect — for example, the Children's Court funding that I referred to earlier — then that would be a matter for the Parliament on behalf of the community to endorse and to provide that funding. So the courts executive service is about ensuring

effective provision of administrative support to the courts within the parameters of the appropriation and the outputs that are considered and approved by the Parliament.

Mr O'BRIEN — I will follow on from that matter in relation to budget paper 3, pages 186 to 189, and the performance measures there under 'Dispensing justice'. I would like to ask you a question in relation to the matter you touched on in your opening presentation. Could you tell the committee about budget initiatives that relate to improving the efficiency of the Court of Appeal?

Mr CLARK — As I touched on earlier, these are very important reforms. They are reforms for which the Supreme Court deserves full credit. They were an initiative of the Supreme Court in the time of the previous government. I particularly want to place on record the work of the then Justice David Ashley who formed the view that the current systems and procedures that were then operated in the court were not operating as well as they should be to deal with criminal appeals. He, amongst other things, arranged for Master Roger Venne of the English courts to visit Australia and hold a series of discussions with various members of the court and with the legal profession to talk about how things are done in the UK. Based on his visit and the dialogue that that promoted, the Court of Appeal determined a range of reforms that they have been deploying.

As I indicated earlier, they have been very successful, so far, in increasing the clearance rate from 156.1 per cent in 2010–11, and increasing finalisations. Those are focused on ensuring that there are more written arguments lodged early on in support of the grounds for a criminal appeal and seek to have more leave applications determined on the papers without a hearing and also to assist the court, where it is appropriate, to deliver judgements more on the spot, extempore, and also to speed up the time taken to deliver other judgements. Not only should that improve the efficiency and effectiveness of how the courts operate, but in practical terms it should mean fewer delays for parties involved and, where appeals do not have merit, for that lack of merit to be identified earlier on so that a resolution of the matter can be achieved more quickly, which is obviously in the interests of victims, witnesses and/or accused persons, depending on the circumstances.

The funding that is provided in the budget will support a specialist registrar of criminal appeals and registry lawyers, and the work that they do behind the scenes in managing the increased body of work that is being done on the papers will reduce the time taken up in actual hearings and achieve the enhancements I have referred to. So far these reforms have been working very well. They have been well supported, and the judiciary is very pleased with how they are operating and that the budget is providing a further \$800 000 a year to allow those reforms to continue.

Mr PAKULA — I want to follow on from that answer, Minister. You have talked about the funding for reducing delay in the Court of Appeal, but in relation to your proposed statutory minimum sentences for gross violence, the report of the Sentencing Advisory Council quotes the Magistrates Court as indicating that for the Magistrates Court the court would be unable to impose a sentence in approximately 50 per cent of all 'recklessly causing serious injury' charges, the committal jurisdiction of the court would face further increases to already busy workloads and an estimated 225 contested committals per year would blow out committal lists. That is from the report of the Sentencing Advisory Council. Why have you not provided any funding in the budget to tackle court delay in the Magistrates Court, particularly in regard to committal lists, given the legislation you are intending to introduce?

Mr MORRIS — On a point of order, Chair, just before you call the Attorney, while the Sentencing Advisory Council has produced a report and there is a government policy position to introduce legislation, really the question invites the Attorney to speculate on the nature of the legislation, given that the legislation has not yet been introduced.

Mr PAKULA — He has already referred to it in his presentation.

Members interjecting.

Mr MORRIS — I have not actually completed my remarks. Certainly while the matter was referred to in the introductory remarks in the PowerPoint presentation, the question relates to the specific impact of the operation of the legislation. Given that the legislation has not yet been seen by the public or the Parliament and certainly has not considered by the Parliament, I think it is a little bit hard to anticipate how it is going to operate.

The CHAIR — Thank you, Mr Morris, I know my deputy is anxious to respond. I think on the premise that the subject has been introduced in effect by the presentation by the Attorney, I anticipate the Attorney will respond to it either in full or in part but in his own manner.

Mr CLARK — Thank you, Chair, I am happy to respond. As Mr Morris alludes to, a lot of the detail of the specification of this offence will be set out in the legislation, but let me make it clear that the government was elected committed to send a very clear message that this sort of gratuitous gross violence against innocent victims will not be acceptable and that people who commit serious crimes can expect those crimes to have serious consequences. We make no apologies for that reform. I think you will find, if you read the Sentencing Advisory Council's report fully, that the Sentencing Advisory Council indicated and confirmed that the impact on the courts is likely very much to depend on the actual design of the detail of how those offences are specified, and I think you will find in the council's report an indication that they believe that the model they have come up with will address a substantial part of the concerns that were made by some parties in the submissions that they made to the Sentencing Advisory Council's review. Bear in mind that when people made submissions to the review, they were making submissions without knowledge of the model that the council was going to recommend or the model the government was going to bring to Parliament. Quite rightly, they sought to flag issues that needed to be considered in the design of the offences concerned, and that is precisely one of the reasons why we committed in opposition and then proceeded in government to refer the issue to the Sentencing Advisory Council, because we wanted to ensure that all of these issues were fully and properly explored and that the government, the Parliament and the community made decisions on a fully informed basis.

So, in short, while these concerns were raised in the course of submissions, those concerns were addressed in large part by the Sentencing Advisory Council and the recommendations that they came up with and will be addressed further by the government in the way we formulate the offence in the legislation that we will bring to Parliament.

Mr PAKULA — Just briefly, by follow-up — except, minister, we do not know whether the government is going to accept the Sentencing Advisory Council's recommendations. Should I assume, then, that your comments would remain the same in regards to the concerns raised by the County Court where they say that a significant reduction in guilty pleas will require a significant number of additional judges, necessary support staff and the provision of additional courtrooms if long delays are to be avoided?

Mr CLARK — In essence, the answer is yes. As with the Magistrates Court, the County Court was commenting on matters that they believed needed to be addressed in how the offence was specified. They did so without knowledge of the Sentencing Advisory Council's recommendations or indeed the government's decisions on them. As I said earlier, it is important that those concerns be addressed. The Sentencing Advisory Council concluded that the bulk of them were addressed in the model that it had come up with, and the government is going to further consider the issues in preparing the legislation.

In terms of the government's response to the Sentencing Advisory Council's report, we issued a detailed media release on 10 November last year in which we indicated those aspects of the report that we agreed with at that time — that gross violence offences incurring a statutory minimum sentence should be separately defined in the legislation, that they should incorporate a higher threshold definition for the relevant injury and that they should be applied in specified circumstances. We accepted the recommendation about defining exceptional circumstances as special reasons, and we indicated that we would give further consideration to the remainder of the Sentencing Advisory Council recommendations, including the specifications of the particular special reasons that were proposed by the Sentencing Advisory Council. So that is what we said at the time, and that is what we are now proceeding to do.

The CHAIR — I turn now to your opening presentation and to BP 3, chapter 2, relating to supporting the judicial process. I just want to ask you if you can provide further information to expand on your earlier presentation on additional funding for Victoria Legal Aid?

Mr CLARK — This is a key commitment made in this budget, and it is a far-reaching one because legal aid has for a number of years been reliant on short-term funding to provide it with the funds that it needs to carry out its very important work. The previous government provided some short-term funding on one and two-year bases, but that funding was due to lapse in the forthcoming financial year. This is a yet another one of the black

holes that I am sure has been mentioned to the committee on previous occasions that the government has had to deal with — —

Mr ANGUS — Plenty of black holes in the previous mob.

Mr PAKULA — All you have done is index it! You have just indexed it!

Mr CLARK — in framing its budget and to make up for the lapsing of short-term funding that was provided by the government — —

Mr PAKULA — This is lapsing too.

Mr ANGUS — Just listen to the answer.

Mr CLARK — in circumstances where there should have been ongoing funding. This reform gives Victoria Legal Aid a secure state government budget funding base going forward over four years and ongoing, for the information of Mr Pakula.

Mr PAKULA — So it is in the base, is it?

Mr CLARK — Correct, Mr Pakula.

Mr PAKULA — Oh, it is not!

Mr CLARK — And that is one of the things that this government has been doing systemically — to, wherever we possibly can, put funding on an ongoing basis. We did the same last year with the funding for community legal centres — the \$9 million that we provided there for family violence services and for services to regional and rural Victoria. That was again a lapsing program that had not been funded by the previous government and threatened very serious consequences to the community, so again we have provided this ongoing budget funding base for Victoria Legal Aid.

I would add that legal aid in Victoria, as in all other states, is funded jointly between the commonwealth and the state government, and increasingly over the years the commonwealth has been funding a smaller and smaller proportion of the total. I spoke at a function a few months ago commemorating a VLA milestone of many decades, and at that event I remarked on the fact that in the past funding between the commonwealth and Victoria for legal aid had been approximately 50-50. It was now down to roughly one-third, two-thirds. I think it is important that the commonwealth does contribute its fair share of legal aid funding. The Victorian government has done its bit by putting the VLA's Victorian budget base funding on a secure basis going forward, and it is now up to the commonwealth to come to the table also and put in their fair share.

The CHAIR — Thank you, Attorney. We have time for one very quick intervention.

Mr PAKULA — Yes, without follow-up. Minister, I just want to ask you about the Victorian systemic review of family violence deaths that was set up within the coroner's prevention unit by the previous government. I find it difficult to find ongoing funding for that unit. Can you reassure the committee that there is money — I cannot find it, or whether it is in the base — for the coroner's prevention unit to continue its work under the Victorian systemic review of family violence deaths?

Mr CLARK — As I understand it — this was a matter that took place under the previous government — there was short-term funding provided for a project in relation to that review.

Mr PAKULA — Four years.

Mr CLARK — But it was intended to fund a project. However, the Coroners Court does very valuable work in looking at systemic issues relating to deaths not only in relation to family violence but in relation to other areas where deaths occur. That is ongoing work that the Coroners Court does. While the project funding has concluded, ensuring that the Coroners Court is resourced to carry out the systemic investigatory work that it does is something that the government is very keen to ensure continues. As you would know, it is part of the reforms that were introduced with the new Coroners Act, and it has been a worthwhile initiative. That issue is

being considered and addressed as part of the funding arrangements that have been made for the Coroners Court on an ongoing basis.

The CHAIR — Thank you very much. This concludes the hearing on the Attorney-General's portfolio. I thank Ms Armytage, Ms Moody and Ms Gale for their attendance, and I adjourn the hearing.

Witnesses withdrew.