

GENERAL PURPOSE STANDING COMMITTEE NO. 4

Thursday, 1 September 2016

Examination of proposed expenditure for the portfolio area

ATTORNEY GENERAL

The Committee met at 14:00

UNCORRECTED PROOF

MEMBERS

The Hon. R. Borsak (Chair)

The Hon. D. Clarke

The Hon. S. Mallard

The Hon. S. Moselmane

The Hon. A. Searle

Mr D. Shoebridge

The Hon. B. Taylor

The Hon. L. Voltz

PRESENT

The Hon. Gabrielle Upton, *Attorney General*

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

Corrections should be marked on a photocopy of the proof and forwarded to:

**Budget Estimates secretariat
Room 812
Parliament House
Macquarie Street
SYDNEY NSW 2000**

The CHAIR: I welcome the Attorney General and accompanying officials to the inquiry into budget estimates 2016-17. I acknowledge the Gadigal people, who are the traditional custodians of this land, and I pay respect to the elders, past and present, of the Eora nation and extend that respect to other Aboriginals present. Today the Committee will examine the proposed expenditure for the portfolio of Attorney General. Today's hearing is open to the public and is being broadcast live by the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available.

In accordance with broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not extend to what witnesses may say outside of their evidence at the hearing. I urge witnesses to be careful about any comments they make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness would be able to answer if they had more time or with certain documents to hand. In these circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. Any messages from advisers or members of staff seated in the public gallery should be delivered through the Committee secretariat.

Attorney General, I remind you and the officers accompanying you that you are free to pass notes and refer directly to your advisers seated at the table behind you. Could everyone please make sure they turn off their mobile phones for the duration of the hearing? All witnesses from statutory bodies, departments or corporations will be sworn prior to giving evidence. Attorney General, I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of Parliament. I also remind Mr Cappie-Wood, Mr Thomas, Ms Torres and Mr Evans that they do not need to be sworn again as they were sworn earlier in the budget estimates hearing of this Committee.

ANDREW CAPPIE-WOOD, Secretary, Department of Justice, on former oath

BRENDAN THOMAS, Deputy Secretary, Justice Strategy and Policy, Department of Justice, on former oath

CHRIS D'AETH, Acting Deputy Secretary, Courts and Tribunal Services, Department of Justice, affirmed and examined

SAMANTHA TORRES, Acting Deputy Secretary, Arts and Justice Services, Department of Justice, on former oath

WAYNE EVANS, Acting Chief Financial Officer, Department of Justice, on former oath

BILL GRANT, Chief Executive Officer, Legal Aid Commission, sworn and examined

The CHAIR: I declare the proposed expenditure for the portfolio of Attorney General open for examination. As there is no provision for a Minister to make an opening statement before the Committee commences questioning, we will begin with questions from the Opposition.

The Hon. LYNDA VOLTZ: Attorney General, in over four months this year, from 17 February to 23 June, the board of the Legal Aid Commission of New South Wales was inquorate, was it not, because you failed to appoint board members?

Ms GABRIELLE UPTON: Ms Voltz, I thank you for your question. The Legal Aid Commission is an important part of making the governance of legal aid, its provision of legal services and access to justice available across our community. These appointments are made by Cabinet. They are to ensure that we have people on that board who bring a wide range of skills to what the Legal Aid Commission does in its important provision of access to justice across our State. They are appointments that have been approved by Cabinet, and the work of the commission under the very good leadership of Mr Bill Grant continues.

The Hon. LYNDA VOLTZ: Attorney General, from 17 February to 23 June the board of the Legal Aid Commission was inquorate, was it not?

Ms GABRIELLE UPTON: Ms Voltz, the work of the Legal Aid Commission continues.

The Hon. LYNDA VOLTZ: I asked: Was it inquorate?

Ms GABRIELLE UPTON: It has been strongly funded by this Government—in fact, an increase to funding year on year since 2011. It does important work. Those members of the board are important appointments. It is important to get those appointments right. They are considered by Cabinet, but let me assure you that the important work, day to day, that the legal aid agency does across this State continues under the strong leadership of our chief executive officer [CEO] and it does an important piece of work to make access to justice available to members of our community who otherwise would not have it. I am very proud to say that this Government, year on year, has increased the funding to legal aid across this State.

The Hon. LYNDA VOLTZ: The terms of nine of the 10 members of the board expired in February, and you did not appoint new members until 23 June. The board was not so much inquorate as non-existent because the paperwork was on your desk gathering dust, Attorney General.

Ms GABRIELLE UPTON: Ms Voltz, these appointments are important appointments.

The Hon. LYNDA VOLTZ: Yes, you have said that.

Ms GABRIELLE UPTON: I have answered your question.

The Hon. LYNDA VOLTZ: No, you have not.

Ms GABRIELLE UPTON: The access to justice that is given through the provision of legal aid throughout our State continues. It is a strong commitment that this Government has made. We have demonstrated that by an increase in funding, year on year, since we have been elected to government.

The Hon. LYNDA VOLTZ: The term completed on 17 February for the board members.

Ms GABRIELLE UPTON: Your question is?

The Hon. LYNDA VOLTZ: Did the term expire for the board members on 17 February?

Ms GABRIELLE UPTON: I will take that question on notice. The point I wish to make is that the provision of access to justice through legal aid continues. It continued through that period, it will continue and

this Government is very proud of the record we have had of increasing funding year on year to legal aid across our State.

The Hon. LYNDIA VOLTZ: You have now said three times that they are important statutory positions. Their role is prescribed by sections 14 and 15 of the Legal Aid Commission Act. Why did you not think it was important to fulfil your statutory duty and appoint members to the board so it was not inoperative for four months, Attorney General?

Ms GABRIELLE UPTON: Ms Voltz, I have answered your question. Those appointments have been made. The point I have made a number of times is that the provision of legal access through legal aid has continued. This Government has a strong record of funding, and I have answered your question.

The Hon. LYNDIA VOLTZ: You had years of notice of the expiry of those terms, did you not? They are three-year terms.

Ms GABRIELLE UPTON: I have been Attorney General since April last year, but the point I make is that the provision of legal aid throughout our State has continued over that period. This Government has a proud and strong record of commitment to legal aid and the provision of legal services across our State. Over that period decisions about the appointments to the board are considered appointments to get the right set of skills around the table. Those appointments have been made, but the critical point to note here, which you are failing to recognise, is that legal aid has continued to be provided across our State through our term of government with a strong and proud commitment of increasing funding year on year.

The Hon. LYNDIA VOLTZ: Yes, but the Legal Aid Commission just happens to be without a board that sets the broad policies and the strategic plans.

Ms GABRIELLE UPTON: Ms Voltz, I will continue to answer the question in the same way, which is to say that the important point here to note is that this Government has a strong commitment to legal aid funding and has increased funding year on year. The important work goes on across our community, including in regional areas where access to justice may not be as readily available as it might. That work has continued. That is the important thing; that is how it impacts our community and how, as I said, we have been able to increase the resourcing to legal aid over our period of government.

The Hon. LYNDIA VOLTZ: At any time whilst you have been Attorney General have there ever been fewer than two appointed commissioners to the NSW Law Reform Commission?

Ms GABRIELLE UPTON: I will take that question on notice.

The Hon. LYNDIA VOLTZ: Attorney General, you received a Legislative Council committee report making a unanimous bipartisan recommendation on serious invasion of privacy on 3 March. Why have you done nothing six months later?

Ms GABRIELLE UPTON: I welcome the committee report into the issue of serious invasion of privacy. That is a report that the committee has presented. The Government is considering its recommendations. It goes to important issues of how things like revenge porn are dealt with by our criminal justice system and by our civil justice system. That is under consideration by government. The Government will consider the recommendations and respond.

The Hon. LYNDIA VOLTZ: Given that they were unanimous, bipartisan recommendations, why will you not just give the Privacy Commissioner the power to issue take-down orders, and cease and desist orders? What could possibly be wrong with taking that approach?

Ms GABRIELLE UPTON: There is a number of recommendations in that report. We are considering the recommendations in the report. This is an area that is contentious, but it is important that we provide privacy to individuals to get the balance right. It is a matter that is before the Government at the moment, and we will respond.

The Hon. LYNDIA VOLTZ: It was unanimous across all parties—I am not sure how contentious it is. The only Government member to say anything definitive about the report is Peter Phelps, who opposes the recommendations. Is he now deciding the policy?

Ms GABRIELLE UPTON: I reject that assertion on your part, Ms Voltz.

The Hon. LYNDIA VOLTZ: You said it was contentious. There is a number of committee members sitting up here who unanimously voted for it. The only person to raise any contention with the recommendations was Peter Phelps. You are saying it is contentious. Who is it contentious with beside Peter Phelps?

Ms GABRIELLE UPTON: The point is that the recommendations are before the Government to consider and the Government will respond.

The Hon. LYNDA VOLTZ: On Monday. You will not even get the Privacy Commissioner—

Ms GABRIELLE UPTON: The Government will respond. This is an important report. They were important considerations by the Government and by the committee, and we will respond to the recommendations.

The Hon. LYNDA VOLTZ: You admitted last year that the racial vilification laws under section 20D of the Anti-Discrimination Act 1977 are not working, and that you would introduce remedies and legislation in the first half of 2016. You have not. Why have you not, and why did you promise that you would?

Ms GABRIELLE UPTON: Let me state at the outset that the New South Wales Government has a very strong commitment to protection from race hate speech. We always have had and always will have. It is important to listen to the many voices in this debate. It is a personal issue, Ms Voltz. You would understand, as would all members in this room, that there is a wide range of opinions on the matter of racial vilification. There is existing legislation that provides protection. In fact, there is a national debate about this very issue at the moment, which elicits very different views in relation to racial vilification. It is important that a government consults and takes views across the community, and any reform in this area must strike a balance between both principles of protection from violence in speech and free speech.

The Hon. LYNDA VOLTZ: You promised that you would introduce remedies. Why haven't you?

Ms GABRIELLE UPTON: This is a matter of continuing discussion and consultation with the community. It is a discussion about an issue that has a wide range of views across community. Before any reform can be undertaken, it needs to have a wide range of support. There is protection under the current law, and this Government continues to consult.

The Hon. LYNDA VOLTZ: Who within Government is opposed to strengthening the racial vilification laws?

Ms GABRIELLE UPTON: Ms Voltz, there is a broad-ranging conversation in the community about what the protection must look like and how the offence must be cast. It is a debate that is happening not only at the State level but also at the Federal level. Those consultations continue. As I said, this Government has a strong commitment to protection from race hate speech and will continue with those consultations.

The Hon. LYNDA VOLTZ: It is the attitude of the same people as those who oppose the present provision in section 18D of the Commonwealth Racial Discrimination Act 1975—is that what you are saying?

Ms GABRIELLE UPTON: That is an assertion you are making. What I am saying is—

The Hon. LYNDA VOLTZ: No, you just said there was a Commonwealth debate, and we know what the Commonwealth debate is about.

Ms GABRIELLE UPTON: I am listening to all the voices in the community on behalf of the Government. There are many and varied views on this issue. People are very passionate about this issue, and I continue to consult on behalf of Government about what if any changes there must be to these provisions in the Anti-Discrimination Act 1977.

The Hon. LYNDA VOLTZ: Are people in the Government opposed to these changes because they see it as a restriction on freedom of speech?

Ms GABRIELLE UPTON: Ms Voltz, I have answered your question. I will continue to consult on this issue on behalf of Government. Across our community there are varied views about this issue and about whether there should be change. What should that change be? I will continue to consult on this issue.

The Hon. LYNDA VOLTZ: You did not say you were going to consult when you got up at that function.

The Hon. BRONNIE TAYLOR: Point of order: The honourable member is continuously interrupting the Attorney General when she is obviously answering the question. We need her to be heard without constant interruptions.

The CHAIR: That is not actually a point of order, but I ask Ms Voltz to ensure that she does not interrupt the Minister when the Minister is trying to answer. She can ask the same question as many times as she likes and the Minister can answer as many times as she likes, but she should have a chance to answer.

The Hon. LYNDA VOLTZ: Minister, why did you get up at a function and say that you were going to introduce legislation in the first half of 2016 when now you are saying you will not?

Ms GABRIELLE UPTON: I have answered your question. The Government continues to consult on this issue, on which there are varied views, on which if there is law reform there must be a balance struck between free speech and protecting people from violence in the words that they use, and on which any reform of the current provisions which do provide a level of protection in the act must have wide support across New South Wales.

The Hon. LYNDA VOLTZ: On another issue, why is your statutory review of the Government Information (Public Access) Act 2009 over a year late in being tabled in Parliament?

Ms GABRIELLE UPTON: Statutory reviews are an important part of the Government's work. That purpose is to see that the objectives of the Act remain valid and that they are reflected in the way the Acts are drafted. They are undertaken with a great deal of solicitation of views across community to make sure that those purposes are met by the legislation as it sits on our law books. There are a number of reviews that are being conducted at the moment. When we consult we make sure that we consult broadly and seek views broadly. There are a number of reviews that are being undertaken at the moment and, when that work is done, they will be brought forward.

The Hon. LYNDA VOLTZ: Can you tell me why your five-year review, which you are required to perform as the Minister administering the Act, is more than a year late?

Ms GABRIELLE UPTON: There are many Acts in my portfolio. They are all important Acts. We consult on reviews of statutes. It is important that they are responded to in the right way with all those views taken into account, because this review process does the important work of ensuring that the policy objectives of the Act are still valid and are reflected in the laws that govern our land.

The Hon. LYNDA VOLTZ: When did you start the review?

Ms GABRIELLE UPTON: These reviews take place within the required—

The Hon. LYNDA VOLTZ: No, this review.

Ms GABRIELLE UPTON: Reviews take place and are started within the time required. Again I say to you, Ms Voltz, that these reviews are widely consulted. It is important to get them right because they do the important job of ensuring that the policy objectives remain valid for our community in forming part of the law and that in fact the way they are expressed in the black letter law is the right way. Reviews are undertaken by the department with broad consultation. When we have gone thorough reviews they are brought forward by Government.

The Hon. LYNDA VOLTZ: Except the act requires you to do a review and you are required as the Attorney General to undertake a review of the Government Information (Public Access) Act 2009. You are required to begin the review as soon as possible, according to the Act, and the Act clearly says when you have to do it. You are then required to table it in the House within a certain time frame, which you have now missed. When did you actually start the review that the Act says you must do?

Ms GABRIELLE UPTON: The review started at the time it was required to start, but I make the point again—which you are failing to acknowledge while you are talking over the top of me over this—that the consultation is a thorough consultation. It is an important consultation. When a review is finalised, it is done in the knowledge that we have thoroughly consulted the community on the issues that are important issues, as I said, because it is testing whether the policy—the policy that was the reason for bringing the Act onto the law books of this State—is still valid and testing whether the law as it is currently drafted meets those objectives. It is important work to get the law right. These reviews are brought forward when all that thorough work has been completed.

The Hon. LYNDA VOLTZ: What stage has the review reached? Whom have you consulted?

Ms GABRIELLE UPTON: The review is continuing, and I will bring it forward when it is ready. As I said, this is a process we must get right.

The Hon. LYNDA VOLTZ: So either the Government has distain for the GIPA process or you are just hopeless at this process. Which one is it?

Ms GABRIELLE UPTON: I reject both assertions. I am saying that reviews are an important part of the Government's work. We will bring the review forward when it is ready, and when we are satisfied that the consultation that needs to be conducted has been conducted. These reviews do the heavy lifting of ensuring that

the law on our books is current and that it responds to the policy intent that was the initial reason for it being introduced.

The Hon. LYNDA VOLTZ: In April this year, the Court of Criminal Appeal quashed the conviction of a young man known as JB for the murder of Edward Spowart. That judgment was based on the failure of the prosecuting authorities to advise the defence of material evidence concerning a witness who claimed that JB confessed to him. In your submission to the Court of Criminal Appeal, you admitted that the Crown Prosecutor, the prosecuting solicitor and the investigating police all knew of the material and all failed to disclose it. What have you done about that failure to disclose?

Ms GABRIELLE UPTON: Are you referring to the case relating to a young girl called Girl X? Is that how you are identifying this matter?

The Hon. LYNDA VOLTZ: I am not identifying the matter in that way. I am referring to the conviction of a young man known as JB for the murder of Edward Spowart.

Ms GABRIELLE UPTON: I am not familiar with those circumstances, but it sounds like it is a matter for the Director of Public Prosecutions, who is independent from me.

The Hon. LYNDA VOLTZ: So you have not taken any steps to call to account any person responsible for that serious dereliction of duty?

Ms GABRIELLE UPTON: You are asserting that there was a dereliction of duty. I do not know that to be the case.

Mr DAVID SHOEBRIDGE: The conviction was set aside on the basis of it. Are you calling into question a determination of the Court of Criminal Appeal?

Ms GABRIELLE UPTON: I am happy to consider the circumstance the member has raised with me if she puts the question to me on notice.

The Hon. LYNDA VOLTZ: It came about because of an application lodged on behalf of the New South Wales Attorney General. I would have thought that you would be across this.

Ms GABRIELLE UPTON: All cases before our courts are important. I am happy to respond on notice. On my initial hearing of the issue put to the Committee, it seems to me to be an issue for the Director of Public Prosecutions. As I said, I am happy to take the question on notice.

The Hon. LYNDA VOLTZ: The barrister appearing for you said that the Crown Prosecutor, the prosecuting solicitor and the investigating police all failed to reveal to the defence information about the key witness. Despite that, you think it is a matter for someone else to take action rather than you?

The Hon. SHAYNE MALLARD: Point of order: The Attorney General has clearly said that she needs to take the question on notice. The member's pursuing that line of questioning will elicit more responses from the Attorney General that she will take it on notice. I do not know why the member is persisting.

The Hon. LYNDA VOLTZ: That is none of your business.

The Hon. SHAYNE MALLARD: It is my business as a member of this Committee to ask questions.

Mr DAVID SHOEBRIDGE: That is not a point of order.

The CHAIR: I will give them extra time. There is no point of order.

The Hon. LYNDA VOLTZ: Do you have a response, Attorney?

Ms GABRIELLE UPTON: As I said, I am happy to take this question on notice, and I am happy to consider it.

The Hon. LYNDA VOLTZ: So you have taken no steps to call those responsible to account for that serious dereliction of duty?

Ms GABRIELLE UPTON: That is your opinion.

The Hon. LYNDA VOLTZ: It is not my opinion.

Mr DAVID SHOEBRIDGE: It is the opinion of the Court of Criminal Appeal.

The Hon. LYNDA VOLTZ: It is a decision of the Court of Criminal Appeal.

The CHAIR: The Attorney General has answered the question.

Ms GABRIELLE UPTON: I am happy to look at the circumstances, and I will take the question on notice.

Mr DAVID SHOEBRIDGE: Madam Attorney, I thank you and your staff for appearing before the Committee today. Ms Voltz was asking you questions about the reform of the legislation dealing with racial vilification. Do you agree as the Attorney General that it does need to be improved and that there are deficiencies in it?

Ms GABRIELLE UPTON: Thank you for the question. This is a challenging and contentious area of the law. As you well know, recommendations were made by a Legislative Council committee in a report on racial vilification. They are matters on which I continue to consult on behalf of the Government.

Mr DAVID SHOEBRIDGE: You say it is contentious. Every recommendation made by the Legislative Council committee had unanimous support. Agreement was not only bipartisan, it was multi-partisan. There was no contention within the committee that each and every one of those reforms was appropriate and timely. Where does the contention come from in your mind?

Ms GABRIELLE UPTON: We continue to consult on the Legislative Council recommendations. These matters are the subject of different views across the community. The Legislative Council committee's report was important. However, as I said, we continue to consult on those recommendations.

Mr DAVID SHOEBRIDGE: It was unanimous; it was not contentious. Who are you talking to who says this is contentious? Is it Alan Jones or Cory Bernardi? Who do you say believes that these recommendations are contentious?

Ms GABRIELLE UPTON: The consultation continues because there are different views as to what the race hate provisions should be across our State. A national debate is also being conducted in regard to different provisions. I continue to consult on that report on behalf of the Government and on a matters relating to racial vilification.

Mr DAVID SHOEBRIDGE: People want the Government to remedy the holes in the law which were identified and which the committee unanimously agreed needed to be fixed. It is your job to fix the holes in the law. The unanimous report was handed to your Government in December 2013, and it is now September 2016. Your mantra about continued consultation and contention is beginning to wear thin. Do you understand that?

Ms GABRIELLE UPTON: You have made a number of assertions, and I reject them. I am continuing to consult on that report on behalf of the Government. There are different views about what, if any, reform should be undertaken.

Mr DAVID SHOEBRIDGE: You keep saying there are different views. Who has a view that that set of unanimous recommendations should not be implemented at least as a starting point for consensus-driven reform?

Ms GABRIELLE UPTON: I have answered the question.

Mr DAVID SHOEBRIDGE: With all due respect, you have simply asserted that there are differing views. Despite repeatedly being asked, you have failed to nominate a single individual or a single organisation that has spoken against those unanimous recommendations. Now is your chance. Name a single individual or a single organisation that you have spoken to that is against those consensus recommendations.

Ms GABRIELLE UPTON: I have answered the question. There are many and varied views on this area of law.

Mr DAVID SHOEBRIDGE: You just will not tell us who they are.

Ms GABRIELLE UPTON: I meet with many groups across the community, and there are many and varied views. This is an area of the law about which there are divergent views. The Legislative Council report put forward a number of recommendations about how that criminal offence should be cast. There still remain different views across the community about whether that is what we should embrace.

Mr DAVID SHOEBRIDGE: You simply will not tell us of a single person or a single organisation you have consulted that believes those recommendations should not be implemented. Why are you not being frank with this Committee?

Ms GABRIELLE UPTON: I am. I am continuing to consult on the recommendations. This is an issue about which there are many different views. As I said, the Government wants to get the response right given that there are many and varied views about it. I have made the point that it is under active discussion and consultation by me, leading on behalf of the Government. Any law reform needs broad support. The Legislative

Council report put forward some suggestions about how the procedure and the law should be cast, and I continue to consult across the community on them.

Mr DAVID SHOEBRIDGE: If that is your definition of active, we are in a lot of trouble.

Ms GABRIELLE UPTON: That is a matter of opinion, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: The Law Enforcement (Power and Responsibilities) Regulations have been remade effective as of today. Are you aware of that?

Ms GABRIELLE UPTON: Yes, I am.

Mr DAVID SHOEBRIDGE: There is an obvious hole in the protections provided in the regulations with regard to Aboriginal citizens of this State that I am sure has recently come to the attention of your office because of the tragic death of an Aboriginal women in a police cell—the first in 16 years. Are you aware of that death?

Ms GABRIELLE UPTON: I am, and it was tragic. I think you are referring to Rebecca Maher.

Mr DAVID SHOEBRIDGE: I am indeed. I think we probably all support the recommendation from the Royal Commission into Aboriginal Deaths in Custody that when an Aboriginal person is arrested and detained by the police they should effectively have immediate access to legal services and support because there have been too many such deaths. I think we probably all share that view, do we not?

Ms GABRIELLE UPTON: The reference to the Coroner on this particular matter, which I think you are bringing up to make a point, and the police investigation continue around the circumstances. It is important to let those processes run. You are making an assertion, I think, that there is some particular difficulty with the regulation as it is currently cast. Is that the point you are making?

Mr DAVID SHOEBRIDGE: Perhaps if you listen to my questions, answer the questions and stop trying to guess where I am going, this will be quicker. Do you agree with and support the recommendation from the Royal Commission into Aboriginal Deaths in Custody that said Aboriginal people when they are arrested and held in a police cell should have immediate access to legal and support services?

Ms GABRIELLE UPTON: That was a report quite some time ago, as you know—

Mr DAVID SHOEBRIDGE: Twenty-five years.

Ms GABRIELLE UPTON: —in response to which the federally funded Custody Notification Service was introduced to address the issue that was highlighted there. You mentioned the circumstances of Rebecca Maher and her tragic death in July. There is both a policy investigation and a Coroner's reference under way which may look at those circumstances. We have to let those processes run.

Mr DAVID SHOEBRIDGE: Do you support the recommendation from the Royal Commission into Aboriginal Deaths in Custody—yes or no?

Ms GABRIELLE UPTON: The Custody Notification Service was introduced in response to that. It has been strongly funded since that time by the Federal Government. It is a service that provides a great deal of support into community in the circumstances that you are pointing to. It is something that provides Aboriginal people in custody with access through Aboriginal legal services with support and it is something that was directly in response to the report that you are raising.

Mr DAVID SHOEBRIDGE: Are you aware of the defect in your recently made regulation? In the circumstances in which Rebecca Maher found herself in police custody, whereby she was detained and arrested but not charged, your newly made regulation did not and would not require the police to notify the Aboriginal Legal Service [ALS] because she was not a "detained person" for the purposes of part 9 of the Law Enforcement (Powers and Responsibilities) Act [LEPRA]. As Attorney, are you aware of that problem?

Ms GABRIELLE UPTON: We do not have the facts. This is a tragic death. I have said a number of times there are official processes that are being undertaken at the moment by both the police and a reference to the Coroner. Questions will be asked.

Mr DAVID SHOEBRIDGE: I just asked it.

Ms GABRIELLE UPTON: We need to get to the bottom of the facts about this and they will be answered through those processes. There may well indeed be recommendations but it is proper and appropriate that those official investigations continue and that the Government considers the recommendations. If there is a gap in the circumstances, this Government is happy to consider that recommendation.

Mr DAVID SHOEBRIDGE: Put Ms Maher's case to one side—as hard as that is given how recent and raw the tragedy is. Do you agree with me that the way the regulation that you made effective today operates is that, if an Aboriginal person is incarcerated and put in a police cell—they could be held there for six hours or 12 hours—by reason of being intoxicated but is not charged with an offence, it does not require the police to notify the Aboriginal Legal Service? Do you agree that that is how the law works today?

Ms GABRIELLE UPTON: That is how the law works today. Whether indeed that was the circumstance that occurred in relation to Rebecca Maher is a matter for the investigation of police and of referral to the Coroner. We do not know if that was this circumstance. There are facts to be found. There are questions to be asked and answers to be given. On the back of those findings we will know whether in Ms Maher's circumstance that was indeed the case.

Mr DAVID SHOEBRIDGE: Again, given how raw and recent the tragedy of Ms Maher's case is, putting that to one side, you now agree that the law that you just made effective today does not require the police to notify the Aboriginal Legal Service when they have detained an Aboriginal person and not charged them. Do you not think that in the interests of stopping Aboriginal deaths in custody you should not wait potentially years for the Coroner to report; rather, you should fix the law now, shut the gap in the law now, protect Aboriginal people and amend the regulation to make the requirement operate whenever Aboriginal people are arrested and detained in police cells?

Ms GABRIELLE UPTON: This tragic circumstance of Rebecca Maher's death provides an opportunity to see whether indeed these circumstances are the ones that you are suggesting they are.

Mr DAVID SHOEBRIDGE: You have just agreed that is the way the law works.

Ms GABRIELLE UPTON: There are questions that will be asked. We do not know in Ms Maher's circumstance—

The Hon. LYNDA VOLTZ: We are not asking about her circumstance.

Ms GABRIELLE UPTON: —that there was a gap or that the circumstances led to her death in the way that you are asserting.

Mr DAVID SHOEBRIDGE: I did not.

The Hon. LYNDA VOLTZ: We are not talking about her case.

Ms GABRIELLE UPTON: The Custody Notification Service provides for when somebody is charged. That is correct. That is the law. But you are drawing a connection between Ms Maher's death as being circumstances that fall outside the current Custody Notification Service provisions. We do not know that that is the case. We need to let the processes run to understand what the facts are, to see—independent of government—whether there are recommendations to be made and then we will be in a better position to know whether that regulation has to change.

Mr DAVID SHOEBRIDGE: I suppose the transcript will speak for itself in terms of the deliberate obtuseness of your answers.

Ms GABRIELLE UPTON: I reject that, Mr Shoebridge. You and I know what the law says. You are dealing in hypotheticals. We do not know the circumstances of Ms Maher's death. You and I will await the answers and recommendations of those processes that are independent from government.

Mr DAVID SHOEBRIDGE: Madam Attorney, you will sit on your hands and do nothing. I, if I was in your shoes, would do the opposite. I would act now to fix the law and not allow another Aboriginal person to die in police custody. Why will you not take that action?

Ms GABRIELLE UPTON: I will not deal in the hypotheticals that you are raising. There is a process running in relation to Ms Maher, which is an important one. This is a tragic death. Both the police and the Coroner will look into the circumstances—the facts—of her death and make recommendations. They will be considered by government. This is a serious matter that should be dealt with in that fashion.

Mr DAVID SHOEBRIDGE: What advice have you or anyone in your department sought about possible breaches of section 316 of the Crimes Act relating to the practice of blind reporting as used by the New South Wales police regarding child sexual abuse?

Ms GABRIELLE UPTON: I am happy to take that on notice.

Mr DAVID SHOEBRIDGE: How many cases is your department aware of in which the Ellis defence has been used by religious organisations in this State to defeat civil claims in the last five years?

Ms GABRIELLE UPTON: I am happy to refer that question to the secretary.

Mr CAPPIE-WOOD: Obviously the question of the Ellis defence before the royal commission is one that has occupied a degree of investigation and commentary.

Mr DAVID SHOEBRIDGE: And they have made recommendations, Mr Cappie-Wood.

Mr CAPPIE-WOOD: Correct. You asked about how many we were aware of in this State. We will take that on notice because I think that is something that is well worthwhile bringing to the Committee's attention. We will do so.

Mr DAVID SHOEBRIDGE: When will you be formally responding to the recommendations from the royal commission?

Mr CAPPIE-WOOD: That is a policy question for the Minister.

Ms GABRIELLE UPTON: The royal commission, as you know, has been convening for some time and considering on testimony and other evidence the tragic case of child sexual abuse in institutions over time. I have sat with some of the people who have given testimony. They have been very brave survivors of difficult circumstances of their childhoods. There are a number of recommendations, as you know, from the commission. They go to issues of redress. I was very proud to bring into the Houses of Parliament a reform to an Act—

Mr DAVID SHOEBRIDGE: The Limitation Act.

Ms GABRIELLE UPTON: —the Limitation Act—that gives those survivors of child sexual abuse the opportunity to bring their case against institutions that may have breached their duty of care but not to raise the passage of time as a limitation to those actions. We were the first State to do that, and I was proud that we were able to do that.

Mr DAVID SHOEBRIDGE: No. You were not the first State, Madam Attorney. Victoria was the first State.

The Hon. SHAYNE MALLARD: She should still get credit for it though.

Mr DAVID SHOEBRIDGE: You are aware of that, are you not?

Ms GABRIELLE UPTON: Mr Shoebridge—

Mr DAVID SHOEBRIDGE: You were not the first State. You are misleading the Committee. Victoria was the first State to move.

Ms GABRIELLE UPTON: We introduced that limitation. The Victorian bill is slightly different in the way that it is cast. Our bill was introduced to address sexual abuse, serious abuse and connected abuse with that. Those were the terms in which it was introduced in this State. In addition to taking away the limitations around civil actions, there are recommendations about a redress scheme which this Government has called upon to be led from a national level. It is appropriate that it is led at a national level. It has been a disappointment to me that the Federal Government is saying it should be a nationally consistent redress system, when in fact it should be something that is nationally led so that it is consistent in its provision of a response to child sexual abuse for people regardless of where they live inside Australia, whatever State it may be. These are important responses from the Government.

There have been some immediate measures which this Government has also taken over time. Last year, and the year before in fact, better access was made available to victims of child sexual abuse to the records that are held by Family and Community Services. There was a recasting of the model litigant policy that means that Government cannot raise the passage of time as a limitation on civil actions that are brought by people against the State. These are all responses to this very difficult, painful, distressing notion that institutions with oversight of children and youth may have abused those children. That should never have happened and this Government has a strong commitment to responding to that. Mr Shoebridge, I know the matter of the Ellis defence, which has already been raised, is a matter of interest to you. The commission has suggested a series of changes to the way the civil law is cast to take away the protections that have been raised by some institutions across government.

Mr DAVID SHOEBRIDGE: Minister, I have read it. I just want to know when you are going to respond. Seriously, I have read it. I want to know when you are going to respond.

Ms GABRIELLE UPTON: On which particular aspect?

Mr DAVID SHOEBRIDGE: On the Ellis defence, in fact on the series of recommendations on civil redress. You know what I am talking about and you know the answer I want. If you are not going to tell me when you are going to respond, just say so—but do it quickly.

Ms GABRIELLE UPTON: There are, as you know, a number of things that have been floated by the royal commission, including that a new civil standard should be required of our institutions that look after children. We will put out a paper for consultation. It will soon be released, and it will address some of the issues that are raised by the royal commission.

Mr DAVID SHOEBRIDGE: Thank you for that information. As you know, these are very often damaged individuals—many are very brave individuals—who are strong advocates. They would like an indication from your Government of when that discussion paper will be released. No-one will hold you to it if it is delayed, but what are your current expectations for releasing that discussion paper—so that they know that something is happening in this space?

Ms GABRIELLE UPTON: My anticipation would be that it would be released this year for discussion. It raises those important issues about what duty should exist and be expected of institutions across the State when they are looking after children in their care. It raises a number of other aspects which should properly be taken out to consultation with the community to have a broad discussion. They are important recommendations that, as they are currently proposed by the royal commission, will add significant duties to those institutions that look after children, that will limit the defences that can be raised and that will provide that a person must be nominated by these institutions as being the nominal defendant for any actions that are brought against that institution.

Mr DAVID SHOEBRIDGE: Will any of that be retrospective? It is historical abuse where some of the greatest injustice has occurred.

Ms GABRIELLE UPTON: That will be a matter for consultation. As I said, I look forward to bringing that paper forward for broad public discussion.

The Hon. LYNDA VOLTZ: Are there boards or similar bodies, other than the Legal Aid board, that you have failed to make appointments to?

Ms GABRIELLE UPTON: Do you have any particular boards in mind?

The Hon. LYNDA VOLTZ: All the ones under your purview.

Ms GABRIELLE UPTON: There are, as is the case for many Ministers, many boards under my purview. It is one of the tasks that I have to make sure those appointments are made in such a way that those boards have the kinds of skills, competencies and people on them that are needed to make sure they do the work of government. If there is a particular board you have in mind, I would really like you to raise it with me now.

The Hon. LYNDA VOLTZ: Given your statement about how important they are and how across the brief you are, I would like to know whether there are any boards under your purview, other than the Legal Aid board, which you have failed to make appointments to.

Ms GABRIELLE UPTON: The process that I go through, which I explained to you when you asked these questions before, is one of making sure we have the right skills on these boards, that they are the right appointments. They are then approved by Cabinet. If there is a particular board you have in mind, please raise it for my consideration now.

The Hon. LYNDA VOLTZ: What about we go with the Law Reform Commission—

Mr DAVID SHOEBRIDGE: The Serious Offenders Review Council?

The Hon. LYNDA VOLTZ: Yes, that is another one.

Ms GABRIELLE UPTON: I am happy to take that on notice, and I will ask the Secretary to respond.

The Hon. LYNDA VOLTZ: But I thought you were across it all? Have any other boards become inquorate because appointments were not made?

Ms GABRIELLE UPTON: If you have particular examples in mind, please raise them now.

The Hon. LYNDA VOLTZ: Will you not just take them all on notice again?

Ms GABRIELLE UPTON: If you raise the names of particular boards that you are asserting are inquorate, I would be happy to address your question.

The Hon. LYNDA VOLTZ: I have already asked whether the Legal Aid board is inquorate, so we can go back and start with that. Was the Legal Aid board inquorate?

Ms GABRIELLE UPTON: The Legal Aid board is not inquorate. You are asking a question as at this date. It is not inquorate, and I explained—

The Hon. LYNDA VOLTZ: Was it inquorate?

Ms GABRIELLE UPTON: It is not currently inquorate, and I made the point before, when you asked this question incessantly, that getting these appointments on boards is incredibly important. They need to bring a breadth of skills to those boards. It is a process which I take seriously and this Government takes seriously. We make sure we have the people with the skills to discharge the obligations of that board. The board that you are referring to, for Legal Aid NSW, is not inquorate as of this date.

The Hon. LYNDA VOLTZ: You said, "Ask me about any board". From 17 February to 23 June, was the Legal Aid board inquorate?

Ms GABRIELLE UPTON: I have told you about the process we go through—

The Hon. LYNDA VOLTZ: I asked you whether it was inquorate?

Ms GABRIELLE UPTON: It is about considering what skills are required on that board. That board is not inquorate as of today.

The Hon. LYNDA VOLTZ: You wanted me to ask a specific question. I am giving you a very specific question. From 17 February to 23 June—that is very specific—was the Legal Aid board inquorate? That is a very specific question to which there is a specific answer. I would like you to answer that question.

Ms GABRIELLE UPTON: I have said that the Legal Aid board is not inquorate. It is quorate as of this point in time. I have answered the question many times. I will go through the process again. It comes back to the fundamental duty of this Government, which is to make appointments to government boards who bring the skills and competencies that are required for those positions. Those recommendations go to Cabinet. They are Cabinet appointments. That is the appropriate process that this Government goes through to make sure that the board appointments are good appointments, that they bring skills to those boards.

The Hon. LYNDA VOLTZ: Let us have another go at this. I will take your lead on this. Let us put aside the process of appointing them. Let us put aside how important they are. Let us put aside where you think the Legal Aid board is today. Let us just go to 17 February to 23 June. Attorney-General, was the board inquorate at that time?

Ms GABRIELLE UPTON: I have answered your question.

The Hon. LYNDA VOLTZ: No, I have just told you, put aside all those other things. At no point have you ever said, in front of this Estimates Committee, whether the board was inquorate between 17 February and 23 June.

Ms GABRIELLE UPTON: Ms Voltz, your questioning is becoming—

The Hon. LYNDA VOLTZ: Repetitive?

Ms GABRIELLE UPTON: Repetitive and badgering. I have answered your question.

The Hon. LYNDA VOLTZ: If only the answers were repetitive!

Ms GABRIELLE UPTON: I answered your question right at the beginning. I will answer it again. Board appointments are made with full consideration of the skills we need around the table. They are made by Cabinet. They are made with a lot of consideration as to who those people should be—

The Hon. SHAYNE MALLARD: They are a highly qualified board.

Ms GABRIELLE UPTON: —and the Legal Aid board is quorate, today.

The Hon. SHAYNE MALLARD: It is a good board.

The Hon. BRONNIE TAYLOR: A very good board.

The Hon. SHAYNE MALLARD: Very good quality candidates.

Mr DAVID SHOEBRIDGE: Fish.

The Hon. LYNDA VOLTZ: I am still waiting for the answer. Are you going to give me the answer to the question.

Ms GABRIELLE UPTON: I have answered your question, Ms Voltz.

Mr DAVID SHOEBRIDGE: The answer is "Fish".

The Hon. LYNDA VOLTZ: Fish? It is a Babel fish.

Mr DAVID SHOEBRIDGE: "Was it inqurate?" "Fish: I have answered your question."

The Hon. LYNDA VOLTZ: Yes.

The Hon. SHAYNE MALLARD: There are plenty of rulings on that.

The Hon. BRONNIE TAYLOR: Gee, this is really grown up.

The Hon. LYNDA VOLTZ: Yes, it is, isn't it?

The Hon. SHAOQUETT MOSELMANE: Attorney, I will relieve you from Ms Lynda Voltz. Earlier this year, the NSW Trustee and Guardian required private managers of estates to enter into security bonds with a Scottish registered company, Aviva, whose Australian agent is Willis Towers Watson. Are you aware of this?

Ms GABRIELLE UPTON: Thank you for the opportunity to address this matter, Mr Moselmane. Trustee and Guardian, as you know, provides the very important service of looking after the vulnerable people in our community who cannot otherwise provide for themselves in terms of financial management. You may well be aware that where private managers are appointed sometimes there is mismanagement or misappropriation of the assets of the vulnerable person, and the introduction of the surety bond, which you are referring to here, was a response to that gap. Regrettably, where there are cases where vulnerable people who are oversighted by Trustee and Guardian who have private managers have been ripped off, the surety bond provides a level of protection so that will not happen.

The Hon. SHAOQUETT MOSELMANE: There are over 5,000 private managers. The majority of those managers had no issues. They are not only appointed by the courts; they are administered by the Trustee and Guardian, so they are successful managers. Yet what you have done is punish them by having them pay a maximum of \$12,000 annually. How do you justify the argument you have presented with what I have presented to you?

Ms GABRIELLE UPTON: Mr Moselmane, there have been occasions when money has been misappropriated.

The Hon. SHAOQUETT MOSELMANE: How many occasions?

Ms GABRIELLE UPTON: This is an important response to protect those people.

The Hon. SHAOQUETT MOSELMANE: How many occasions were there?

Ms GABRIELLE UPTON: This is an important response to protect those people in the way that insurance and surety bonds are used in other contexts. This is an important response to a circumstance that none of us would want to see a vulnerable person in. When the person who is looking after their finances takes that money and misappropriates it, it is for those circumstances, which are regrettable, but they do happen, that this concept of a surety bond—

The Hon. SHAOQUETT MOSELMANE: I have just asked you how many of those 5,000 managers?

The Hon. BRONNIE TAYLOR: Let her answer the question.

Ms GABRIELLE UPTON: —was introduced.

The CHAIR: Order! If you have a point of order, take it.

The Hon. SHAOQUETT MOSELMANE: I just asked you how many of those 5,000 managers have failed to do their job properly?

Ms GABRIELLE UPTON: Mr Moselmane, I will ask the secretary to respond to your specific question on this.

The Hon. SHAOQUETT MOSELMANE: I am happy to take it on notice if you cannot answer it now.

Ms GABRIELLE UPTON: You are asking about numbers and I am happy to refer that to the secretary for a response.

Mr CAPPIE-WOOD: The advice from the Trustee and Guardian is that there are approximately 3,500 private managers that they are aware of and have had discussions with. I am happy to come back with details. You mentioned 5,000. In respect of the absolute numbers, we will bring that back as well, but I think it would be worthwhile noting that whilst there is an upper limit that has been mentioned in your question, the average payment under the scheme is \$1,236.

The Hon. SHAOQUETT MOSELMANE: Were these 3,500, as you state, consulted before the Attorney General approached the Scottish-registered company Aviva?

Mr CAPPIE-WOOD: Thank you. In respect of the consultation process, there was an extensive consultation process across all of the reforms, particularly about the surety bonds issue. Community stakeholder forums were held in Sydney, Parramatta, Broken Hill, Bathurst, Lismore, Wagga Wagga, Wollongong and Newcastle in late 2015 and 2016 about the proposed changes. In particular, they were well attended by private managers and the surety bond issue was specifically discussed at all forums. Subsequent to that, there was direct correspondence to all of the private managers that the Trustee and Guardian has knowledge of in respect of their books about the changes, and there has been, obviously, ongoing consultation about the details.

The Hon. SHAOQUETT MOSELMANE: Thank you. Attorney, why did you mandate that the bond provided be from Aviva?

Ms GABRIELLE UPTON: Mr Moselmane, that was done through a competitive tender, as I understand, where an Australian company, Willis Towers Watson, was appointed. Those matters were dealt with under procurement guidelines, and I will ask the secretary to comment further.

Mr CAPPIE-WOOD: The New South Wales Public Works and Procurement Act 2012 and Treasury guidelines were attended to in respect of this. Willis Towers Watson was considered in this regard because of their considerable history in providing surety bonds for financially managed persons in the United Kingdom over a number of years and their success in this regard was considered to be of considerable benefit in respect of shaping the nature and services of surety bonds in this country. In respect of pricing the bonds, Trustee and Guardian advises that Willis Towers Watson has been able to provide it at a much lower cost than any insurance provider in Australia that meets the requirements. The percentage charged for premiums was based on total unsecured assets to be insured—

The Hon. SHAOQUETT MOSELMANE: Did any other company tender for it other than Aviva?

Mr CAPPIE-WOOD: To that extent, we can provide the details associated with the outcome of that particular—

The Hon. SHAOQUETT MOSELMANE: I am curious whether there were other tenderers. Aviva won the tender. Were there any others? You have gone through the process.

Mr CAPPIE-WOOD: I will take that on notice to ensure I have the accurate details for you.

The Hon. SHAOQUETT MOSELMANE: Going back to the private managers, as I understand it, the Scottish-registered company in the United Kingdom allows its managers to go private—go outside the system. In Australia why will we not allow our private managers to go outside the system?

Mr CAPPIE-WOOD: I am informed by Trustee and Guardian that, provided they meet the requirements—and that relates to the requirements that would otherwise be covered by these arrangements—outside insurance firms can be sought but they would have to meet minimum requirements as determined by Trustee and Guardian.

The Hon. SHAOQUETT MOSELMANE: They can go outside Aviva?

Mr CAPPIE-WOOD: So I am informed, and I am happy to provide details to you.

The Hon. SHAOQUETT MOSELMANE: Yes, please. The request for tender [RFT] provided no advice on the estimated dollar value of claims of maladministration and it provided no age, demographics or other profiles of either clients or private managers. Attorney or Mr Cappie-Wood, does this not mean that the RFT was significantly lacking in providing meaningful data??

Mr CAPPIE-WOOD: I do not have the particular tender documents you refer to in front of me. I am happy to respond to you once I have those in front of me. I am assured the Trustee and Guardian went through all of the procurement requirements and Treasury guidelines for the purposes of achieving this outcome.

The Hon. SHAOQUETT MOSELMANE: Is it not a fact that this lack of information inadvertently meant that one tenderer with experience in the field, being Aviva, was going to be successful?

Ms GABRIELLE UPTON: You are making an assertion, Mr Moselmane. Please keep in mind that Trustee and Guardian are independent and self-funding as an organisation. You have heard today that there would have been procurement that was conducted in accordance with government guidelines. The secretary has taken on notice a number of questions you have about that process, and that is entirely appropriate. We are happy to come back to you on notice with answers to those questions.

The Hon. SHAOQUETT MOSELMANE: Attorney, a number of NSW Trustee and Guardian offices were announced for closure. The closure of offices in The Nationals' electorates of Lismore, Bathurst and Broken Hill were overturned. Can you tell us why they were overturned?

Ms GABRIELLE UPTON: Thank you, Mr Moselmane. It gives me an opportunity to talk about the important work of transforming Trustee and Guardian.

The Hon. SHAOQUETT MOSELMANE: You can tell me about that later. Can you answer the question, please?

Ms GABRIELLE UPTON: Mr Moselmane, the Independent Pricing and Regulatory Tribunal had said that Trustee and Guardian did not serve effectively its purpose of supporting vulnerable people, nor was it financially sustainable. They were two important recommendations that led to the transformation that you are pointing to in terms of where offices are based, how they provide their service to community and to vulnerable people. We know more and more that people are seeking the advice of Trustee and Guardian by way of phone, by way of online services. So the traditional ways in which an office or shop front provides these services is not the only way in which Trustee and Guardian can provide a very good service to vulnerable people.

Under that transformation there is some centralisation of functions of Trustee and Guardian to provide a better service where it is a comprehensive service with teams that have a number of skills. There were decisions made about what offices should be kept open, where those services should be run from and, indeed, an extension of those services have been made available through Service NSW centres, which have been a great success of this Government that provide easy front-of-office, friendly face of government services to our community.

The Hon. SHAOQUETT MOSELMANE: The decision to overturn the allocation for Lismore, Bathurst and Broken Hill was not political? It was pork barrelling, wasn't it, for The Nationals?

Ms GABRIELLE UPTON: I reject that contention strongly. That is not the way decisions of Government are made.

The Hon. SHAOQUETT MOSELMANE: What justification do you have then for overturning that decision?

Ms GABRIELLE UPTON: That is not the way the Government makes decisions. Decisions about which offices would remain open and which would not was led by the Transformation Project and by the NSW Trustee and Guardian, which is independent of Government and self-funded. If you would like further detail about what offices remained open and where new additional, centralised, comprehensive services are being provided, I will ask the Secretary to comment.

The Hon. SHAOQUETT MOSELMANE: Before the Secretary does that, can you tell me why Chatswood and Hurstville were not subject to a backflip.

Ms GABRIELLE UPTON: I reject the assertion that there was a backflip. The Secretary will have details of which offices remained open and where those comprehensive services have been provided. As I said, there is a change in the way in which the NSW Trustee and Guardian are providing these services into communities. More and more, the shopfront is not necessary for online services and for telephone assistance given to vulnerable people. More and more the way that they are receiving the services of the NSW Trustee and Guardian is in their homes, rather than having to go to a shopfront office. In addition to that, the Government has had great success in opening up Service NSW offices, which provide a friendly face of government to communities, where Trustee and Guardian services are provided in addition to other services. That provides an easier way for members of the community to receive services in relation to the NSW Trustee and Guardian.

The Hon. SHAOQUETT MOSELMANE: Do you accept that closing offices will make it considerably more difficult for people, such as those with cognitive disabilities, using the NSW Trustee and Guardian services?

Ms GABRIELLE UPTON: I have explained that the Trustee and Guardian is working more and more in a way which provides those services on line for people. That makes it easier for some people to have services responded to in their homes. They can make those requests from their homes through a telephone

service. This is the way that services across government are increasingly being provided. That does not take away from the fact that there will be an important role taken by the NSW Trustee and Guardian in having a shopfront. There are many branches that remain available. Indeed, in many places across New South Wales, Service NSW will provide a friendly face and an open door in relation to Trustee and Guardian matters.

Mr DAVID SHOEBRIDGE: Secretary, do you take your instructions from the Attorney General, or from the Minister for Police and Justice?

Mr CAPPIE-WOOD: I am responsible for the Department of Justice. The Department of Justice has responsibilities that are broad and complex. As such, a range of my responsibilities have different Ministers who are directly responsible for them. As such, the Attorney General is responsible for a wide variety of the department's areas of responsibility, just as I report to the Minister for Corrections and Minister for Emergency Services on a range of issues. As well, I report to the Deputy Premier on a range of issues. Given the breadth and nature of my organisation, I report to three Ministers.

Mr DAVID SHOEBRIDGE: Of those three Ministers, who is the senior Minister—the one that is on top?

Mr CAPPIE-WOOD: By the Government's own administrative arrangements, there is a lead department in each cluster. There is a lead Minister for each cluster. I think it is publicly documented that the lead Minister for this cluster is the Deputy Premier.

Mr DAVID SHOEBRIDGE: That would be the Minister for Justice and Police, not the Attorney General.

Mr CAPPIE-WOOD: That is correct. That is as it is stated.

Mr DAVID SHOEBRIDGE: Are you aware of any other time in the State's history where the police Minister has also been the justice Minister and has therefore been in a departmental or cluster structure that sees the police Minister senior to the Attorney General? Are you aware of that ever having occurred in the State's history?

Ms GABRIELLE UPTON: I would like to comment on that. The justice cluster includes three Ministers. There is a Minister for Justice and Police; the Attorney General; and, as you heard, the Minister for Corrections. We work together cooperatively. We have separate responsibilities. In fact, I am very proud of the fact that, as Attorney General, I have chief law officer obligations that extend back into the history of the early days of this colony with respect to the independence that the chief law officer has in relation to court proceedings, pardons and ex gratia payments.

The three Ministers within the cluster have separate responsibilities. I have those additional responsibilities as chief law officer. The wonder of having three Ministers together in one cluster is that we can work cooperatively across those portfolios. This has led to very good work by this Government. This Government understands better than any government before that it takes an Attorney General working with the Minister for Justice and Police and a Minister for Corrections to get good outcomes for justice in this State. It involves an Attorney General working with a Minister who is responsible for correctional services and a Minister who is responsible for police.

I can give you an example of where this has worked to the benefit of better services in our community. Body-worn video creates extra powerful evidence to be brought before a court in relation to domestic violence victims. That involves a good working relationship between the police and the courts. It provides a benefit to vulnerable witnesses when they appear in court. That policy of having those three Ministers with separate focuses work together cooperatively works to the benefit of our community and victims.

I can give you another example. The big focus in relation to domestic violence is on prevention and our support of victims. There is now an opportunity for senior police officers to take out apprehended domestic violence orders [ADVOs] directly and to refer those women, primarily, who are subject to domestic violence issues to another service which our Government proudly funds. The Government has made a commitment to Women's Domestic Violence Court Advisory Services [WDVCAS] or the Women's Domestic Violence Court Advisory Program [WDVCAP]. That new service for domestic violence victims means that police can connect victims of domestic violence in time and place with court assistance and comprehensive services to respond to their needs. That is a proud outcome of that incredibly important work which we are doing as a cluster, recognising our separate responsibilities but coming together for the benefit of the justice system and, in those two cases, for the benefit of domestic violence victims.

Mr DAVID SHOEBRIDGE: Mr Cappie-Wood, would you mind answering the question?

Mr CAPPIE-WOOD: Personally I am unaware of the exact replication of the current arrangements prior to this day.

Mr DAVID SHOEBRIDGE: Madam Attorney General, are you saying that it takes the Attorney General to be junior to the Minister for Justice and Police to get something done in your portfolio? Is that what you are telling us?

Ms GABRIELLE UPTON: No, you are verballing me. That is not what I was saying. I think you are failing to understand the point that I am making. We have separate responsibilities. We come together as a cluster because the best response that the Government can make to a justice system is to have the ministries of Police, Attorney General and Corrective Services working together, understanding their separate responsibilities but coming back with a joint policy response with an operational impact on the ground. That benefits victims in the cases that I have identified. It benefits our legal system. I am proposing to you that this is a structure that works effectively, with the impact it should have on victims and our criminal and civil justice system.

Mr DAVID SHOEBRIDGE: Which officer is responsible for victims' rights and support?

Ms GABRIELLE UPTON: That is Brendan Thomas, who is to the right of me.

Mr THOMAS: And Ms Torres.

Mr DAVID SHOEBRIDGE: Ms Torres put her hand up; she self-nominated. How many people were eligible to apply for reassessment of the transitional matters pursuant to the 2015 transitional claims regulation?

Ms TORRES: I will defer to Mr Thomas, as I have only actually just picked up this portfolio.

Mr DAVID SHOEBRIDGE: I do not mind who answers it. You two know better than I who has the knowledge.

Mr THOMAS: There were around about 17,000 applicants who were eligible for application—17,500.

Mr DAVID SHOEBRIDGE: How many applications were received?

Mr THOMAS: As of close of business yesterday, 31 August, there were 10,030.

Mr DAVID SHOEBRIDGE: How many victims was victims' services unable to contact?

Mr THOMAS: I cannot give you the number off the top of my head but we did not have—

Mr DAVID SHOEBRIDGE: I am happy for you to take it on notice.

Mr THOMAS: There was a significant effort to contact people in that circumstance. There was a public education campaign. We wrote to every victim that was on record through their most recent address. We contacted all the legal representatives that had previously represented victims. There was a significant number of victims who had previously been represented by Family and Community Services, and we contacted FACS to contact those victims. Earlier this year there was another round of public advertising as well as further information that went out to victims that we did not get a response from, or where we got a return-to-sender letter back from them. There was a significant public campaign as well as an intensive contact campaign, either directly or through the representatives.

Mr DAVID SHOEBRIDGE: Mr Thomas, I am not cavilling with the fact that you made substantial efforts to contact victims, but by nature of the class of people you are dealing with, many of them have fractured lives, multiple addresses and they are very hard to contact. That is the fact of the matter, is it not?

Mr THOMAS: They are difficult to contact.

Mr DAVID SHOEBRIDGE: Despite your best endeavours, 7,470 have not either been able to or been aware of the opportunity to make an application.

Mr THOMAS: Or they chose not to make an application.

Mr DAVID SHOEBRIDGE: Or chose not to.

Mr THOMAS: Certainly the reassessment meant that there were some people who received payments under the transitional arrangement who would have received less under a reassessment. Some of those people may well have sought advice and chose not to make an application. I cannot say whether that is true or not, but that would certainly be the case with some of those individuals.

Mr DAVID SHOEBRIDGE: For how many applications have people got less?

Mr THOMAS: I cannot answer that. I will take it on notice. We are still going through the 10,030 applications.

Mr DAVID SHOEBRIDGE: Is it your intention to potentially take some money from victims as a result of this reassessment process?

Mr THOMAS: No, no.

Mr DAVID SHOEBRIDGE: Given the small amounts of compensation we are talking about now, Madam Attorney, can you make that commitment to victims—that none of them will be worse off as a result of the reassessment process?

Mr THOMAS: That was the Government's commitment.

Mr DAVID SHOEBRIDGE: That was the Government's commitment?

Mr THOMAS: That was the Government's commitment.

Mr DAVID SHOEBRIDGE: So that is not discouraging anyone from making an application, is it? On the basis of the Government's own policy, people would not be prevented from making an application because they were worried about getting less.

Mr THOMAS: But they may have got more under the reassessment than they would have got originally.

Mr DAVID SHOEBRIDGE: Yes. It is on the upside if you put your application in, is it not—on the upside?

Mr THOMAS: It is.

Mr DAVID SHOEBRIDGE: On the upside. So 7,470 victims have not made an application where the only thing is an upside outcome. That is the case, is it not?

Mr THOMAS: That is right.

Mr DAVID SHOEBRIDGE: Madam Attorney, are you not worried that almost seven and a half thousand victims of violence, victims of crime, despite having an entitlement to make an application have not made an application and, because the period closed hard and fast yesterday, they are now precluded from making an application?

Ms GABRIELLE UPTON: Mr Shoebridge, the opportunity to make a claim was open for a year. I am satisfied that it was widely advertised. Eligible victims were contacted. With the best of intentions—

Mr DAVID SHOEBRIDGE: All of them?

Ms GABRIELLE UPTON: —with the best efforts that were possible in the circumstances. I am not saying, Mr Shoebridge, that every victim was contacted, but that would have been the intention. Sometimes people move. There are circumstances that may lead to them not being able to be contacted, but that was definitely the intention—as it was when the Government made the commitment for people to be able to make a reapplication.

Mr DAVID SHOEBRIDGE: I think everybody appreciated that there was a reassessment process. That was good; we are on the same page on that. But because it was only open for 12 months and because we are often talking about people with very damaged lives who can be hard to contact and who move around, many people in the sector were critical of the hard and fast 12-month limitation. Will you consider allowing those victims who have not been contacted or those victims who, because of the personal circumstances, were unable to put an application in an extended period of time so that they can get justice?

Ms GABRIELLE UPTON: Mr Shoebridge, I would put it to you that it may be that some of those people—and you are asserting the number; I do not know that to be a fact and I am happy to take that number on notice—may not want to apply. They may not want to revisit this issue. They may want to get on with their lives. I am not putting myself in their shoes, or even suggesting I could be in their shoes or would understand, but there may be reasons why people did not apply beyond the ones that you are offering up.

Mr DAVID SHOEBRIDGE: Madam Attorney, that might be the case. But your own advice is that there have been victims that have been unable to be contacted. If they did not know and they can prove they did not know, or they can prove that they wanted to but were unable to, surely justice dictates that they be allowed to get access to the reassessments and to some, basically, reasonable damages for being a victim of crime. Surely you agree that justice dictates that?

Ms GABRIELLE UPTON: Well, Mr Shoebridge, the scheme was open for a year for people to apply. There were many thousands of calls that were received in response to that publicity—in response to the personal contact by mail that was able to be established, where it could be—and there may be reasons why people did not want to reapply. That is entirely their election. I am satisfied that the process of contacting those people and communicating with them was a good process, as best that could be done in the circumstances. But there may be people who do not want to re-litigate the matter and want to move on, and that is their right.

Mr DAVID SHOEBRIDGE: Madam Attorney, in terms of stakeholders in your portfolio, there would be few who are more important than His Honour Chief Justice Tom Bathurst of the Supreme Court. Do you agree with that?

Ms GABRIELLE UPTON: Mr Shoebridge, there are many important stakeholders in my portfolio.

Mr DAVID SHOEBRIDGE: He is an important one, though, is it not?

Ms GABRIELLE UPTON: He is one of the heads of jurisdiction along with Derek Price, who is the chief of the District Court, and of course Graeme Henson, who is head of the Local Court. There are stakeholders who go beyond that that I also consider are stakeholders with whom I deal on a regular basis and welcome their views. It is incorrect to characterise the chief justice as the most important stakeholder.

Mr DAVID SHOEBRIDGE: I said he is one of the most important, but let us just say he is an important stakeholder: Yes or no? You may not agree. I am not saying that you have to agree. I am putting to you the proposition that he is an important stakeholder. You can agree or disagree; you are the Attorney General.

Ms GABRIELLE UPTON: There are many important stakeholders in my portfolio, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Madam Attorney, are you aware of the speech that His Honour the Chief Justice gave at the opening of the law term on 4 February 2016?

Ms GABRIELLE UPTON: What date was that, Mr Shoebridge, and what was the topic?

Mr DAVID SHOEBRIDGE: It is still 4 February 2016 and the topic was "The Nature of the Profession: The State of the Law".

Ms GABRIELLE UPTON: And, Mr Shoebridge, would you like to further identify that speech? Where was it given?

Mr DAVID SHOEBRIDGE: It was given in court at the opening of the law term—you know, it happens every year.

Ms GABRIELLE UPTON: I understand it happens every year. I attended some of the events that go along with that formal opening of Parliament.

Mr DAVID SHOEBRIDGE: Did you attend this one?

Ms GABRIELLE UPTON: I am not familiar with that particular speech given in those particular circumstances. I have heard the chief justice speak on a number of occasions.

Mr DAVID SHOEBRIDGE: Did you attend the opening of the law term in February this year?

Ms GABRIELLE UPTON: As you would know well, there are a number of events associated with the opening of the law term and I attended one at least of those events.

Mr DAVID SHOEBRIDGE: Are you aware that His Honour the Chief Justice did a review of the statute books of New South Wales and he found this: There are at least 397 legislative encroachments on either the rights to legal professional privilege against self-incrimination or the presumption of innocence? Are you aware that he said that?

Ms GABRIELLE UPTON: I am, Mr Shoebridge. Now that I know that that is the subject matter of speech, I have read that speech. It was reported in the press. The chief justice is entitled to his view. It is a considered and learned view, but I do not understand the point that you are trying to make.

Mr DAVID SHOEBRIDGE: Have you asked the department to check on His Honour's analysis, and did you perhaps yourself do an analysis to see the extent to which these fundamental common law protections have been undermined by the legislation of your own Government?

Ms GABRIELLE UPTON: Mr Shoebridge, the chief justice has his view. I respect that view and I am always interested in that view—as I am with the views of all the stakeholders in my portfolio. This Government, in the interest of the community, will take different policy decisions at different times, which may

or may not represent the views of the chief justice, but I always welcome his views. Indeed, I was interested to read his speech and to see reporting on it earlier this year.

Mr DAVID SHOEBRIDGE: Madam Attorney, I think to be fair to the chief justice, he tried not to assert a view or an outcome but simply to make the observation. He said this, "Whether this is more or less than desirable is not a matter for me to comment on. Whether it reflects the robust operation of a culture of justification within New South Wales is also a matter for individual opinion and comment." What the chief justice was trying to do was to open up a conversation and debate and get you and others to actually express a view about it. Do you have a view about at least 397 encroachments on just those three fundamental legal principles?

Ms GABRIELLE UPTON: Mr Shoebridge, as I said, I always welcome the views of the chief justice of this State. He is entitled to his view; I am entitled to my view and to listen to other views as well. The view that I may hold and that this Government may hold may be different from that of the chief justice. That is entirely appropriate. We both have different responsibilities and we will have different views at times. But, as I said, I do respect the chief justice's view. He serves our community well, as do all the members of our judiciary and magistracy every day to make sure that we have a justice system that is at arm's length from politics, at arm's length from myself as Attorney General. I do respect his views, but we may have different views at different times.

Mr DAVID SHOEBRIDGE: Madam Attorney, what steps have been taken to ensure that the Criminal Records Amendment (Historical Homosexual Offences) Act 2014 is being effectively implemented?

Ms GABRIELLE UPTON: I am happy to take that question on notice, Mr Shoebridge.

The CHAIR: That brings the questioning to an end. Attorney General, thank you very much. I think a few questions were taken on notice. Please be aware that you have 21 days to respond to those questions. I am sure the secretariat will be in contact with you to remind you of which questions were taken on notice. I declare this hearing closed.

(The witnesses withdrew)

The Committee proceeded to deliberate.