



**Gabrielle Upton**  
Attorney General

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## **BUDGET ESTIMATES 2016-2017**

### **Questions Taken on Notice**

#### **General Purpose Standing Committee No. 4**

##### **Question 1 (page 2 of transcript):**

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.

##### **ANSWER:**

The appointments of the members of the Board of Legal Aid NSW expired on 17 February 2016, with the exception of Bill Grant who is an ex officio member in his capacity as Chief Executive Officer of Legal Aid NSW.

**Question 2 (page 3 of transcript):**

The Hon. LYNDA 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.

**ANSWER:**

I am advised that the answer is no.

**Question 3 (pages 6-7 of transcript):**

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?

...

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.

**ANSWER:**

I am advised that the Director of Public Prosecutions has been conducting a review of this matter. It would be inappropriate for me to comment at this time.

**Question 4 (page 9 of transcript):**

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.

**ANSWER:**

I am advised by the Department of Justice that it sought advice from the NSW Bureau of Crime Statistics and Research on available statistics on finalised charges under section 316 of the *Crimes Act 1900 (NSW)*.

**Question 5 (pages 9-10 of transcript):**

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.

**ANSWER:**

I am advised that the Department of Justice is aware of one decision in the past five years in which the so-called *Ellis* defence was relied on by a religious institution to successfully defeat a claim for historical child sexual abuse.

**Question 6 (page 11 of transcript):**

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

Mr DAVID SHOEBRIDGE: The Serious Offenders Review Council?

The Hon. LYNDIA 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.

**ANSWER:**

I have appointed a new Chair and two new Commissioners to the Law Reform Commission.

The Minister for Corrections is responsible for appointments to the Serious Offenders Review Council.

**Question 7 (pages 13-14 of transcript):**

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.

**ANSWER:**

I am advised that as at 12 July 2016 there were approximately 5,000 private managers in New South Wales.



**Question 8 (page 14 of transcript):**

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.

**ANSWER:**

I am advised that four companies tendered.

**Question 9 (page 14 of transcript):**

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.

**ANSWER:**

I am advised that a private manager may nominate an alternative surety bond provider for the estate of the managed person. NSW Trustee and Guardian will accept an alternative provider that is approved by the Insurance Council, provides comparable security, and does not disadvantage the managed person.

**Question 10 (pages 14-15 of transcript):**

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.

**ANSWER:**

I am advised that the Request for Tender (RFT) was based on the template RFT from the NSW Treasury procurement website and that all appropriate procurement policies and procedures were followed.

**Question 11 (page 17 of transcript):**

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.

**ANSWER:**

I am advised that Victims Services will provide data profiles in relation to the reassessment of victims compensation claims in October 2016. The data profiles will be available at <http://www.victimsservices.justice.nsw.gov.au/>.

**Question 12 (pages 17-18 of transcript):**

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.

**ANSWER:**

I am advised that no eligible applicant would be worse off after their claim is reassessed. If the reassessed determination is greater than the initial determination, the individual will receive the difference between their initial and final determination. However, if the reassessed determination is less, they will not have to pay any money back.

**Question 13 (page 18 of transcript):**

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.

**ANSWER:**

I am advised that under the Victims Rights and Support Amendment (Transitional Claims) Regulation 2015, eligible victims had one year from 1 September 2015 until 31 August 2016 to apply for reassessment of their claim. There are currently no plans to amend the Victims Rights and Support Amendment (Transitional Claims) Regulation 2015.

**Question 14 (page 20 of transcript):**

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.

**ANSWER:**

I am advised that the Department of Justice provided information to stakeholders at the time the scheme commenced and information is available on the Department of Justice website at <http://www.justice.nsw.gov.au>. The Department of Justice continues to work with relevant stakeholders to assist in improving awareness of the scheme. The operation of the scheme has been monitored since its commencement and ensuring the scheme operates effectively is the subject of ongoing consideration.