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Attorney General

BUDGET ESTIMATES 2016-2017

Questions Taken on Notice

General Purpose Standing Committee No. 4

Question 1 (page 2 of transcript):

The Hon. LYNDA VOLTZ: I will give it a go. Mr Severin might know the answer, but I doubt it. I say that only because he is the acting secretary of the department and I know where he usually works. Since the Attorney General was appointed there have been 14 judicial appointments to the District Court, and 70 per cent of the appointees have a prosecution background. Is it the Government's policy that District Court judicial appointees should have a prosecution background?

Mr SEVERIN: That is a question entirely for the Attorney General to answer. I will take it on notice and refer it to the Attorney General for a response.

Mr DAVID SHOEBRIDGE: We get the same answer from the Attorney General. Your answer is almost a replica of the answer given by the Attorney General.

The Hon. LYNDA VOLTZ: You are obviously well briefed on this issue. Is there now a departmental policy with regard to these appointments?

Mr SEVERIN: There has been absolutely no indication to me about a departmental policy that in any way discriminates one way or the other in relation to the background of candidates considered for those appointments, other than those set out in law.

The Hon. LYNDA VOLTZ: Please take on notice whether 70 per cent of the appointees have a prosecution background. Obviously I am not asking for the names, but I would like a breakdown of the appointee's background.

Mr SEVERIN: I will take that question on notice.

ANSWER:

I am advised that the statutory requirements for qualification for office in the District Court are set out in the *District Court Act 1973* (NSW).

Information about the selection criteria and process for appointment of District Court judges is available on the Department of Justice website:

<http://www.careers.justice.nsw.gov.au/Pages/our-roles/judicial-careers/Judicial-careers.aspx>.

Question 2 (page 2 of transcript):

The Hon. LYNDIA VOLTZ: Which local court is being used in place of Camden Court House? Is it Moss Vale Court House?

Ms D'ELIA: The listings have been moved at the direction of the chief magistrate. I am not sure off the top of my head which matters have been moved to which courts.

The Hon. LYNDIA VOLTZ: I am told they have been moved to Moss Vale Court House, but that there is spare capacity at Campbelltown. Why have they been moved to Moss Vale rather than Campbelltown?

Ms D'ELIA: The chief magistrate decides where matters are heard.

The Hon. LYNDIA VOLTZ: Can you take on notice whether there is spare capacity at Campbelltown and whether court cases that would have been heard at Camden are now being heard at Moss Vale?

Ms D'ELIA: I will take that question on notice.

ANSWER:

Local Court sitting arrangements are a matter for the Chief Magistrate. A comprehensive list of all Local Court sittings is available on the Department of Justice website at http://www.localcourt.justice.nsw.gov.au/Pages/court_lists.html,c=y.aspx.

Question 3 (page 3 of transcript):

The Hon. LYNDA VOLTZ: So no review of section 20D of the Anti-Discrimination Act is being undertaken?

Mr THOMAS: There is no further review of that section of the Act. There was targeted consultation—

The Hon. LYNDA VOLTZ: There was a consultation?

Mr THOMAS: —towards the end of last year of those who made submissions to the parliamentary inquiry. However, there are no further consultations.

The Hon. LYNDA VOLTZ: Who undertook those consultations?

Mr THOMAS: The department.

The Hon. LYNDA VOLTZ: What was the outcome?

Mr THOMAS: We received 17 submissions from interested parties and they were subject to that consultation.

Mr DAVID SHOEBRIDGE: I think the question asked who were the targeted stakeholders.

Mr THOMAS: Those who had made submissions to the parliamentary inquiry.

Mr DAVID SHOEBRIDGE: The list, I think, is what we are after, Mr Thomas.

Mr THOMAS: Yes, I do not have that with me.

The Hon. SHAOQUETT MOSELMANE: Will you take it on notice?

Mr DAVID SHOEBRIDGE: Mr Thomas needs to verbalise his answers; nodding his head does not work for Hansard. The question was: Will you take it on notice?

Mr THOMAS: I will take it on notice.

ANSWER:

I am advised that the Department of Justice wrote to a number of individuals and organisations, including those who made a submission to the inquiry of the Legislative

Council Standing Committee on Law and Justice (Committee) into racial vilification law in NSW and who provided their contact details to the Committee. A list of those stakeholders is available at:

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?activetab=Reports&pk=2260#tab-submissions>

The NSW Government is continuing to consider the recommendations of the Committee in relation to this inquiry. We are committed to obtaining views from across the community to ensure that any reform strikes the right balance between preserving freedom of speech and protecting people from violence.

Question 4 (page 4 of transcript):

Mr DAVID SHOEBRIDGE: When you were looking at concerns about the Anti-Discrimination Act and issues of vilification, who from the Muslim community did you speak to?

Mr THOMAS: I do not recall who those 17 parties were.

Mr DAVID SHOEBRIDGE: Do you know of anybody from the New South Wales Muslim community who was reached out to in the course of that consultation?

Mr THOMAS: I cannot answer that question. I do not have the list of individuals in front of me.

Mr DAVID SHOEBRIDGE: Could you provide on notice what consideration was given to reaching out specifically to members of this State's Muslim community in seeking consultation on changes to the Anti-Discrimination Act?

Mr THOMAS: I will take that on notice.

ANSWER:

See response to question 3 above.

Question 5 (page 5 of transcript):

Ms TORRES: Yes, the data is available on the Victims Services website in relation to statistical analysis for the Victims Support scheme, community engagement and awareness work by Victims Services and multicultural profile.

Mr DAVID SHOEBRIDGE: How many victims who were eligible was the department unable to contact?

Ms TORRES: That is not in this listing, I am afraid. I can take that on notice. They were 15,143 people who lodged 16,000 applications. I am told 771.

Mr DAVID SHOEBRIDGE: Who were unable to be contacted?

Ms TORRES: Yes.

Mr DAVID SHOEBRIDGE: Of the 771 who were unable to be contacted, did any of them make an application for reassessment?

Ms TORRES: That I cannot answer at this stage, but I will come back to you on notice.

ANSWER:

I am advised that information about the reassessment of victims compensation claims is in the Victims Services data profiles published at:

http://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs_publications_brochures_reports/vs_dataprofiles.aspx

Question 6 (page 7 of transcript):

The Hon. SHAOQUETT MOSELMANE: I will just jump in on a couple of other matters that my colleague raised earlier about the appointments of District Court judges. By appointing 70 per cent of the judges who had a defence or a prosecution background, is not the Attorney General effectively restricting the pool from which the court can choose?

Mr SEVERIN: I would have to take that on notice. But a District Court judge is a District Court judge and can adjudicate across the whole spectrum of the law as it is dealt with by the District Court.

The Hon. SHAOQUETT MOSELMANE: My understanding is that in the District Court there is a significant civil jurisdiction and you would expect that a significant number of judges or appointees would have a civil law background, would you not?

Mr SEVERIN: Again, I need to take that on notice.

The Hon. SHAOQUETT MOSELMANE: You can take this one on notice as well and tell us whether there is a pattern, whether historically other Attorneys General have decided to appoint judges who have a prosecution background as opposed to a balance of a prosecution and civil background to the District Court.

Mr SEVERIN: I will take that on notice.

ANSWER:

See response to question 1 above.

Question 7 (page 8 of transcript):

Mr DAVID SHOEBRIDGE: I have been advised that the NSW Trustee is in the process of implementing a call centre to take over the responsibilities of individual managers and individual case managers. Are you aware of this?

Mr SEVERIN: No, I am not. I would have to take that on notice.

Mr DAVID SHOEBRIDGE: Given the vulnerable people that the Trustee deals with and the nature of their caseload, do you think it is appropriate that the responsibility of individual managers be handed over to a call centre?

Mr SEVERIN: Again, I can answer in a very general context and that is that it is my understanding that very careful consideration is given to ensuring that every citizen who accesses the Trustee and Guardian services, who is under the jurisdiction of the Trustee and Guardian, that their needs are very carefully considered and appropriately dealt with. However, the detail of your question in relation to the link to the call centre I will take on notice.

ANSWER:

I am advised that:

Currently, over 80% of all client interactions across NSW Trustee and Guardian (NSWTG) are by phone.

NSWTG has been changing the way it delivers services to respond to client feedback and better protect and support vulnerable people. This transformation includes consolidating NSWTG's branch network and establishing service centres. The service centres will carry out the range of services previously carried out by branches.

Further information about the benefits of the new NSWTG operating model, including service centres, is available at: <http://www.tag.nsw.gov.au/transformation.html>

Question 8 (page 8 of transcript):

Mr DAVID SHOEBRIDGE: I asked the Attorney General last time she was here:

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?

The Attorney General opted to take that on notice and then answered:

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).

What was the advice you received from BOCSAR?

Mr THOMAS: I do not have that advice with me, but I will endeavour to provide you with the numbers that we got from the Bureau of Crime Statistics.

ANSWER:

I am advised that the NSW Bureau of Crime Statistics and Research (BOCSAR) provided the Department of Justice with court statistics showing the number of finalised charges under section 316 of the *Crimes Act 1900* (NSW) in recent years.

Question 9 (page 8 of transcript):

Mr DAVID SHOEBRIDGE: Questions were also asked and taken on notice about the Ellis defence. Mr Cappie-Wood and the Attorney took on notice a question on how many occasions the Ellis defence has been used in New South Wales. First of all, are you aware of what the Ellis defence is?

Mr THOMAS: Yes.

The Hon. TREVOR KHAN: He said yes, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I did not hear. There is quite a distance: You are much closer to Mr Thomas than I am.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: Mr Thomas, the answer that eventually came was:

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.

First of all, what was that decision?

Mr THOMAS: Again, Mr Shoebridge, I do not have it with me—unless one of my colleagues does.

Mr DAVID SHOEBRIDGE: Again, did you not think that this would be the nature of the supplementary questions? Did you not think to prepare for this hearing?

Mr THOMAS: I do not have that case with me. Sorry, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Would you provide that on notice?

Mr THOMAS: Yes, we will.

ANSWER:

I am advised that the decision was delivered in *PAO v Trustees of the Roman Catholic Church for the Archdiocese of Sydney & Ors* [2011] NSWSC 1216; [2011] NSWSC 355.

Question 10 (page 9 of transcript):

The Hon. LYNDA VOLTZ: I asked the Attorney General about board appointments under her portfolio that were inquorate. Other than the Law Reform Commission, were there any other boards in the Attorney General's purview that were inquorate because there had been no appointments to them?

Mr SEVERIN: Sorry, I do not have that information available. I need to take that on notice, unless any of my colleagues can answer.

ANSWER:

The positions on the Anti-Discrimination Board, including the President, are expected to be filled soon.

I am advised that other boards within my portfolio as Attorney General are able to meet their quorum requirements set out in their legislation.

Question 11 (page 9 of transcript):

Mr DAVID SHOEBRIDGE: The Chief Magistrate of the Children's Court, gave evidence on Tuesday of last week to a child protection hearing in which he advised the Committee that he does not have the power to appoint magistrates to the Children's Court: that power rests only with the Chief Magistrate of the Local Court. Is that your understanding of the current law, Mr Thomas, Ms Torres and Ms D'Elia?

Ms D'ELIA: The magistrates of the Children's Court are appointed to the Local Court, and it is the Chief Magistrate who then appoints them to the Children's Court.

Mr DAVID SHOEBRIDGE: Has the Government received a request from the Chief Magistrate of the Children's Court to change that arrangement so that it is the Chief Magistrate of the Children's Court who chooses the magistrates for his court—or her court, as the case may be?

Ms D'ELIA: I would have to take that on notice. I am not aware of correspondence between the Children's Court and the Government.

Mr DAVID SHOEBRIDGE: Is the Government considering a change to allow for the Chief Magistrate of the Children's Court to be the officer responsible for choosing magistrates for his court as opposed to the Chief Magistrate of the Local Court? You probably want to take that on notice.

Ms D'ELIA: I was just about to say I cannot answer that and I would have to take it on notice.

ANSWER:

Children's Magistrates are appointed in accordance with section 7 of the *Children's Court Act 1987* (NSW).

As Attorney General, I consider any proposal put forward by the President of the Children's Court or the Chief Magistrate.

Question 12 (page 10 of transcript):

Mr DAVID SHOEBRIDGE: In the course of the budget estimates, I asked the following of the Attorney General:

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

The Attorney took it on notice and then provided the following non-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.

What "ongoing consideration"?

Mr SEVERIN: Again, I am not across the detail of the particular issue, and neither are any of my colleagues, so I will take that on notice and refer it back to the Attorney General.

Mr DAVID SHOEBRIDGE: Again, did none of you prepare for this supplementary budget estimates hearing? Did you not read the non-answers that were given?

Mr SEVERIN: We certainly read the answers that were provided.

Mr DAVID SHOEBRIDGE: Which "relevant stakeholders" is the department working with in terms of implementing what was celebrated at the time as being a fundamental improvement and necessary reform for Justice in New South Wales?

Mr SEVERIN: I need to identify that and take that on notice.

Mr DAVID SHOEBRIDGE: Whereabouts on the website of the Department of Justice do I find that information?

Mr SEVERIN: I think the link to the Justice website was provided in the answer.

Mr DAVID SHOEBRIDGE: No, it was not. Do you have the answers there?

Mr SEVERIN: I do have the answers.

Mr DAVID SHOEBRIDGE: Please look at them now. Do you believe that it is grossly disrespectful of the Parliament for the Executive to simply provide the standard Justice website, that is, justice.nsw.gov.au for such an important question about an important historical reform that has been asked of the Executive? Do you accept that that is grossly disrespectful of Parliament?

Mr SEVERIN: I understand what you are saying. I do not accept that that is grossly disrespectful of Parliament. However, in response to your question I will ensure that the direct link to that particular part of the website is provided in the response that we have taken on notice.

ANSWER:

I am advised that information on the extinguishment scheme can be found at the following webpage on the Department of Justice website:

<http://www.justice.nsw.gov.au/Pages/legal-info-services/Historical-homosexual-offences.aspx>

Question 13 (page 10 of transcript):

The Hon. LYNDA VOLTZ: Ms Torres, you said that the Antidiscrimination Board had no appointments. Were there any other boards? Was that the only one under the Attorney General?

Ms TORRES: That is the only one I am aware of.

The Hon. LYNDA VOLTZ: Will you take that question on notice and inform the Committee whether any other appointments are still to be made?

Ms TORRES: Yes.

ANSWER:

See response to question 10 above.