PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS

Friday, 8 September 2017

Examination of proposed expenditure for the portfolio area

ATTORNEY GENERAL

UNCORRECTED PROOF

The Committee met at 2.00 p.m.

MEMBERS

The Hon. Robert Borsak (Chair)

The Hon. David Clarke
The Hon. Catherine Cusack
The Hon. Shaoquett Moselmane
The Hon. Mark Pearson
The Hon. Adam Searle
Mr David Shoebridge
The Hon. Lynda Voltz

PRESENT

The Hon. M. Speakman, *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: Welcome to the public hearing for the inquiry into the budget estimates 2017-18 for the Attorney General. Before we commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to elders, past and present, of the Eora nation, and extend that respect to other Aboriginals present. I welcome Attorney General Speakman and accompanying officials to this hearing. 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 via the parliamentary website. 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 would also remind media representatives that you must take responsibility for what they publish about the Committee's proceedings. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could answer if only 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 to refer directly to your advisers seated at the table behind you.

Transcripts of this hearing will be available on the web from tomorrow morning. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing. All witnesses from departments, statutory bodies 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 would also like to remind Mr Cappie-Wood and Mr Diakos from the Department of Justice that they do not need to be sworn as they were sworn at an earlier budget estimates hearing. For all other witnesses, I ask that you each in turn, first, state your full name, position, title and agency; and, secondly, swear either an oath or an affirmation.

KATHRINA LO, Deputy Secretary, Justice Services, Department of Justice, affirmed and examined

KATE CONNORS, Acting Deputy Secretary, Strategy and Policy, Department of Justice, affirmed and examined

CHRISTOPHER D'AETH, Acting Deputy Secretary, Court and Tribunal Services, Department of Justice, affirmed and examined

BRENDON THOMAS, Chief Executive Officer, Legal Aid Commission, Department of Justice, sworn and examined

The CHAIR: I declare the proposed expenditure for the portfolio of Attorney General open for examination. The questioning of the portfolio of Attorney General will run from 2.00 p.m. to 4.00 p.m. 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. ADAM SEARLE: Attorney, the Royal Commission into Institutional Responses to Child Sexual Abuse has recommended that Catholic priests hearing confessions be legally obliged to report admissions made to them about child sexual assault. Will your Government legislate to implement that recommendation?

Mr MARK SPEAKMAN: About a week or so ago the New South Wales Government issued a discussion paper to elicit stakeholder feedback on the various recommendations of the Commonwealth royal commission, one of which concerns the confessionals that Catholic priests take, or indeed any priest that takes a confession. We will be considering those recommendations very closely. We will be eliciting feedback from all relevant stakeholders and, once we have done that, we will come forward with a package. But I will not pre-empt at this stage what the outcome of that consultation from that discussion paper might be.

The Hon. ADAM SEARLE: What is the time frame that you envisage for these steps to be taken?

Mr MARK SPEAKMAN: I would envisage that we would be looking at legislation in the budget session next year. That is not a promise or an undertaking, but that is my best expectation at the moment.

The Hon. ADAM SEARLE: I understood that was the position. Attorney, you have had a lot of notice of this issue coming up. In fact, in answers to questions on notice about section 316 of the Crimes Act lodged by the shadow Attorney you specifically referred in your response to the royal commission review—you knew this issue was coming. Why were you not able to do that consultation around this issue in advance of the royal commission recommendations as this is not a new issue?

The Hon. TREVOR KHAN: He was waiting for a recommendation from the commission.

Mr MARK SPEAKMAN: These are incredibly sensitive issues. The issue you just raised, on the one hand you have the Catholic Church, which regards it as fundamental that the confidentiality of the confession is respected. On the other hand, you have a terrible legacy of institutional abuse in many institutions, including the Catholic Church, and the understandable view of victims and victim advocacy groups that that confidentiality can, in the circumstances, no longer be upheld. I think it is important for the New South Wales Government, which incidentally is the first State or Territory government in Australia to respond to the royal commission, that we understand all the views of all stakeholders and come to the right decision.

The Hon. ADAM SEARLE: Section 316 of the Crimes Act requires the consent of the Attorney General for certain categories, including that clergy can be prosecuted for failing to disclose a serious indictable offence. In your short time as Attorney General, have you ever been called on to exercise that discretion?

Mr MARK SPEAKMAN: Not that I can recall, no.

The Hon. ADAM SEARLE: In what circumstances would you grant or withhold consent? Is there a policy by which the Attorney General informs himself of these matters?

Mr MARK SPEAKMAN: It has not come across my desk. I certainly have not formulated such a policy. Whether previous Attorneys General have formulated some guidelines or policies, I am not aware.

The Hon. ADAM SEARLE: Is your departmental secretary aware?

Mr CAPPIE-WOOD: No.

The Hon. ADAM SEARLE: You are not aware, or there is no policy?

Mr CAPPIE-WOOD: There is no current policy on this matter.

The Hon. ADAM SEARLE: Does the fact that disclosure was made in a confessional mean that you would automatically refuse consent to a prosecution for withholding that disclosure or how would you go about exercising that function? I am happy for you to take that question on notice.

Mr MARK SPEAKMAN: I will answer it this way: At the moment that is hypothetical because no such application or issue has come across my desk. If and when it were to do so, then obviously it would be something I would give careful consideration to.

The Hon. ADAM SEARLE: Perhaps I could ask, through you to the secretary: Has that discretion been exercised by previous Attorneys General over the past two years?

Mr CAPPIE-WOOD: Not to my knowledge.

The Hon. ADAM SEARLE: Attorney, in your comments in reply to the second reading debate on the Justice Legislation Amendment Bill you appeared to be attacking, or at least questioning, the notion of specialist courts—at least in some circumstances. Is that attitude the reason why you will not fund the Downing Centre Drug Court properly or expand it to Dubbo or Tamworth?

Mr MARK SPEAKMAN: Could you repeat the question please?

The Hon. ADAM SEARLE: I am asking why you have not funded, or will not fund, the Downing Centre Drug Court properly or expand that operation to Dubbo or Tamworth.

Mr MARK SPEAKMAN: You are not asking me about my comments in the second reading speech in reply, but rather a standalone question about funding the drug court in Dubbo?

The Hon. ADAM SEARLE: As to the views that you expressed in reply, are they the reasons why you will not fund these measures, because you have queries or reservations about so-called "specialist courts"?

Mr MARK SPEAKMAN: I think this is what you are referring to. In reply, I quoted from the Chief Justice about some remarks that he made at the Pacific Judicial Conference, where he observed that specialist courts:

> … run the risk of creating insularity, jurisdictional overlap and fragmentation … There is a risk that specialised courts will 'evolve into a kind of archipelago of islands of expertise separated by a sea of unknowing'.

The Hon. ADAM SEARLE: I read that speech too.

Mr MARK SPEAKMAN: In evoking those comments, I was not suggesting some absolute or invariable rule that we should not be looking at specialist courts, but rather observing that you should approach that very carefully and cautiously lest the problems that His Honour identified emerge. That said, in the case of the Drug Court, we know that the Drug Court that we have at the moment, principally at Parramatta but also in the city and at Toronto, appears to work pretty well.

The Hon. ADAM SEARLE: It does.

Mr MARK SPEAKMAN: We know from NSW Bureau of Crime Statistics and Research analysis back in 2007 that those who go through that process appear to have a lower rate of reoffending than others. That said, I do not understand that the Bureau of Crime Statistics and Research analysis involved a cost-benefit analysis of a separate Drug Court. In other words, it identified the efficacy and the benefits of a standalone Drug Court to not just the legal process involved but also counsellors, drug treatment programs and others. I am interested in whether or not we can expand the operation of the Drug Court. I will consider any possible expansion—for example, in Dubbo—when I can.

The Hon. ADAM SEARLE: The Downing Centre Drug Court is restricted only to defendants who live within the boundaries of the City of Sydney, and I think it is restricted to about 40 participants at any one time. Given the undoubted need for that kind of service, that restrictive nature is absurd, is it not? Given those positive outcomes, the case for expansion is overwhelming, is it not?

Mr MARK SPEAKMAN: You have to look at that in this context: If an accused does not go through the Drug Court it is not as if they are dealt with in some sterile, legalistic way. There are other things we do—for example, we have invested $197 million in drug and alcohol services, including prevention and harm reduction programs across New South Wales. Commonly, those who are dealt with by the judicial system and have a drug and alcohol problem will be put into diversionary programs such as the MERIT scheme. The Drug Court is one way of approaching an offender's drug and alcohol problem, but it is not the only way of doing so.

The Hon. ADAM SEARLE: No, but as you indicated, the evidence to date shows that it does have a good set of outcomes and in many respects they are better than those of the general criminal justice system. What kind of indicia or evidence would you need to be persuaded of to expand it to places such as Dubbo, Tamworth or Wollongong, where there is also undoubted need?

Mr MARK SPEAKMAN: As I said before, you have to look at not only the benefit of a drug court compared with some other approach but also the cost. It is an intensive approach in terms of the physical resources you need, as you do not just need a courtroom. It is an intensive approach in terms of the professionals involved, such as drug and alcohol counsellors. In weighing up any decision to expand the Drug Court the Government would take account of those factors but also look at the efficacy of current programs such as the MERIT program I referred to—the Magistrates Early Referral Into Treatment program—which deals with, among others, offenders with drug problems who are eligible for bail and helps them address drug problems that may contribute to their criminal behaviour. Under that scheme their progress and treatment can be considered during final hearing and sentence.

The Hon. ADAM SEARLE: What discussions, if any, have you had with the member for Dubbo about the Drug Court opening in Dubbo?

Mr MARK SPEAKMAN: The member for Dubbo is a very vocal and strong advocate for his community on many fronts and I understand he is quite supportive of at least some sort of pilot drug court in Dubbo.

The Hon. ADAM SEARLE: Have you had any discussions with the member for Tamworth about the Drug Court opening in Tamworth?

Mr MARK SPEAKMAN: I may have but I cannot recall at the moment.

The Hon. ADAM SEARLE: Do you recall if you have had any other discussions with any of your parliamentary colleagues about drug courts?

Mr MARK SPEAKMAN: I have to take that on notice.

The Hon. ADAM SEARLE: I am happy for you to do so. The Government has had a proposition before it for over a year from the District Court to establish a Koori court. When do you envisage responding and what is causing the delay?

Mr MARK SPEAKMAN: I had a proposal from the Chief Judge in relation to that. There is, of course, a Youth Koori Court in Parramatta, part of the Children's Court. The Chief Judge has proposed a hybrid between how that Youth Koori Court operates, on the one hand, and the Drug Court, on the other hand. It is not only looking at a specialist way of proceeding between a guilty plea and sentence but also looking at judicial intervention post sentence. We are considering that proposal at the moment. I have discussed it with the Chief Judge. I have also discussed it with Judge Yehia, who is a vocal advocate for that from the District Court. I have had a discussion with the Bar Association about it as well. We are looking to evaluate that proposal and see whether it can be piloted. I cannot put a definitive time frame on when that might be but my intention is to make a decision in time for the next financial year.

The Hon. ADAM SEARLE: I do not want to put words in your mouth, but do I understand that your view is generally a positive one, subject to things stacking up?

Mr MARK SPEAKMAN: In principle, I can see the merits of that approach. We have not yet had a formal evaluation from Western Sydney University on the Youth Koori Court, but all the indications from stakeholders are fairly positive. In terms of engaging the Indigenous community in the judicial process, it is pretty positive that they can feel some confidence in what happens. I am very interested in the proposal and hopefully will be able to make a decision in the first half of next year.

The Hon. ADAM SEARLE: Do you have a time frame as to when you expect to receive the evaluation? I am happy for you to take that on notice. These are not trick questions.

Mr MARK SPEAKMAN: Imminently, in my understanding, but I will take it on notice.

The Hon. ADAM SEARLE: With the Koori court in the Children's Court at Parramatta, as I understand it Judge Johnstone developed that process himself—

Mr MARK SPEAKMAN: Yes.

The Hon. ADAM SEARLE: —using the existing resources of his court. What additional assistance, if any, has your Government provided to that Children's Court?

Mr MARK SPEAKMAN: Among other things we have provided, in June 2017 I announced a $220,000 funding boost for Marist Youth Care to assist young Aboriginal offenders who appear before the Youth Koori Court. It is funded from Children's Court resources but I do not believe there is any problem or issue with that.

The Hon. ADAM SEARLE: Your Government referred the issue of a statutory cause of action for serious invasions of privacy to a Council of Australian Governments [COAG] working group. At the October meeting of that council a working party led by New South Wales was established but there was no reference to that idea in the communiqué of the council's last meeting, which I think was in May. Does that mean that proposal or that reference from New South Wales is now dead at a national level?

Mr MARK SPEAKMAN: I do not know that it is dead.

The Hon. ADAM SEARLE: It is not very healthy.

Mr MARK SPEAKMAN: My perception is that there does not seem to be a lot of enthusiasm from other jurisdictions for it.

The Hon. ADAM SEARLE: It is only South Australia and Tasmania that exhibited any interest apart from New South Wales. Is that correct?

Mr MARK SPEAKMAN: I cannot recall precisely which jurisdictions—

The Hon. ADAM SEARLE: Could you take that on notice?

Mr MARK SPEAKMAN: I could take that on notice. I accept the general proposition that support was underwhelming.

The Hon. ADAM SEARLE: That reference was an effort by your Government to kill that idea off by kicking it into touch, was it not?

Mr MARK SPEAKMAN: Not at all. I think that reference preceded my appointment as Attorney General, but we do not refer things to COAG with the intention of kicking them into touch. We aim to score goals but it is a team effort. If you only have a couple of players on the field, you do not necessarily get a try—or a goal, depending on your football code.

The Hon. ADAM SEARLE: Given that the prospects for a national scheme do not appear to be very healthy, will you now support the findings of two Law Reform Commission reports and the unanimous report of a New South Wales parliamentary committee and introduce a statutory cause of action for serious breaches of privacy in New South Wales?

Mr MARK SPEAKMAN: Before I became Attorney General, the view taken by the Government was that if there were to be such a statutory cause of action it ought to be a national or a Federal one, or uniform rather than New South Wales going it alone. But I am happy to take that question on notice.

The Hon. ADAM SEARLE: The Government has introduced legislation that in a sense creates a criminal offence. That is a pretty serious step to take, and the Opposition supported that.

Mr MARK SPEAKMAN: Are you referring to intimate images?

The Hon. ADAM SEARLE: Yes, the intimate images legislation. In one sense, you have not waited for a national scheme. You are obviously convinced that some kind of action was required. Why the differential for a civil cause of action?

Mr MARK SPEAKMAN: There are guidelines for State and Territory laws in that respect that were agreed at the Law, Crime and Community Safety Council meeting back in May, I think. We did not jump the gun and go ahead unilaterally with our own legislation; we waited until there was a consensus across jurisdictions about the framework within which each State or Territory would legislate. Once that framework was agreed, within a couple of days we announced what we were doing.

The Hon. ADAM SEARLE: One of the features of that legislation is that post conviction there is a statutory power to take down the offending material, but in a sense that is putting the cart before the horse. That is long after the damage has been done. The unanimous recommendation of the parliamentary inquiry was that it is important to be able to intervene early and swiftly without putting a victim through the trauma of any kind of legal proceeding to take down that material. Your package has not done that. Will you at least revisit that one aspect?

Mr MARK SPEAKMAN: The package does include take down powers—

The Hon. ADAM SEARLE: But only post conviction.

Mr MARK SPEAKMAN: —where a court can order an offender to take reasonable steps to have material taken down. The difference is that if material is on the Internet it is not only in New South Wales. If you can see it anywhere in the world, the service provider or host computer could be anywhere in the world. Those issues are best dealt with at a national level.

The Hon. ADAM SEARLE: Of course, but when the offender is here in New South Wales they are subject to court orders here.

Mr MARK SPEAKMAN: As you probably know, the Commonwealth has announced that it is looking at its own civil penalties and related regime, and we expect that those take down powers will be dealt with in the Commonwealth legislation. It is best done at a national level rather than using a piecemeal approach.

The Hon. ADAM SEARLE: I think we can all agree that national action is desirable where you can get agreement to do so. However, does that mean that it is your view as Attorney General or the view of the Government that where you cannot secure a national consensus you will just put it into the too-hard basket and say that you do not need to do anything?

Mr MARK SPEAKMAN: No. My expectation is that there will be national laws dealing with this, and therefore there will not be a gap that needs filling.

The Hon. LYNDA VOLTZ: There is already.

Mr MARK SPEAKMAN: If, contrary to my confident expectations, that were not to happen, I would certainly revisit it.

The Hon. ADAM SEARLE: I understand there is no provision in the legislation that allows for a justice of the peace whose appointment has lapsed to be reappointed, even if the lapse is due to an error by the department. Is that correct?

Mr CAPPIE-WOOD: I will have to check the technicalities. I will take that question on notice.

The Hon. ADAM SEARLE: Okay. As I understand it, when somebody's appointment comes up for renewal, the department sends them some paperwork. However, where the department fails to do so and the appointment lapses, they have to go back to the bottom of the deck and play from scratch.

Mr CAPPIE-WOOD: We have introduced a number of online options, including the capacity to seek reappointment online, obviating the need for us to send out additional paperwork. Enhancements recently brought into play should overcome some of these constraints.

The Hon. ADAM SEARLE: I have a case of a person who was a justice of the peace [JP] for some decades and whose appointment lapsed due to an admitted error by your department. If I provide you with the details, could you look into that to see whether or not the situation can be remedied?

The Hon. TREVOR KHAN: You did not have to wait until budget estimates to do that, did you?

The Hon. ADAM SEARLE: It was a good opportunity.

The Hon. SHAOQUETT MOSELMANE: A good approach.

Mr DAVID SHOEBRIDGE: In 2015, two specialist District Court judges were appointed to deal with child sexual assault cases. Has your department or has the court implemented review structures to ensure that those two judges are able to deal with the undoubtedly enormous emotional strain of dealing so consistently with that type of case?

Mr CAPPIE-WOOD: I am in regular communication with the Chief Judge. I met with him this morning to discuss matters before the court and manage them. We have discussed this issue a number of times in terms of managing it and ensuring that there is appropriate support. The Chief Judge also keeps a close eye on the distribution of cases because clearly it is not only those two judges who carry a burden in this area. It is a general concern as well as being specific to those two judges.

Mr DAVID SHOEBRIDGE: I acknowledge the general concern. However, with such an intense caseload involving unrelentingly traumatic matters, are there any formal measures in place to ensure the welfare of the judges who have been given such an extremely important but trying role?

Mr CAPPIE-WOOD: I agree that it is a trying role. There is ongoing dialogue to ensure that the Chief Judge looks at not only the listing practices but also the health and wellbeing of all judges, including those two specific judges. There is no formal review process or anything of that nature, but there is a strong focus on

ensuring that all judges are given appropriate care and attention. Up to 30 per cent of the total listings before the court are sexual assault or child sexual assault-related matters.

Mr DAVID SHOEBRIDGE: Attorney, given there are no formal structures in place and given that anybody who is aware of the nature of the jurisdiction could understand the mental stress and emotional trauma it involves, would you review the current oversight mechanisms to see whether the arrangements are satisfactory?

Mr MARK SPEAKMAN: I will take that question on notice.

Mr DAVID SHOEBRIDGE: When you speak to practitioners in this area, particularly prosecutors, they say that the two specialist judges conduct quicker, clearer and more practical trials in this area. Are there any plans to appoint additional judges with this kind of expertise given the surge in these cases in the District Court?

Mr MARK SPEAKMAN: I do not have any imminent plans to do that, but I will keep monitoring the situation and take the Chief Judge's advice.

Mr DAVID SHOEBRIDGE: You said that you will keep monitoring the situation. What monitoring have you done to date to check the efficacy of these two appointments?

Mr MARK SPEAKMAN: You do not necessarily need a formal monitoring process beyond the process that Mr Cappie-Wood described. I have periodic discussions with the heads of jurisdictions, including the District Court. That is an opportunity for the Chief Judge to raise concerns or to make suggestions about how he conducts his lists.

Mr DAVID SHOEBRIDGE: Do you know what, if any, mechanisms the Chief Judge has in place to ensure that the welfare of these two judges is being considered and whether or not that kind of expertise would be useful?

Mr MARK SPEAKMAN: I will have to take the details of the answer on notice.

Mr DAVID SHOEBRIDGE: You answered some questions asked by the Hon. Adam Searle about section 316. Do you recall that?

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: Previous attorneys general have delegated the decision-making power under section 316 to the Director of Public Prosecutions [DPP]. Have you put in place any delegations in relation to the decision-making under section 316; if not, do you intend to do so?

Mr MARK SPEAKMAN: I have a long list of delegations and I will check whether that includes section 316 delegations.

Ms CONNORS: It does.

Mr MARK SPEAKMAN: I am told that it does.

Mr DAVID SHOEBRIDGE: So when you gave a series of answers about how you have exercised the discretion and the like, in fact you will not be exercising it? None of it lies with you; it all lies with the DPP. Is that correct?

Mr MARK SPEAKMAN: If the decision-making power under section 316 has been delegated then the answer is yes.

Mr DAVID SHOEBRIDGE: You have just been told that it has been delegated.

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: So are we to understand that all of the answers you gave about how you would exercise discretion are largely irrelevant because you have handed over that discretion to the DPP?

Mr MARK SPEAKMAN: It appears that they are academic if the matter has been delegated to the DPP.

Mr DAVID SHOEBRIDGE: What, if any, guidelines are in place for exercising that discretion when the DPP is reviewing matters under section 316?

Mr MARK SPEAKMAN: I am not aware of any guidelines, nor am I or those with me aware of any such cases having come before the DPP. To answer your question fully, I will take it on notice.

Mr DAVID SHOEBRIDGE: And with that I seek the details of any matters that have been referred to the DPP and details of any guidelines or other policies in place to structure the discretion.

Mr MARK SPEAKMAN: Certainly.

Mr DAVID SHOEBRIDGE: Given that the power has been delegated to the DPP, do you not think it would be appropriate to ensure that there are guidelines in place and some kind of structure for the exercise of the discretion? Or are you satisfied with handing over an unformed discretion to the DPP?

Mr MARK SPEAKMAN: This whole area is under review because we are looking at the response to institutional child abuse. This is something we can take into consideration when we are reviewing the response to our discussion paper on that issue.

Mr DAVID SHOEBRIDGE: On the one hand you are weighing up the interests of, say, the Catholic Church and its priests and hierarchy, and on the other hand you have children who are being criminally sexually assaulted—tragically, on a number of occasions repeatedly—by priests who have given confessions about previous assaults. Surely you have a view about how that discretion should be exercised to prioritise the needs of children.

Mr MARK SPEAKMAN: Everything we do in the criminal justice space has victim protection and community safety at its forefront. What guidelines there might be that are appropriate for a Director of Public Prosecutions to exercise at his discretion are something that I will take on notice.

Mr DAVID SHOEBRIDGE: I took your earlier answers to the Hon. Adam Searle to say that on the one hand you have got the interests of the Catholic Church and then on the other hand you have the interests of children who are being criminally sexually assaulted by priests. It seemed that you were weighing them up as if they are equal. They are not equal, are they? Children's interests must dominate.

Mr MARK SPEAKMAN: Hang on. My recollection is that I was answering a question about what the Government might do to respond to the recommendations of the royal commission. I do not think I made those comments in the context of how I or, under delegation, the DPP might exercise the prosecutorial discretion.

The Hon. CATHERINE CUSACK: It is about consultation. He needed to consult both.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: Do you agree with my proposition that when you are looking at the discretion under section 316 there should be a clear guidance given to anyone you delegate that power to that the interests of victims and the interests of children must dominate the interests of institutions such as the church?

Mr MARK SPEAKMAN: As I said before, throughout the entire criminal justice system our Government places community safety and victim protection at the forefront of everything we do.

Mr DAVID SHOEBRIDGE: Is that in your delegation to the DPP?

Mr MARK SPEAKMAN: That is the general approach throughout the Justice Cluster.

Mr DAVID SHOEBRIDGE: Are you saying the DPP has to exercise that policy position when forming the decision under section 316?

Mr MARK SPEAKMAN: No. This is basically hypothetical because, as I understand it, no such proposed prosecutions have arisen. You are asking me to speculate about a fact situation that, subject to checking and answering fully, has not arisen.

Mr DAVID SHOEBRIDGE: Surely your job as the first law officer in the State is to get the law right before the case lands on the desk of the DPP—is that not right?

Mr MARK SPEAKMAN: My job as first law officer is to uphold the justice system in New South Wales to the extent that is part of an executive responsibility and, if there is a need for reform of the law, to advocate that within Government so that the appropriate legislation is before Parliament.

Mr DAVID SHOEBRIDGE: But your job is to make sure that policies and laws are in place so that when cases come before our criminal justice system they are decided in a way that protects community safety and is ethical and forward-looking.

Mr MARK SPEAKMAN: That is correct.

Mr DAVID SHOEBRIDGE: Why will you not put policies in place or direct the DPP to come up with some policies or guidelines to direct the discretion under section 316 to prioritise victims?

Mr MARK SPEAKMAN: As I said before, we are looking at the appropriate response to the royal commission in relation to criminal law reform for child sex abuse generally. These sorts of issues will arise in that. Bear in mind too that the DPP does have general prosecution guidelines.

Mr DAVID SHOEBRIDGE: Two days ago you said you had spoken with the Director of Public Prosecutions and sought an urgent brief on the circumstances surrounding the tragic case of Lynette Daley.

Mr MARK SPEAKMAN: I spoke to him yesterday.

Mr DAVID SHOEBRIDGE: When you spoke to the DPP, what matters did you raise with him?

Mr MARK SPEAKMAN: I have asked the DPP for a brief on the background to decisions not to prosecute prior to the ultimate prosecution and the reasoning for that.

Mr DAVID SHOEBRIDGE: Have you asked for a review of those decisions in light of the fact that the jury convicted after only about 32 minutes of deliberations?

Mr MARK SPEAKMAN: I have not asked for a review by anyone. What I have done is asked the DPP to provide me with a brief as to the process that was undertaken in arriving at the decisions not to prosecute and the reasons for those decisions.

Mr DAVID SHOEBRIDGE: Is this the first time you have requested the DPP to brief you on a decision not to prosecute?

The Hon. TREVOR KHAN: He has been in the job for about three months.

The CHAIR: Order!

Mr MARK SPEAKMAN: May I take that on notice? I do not recall any at the moment but when I refresh my memory—

Mr DAVID SHOEBRIDGE: Sitting there now, you cannot recall any other instances but you are going to review your records—I understand that. Do you know if the previous Attorney General made any representations after the *Four Corners* report in 2016?

Mr MARK SPEAKMAN: My understanding is that at some stage she requested that the DPP review the matter. I am not sure whether that was before or after the *Four Corners* story.

Mr DAVID SHOEBRIDGE: Can I ask you on notice to provide the Committee with details about the timing and content of that request?

Mr MARK SPEAKMAN: Okay.

Mr DAVID SHOEBRIDGE: Attorney, University of Technology Sydney Associate Professor Thalia Anthony has said that Ms Daley's case was part of a larger pattern of Aboriginal women not being protected by the courts. Do you accept that there may some validity to those concerns?

Mr MARK SPEAKMAN: I am happy to receive submissions about any systemic problem that there may be with protecting Aboriginal women. We know in particular that Aboriginal women are probably more likely than non-Indigenous women to be victims of domestic violence. We are certainly cognisant of the need to protect Indigenous women in the domestic violence space.

Mr DAVID SHOEBRIDGE: Ms Daley's case was not domestic violence.

Mr MARK SPEAKMAN: No, it was not.

Mr DAVID SHOEBRIDGE: This was appalling violence outside the home.

Mr MARK SPEAKMAN: **No-one has put to me a submission that outside the domestic violence context Aboriginal women are less protected than non-Indigenous women. But I am certainly someone who proceeds on the basis of an evidence-based policy and I am happy to receive evidence or submissions that might be to the contrary.**

Mr DAVID SHOEBRIDGE: I assume then that the concerns around whether or not this is part of a more systemic problem are not part of the brief that you have asked for from the DPP.

Mr MARK SPEAKMAN: That is correct. I have asked him specifically about this matter.

Mr DAVID SHOEBRIDGE: Given the two decisions by the DPP not to prosecute in this case, given that it required external intervention to get a prosecution and given that after that a jury acquitted in just a little over half an hour, do you accept that there may be a systemic problem here?

Mr MARK SPEAKMAN: I would not be drawing an inference of a systemic problem from one case. There is understandable community concern about the delay in getting a conviction and about earlier decisions not to prosecute when it transpired that the DPP ultimately made the decision to prosecute and has so far done that successfully. But I do not think that you can infer, because of whatever may be the case with one case, that there is some systemic problem. When I get the brief I will see what the contents are and I will take it from there.

Mr DAVID SHOEBRIDGE: Given that data is so important, will you consider asking the DPP for a review or at least a list of other cases in the last few years where there are alleged crimes of serious violence against Aboriginal women but a decision not to prosecute has been made by the DPP? If you want to start with the evidence, why do you not ask for it from the DPP?

Mr MARK SPEAKMAN: I do not see a problem in asking for that, so I am happy to ask for that.

Mr DAVID SHOEBRIDGE: Thank you, Attorney. Another tragic death was that of Rebecca Maher. Rebecca Maher died in custody but there had been no notification under the Custody Notification Service because, if you recall, she had not been charged or detained in the terms required for a referral under the Custody Notification Service. Do you recall the circumstances, Attorney?

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: It has now been well over a year. Are you still just waiting for a coronial report on that, which may be another 12, 18 or 24 months?

Mr MARK SPEAKMAN: The Custody Notification Service that the Aboriginal Legal Service runs does not pick up Aboriginal people who are detained as intoxicated as distinct from under arrest or under suspicion of a charge. The matter is subject or will be subject to a coronial inquest. The coroner is waiting for the police to provide a report, which is due this month. We will await the recommendations of the coroner as to whether it is appropriate to expand the service. It is a service that is wholly Commonwealth-funded, run by the Aboriginal Legal Service. It does not extend to dealing with intoxicated Indigenous people who are detained.

Mr DAVID SHOEBRIDGE: Have you asked for any data from your colleague, the Minister for Police, about the number of occasions that Aboriginal people are detained at police stations by police but no referral is made under the Custody Notification Service? If not, why not?

Mr MARK SPEAKMAN: I anticipate that the coroner will make recommendations about whether the Custody Notification Service should be expanded. I do not see a need at the moment to have a parallel inquiry using taxpayer resources if it will be thoroughly looked at by the coroner.

Mr DAVID SHOEBRIDGE: Do you know if the coroner is making those inquiries?

Mr MARK SPEAKMAN: My anticipation is that the issue before the coroner will be whether the absence of involvement of the Custody Notification Service was relevant and whether there should be a Government change of policy. We will wait to see what the coroner recommends, if anything.

The Hon. MARK PEARSON: The common law allows for individuals to commence private prosecutions when they consider that a criminal offence has taken place. What is the public policy rationale for private citizens being precluded from exercising their common law rights for offences committed in breach of the Prevention of Cruelty to Animals Act 1979 when they remain available for almost all other offences, including serious animal cruelty under section 530 of the Crimes Act.

Mr MARK SPEAKMAN: I will take that on notice. I observe that the RSPCA is prosecuting in that area. It might be a relevant distinguishing feature from the general position. I will take that on notice, if I may.

The Hon. MARK PEARSON: Private prosecutions for the Prevention of Cruelty to Animals Act were disallowed some 15 years ago by my colleagues to the right—

The Hon. ADAM SEARLE: That is all of us.

The Hon. MARK PEARSON: —despite there being no evidence of vexatious prosecutions at a time when there was growing public interest in animal welfare. The Director of Public Prosecutions is authorised to take over or terminate any private prosecution when it is deemed appropriate and the courts have the power to award costs against private prosecutors. Given these ample safeguards, how does the Government justify the ongoing restriction of private prosecutions in animal cruelty matters?

Mr MARK SPEAKMAN: Mr Pearson, this is not a matter that has come to my attention before today. I certainly understand your passion for and interest in the subject matter, but I will have to take that on notice.

The Hon. MARK PEARSON: Thank you. Is it appropriate in 2017 that two charitable bodies are the principal agencies tasked with administering public law, by which I mean the RSPCA and the Animal Welfare League?

Mr MARK SPEAKMAN: I will take that question on notice as well. I am not sure, even though I am the first law officer and have responsibility—

The Hon. MARK PEARSON: I know you have not been there long.

Mr MARK SPEAKMAN: —whether those questions would be best directed to another portfolio Minister. Let me take them on notice.

The Hon. MARK PEARSON: You will want to take the next question on notice as well. The only reason for this arrangement is historic. The RSPCA received a royal charter to investigate animal cruelty in 1824, even before the establishment of the police force as we know it today. Is this not the equivalent of leaving the investigation of child abuse to St Vincent de Paul and the Salvation Army?

The Hon. SHAOQUETT MOSELMANE: Take it on notice.

The Hon. TREVOR KHAN: That is outrageous. I got that in within 43 minutes this time!

The Hon. MARK PEARSON: The question is to the Attorney.

Mr MARK SPEAKMAN: I can certainly see your passion. I do not understand that I have principal portfolio responsibility for regulating the welfare of animals. I am happy to take the question on notice.

The Hon. TREVOR KHAN: Ask Minister Blair; he knows the answer.

The Hon. MARK PEARSON: The Prevention of Cruelty to Animals Act was originally introduced in 1958 and reviewed in 1979. Since then, there have been a few piecemeal changes to the legislation. In the nearly 40 years since 1979 there has been no review of the legislation despite the fact that we have seen significant shifts in public attitudes about animal protection. For example, what right-minded person thinks it would be lawful to tether a dog for more than 23 hours each and every day?

The Hon. CATHERINE CUSACK: Point of order—

The Hon. ADAM SEARLE: I think the Attorney can deal with this.

Mr MARK SPEAKMAN: I can.

The Hon. CATHERINE CUSACK: The legislation that the member is referring to is not allocated to the Attorney General. Can I suggest that he be directed—

Mr DAVID SHOEBRIDGE: Is he barking up the wrong tree?

The CHAIR: Order!

The Hon. ADAM SEARLE: To the point of order—

The Hon. TREVOR KHAN: You are not going to run interference, are you?

The Hon. ADAM SEARLE: The Attorney may not be the portfolio Minister, but the first law officer has wide discretion to the whole of the legal system. I do not see that this is outside that purview. Again, I make the earlier observation that the Attorney can handle himself.

Mr DAVID SHOEBRIDGE: There are multiple potential prosecutors under the Act.

The Hon. CATHERINE CUSACK: Further to the point of order: We have come a long way from the days when members had to ask questions about budget estimates. Increasing latitude has been allowed, but to be directing questions—

The CHAIR: Order! I uphold the point of order.

The Hon. MARK PEARSON: Science has also progressed with increased knowledge and understanding about animal physiology and their capacity to suffer. Do you agree it is time for a comprehensive review of criminal legislation that is under your watch?

Mr MARK SPEAKMAN: I am looking at the Administrative Arrangements (Administration of Acts—General) Order 2017. I do not have portfolio responsibility for the Prevention of Cruelty to Animals Act. I understand that is the responsibility of the Minister for Primary Industries. You are best directed to ask him those questions.

The Hon. MARK PEARSON: I put to you that you would have overarching responsibility for criminal law in the State of New South Wales.

The CHAIR: Mr Pearson, I have ruled on that question. We will now proceed to the Opposition.

The Hon. ADAM SEARLE: Returning to section 316 and the discussion paper and the child abuse royal commission recommendations, does your discussion paper specifically canvass the issue of the confessional?

Mr MARK SPEAKMAN: Not in terms.

The Hon. ADAM SEARLE: How is that responsive to the recommendations of the royal commission?

Mr MARK SPEAKMAN: It is because the question is whether there is an obligation to report, and whether that obligation to report will override any privilege or confidence that attaches to the confessional.

The Hon. ADAM SEARLE: You see it in that context?

Mr MARK SPEAKMAN: Absolutely.

The Hon. ADAM SEARLE: Even though it does not specifically canvass the confessional?

Mr MARK SPEAKMAN: I do not recall the discussion paper using the word "confessional". It is clear, and from public discussion everyone understands what we are getting at. A question will be raised as to whether a duty to report will override any confidence or privilege attaching to a confession.

The Hon. ADAM SEARLE: Your predecessor, Ms Upton, told a Jewish Board of Deputies event in October 2015 that section 20D of the Anti-Discrimination Act does not work and must be changed as no prosecutions have been brought since it was created. She was not able to deal with that in her term as Attorney. Will you act on the well-recognised shortcomings of section 20D of the Anti-Discrimination Act, given there has been a parliamentary report and the Opposition has brought forward a private member's bill?

Mr DAVID SHOEBRIDGE: And unanimous recommendations of the Law and Justice committee.

The Hon. ADAM SEARLE: I acknowledge that interjection.

Mr MARK SPEAKMAN: I am aware of those recommendations. Since I became Attorney General we have been consulting broadly. I had Dr Kerkyasharian consult—do not hold me to this figure—with approximately 40 community groups on section 20D. Indeed, it is analogous in the Anti-Discrimination Act to other forms of discrimination. I have met the Jewish Board of Deputies, the Gay and Lesbian Rights Lobby, the Catholic Archbishop. I met an Orthodox minister this week. We want to ensure that we get this right. It is an incredibly sensitive area. We want to get the balance right between protecting our community's safety and cohesion on the one hand and freedom of speech on the other hand.

The Hon. SHAOQUETT MOSELMANE: Are you aware that yesterday Minister for Multiculturalism Ray Williams did not know about section 20D?

Mr MARK SPEAKMAN: I have not read his transcripts.

The Hon. LYNDA VOLTZ: After the NSW Civil and Administrative Tribunal [NCAT] found that the Trustee and Guardian acted without power in requiring private managers of estates to purchase surety bonds the Trustee and Guardian did a backflip and announced that the scheme was to be cancelled. It also announced that fees paid would be repaid together with interest of 5.33 per cent per annum. How much will be repaid?

Mr MARK SPEAKMAN: The acting chief executive officer of the Trustee and Guardian wrote to all private managers in New South Wales to inform them of the decision of the Trustee and Guardian to not appeal the decision of NCAT and to not proceed with the mandatory surety bond scheme. At the moment I am advised that the total amount of payments has been $812,321.72 plus $40,203.23 in interest. The Trustee and Guardian is also in the process of paying around $700 to compensate for NCAT appeal lodgement fees.

The Hon. LYNDA VOLTZ: Is that the total amount that is going to be repaid?

Mr MARK SPEAKMAN: The advice I have is that it is likely to be the total amount that will be paid directly to privately managed estates. It might drift up a bit more but it will be in that ballpark.

The Hon. LYNDA VOLTZ: Where will the money for the repayment come from?

Mr MARK SPEAKMAN: Out of the current resources of the Trustee and Guardian.

The Hon. LYNDA VOLTZ: What are you foregoing to make these repayments?

Mr MARK SPEAKMAN: I will invite Mr Cappie-Wood to answer that.

Mr CAPPIE-WOOD: The Trustee and Guardian is a self-funding entity within the Department of Justice. It has its own separate legislation and a statutory appointment as head. As such, they raise fees from their services both directed and commercial. It is anticipated that there might be a small deficit to be incurred as a result of this. We are just looking to see how that can be managed within existing resources without impacting services. It is an ongoing process in the department.

The Hon. LYNDA VOLTZ: If you have a deficit and you cannot fund your existing resources—

Mr CAPPIE-WOOD: If necessary and if it cannot be contained within the Trustee and Guardian within the financial year I will be looking at the entirety of the department to be able to accommodate anything that goes beyond that.

The Hon. LYNDA VOLTZ: Will you be looking at raising fees?

Mr CAPPIE-WOOD: No, we will not be looking at raising fees to cover this. They have some cash reserves at the moment and that will be the first port of call for any call upon these repayments.

The Hon. LYNDA VOLTZ: The total under private managers is approximately $4 billion, 0.4 per cent of which is $16 million. How much of the $16 million is going to be repaid?

Mr CAPPIE-WOOD: How much of the $16 million is going to be repaid?

The Hon. LYNDA VOLTZ: Under private managers there is $4 billion, yes?

Mr CAPPIE-WOOD: That is correct.

The Hon. LYNDA VOLTZ: And 0.4 of $4 billion is $16 million, is it not?

Mr MARK SPEAKMAN: If the question is how much of the surety bond fees will be refunded to private managers the answer is 100 per cent plus the interest rate you identified. Approximately $812,000 has been paid so far. That might drift up slightly but that is the ballpark of refunds to private managers.

The Hon. LYNDA VOLTZ: Has Aviva requested, discussed or mentioned seeking compensation from the Government following the NCAT decision and the Trustee and Guardian decision to cancel the scheme?

Mr MARK SPEAKMAN: There are negotiations with surety bond provider Willis Towers Watson regarding the end of the surety bond scheme that are ongoing.

The Hon. LYNDA VOLTZ: Are they around compensation?

Mr MARK SPEAKMAN: They are general discussions.

The Hon. LYNDA VOLTZ: Do they include compensation?

Mr MARK SPEAKMAN: They include any invoices that the surety bond issuer has issued that have not been paid by private managers.

The Hon. LYNDA VOLTZ: Has the Government considered whether it has a financial liability to Aviva because a government agency acted outside the law?

Mr MARK SPEAKMAN: I am informed that the monetary value of those outstanding premiums that I referred to is $724,497.

The Hon. LYNDA VOLTZ: Say that again.

Mr MARK SPEAKMAN: The monetary value of outstanding premiums—in other words, premiums for which invoices have been issued but not paid by private managers—is $724,497.

The Hon. LYNDA VOLTZ: But you do not think you have any other financial liability?

Mr MARK SPEAKMAN: The position that the New South Wales Government takes and the Trustee and Guardian takes is that there is no other liability.

The Hon. LYNDA VOLTZ: You believe there is no other liability?

Mr MARK SPEAKMAN: I said the position that the New South Wales Government takes and the Trustee and Guardian takes is that beyond that which I have described there is no other liability.

The Hon. LYNDA VOLTZ: You have ordered a review of the scheme by KPMG. Those involved in consultations were told the KPMG report would be completed by the end of August. Do you have the report?

Mr MARK SPEAKMAN: I do not have the report but I expect to receive it shortly.

The Hon. LYNDA VOLTZ: Do you know when?

Mr MARK SPEAKMAN: Shortly.

The Hon. LYNDA VOLTZ: In a week, or a month?

Mr MARK SPEAKMAN: Within weeks. That is my best estimate.

The Hon. LYNDA VOLTZ: Will you release it?

Mr MARK SPEAKMAN: My intention is to release it subject to any matters in there that might be commercial in confidence.

The Hon. LYNDA VOLTZ: So you may release it?

Mr MARK SPEAKMAN: I may release it. The general approach of the Government is one of openness and transparency, as members of this Committee well know.

The Hon. LYNDA VOLTZ: We will just get out all the questions on notice and the answers to them to see that transparency. You are the senior law officer. Are you meant to come in and mislead us in that way?

The Hon. CATHERINE CUSACK: Point of order: Mr Chair, can you ask the member to listen quietly while the Minister answers her question?

The Hon. LYNDA VOLTZ: Will you undertake now not to introduce legislation to retrospectively impose a surety bond on private managers and therefore not impose a surety bond where someone is already a manager?

Mr MARK SPEAKMAN: The whole purpose of getting a review by KPMG is to get outside independent advice and a fresh set of eyes to look at this whole matter. I am not going to pre-empt what they may or may not recommend. Just to be clear, I have a general aversion to retrospectivity and I do not anticipate that anything we might do would retrospectively impose a liability.

The Hon. LYNDA VOLTZ: You are undertaking not to introduce any retrospective legislation?

Mr MARK SPEAKMAN: I have said what my general principle is but I am not going to pre-empt what might be in an external review by a fresh set of eyes as to the best way forward.

The Hon. LYNDA VOLTZ: Will you undertake now not to introduce legislation to impose surety bonds on private managers without some indication that in a particular case the bond is needed?

Mr MARK SPEAKMAN: I think we all understand the pros and cons of mandatory surety bonds. At the end of the day the Trustee and Guardian was trying to protect vulnerable people. Whether you need to go to the extent of a mandatory surety bond scheme is quite another matter. NCAT has held that the current scheme is invalid. Rather than arguing the legal niceties in an appellant jurisdiction as to whether NCAT is or is not correct, we thought the better way to proceed was to have a fresh set of eyes look at this area as to the best way forward. That is what we are doing and when we get those recommendations we will act accordingly.

The Hon. LYNDA VOLTZ: You have said whether you need to do it with a surety bond is another matter, but did anyone in the Government or the NSW Trustee and Guardian turn their mind to whether the NSW Trustee and Guardian had the power to require managers to enter into surety bonds?

Mr MARK SPEAKMAN: This scheme was established before I became the Attorney General and because I was not around at the time I certainly did not turn my mind to that question.

The Hon. LYNDA VOLTZ: Perhaps Mr Cappie-Wood can inform us about that?

Mr CAPPIE-WOOD: The NSW Trustee and Guardian has its own legislation; as such it is statutorily independent and formulated this policy in that context.

The Hon. LYNDA VOLTZ: Minister, did you discuss the funding of the proposed justice reinvestment in Cowra with the local member, Ms Katrina Hodgkinson, before she resigned?

Mr MARK SPEAKMAN: I do not recall whether or not I did, but I certainly received representations from her to that effect—sorry, advocating government investment in that scheme.

The Hon. TREVOR KHAN: As one would expect a good member to do because it is a good scheme.

The Hon. LYNDA VOLTZ: So you did not have a discussion with her but you received correspondence?

Mr MARK SPEAKMAN: I cannot recall—

The Hon. LYNDA VOLTZ: Can you take that on notice?

Mr MARK SPEAKMAN: I will take it on notice. At the moment I cannot recall one way or another whether I had a discussion but I certainly received representations from her. She wrote to me in May seeking $250,000 over three years to establish a justice reinvestment enterprise in Cowra.

The Hon. LYNDA VOLTZ: Did you have discussions with any other members of the Cowra community?

Mr MARK SPEAKMAN: I personally have not; however, officials from the department have met with the Cowra Justice Reinvestment Project team to understand the proposal and where the department might be able to support the project. An official from my department met members of the project on 17 August to identify Aboriginal justice programs that could be rolled out in Cowra like Circle Sentencing and Aboriginal court support. We are continuing to work with the community to address Aboriginal justice issues in Cowra.

The Hon. LYNDA VOLTZ: What other discussions have you had, and with whom have you had them, about the project?

Mr MARK SPEAKMAN: I had internal discussions with officers in the Department of Justice.

The Hon. LYNDA VOLTZ: Given the Cowra community has been waiting for a decision for more than a year, will you or will you not provide finding for the justice reinvestment pilot project at Cowra?

Mr MARK SPEAKMAN: This year I announced a $113,738 grant for the Cowra Youth for a Safer Community program, which will assist with local community programs and provide ongoing support for the continuation of crime prevention programs in Cowra.

The Hon. LYNDA VOLTZ: What was the name of that program again?

Mr MARK SPEAKMAN: Cowra Youth for a Safer Community program.

The Hon. LYNDA VOLTZ: Is that the reinvestment project?

Mr MARK SPEAKMAN: This is an Aboriginal justice—

Mr CAPPIE-WOOD: It is aligned to it.

Mr MARK SPEAKMAN: Certainly, I hope to form an early view on the broader Cowra readjustment strategy.

The Hon. LYNDA VOLTZ: Have you provided any funding to the Cowra reinvestment program?

Mr MARK SPEAKMAN: Except to the extent that I have described, not to my knowledge.

The Hon. LYNDA VOLTZ: So you are just taking Cowra and Cootamundra for granted, are you?

Mr MARK SPEAKMAN: Of course not.

The Hon. LYNDA VOLTZ: Minister, your overall commitment of $6 million in extra funding to community legal centres is unfunded from Treasury. You said that it will be met from existing resources. What other programs will be cut to meet that commitment?

Mr MARK SPEAKMAN: There is a false premise in your question. It is not unfunded. I have announced an extra $6 million for community legal centres over the next two years. It will be funded from Department of Justice resources.

The Hon. LYNDA VOLTZ: If you fund something from your existing resources that will mean something else has to be cut.

Mr MARK SPEAKMAN: That is an interesting proposition. When you say we are funding—to use a hypothetical—100 or 200 programs and we are going to give an extra $6 million to one of those programs, you cannot say, "Which of the programs on the other side are going to be cut?" You cannot earmark specifically $6 million for community legal centres to some other program that is being cut or some specific revenue resource that you have. The $6 million comes from the Consolidated Fund and you cannot cherry-pick, isolate or earmark which program or which revenue stream it comes from.

Mr DAVID SHOEBRIDGE: It was a welcome announcement.

Mr MARK SPEAKMAN: Thank you.

The Hon. LYNDA VOLTZ: Will you give an unqualified commitment that no other legal aid program will be cut to fund this commitment?

Mr MARK SPEAKMAN: I can say that no legal aid program has been cut to fund this commitment.

The Hon. LYNDA VOLTZ: But will you give an unqualified commitment that no other legal aid program will be cut?

Mr MARK SPEAKMAN: Do you mean generally or to fund this program? As I said, no legal aid program has been or will be cut to fund this program.

The Hon. LYNDA VOLTZ: Given that you and the State Opposition agree on the invaluable nature of the work of community legal centres, why can you not get Treasury to properly fund this increase rather than funding it at the expense of other programs?

Mr MARK SPEAKMAN: I just said that it has not been at the expense of other programs.

Mr DAVID SHOEBRIDGE: Of all the things to attack him on, funded community legal centres was a good decision and the sector welcomed it.

The Hon. LYNDA VOLTZ: I love how you run defence for the Government in just about every estimates.

The CHAIR: Order!

Mr MARK SPEAKMAN: You are looking for some sinister funding cut that just is not there.

The Hon. LYNDA VOLTZ: I am not looking for a sinister funding cut, there is a $6 million allocation—

Mr MARK SPEAKMAN: Or a benign funding cut; it just is not there.

The Hon. LYNDA VOLTZ: —and you are not explaining where the money is coming from.

Mr MARK SPEAKMAN: I have just said it is from Department of Justice resources.

The Hon. LYNDA VOLTZ: They have surplus funds, have they?

Mr MARK SPEAKMAN: When it comes from the Consolidated Fund you cannot earmark or cherry-pick some program that has been cut or some revenue stream within that fund that has been specifically allocated for it.

The Hon. LYNDA VOLTZ: I cannot cherry-pick it but I would like to know how it is funded.

Mr MARK SPEAKMAN: I have just told you: Department of Justice resources.

The Hon. LYNDA VOLTZ: Apart from his particular recommendations, the coroner said in his report on the Lindt Café that "he assumed DPP senior managers would deal with the shortcomings revealed". What steps have you taken to ensure that these remedial steps are taken?

Mr MARK SPEAKMAN: Would you mind repeating the question?

The Hon. LYNDA VOLTZ: Apart from his particular recommendations, the coroner said in his report that "he assumed DPP senior managers would deal with the shortcomings revealed." What steps have you taken to ensure that these remedial steps are taken?

Mr MARK SPEAKMAN: I spoke with the Director of Public Prosecutions [DPP]. He assured me that he was adopting all of the coroner's recommendations, and I think the DPP issued a statement to the effect that that was what he was doing.

Mr DAVID SHOEBRIDGE: I return to the death and convictions in the case of Lynette Daley. You said that you are requesting the brief urgently from the DPP. Did you give a time frame for that?

Mr MARK SPEAKMAN: I anticipate getting a brief within a fortnight.

Mr DAVID SHOEBRIDGE: Is it your intention to publicly release that brief?

Mr MARK SPEAKMAN: No. It is my intention to digest the contents of that brief, to ask further questions, if I think it is appropriate to do so, and to take such action as I think appropriate once I have done that.

Mr DAVID SHOEBRIDGE: Do you think it would be important for the public to see that brief, and in particular for the family of the Lynette Daley to see it, so as they understand what informed those earlier decisions?

Mr MARK SPEAKMAN: So far as Lynette Daley's family is concerned, you do not have to inform a family of the reasons for prosecutorial decisions by publishing a brief; you can have private conversations with members of the family. I know that has been done in one case by the DPP in the past several months—that is a refresher to a question you asked me a moment ago. I understand the public interest in this. I understand the public concern about two decisions being made and ultimately a successful prosecution taking place. I will look at the brief and then decide what is appropriate. There are countervailing considerations. I do not think that it is necessarily appropriate that the DPP disclose matters that may be of privilege, for example. It is difficult to answer your question in the abstract until I see the brief, decide whether I need more information and then act accordingly. With respect to your refreshing my memory, I think you asked whether I had discussed with the DPP any other decisions not to prosecute.

Mr DAVID SHOEBRIDGE: Correct.

Mr MARK SPEAKMAN: I just recalled that I have discussed the Rhys Colfax matter with the DPP earlier this year.

Mr DAVID SHOEBRIDGE: I will not press you on it now, but if there are any other details you can get in relation to that on notice, that would be appreciated.

Mr MARK SPEAKMAN: Certainly.

Mr DAVID SHOEBRIDGE: Lastly, on the Lynette Daley case, given the delay and the trauma that the family has been through, is one of the matters you are considering whether to issue an apology on behalf of the New South Wales Government to her family about the way in which the matter was prosecuted?

Mr MARK SPEAKMAN: I cannot pre-empt anything that will be in the brief and how I might respond to the brief. Certainly the welfare of Ms Daley's family is very important to the New South Wales Government. My office has been assured by the Commissioner of Victims Rights that the family has been offered counselling if they want it. They have been given travel and accommodation during the ordeal of the trial. Certainly, their welfare is of the highest priority to the Government.

Mr DAVID SHOEBRIDGE: If you formed the view that there were failures, surely saying sorry would cost nothing but might be of great comfort to the family. Is that in your contemplation?

Mr MARK SPEAKMAN: I am not going to speculate about hypothetical situations. I will wait and see what is in the brief.

The CHAIR: On 5 February last year in the *Sydney Morning Herald*, the New South Wales Chief Justice, Tom Bathurst, identified that there were at least 397 legislative encroachments on three basic common law rights in New South Wales, including the presumption of innocence and privilege against self-incrimination. What progress, if any, has been made on removing these encroachments on citizens' basic legal rights?

Mr MARK SPEAKMAN: It is difficult to respond to that question at such a high level. If you want to pose me questions about particular pieces of legislation with which you have a problem I am happy to answer those questions to the extent that I can.

Mr DAVID SHOEBRIDGE: They were in his speech.

The CHAIR: They were in his speech; I can give you a copy. I thought you would be familiar with such an excellent article written by the Chief Justice and his decrying of the fact that common law rights are disappearing at a rate of knots in New South Wales.

Mr DAVID SHOEBRIDGE: You might even have been there. It was at the opening of term, last year.

Mr MARK SPEAKMAN: I was there for his opening of the law term this year, but I missed the speech last year. I am aware of the speech. The article that you have given me identifies the Local Government Act. I do not have portfolio responsibility for that Act. It identifies—

The CHAIR: Are you going to cherry-pick? In other words, do you not want to answer the question?

Mr MARK SPEAKMAN: With respect, I do not think that I am in a position to answer—

The CHAIR: You are not in a position to make a commentary in relation to the law in New South Wales?

Mr MARK SPEAKMAN: Please allow me to answer your question without interruption. I paid you—

The CHAIR: It does not sound as if you are answering the question.

Mr MARK SPEAKMAN: With respect, I paid you the courtesy of listening to your question. Will you please listen to my answer?

The CHAIR: I will listen to your answer.

Mr MARK SPEAKMAN: Thank you. You have referred me to His Honour's speech, which identifies 397 legislative encroachments. The article that you have given me identifies two pieces of legislation. Neither of those pieces of legislation is an Act for which I have portfolio responsibility. If you wish to ask about the Local Government Act and the Public Interest Disclosures Act you should address your questions to the Minister for Local Government and the Premier. If there are any other of the 395 pieces of legislation referred to at a high level but not identified in this article I am happy to receive your questions about legislation for which I have portfolio responsibility.

The CHAIR: I will go back and I will get the details of the 395 legislative encroachments he mentions. I will then examine those areas that you are responsible for. I will put those questions on notice for you.

Mr MARK SPEAKMAN: Thank you.

The CHAIR: In reply to a comment on a post on the Department of Justice Facebook site, regarding dealing with a legal problem and representing one's self, the Department of Justice responded, "I will create a campaign for agencies referencing the Model Litigant Policy." Can you provide details of the Model Litigant Policy awareness campaign for the Department of Justice. Has it commenced, and which agencies have been reminded of the policy?

Mr CAPPIE-WOOD: The Model Litigant Policy obviously goes beyond the department. All government agencies were made aware of the Model Litigant Policy through, I think, a Premier's memorandum. I will provide the Committee with the appropriate documentation, which is whole of Government. It has just been confirmed to me that the Model Litigant Policy was a Premier's memorandum entitled 2006/03. It was provided to all Government agencies. All Government agencies have had this discussed with them. The general counsels within the departments have taken this on to ensure that it is applied appropriately and uniformly. From my own discussions with other secretaries I know that we are taking it very seriously and applying it as it is intended to be applied.

Mr DAVID SHOEBRIDGE: Are you aware of the August 2016 report by Bureau of Crime Statistics and Research [BOCSAR] on what is causing the growth in Indigenous imprisonment in New South Wales?

Mr MARK SPEAKMAN: I am aware of a report. Let me just check whether that is the one.

Mr DAVID SHOEBRIDGE: I am talking about the August 2016 report. If you are hunting for it, there is also a June 2017 report that I will take you to as well.

Mr MARK SPEAKMAN: I am aware of both reports.

Mr DAVID SHOEBRIDGE: Are you aware of the fact that the August 2016 report notes:

> … between 2001 and 2015, the number of Indigenous Australians in New South Wales prisons more than doubled. On an age-standardised basis, the rate of Indigenous imprisonment rose by 40 per cent.

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: Do you recognise that there is a problem with our criminal justice system when we see a doubling of the number of Indigenous Australians in New South Wales jails in that period, and such an extraordinary increase in the aged standardised basis upon which Aboriginal people are put in jail?

Mr MARK SPEAKMAN: I certainly recognise that the level of Aboriginal incarceration and the increase in Aboriginal incarceration is unacceptable. As Senator Brandis has described it, it is a national tragedy.

Mr DAVID SHOEBRIDGE: Are you also aware that the BOCSAR report in August 2016 said that the rise in Indigenous imprisonment is due to a number of factors? One of those is higher rates of arrest, which is not in your portfolio, but the other two key factors were a greater likelihood of imprisonment given conviction, and a higher rate of bail refusal. Are you aware of that?

Mr MARK SPEAKMAN: I have taken note of the more recent BOCSAR report of June 2017. It is not inconsistent with what you say. It identified the growth in Indigenous imprisonment since 2012 in New South Wales as a result of three main factors—first, an increase in the number of Indigenous defendants charged with criminal offences, especially those in the categories of stalking and intimidation; breaching of a section 9 bond, which is a good behaviour bond; and breaching of section 12 bond, which is a suspended sentence. Secondly, there was an increase in the proportion of convicted Indigenous offenders receiving a prison sentence for the offence of stalking and intimidation. Thirdly, there was an increase in the length of time being spent on remand by Indigenous defenders refused bail, which is said to be in large part because of a growth in court delays in the District Court.

Mr DAVID SHOEBRIDGE: I will take you to that June 2017 report later. You can see, from the August 2016 report, which looks at the longer run—from 2001 to 2015—that Aboriginal people have a greater likelihood of imprisonment given conviction and a higher rate of bail refusal, and that is two-thirds of the reason why the Aboriginal prison population doubled in that period. What are you doing in your portfolio area to ensure that Aboriginal citizens in this State are not being prejudiced in the criminal justice system?

Mr MARK SPEAKMAN: The tragic context of Aboriginal over-representation in prisons is this: generations of socio-economic disadvantage in education, in health, in housing, across the board. To some extent these problems in the justice system are stark symptoms of those underlying societal problems. I want to make sure that the justice system does not exacerbate those problems and make thing worse. There are a number of things we are doing in this space. Later in the year there will be an Aboriginal over-representation strategy, I hope, that is being developed within the Department of Justice at the moment.

In the meantime, getting back to BOCSAR and June 2017—it is also relevant to the trends that you identified in the earlier BOCSAR report—the conclusion in June 2017 by BOCSAR was that the number of Indigenous offenders receiving a prison sentence could be reduced by more than 500 a year if half of those currently given a short prison sentence for assault, actual bodily harm, common assault, stalking and intimidation, breaching an apprehended violence order, breaching a section 9 bond or breaching a section 12 bond were instead placed on an intensive corrections order or home detention. That is part of our criminal justice reform strategy which, with the police Minister and the corrections Minister, I announced in May.

The far greater use of intensive corrections orders [ICOs], which primarily we are doing for community safety and to reduce reoffending, will reduce reoffending by the Aboriginal population. It will do that in a number of ways. By having a system of swift and escalating sanctions for breaches of ICOs there should be fewer breaches of ICOs and therefore fewer offenders, including Aboriginal offenders, going back to jail because of breaches. Overwhelmingly, the restructured ICOs will be replacing unsupervised sentences in the community, suspended sentences and so on, where there is no intervention to prevent reoffending.

Mr DAVID SHOEBRIDGE: That will not reduce the imprisonment rate.

The Hon. TREVOR KHAN: Let him answer.

Mr MARK SPEAKMAN: It will. You have asked the question. There is an enormous amount of work going on. This is a personal passion of mine. It is just unacceptable in Australian society and New South Wales that you have 13.5 times the chance if you are Aboriginal of being incarcerated in New South Wales. It is unacceptable that Aborigines in New South Wales make up only 3 per cent of the population but 24 per cent of the prison population. It is not just about the justice system; you have to have an education base, a health base, a housing base, a substance abuse base. You cannot do it just in the justice system, but I want to make sure that in the justice system we are doing all that is reasonably possible to tackle this problem.

At the moment there is a problem in remote and regional areas where judicial officers will not want to impose ICOs because the resources are not there. It is a condition of ICOs at the moment that you have to have 32 hours service per month. But if you have an offender who cannot find service in a remote or regional community or has a substance abuse or other problem that they are not suitable for work, they will not get an ICO and they will go to jail. Empirical evidence shows that if you have a choice between a short prison sentence without any form of rehabilitation and an ICO with appropriate intervention tailored to the circumstances of the offender or unsupervised release into the community, the most efficacious way to cut reoffending is with an ICO. It reduces Aboriginal incarceration by cutting reoffending; it diverts Indigenous offenders from prison in the first place. That is certainly part and parcel of what we are doing.

As to driver disqualification, we have announced reform in those areas. In some areas at the moment people have been disqualified from driving until 2041. As I said, 3 per cent of the population are Aboriginal, 14 per cent of disqualified drivers are Aboriginal and about one-third of those who are in prison for driver disqualification offences are Aboriginal. We are giving disqualified drivers the opportunity to get their licences

back after two years or four years, with appropriate carve outs if they have been disqualified because of, for example, driving offences causing death or grievous bodily harm. We will give them the opportunity to do the right thing and get their licences back so they do not reoffend. We have the perverse situation at the moment where lengthy disqualification periods are not discouraging driving whilst disqualified and, if anything, giving a perverse incentive for people to do that. If you are disqualified until 2041—

Mr DAVID SHOEBRIDGE: —you cannot do any more damage to me.

Mr MARK SPEAKMAN: Exactly. So that should reduce Aboriginal incarceration as well. As to domestic violence, we were piloting in, I think, approximately 46 local courts around the State a What's Your Plan app. This is a pilot. Nowhere in the world has this been tried before with domestic violence but it has been tried with behaviour change in other contexts. The offender sits down with a community corrections officer or an appropriate Aboriginal officer and devises a plan to prevent reoffending. For example, they could agree that they will get SMS messages periodically to keep them on the straight and narrow.

What has worked in other contexts is applied in this context. I will give you an example. Suppose you want to lose weight. If that is your plan, you probably will not lose weight. If you go further and say, "I want to lose weight and I am going to try to cut back on fat and sugar", if that is as far as you go you probably will not succeed as well. But the evidence suggests that if you have a plan, what will happen if I am out to dinner and Ms Cusack offers me a cheesecake, or whatever the traditional dessert is at a Liberal Party fundraiser—

The Hon. LYNDA VOLTZ: That would be cheesecake, yes.

Mr MARK SPEAKMAN: After the rubber chicken and the prawn cocktail I will be able to say to her—I will have a strategy—"No, thank you. I will take the coffee or tea". We are trying to apply that learning in this space so that if an offender gets a message from his or her partner—usually his partner—from, let us call her, Mary, Mary sends him an SMS and he will have a strategy in place about what to do with that. This has worked in other contexts and, again, this about behaviour change to reduce domestic violence offending, and we are trialling that with Aboriginal communities. There are a whole host of these sorts of things we are doing and, as I said, we are developing an overarching strategy that I hope will be out there next year or later this year.

Mr DAVID SHOEBRIDGE: Minister, I do not in any way doubt the goodwill and the intent with these individual programs. But we have a criminal justice system that says when an Aboriginal accused comes before the courts they are more likely to be convicted. When an Aboriginal defendant comes before the courts to be sentenced they are more likely to get an imprisonment sentence. When they are imprisoned they are more likely to be imprisoned for a longer period of time. They are more likely to be refused bail. They are more likely to be denied parole. At every step of the way our First People are not getting a fair shake in the criminal justice system and individual programs will not adjust it. What are you going to do in terms of a systemic redress within the criminal justice system?

Mr MARK SPEAKMAN: The problem is if an offence is being committed you cannot turn a blind eye to that commission of an offence. But what you have to do is try to stop the offence being committed in the first place, and if the offender is incarcerated or otherwise sentenced in the criminal justice system, prevent reoffending. I referred to in the BOCSAR statistics the dramatic increase in the number of convictions for stalking and intimidation. That is commonly a criminal charge used in a domestic violence context.

We as a government will not turn a blind eye to domestic violence and we will not say that because a woman is Aboriginal she is less worthy of protection of the criminal justice system because that will affect our statistics with Aboriginal incarceration. What we will do though is, beyond the holistic approach of education, health, housing and so on, make sure that the justice system does not exacerbate Aboriginal over-representation problems and reverses that over-representation in the ways I have described. That involves addressing the root causes of offending and, where offending has occurred, preventing reoffending.

The Hon. LYNDA VOLTZ: Minister, I take you back to your previous answer on the Lindt Cafe report. Exactly what have you done to ensure that the Coroner's recommendation on file management has been adopted?

Mr MARK SPEAKMAN: This is file management in the DPP?

The Hon. LYNDA VOLTZ: Yes.

Mr MARK SPEAKMAN: I have asked the DPP whether he is adopting all those recommendations, implementing them. He has said so; he is implementing them. I do not see my role as being a kind of auditor to go into the DPP and look at the files and make sure they are managed in a certain way.

The Hon. LYNDA VOLTZ: They are being implemented. My previous question was: What steps have you taken to ensure that these remedial steps are taken?

Mr MARK SPEAKMAN: I am told that the Director of Public Prosecutions [DPP] has reviewed the training in file management given to its lawyers to address the issues identified in the recommendation and has developed operating procedures for file management to give effect to the outcomes of the review.

The Hon. LYNDA VOLTZ: Precisely what changes have been instituted in the Office of the Director of Public Prosecutions following the recommendations of the State Coroner into the Lindt Cafe siege?

Mr MARK SPEAKMAN: As I said, it is not my role to be an auditor of individual files. There were issues raised by the Coroner in the Lindt Cafe inquiry to be addressed and the DPP has said that his office has addressed them.

The Hon. LYNDA VOLTZ: When I asked my first question as to what steps you have taken to ensure that these remedial steps are taken, the answer is none?

Mr MARK SPEAKMAN: The answer is, I pick up the phone to the DPP and say, "What are you doing about this?" He tells me, "I am accepting these recommendations, I am doing something". He tells the general public that is what he is doing and what he has done is reviewed the training in file management given to his lawyers, to address the issues identified in the recommendation and develop standard operating procedures for file management to give effect to the outcomes of the review.

The Hon. SHAOQUETT MOSELMANE: In October last year, your predecessor confirmed that a petition concerning the conviction of Kathleen Folbigg had been received by the Governor. What progress has been made in relation to the petition?

Mr MARK SPEAKMAN: Thank you for that question. The Governor receives many requests for the exercise of the Royal prerogative of mercy or for a review of convictions that have been resolved. Since I became Attorney General, 47 such petitions have been resolved. Fourteen remain outstanding of which eight are awaiting legal advice from the Crown Solicitor's office and the Department of Justice, and I am currently considering five matters. I have personally read, considered and discussed within my office the Department of Justice brief in this matter. I have personally gone through the petition and the accompanying material and I am presently considering the matter as to what recommendation I will make to His Excellency.

The Hon. SHAOQUETT MOSELMANE: Is part of that recommendation to refer the matter to the Court of Criminal Appeal?

Mr MARK SPEAKMAN: That is one of the available recommendations under the legislation, yes.

The Hon. SHAOQUETT MOSELMANE: When would you likely be doing that? Is there a time frame?

Mr MARK SPEAKMAN: I cannot give you a time frame. I am very conscious that this has been hanging around now for a considerable period of time. I will try to deal with it as quickly as I can.

The Hon. SHAOQUETT MOSELMANE: The Court of Criminal Appeal in 2016 overturned the conviction of a young man known as JB for the murder of Edward Spowart because of severe prosecutorial misconduct in not revealing crucial evidence to the defence. Last year your predecessor again said that an inquiry was being conducted by the DPP and it was not appropriate to comment "at this time". This was 12 months ago. Twelve months later, what has happened?

Mr MARK SPEAKMAN: I will have to take that question on notice.

The Hon. SHAOQUETT MOSELMANE: Has the inquiry been completed, are you aware?

Mr MARK SPEAKMAN: I have not had any personal involvement in the matter. I would have to take that question on notice.

The Hon. SHAOQUETT MOSELMANE: I see Mr Cappie-Wood is shaking his head. Can he add anything further?

Mr CAPPIE-WOOD: I was nodding in confirmation that we will obviously take that on notice.

The Hon. SHAOQUETT MOSELMANE: Why did your department change its position and issue advice in 2016 that justices of the peace [JPs] could not witness proof of life forms for overseas pensions?

Mr MARK SPEAKMAN: The Justice of the Peace handbook that the department produces and is available on its website advises that a JP can only exercise a task in their capacity as a JP if that function is

based on or referable to a New South Wales Act or regulation. New South Wales law does not authorise New South Wales JPs to witness signatures on overseas documents. Although documents are required by an overseas organisation or agency, because there may be requirements for overseas documents that are governed by overseas laws rather than New South Wales law, New South Wales law does not restrict New South Wales JPs from certifying copies of overseas original documents like a birth certificate if a JP is satisfied that the document is a true and accurate copy. I met, in the last month or so, with representatives of the Justices Association. There are four groups in New South Wales representing JPs, of which the Justices Association is the largest. I have asked the Department of Justice to investigate whether legislative amendments to authorise New South Wales JPs to witness signatures on overseas documents might be appropriate. That is currently under consideration.

The Hon. SHAOQUETT MOSELMANE: Given that there are four groups, as you have just stated, why was this advice specifically directed to the NSW Justices Association and to no-one else?

Mr MARK SPEAKMAN: It is not specifically directed. It is advice to the general public, to the world. They are, far and away, the largest professional association of justices of the peace that I met with a month or so ago. I do not know whether any other JP association has requested a meeting with me. Membership of a JP association is entirely voluntary. We do not fund their activities. There are three other associations: the Northern NSW Federation of Justices of the Peace, the Tweed Valley Justices Association, the Australian Justices of the Peace Association and, with liberty to supplement or amend my answer if I have the statistics wrong, my guess is that, of JPs who are members of one of those four organisations, probably 80 per cent or more of them will be members of the association I mentioned.

The Hon. SHAOQUETT MOSELMANE: Why not write to all four organisations, rather than just the NSW Justices Association?

Mr MARK SPEAKMAN: There is no secret about it. We do not have anything to announce, in the sense we have made no decision but we are reviewing whether it is appropriate to make a legislative amendment.

The Hon. SHAOQUETT MOSELMANE: Just going back to the question about withdrawing the ability of JPs to witness proof of life forms. Is it not absurd for someone obtaining a $30 per month pension from an overseas country to pay $250 to a public notary to witness their proof of life form?

Mr MARK SPEAKMAN: I understand that public policy issue. That is why we are looking at whether it is appropriate to make a legislative amendment. But at the moment, having taken advice, I am proceeding on the basis that it is not authorised by New South Wales law at the moment, which is why we are looking at whether we should amend that law.

The Hon. SHAOQUETT MOSELMANE: You are looking at that in the near future?

Mr MARK SPEAKMAN: I cannot be specific. I do not want to be seen to be evasive. It is not within weeks, it is probably months, not years.

The Hon. SHAOQUETT MOSELMANE: It is months, not years? It is not clear.

Mr MARK SPEAKMAN: I cannot put a precise time frame on it, but if you want a ballpark figure, I am not saying we will have legislation ready, but we probably will have an announced position in months, rather than weeks, days, hours or years.

Mr DAVID SHOEBRIDGE: Closer to the appropriate juncture.

The Hon. SHAOQUETT MOSELMANE: With more than 150 courthouses statewide and fewer than 300 sheriff's officers, you do not have enough sheriff's officers to fully staff courthouses, have you, particularly bearing in mind the significant non-court duties they also perform?

Mr MARK SPEAKMAN: I do not think that is right. We now have a Sheriff's Officer at every courthouse in New South Wales when the court is sitting.

The Hon. SHAOQUETT MOSELMANE: One Sheriff's Officer?

Mr MARK SPEAKMAN: I will let Mr Cappie-Wood expand on that.

Mr CAPPIE-WOOD: There are 282 sheriff's officers in New South Wales. That includes an additional 40 Sheriff's Officer positions recruited in 2015. Extensive work has been undertaken together with each of the various jurisdictions to make sure that there is a sheriff officer at every sitting of a court. This has not happened before, so this is an improvement to service. It is something we have worked hard to achieve. There has also recently been the appointment of an intelligence officer who works with not only the court jurisdictions in terms of court listings but also the police to make sure that there is a balance of security relative

to the nature of the matters coming before a court. We work very carefully to make sure that the perimeter security and security arrangements of courts are appropriate and we have worked hard to make sure that we are stepping up the services.

The Hon. SHAOQUETT MOSELMANE: Attorney, the Downing Centre was evacuated on 10 February this year because workers and contractors did not properly lock the doors of the complex when they had finished work. Did that happen because the Government will not spend sufficient money to supervise the contractors?

Mr MARK SPEAKMAN: The premise of your question is wrong, but I will invite Mr Cappie-Wood to provide some details.

The Hon. SHAOQUETT MOSELMANE: Did it not happen?

Mr CAPPIE-WOOD: A security incident was logged in the Downing Centre, and you are right that there was an external door that was seen to have been propped open. That led to the putting in place of security arrangements that we now have at the Downing Centre, which work well in establishing the cause and implications as quickly as possible with minimum disruption. The result of the incident was that there is a need for further briefing of contractors on site. In this case, the contractors were on site to expand the court capacity. They were working on building three additional district courts in the Downing Centre, which are very useful. They had to work after hours because otherwise the Downing Centre is in full operation. The incident meant that we reviewed our security arrangements, and we have placed greater emphasis upon the briefing of contractors working there and the supervision of those contractors. In other words, the security arrangements responded well and we have made sure that we are now being proactive in managing the presence of contractors on site.

The Hon. SHAOQUETT MOSELMANE: At the time of the incident, how many sheriff officers were present after the contractors had left?

Mr CAPPIE-WOOD: I will have to take that on notice to get the exact number for you.

The Hon. CATHERINE CUSACK: You have your headline: "Builder forgot to lock the door".

The Hon. SHAOQUETT MOSELMANE: That is an interjection.

The CHAIR: Order!

The Hon. SHAOQUETT MOSELMANE: Attorney, between 1 January 2016 and 31 March 2017 the Downing Centre was evacuated four times. How many of those times were drills?

Mr MARK SPEAKMAN: We will take that question on notice.

The Hon. SHAOQUETT MOSELMANE: In 2015 you employed 40 extra sheriff officers on 12-month contracts. Have those contracts been extended?

Mr CAPPIE-WOOD: Yes, those contracts have been extended. They were brought in in 2015 following a review of security arrangements and given the lift in the general security alert level. At this time, not knowing whether that security level will reduce, those contracts are currently employed on an annualised basis.

The Hon. SHAOQUETT MOSELMANE: Attorney, why did you officially open a courthouse in Wagga Wagga in March this year when its air-conditioning did not work?

The Hon. CATHERINE CUSACK: Did Lynda write these questions for you?

The Hon. SHAOQUETT MOSELMANE: I can see everyone laughing as a result of your questions.

The CHAIR: Order!

Mr MARK SPEAKMAN: This was a greatly expanded and upgraded courthouse in Wagga Wagga that I visited twice in March, and I visited it again a few weeks ago. I am aware of those issues, and there is a tender process underway at the moment aiming to rectify those issues. The work should be starting this month. In the meantime, the department is undertaking interim measures to ensure a comfortable ambient temperature in the courthouse, including portable air-conditioning units and heaters and increasing the power to the circuit board. Personnel are on site to monitor temperatures and to respond to any requirements to move heating equipment to other areas.

The Hon. TREVOR KHAN: I can tell you that I have appeared in many traffic courts without air-conditioning.

The Hon. SHAOQUETT MOSELMANE: Bad luck.

Mr DAVID SHOEBRIDGE: Attorney, the royal commission into institutional abuse handed down its redress and civil litigation report in September 2015. Survivors and victims of abuse are still awaiting a final decision from the New South Wales Government as to signing onto the national redress scheme. When can they expect such a decision?

Mr MARK SPEAKMAN: I have met twice with my Commonwealth, State and Territory counterparts. The department is working hard, but obviously we are not doing this unilaterally or in isolation. We are very keen for a national redress scheme and we support the idea in principle. There is not yet a model with any settings that the Commonwealth has released publicly. We are working very closely with Victoria, Queensland and all the other States and Territories along with the Commonwealth to hopefully get a scheme up and running. I certainly understand the point you make about delay and stress for victims. We want to get it done as soon as possible.

Mr DAVID SHOEBRIDGE: Attorney, you would be aware of the published data that the delay in victims coming forward and speaking about childhood sexual abuse can be in the order of 20 to 25 years on average.

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: To have those victims wait another two, three, four, five years for the New South Wales Government to make a decision would mean the offences could be 30 years in the past. When can we expect a decision?

Mr MARK SPEAKMAN: Hang on, there is nothing to make a decision on. That is the problem. We cannot make a decision until the Commonwealth says, "Here is our scheme". We have been discussing with other States and Territories as well as the Commonwealth what a scheme like that might look like. We think the Commonwealth is pretty close to telling us what that scheme would look like. Subject to its settings, we hope we are able to opt in, but we cannot make a decision if there is no scheme to make a decision about. We are trying to get that scheme expedited.

Mr DAVID SHOEBRIDGE: There is the scheme that was put out in some detail by the royal commission. Does the New South Wales Government have an in-principle position about the scheme that was proposed by the royal commission including the maximum caps, the funder of last resort and other aspects?

Mr MARK SPEAKMAN: I cannot reveal the content of confidential communications with other jurisdictions which are respecting the confidence of those communications. If I do, that is likely to cause more delay and roadblocks to getting a scheme in place. We want a national redress scheme. We cannot make a decision about that until there is a Commonwealth model. By answering your question, I cannot indirectly reveal what we are and are not saying to the Commonwealth. But we are very keen for a scheme that deals fairly and cheaply—not in the sense of payouts but in terms of the time and transaction costs for stakeholders, especially victims—to be up and running as soon as possible. It is a redress scheme, where providing some form of redress to victims is obviously the number one priority.

Mr DAVID SHOEBRIDGE: Attorney, I hope you are not saying that you are only going to sign onto a scheme if every other State and Territory signs onto the scheme, given that South Australia has largely said it does not have the funds for it.

Mr MARK SPEAKMAN: No, I am not saying what we will or will not do if other jurisdictions do not sign up. Nor am I saying that we will sign up if we are the only jurisdiction that will sign up. We support in principle a national redress scheme. We are very keen to have maximum participation in that scheme by Australian jurisdictions and by stakeholders and by victims. We are doing all that we reasonably can to get an announcement expedited. I am certainly not saying that we will only act if there is unanimity among jurisdictions. I am certainly not saying that.

Mr DAVID SHOEBRIDGE: There is no money set aside in the current budget to plan for or begin preliminary steps for a redress scheme, why is that?

Mr MARK SPEAKMAN: We do not have a redress scheme at the moment, but rest assured that if New South Wales announces that it is signing up to one I will be before the Expenditure Review Committee shaking the tin for whatever money is needed.

Mr DAVID SHOEBRIDGE: Has the New South Wales Government done any kind of assessment about what the cost to the NSW Treasury would be for a scheme as designed by the royal commission? Have you checked the numbers that the royal commission produced?

Mr MARK SPEAKMAN: There have been extensive Cabinet-in-confidence analyses of different permutations and combinations of a redress scheme.

Mr DAVID SHOEBRIDGE: Given there have been some estimates calculated, how can you give any comfort to survivors and victims if there is not a single dollar allocated for a resource scheme in any of the budget estimates going forward?

Mr MARK SPEAKMAN: It is absolutely our goal to have a national redress scheme in principle. If for some reason there is no such scheme then we will consider what plan B might be. We want a scheme that adequately redresses the suffering that victims have gone through. We have modelled various permutations and combinations Cabinet in confidence. We would not be doing that if we were not serious, but we cannot make a decision until the Commonwealth announces what the scheme is. That is not to say we will wait forever—for mañana—but if, as I believe, an announcement is imminent then we will try to get that announcement expedited.

Mr DAVID SHOEBRIDGE: Returning to Aboriginal imprisonment, you correctly noted that in the most recent Bureau of Crime Statistics and Research [BOCSAR] report one of the three main factors for the increase in Aboriginal imprisonment was an increase in the length of time being spent on remand by Indigenous defendants refused bail in large part because of a growth in court delay in the New South Wales district criminal court. Do you accept that is a failing of the District Court on your watch and there needs to be additional resources and judicial members to remove that backlog?

Mr MARK SPEAKMAN: I do not accept there is any failing. This is the paradox. Reported crime has been going down in the 17 major categories over 20 years. The BOCSAR stats that came out yesterday show that over the last two years crime has risen in one category—steal from retail. It has otherwise fallen in three and stable in the rest.

Mr DAVID SHOEBRIDGE: It is the lowest level of violent crime in the post-war period.

Mr MARK SPEAKMAN: I accept that. The paradox is that police are getting better at their job and arresting offenders. We have an increased workload in the District Court because more people are being arrested because the police are better at their job. That backlog, which is now around 2,000 cases, is something the Government wishes to address and that is why in May I announced our appropriate early guilty plea reforms, which will put downward pressure on that delay. We know that approximately three-quarters of people charged with an indictable offence will plead guilty, but 24 per cent will plead guilty on the day of trial or later. What we want to do is speed up that process and get people through the system quicker, not just because we want to be managerially efficient people, but because we want to reduce the stress for victims and witnesses, reduce the waste of time for police and we want to be fair to accused who may be held on remand for two years before they get to trial—we want to cut that.

In a system of fixed early guilty pleas you have charge certification upfront by senior prosecutors, getting senior prosecutors involved in the decision-making, resourcing Legal Aid so you have appropriately qualified defence lawyers involved in the process up-front, thereby getting those early guilty please and getting cases through the system much faster. We have appointed an extra five District Court judges. It is a $59 million package, with extra District Court judges and public defenders, two new courtrooms in the Downing Centre, and a new State Parole Authority hearing room at Parramatta to get an extra courtroom there. We are doing all we can to put downward pressure on that backlog and reduce delay.

Mr DAVID SHOEBRIDGE: Could you provide the number of District Court judges each year from 2011 to date?

Mr MARK SPEAKMAN: Certainly.

Mr DAVID SHOEBRIDGE: When I speak to members of the public about freedom of information requests I tell them that for many government agencies they have to write a cheque because there is no electronic payment. As a general rule, the public cannot believe that the New South Wales Government has such an antiquated system. When will you direct agencies to ensure they have an electronic payment system available for all Government Information (Public Access) applications?

Mr MARK SPEAKMAN: As you are probably aware there has been a recent statutory review of the Government Information (Public Access) Act 2009 and the Government Information (Information Commissioner) Act 2009. I do not recall that issue coming up. Mr Cappie-Wood does not either. I will take your question on notice.

Mr DAVID SHOEBRIDGE: Do you have a time frame within which you expect agencies to accept electronic payment and electronic applications, because obviously they are linked? There is no point having an electronic application if you have to send a cheque.

Mr MARK SPEAKMAN: We indicated at the statutory review that agencies will be able to elect whether they accept electronic applications.

Mr DAVID SHOEBRIDGE: What if an agency doggedly says they do not want electronic applications and they want them to come by snail mail? We are not going to remain wedded to the twentieth century, are we?

Mr MARK SPEAKMAN: That has been the subject of a thorough statutory review on which submissions were taken. The position is we are facilitating digital applications by empowering agencies to accept those applications if they wish to do so.

Mr DAVID SHOEBRIDGE: You are the Minister responsible for the system. If an agency doggedly says, "We only want to accept paper applications because if we accept online applications we will have too many citizens requesting information", that is unacceptable, is it not?

Mr MARK SPEAKMAN: As I said before, to the surprising disbelief of one member of this Committee.

The Hon. LYNDA VOLTZ: That would be me.

Mr MARK SPEAKMAN: We are a Government that believes in open and transparent government. The general tenor of the reforms we have identified in the statutory review that we will be implementing are heading in that direction of open government. We have an Information Commissioner who oversees this general area of policy. I will take advice from her if she thinks there is more that agencies can do to speed up or facilitate applications for information.

Mr DAVID SHOEBRIDGE: If we are talking about freedom of information more broadly, is the Government considering abolishing fees for Government Information (Public Access) applications so it can be about freedom of information?

Mr MARK SPEAKMAN: Freedom of information is not free information; it is $30 an hour. That has not gone up. It is a pretty modest charge. If you look at the statute you will see clearly that we are heading in the direction of greater transparency and openness. If people want to make an application I do not think it is inappropriate that government charges a modest hourly fee. The time for public servants engaged in collecting that data is time and money we are not spending on schools, hospitals, police stations, roads and public transport. There is an opportunity cost in engaging public servants providing that information. We want to be open, transparent and provide information, but a reasonable charge is appropriate.

Mr DAVID SHOEBRIDGE: Minister, are you aware which recommendations of the Royal Commission into Aboriginal Deaths in Police and Prison Custody have not been implemented? My question is ultimately this: Do you have any system in place to track the recommendations to determine which of those have not been implemented and what systems are in place to ensure that two decades later we have implemented the majority of them?

Mr CAPPIE-WOOD: There is substantial progress. We do track it, but I do not have it with me. Could I take it on notice?

Mr DAVID SHOEBRIDGE: Take on notice those that have been implemented, those that have been partially implemented and those, if any, that have been rejected?

Mr CAPPIE-WOOD: We can do that.

Mr DAVID SHOEBRIDGE: Who in your agency is responsible for tracking this? Is there any part of your agency that is set aside to deal with Aboriginal justice as a standalone key part of your portfolio?

Mr CAPPIE-WOOD: Within the policy and strategy area of the department we have an Aboriginal area which looks at policies as well as services. More broadly within the rest of the policy and strategy area we have key focus on the whole issue of Aboriginal over representation. Recently we had a workshop across all of the criminal justice system, including Department of Public Prosecutions, Legal Aid, police, Justice department, and courts. Everybody was there literally looking at what was best practice as we move forward in this area. We are very active in this space.

Mr DAVID SHOEBRIDGE: Can you detail the outcomes of that workshop on notice?

Mr CAPPIE-WOOD: It is ongoing, but we are happy to give you an indication about where we are going. It is also about forming policy advice to the Minister. There are some links to that.

The CHAIR: I thank the Minister and his officers for their attendance.

(The witnesses withdrew)

The Committee proceeded to deliberate.