



LEGISLATIVE COUNCIL

LEGISLATIVE COUNCIL PORTFOLIO  
COMMITTEE No.4

**BUDGET ESTIMATES 2017-  
2018**

**Questions Taken on Notice**

**Legislative Council Portfolio  
Committee No.4**

**ATTORNEY GENERAL**

Hearing: Thursday 8 September 2017

**Answers due by: Wednesday 4  
October 2017**

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**Question 1 (page 4):**

**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.**

**Answer:**

I cannot recall the specific terms of conversations, but it is possible that I have had one or more informal conversations with other parliamentary colleagues about drug courts not referred to in the transcript of questions and answers about drug courts.

**Question 2 (page 4):**

**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.

**Answer:**

I am advised:

The report is currently being finalised.

**Question 3 (page 5):**

**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 communique 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.

**Answer:**

I am advised:

To date, the Commonwealth and Tasmania have declined to participate. The Australian Capital Territory, Northern Territory and South Australia have expressed interest in joining a NSW-led working group. The remaining jurisdictions are yet to advise of their intentions.

**Question 4 (page 5):**

**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.

**Answer:**

I am advised:

The Government tabled its response to the Standing Committee on Law and Justice's report 'Remedies for the serious invasion of privacy in New South Wales' on 5 September 2016, which noted that the scope and effect of a statutory cause of action for serious invasions of privacy in NSW, particularly in the absence of a national approach, is uncertain.

As the Government response noted, NSW cannot act alone in the absence of an agreed approach at a national level. A lack of national uniformity would be likely to lead to inconsistency and complexity, and increased costs for legitimate NSW business activities compared to competitors in other jurisdictions.

**Question 5 (page 6):**

**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.

**Answer:**

I am advised:

Justices of the Peace are appointed and re-appointed in accordance with the *Justices of the Peace Act 2002* (NSW). If an appointment has lapsed and the person wishes to be reappointed, they may apply to the Department of Justice for appointment.



**Question 6 (page 7):**

**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.**

**Answer:**

I am advised:

The Chief Judge regularly monitors the wellbeing of all judges. All judicial officers in NSW can access the Judicial Assistance Program which offers a 24 hour counselling service.

**Question 7 (page 7):**

**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.

**Answer:**

I am advised:

The Chief Judge regularly meets with all judges, including the two specialist judges appointed to deal with child sexual assault cases, and enquires about their welfare.

The caseload of the two specialist judges is not confined to sexual assault trials and the Chief Judge ensures that they are also assigned trials other than sexual assault matters. All judges sitting in the District Court's criminal jurisdiction also preside in sexual assault trials.



Question 8 (page 7):

**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.

**Answer:**

I am advised:

The Director of Public Prosecutions applies the Prosecution Guidelines, in particular Guideline 4.

No matters under s 316(4) of the *Crimes Act 1900* (NSW) have been referred to the Director of Public Prosecutions or determined by the Director of Public Prosecutions since I became Attorney General.

**Question 9 (page 8):**

**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.

**Answer:**

Refer to the answer to question 8.

Question 10 (page 9):

**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—

**Answer:**

I am advised:

No.

**Question 11 (page 9):**

**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.

**Answer:**

I am advised:

On 3 February 2016, the former Attorney General, the Hon Gabrielle Upton MP, requested the Director of Public Prosecutions review the decision not to prosecute Mr Adrian Attwater and Mr Paul Maris.

**Question 12 (page 10):**

**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.

**Answer:**

This question should be directed to the Minister for Primary Industries, as the Minister responsible for the *Prevention of Cruelty to Animals Act 1979*.

**Question 13 (page 10):**

**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.

**Answer:**

This question should be directed to the Minister for Primary Industries, as the Minister responsible for the *Prevention of Cruelty to Animals Act 1979*.

**Question 14 (page 11):**

**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.

**Answer:**

This question should be directed to the Minister for Primary Industries, as the Minister responsible for the *Prevention of Cruelty to Animals Act 1979*.



**Question 15 (page 11):**

**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.

**Answer:**

This question should be directed to the Minister for Primary Industries, as the Minister responsible for the *Prevention of Cruelty to Animals Act 1979*.

**Question 16 (pages 14 and 15):**

**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.

**Answer:**

My office received correspondence from the former member for Cootamundra, the Hon Katrina Hodgkinson, in May this year regarding the Cowra Justice Reinvestment project. I do not recall discussing this project with the Member for Cootamundra outside this correspondence.

**Question 17 (page 17):**

**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.

**Answer:**

On 12 May 2017, I requested a briefing from the Director of Public Prosecutions about the decision not to commence a prosecution in the matter of Rhys Colefax.

**Question 18 (page 21):**

**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.

**Answer:**

I am advised:

The Director of Public Prosecutions referred this matter to the Legal Services Commissioner (NSW) on 23 September 2016.



**Question 19 (page 23):**

**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.

**Answer:**

I am advised:

The Downing Centre is monitored from the Sheriff's Operations Centre overnight.

**Question 20 (page 23):**

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**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.**

**Answer:**

I am advised:

One.

**Question 21 (page 25):**

**Mr MARK SPEAKMAN:** ... 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 pleas 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.

**Answer:**

I am advised:

A list of District Court judges (including the Chief Judge) is published in the District Court Annual Review on the Operations of the Court for the period 1 January to 31 December each year. The District Court Annual Reviews can be found at [www.districtcourt.justice.nsw.gov.au](http://www.districtcourt.justice.nsw.gov.au)



**Question 22 (page 25):**

**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.

**Answer:**

I am advised:

It is a matter for each agency to determine if they have an electronic payment system available for all *Government Information (Public Access) Act 2009* applications.

**Question 23 (page 26):**

**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.

**Answer:**

I am advised:

The Department of Justice, through Corrective Services NSW, is involved in the implementation of the recommendations from the Royal Commission.

This is a question for the Minister for Corrections and the Minister for Police.

**Question 24 (page 26):**

**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.

**Answer:**

I am advised:

In August 2017, the Criminal Justice Transformation Board met to discuss the overrepresentation of Aboriginal people in the criminal justice system.

A comprehensive strategy to address the overrepresentation of Aboriginal people in the criminal justice system is currently being developed by the Department of Justice.

