

PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS

BUDGET ESTIMATES 2018-2019

NSW POLICE FORCE

At Macquarie Room, Parliament House, Sydney, on Wednesday 31 October 2018

The Committee met at 9:40 am

PRESENT

The Hon. Robert Borsak (Chair)
The Hon. David Clarke
The Hon. Catherine Cusack
The Hon. Trevor Khan
The Hon. Shaoquett Moselmane
Mr David Shoebridge (Deputy Chair)
The Hon. Lynda Voltz

QUESTIONS AND ANSWERS

Q1. The Hon. LYNDA VOLTZ: Has the Department of Corrective Services sought your advice on any occasion in the last year or two in regard to Corrective Services officers facing risk?

Mr FULLER: Not me personally, but could I take that on notice in terms of checking our records to see if we have received any? We do have a liaison unit with Corrective Services and it is possible that they have received those and passed it to the relevant police area command district or investigative body to look at. If I could take that part on notice?

ANSWER:

I am advised:

The NSW Police Force (NSWPF) does not keep a register of criminal complaints or threats against Corrective Services NSW staff. All matters of this type are dealt with in the same manner as that of members of the public. The NSWPF defer to Corrective Services NSW for any statistics regarding the number of staff requiring the services of NSW police in dealing with matters of personal safety.

Q2. The Hon. LYNDA VOLTZ: I refer to the previous estimates hearing regarding the counterterrorism asset management report that was completed for the Sydney Cricket and Sports Ground Trust. Have there been any similar requests for either Town Hall or Wynyard stations?

Mr FULLER: I know our counterterrorism command provide advice and guidance to many, particularly our vital and major State infrastructure. I would have to take those two locations on notice. But if they had, there would certainly be a record at counterterrorism command.

ANSWER:

I am advised:

The NSW Police Force Terrorism Protections Unit has provided training for selected Transport for NSW staff so they can complete vulnerability assessments of their own assets. Transport for NSW staff have completed reviews of both Town Hall and

Wynyard Stations. On this basis, a separate vulnerability assessment by the NSWPF has not been required.

Q3. Mr DAVID SHOEBRIDGE: Can you provide details on notice of training materials provided on the tactical options model that relates to mental illness?

Mr FULLER: Yes, I can.

ANSWER:

I am advised:

NSWPF currently maintains the Tactical Options Model under Education and Training Command. The Model has been incorporated into Mental Health Training, including the Four Day Mental Health Training course. This course is operated by the Mental Health Intervention Team (MHIT) who have used the Tactical Options Model to baseline the response to the training needs of NSW Police Officers when applying intervention to Mental Health Incidents.

The Mental Health Training Course highlights the various parts of the Tactical Options Model that may assist officers in dealing with Mental Health Patients, including assisting in de-escalating situations or preventing situations from escalating unnecessarily. Parts of the Tactical Options Model emphasised during this Training include the use of communication (words, body movement, vocal tones, conflict resolution) and officer presence and tactical positioning. These options are covered in this Training, among other important factors such as officer safety, warning signs, non-verbal warning signs, reactionary gap and bladed stances.

The NSW Police Handbook is also referenced within the four-day training course, in relation to use of force and prescribing the least restrictive use of force in any circumstances (i.e. using force as the last resort).

Currently the NSWPF MHIT deliver training to 300 officers per year for the four-day training program along with all police recruits who receive the One Day Training Course delivered at the Goulburn Police Academy. In the Four Day Course NSW Police Officers receive twenty-two sessions over four days that includes Clinical Teaching, Operational Appreciations for Intervening and additional information around Mental Illness and Disturbance, commensurate with the types of matters NSW Police Officers encounter throughout the state.

Q4. Mr DAVID SHOEBRIDGE: Is there anywhere you can point me to where you have given a direction to police, or there is a directive from a prior commissioner, that says

you should, wherever possible, try and not rely upon force, rely upon negotiation and other communications to de-escalate the situation? Will I find that in writing anywhere?

Mr FULLER: From me personally or from my policy and legislation that I control?

Mr DAVID SHOEBRIDGE: From you as commissioner, or from a prior commissioner, is there a current "in place" directive or memorandum to that effect?

ANSWER:

I am advised:

Considerable guidance is provided to NSWPF officers in the NSW Police Force Handbook specific to the Use of Force and in dealing with people with mental health issues. This is reinforced by mental health training modules.

The NSW Police Handbook (the Handbook) contains a section relating to people with mental health issues, which outlines the relevant legislation, policies, resources and options in dealing with people with mental health issues.

The NSW Police Handbook states:

"Least Restrictive Actions

In all that you do, be sure to apply the least restrictive actions possible upon a person suffering from a mental illness. The use of force, whilst justifiable in appropriate circumstances, should be utilised as a last resort. Use effective communication skills and other tools at your disposal to de-escalate potentially violent situations, where possible."

This section of the Handbook also provides officers with a number of alternative options for mental health intervention, including but not limited to referral options and engaging with NSW Health.

Q5. The CHAIR: You raised the issue of licences and one of the ongoing complaints we have had—and I tried to amend it earlier this year—was the physical delivery of licences and them being lost in the post. I am not sure exactly where in that chain of activities you go to Service NSW to get your licence renewed, but you cannot go to pick it up like we did in the past. Licences seem to be getting lost in the mail. Are you satisfied the security requirements that were built into the Firearms Registry processes in the past still function? I am getting a lot of complaints about people's mail going astray.

Mr FULLER: I am, sir. But I will take that on notice and see how many have been lost and what is the reason and I will come back to you personally.

ANSWER:

I am advised:

After investigation, it is difficult to ascertain how much mail goes astray, however a small amount of mail sent out from the Registry is returned to sender.

Q6. The CHAIR: Certainly, the impression I have been getting in the last six or eight months it has been going the other way, and resources are being removed from you or the registry.

Mr FULLER: I think a lack of certainty has seen staff leave. I think that is a fact, and we are in the process of backfilling them. It is my understanding that we have not deleted any positions. I will triple check that on notice for you.

ANSWER:

I am advised:

No positions have been deleted. Since Superintendent Bell commenced as Director of the Firearms Registry, he has been working well with staff and has introduced some temporary additional resources to deal with some areas of backlog and improve service to the community.

Q7. The CHAIR: That is really where I am going. As I said on the professional use side of things, 108 of the 109 applications were approved. Only one out of 79 applications was approved for "RECREATIONAL/SPORTING PURPOSES", yet they are one of the listed "genuine reason" application areas. There seems to be a bit of a dichotomy there; no-one really understands what a "genuine reason" is for recreational and sporting purposes. I turn now to the question of costs—and I have tried to get my hands on some of this stuff but have not been able to. What was the cost to the NSW Police Force arising from legal representation provided by the Office of General Counsel, the Crown Solicitor's Office, external barristers and solicitors, and expert witnesses as a respondent to the following cases dealing with the NSW Civil and

Administrative Tribunal: Marando v Commissioner of Police, Larsson v Commissioner of Police, Henney v Commissioner of Police, Trigg V Commissioner of Police, Burge v Commissioner of Police and Burton v Commissioner of Police?

Mr FULLER: We do have that information, and I can provide it on notice to the Committee as a result of this.

ANSWER:

I am advised:

The Office of General Counsel does not apportion costs to individual matters. The GST exclusive costs arising from legal representation provided by the Crown Solicitor's Office, external barristers and solicitors, and expert witnesses are as follows:

Marando v Commissioner of Police - \$53,782.97

Larsson v Commissioner of Police - \$60,597.53

Henney v Commissioner of Police - \$27,193.60

Trigg v Commissioner of Police - \$23,571.39

Burge v Commissioner of Police - \$36,749.72

Burton v Commissioner of Police - \$30,226.31

Q8. The Hon. LYNDA VOLTZ: What about consideration being given to police radio operators having mental health training to better identify the first call-out?

Mr FULLER: Absolutely, and that has been passed on to the head of the communications and information command, or Comms group. They are a central point in police responding to many incidents, including mental health issues.

The Hon. LYNDA VOLTZ: Can you provide on notice what action has been taken in response to that recommendation and police radio operators?

Mr FULLER: Absolutely.

ANSWER:

I am advised:

The State Coordinator VKG and a Senior Communications Officer at VKG completed the four-day MHIT course in May 2018. Further discussions relating to MHIT and the way to accredit VKG officers is continuing to be examined. The response to this recommendation is ongoing.

The NSWPF has also given consideration to developing criteria by reference to which police radio operators may identify an incident as possibly involving a person in mental health crisis.

Q9. The Hon. LYNDA VOLTZ: I think the intention was similar to that in domestic violence, where domestic violence officers would attend along with police officers to assist in incidents of domestic violence. As you would no doubt be aware, going back a number of years now crisis teams would normally attend, but police appear to have fallen into that role. I am asking whether the supplementing of mental health nurses in that process has been looked at?

Mr FULLER: I will take it on notice to go back and review the recommendation to see what decisions were perhaps made before my time. But I certainly have not progressed it in my time as commissioner.

ANSWER:

I am advised:

The NSWPF is currently examining co-located models that operate in other jurisdictions both nationally and internationally, including counterparts in Western Australia.

Q10. The Hon. LYNDA VOLTZ: In the use of tasers, do you know whether in the past two years—I know the Auditor-General does audits of them—there has been an increase in taser use?

Mr FULLER: We do have the statistics on it. I do not believe there is a marked increase in taser use, but I can certainly, on record, get you the statistics going back.

The Hon. LYNDA VOLTZ: Will you take that on notice and also a breakdown of them regionally—taser use by regional area command?

Mr FULLER: I certainly cannot see why not. If we can, we will do that. I think, Ms Voltz, it is important with tasers that they are a very important less lethal option but they are not foolproof either. They do have a failure rate because clearly they need to connect two probes with the skin. I think people need to understand that I think around 50 per cent of the time there is a failure because they just do not connect because of clothing and other issues.

The Hon. LYNDA VOLTZ: I understand that, and particularly with ice they are also an issue. It would be interesting to know how they are being used and whether the use of them has increased. Is that consistent across the board or is it being used more in certain regions?

ANSWER:

I am advised:

Tasers were used in the following ways during 2016/17 and 2017/18:

	2016/17	2017/18
Drive and Stun	8	2
Drive Stun & Barbs Deployed	19	19
Barbs Deployed	144	155

It should be noted that tasers may be 'drawn' at an incident without being used.

Q11. Mr DAVID SHOEBRIDGE: When was the last full review of the police pursuit policy?

Mr FULLER: It gets reviewed every 12 months. I could get you that date reasonably quickly.

Mr DAVID SHOEBRIDGE: When was the last substantive change made to it?

Mr FULLER: It gets changed every year when we do a review. It would be a progressive review. I cannot tell you the amount of reviews that happen every year but we would have a track change of that. But they are changes based on a whole range of different best practice and outcomes of inquiries of critical incidents and coronials.

Mr DAVID SHOEBRIDGE: Will you provide this Committee with a copy of the current policy? You may wish to ask for it to be confidential. I understand that.

Mr FULLER: There is methodology in it that we do protect because it does obviously talk about how we deal often with criminals in the space of pursuits. So it is something we do not normally release. But if I have to release it, then we would mark it.

Mr DAVID SHOEBRIDGE: I ask you to provide a copy and if you wish it to be kept confidential to clearly indicate that to the Committee.

The Hon. TREVOR KHAN: I think he is indicating now that if he does provide it he wants it confidential.

Mr DAVID SHOEBRIDGE: We have had this discussion before.

The CHAIR: There is no question of that. We can keep that confidential.

ANSWER:

I am advised:

The NSW Police Force is currently reviewing the Safe Driving Policy. The most recent changes to the policy were made in 2017. The Policy contains police methodology and other sensitive information that is critical to conducting police operations, and it therefore not appropriate to release it.

Q12. Mr DAVID SHOEBRIDGE: How many of the 2,589 police pursuits last financial year were found to be in breach of policy?

Mr FULLER: I would have to check. But, again, each one of them goes before a pursuit committee. Each one of them is reviewed and if there are problems people are essentially taken off the road while a whole range of other actions are taken.

Mr DAVID SHOEBRIDGE: I will ask that question in relation to each of those 2014-15, 2015-16, 2016-17, 2017-18 and partial financial year, which you have provided data on already—

Mr FULLER: I will take that on notice.

Mr DAVID SHOEBRIDGE: If you could, could you provide how many of those pursuits were for minor traffic matters?

Mr FULLER: If I can, I will certainly do that.

Mr DAVID SHOEBRIDGE: If you do not have a database that records that, will you explain why?

Mr FULLER: Yes, I can. I could probably explain that now but I will wait to see whether we can pull that information.

ANSWER:

I am advised:

The NSW Police Force is not able to provide data on breaches of the Safe Driving Policy.

The NSW Police Force recording system records details of all police driving incidents (including police pursuits), however, the system does not record retrievable statistical data of police pursuits or incidents which are related to non-compliance with the Safe Driving Policy.

All police pursuits are recorded on manual debrief forms, which are reviewed individually to ensure that each pursuit has complied with the Safe Driving Policy.

Q13. Mr DAVID SHOEBRIDGE: You make that assertion, but I am asking you if there is any independent expert advice that you can point to that says STMP was a good idea before you implemented it, or that shows that it is working now?

Mr FULLER: I will take that on notice to see if we have had it independently assessed over its life and different iterations.

ANSWER:

I am advised:

The NSW Ombudsman has conducted two reviews of the STMP Framework, in 2002 and 2005. The 2005 review was conducted prior to the implementation of the reframed STMP II and the NSW Ombudsman supported the strategies contained in STMP II.

The NSW Police Force continually reviews the STMP Framework to identify opportunities for improvement and implement enhancements. The most recent review was conducted in 2018, which focused on compliance with the policy.

Q14. Mr DAVID SHOEBRIDGE: Will you review whether or not there were arrangements put in place to ensure that there was no conflict of interest between the police commissioner, who had a friendship with Mr Brian Houston, and the police undertaking the investigation arising from Case Study 18?

Mr FULLER: Could I just ask a quick question?

Mr DAVID SHOEBRIDGE: By all means.

Mr FULLER: My advice is that the matter is still open with us, Mr Shoebridge. And perhaps I could provide further information out of session in relation to your letter, not so much the commentary around the previous commissioner and the relationships, but if I could perhaps provide out of session or on notice information in relation to the broader investigation.

ANSWER:

I am advised:

Investigators at the NSWPF are currently following a number of lines of inquiry into the actions taken when dealing with allegations of sexual assault by Frank Houston. This matter was initially referred to Police in 2015. In July 2016 Mr Brian Houston declined to be interviewed or assist police with the investigation. In November 2016 legal advice was received regarding a lack of sufficient evidence to proceed. However, in October 2018, a review of the original investigation commenced.

Prior to the recent review, a number of issues have been experienced regarding the legalities around the admissibility of available forms of evidence, and sufficiency of evidence. However, the NSWPF is currently taking steps to resolve these issues, including obtaining fresh legal advice and following a number of lines of inquiry into this investigation. Police are maintaining contact with the victim.

As this is an ongoing investigation, the NSWPF is unable to provide further information in relation to this matter at this point in time.
