

BUDGET ESTIMATES 2021
Questions Taken on Notice

**Portfolio Committee No. 5 – Legal
Affairs**

ATTORNEY GENERAL AND PREVENTION OF DOMESTIC VIOLENCE

Hearing: Monday 1 November 2021

Answers due by: Tuesday 30 November 2021

ANSWERS

Question 1 - Bail of Mostafa Baluch

Transcript page 2

The Hon. ADAM SEARLE: Mr Attorney, this morning you were in the newspaper discussing the flight while on bail of Mostafa Baluch.

Mr MARK SPEAKMAN: Yes.

The Hon. ADAM SEARLE: You expressed some concerns about the bail decision made by the magistrate, noting of course that the Magistrates Court is very busy. Are you able to tell us about what evidence the magistrate had before it from the police in order to reach that particular decision?

Mr MARK SPEAKMAN: I have read the—sorry, just repeat the question.

The Hon. ADAM Searle: The question was about the sufficiency of evidence before the court in making that bail determination.

Mr MARK SPEAKMAN: I have not seen the evidence, but I have read the transcript. There was, I think, evidence of whatever prior offending the accused had; a proposal that the accused be electronically monitored by a private company; the accused's proposal for surety, which was, I think, \$4 million related to, I think, a house at Bayview that was offered as security for that; and submissions were made as to the strength of the prosecution case.

The Hon. ADAM SEARLE: The police were asked some questions on Friday about this matter, and the police Minister, I think, or the police commissioner indicated that advice was sought from the Crown Solicitor about the prospects of appealing the bail decision. I think the evidence on Friday was that the evidence—

The Hon. TREVOR KHAN: I think it was the Director of Public Prosecutions [DPP].

The Hon. ADAM SEARLE: It was the DPP—and that the chances were not strong. Can you explain to us why that might have been the case, given the amount of money involved, given the resources of the accused?

Mr MARK SPEAKMAN: I have not seen whatever advice the DPP has given, so I would only be speculating.

The Hon. ADAM SEARLE: **Could you take that on notice, perhaps, and come back to us about that matter?**

Mr MARK SPEAKMAN: Sure.

Answer

I am advised:

Mr Baluch is being prosecuted by the Commonwealth Director of Public Prosecutions (CDPP). This falls outside of my portfolio. I am unable to comment on any decisions made by the CDPP.

Question 2 - Mostafa Baluch - ankle monitoring bracelet

Transcript pages 2-3

The Hon. ADAM SEARLE: You mentioned, both in the article and this morning, about the ankle-monitoring bracelet being one maintained by a private company. Pardon my ignorance about this. Is this standard practice in New South Wales now, for the State to outsource this function?

Mr MARK SPEAKMAN: It was the Commonwealth DPP that appeared in the Baluch matter. No, my understanding is that where there is electronic monitoring of someone on parole, for example, that is done by Corrective Services. Electronic monitoring is typically not a bail condition and, typically, rather than prosecutors seeking to impose that condition, it is accused who offer that up and offer to pay for it themselves as a risk-mitigation factor and an argument as to why there is not an unacceptable risk if they are given bail. But, generally speaking, electronic monitoring is not used for people who are on bail. Typically, prosecutors oppose bail being granted on the basis that the risk is mitigated by electronic monitoring.

The Hon. ADAM SEARLE: On this occasion, was it the defendant who put up this proposal?

Mr MARK SPEAKMAN: That is my understanding.

The Hon. ADAM SEARLE: **If you could just double-check that on notice, that would be very useful.**

Mr MARK SPEAKMAN: Sure.

Answer

I am advised:

According to the transcript of proceedings in the Local Court, it was the accused Mr Baluch who offered to agree to be subject to electronic monitoring, at his own expense, if he were to be granted bail.

Question 3 - Pill testing

Transcript page 6

The Hon. ADAM SEARLE: One of the recommendations that was ruled out also was that the Police Force should cease the use of drug detection dogs at music festivals. That was, I think, based on the idea that young people carrying drugs would panic and ingest them rather than ditching them in other ways. Can you explain to the Committee again the rationale in rejecting that recommendation?

Mr MARK SPEAKMAN: That is one rationale that is offered. I think another rationale, that the police contend for, is that the use of sniffer dogs is an effective form of drug detection.

Mr DAVID SHOEBRIDGE: Despite being wrong two-thirds of the time?

Mr MARK SPEAKMAN: Well, I will take that on notice.

Answer

I am advised:

The Interim NSW Government response to the Special Commission of Inquiry into the Drug “Ice” explained that “The Government also maintains its view that drug detection dogs are the best method for police to screen large crowds of people for the presence of drug odours”.

The Interim NSW Government response to the Special Commission of Inquiry is available here: <https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/The-Drug-ice-1546/01-Interim-NSW-Government-response-to-the-Special-Commission-of-Inquiry-into-the-Drug-Ice.pdf>

Question 4 – Mr Maguire’s legal costs

Transcript page 8

Mr DAVID SHOEBRIDGE: Are Mr Maguire's legal costs before ICAC still being met by the people of New South Wales?

Mr MARK SPEAKMAN: Yes. I will qualify that. I do not know whether all his legal costs are being met. I do not know whether there is a gap between that part that the State is funding, on the one hand, and what he might be personally incurring, on the other hand.

Mr DAVID SHOEBRIDGE: Ms D'Elia, do you know how much has been paid to date?

Ms D'ELIA: I would have to take that on notice.

Answer

I am advised:

As at 10 November 2021, \$26,276.42 has been paid in relation to Mr Maguire's legal representation in relation to the Independent Commission Against Corruption's Operation Keppel.

Question 5 - Decision to grant legal assistance to Mr Daryl Maguire

Transcript pages 8-9

Mr DAVID SHOEBRIDGE: In terms of the public interest, it is now abundantly clear that the conduct for which Mr Maguire is being held to account was conduct that had no legitimate connection with his work as a Parliamentary Secretary, no legitimate connection with his work as a member of Parliament. How is it that he is still having his legal costs paid, then?

Mr MARK SPEAKMAN: The decision to grant him legal assistance was not one made by me but under delegation by the then secretary of the department. In all these—

Mr DAVID SHOEBRIDGE: Is that Mr Coutts-Trotter?

Mr MARK SPEAKMAN: Mr Coutts-Trotter.

The Hon. TREVOR KHAN: He gave evidence on the last occasion.

Mr MARK SPEAKMAN: In all these cases, given the potential controversy about granting legal assistance to any current or former politician, it has been my practice to keep well away, completely away from the decision-making and delegate it either to the Solicitor General or the secretary of the department.

Mr DAVID SHOEBRIDGE: Very wise, Attorney.

Mr MARK SPEAKMAN: I have confidence, in each of those, that they will make an appropriate decision, be it an application under the Premier's memorandum or an application under section 52.

Mr DAVID SHOEBRIDGE: Attorney, when was that decision made by Mr Coutts-Trotter?

Mr MARK SPEAKMAN: I would have to—

Mr DAVID SHOEBRIDGE: I think Mr McKnight might be able to assist.

Mr McKNIGHT: **We would have to take that on notice. I think questions of timing in relation to Mr Maguire were taken on notice last time and the Committee was provided with some information. But I would need to go back.**

Mr DAVID SHOEBRIDGE: Sometime in 2018, though, was when the application was approved.

Mr McKNIGHT: I do not have that information in front of me.

Answer

I am advised:

Mr Maguire's application was determined by the Secretary under section 52 of the *Independent Commission Against Corruption Act 1988*. A witness who is appearing or about to appear before the Independent Commission Against Corruption (ICAC) may apply to the Attorney General for legal or financial assistance under this provision.

Whether Mr Maguire's appearance at the ICAC was in relation to conduct that was in connection with his work as a Parliamentary Secretary or a Member of Parliament is immaterial to the grant of assistance.

Question 6 - Scope for review of decisions to provide legal assistance

Transcript page 10

Mr DAVID SHOEBRIDGE: Mr McKnight, is there any administrative process that would bring up a review of a decision to provide someone like Mr Maguire with their legal costs being paid for by the people of New South Wales when there has been a material change or material additional evidence? Is there any administrative process or is it once the ship sets sail the people of New South Wales just keep paying?

Mr McKNIGHT: I am not aware of any review happening in the past, which is not to say that is not possible. **I would have to take that on notice.** A couple of things that happen once legal assistance is granted that are important I think to note: one is the claw-back provision that the Attorney General alluded to. When legal assistance is granted to any witness in ICAC, they must sign an agreement that if they are later convicted of an indictable offence they pay back those legal costs. The other issue is, I guess, that we are careful about is when the bills come in we moderate them carefully to ensure that the costs incurred are reasonably attributable to the ICAC inquiries and that they are within the rates agreed.

Answer

I am advised:

Mr Maguire was granted legal assistance under section 52 of the *Independent Commission Against Corruption Act 1988* (ICAC Act). This section provides for a witness who is appearing or is about to appear before the Independent Commission Against Corruption (ICAC) to apply for legal or financial assistance.

It is in the public interest for witnesses before the ICAC to be advised of their rights and obligations, and it ensures that ICAC can function effectively.

The basis for any review of assistance granted to Mr Maguire based on a redetermination of the public interest factors would be unclear, since the ICAC investigation is currently ongoing and findings have yet to be made.

It is a condition of any grant of assistance further to an application under section 52 of the ICAC Act that the witness agrees that, if he or she is convicted of an indictable offence, other than an indictable offence tried summarily, as a result of the ICAC investigation, the witness is required to immediately repay to the Attorney General, in full, the amount of the assistance paid to him or her, including interest. This is referred to as a 'clawback' condition.

Question 7 - Men's behaviour change programs

Transcript page 13

The Hon. ADAM SEARLE: You mentioned a number of the programs. They include men's behaviour change programs such as ENGAGE, What's Your Plan, ReINVEST and EQUIPS. Are they all still underway?

Mr MARK SPEAKMAN: They are all still underway. What's Your Plan has been recently evaluated by BOCSAR and unfortunately that did not show any difference in reoffending. So that is one program for which we had high hopes but they have not come to fruition, so we have got to review that program to decide whether to continue it or whether it can be modified in some way that may have better prospects of success. ReINVEST is still underway. We should have the results of that by June 2022. EQUIPS is also underway as well.

The Hon. ADAM SEARLE: How many domestic violence perpetrators are participating in the ENGAGE program?

Mr MARK SPEAKMAN: I cannot give you that number off hand. I can take that on notice, if I may.

Answer

I am advised:

In 2020-21, 921 participants completed an ENGAGE workshop.

Question 8 - ENGAGE program evaluation

Transcript page 13

The Hon. ADAM SEARLE: That is fine. You may have already covered this but did the evaluation of ENGAGE actually start in February 2020 as it was intended to?

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

The Hon. ADAM SEARLE: Can Ms D'Elia assist us?

Ms D'ELIA: I do not have the information but Ms Campbell might?

The Hon. ADAM SEARLE: Ms Campbell?

Ms CAMPBELL: I do not have the detail. But we, again, can take it on notice.

Answer

I am advised:

The ENGAGE evaluation commenced in April 2020.

Question 9 - Participants in men's behaviour change programs

Transcript page 13

The Hon. ADAM SEARLE: Okay. Do you know how many men are participating in men's behaviour change programs overall?

Mr MARK SPEAKMAN: Is that to me or Ms Campbell, or either of us?

The Hon. ADAM SEARLE: I think the default is that we start with the Minister and if the Minister cannot take it then he or she may pass it on.

Mr MARK SPEAKMAN: I do not know the number offhand. Ms Campbell?

Ms CAMPBELL: I am just checking my notes. No, I will need to take that on notice.

Answer

I am advised:

In 2020-21, 622 clients received men's behaviour change group programs from NSW Government-funded providers.

Question 10 - Review of men's behaviour change programs

Transcript page 13

The Hon. ADAM SEARLE: Okay. Has a review of the men's behaviour change programs been undertaken?

Mr MARK SPEAKMAN: My understanding is BOCSAR is undertaking a review of that. Ms Campbell might be able to elaborate further.

Ms CAMPBELL: I would need to take that one on notice.

Answer

I am advised:

An evaluation of the four men's behaviour change program pilot sites was completed by the University of New South Wales in October 2019. Women NSW have provided the following Evaluation Summary of the research findings which is available at:

https://www.women.nsw.gov.au/_data/assets/pdf_file/0011/777809/MBCP-Evaluation-Summary-Report.pdf

Question 11 - EQUIPS Domestic Abuse program review

Transcript page 13

The Hon. ADAM SEARLE: Okay. I am going to ask a series of questions and they may all be taken on notice. How many perpetrators are participating in EQUIPS?

Mr MARK SPEAKMAN: In 2020-21 there were 2,544 domestic violence offenders who participated in EQUIPS while in custody. There were 1,129 DV offenders who participated in EQUIPS in the community. Sixty-two programs were conducted in correctional centres and 63 programs were conducted in the community.

The Hon. ADAM SEARLE: Has a review of the EQUIPS Domestic Abuse Program been undertaken?

Mr MARK SPEAKMAN: I will have to take that on notice. But if it has not been completed it is certainly—my understanding is, every one of these programs has been or is being reviewed—

Answer

I am advised:

An independent evaluation of the EQUIPS Domestic Abuse Program was published in 2018 by the NSW Bureau of Crime Statistics and Research (BOCSAR) (Rahman, S. and Poynton, S. (2018), *'Evaluation of the EQUIPS Domestic Abuse Program'* (Crime and Justice Bulletin No. 211). Sydney: NSW Bureau of Crime Statistics and Research). The evaluation is available here:

<https://www.bocsar.nsw.gov.au/Publications/CJB/2018-Report-Evaluation-of-the-EQUIPS-Domestic-Abuse-CJB211.pdf>.

Question 12 - List of men's behaviour change programs

Transcript pages 13-14

The Hon. ADAM SEARLE: Okay. Well, perhaps—

Mr MARK SPEAKMAN: —among other things, from the question of "Do they reduce reoffending?"

The Hon. ADAM SEARLE: Perhaps you could provide on notice a list of all the programs, whether they are being reviewed, where the reviews are up to and, if they have been reviewed, what the review found?

Mr MARK SPEAKMAN: Certainly.

Answer

I am advised:

Program evaluations are published on a regular basis and are available on the NSW Bureau of Crime Statistics and Research (BOCSAR) and Department of Communities and Justice websites.

Question 13 - Women's refuge capacity

Transcript page 17

Ms ABIGAIL BOYD: Thank you. That sounds like an improvement from when we last discussed this. So I will wait and see. Can I ask you about the new shelters. As you say, that was a promising announcement made last month. The plan is for the number of women's refuges to increase from 86 to 161. What will be the increase in actual capacity in refuges? If these new core-and-cluster have only six units, what is the percentage increase in available accommodation?

Mr MARK SPEAKMAN: I will make some remarks if I may, and then I will invite Ms Campbell to supplement. That represents roughly a doubling in capacity. The number of 75 is approximate. There will also be eight refurbishments of existing refuges to convert them to a core-and-cluster model. Typically, there would be maybe four—up to six but maybe four—units at each one of these core-and-cluster, so you can do the maths from that, how many extra units it provides. I do not know whether Ms Campbell wants to comment on what proportion increase in capacity it represents.

Ms CAMPBELL: Thank you, Attorney. In terms of numbers, it would be an additional 2,900 women and children each year over the four years.

Ms ABIGAIL BOYD: What is the current capacity?

Ms CAMPBELL: The current capacity is very similar, so it would be just a little bit more currently, probably closer to 3,500, but I am happy to take that on notice and give you the exact detail.

Answer

I am advised:

Data on accommodation and services provided to clients of Specialist Homelessness Services (SHS) is published annually by the Australian Institute of Health and Welfare (AIHW).

In 2019-20, approximately 5,700 women and children (under 15 years of age) were provided with short-term or crisis accommodation by SHS in NSW, including approximately 3,400 women aged 15 or older. The data published by AIHW does not differentiate between accommodation provided in women's refuges and other forms of short-term accommodation that may have been provided by the SHS.

Question 14 - The Orchard facility

Transcript pages 17-18

Ms ABIGAIL BOYD: Thank you. That would be useful. How many of those will be pet friendly?

Mr MARK SPEAKMAN: That is a good question. I cannot give you a precise answer, but Ms Campbell and I have already had a discussion about this and the need to have as many as possible that are pet friendly, so that and accessibility for people with disability will be important parts of the design.

Ms ABIGAIL BOYD: Was consideration given to expanding existing refuges? I hear that there are some refurbishments, but there are a lot of refuges asking for additional funding to expand. Has that been—

Mr MARK SPEAKMAN: No, but I anticipate that in the \$140 million of New South Wales and Commonwealth extra money over the next two financial years some of that will be available for infrastructure programs.

Ms ABIGAIL BOYD: The existing Orchard facility in Orange that is run, I believe, by Housing Plus, what percentage of that was funded by the New South Wales Government and what percentage was through charitable donations?

Mr MARK SPEAKMAN: I would have to take that on notice. I don't know whether you know, Ms Campbell?

Ms CAMPBELL: My understanding is that was funded through the NSW Homelessness Strategy. I am not exactly sure whether there was any co-contribution so, again, I am happy to take that on notice.

Answer

I am advised:

Information about The Orchard is available on the Housing Plus website at: <https://www.housingplus.com.au/about-us/current-projects/orchard/>.

The Housing Plus website advises that The Orchard has been funded in broadly equal amounts by the Commonwealth Government, NSW Government and local fundraising by community groups, businesses, schools and individuals.

Question 15 - Men's behaviour change program - Walgett

Transcript page 21

The Hon. SHAOQUETT MOSELMANE: Thank you, Attorney General. If a domestic violence offender lived in Walgett, where would they participate in a men's behaviour change program?

Mr MARK SPEAKMAN: Ms Campbell might be able to answer that.

Ms CAMPBELL: There is one in that area. I am just looking through my notes— let me have a look. I would need to take that one on notice.

Answer

I am advised:

Mission Australia is registered under the NSW Practice Standards to deliver its men's behaviour change program in Walgett.

Question 16 - Men's behaviour change program participant – Moree Plains

Transcript page 21

The Hon. SHAOQUETT MOSELMANE: What about if a domestic violence offender lived in Moree Plains?

Ms CAMPBELL: I would need to take that one on notice.

Answer

I am advised:

Mission Australia is registered under the NSW Practice Standards to deliver its men's behaviour change program in Walgett, which is the closest provider to Moree Plains.

Question 17 - Rates of domestic violence assault in Bathurst and Lithgow areas

Transcript page 21

The Hon. SHAOQUETT MOSELMANE: Thank you. Minister, why are domestic violence rates increasing in the Bathurst and Lithgow areas? I know you indicated it is increased policing, but there is a situation where there is a significant increase in those areas. Why are they increasing?

Mr MARK SPEAKMAN: I am not familiar with the specifics of Bathurst and Lithgow. But, as a general proposition, where there is a significant increase in recorded domestic violence offences in a particular locality but not a general trend of increased recorded domestic violence offences across the State, the more likely explanation for Bathurst and Lithgow is some increased or different police activity. **If you would like me to take the question on notice, so that I—**

The Hon. SHAOQUETT MOSELMANE: Yes.

Answer

I am advised:

Changes in the incidence of reported domestic violence assault can be affected by many factors including changes in underlying prevalence, victims' willingness to report to police and policing operations.

NSW Bureau of Crime Statistics and Research (BOCSAR) data shows that, in the 24 months to June 2021, reported domestic violence assaults rose 38 per cent in the Bathurst Local Government Area and 27 per cent in the Lithgow Local Government Area. BOCSAR is unable to identify the specific causes of the increase in these areas.

Question 18 - Rates of domestic violence assaults in specific locations

Transcript page 23

The Hon. ADAM SEARLE: My friend was asking you some questions about spikes in DV rates in particular localities. You were saying, I think, the most likely explanation is an increase in policing. You have taken, I think, the examples he has given you on notice to see whether or not it is related to policing or whether it is some other feature. For example, Eurobodalla has gone up by nearly 11 per cent a year over five years but, more recently, the two-year average is a 39 per cent increase. What is another example? Parramatta is nearly up by 7 per cent; Penrith, 4 per cent; Tenterfield, 12 per cent per year over five years but nearly 77 per cent over the last two years. These are, as you say, quite dramatic increases. If I put these on as supplementary questions, will you come back with a full explanation about whether it is related to policing or whether there is some other things?

Mr MARK SPEAKMAN: I will do my best.

Answer

I am advised:

NSW Bureau of Crime Statistics and Research (BOCSAR) data shows that, in the 24 months to June 2021, reported domestic violence assaults rose 39 per cent in the Eurobodalla Local Government Area, 6 per cent in the Parramatta Local Government Area and 77 per cent in the Tenterfield Local Government Area, and fell 12 per cent in the Penrith Local Government Area.

BOCSAR is unable to identify the specific causes of the increases or decrease in these areas.

Changes in the incidence of reported domestic violence assault can be affected by many factors including changes in underlying prevalence, victims' willingness to report to police and policing operations.

Question 19 - Monitoring devices

Transcript page 24

Mr DAVID SHOEBRIDGE: Attorney, you were asked some questions by Mr Searle earlier today, about the monitoring devices that were used in one notorious bail case recently. Are those monitoring devices provided by a private corporation? If so, who?

Mr MARK SPEAKMAN: My understanding was, in the case to which you refer, it was a private company providing the device. I do not know the identity of that company.

Mr DAVID SHOEBRIDGE: Can Ms D'Elia help us?

Ms D'ELIA: I would have to take it on notice.

Answer

I am advised:

According to the transcript of proceedings in the Local Court, the company was Attenti Group Pty Ltd.

Question 20 - Arrangements for bail monitoring devices

Transcript pages 24-25

Mr DAVID SHOEBRIDGE: Are you seeking a review of the contract with that private company if, as appears in this case, at least according to your comments, the accused was able to cut it off and then abscond?

Mr MARK SPEAKMAN: I do not understand there is a contract between the State and the private company. I would have to check what the bail conditions are. I do not understand we have contracted with that company. Is that correct?

Mr McKNIGHT: That is my understanding.

Mr MARK SPEAKMAN: We—I say "we", not me. It was the Commonwealth DPP in that case—is not proffering electronic monitoring as a solution to bail risk. That is something that the accused proffered.

Mr DAVID SHOEBRIDGE: Who arranged for the private monitoring of the accused?

Mr MARK SPEAKMAN: I will have to take that on notice. Do you know?

Ms D'ELIA: No

Mr DAVID SHOEBRIDGE: It cannot have just been a private contract between the accused and some third party.

Mr MARK SPEAKMAN: I was not involved in running that case. I will have to take that question on notice.

Answer

I am advised:

As this was a condition proposed by the accused, it was the responsibility of the accused, through his legal representatives, to make arrangements with the private company, and to provide information to the court about these arrangements.

Question 21 - Role of monitoring people on bail in NSW

Transcript page 25-26

Mr DAVID SHOEBRIDGE: Mr McKnight, do you know the circumstances in which private corporations are having the role of monitoring people on bail in New South Wales? You must have some oversight of it. It cannot just be happening entirely free from any oversight from you.

Mr McKNIGHT: The situation, as I understand it, is as the Attorney General has explained it. The department has contracts with electronic monitoring arrangements when the person is in the care of Corrections. In the situation of extended supervision orders or intensive correction orders that involve electronic monitoring, Corrections have contracts with monitoring agencies. The bail situation is relatively unusual, as I understand it. The situation is as the AG has explained it.

Mr DAVID SHOEBRIDGE: There is no contract, no outstanding arrangement, they are just freelancing, are they, with whoever they choose to have private monitoring? It is a freelancing situation.

Mr McKNIGHT: I think we need to take the detail of what happened in this case on notice.

Mr DAVID SHOEBRIDGE: Ms D'Elia, can you shed any light on this?

Ms D'ELIA: I cannot, no. Sorry.

Mr DAVID SHOEBRIDGE: Right now your understanding, Attorney, is that there are private arrangements entered into with private corporations, unrelated to a contract with the people of New South Wales, under which, if you are wealthy enough, you can have your bail monitored, and in circumstances when you can just then cut off the monitor and go for a run.

Mr MARK SPEAKMAN: A number of responses to that. Firstly, as a general proposition, prosecutors on behalf of the State do not support electronic monitoring as a risk mitigation condition for bail. They would generally oppose bail being granted. So this is not something that the State proffers. Secondly, this was a case involving the Commonwealth Director of Public Prosecutions, not the State. Thirdly, because I was not involved in the case, I do not know what the mechanism was to make the undertaking to be monitored enforceable—how it was enforced as against the private company. But that is not to say there was not some enforcement mechanism. I just do not know what it was because it was a matter between the Commonwealth DPP and this private accused.

Mr DAVID SHOEBRIDGE: How do you know it was a matter between the Commonwealth DPP and the private accused? The model—

Mr MARK SPEAKMAN: Because—

Mr DAVID SHOEBRIDGE: No, let me finish.

Mr MARK SPEAKMAN: I am sorry.

Mr DAVID SHOEBRIDGE: How do you know it was a matter between the Commonwealth DPP and the accused if you do not know even the identity of the corporation that was doing the monitoring and, I assume, you have not got a copy of the order in front of you? So how do you know it was an arrangement between the Commonwealth DPP and the accused?

Mr MARK SPEAKMAN: I do not know if it is an arrangement. What I am saying is it is not a bail application that the State was running and opposing. It was being opposed by the Commonwealth DPP because they were Federal charges, so what contract or undertaking was entered into by a private company to the

Commonwealth DPP or to the Commonwealth, I do not know because I was not involved and I have not, in the time available, been able to descend to that level of detail.

Mr DAVID SHOEBRIDGE: It is not the Commonwealth DPP that is going to be monitoring whether or not bail is complied with. It is the NSW Police Force, I assume, that is going to be monitoring whether bail is complied with, or have I got something wrong? Does the Commonwealth DPP have a role that I do not understand?

Mr MARK SPEAKMAN: Just to be clear, I am not saying there is some kind of total vacuum, that a private company just says it will do something and there is no enforcement mechanism. I am just saying I do not know what that mechanism is and will take that question on notice.

Answer

I am advised:

In making a decision about bail, courts are required to assess whether someone presents a bail concern, and whether that concern can be mitigated by imposing bail conditions.

Bail conditions can be proposed either by the prosecution or by an accused person. Before a person can be released to bail, they must enter an acknowledgment to abide by the bail conditions.

In some cases, an accused person will offer to comply with a condition that involves services provided by a third party that is not overseen by police, for example, participation in drug and alcohol rehabilitation or medical intervention programs. Whilst the court cannot impose a bail condition that binds a third party, it can take into account evidence from a third party about what they will do to monitor the accused while they are on bail.

Electronic monitoring bail conditions involve a similar arrangement. An accused person makes an arrangement with a private company to provide services, which the accused person then presents to the court, on the basis of evidence, in the hope that the court will find that this arrangement is sufficient to mitigate any bail concerns posed by the accused.

Under these agreements, the private company attaches an electronic monitoring device to the accused. If the accused person tampers with the device; enters a location that they are prohibited from entering; or leaves a location that they are prohibited from leaving, the device sends notification to the company and to a nominated police officer who can respond.

Question 22 - Private monitoring of people on bail

Transcript page 27

Mr DAVID SHOEBRIDGE: How many times has it happened in the last financial year and the financial year before that?

Mr MARK SPEAKMAN: "It" being someone on bail?

Mr DAVID SHOEBRIDGE: Being privately monitored.

Mr MARK SPEAKMAN: I would have to take that on notice. I am not aware of any—

Answer

I am advised:

A search was completed on all bail orders made and met in FY2020 and FY2021, using "Electronic Monitoring" and "Ankle Monitoring" as a condition of bail. Please note that additional orders may be present if alternative spelling or terminology was used in the recording of the condition of bail.

The following numbers should only be used as an indicative representation due to the limitations of the records.

In FY2020: 32

In FY2021: 47.

Question 23 - Domestic violence notification scheme closure

Transcript page 29

The Hon. ADAM SEARLE: Mr Attorney, I just wanted to take you back to some answers you gave in response to questions from my colleague the Hon. Shaoquett Moselmane about the domestic violence notification scheme. Did you say that that scheme had been discontinued this year?

Mr MARK SPEAKMAN: It was discontinued on 30 June 2019.

The Hon. ADAM SEARLE: Can you tell us why it was discontinued?

Mr MARK SPEAKMAN: I hope I articulated that earlier but I will have another go. It did not appear to be a cost-effective exercise. The cost per notification was in the many thousands. If you would like, I can give you a more—

The Hon. ADAM SEARLE: **That would be good if you could do that on notice.**

Mr MARK SPEAKMAN: **Yes, what the figure was. There were not a lot of notifications. It was trialled in four local area commands. So it was discontinued for that reason.**

The Hon. SHAOQUETT MOSELMANE: In 2019.

Mr MARK SPEAKMAN: In 2019, and my impression is that it did not have much sector support. They thought there were better ways to spend money on tackling domestic violence than on this notification scheme.

Answer

I am advised:

The Domestic Violence Disclosure Scheme (DVDS) Pilot Evaluation and Crisis Assistance Scheme Review Final Report is available at: <https://www.women.nsw.gov.au/download?file=670009>. Costing information is included as part of the evaluation.

Question 24 - Recommendation 30 of the DVDRT Report 2017-2019

Transcript page 30

The Hon. ADAM SEARLE: The Domestic Violence Death Review Team report recommendation 30 was that there should be a review of the notification scheme. Was there a working group established to do that review and is there a document that embodies that work?

Mr MARK SPEAKMAN: I cannot recall the answer to each of those questions.

The Hon. ADAM SEARLE: If you could take those on notice.

Mr MARK SPEAKMAN: Okay.

Answer

I am advised:

The Department of Communities and Justice is continuing to work collaboratively to progress recommendation 30 of the Domestic Violence Death Review Team Report 2017-2019.

Question 25 - Additional women's shelters

Transcript page 33

The Hon. SHAOQUETT MOSELMANE: Attorney, I will just use the couple of minutes left for us to ask a few questions on your announcement on 19 October to provide an additional 75 women's shelters. The funding announced for an average of \$5.7 million per shelter over four years. How much of that funding will be operational costs?

Mr MARK SPEAKMAN: I would have to check your maths, if it is 5.7. But whatever the average is, about half is construction and half operation, very roughly.

The Hon. SHAOQUETT MOSELMANE: Will the refuges go to tender?

Mr MARK SPEAKMAN: There will be some tendering process, yes.

The Hon. SHAOQUETT MOSELMANE: When will that start?

Mr MARK SPEAKMAN: I suspect that will be a staged process. Not all 75 will come online at once. We want to have a staggered process.

The Hon. SHAOQUETT MOSELMANE: That is my next follow-up question.

What numbers will be delivered in, say, 2022?

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

Answer

I am advised:

Construction of the new refuges will commence in 2022-23 and will be phased across the four years.

Question 26 - Additional women's shelters

Transcript page 33

The Hon. SHAOQUETT MOSELMANE: And 2023 and 2024?

Mr MARK SPEAKMAN: I will have to take it on notice, but all this will be preceded by a mapping exercise to work out in broad terms where the best locations are for 75 or so women's shelters.

Answer

I am advised:

Construction of the new refuges will commence in 2022-23 and will be phased across the four years.

Question 27 - Monaro Farming Systems

Transcript page 34-35

The Hon. ADAM SEARLE: I might have a question for the Crown Solicitor. In relation to the Monaro Farming Systems return to order, where the upper House asked for certain documents, there was one document that was at issue, which was a memo by a public servant who was concerned that a so-called contract with Monaro Farming Systems might be a grant. There was some legal advice sought from you as Crown Solicitor. I know your general position about not wanting to talk about advice to clients. But this advice, including your written advice, was the subject of a privilege claim, it went through the arbitral process in the upper House and the Government did not succeed in maintaining restricted access to those documents, including your advice. So access to that is now unrestricted. I was interested in the advice that you provided about whether or not there was privilege over that particular memo. In your advice, you did not talk about the potential fraud exception. Why was that?

Ms SMITH: Are you able to share with me a copy of that advice?

The Hon. ADAM SEARLE: I do not have a copy of your advice to hand. It has got your signature on it. It has been through a disputation process in the upper House. I cannot believe you would not—

Mr DAVID SHOEBRIDGE: We can have it sent to the Crown over the next 20 minutes.

The Hon. ADAM SEARLE: Yes, we could have it sent to the Crown. But, of course, we are about to run out of time. Do you recall giving advice on this issue?

Ms SMITH: I think I do, but I do not have the specifics.

The Hon. ADAM SEARLE: Perhaps you could answer this question on notice: Why, in giving what was otherwise comprehensive advice and, given the subject matter of the memo—I will provide the secretariat a copy of the memo to refresh your memory—and the nature of the issues raised by that public servant, the concerns they expressed, you did not discuss the exceptions as to whether or not legal professional privilege could be maintained over that document. I cannot take it any further today. I will come back to that.

Ms SMITH: Sorry. Just so I can clarify, is your question about the advice or the privilege claim made [disorder]—

The Hon. ADAM SEARLE: No, it is about your advice. In providing advice to your client—your advice is now a public document, and we can provide it to you—why did you not discuss the exceptions to privilege, particularly the potential fraud exception, given the nature of the issues of concern raised by the public servant? Thank you.

Ms SMITH: Yes. I am not sure what I can add to the advice [disorder]—

The Hon. ADAM SEARLE: Well, to put it directly, you can tell us why you did not give advice on the potential presence of the exceptions. You have given comprehensive advice. You have made a certain recommendation. But I will not take it any further, because it is Mr Shoebridge's time.

Mr DAVID SHOEBRIDGE: Just to be clear, Ms Smith, did you take that on notice?

Ms SMITH: I can take it on notice. I am just saying I am not sure what else I can add [disorder]—

The Hon. ADAM SEARLE: You can answer the question.

Ms SMITH: The advice will speak for itself. [Disorder]—

The Hon. ADAM SEARLE: Not the absences from the advice.

Mr DAVID SHOEBRIDGE: Ms Smith, I think the question was about what was not in the advice, which is, I assume, what you have taken on notice—answering about why there was an absence of any consideration of the fraud exception. **Is that what you have taken on notice?**

Ms SMITH: Yes. But I do not know if I can add much to that. If it is not there, it is not there.

The Hon. ADAM SEARLE: The question is "Why is it not there?"

Answer

I am advised:

My advice of 22 April 2021, in considering whether a valid claim of legal professional privilege could be made under Standing Order 52, addressed the particular issues identified by the client in its instructions. Those issues are recorded at paragraphs 12 – 14 of the advice.

Question 28 - Legal Aid funding

Transcript page 38

Mr THOMAS: The budget for this year is \$404 million as set through the budget process. It has actually increased since then. We got some additional State and Commonwealth money and it sits at about \$414 million for the remainder of the year.

Mr DAVID SHOEBRIDGE: Do you know how much of that budget has been expended on deaths in custody matters?

Mr THOMAS: I can provide that on notice. We do have a coronial team that does work around deaths in custody and I can provide you with that on notice.

Mr DAVID SHOEBRIDGE: Would it be possible, Mr Thomas, to get the last three years so as we can get some kind of longitudinal review of it?

Mr THOMAS: Yes, I can provide you grants of Legal Aid. So any funding that we have provided to private solicitors as well as the cost of that coronial team and, if you like, the volume of the work they have undertaken.

Answer

I am advised:

Legal aid is available for representation at inquests within NSW in all cases involving the death of an Aboriginal or Torres Strait Islander person in custody, or in other cases where a public interest test is satisfied.

Legal Aid NSW's Coronial Inquest Unit provides legal advice and representation at Coronial Inquests. Expenditure on the Coronial Inquest Unit for 2018-19, 2019-20 and 2020-21 totalled \$1,463,576. This includes employee related expenses, on costs and corporate overheads. In addition, Legal Aid NSW expended the following in legal expenses on deaths in custody matters:

Deceased was an Aboriginal person:

2018-19: \$20,357

2019-20: \$11,831

2020-21 \$14,340

Deceased was not an Aboriginal person:

2018-19: \$3,825.00

2019-20: N/A

2020-21: \$9,331

Over the three financial years 2018-19, 2019-20 and 2020-21, Legal Aid NSW made 19 grants of aid related to deaths in custody*:

- 9 of these matters involved deaths of Aboriginal people, including 8 deaths in Corrective Services NSW custody and 1 death in NSW Police Force custody
- 10 of these matters involved deaths of non-Aboriginal people in Corrective Services NSW custody

Over the three financial years 2018-19, 2019-20 and 2020-21, Legal Aid NSW made 13 grants of aid related for deaths under section 23 of the *Coroners Act 2009* (NSW)

(deaths as a result of police operation*), 2 of these matters involved Aboriginal deceased.

**Annual reporting in NSW by the State Coroner to Parliament differentiates between deaths in custody and deaths as a result of police operations. The National Deaths in Custody Program, coordinated by the Australian Institute of Criminology (AIC), reports on deaths in both prison and police custody and custody-related operations. Refer to definitions used by the AIC, Deaths in Custody in Australia 2017-2018: <https://www.aic.gov.au/publications/sr/sr21>.*

Question 29 - Strategy, Policy and Commissioning (SPC) staff numbers

Transcript page 39-40

Mr DAVID SHOEBRIDGE: Ms Campbell, what has been the impact of 112 less employees in the Strategy, Policy and Commissioning Division?

Ms CAMPBELL: I think there have been opportunities to consolidate a number of the functions across Strategy, Policy and Commissioning. For example, we have consolidated positions so that we have got a dedicated domestic and family violence branch. Certainly, we are focused on the Premier's Priorities. This division has lead responsibility for coordinating that across the department and we have been able to look at synergies and bring together different programs. So there have been some opportunities. Obviously, the reduction has an impact and we have had to reprioritise some of the work but all the critical priorities that we are working on at the moment are continuing.

Mr DAVID SHOEBRIDGE: Attorney, the Government says that it is a Premier's priority to deal with family violence and domestic violence and your departmental response is to remove 112 positions from the division responsible for that very thing. How do those two facts sit? How on earth can you justify that?

Mr MARK SPEAKMAN: Operational decisions about employment numbers are not made by me. They are typically made by the department secretary but you are presupposing that we cannot do things better with a finite number of resources. You are presupposing that we cannot utilise whatever workforce we have in a more efficient manner. I think Ms Campbell has articulated how it is that consolidation and streamlining can occur so you can get superior results from a better organised workforce.

Mr DAVID SHOEBRIDGE: You must have heard a different answer than I heard because I heard the phrase "reprioritising", which means, if you look under the bureaucratic language, deprioritising for a whole lot of matters that you no longer have the staff for. And that is what has happened under your leadership—112 positions lost in this critical unit dealing with family violence and deprioritising of a bunch of their work.

Mr MARK SPEAKMAN: There certainly has been no deprioritising of tackling domestic and family violence or of the Premier's Priorities, including a reduction in reoffending. The challenges in that have not been how many public servants we have working on the matter but rather the increase in stats that we have from greater police activity.

Mr DAVID SHOEBRIDGE: Ms Campbell, what matters got reprioritised as a result of the 112 less staff that you have—and, when I say reprioritised, given a priority that was lower than what it was before the staff reduction.

Ms CAMPBELL: No, that is not true.

Mr DAVID SHOEBRIDGE: That answer is kind of like fish but we will leave it there.

The CHAIR: Is that your answer, Ms Campbell?

Ms CAMPBELL: I said that that is not the case. It has not been deprioritised.

Mr DAVID SHOEBRIDGE: So when you said earlier that matters had been reprioritised, is it your evidence now that you meant nothing had a lower priority as a result of 112 staff being cut from the division? Is that what your evidence is now? You did not mean anything got a lower priority.

Ms CAMPBELL: I am sorry, I must have misheard your question. Yes, some things have been looked at. For example, a number of the positions were

temporary positions as well. They were program funded and those programs have finished. So it is a lot more complex and I am certainly happy to take that on notice and come back with a clearer answer for you.

Answer

I am advised:

The coming together of the former Department of Family and Community Services (FACS) and the former Department of Justice (DOJ) resulted in significant changes to how the Strategy, Policy, and Commissioning Division (SPC) operates, to promote increased collaboration and improve outcomes for people and communities in NSW. The reform enabled SPC to focus its resources on new ways of working that reduced duplication and streamline processes across similar areas. This approach ensures a continued focus on government priorities within existing resources.