PORTFOLIO COMMITTEE NO. 5 - REGIONAL NSW AND STRONGER COMMUNITIES

Monday 22 August 2022

Examination of proposed expenditure for the portfolio area

ATTORNEY GENERAL

UNCORRECTED

The Committee met at 9:30.

MEMBERS

Ms Sue Higginson (Acting Chair)

The Hon. Lou Amato
The Hon. Scott Barrett
The Hon. Shaoquett Moselmane
The Hon. Peter Poulos
The Hon. Adam Searle

PRESENT

The Hon. Mark 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 ACTING CHAIR: Welcome to the initial public hearing of the inquiry into budget estimates 2022-23. I acknowledge the Gadigal people of the Eora nation, who are the traditional custodians of the lands on which we meet today. I pay my respects to Elders past, present and emerging, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the land and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. I note that Mr Borsak, the Chair of the Committee, is absent today. As Deputy Chair, I will act as Chair for today's hearing and Mr Searle has been elected as Deputy Chair. I welcome Attorney General Mark Speakman and accompanying officials to this hearing. Today the Committee will examine the proposed expenditure for the portfolio of Attorney General.

Before we commence, I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. The proceedings are also being recorded and a transcript will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. All witnesses in budget estimates have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018.

There may be some questions that a witness could answer only if they had more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. If witnesses wish to hand up documents, they should do so through the Committee staff. Attorney General, I remind you and the officers accompanying you that you are free to pass notes and refer directly to your advisers seated at the table behind you. Finally, would everyone please turn off their mobile phones or switch them to silent for the duration of the hearing.

Mr MICHAEL TIDBALL, Secretary, Department of Communities and Justice, sworn and examined

Mr PAUL McKNIGHT, Deputy Secretary, Law Reform and Legal Services, Department of Communities and Justice, affirmed and examined

Ms ANNE CAMPBELL, Acting Deputy Secretary, Strategy, Policy and Commissioning, Department of Communities and Justice, sworn and examined

Ms MONIQUE HITTER, Acting Chief Executive Officer, Legal Aid NSW, affirmed and examined

Ms KAREN SMITH, NSW Crown Solicitor, NSW Crown Solicitor's Office, affirmed and examined

Mrs KAREN WALLACE, Acting Deputy Secretary, Courts, Tribunals and Service Delivery, Department of Communities and Justice, affirmed and examined

Ms KATHRYN BOYD, Deputy Secretary, General Counsel, Department of Premier and Cabinet, affirmed and examined

The ACTING CHAIR: Today's hearing will be conducted from 9.30 a.m. to 12.45 p.m. with a 15-minute break at 11.00 a.m. We will be joined by the Attorney General in the morning, and in the afternoon we will hear from departmental witnesses from 2.00 p.m. to 5.15 p.m. with a 15-minute break at 3.30 p.m. During these sessions there will be questions from Opposition and crossbench members only. If required, an additional 15 minutes is allocated at the end of the morning and afternoon sessions for Government questions. Thank you very much for your attendance today. I remind everybody that the microphones operate automatically so you do not need to switch them on. We will begin with questions from the Opposition.

The Hon. ADAM SEARLE: Thank you, Chair. Welcome to you, Attorney, and your officials.

Mr MARK SPEAKMAN: Thank you.

The Hon. ADAM SEARLE: Mr Attorney, it has been nearly three years since the LECC report in Operation Tusket was delivered—that was in October. It said that the child offender register was in need of urgent legislative change, was overly complex and that there had been a number of errors. Some 700 errors had been identified. Serious offenders were being left unmonitored to wander around the community; I think that in at least one case they had reoffended. People who should not have been on the register were, and they were subject to intrusive searches. Three years on, nothing has been done about it. Your Government was able to find John Barilaro a half a million dollar a year job in New York. You did that pretty expeditiously. Why can't your Government get its act together and fix this register?

Mr MARK SPEAKMAN: Thanks for that question. A number of recommendations were made by LECC on that operation. They were primarily directed to the NSW Police Force, and by and large those recommendations have been implemented. One recommendation was that I refer the question of legislative reform to the Law Reform Commission. Under section 10 of the Law Reform Commission Act 1967, substantive work by the Law Reform Commission depends on a reference by me. Where something falls within my portfolio responsibility, I will be the substantive initiator of that reference. Where, however, something falls within the portfolio responsibility of another Minister, the substantive responsibility for developing a proposal is the responsibility of that Minister. My role is effectively as a conduit or gatekeeper to the Law Reform Commission, for example, to make sure that it is not getting references left, right and centre and cannot take on the volume of work.

In the case of that recommendation, there was a supplementary report by LECC last year. Chapter 1 of that supplementary report deals with responses to that recommendation about a reference to the Law Reform Commission. It is not something for which I have portfolio responsibility. It is a responsibility of the NSW Police Force and, ultimately, the police Minister. But LECC, in the supplementary report, noted that the NSW Police Force agreed with the commission that there is an urgent need for comprehensive reform of the legislation. In September 2019 the NSW Police Force stated to the commission that it supports legislative reform as a matter of urgency but does not support referral to the Law Reform Commission. The NSW Police Force advised that it has prepared its own proposal for a wholesale redraft of the Act drawing on the commission's analysis. It intends to consult with key stakeholders.

The Police Force stated that, given the LECC's extensive review, it is appropriate to approach the Government to seek legislative reform rather than a reference to the Law Reform Commission. The Police Force then provided a draft of its proposals for reform in October 2019. In February 2020 commission staff met with members of the Police Force. In May 2020 the commission wrote to the then Minister for Police and Emergency Services, David Elliott, as the Minister responsible for the Act, seeking a response to recommendation 3. To

interpose there, the commission is writing to the police Minister; it is not writing to me saying, "Where are things up to?" The Minister replied in June 2020 and referred the commission to the detailed review of the legislation being conducted by the Police Force. The Minister informed the commission that the Police Force had established an inter-agency working group and that the Police Force intends on closely consulting with LECC as the review progresses.

There were then further references to toing and froing on that review. In March 2021 the Police Force confirms that it was pursuing revision of the Act, that its review of the Act was continuing and that the Police Force would present recommendations for legislative change for government consideration at completion of the review. Certainly the Police Force acknowledges the deficiencies in the legislation. It is the portfolio responsibility of the police Minister and the operational work of the Police Force at the moment to develop those proposals, which I understand are proceeding. I might add this: Where matters relating to child abuse are within my portfolio, I think my record as Attorney General is as good as any in Australia in the last several years. We have acted very swiftly to implement the recommendations of the Royal Commission into Institutional Responses to Child Abuse.

We adopted all the civil justice recommendations, including creating a proper defendant, a vicarious liability of institutions where someone was akin to an employee but not quite an employee and a proactive civil obligation to create safe places for children. We have adopted pretty much all the criminal justice recommendations—the first and most comprehensive response of any government in Australia. We were the first government to refer powers to the Commonwealth for the National Redress Scheme. With Victoria, we were the first of two governments to announce that we would be participating in a National Redress Scheme. We led the response of uniform evidence States on redrafting coincidence and tendency laws and presumptions in favour of joint trials. We have continued funding the Child Sexual Offence Evidence Pilot in the District Court.

Going beyond the Law Reform Commission recommendations, in the civil liabilities space we have reformed legislation so that claimants in relation to child sex abuse allegations can reopen settlements that are said to be unfair. Certainly where things are within my portfolio, I have been as proactive as any Attorney General in Australia. However, this is not within my portfolio. I am the gatekeeper for references to the Law Reform Commission. I recommend that you follow those questions up with the police commissioner and the police Minister when they appear before budget estimates.

The Hon. ADAM SEARLE: I will certainly do that, Mr Attorney, but on the last occasion I did ask you to confer with the police Minister and to come back to us about a time frame for when we might expect legislation. You took that on notice. Your answer on notice was to take it up with the police Minister. Last year you said that you hoped there would be legislation this year. That was still your optimistic hope in March. Can you now tell this Committee what is your best estimate of legislation to fix these problems? Will it be in the last five sitting weeks of this Parliament?

Mr MARK SPEAKMAN: You would have to ask the police Minister that question as that is within his purview, and ask the police commissioner how their review is progressing.

The Hon. ADAM SEARLE: You have given us a time line and a bit more of an insight into what has been happening within government. Previously when I pressed you on these matters you said that you thought there was better chance of cooperating with the police rather than referring it to the Law Reform Commission. But it has been three years and there has been no change. The Law Reform Commission can do pretty fast turnarounds if that is in the terms of reference. Should we interpret from what you have said that the hold-up is the police Minister or police Ministers?

Mr MARK SPEAKMAN: No, it is not a matter of finger-pointing; it is a matter of identifying where you should ask your questions. If there were a proposal—if the police came back and said, "We would like it to be referred to the Law Reform Commission"—then I would certainly very closely consider that proposal as the ultimate gatekeeper of matters that go to the Law Reform Commission. But the police have undertaken very extensive work on this; they have undertaken very extensive consultation. I don't think they have put it in the too-hard basket and forgotten about it. But you are best to ask the police commissioner and the police Minister for the prognosis on work in that area.

The Hon. ADAM SEARLE: Rest assured I will do that, but on the last occasion here at budget estimates you were very clear that the kinds of problems identified by the LECC were unacceptable. You agreed with the LECC assessment that this was urgent and pressing. The police have been thinking about this matter for far longer than Operation Tusket has been on foot. I know the legislation is said to be complex and unwieldy, leading to many errors, but the solution can't possibly be this difficult that it takes three years to not even have a proposal.

Mr MARK SPEAKMAN: They are matters that you should ask the police Minister and the police commissioner about.

The Hon. ADAM SEARLE: In the *Operation Tusket Supplementary Report* the LECC did note the cooperation of the police, in particular Deputy Commissioner Hudson, but it did say that it was still imperative that the Parliament substantially reform the Act as a matter of urgency because the mistakes that have occurred will keep occurring. I know you are not the portfolio Minister, but you are the Minister for the LECC, you are the Minister for the Law Reform Commission and collectively you share the responsibility of the Government's failure to act so far on this important matter. Surely there comes a point in time at which, as the first law officer, you would have to at least propose to the police Minister that some action be taken. Can you give us any insight into your thoughts on this?

Mr MARK SPEAKMAN: As I said, it is the portfolio responsibility of the police Minister. The police have been engaged in pretty extensive work on this over a few years. In terms of an ongoing reference to the Law Reform Commission, while the police accepted the need for urgent reform and the LECC continued to identify that reform was urgent, there is no suggestion in the supplementary report that the LECC continues to consider that the Law Reform Commission reference is the appropriate vehicle for that. So that is on the reference to the Law Reform Commission. In terms of drafting legislation, again, you are best to ask the police Minister and the police commissioner about that.

The Hon. ADAM SEARLE: I will do that, but are you saying that you as first law officer will not have any input into that process?

Mr MARK SPEAKMAN: I will have input into that process.

The Hon. ADAM SEARLE: Other than as a member of Cabinet? As a matter of developing the framework or the solution, are you saying that you will not have any input into that?

Mr MARK SPEAKMAN: If or when I see a draft, I will no doubt comment on the draft, but the responsibility for its development is within the portfolio of the police Minister.

The Hon. ADAM SEARLE: Last estimates you said that periodically you do speak to the police Minister about a range of matters, including this matter. Have you had any recent discussions with the police Minister about the need to urgently act on this?

Mr MARK SPEAKMAN: Not that I recall.

The Hon. ADAM SEARLE: When you told budget estimates that you thought the Law Reform Commission option would have been too time consuming and that it was not the best way forward, what discussions had you had or what advice had you received that led you to the view that the Law Reform Commission option was not the one likely to lead to the quickest and best outcome?

Mr MARK SPEAKMAN: I am not disputing your version of what I may have said at budget estimates. I do not recall saying that was my personal view, although it is possible that that is what I said. I may have been conveying the view, or a Government view, rather than a personal view.

The Hon. ADAM SEARLE: Understood.

Mr MARK SPEAKMAN: But I think—

The Hon. ADAM SEARLE: Is it your view?

Mr MARK SPEAKMAN: I think the police had objected to a reference to the Law Reform Commission on the basis they just thought it would take too long. I mean, hindsight's a wonderful thing, looking back, but at the time they objected to it going to the Law Reform Commission because they thought their own review would be more expeditious.

The Hon. ADAM SEARLE: But just on that, yes, the Law Reform Commission can take a long time to develop proposals, but if part of the reference included a time frame, they have done quick turnarounds in the past, haven't they, the Law Reform Commission?

Mr MARK SPEAKMAN: Well, they can do that.

The Hon. ADAM SEARLE: And in fact you can have a temporary commissioner to expeditiously lead a bespoke piece of work.

Mr MARK SPEAKMAN: That's correct and, by way of example, I anticipate a very quick turnaround on the Bail Act reference that I made in the last week because I'm keen to tidy that area.

The Hon. ADAM SEARLE: We'll come back to that.

Mr MARK SPEAKMAN: Yes, okay, but I'm keen to tidy that up during this session of Parliament so they can. But you can look back in hindsight and say, "Well, if it had gone to the Law Reform Commission four years ago, we would have had an answer." Hindsight is wonderful thing, but at the time the police considered—and the Government didn't disagree—that the best prognosis for getting on with it in this area was for police to have carriage and to consult stakeholders.

The Hon. ADAM SEARLE: Okay. What were the discussions that you had that led you to believe that letting police manage this without the assistance of the Law Reform Commission or your own administration was the best outcome, or was it just a police view that the Government acquiesced in?

Mr MARK SPEAKMAN: Primarily it was—well, firstly, it's within the portfolio. It's not ultimately my decision to proactively put up a proposal for reference to the Law Reform Commission. If it's within my portfolio, that's my decision. If it's within someone else's portfolio, then I'm a conduit for that; I'm a gatekeeper for that to regulate the workflow, but I'm not the decision-maker and the decision that was made within the former police commissioner's office was that this was best to be handled by police—

The Hon. ADAM SEARLE: Mr Attorney, I know that's—

Mr MARK SPEAKMAN: —and no-one—I have not demurred from that decision.

The Hon. ADAM SEARLE: Okay. But in the past—in the limited experience I've had as a staffer in the long distant past—when big issues are confronting government as a whole, sometimes the Attorney General is proactive and does take a proposal to other affected portfolio Ministers and there are interdepartmental discussions or inter-ministerial discussions about how to solve this.

Mr MARK SPEAKMAN: Yes.

The Hon. ADAM SEARLE: Now, given the gravity of this matter—and I think you agree that this is a matter of some gravity?

Mr MARK SPEAKMAN: Correct.

The Hon. ADAM SEARLE: It's not acceptable, is it, to have sex offenders wandering around unsupervised? You accept that?

Mr MARK SPEAKMAN: I accept that.

The Hon. ADAM SEARLE: And it's also bad for people, who shouldn't be on the register, to be on the register.

Mr MARK SPEAKMAN: Correct.

The Hon. ADAM SEARLE: So you'd be keen to have this resolved.

Mr MARK SPEAKMAN: Correct.

The Hon. ADAM SEARLE: Hopefully this year?

Mr MARK SPEAKMAN: Correct.

The Hon. ADAM SEARLE: So in that case, given the drag of time that it's taken, why haven't you taken the initiative to at least try and draw this process together?

Mr MARK SPEAKMAN: As I said, hindsight is a wonderful thing. Clearly, back in 2019 Government did not anticipate that the matter would not have been resolved by now. I would have to refresh my memory about what discussions I had in 2019 with that then police Minister.

The Hon. ADAM SEARLE: Or even 2020 or 2021.

Mr MARK SPEAKMAN: I'd have to refresh my memory on that.

The Hon. ADAM SEARLE: Could you? And come back to us?

Mr MARK SPEAKMAN: Yes, sure. But primarily the police Minister at the time recommended that the Police Force conduct the review because they had the capacity and the expertise and he thought that there would be a more expeditious and possibly informed outcome with that operational expertise than if the matter went to the Law Reform Commission.

The Hon. ADAM SEARLE: In these discussions that led up to that decision by the Government, were you provided with any time frames by the police Minister about when he or his successor thought that this matter would be resolved?

Mr MARK SPEAKMAN: I would have to refresh my memory on that.

The Hon. ADAM SEARLE: If you could, and come back to us on notice, that would be really good. Since the time the Government took that approach of leaving it with the police and the police Minister, have you sought periodic updates from the police Minister or his administration about this matter?

Mr MARK SPEAKMAN: I have had periodic updates, I believe. I'd have to refresh my memory about when and how often and—

The Hon. ADAM SEARLE: That's okay. It's not a gotcha.

Mr MARK SPEAKMAN: —I can't recall to what extent I sought them or received them, but I've had periodic updates.

The Hon. ADAM SEARLE: On notice, could you give us a narrative about what you sought—

Mr MARK SPEAKMAN: Sure.

The Hon. ADAM SEARLE: —what you received and when the most recent one was?

Mr MARK SPEAKMAN: Sure.

The Hon. ADAM SEARLE: That'll be really good. So I will take it up with the police Minister about whether or not we can expect legislation this year, but, if we don't, what conclusions do you think the wider public should draw about this failure of Government over a three-year period to fix this problem?

Mr MARK SPEAKMAN: Well, that's a matter you should take up with the police Minister and the police commissioner.

The Hon. ADAM SEARLE: I will, and I will definitely do that. Thank you, Mr Attorney.

The Hon. SHAOQUETT MOSELMANE: Thank you, Attorney. This may be your last budget estimates, even if you're going Federal.

The Hon. LOU AMATO: That's a point of order.

The Hon. ADAM SEARLE: We have supplementaries, surely.

The Hon. SHAOQUETT MOSELMANE: Attorney, can I just use that one minute to start off a conversation about the Crimes (Domestic and Personal Violence) Amendment (Coercive and Controlling Behaviour) Bill 2020—

Mr MARK SPEAKMAN: Sure.

The Hon. SHAOQUETT MOSELMANE: —and ask: What was the reason for not having a time frame for commencement of this draft bill?

Mr MARK SPEAKMAN: I'm not sure I understand your question.

The Hon. SHAOQUETT MOSELMANE: What was the reason for not having a time frame for the commencement of this bill? According to the bill, the Act commences on a day or days to be appointed by proclamation.

Mr MARK SPEAKMAN: Sure. So I think there's a broad consensus among those who are proponents of coercive control criminalisation that there is a need for quite a long lead time between commencing the Act on the one hand and assent on the other hand, and that that lead time would have to be at least 12 months. That's because it's widely recognised that this is quite novel legislation. The way that police normally go about charging people is it's incident based rather than a course of conduct. So it's a whole new way of thinking that will require considerable time to train police, to educate police and also to raise general awareness about this offence with the public.

The experience in jurisdictions which have introduced coercive control criminalisation in the last decade demonstrates the need for this long lead time of at least 12 months. The suggestion was that in England and Wales there wasn't enough time to do this. Scotland took a much lengthier approach. One of the issues I'm keen to get feedback in the consultation process is not only on the wording of the bill but also how long stakeholders think we need before we commence the Act. But, at the moment, I think we would need at least 12 months and maybe a bit longer. I hope that answers your question—

The Hon. SHAOQUETT MOSELMANE: I'll come back to it.

Mr MARK SPEAKMAN: —that we haven't fixed or we haven't settled on a particular time frame. But I would be expecting that there would be broad consensus that we would need at least 12 months.

The ACTING CHAIR: Thank you. Mr Attorney General, in early July we saw the introduction of section 22B into the Bail Act and we know that the Premier committed that this sort of amendment would be made when he was speaking with Ray Hadley on his radio interview show on 15 June. The Premier during that interview said words to the effect that you would introduce these amendments. Did you know he was going to make that commitment on that radio show?

Mr MARK SPEAKMAN: Yes, I did.

The ACTING CHAIR: Because he said that he would be speaking to you later that day, so clearly he had spoken to you already.

Mr MARK SPEAKMAN: I had a conversation the previous evening with the Premier where we discussed an appropriate approach to issues that had arisen in recent bail decisions.

The ACTING CHAIR: And that was directly in response to the, I suppose, media kind of outcry around that?

Mr MARK SPEAKMAN: Well, there was considerable community concern about the fact that some offenders who had been convicted of child sex offences had been granted bail pending sentencing. My understanding was that there had been a practice—pretty much a practice in the past—that in those circumstances absent special—I'm not using this as a term of art like it might be in the legislation—but absent unusual circumstances that when someone is convicted and it's pretty clear they're going to jail that they would generally be refused bail. So there was community concern about that and the Premier and I agreed that a legislative reform along the lines of what became section 22B was an appropriate response.

The ACTING CHAIR: Does it concern you at all that it's legislation that does engage in the prejudgement of a sentence, having a kind of deep understanding that sentencing discretion is something that is fundamental to the proper operation, judicial discretion is fundamental, particularly in sentencing? Does it concern you at all that, really, this is a form of prejudgment?

Mr MARK SPEAKMAN: No, because I don't agree with that proposition—that that's what it is. The second reading speech has made it very clear that we are not expecting judges, bail authorities to make those kind of prejudgements. It is not a mini sentencing hearing. It is not, as I say, a mini sentencing hearing and it is comparable with what was already happening where there was an appeal against conviction or sentence, that special circumstances or exceptional circumstances would have to be demonstrated for a detention application not to succeed. Section 18 of the Bail Act already requires a consideration of the likelihood of a custodial sentence. So this is not determining definitively what is going to happen. That doesn't concern me at all and it is something, as I say with section 18, to which courts would already advert in making a bail determination.

The ACTING CHAIR: Even the words "will be sentenced to imprisonment", you are suggesting that that is not asking for a predetermination? "Will be sentenced to imprisonment", that's the term upon which their law operates.

Mr MARK SPEAKMAN: It's making a finding for the purpose of the detention or bail application. It's not making a finding that binds a judge down the track in any way in actual sentencing. But in any bail decision, absent 22B, there is a requirement to weigh up various factors, including the likelihood of a custodial sentence if convicted. This was already a matter that a bail authority had to take into account. What has changed is the standard of likelihood, if you like, as well as now a carve-out for special or exceptional circumstances.

The ACTING CHAIR: It's sounding very much like a prejudgement there to me. If you are suggesting that there was already a requirement to do that kind of investigation in the exercise of discretion in an application, then the words "will be sentenced to imprisonment" do seem to take it that bit further.

Mr MARK SPEAKMAN: I make two comments in response to that. Firstly, until these cases emerged, at least in times gone past as I understand it, having spoken to some judicial officers, there was a general practice to refuse bail in these circumstances. Secondly, if you are looking under section 18 of the likelihood of a custodial sentence, the court is already making a determination for the purposes of a bail or detention application only of whether or not someone is going to be incarcerated.

The ACTING CHAIR: Do you accept the expert views of the Law Society, the ALS and the Bar Association that the amendments were rushed and that they may have unintended consequences and that they may in fact disproportionately impact unintended defendants?

Mr MARK SPEAKMAN: What do you mean by "unintended defendants"?

The ACTING CHAIR: Do you accept the views, particularly of those organisations, that these amendments may in fact interfere with the very good system that you introduced—the early appropriate guilty plea program—particularly in relation to the special and exceptional circumstances test, and that in fact this new provision may deter or may affect the operation of that scheme?

Mr MARK SPEAKMAN: No doubt in terms of your suggestion it was rushed, I don't think it was rushed but it was certainly dealt with urgently. It was put through Parliament—both Houses—as a matter of urgency. So I certainly accept that it was dealt with urgently. On the question of the impact on early appropriate guilty pleas, we have said we will keep that under review. But I make a couple of points. One is I don't anticipate an increase in the incarceration rate because of these reforms. The purpose of these reforms is not ultimately to put more people in jail. It will bring forward the incarceration of those who the courts expect will be going to jail in any event. If there is a four-month delay between conviction and sentence and there is an expectation they are going to jail, rather than that incarceration start in four months' time, it will start straightaway and time served will generally be credited in the ultimate sentence. It will not increase—I withdraw that—I don't anticipate it will increase the overall rate of incarceration.

So far as the impact on early appropriate guilty pleas is concerned, we have said we will monitor that very closely, but my current anticipation is that it won't negatively impact the operation of that scheme. Those who plead before committal get a fixed—with some exceptions—largely get a 25 per cent discount and then there are further discounts the later you have. They are big incentives for an early appropriate guilty plea. If you expect someone is going to go to jail, you would expect they have legal advice to that effect. The effect of what we are doing is to bring forward their incarceration, not to increase it. It may be that some people might say, "Well, I've got to get my kids organised or my elderly parent organised, I know I'm going to go to jail but I don't want to go straightaway, and if I have to plead guilty, that's going to happen straightaway, well, I won't do it."

That's dealt with by having a special or exceptional circumstances carve-out. If there are people with unusual circumstances that justify starting the service of incarceration later on, then that is covered there. I understand the critique, that is why we will closely monitor the statistics. But my present anticipation is that there won't be any material adverse impact on the operation of that scheme.

The ACTING CHAIR: Is that just a hunch? When you say the amendments weren't rushed, they were done urgently, it's not my view alone—it's those agencies and those expert frontline law services, that you didn't consult with, you didn't talk to, nobody spoke to them. They believe and spoke very publicly that they would have had material, substantive material, to present to suggest that these laws will see a change and will see an increase in incarceration on remand and that there is a significant difference between remand and custodial sentence, and that clearly these things perhaps have not been factored in properly.

And perhaps going to the ALS point—which I think is resoundingly one that you need to take clear and firm responsibility for—and that is the disproportionate impact that this may have on First Nations people and whether or not there is regret or, again with the benefit of hindsight, how can you say that it's not going to have an increase or that we are not going to experience an increase when you didn't seek any input, you haven't had those expert views put in front of you and they in fact say otherwise?

Mr MARK SPEAKMAN: There are a number of propositions in what you have just put. Firstly, in terms of consultation, we did consult the Law Society. We did consult the Bar Association, albeit in truncated and urgent circumstances. We did not consult the ALS and I have apologised to the ALS for that. I don't anticipate a disproportionate impact on First Nations people because I don't anticipate an increase in the overall rate of incarceration for the reasons I've given. You said, "Is it a hunch?" No, it's not a hunch; it's a reasoned approach from first principles that I've attempted to articulate. If you are sending to jail in a bail or detention application someone the court expects is going to go to jail anyway, you are not increasing the overall rate of incarceration; you are bringing forward incarceration that is going to happen anyway. So I don't anticipate an adverse impact on First Nations people because I don't anticipate an increase in the overall rate of incarceration.

The ACTING CHAIR: Do you accept that there is a difference between remand and custodial sentence incarceration?

Mr MARK SPEAKMAN: In the sense that a sentence is punishment for an offence that has been found. Remand is not punishment. Remand is a holding position where, balancing all considerations, the court keeps someone in detention.

The ACTING CHAIR: In the New South Wales Government's $143 million investment in the Towards Zero Suicides in New South Wales, one of the priorities in that for suicide prevention spoke of remand being a significant risk factor for suicide. Does increasing the remand—which I think you're suggesting we are

going to do by bringing forward incarceration—do you think that we've got a problem there and that we're running counter to, even in a specific way, that this is again something we didn't anticipate?

Mr MARK SPEAKMAN: Other things being equal, there is a risk with any incarceration of mental health issues and, sadly, suicide. I don't have in front of me the passage which you quote. That would be comparing remand with being on bail, but the point here is I don't anticipate that you are increasing the overall rate of incarceration and therefore the risk of suicide inside a prison by these reforms. So the risk with remand is the risk of suicide inside a jail. You are not increasing that risk if what you are doing is bringing forward incarceration rather than increasing the rate of incarceration. If there are special or exceptional circumstances affecting that individual—which may be, for example, the need for particular medical treatment that can't be provided inside a prison—then that's a special or exceptional circumstance that could be made out on the facts before a bail authority.

The ACTING CHAIR: So you're aware of cases where a magistrate or a judge who, based on police facts and the criminal history and the hearing, initially forms the view that a full-time custodial sentence is warranted, but that view will change and that view can change on the consideration of subjective material presented during a sentence hearing. But on your new version of our law where we've predetermined that somebody will be sentenced to imprisonment and they're denied bail and they're incarcerated, then they were incarcerated wrongly ultimately.

Mr MARK SPEAKMAN: I don't anticipate any material increase in those sorts of circumstances. As was said in the second reading speech in the Legislative Council, if there's a possibility that someone will not be incarcerated, then section 22B is not invoked and you go to general bail principles, so I don't anticipate a materially increased risk of that happening.

The ACTING CHAIR: And do you see that one fundamental difference will be that defendants will not be able to access the rehabilitation and reform programs that they may have otherwise between guilt and sentence?

Mr MARK SPEAKMAN: That is an issue, but that's something that Corrective Services can look at—what sort of high-intensity programs would be appropriate for people on remand. We do have HIPUs—I think is the acronym—high-intensity units providing short rehabilitation programs for people who are on remand or short sentences, including domestic violence offenders. I think there are variants of those in-prison programs specifically aimed at domestic violence offenders.

The ACTING CHAIR: Just finally on your commitment that you will be monitoring the impacts, what sort of monitoring program have you set up?

Mr MARK SPEAKMAN: I'll ask Mr McKnight to answer that.

PAUL McKNIGHT: In terms of the EAGP effects? Is that where your question is going?

The ACTING CHAIR: Yes, and also perhaps if there is monitoring overall in terms of the "not hunches" that you said that you've based the laws upon.

PAUL McKNIGHT: Exactly. The effects of these reforms will be monitored through the Bail Act Monitoring Group, which receives reports on how the Bail Act is working on the ground. In terms of the effect on the early appropriate guilty pleas legislation, there's an early appropriate guilty pleas steering committee that the chief District Court judge chairs, and that committee will get reports on the effect. There's also the criminal justice reform board, which the secretary chairs, which receives regular reports on a wide range of matters that affect the criminal justice system, including bail rates, remand rates and the performance of the courts. So all of those bodies will be looking at the effects of these reforms and all the other reforms that go through the criminal justice system.

The ACTING CHAIR: Just to finish, Mr Attorney, if the monitoring does suggest that these amendments are not working as intended, would you consider—assuming you're still there—repealing those laws?

Mr MARK SPEAKMAN: There's no point monitoring something without intending to act on the results of the monitoring, but I can't answer in the abstract what the response might be without knowing what the monitoring produces. We're not locked in to a position if the facts change.

The Hon. SHAOQUETT MOSELMANE: I will just go back to my questions, and thank you, Attorney. I will just continue with the Crimes Legislation Amendment (Coercive Control) Bill. You've chosen clearly that this Act commences on a day or days to be appointed by proclamation. Are there any conditions that need to be met between now and the proclamation date?

Mr MARK SPEAKMAN: No. When it commences on proclamation that effectively gives the Executive a discretion to make a recommendation to the Governor to proclaim operation. I'm happy to entertain, if that's what stakeholders think appropriate, something in the draft that says it will be at a date to be proclaimed in a certain date range so that people have comfort that it's not going to be pushed off to the never-never and on the other hand they have comfort that it's not going to be done too hastily. That's a draft bill. It's a draft because I want comments and feedback like that, and if that gives people some comfort that it's definitely going to happen but it won't happen too quickly, then I'm happy to put a range of dates within which a proclamation—sorry, when I'm happy. It will be a matter for Cabinet, but personally I'm happy to recommend that there be a date range there if that's what makes people feel comfortable.

The Hon. SHAOQUETT MOSELMANE: Certainly there are some concerns, Attorney, particularly because we've had experiences in the past where we've had legislation—in particular, the New South Wales Modern Slavery Act 2018—which was also to commence by proclamation. It took 1,284 days after royal assent for the Act to commence. That's a long, long time.

Mr MARK SPEAKMAN: Yes.

The Hon. SHAOQUETT MOSELMANE: There's no clarity in this proposed draft for people to understand when things will start and kick off.

Mr MARK SPEAKMAN: Sure. I think the Modern Slavery Act was a fairly peculiar set of circumstances, because you had intervening Federal legislation in that time and some difficulties in operationalising what was in the Modern Slavery Act 2018. Eventually, that was resolved in legislation that commenced this year. But, as I say, I haven't received any—it doesn't mean my office hasn't or the Government hasn't, but I'm not aware of any—feedback of concern about that drafting of the commencement date in our exposure draft for coercive control. But I would be favourably inclined to any date by which it must happen and date before which it can't happen. For example, we might say, "It will be a date to be proclaimed but it mustn't be any later than"—to pull a date out of the air—"1 July 2023, and it mustn't be any sooner than 1 January 2024."

The Hon. SHAOQUETT MOSELMANE: Why wasn't it done that way, instead of a proclamation?

Mr MARK SPEAKMAN: That sort of range is pretty unusual. As I say, no-one has complained to me about it yet, but I'm certainly happy to put in start and finish dates for any range within which it's proclaimed. The general, almost unanimous, feedback is this is not something that should commence on assent. It's something where you need at least 12 months to train the judiciary, to train the police force, to raise community awareness, and to assist and empower frontline workers before the legislation starts.

The Hon. SHAOQUETT MOSELMANE: In terms of time frame, do you anticipate between royal assent and commencement that it will commence, that it will kick off?

Mr MARK SPEAKMAN: My aim is to have legislation through Parliament this year. Then, I guess, that means—

The Hon. SHAOQUETT MOSELMANE: There are only five weeks left.

Mr MARK SPEAKMAN: Five or six?

The Hon. SHAOQUETT MOSELMANE: Five sitting weeks.

Mr MARK SPEAKMAN: Six sitting weeks. We announced at the end of last year that we intend to bring legislation in this session. If that legislation is passed then I would anticipate it wouldn't commence for at least 12 months. But if stakeholders tell us, "No, it should commence sooner", then that's certainly something we'll take into account. But I don't expect to get that sort of submission—to the contrary.

The Hon. SHAOQUETT MOSELMANE: Stakeholders have different interpretations of various things, which I'll come to in a minute. Firstly, Attorney, can I ask you, in terms of training of New South Wales police when this legislation goes through, what is the current proposal for specialised training for New South Wales police? Is there a proposal? What proposals do you have?

Mr MARK SPEAKMAN: I think we're working on that. That's also something that we'll be doing jointly with police.

The Hon. SHAOQUETT MOSELMANE: That's clearly a critical aspect of this whole legislation, that police have to be well trained to be able to execute and understand this particular legislation. Wouldn't you say so, Attorney?

Mr MARK SPEAKMAN: That's correct. But you can't train them until the legislation is finalised. Again, that's why you would need at least 12 months, on my current advice, before the legislation commenced.

The experience in England and Wales has been a tendency not to use this charge initially because of lack of training of police and their unfamiliarity with it. So, I agree, it is a critical part of the success of any such legislation.

The Hon. SHAOQUETT MOSELMANE: After proclamation then there is 12 months for commencement. Then after 12 months you will start training.

Mr MARK SPEAKMAN: No. That's what the 12 months is for. The 12 months—or whatever figure we settle on, but say it's 12 months—is to train police, to get the bench books in place that educate the judiciary and to raise community awareness because, quite frankly, I think it's possible that the majority of the community have never heard of coercive control and don't know what it is. Victim-survivors don't understand that they're the victims of coercive control, as distinct from separate physical abuse. So raising that awareness is not going to be something that happens between it going through both Houses and assent. That's why, I suspect, you need at least 12 months to do that. That is what is happening in that 12 months. We're not doing a standing start 12 months later.

The Hon. SHAOQUETT MOSELMANE: The reason I raise that concern is clearly there have been reports in the papers. One in *The Sydney Morning Herald* is entitled "Lack of police training could stymie success of coercive control laws". Clearly, they're raising this issue now and not raising it in six months' time, once the law is proclaimed.

Mr MARK SPEAKMAN: That's right. I completely accept that. That's why the legislation won't start on assent. It will start on a date to be proclaimed, which my current expectation would be at least 12 months. As I said, to give people some comfort that it's definitely going happen and not be archived somewhere, I'm happy to put a finish date on that and, if people want to make sure it's not too rushed because of the need for, among other things, police training, a not-before marking.

The Hon. SHAOQUETT MOSELMANE: Do we have any understanding as to how many officers and staff will be provided training?

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

The Hon. SHAOQUETT MOSELMANE: Because, as I understand it, Attorney, you wanted to get this legislation through pretty quickly. Obviously, this would have been something on the top of your mind, the number of police officers and staff that ought to be trained to be able to execute this particular legislation.

Mr MARK SPEAKMAN: When you say "get it through quickly", I wanted to get it through promptly, this year, because we know that coercive control is a precursor to just about every intimate partner domestic violence homicide in New South Wales. The DVDRT report suggested that 99 per cent of intimate partner domestic violence homicides in New South Wales over a six- or eight-year period had been preceded by coercive control. So the longer we wait, the more lives we put at risk. I do want to do it promptly. But if there's an implication in your question that this is being rushed, that's not the case. We've had a discussion paper out now for almost two years. We had a joint select committee that unanimously recommended criminalisation. It took, I think, 150 written submissions. Submissions were open over an 11-week period. It heard from 70 witnesses and had six days of hearings. Before this exposure draft went out, we consulted legal stakeholders, the police and the Aboriginal Legal Service. So this is not rushed. This has been a thorough and methodical process, drawing on the learnings of other jurisdictions like England, Wales and Scotland.

The Hon. SHAOQUETT MOSELMANE: I'll come to those questions.

Mr MARK SPEAKMAN: What can't be rushed once the legislation commences is the training of police and the judiciary and raising general community awareness.

The Hon. SHAOQUETT MOSELMANE: I'll come to those particular points, Attorney. But, first, staying on police. Will training be mandatory for police across New South Wales?

Mr MARK SPEAKMAN: That hasn't been determined, to my knowledge. That will be a matter for the police commissioner and the police, but I hope to have some input into that. We know that maybe up to half the volume of work of general duties officers in the Police Force is domestic violence. I expect that all police officers will have to be trained in it, to some extent. But, operationally, who will have the responsibility for bringing prosecutions, whether it's a matter for general duties officers or a more specialised squad, is yet to be determined. But we will want to draw, I would imagine, on learnings from Scotland, England and Wales of what works and hasn't worked in those jurisdictions.

The Hon. SHAOQUETT MOSELMANE: In dollar terms, do you have any idea as to how much will be allocated for police training? I know you just said that you haven't cast your mind across how many police.

Mr MARK SPEAKMAN: No, I don't. A final allocation has not been made. There was around $700,000, I think, in the budget, but you could regard that as a down payment.

The Hon. SHAOQUETT MOSELMANE: So $700,000 right across New South Wales?

Mr MARK SPEAKMAN: That's an initial contribution in the 2022-23 budget.

The Hon. SHAOQUETT MOSELMANE: So you anticipate there will be a larger contribution down the track?

Mr MARK SPEAKMAN: When we get a budget proposal worked up, that is my present expectation.

The Hon. SHAOQUETT MOSELMANE: Clearly, $700,000 is a small amount for such legislation.

Mr MARK SPEAKMAN: That will go a fair way. But my anticipation is that there will be a budget proposal for more.

The Hon. SHAOQUETT MOSELMANE: David Shoebridge is here. We always ask questions, in particular, about the increased number of incarcerations amongst our First Nations people. What mechanisms are in place to ensure that this new offence does not further contribute to the crisis of Indigenous incarceration in New South Wales?

Mr MARK SPEAKMAN: I don't know that—

The Hon. SHAOQUETT MOSELMANE: Given the significance of domestic violence in our communities, it will certainly capture that aspect within our First Nations people.

Mr MARK SPEAKMAN: I am very conscious of that issue. I know that many Indigenous stakeholders and the Aboriginal Legal Service have opposed the criminalisation of coercive control because they fear—obviously, if you are going to have a crime on the books, people are going to be charged, people are going to be convicted, people are going to be incarcerated. So that is something that I am very alive to. One of the issues that has concerned some stakeholders is reverse criminalisation; the failure to identify who is the perpetrator and who is the victim. Again, that is why we have an exposure draft out, to get comments on that. I do not know that drafting the legislation is going to solve that problem. What will address that problem, I think, will be training police officers to identify these sorts of circumstances. Again, that is why it's so important to have a significant lead time between legislation going through and commencing legislation.

One of the purposes of criminalisation as well is to raise awareness of coercive control. I have to be honest with you, when I became Attorney General I had never heard of coercive control. I didn't know what it was. I suspect most people in the community didn't know what it was. As I said earlier, I suspect a lot of victim-survivors don't realise this. One purpose of criminal law is to change behaviour. It's not just to capture people and charge people and send them to jail; it's to change behaviour as well. A lengthy education program and an awareness-raising program is part of mitigating the risk that you identify.

The Hon. SHAOQUETT MOSELMANE: I'll come back to the length of time of your draft exposure and the consultation process that you are currently undertaking. But, first of all, given that you have mentioned a number of times the Irish and Scottish experiences, in terms of the Northern Irish legislation on coercive control, it takes a broad and unique scope of relationships as opposed to what you currently have here. It covers moving beyond intimate partners to include members of the same family and members of the partner's family. Why was the decision made not to follow that approach, given that you have obviously used the Irish model?

Mr MARK SPEAKMAN: We have looked at various models. The Scottish model is sometimes said to be a gold standard. It is limited to former and current intimate partners; it doesn't extend to other domestic relationships. Evan Stark was a sociologist who started the analysis of this phenomenon of coercive control. It is largely a dynamic within intimate partner relationships. It is a different dynamic from child abuse or elder abuse, for example. It might be further down the track that we would look at expanding the scope of this legislation, but this is a very significant change to the criminal law.

My approach is to be cautious and incremental to try to get the balance right between capturing obnoxious and abusive conduct, on the one hand, but not overly or inadvertently criminalising behaviour, on the other hand, that shouldn't attract the sanction of the criminal law. This is part of getting that balance right. What is said to be the gold standard in Scotland does not extend this legislation beyond intimate partner relationships, where the sociological evidence and analysis suggests that, overwhelmingly, it is a dynamic in that context rather than in other domestic relationships.

The Hon. SHAOQUETT MOSELMANE: I wasn't part of the process, but was there feedback to you through the various consultation processes that said that this ought to be looked at?

Mr MARK SPEAKMAN: There will be stakeholders who say that it should be broader than intimate partner relationships, I accept that. There will be others who may say that it should be limited in the way that we propose.

The Hon. SHAOQUETT MOSELMANE: So your view is that it should be limited?

Mr MARK SPEAKMAN: That is the current view. This is a significant change to criminal law by focusing on courses of conduct rather than individual incidents. There is also the issue you raised of Indigenous over-representation in the criminal justice system. Were you to go broader than intimate partner relationships, you would pick up kinship groups, for example, which some suggest we should do. But, again, it is about trying to balance the need to protect those at risk, on the one hand, with avoiding overcriminalisation, on the other hand. Having this limit to intimate partner relationships is part of that, including considering the impact on Indigenous communities.

The Hon. SHAOQUETT MOSELMANE: It certainly has impacts in many ways in various communities. In terms of the multicultural communities, I don't know whether they have had significant understanding or interaction with this or whether that consultation process included CALD communities. I haven't seen it, for example, in the Arabic media that there is this particular legislation on coercive control coming through. You indicated, and I would say the same, that I wouldn't have known what it was initially until I read up on this. Communities out there would not know what coercive control is. In terms of the consultation process, has it reached out to those CALD communities?

Mr MARK SPEAKMAN: I believe the joint select committee certainly did. I can refer you to the list of stakeholders who provided submissions and gave evidence at the hearing, but they included CALD stakeholders. I'll let you look at that list. If you want to, I can provide it.

The Hon. SHAOQUETT MOSELMANE: Sure.

Mr MARK SPEAKMAN: During the consultation period that is open at the moment, as well as inviting members of the public to provide submissions on the Have Your Say website, the Department of Communities and Justice has organised a series of targeted round tables—I think about 10 round tables.

The Hon. SHAOQUETT MOSELMANE: Have they commenced?

Mr MARK SPEAKMAN: They are in the process at the moment. I think at least one of those is a CALD round table. I will invite Mr McKnight to address that.

PAUL McKNIGHT: The department is currently undertaking targeted consultations, as the Attorney General said. So far there have been 10 targeted consultations. Those are either targeted meetings or round tables. A further 10 are planned before 31 August. I can tell you that one of those round tables was targeting the culturally and linguistically diverse community. We have also targeted legal stakeholders, we targeted the domestic and family violence sector. Aboriginal women have had a specific round table. There has been a round table with the LGBTQIA+ sector. Tomorrow there will be round tables targeting groups representing older people in the disability sector. Towards the end of August there will be two regional visits, mostly to target Aboriginal groups in Kempsey and Dubbo. I think there was a legal stakeholder round table also planned in Dubbo. We are very active, talking to people about this legislation.

The Hon. SHAOQUETT MOSELMANE: And the CALD community that you are targeting, has that meeting happened?

PAUL McKNIGHT: It has. It happened on 10 August.

The Hon. SHAOQUETT MOSELMANE: Was it a broad cross-section of CALD community presence?

PAUL McKNIGHT: I would have to take on notice who was represented at that meeting. My note doesn't cover the detail of who was there.

The Hon. SHAOQUETT MOSELMANE: We will come back to that.

PAUL McKNIGHT: It would have been as broad as we could accommodate to ensure that the representation was broad for that community, yes.

The ACTING CHAIR: Attorney General, I would like to talk to you about the children, if that's okay. In particular, I know that through the Meeting of Attorneys-General you were leading and mapping out an attempt to harmonise raising the age of criminal responsibility. Clearly that has not worked for all sorts of various reasons. I am sure you have a different version of "work" here. I suppose what I'm trying to say is that we've seen the ACT and the Northern Territory are forging and taking their path. I think the week before last you were presented with

the 63,488-signature petition, with which I was also presented. Of course, the people who presented that to us—the coalition there, the alliance—basically said that they would have gotten thousands and thousands of more signatures, but they literally cut it off in the absolute hope that now was a timely and appropriate time to present it to you before we head to the State election, giving you this one chance—this one more chance—to actually take to action, raise the age and do something for our children when, as you and I both know, the evidence is just overwhelming that what we are doing right now is not right.

Mr MARK SPEAKMAN: Is there a question?

The ACTING CHAIR: The question is: Are you going to do it? The question really is: Where are you up to, Attorney General?

Mr MARK SPEAKMAN: Sure.

The ACTING CHAIR: As you know, there are people so stressed on this question and they are urging us all in this place to do something, Attorney.

Mr MARK SPEAKMAN: Look, I'm very grateful to all legal and medical stakeholders who have worked very hard on this. The Attorneys-General across the country met in Melbourne on 12 August. We had previously agreed in November last year that State Attorneys-General would develop a proposal to go to 12 and give consideration to carve-outs, if any. That has now been overtaken by what we agreed on 12 August, which was we would continue to work to develop a proposal to increase the minimum age, paying particular attention to eliminating the over-representation of First Nations children in the criminal justice system.

That work is back on track. I anticipate it will come to a head probably in the middle of next year. I can't pre-empt what it may or may not decide or pre-empt what New South Wales may or may not do, but our present position is we are part of that national process, trying to find common ground among the States, accepting that the ACT and the Northern Territory have already announced what they are going to do—in the case of the ACT, go to 14; in the case of the Northern Territory, go to 12.

The ACTING CHAIR: I think—

Mr MARK SPEAKMAN: Can I add one other thing?

The ACTING CHAIR: Absolutely.

Mr MARK SPEAKMAN: Ultimately, among others, this has to be, "What is the best way to protect community safety?" Proponents of going to 14, or raising the age, would say you will have a safer community if you avoid early engagement with the criminal justice system. But if you're going to do that, rather than do this in the abstract, you need to identify what the alternative pathway is for offenders under 14 or 12 or whatever age you have. That is what I hope this working group will do, because when a proposal is developed it will be really important to identify what the alternative pathway is so that it's not a retreat from intervention but it's something that we think will be a better model. Now I know the ACT is doing work on that, and hopefully that will inform a decision that State Attorneys-General, State governments and New South Wales come to, but that is a really important part of the process and, hitherto, I think where it has stalled at a national level as that work has not been done.

The ACTING CHAIR: Are you referring there, Attorney, to the ACT report, the review of the service system and implementation requirements for raising the minimum age?

Mr MARK SPEAKMAN: That's something that we will look at, but what—

The ACTING CHAIR: Is that something you would commit to doing here and having that same kind of—

Mr MARK SPEAKMAN: I can't commit to anything because the Government here has not made any decision.

The ACTING CHAIR: How can we introduce bail laws after one radio announcement and five weeks and we can't introduce laws that are actually going to not only meet community expectation but save children's lives?

Mr MARK SPEAKMAN: Well, we have been relying on a national process, and we have been relying on that national process to develop an alternative model so we can then consider, "Is that alternative model the way to go?" That national process led by Western Australia has not reached that point, and that's what we are relying on. The way the meetings of Attorneys-General work is different jurisdictions take the lead responsibility for different projects. New South Wales, for example, has been the lead jurisdiction on defamation and on access to digital assets after death and incapacity. We have not been the lead jurisdiction on raising the minimum age;

that has been Western Australia. So we are reliant on Western Australia leading that project. I think Queensland is now joining them, and I think the Commonwealth is joining them as well. I think there are three—can I have liberty to apply if I have misidentified which jurisdictions are doing it? I think Queensland, WA and the Commonwealth are now leading the work in this area to develop a proposal.

The ACTING CHAIR: Why are we so committed, Attorney General? If we think that we should be raising the age, why are we so committed to the harmonisation project that clearly other States and Territories have now left?

Mr MARK SPEAKMAN: When you say "we think", you think. The Government hasn't reached a view because, rather than developing our own alternative pathways, we have been relying on a national process to do that so we can then evaluate that alternative pathway—

The ACTING CHAIR: But—

Mr MARK SPEAKMAN: Hang on, I haven't finished; sorry. We can then evaluate that alternative pathway and decide whether that represents an improved model of community safety and avoidance of offending and reoffending than the status quo. It's not that we have done nothing. We have been relying on a national process that has stalled in the last 12 months, but I am confident, as a result of the discussions I have had with other Attorneys-General on 12 August, that that is now reinvigorated and we should have some concrete proposal to consider around the middle of next year.

The ACTING CHAIR: The communique is quite vague and disappointing, really. It really does just say, "We commit to carrying on" or " We commit to keeping on looking at it", I think, or something to that effect. At this point, am I hearing clearly that you're not committing to forge a way and take New South Wales on its own path of raising the age, particular to our circumstances here in New South Wales?

Mr MARK SPEAKMAN: I can't predict what New South Wales will do from the middle of next year, but I don't anticipate us doing our own thing this side of the reinvigorated attempt at a national approach.

The ACTING CHAIR: But do you accept that, really, the harmonisation and this approach—the national process that you were committed to—has failed? I am not just trying to be silly there. I am suggesting we now have evidence of others not being part of that and forging their own path and going forward.

Mr MARK SPEAKMAN: No, I don't accept that. I accept that it has stalled, but I think it is reinvigorated. Harmonisation is desirable, but it's not essential in criminal law. There are some areas of the law, like defamation, where it is ludicrous for different jurisdictions to do different things because—

The ACTING CHAIR: It's hardly a comparison. We're talking about locking children up.

Mr MARK SPEAKMAN: Hang on, I haven't finished. Let me finish.

The ACTING CHAIR: Sorry.

Mr MARK SPEAKMAN: It's clearly ludicrous for different State and Territory jurisdictions to do different things when a wrongdoing can cross borders. It's not essential in the criminal law that each State and Territory jurisdiction operate in unison. It is desirable, and it is desirable that we learn from each other and cross-fertilise ideas, learnings and research, which is what we are attempting to do with this approach. So I don't accept that it has failed. I accept that it has stalled, but I think it is reinvigorated and the New South Wales approach at the moment is to see what this produces.

The ACTING CHAIR: But not before mid-next year?

Mr MARK SPEAKMAN: I don't anticipate anything substantial in, for example, this session of Parliament. But it is not in the too-hard basket. It is, on one view, a contentious area. It is not in the too-hard basket. If there is a national model, if you like, being developed, with research and, more importantly, developing what would be an alternative pathway, that is something we would want to look at before deciding what we do.

The ACTING CHAIR: So what resources are we putting into that at the moment?

Mr MARK SPEAKMAN: I will let Mr McKnight supplement, but we are on a working group, I think. Primarily, as I said before, at the Meetings of Attorneys-General, different jurisdictions take lead responsibility, so we are not the lead jurisdiction doing this.

PAUL McKNIGHT: Basically, we are participating in the national working group.

The ACTING CHAIR: Do you think we should be stepping up our efforts? I mean, if it has stalled and we have recommitted, do we really have to wait for other States? Can we not take lead in your own agency to do

something that is so desperately wanted by so many of the experts and so many people across our community? It is our children; it is not adults ruining each other's reputations.

Mr MARK SPEAKMAN: Yes.

The ACTING CHAIR: This is about our children being incarcerated, and the number we know of children in incarceration between 10 and 14 is actually not that great in terms of the volume, the quantity of people, but every single one is dire, it's significant and it is having catastrophic impacts—not just on their lives; on everybody's lives. Do you not think we should perhaps un-stall the process, take some leadership and do something in New South Wales?

Mr MARK SPEAKMAN: It is not just about the children under 14; it is also about those who are harmed by their actions, which is why it is important that, if there is any move to raise the minimum age of criminal responsibility, we have a very clear idea about what the alternative pathway is. We are being proactive on that in the sense that we are facilitating a national process that will develop an alternative pathway and we are cooperating with another jurisdiction or jurisdictions that are taking that lead, but we don't intend to run our own parallel process when there is that national process that every jurisdiction is cooperating with happening at the moment, which in my read of what happened on 12 August, having stalled, is now reinvigorated.

The ACTING CHAIR: Just finally, the work that the ACT did in reviewing the services and all of those wraparound processes and diversionary programs that are necessary—is that not something that we should be doing now in New South Wales so that in the event we get some national leadership through MAGs and we take a harmonisation process, won't we need to have done this work for when that time comes and we are ready and we have a system that is fit and proper and ready to go?

Mr MARK SPEAKMAN: Correct, and that is why there is a national process to do that work that another jurisdiction is leading. I would anticipate that whatever the ACT is doing will be taken into account in developing that. That is what this national process is for, to develop—

The ACTING CHAIR: And it will do specifically New South Wales analysis. Is that what you are saying?

Mr MARK SPEAKMAN: Do you want to comment on that?

PAUL McKNIGHT: The working group hasn't reconvened post the Meeting of Attorneys-General, so I would anticipate that the scope of work that the working group sets up would cover cataloguing existing services and service gaps on a national basis, given the kind of work that the attorneys-general agreed to do and, should that be the case, New South Wales will participate in that process.

The Hon. SHAOQUETT MOSELMANE: I will continue my questions with regard to coercive control. You have indicated, Attorney, that the Scotland model is the gold standard.

Mr MARK SPEAKMAN: I haven't said it is the gold standard; I said that is what some others say it is.

The Hon. SHAOQUETT MOSELMANE: I thought you said that, but that is okay.

Mr MARK SPEAKMAN: I don't think I did.

The Hon. SHAOQUETT MOSELMANE: Okay, that is fair enough. My question then is that the draft bill uses the phrase, "course of conduct". Why was the decision made to not include a specific number of instances? Both Scotland and Northern Ireland refer to "at least two occasions".

Mr MARK SPEAKMAN: The wording of our exposure draft leaves it open that two occasions could constitute a course of conduct, but we do not want to be overly prescriptive. The thinking behind the current draft—and, again, it is a draft—is that we don't want to be overly prescriptive and say that what, on one view, might be merely two occasions constitutes a course of conduct.

The Hon. SHAOQUETT MOSELMANE: When you say a course of conduct—like regular as opposed to just one or two events—would that be an interpretation that some might see one or two may not be a course of conduct, but more a series of three, four, five or six is a course of conduct? A series of them would constitute a course of conduct?

Mr MARK SPEAKMAN: Sure. There are plenty of instances in the law, including the criminal law, where you don't have some kind of quantitative standard for what falls within the offence. Take an expression like "negligence". That is a finding of fact as to whether something constitutes negligence. Likewise, whether something happens often enough or of a particular kind that it constitutes a course of conduct, that is for a magistrate or a jury to determine, and the fact that judgement has to be made about whether something does or doesn't fall within a description doesn't mean it is inappropriate

The Hon. SHAOQUETT MOSELMANE: In other words, two occasions is a course of conduct?

Mr MARK SPEAKMAN: Well, it may be. It would be open to a jury or a magistrate to find that two are, but it would also, I think on that drafting, be open to find that two were not enough.

The Hon. ADAM SEARLE: This is a novel piece of legislation, as you have said in the past.

Mr MARK SPEAKMAN: Yes.

The Hon. ADAM SEARLE: And you have spoken about the difficulties of trying to regulate coercive control as a new concept. Wouldn't it be better to be clearer rather than run the risk that courts, in interpreting this, may or may not apply it as you intend?

Mr MARK SPEAKMAN: You want to be clear, but you also want to avoid over-criminalisation.

The Hon. ADAM SEARLE: Yes.

Mr MARK SPEAKMAN: This is why we have got an exposure draft and this is the balance that you have got to get right, and you want to make sure—there may be some circumstances where two episodes of something ought not to be regarded as a course of conduct. The problem with having a numerical criterion is that you may capture in your offence episodes that aren't frequent enough or serious enough to be appropriately criminalised.

The Hon. SHAOQUETT MOSELMANE: But that is for the jury or the judge to determine.

Mr MARK SPEAKMAN: That's right, and that is why there is no numerical criterion in there, whereas if you put a numerical criterion in there you are telling the jury or the magistrate that, whatever you think as a matter of common sense, two episodes were enough.

The Hon. SHAOQUETT MOSELMANE: But it is saying here "at least two occasions", so it is not just saying two occasions. There could be a sequence of those occasions afterwards, but at least two occasions would constitute a breach.

Mr MARK SPEAKMAN: What we have done is cherrypick from different legislation overseas. In this case we have taken the English and Welsh approach, rather than having an arbitrary number. But, again, it is an exposure draft, and that's why it is an exposure draft—to flush out these sorts of critiques and have an informed evaluation.

The Hon. ADAM SEARLE: But just on that issue of the exposure draft, some stakeholder groups such as DVNSW have said that the six-week time frame wasn't sufficient, and given the nature of the legislation and its novel qualities that longer would be better. I know you want to act sooner, unlike on some of the other issues that we have been discussing. You want to get this done, I appreciate that. But we also want to get it right. Wouldn't a longer consultation period enable better engagement to bring out some of these tricky questions to make sure the legislation enacted—

Mr MARK SPEAKMAN: We have to balance, as I said before, the risk to lives the longer we wait because of coercive control being a red flag for domestic violence homicide but, on the other hand, having adequate time. This is not the start of the consultation process. This is a process that started at least as long as ago as October 2020 with a fairly detailed discussion draft and a joint select committee that ran for nine months, where there were 11 weeks for written submissions. There were six days of hearings.

The Hon. ADAM SEARLE: But the devil is always in the final detail, isn't it? The actual—

Mr MARK SPEAKMAN: That's right. We're now at the pointy end, but this is not something where we're having a standing start. This is consultation that has been going on since October 2020. While it's novel, it's novel in the sense that police and others have generally got incident-based approaches to criminal law rather than a course of conduct. It's not novel, though, in the sense that we won't be the first jurisdiction in the world doing this. We can learn from the experience in Scotland, England and Wales, and Northern Ireland—and Tasmania, for that matter. It is not novel.

The approach we have taken in our exposure draft is to prefer the English and Welsh drafting in this area rather than the Scottish drafting, but that's what it's there for as an exposure draft. We are confident that six weeks should be adequate time for people to comment on that, particularly as it's not just six weeks unaided. We are facilitating round tables—at least 10 round tables—with relevant groups to flush out and discuss these sorts of issues so it is not just written submissions—ships crossing each other in the dark—but there is a kind of Socratic interchange to discuss these issues that flush out strengths and weaknesses.

The ACTING CHAIR: I draw attention to the time. We will break for morning tea. We will reconvene at 11.15 a.m. Thank you everybody.

(Short adjournment)

The ACTING CHAIR: We will pick up where we left off. The Opposition has a further 16 minutes.

The Hon. ADAM SEARLE: Mr Attorney, the subject matter of the Special Commission of Inquiry into the Drug 'Ice', you would accept that that is a pretty important inquiry?

Mr MARK SPEAKMAN: Yes.

The Hon. ADAM SEARLE: It went for 14 months, but it has now been 30 months since that report was delivered. I understand that when Dr Howard delivered his report he tried to see the Premier but wasn't able to. He had to deposit the report at reception at 52 Martin Place. He wasn't able to see the Premier on that occasion. I believe he has reached out to the Premier—the former Premier, at least—on a number of occasions but wasn't able to secure a meeting. Have you met with Dr Howard in relation to the ice inquiry recommendations?

Mr MARK SPEAKMAN: No. I did meet Dr Howard before he provided his report. I have not met him since then. I may have written to him.

The Hon. ADAM SEARLE: I am happy for you to take that on notice.

Mr MARK SPEAKMAN: I'll take that on notice.

The Hon. ADAM SEARLE: You would accept that the people who came forward to give evidence to that inquiry about their lived and quite horrific experiences, there would be a reasonable expectation on them that the Government would respond in a timely way to these important issues? You would accept that?

Mr MARK SPEAKMAN: Yes.

The Hon. ADAM SEARLE: Leaving aside the disrespect to Dr Howard from no-one in the Government talking to him, there is a disrespect to all those who participated in the inquiry to not have heard from the Government to date. Would you accept that?

Mr MARK SPEAKMAN: I'm disappointed that we haven't yet had a formal response to the ice inquiry. It is a very important inquiry that is founded on extensive research evidence and a very extensive report. It is disappointing that there has not yet been a formal response. I'd note that most of the report doesn't concern my portfolio. Drugs are basically more a health issue than a legal issue.

The Hon. ADAM SEARLE: Or should be.

Mr MARK SPEAKMAN: Or should be. But to the extent that there are legal issues that were the subject of recommendations, where it has been possible to hive those off and deal with them ahead of a formal response I have tried to do so. For example, expanding the Youth Koori Court was a recommendation; I've announced that is expanding to Dubbo. Expanding circle sentencing was a recommendation; we are expanding that to another eight sites. Expanding justice reinvestment was a recommendation; we are doing that. Expanding the Drug Court was a recommendation; we are doing that. There was a recommendation for a Walama court; there is a list that started early this year.

The Hon. ADAM SEARLE: And a longitudinal study by BOCSAR?

Mr MARK SPEAKMAN: I beg your pardon?

The Hon. ADAM SEARLE: And a longitudinal study by BOCSAR?

Mr MARK SPEAKMAN: That's correct. It is not as if nothing has happened, but I accept that there is a very lengthy delay in the overall response, and that's a matter of disappointment to me.

The Hon. ADAM SEARLE: I think in November you said you would be disappointed if it was not this year—that is, 2021. Of course, in March you were similarly disappointed. I imagine the disappointment must be giving way to despair at this point?

Mr MARK SPEAKMAN: No, I remain disappointed.

The Hon. ADAM SEARLE: The Premier not that long ago said that the Government was very close to finalising that response. Can you shed any light on where that is up to?

Mr MARK SPEAKMAN: That's my belief but, ultimately, it's in the hands of the Premier and Cabinet generally.

The Hon. ADAM SEARLE: How did you receive the report from Dr Howard? Were you given a copy by the Premier's office?

Mr MARK SPEAKMAN: I think that's the case. I don't think he wrote to me directly because it was the Premier who commissioned the report. I think the report went to the Premier, or it might have gone to the Governor.

The Hon. ADAM SEARLE: So you were furnished with a copy of the report, but reading the report or getting briefed on what it had to say didn't prompt you to want to meet with Dr Howard to better understand his thinking or the sense of urgency that seems to underpin it?

Mr MARK SPEAKMAN: I think it is a fairly clear report. It is extensively footnoted. I have certainly looked at sections of the report that involve the law very closely, and not just the report but primary materials that are footnoted there as well. The report on one view speaks for itself.

The Hon. ADAM SEARLE: So you don't need to be persuaded or convinced about the logic behind its proposals?

Mr MARK SPEAKMAN: That logic is a matter for Cabinet. There were over 100 recommendations, a handful of which were ruled out fairly quickly by the then Premier.

The Hon. ADAM SEARLE: Five of them.

Mr MARK SPEAKMAN: I have put on record pretty clearly my view about the general direction of pre-court diversion, without disclosing what has been to Cabinet or what may be before Cabinet. My view about the general desirability of a diversionary approach is pretty clearly on the record.

The Hon. ADAM SEARLE: Given that Dr Howard hasn't been able to meet at least with the former Premier—I don't know whether he has tried to meet with the current Premier—he hasn't been able to meet with the health Minister and you haven't sought to meet with him because I intuit you seem to be convinced about what he has to say, how come no-one in the Government wants to speak to him about the report?

Mr MARK SPEAKMAN: You would have to ask individual Ministers that. I can't answer for what they choose or choose not to do.

The Hon. ADAM SEARLE: I am only asking you in a representative capacity, you understand, Mr Attorney?

Mr MARK SPEAKMAN: And I have provided my answer.

The Hon. ADAM SEARLE: How many of the recommendations do fall within your portfolio?

Mr MARK SPEAKMAN: Can I take the precise number on notice?

The Hon. ADAM SEARLE: Sure.

Mr MARK SPEAKMAN: Certainly a minority.

The Hon. ADAM SEARLE: What have you done to progress those? I understand they are within a wider framework but, of those that do fall to you, what have you done about them in the 30 months?

Mr MARK SPEAKMAN: I have certainly had extensive briefings from the agency, taken submissions to Cabinet, spoken with colleagues to discuss the merits or otherwise of matters that fall within my jurisdiction, taken the matter to the Expenditure Review Committee for funding for certain proposals and made the announcements that I described before in relation to some legal matters—Koori Court, Drug Court, circle sentencing, justice reinvestment, Walama List.

The Hon. ADAM SEARLE: So to the extent that you can, you've progressed the bits that fall to you?

Mr MARK SPEAKMAN: I have probably spent hundreds of hours trying to progress it.

The Hon. ADAM SEARLE: Is it the police Minister who has been standing in the way of—

Mr MARK SPEAKMAN: I am not going to get into—I can't—the details of discussions with colleagues. By the comments that I have put on record, I am not purporting to disclose what might be before Cabinet or has been before Cabinet, but these are matters which some people will have views on and that is what Cabinet is there for—to thrash this out.

The Hon. ADAM SEARLE: Perhaps I could ask a different question. Is it the Police Force that is resisting a number of these proposals? I can speak from my own experience. They have historically been

antagonistic towards these kinds of policy changes. Is that where the resistance within the Government framework is?

Mr MARK SPEAKMAN: I can't reveal confidential communications within Cabinet, but I will note this in response to that: The then police commissioner made a submission to the inquiry where, in his view, a pre-court diversion scheme, if accompanied by appropriate health interventions, could have a profound, positive impact on drug addiction in New South Wales. That police commissioner is on the record supporting pre-court diversion. That commissioner was part of an inquiry that looked at overdoses at music festivals and made a recommendation for an infringement notice scheme at music festivals. The previous police commissioner before him, Andrew Scipione, is on the record supporting a pre-court diversion scheme.

What the police Minister or other Ministers may say in Cabinet I can't disclose, but the police have been pretty open in their support for a pre-court diversion scheme. Of course, just to be clear, although that is the issue that has attracted the most interest in the media and in political discussion, it is only one of over 100 recommendations. Certainly the bulk of the recommendations and the bulk of the responses are about health interventions rather than legal responses.

The Hon. ADAM SEARLE: Sure.

Mr MARK SPEAKMAN: Or about other diversionary schemes—for example, expanding MERIT.

The Hon. ADAM SEARLE: Certainly, but we've got a situation where this inquiry was called before or perhaps during the last State election. It seemed to diffuse a difficult situation for the Government where there was division, or apparent division, within the Government about drug law policy and responses. So it gets kicked down the road by having an inquiry. Some 30 months after the inquiry recommendations are delivered, there are no tangible signs of action by the Government as a whole—leaving aside the evidence you have given here today. Shouldn't the people who participated in the inquiry and the community of New South Wales draw the conclusion that calling that inquiry was a bit of a stunt?

Mr MARK SPEAKMAN: No, not at all. You would not call an inquiry that you know is going to cost many millions of dollars unless you are interested in its outcomes. I think at the time that Premier Berejiklian called an inquiry she recognised the insidious nature of drug addiction in New South Wales, particularly ice addiction and particularly in regional areas. It is hardly a stunt to call an inquiry which you anticipate will make serious recommendations to which the Government is going to have to respond. It was certainly not a stunt. It was certainly an inquiry called in good faith and funded extensively by the Government. The absence so far of a formal response does not indicate an intention to kick it down the road. It just indicates that Cabinet has not yet made up its mind on one or more of the recommendations.

The Hon. ADAM SEARLE: I understand, but there is no need for Cabinet to deal with everything all at once. Presumably it could work through them progressively and decide what it's going to do. These are complex issues, but is it that hard that it has taken—

Mr MARK SPEAKMAN: I guess if you were back in 2020 and you thought that we would be where we are now in 2022, you would attempt to hive off more things. But we have been on the cusp of a formal response for a long time. At each point along that way it has seemed more productive to get the final response done than start hiving off things, which would just delay a final response. With the benefit of hindsight, you might approach things differently. That is how it has been the whole way through, bearing in mind the delay in the final response is why I have tried to hive off where I can, and I have mentioned some of the things that I have hived off and announced.

The Hon. ADAM SEARLE: Whether it's five weeks or six weeks of sitting that is left in this Parliament—certainly this year—are you able to tell us that it's a realistic expectation that the Government will bring forward legislation to address its response to the ice inquiry this calendar year?

Mr MARK SPEAKMAN: That is my aim—that any legislative response that is required will be this calendar year. But it's unlikely that any primary legislation would be needed. If, for example, we were to expand the MERIT scheme, that doesn't require legislation. If there are more rehab facilities or better health facilities in different areas, that doesn't require legislation. There is already a regulation in place—I think under the Criminal Procedure Act—that authorises the issuing of infringement notices for possession of any drug anywhere in New South Wales. So that is already broad enough to cover at least one sort of pre-court diversion if the penalty were $400, which is what is in the regulation. At the moment, though, operationally, police don't do that except at music festivals.

The Hon. ADAM SEARLE: Well, just speaking of—

Mr MARK SPEAKMAN: So if that were to be broadened, that doesn't require a legislative change. There may or may not be tweaking of regulations, but my current anticipation is that it would not require statutory or primary legislation to expand pre-court diversion. I don't think any of the other responses to—well, I'm sorry, there's one: the Criminal Records Act. There is a recommendation about wiping the slate, I think, at two years rather than 10 years for expunging drug offences from criminal records. That would require a legislative fix, I think.

The Hon. ADAM SEARLE: During COVID, of course, that wasn't a real live issue about music festivals and gatherings and stuff. But obviously now that that has receded—at least from the popular consciousness—and there does seem to be a return to face-to-face gatherings, it doesn't seem that the Government actually has a coherent drug policy to deal with that. The ice inquiry, I think, was meant to provide that content. From my count, it seems that there's been no proactive Government drug policy for nearly a decade in this space and it's just been delayed further.

Mr MARK SPEAKMAN: I don't agree.

The Hon. ADAM SEARLE: It's time to draw a line under it, isn't it?

Mr MARK SPEAKMAN: Look, drug policy is not just me. It's not just me as the first law officer.

The Hon. ADAM SEARLE: Of course.

Mr MARK SPEAKMAN: It's police, Health, Premier, education Minister. I don't agree with that characterisation. The ice inquiry and its recommendations are not about starting a drug policy. They're about amending the way we deal with drugs at the moment with a three-pillar approach of supply reduction, demand reduction and harm reduction.

The Hon. ADAM SEARLE: But now that we're returning to face-to-face gatherings there may be more dance parties, there may be more music festivals. The need to address the contents of the ice inquiry now becomes more pressing than it has been in the last year or two, doesn't it?

Mr MARK SPEAKMAN: I don't know that it's more pressing. It is pressing; I accept that. In terms of pre-court diversion, music festivals are already dealt with, except that there's no health intervention with an infringement notice at a music festival. But I think the vast majority of illicit drugs are not consumed at festivals or parties. There'd be people with daily habits or recreationally doing them elsewhere or consuming them in private, so I don't know that it's more pressing, but I accept that it's pressing.

The Hon. ADAM SEARLE: Well, we'll come back to that.

Mr MARK SPEAKMAN: Okay.

Ms ABIGAIL BOYD: I know that my colleague Mr Moselmane has already asked you some questions about the coercive control legislation. I just want to pick up on a couple of those points. Firstly, I know that you're aware that the sector has been asking for a little bit more consultation time. Just on that basis, is there any sense that now that we have a change in Federal Government that there's going to be some movement towards a national definition of domestic violence and abuse that it might be worthwhile waiting for before this legislation goes through?

Mr MARK SPEAKMAN: There are national principles that are being developed and there's a consultation draft that attorneys-general agreed to release on 12 August. I'm satisfied that our exposure draft complies; it falls within those principles. It's pretty clear in those principles that the aim is not to have substantially identical legislation and statutory definitions across the country, and that's not just my gloss or interpretation. I think there are explicit statements in the consultation draft to that effect.

Broadly, though—in fact, there's not even, in those principles, agreement that each jurisdiction will criminalise coercive control. It is rather, "Here is an overarching framework of analysis to guide you if you choose to criminalise coercive control. Have regard, for example, to the possible effect on First Nations people." That is a consideration to be taken into account but there's no prescription about how you take that into account or what the drafting solution is to that, and I don't think there will be any drafting prescription in these national principles. They're out for consultation. They're pretty broad. Sorry, I withdraw that. Consultation starts in September.

Ms ABIGAIL BOYD: Right. Okay.

Mr MARK SPEAKMAN: Consultation starts in September. Are they out?

PAUL McKNIGHT: No, they're not out.

Mr MARK SPEAKMAN: Sorry, I'll have to correct myself.

Ms ABIGAIL BOYD: I was going to say I don't believe so.

Mr MARK SPEAKMAN: They're not out, but they've been agreed upon. They will be out in September. Having taken advice and my own analysis, it's clear to me that our exposure draft is consistent with, or doesn't depart from, those national principles, so I don't think that is a reason to hold up drafting in New South Wales.

Ms ABIGAIL BOYD: But, I guess, this is something that has been put out for consultation in September, so, presumably, the consultation is for the purpose of hearing back from experts and frontline workers.

Mr MARK SPEAKMAN: Yes.

Ms ABIGAIL BOYD: So you could well end up—and I would hope that that consultation actually improved the drafting. That's what we want consultation to do, so you can't really be confident, can you, that the drafting of the exposure bill is going to be consistent with what ends up being agreed as part of the national principles?

Mr MARK SPEAKMAN: Oh, look, they're pretty broad principles. I don't think there's anything in there that is problematic or controversial, so I would be confident. This is not to point score but, to put this in context to criticisms that there isn't enough consultation on this, this is the fourth round of consultation. From October 2020 when we announced the joint select committee to now there was a discussion paper. There was an 11-week period for written submissions. I get the comment that, "Yes, but part of that was over the Christmas-New Year period", but it's still 11 weeks. It's a pretty large chunk of time to make written submissions. Six days of hearings, 70 witnesses—so two rounds of consultation there.

Before this exposure draft came out we consulted legal stakeholders to deal with the sorts of issues that Mr Moselmane talked about—whether you have a numerical prescription or not—and the Aboriginal Legal Service, and now this round. Before we put out the discussion paper in October 2020, I had been speaking for some months with stakeholders wearing my then dual hat of domestic violence Minister and Attorney General—speaking with people in Scotland, England and Wales and so on. So this has gone through a very extensive process. Anna Watson put up a private member's bill in late 2020 that was voted on in early 2021—a much more wideranging bill than this one. There didn't appear to be any formal consultation on that and yet Labor MPs and Greens MPs in the lower House were prepared to vote for that bill, absent any consultation, other than there might have been informal stakeholder feedback.

Ms ABIGAIL BOYD: I'm not sure about The Greens MPs.

The Hon. SHAOQUETT MOSELMANE: I'm not sure about Labor, either.

Ms ABIGAIL BOYD: Yes, I don't believe that it actually went to a vote.

Mr MARK SPEAKMAN: I'm trying not to—and I'm not doing this to—

Ms ABIGAIL BOYD: Could I stop you there, though, Mr Attorney?

Mr MARK SPEAKMAN: Hang on. Can I just finish? I'll only be—

The Hon. ADAM SEARLE: You're not trying to argue about this, Mr Attorney, are you?

Mr MARK SPEAKMAN: No.

Ms ABIGAIL BOYD: I do think you've forgotten about—

Mr MARK SPEAKMAN: Can I just finish the sentence?

The Hon. PETER POULOS: If he could answer the question?

Ms ABIGAIL BOYD: —the excellent bill The Greens drafted that went for an 18-month consultation. We had about four or five exposure drafts that were sent out to the sector, to experts, to a whole bunch of people. The bill that I presented in the upper House had 18 months of consultation and was put forward on behalf of the sector.

Mr MARK SPEAKMAN: But it ultimately—

Ms ABIGAIL BOYD: And it differs in material respects from the one that you have put forward.

Mr MARK SPEAKMAN: I certainly would invite your feedback on this exposure draft and welcome that, but in the end—and I'm saying this is not to point score but to put in context our lengthy consultation—Labor and The Greens in the lower House were prepared to vote for a bill that had—

Ms ABIGAIL BOYD: I think you're mistaken on that. It didn't go to a vote.

Mr MARK SPEAKMAN: It did in the lower House. It didn't go to your House. It did in the lower House.

Ms ABIGAIL BOYD: No.

Mr MARK SPEAKMAN: Not your bill, Labor's bill.

Ms ABIGAIL BOYD: No, I know but also—sorry, we didn't vote on that. The Greens didn't vote on that.

Mr MARK SPEAKMAN: I think you did.

Ms ABIGAIL BOYD: Okay.

Mr MARK SPEAKMAN: I think you did and I'm not having—I'm doing that just to draw a comparison with—

Ms ABIGAIL BOYD: Because there were significant flaws in that bill.

Mr MARK SPEAKMAN: —the approach of voting members of the Legislative Assembly to that bill and comparing that with the enormous amount of consultation and rounds of consultation we're doing now.

Ms ABIGAIL BOYD: Coming back to your consultation, during the joint select committee, which I was a member of, it was very clear that that was an inquiry about whether or not to criminalise coercive control, rather than it being an inquiry into a particular draft. You and I know that there are many different ways that you could draft the elements of this offence, which is why The Greens bill was so different to Anna Watson's bill, but also why the Scottish law is so different to the English law et cetera. But during that inquiry, if we do look at that inquiry as a form of consultation for the drafting, there are a number of elements you have put in your exposure draft which were not majority supported by the people who had put in submissions. I'm not sure that you can claim that that was consultation that supports the bill that we have before us. The bill is very specific. Six weeks is not a long enough period of time to properly consult.

Mr MARK SPEAKMAN: Well, I would respectfully disagree because we are not doing this from a standing start. We are doing it, as I say, from October 2020, and I get your point that that was about whether or not, rather than the precise wording. But this is not at a standing start. We have done that overall consultation and getting stakeholder submissions on coercive control generally. We are not doing this from a standing start as the first jurisdiction in the world to do it. We are informed by what has happened in Scotland and England and Wales, and it is not six weeks—here it is, put in your submissions and we will open the box in six weeks and see who said what. We have got targeted, roundtable consultation to facilitate discussion.

Ms ABIGAIL BOYD: I am glad you raised that we can look at Scotland. We do have those jurisdictions who have done this before us. The Scottish Act is being reviewed and there will be a report in September, looking at the data and how it has been implemented and whether it has been effective and what they could do better. Wouldn't we be better off then waiting to see that review before we push ahead with this legislation?

Mr MARK SPEAKMAN: I think there will be time to look at that.

Ms ABIGAIL BOYD: Before we pass the legislation?

Mr MARK SPEAKMAN: Yes. I don't anticipate the legislation will come to Parliament in September.

Ms ABIGAIL BOYD: Can I ask you, recommendation 21 of the joint select committee was that the exposure draft would actually go through a consultation process guided by the implementation task force, and that was supported in the Government's response. Just to be clear, the recommendation states:

> That the NSW Government releases an exposure draft of legislation for a coercive control offence as a priority, with proposal of final legislation following further consultation through the implementation taskforce.

The committee was very clear that it did not want to see a draft of this bill put forward before the implementation task force that comprised First Nations representatives, representatives from CALD communities and people with disability had been established first. Why have you departed from the response to that recommendation?

Mr MARK SPEAKMAN: I'd say I would read recommendation 21 in conjunction with recommendation 20. Certainly we will give consideration to an implementation task force after the legislation has passed to deal with the sorts of training, community awareness, education, that I was averting to prior to morning tea.

Ms ABIGAIL BOYD: It's quite—

Mr MARK SPEAKMAN: Hang on, I haven't finished.

Ms ABIGAIL BOYD: It is quite specific.

Mr MARK SPEAKMAN: I haven't finished. But I think I would say that we are fulfilling the spirit of that because rather than just me turning up in Parliament one day, doing a notice of motion and second reading something the next day, we are releasing an exposure draft of legislation—

Ms ABIGAIL BOYD: Sure, but then you could have just stopped it before the comma, couldn't you? But what we have said is that the final legislation would be following further consultation with the implementation task force. If you read the report, it's very, very clear that the threat of unintended consequences from getting this drafting wrong was deemed to be so great by the committee—after all of the evidence we heard through this great consultation process that you initiated, for us to then depart from this recommendation turns that completely on its head.

Mr MARK SPEAKMAN: The spirit has not been departed from. We are releasing an exposure draft. As I said, I could have just simply turned up one week in Parliament, given a notice of motion, then second read a bill the next day, not shown it to anybody, given my Opposition colleagues and crossbenchers would have just seen it on five days notice. And you would have turned up at 11.30 one morning and been given a five-minute whirlwind tour of it at the crossbench briefing. So we are conforming with the spirit of that recommendation. In terms of unintended consequences, well that's the very purpose of an exposure draft and round tables and feedback, to hear from stakeholders what they fear the unintended consequences might be. Those unintended consequences, of course, have been agitated quite significantly in the joint select committee hearings. The question of—

Ms ABIGAIL BOYD: Which is why the recommended drafting was quite different to what you've now produced.

Mr MARK SPEAKMAN: So issues like will it be turned on victim survivors, will perpetrators say they've been coerced, what is the effect on First Nations people? They were issues that were agitated at some length before the select committee. So we know what those issues are. It doesn't require, in my humble submission, a different approach from what we are having now, where stakeholders who have raised these issues can say what drafting might improve. Take the issue of victim versus perpetrator, as I said earlier, I don't know that any drafting can overcome that risk. The way to overcome that risk is training of police and general community awareness.

Ms ABIGAIL BOYD: I agree with you, that the education piece is more important, but there are elements of the drafting which are quite different. I wanted to correct the record in relation to The Greens voting on Anna Watson's bill. I understand our position was that we would see it through to the second read but that we would then be proposing significant amendments to it. Just so we are very clear. Can I move us on slightly?

Mr MARK SPEAKMAN: But not referring it off to a lengthy consultation process.

Ms ABIGAIL BOYD: Well, we had already done our lengthy consultation process. We know what the bill should look like and if you read the submissions you will actually see one of the academics—

The Hon. PETER POULOS: Is there a question?

Ms ABIGAIL BOYD: —refers to The Greens bill as the gold standard, but your bill is quite different. In any event, let's move on.

The Hon. SHAOQUETT MOSELMANE: Bronze standard.

Ms ABIGAIL BOYD: Yes, we have the bronze standard from you, Attorney General. It is very sad.

Mr MARK SPEAKMAN: Well, if you say it's the bronze standard, it's very important that you and those you speak with provide us with the feedback.

Ms ABIGAIL BOYD: And I will.

Mr MARK SPEAKMAN: I don't accept it's the bronze standard.

Ms ABIGAIL BOYD: No, I know.

Mr MARK SPEAKMAN: But if you say that, I want to know why we are not gold medal winners.

Ms ABIGAIL BOYD: Yes. I will provide a detailed submission by the closing date at the end of the month.

Mr MARK SPEAKMAN: We want to hold the world record.

Ms ABIGAIL BOYD: Good. I'm glad. Can I ask you about something totally different? I want to ask you about deaf jurors. I understand that the NSW Law Reform Commission wrote to the Government asking them

to amend the Jury Act to allow deaf people to serve on juries. Why has that recommendation not yet been implemented?

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

Ms ABIGAIL BOYD: Thank you. Do you agree that it's important that we do allow for deaf and hard-of- hearing people to be jurors?

Mr MARK SPEAKMAN: Where possible, but I will have to take on notice that whole area.

Ms ABIGAIL BOYD: Thank you. Are you aware that Article 29 of the United Nations Convention on the Rights of Persons with Disabilities effectively seeks to guarantee that deaf and hard-of-hearing people can serve on juries? And, also, that the UN Committee on the Rights of Persons with Disabilities found that the exclusion of deaf people from jury duty was a failure of the New South Wales Government and a breach of Australia's obligations under the convention? They actually had that in a finding.

Mr MARK SPEAKMAN: I'll take all that on notice if I may.

Ms ABIGAIL BOYD: Thank you. If I could ask you very quickly about drink spiking. Do tell me if this is not really a question for you, but I understand that there's been a marked increase in drink spiking at licensed venues since we came out of lockdown and also that there's been a concerning, really horrifying, number of incidents where young women have been spiked with a needle in certain clubs and pubs, particularly around Newcastle. Are you aware of this and do you know if the Government is taking any action to address it?

Mr MARK SPEAKMAN: It's probably a matter for the police Minister. If you want me to list the various crimes that would be committed, I can take that on notice, but it would be assault among others. But in terms of an increase in crime reporting, that is operationally I think a matter for the police Minister.

Ms ABIGAIL BOYD: Is it an issue though that has been brought to your attention at all?

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

Ms ABIGAIL BOYD: I'm just wondering where to go next. I might just leave it there because the next segment I have is quite large.

The Hon. ADAM SEARLE: Mr Attorney, I think when we left off we were going to gently touch on the issue of strip searches. We were talking about music festivals and government responses.

Mr MARK SPEAKMAN: Okay. You hadn't mentioned strip searches.

The Hon. ADAM SEARLE: Okay, well, I'm now mentioning them.

Mr MARK SPEAKMAN: I'm not sure you're going to be gentle, but anyway.

The Hon. ADAM SEARLE: I'm always gentle, Mr Attorney. The special commission of inquiry into ice also made some mention about the way in which strip searches had been conducted in New South Wales, and the Law Enforcement Conduct Commission had also found that police were failing to comply with the legal threshold for conducting strip searches or weren't fully aware of what their powers were and weren't discharging those lawful powers according to law. I think even recently in the last couple of days there has been a further report of some 4,400 strip searches being conducted in New South Wales by police on children as young as 13 at the height of COVID, again not according to law.

When we discussed this matter in March there had been a lot of work done by the police in this space, and of course as Attorney you have joint responsibility for the Law Enforcement (Powers and Responsibilities) Act with the police Minister. I had asked you then, given all the work that had been done, given that everyone seemed to agree on the nature of the problem and the need to clarify the law, why it was taking so long to address that and you said that you couldn't give us a time frame for action but you hoped to have the matter resolved this year. It's a familiar refrain. Can I ask you or provide you with the opportunity to update this inquiry now about what is the time frame for action on clarifying the law around strip search powers for police?

Mr MARK SPEAKMAN: Sure.

The Hon. ADAM SEARLE: Just our people in blue.

Mr MARK SPEAKMAN: As you correctly identify, unlike with the Child Protection Register, I do have responsibility for LEPRA, joint responsibility with the police Minister. My recollection is I think there were three recommendations that LECC made that were directed to possible legislative reform. The vast majority of the LECC recommendations were directed to operational matters for the police, which I understand the police

contend they have largely addressed. The position with legislative reform remains where it was in March. I can't give you any time frame.

The Hon. ADAM SEARLE: Do you expect it to be this year? Are you optimistic like you are with the ice inquiry recommendations and like you are with other matters that we've discussed today or are you less optimistic?

Mr MARK SPEAKMAN: I can't say any more than I've said.

The Hon. ADAM SEARLE: I'll take that as not optimistic then. We discussed bail laws at the last budget estimates, and I think in the wake of that there were some changes to bail laws, particularly around the monitoring standards for electronic bracelets. I think we were all surprised to discover that these were being conducted by a private company. I think there's one private company that provides them in New South Wales.

Mr MARK SPEAKMAN: Electronic monitoring for parole is done by corrections. Electronic monitoring of people on bail is not something that the State asks for or offers and it's not something that prosecutors offer and, I think as I said last time, they generally oppose electronic monitoring. This is usually something that an accused proffers as a risk mitigator and why they should get bail, and the effect of that legislative change in regulation is to prescribe minimum standards which mean that electronic monitoring of an accused on bail will broadly have the same standards as electronic monitoring by corrections of someone on parole.

The Hon. ADAM SEARLE: You've made a regulation, I think, to implement that. What's interesting is that there's a whole lot of musts—must do this, must do that. They must have these features, but when it comes to stationary beacons or home units, the regulation says, "must be reasonably robust and tamper-resistant". The "robust and tamper-resistant" seems to be qualified by reasonableness, whereas all the other features are mandatory. Can you explain why that is?

Mr MARK SPEAKMAN: I'll have a go and then I'll invite Mr McKnight or someone else to either correct or supplement. My understanding is that these regulations were drafted having taken the advice of corrections about what were appropriate technical specifications. No electronic monitoring is completely foolproof. You cannot 100 per cent guarantee that an accused or an offender won't be able to take off the electronic bracelet. That's why I think there's a question there of reasonable robustness rather than absolute robustness. Is that correct?

PAUL McKNIGHT: Yes.

Mr MARK SPEAKMAN: Mr McKnight nods his head.

The Hon. ADAM SEARLE: Interestingly, because other features, even in that clause—"must utilise the latest radio frequency, must be able to communicate, must be able to automatically tether to the person"—these are all pretty clear requirements and they would seem to be falling into the same sort of category as being tamper-resistant but they are not qualified.

Mr MARK SPEAKMAN: I'm obviously not an expert in this field, but take the latest radio technology. You could presumably identify what is the latest radio technology. What was your next one?

The Hon. ADAM SEARLE: "Must be able to automatically tether to the person". If it's defective or doesn't do that, it's obviously in breach of the regulation.

Mr MARK SPEAKMAN: That sounds like something that can be done in absolute terms rather than relative terms like "relatively robust"—"reasonably robust".

The Hon. ADAM SEARLE: Okay, well, we'll just come back to that. In your answers to questions on notice you indicated that there was currently only one company known to be providing these services in Australia—the Attenti Group. Do they also deal with the ankle bracelets that are supervised by probation and parole? Are they the same?

Mr MARK SPEAKMAN: Do you mean do they monitor them or do they manufacture them?

The Hon. ADAM SEARLE: Do they make them? Is it the same manufacturer? Are we talking about the same devices?

Mr MARK SPEAKMAN: I don't know the answer.

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

MICHAEL TIDBALL: I believe not. I believe they're a separate company.

The Hon. ADAM SEARLE: Okay. When this regulation was drafted, was it drafted to meet the requirements that the Attenti Group already meet or was it sort of drafted to try and raise the standards and has there been any sort of analysis about what the Attenti Group devices actually do or are capable of doing to see whether they—

Mr MARK SPEAKMAN: My understanding was it was to impose on electronic monitoring for bail broadly the same standards as currently apply for parole. It wasn't to write into regulations what was already being done for bail; it was to write into regulations—

The Hon. ADAM SEARLE: The standard you want.

Mr MARK SPEAKMAN: —the standard we want, which was the standard that applied for parole.

The Hon. ADAM SEARLE: Who is the supplier of the devices then for probation and parole?

MICHAEL TIDBALL: I can't name the supplier. What I can indicate is that the Corrective Services devices are different to the bail devices.

The Hon. ADAM SEARLE: But they do the same thing, don't they? Actually, the Chair just needs to make an announcement.

The ACTING CHAIR: I apologise, I just have to slip out and I'm just handing over now to Mr Searle to take the chair. Thank you, everyone.

The Hon. ADAM SEARLE: Don't they do the same thing? They're meant to monitor a person to make sure they do or don't do things required by law. Shouldn't they be the same devices, Attorney?

MICHAEL TIDBALL: We're still—

Mr MARK SPEAKMAN: I could answer that at an abstract level. A RAT test has the same function of detecting coronavirus. It's the same functional specification, but the way they do that might be different. Maybe that's the case for electronic monitoring. It's the same outcome and function, but the technical specifications could be different.

The Hon. ADAM SEARLE: Mr Attorney, you tasked the bail monitoring group at the end of 2021 with reviewing and making recommendations on seven contentious decisions. Have they reported to you?

Mr MARK SPEAKMAN: Yes, they have.

The Hon. ADAM SEARLE: Will that report be made public?

Mr MARK SPEAKMAN: I've made public the recommendations and the executive summary. I haven't made public the rest of the report, over which I would assert Cabinet in confidence. There are a number of reasons for that. One is that it may—I will go back one step. The Bail Act Monitoring Group includes representatives of the police and the DPP and, in some cases, disclosure of some of the contents may prejudice either existing operations or ongoing operations. In other cases there was material there that members of the group provided opinions in confidence that they don't want to be identified individually. I've tried to balance that with transparency by releasing what the recommendations are and the executive summary.

The Hon. ADAM SEARLE: Earlier today I think you indicated that there might be some further legislative action on bail being proposed by you. Can you outline what actions you intend to take?

Mr MARK SPEAKMAN: Sure. Bail is always a balance between the liberty of the accused and the presumption of innocence on the one hand, which is not some arcane legal airy-fairy idea because accused do get acquitted. If they are held on remand, there's generally no compensation for that if they end up being acquitted. You're balancing that on the one hand with risks of offending, if they're on bail, risks to witnesses, flight risks and so on. So it's always a balancing exercise. We have in the Bail Act show cause offences where, for certain very serious offences that are listed in the Bail Act, the accused has to show cause why they should get bail. They include some firearms offences. They also include some offences where there are associations with criminals. The Bail Act Monitoring Group identified that area for further consideration but did not provide me with a recommendation to do something or not to do something. They didn't give me a clean bill of health for the list being long enough but nor did they recommend that I add to the list. They recommended that I refer these matters to the Sentencing Council. They also recommended that the department look at definitions of criminal associations and whether they could be clarified.

I thought it would be more expeditious to deal with all three recommendations by one body rather than split them between the department and someone else. I thought it would be better to refer it to the Law Reform Commission rather than the Sentencing Council because I don't want this to be endlessly kicked down the road;

I want it brought to finality. Referring it to the Law Reform Commission is the most expeditious way of doing that because the Sentencing Council has an ongoing reference on fraud. So the Law Reform Commission had more capacity. Having spoken with the chair of the Law Reform Commission, I'm confident that I can get a report in time on these fairly discrete issues—it's not like some of the other more wideranging Law Reform Commission stuff that can take years—so that if we decide to expand the list, that can be done in this session. I couldn't just leave it and do nothing when it hasn't been given a clean bill of health by the group but nor, in my view, was it appropriate just to add to the list at my whim when I don't have either expert advice or a consensus to do that. That's why it's gone to the Law Reform Commission—fairly discrete issues, which I'm confident can be resolved one way or the other this year.

The Hon. ADAM SEARLE: Have you made that reference to the—

Mr MARK SPEAKMAN: I have.

The Hon. ADAM SEARLE: Have you given them a limited time frame? Three months or—

Mr MARK SPEAKMAN: Not in the terms of reference, but I have spoken with the chair.

The Hon. ADAM SEARLE: Are you able to—

Mr MARK SPEAKMAN: Before I made the reference, I was confident that I would get a timely response.

The Hon. ADAM SEARLE: How timely? Are we talking three months? Two months?

Mr MARK SPEAKMAN: Ideally in time to introduce in October in the Legislative Assembly, but certainly in time to legislate in both Houses in November.

The Hon. ADAM SEARLE: Is it your expectation that it would deal with show cause offences, firearms and sureties—those three things?

Mr MARK SPEAKMAN: Firearms and criminal associations.

The Hon. ADAM SEARLE: But not sureties and not show cause offences?

Mr MARK SPEAKMAN: No. There were no recommendations—sorry, show cause offences which involve criminal associations and show cause offences which involves firearms.

The Hon. ADAM SEARLE: But they are the only areas where you're anticipating legislative action being taken?

Mr MARK SPEAKMAN: At the moment, that's correct.

The Hon. ADAM SEARLE: I think this issue may have been raised earlier today by one of the other Committee members. If so, I do apologise. The latest bail reforms have reduced early guilty pleas. I think that's one of the consequences of the legislation that went through. There are reports, from the Local Court in particular, that the courts are becoming increasingly strained as a result. Is that something that you had received advice on as a potential outcome before the legislation was drafted?

Mr MARK SPEAKMAN: There's a premise in your question that I don't accept. You said that it is reducing early appropriate guilty pleas. That hasn't been established.

The Hon. ADAM SEARLE: Okay.

Mr MARK SPEAKMAN: There is a fear that has been expressed that it will. I've articulated, in answers to Ms Higginson, why I don't anticipate that to be the case, but we will keep it under review.

The Hon. ADAM SEARLE: So you're not getting reports that it's actually happening?

Mr MARK SPEAKMAN: There were suggestions that it would happen. I've not had reports that it has happened or is happening.

The Hon. ADAM SEARLE: Can I ask you to make inquiries from the heads of jurisdiction about what's happening?

Mr MARK SPEAKMAN: Mr McKnight has described what our monitoring program will be. What was the second part of your question?

The Hon. ADAM SEARLE: Had you received advice that that was a possible outcome when you were developing the legislation?

Mr MARK SPEAKMAN: We had received submissions that that was a possible outcome, correct?

The Hon. ADAM SEARLE: In particular from the Bar Association?

Mr MARK SPEAKMAN: Correct.

The Hon. ADAM SEARLE: In the few minutes I've got left of this round I want to ask you some questions about Community Legal Centres' funding program from 2023 to 2024-25. I believe you wrote to Community Legal Centres at the end of October 2021 confirming that the $21.6 million of baseline funding allocated through the Community Legal Centres funding program would continue for the next three years, plus indexation each year. I'm informed that Community Legal Centres are not receiving the promised indexation on their baseline funding. Is that correct or not correct? If it is correct, what has happened since 28 October, when you wrote to them?

Mr MARK SPEAKMAN: I would have to check that letter to see exactly what I said.

The Hon. ADAM SEARLE: I can provide you with a copy if you can't lay your hands on one.

Mr MARK SPEAKMAN: Okay, thank you.

The Hon. ADAM SEARLE: It's in the second paragraph, Mr Attorney.

Mr MARK SPEAKMAN: Thanks very much. Excuse me a moment. I might ask Ms Hitter to answer that question.

The Hon. ADAM SEARLE: Of course.

Mr MARK SPEAKMAN: Then I've got some supplementary remarks.

The Hon. ADAM SEARLE: Of course.

MONIQUE HITTER: My understanding is that indexation payments to the CLC program are at different rates depending on the source of funding that the CLC program contains. For example, there is 1.7 per cent indexation on the Commonwealth funding, 2.5 per cent on State funding and 2.5 per cent on Public Purpose Fund funding.

The Hon. ADAM SEARLE: Mr Attorney, is it the case that you are saying that, to the extent that the money comes from the State Government or from the Public Purpose Fund, the 2.5 per cent indexation has been delivered?

MONIQUE HITTER: That's my understanding.

Mr MARK SPEAKMAN: That's my understanding and that's Ms Hitter's understanding but I'll check that. I might just make these supplementary observations. Community Legal Centres NSW has been in contact with my office in the last couple of weeks drawing our attention to the current inflation rate and the impact that that will have on the operations. We're looking at that at the moment and what an appropriate response would be to that.

The Hon. ADAM SEARLE: So indexation is at the rate of the wages cap rather than at the rate of inflation.

Mr MARK SPEAKMAN: Subject to checking where in what document we have defined indexation, if at all, it appears to be at 2.5 per cent. But I'm conscious that Community Legal Centres say that their operating costs are accelerating greater than that rate. I anticipate dealing with that issue very shortly. In terms of your scale of optimism, I am—

The Hon. ADAM SEARLE: More optimistic? Less optimistic?

Mr MARK SPEAKMAN: Highly optimistic because I don't have to rely on Cabinet colleagues for their imprimatur. I can make decisions myself, to some extent.

The Hon. ADAM SEARLE: I think this round will end in 14 seconds. I might pass to Ms Boyd and reset the clock.

Ms ABIGAIL BOYD: Thank you. It's all very civilised, isn't it? I wanted to ask you about the matter with Ms Folbigg. I understand that a pardon petition had been submitted to you and that pardon was denied in favour of instead going ahead with an inquiry. Can I ask you why that pardon was denied?

Mr MARK SPEAKMAN: Sure. I need to be a bit circumspect because I don't want to do or say anything that prejudices the conduct of the inquiry that is underway. I think I made comments on the record about this. In my view, this is an extraordinary case and, in any view, incredibly tragic—the loss of four lives. Given the widespread support for doing something in the scientific community, the threshold for action by me had been

passed. But I formed the view that it was not appropriate—where Ms Folbigg had been convicted in an open trial and there had been numerous attempts to set aside or deal with that judicially—that I or the Governor on my advice should do something behind closed doors without a transparent inquiry. That includes, for example, having some kind of round table with the scientists that supported her position. If there is to be a conviction through a judicial or quasi-judicial process in a transparent way, then dealing with that or pardoning that should also be done transparently, which is why I chose that path.

Ms ABIGAIL BOYD: Did you receive legal advice about that to back that up?

Mr MARK SPEAKMAN: I did. I received legal advice from Mr Game, SC, Joanna Davidson and one other barrister. I think General Counsel in the Department of Communities and Justice also provided advice.

Ms ABIGAIL BOYD: I suspect I know the answer to this, but would you be prepared to share that advice with the Parliament?

Mr MARK SPEAKMAN: No. That advice remains privileged, and I don't intend to share that advice.

Ms ABIGAIL BOYD: Given everything you have just said about not providing the pardon but given the widespread support and the fact of new evidence et cetera, it's important that we fund Ms Folbigg's representation in a fulsome manner to allow her to actually participate in this inquiry. When you announced the inquiry, you talked about it being transparent, public and fair. Yet I understand that the amount of funding that has been provided to Ms Folbigg's representation is severely lacking and is not allowing them to represent her fully. What is the reasoning for that?

Mr MARK SPEAKMAN: I'll observe that the inquirer, Mr Bathurst, described her legal assistance as "not ungenerous". So I don't know that I agree with your characterisation of whatever assistance she's got as "severely lacking". There are legal restrictions on Legal Aid NSW disclosing whether someone has applied or has legal aid, but those restrictions appear to be somewhat academic because it has all been out in the open at one of the directions hearings for the inquiry. I might ask Ms Hitter to describe the legal representation that Ms Folbigg is getting, which I understand is the same as she had at the last inquiry in terms of numbers and seniority of representatives.

Ms ABIGAIL BOYD: If you could also comment on the number of days of representation as well.

MONIQUE HITTER: I would have to take the number of days on notice, I'm afraid.

Ms ABIGAIL BOYD: I understand that the preparation period was set at 35 days and not the requested 72 days. My understanding is that there's a lot of work being done now completely pro bono.

MONIQUE HITTER: If I may take that question on notice. The Legal Aid Commission Act does prevent me from providing information about grants of legal aid and the terms of the grants of legal aid. If I can provide that information, please, as a response to a question on notice, I can just circumscribe the information that is allowed to be in the public arena and the information that's not.

Ms ABIGAIL BOYD: I understand that one of her counsels is not being paid at full rates but is instead being paid at half the set rates. If you could come back to us on why that would be as well.

MONIQUE HITTER: Absolutely.

Ms ABIGAIL BOYD: Attorney, would you be concerned if Ms Folbigg was not able to afford proper representation during this inquiry?

Mr MARK SPEAKMAN: It's in the interests of justice that she has proper representation, but nothing has come to my attention that suggests that she doesn't.

Ms ABIGAIL BOYD: Well, I sent you a letter.

Mr MARK SPEAKMAN: I think I replied to your letter.

Ms ABIGAIL BOYD: You did reply to the letter. One more thing on the Folbigg case, I understand that Mr Folbigg has not provided his DNA as yet. Are you aware of any reason for why that has not been supplied and are you concerned?

Mr MARK SPEAKMAN: No, I'm not. That really is a matter for the inquirer and those appearing before the inquiry, if that is the case, to make such submissions as they choose to make and the inquirer to make such findings as he chooses to make because of that.

Ms ABIGAIL BOYD: I will turn to the ReINVEST trial, for which we have had many a discussion in the past. This is the trial that received, I think it was, $7.1 million in funding in the end.

Mr MARK SPEAKMAN: Sadly, I'm no longer the Minister with responsibility for that. You'll need to ask Ms Ward.

Ms ABIGAIL BOYD: Were you the Minister responsible when the ReINVEST trial finished?

Mr MARK SPEAKMAN: I don't think so.

Ms ABIGAIL BOYD: Lucky you.

Mr MARK SPEAKMAN: That was 30 June this year, wasn't it?

Ms ABIGAIL BOYD: Yes, it would have been.

Mr MARK SPEAKMAN: No, I wasn't.

Ms ABIGAIL BOYD: Well, that is a great shame. Fine, I will turn to something else. Bear with me. I might pass to Mr Searle.

The Hon. ADAM SEARLE: I am happy to ask questions. Mr Attorney, why has the Government increased funding for some social services to increase the Fair Work Commission minimum wage rate increases of 4.6 per cent and super guarantee increases from 10 per cent to 10½ per cent but not for community legal centres? Are you aware of that?

Mr MARK SPEAKMAN: I'm not aware of the former—I withdraw that. The former is not in my present memory.

The Hon. ADAM SEARLE: Perhaps you should take it on notice and come back to us.

Mr MARK SPEAKMAN: I am sort of aware of the latter. That is something we're taking into account in responding to communications we had in the last couple of weeks from CLC NSW.

The Hon. ADAM SEARLE: Why has there been a delay in decisions to allocate $4 million a year in family law/family violence funding to CLCs and when can we expect a decision to be made on that?

Mr MARK SPEAKMAN: Ms Hitter might answer that question.

The Hon. ADAM SEARLE: Of course.

MONIQUE HITTER: I'm sorry, Mr Searle, could you repeat the question?

The Hon. ADAM SEARLE: Why has there been a delay in allocation of the $4 million for family law/family violence funding to CLCs?

MONIQUE HITTER: I believe that the application process is still in train.

The Hon. ADAM SEARLE: So you're still waiting for applications from CLCs; is that what you're saying?

MONIQUE HITTER: I think we are waiting for the process to determine those applications to be completed, to the best of my knowledge.

The Hon. ADAM SEARLE: If that turns out not to be correct, feel free to answer further on notice.

MONIQUE HITTER: I will. Thank you.

The Hon. ADAM SEARLE: Justice Connect, I understand, is a not-for-profit service and a CLC that's funded through DCJ. I also understand that it's being defunded. Can you shed any light on why that would be, if correct?

MONIQUE HITTER: I have no knowledge of that.

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

The Hon. ADAM SEARLE: You will take that on notice. That's okay. Modern slavery. Now there's a modern slavery commissioner.

Mr MARK SPEAKMAN: There is.

The Hon. ADAM SEARLE: The Act is up and running.

Mr MARK SPEAKMAN: It is.

The Hon. ADAM SEARLE: But there is still a difference between the New South Wales legislation and the Commonwealth legislation about the threshold—$50 million versus $100 million, I think, is the policy

debate. During the second reading speech, then Minister Harwin said that he would be taking the matter up with the Commonwealth. Can you shed any light on whether you, as the Minister now, have had any discussions with the Commonwealth about reducing the threshold to the New South Wales Government's $50 million policy approach?

Mr MARK SPEAKMAN: Sure. I may not have had a conversation; I think I've written him a letter. On 8 July I wrote to Mr Dreyfus and continued our advocacy for reducing the $100 million reporting entity threshold to $50 million.

The Hon. ADAM SEARLE: So you await the Federal Government's response?

Mr MARK SPEAKMAN: There is also a Federal parliamentary inquiry into their legislation. I think we either have made or intend to make a submission that the threshold be reduced from 100 to 50.

The Hon. ADAM SEARLE: That's good that the State Government hasn't changed its policy. Independent funding for integrity agencies—the upper House's Public Accountability Committee has delivered a number of reports advocating for an independent funding mechanism for the ICAC and other oversight bodies. That's being supported by the Auditor-General, but the Premier has indicated he has a philosophical difference of opinion with that and feels that the Executive should maintain very tight control on that. Where is that dialogue up to within the Government? Has the Government absolutely ruled out an independent funding model or is it something you are still considering?

Mr MARK SPEAKMAN: We, I think, have responded to the Public Accountability Committee report and the Auditor-General's recommendations. That response is on the public record. Among other things, those agencies—if they were in the Premier and Cabinet cluster—will not be part of the cluster for financial purposes, bearing in mind that a cluster is not a legal entity; it's almost like an administrative notion.

The Hon. ADAM SEARLE: It's a function of the executive responsibility allocation.

Mr MARK SPEAKMAN: It is. They will no longer be subject to efficiency dividends. They will be able to make their own submissions directly to the expenditure review committee and get—

The Hon. ADAM SEARLE: Without ministerial intermediation?

Mr MARK SPEAKMAN: That's correct. I think they will have contingency funding in the budget each year set aside. So there are a number of responses, but there will not be some elder or parliamentary committee that will make decisions on appropriate funding for those agencies. I might just also say that in the most recent budget, each integrity agency's bid for further funding was accepted.

The Hon. ADAM SEARLE: I note that. Is the Government open to involvement of the various parliamentary oversight committees on these various agencies to their views on the funding that should be allocated? I know, for example, in the PAC reports there have been suggestions that funding considerations be passed through the various oversight bodies. For example, I'm on the oversight committee for the ICAC, and the LECC and the Ombudsman, and getting the input of these parliamentary committees might be useful in, if you like, further depoliticising funding decisions for these bodies. Is that something that the Government might be open to?

Mr MARK SPEAKMAN: I think we have set out what our response is, which is not to formally involve parliamentary committees, but parliamentary committees are always welcome to have inquiries, make reports—particularly the Public Accountability Committee—and make recommendations.

The Hon. SHAOQUETT MOSELMANE: Attorney, I know you answered some questions from the Hon. Sue Higginson with regard to the age of criminal responsibility. As I understand it, you still don't have a decision as to the age of criminal responsibility. What exactly is holding this matter up?

Mr MARK SPEAKMAN: Well, New South Wales' position is that we want to see what happens at a national process. There has been—for about three years—some dialogue at a national level. We accept that in the end each criminal law jurisdiction is independent of the other, but there is some merit in attempting to harmonise, if we can, and to exchange ideas, and research and education. We have been awaiting the outcome of that process. As I mentioned earlier, that process stalled at one stage, but I believe now it has been reinvigorated at the last meeting of Attorneys-General on 12 August. What is important in this process is that if you are going to raise the age—and we don't have a decision on that one way or the other—you're not just abandoning or retreating from dealing with young people with behavioural or offending problems; you've got some kind of alternative pathway or intervention. That is what hasn't been developed yet in this national process but which I believe will produce some kind of proposal for us to consider, probably in the middle of next year.

The Hon. SHAOQUETT MOSELMANE: My question was in terms of time because, as you say, on some other subject matter, using the same terminology, it has been kicked down the road for some time now—over three years. Is it going to be resolved in mid-2023?

Mr MARK SPEAKMAN: Well, I don't know. I didn't say it had been—you might say it has been kicked down the road.

The Hon. SHAOQUETT MOSELMANE: Yes, I'm saying that.

Mr MARK SPEAKMAN: I said "stalled" because I don't think it has been put in the too-hard basket. The preparation of a paper that set out some alternative pathways for these young people stalled. It didn't progress. I think there is now renewed determination among interjurisdictional Attorneys-General to develop that process. I can't say what our response will be to an alternative pathway that hasn't been developed and that I haven't seen. I can't pre-empt something that I haven't seen.

The Hon. SHAOQUETT MOSELMANE: Since there's are a renewed invigoration, if you like, when is it going to—

Mr MARK SPEAKMAN: That's because jurisdictions have made it clear that they will develop something, where there was some hesitancy on the part of one jurisdiction to do that when they had—

The Hon. SHAOQUETT MOSELMANE: Is that the national jurisdiction?

Mr MARK SPEAKMAN: No, WA. As I was saying earlier, the way Attorneys-General work at a national level is that, typically, rather than all nine of us working on something at once, one or two jurisdictions take the lead. I gave the example of defamation, where New South Wales has taken the lead, and likewise with digital assets. In the case of the minimum age, Western Australia had taken the lead from about 2018 or 2019, and they had led the development of an alternative proposal but hadn't got to the stage of identifying some alternative pathway. They were working towards an alternative proposal in the sense of the minimum age shall be X but not telling us, "Well, if that's the case, what do you do with young people with behavioural problems or offending problems?" That's the work that hasn't been done that needs to be done so that any consideration of a minimum age raising is not a retreat from responsibility but an evidence-based approach to improving community safety.

The Hon. SHAOQUETT MOSELMANE: As the Attorney, where do you stand? Do you see raising the age to 12—or was it 14? What's your position on this?

Mr MARK SPEAKMAN: I don't have a position because I haven't seen this alternative pathway and the matter has not been dealt with substantively in New South Wales Cabinet.

The Hon. SHAOQUETT MOSELMANE: It has been going on for three years; I'm sure you would have had some thoughts. I mean you've indicated previously—I will just read out what you've indicated—that the Commonwealth or States could go with 12, with carve outs. You seem to be indicating that that is what—

Mr MARK SPEAKMAN: No, no. When it was clear that the ACT was going to 14 and the Northern Territory going to 12, without the ACT and Northern Territory and without the Commonwealth, State attorneys general met and agreed to develop a proposal, not to support going to 12 with carve outs but to develop a proposal of going to 12; to consider the timing of implementation; to consider if there should be any carve outs; and then that proposal having been developed, consider whether or not to adopt that proposal. So it wasn't support to going to 12; it was support to work up something. I suppose, to the extent that put a gate on things, of going to 12, that gate is now open, the fence has been removed, and it is more open-ended, raising the age generally, which could be to 12 or could be to 14. I have not indicated a preference or a view. I have just indicated a desire to work this up so that we have an evidence-based proposal in front of us where our paramount consideration will be community safety and looking at whether alternative pathways with alternative interventions will reduce lives of crime.

The Hon. ADAM SEARLE: On a different topic, Mr Attorney, on the last occasion Mr Shoebridge asked you some questions about Strike Force Raptor and Operation Monza, and you said that you were consulting on extending other provisions of the Crimes Act to cover defence lawyers—the protection that is given against interference to judicial officers, potentially extending that to defence lawyers. Where are you up to with that consideration?

Mr MARK SPEAKMAN: That consultation has occurred and I look forward to discussing that with my Cabinet colleagues as soon as possible.

The Hon. ADAM SEARLE: This year?

Mr MARK SPEAKMAN: That would be my hope, yes.

Ms ABIGAIL BOYD: I just wanted to talk to you about independent children's lawyers. I don't know if you are aware of the hearing that the children and young people's committee held two Fridays ago looking into the disconnect and problems between New South Wales child protection laws and the way that Family Court custody decisions have been made, and I know that this is something we have talked a little bit about in the past. In that inquiry, we heard very concerning evidence about the role of independent children's lawyers. Basically we were hearing that it wasn't always the case that a child's views were being conveyed by the children's lawyer.

Mr MARK SPEAKMAN: To the Family Court.

Ms ABIGAIL BOYD: When we drilled into it, we found out that the training for these lawyers was really quite minimal, so five years' experience in child protection matters, but not as a representative of a child; some online training; and then a one-day course where some mention of DV and sexual assault was covered. In other jurisdictions they do require the representatives of children to have significantly more experience. Is this an issue that you have looked into? Do you have any interest in trying to, I guess, extend the training requirements for independent children's lawyers?

Mr MARK SPEAKMAN: The answer to your second question is I certainly have an interest in looking at it, but I will have to take the matter generally on notice.

Ms ABIGAIL BOYD: Thank you. I will hand back to Mr Searle for a minute, if I can.

The Hon. ADAM SEARLE: Absolutely. Mr Attorney, returning to the issue about whether or not early guilty pleas are falling off the cliff or are being reduced, I have heard from some judicial officers in the Local Court that this is, in fact, happening, so I just give you that feedback. That might inform Mr McKnight's queries.

Mr MARK SPEAKMAN: Thank you. I guess though, in the end, we will need to look at it statistically rather than anecdotally.

The Hon. ADAM SEARLE: Of course.

Mr MARK SPEAKMAN: But thank you for that feedback.

Ms ABIGAIL BOYD: I wanted to ask you about court-appointed questioners, so the people who are asking questions, for example, on behalf of perpetrators or people who are accused of domestic violence being able to directly cross-examine victim survivors. The feedback that we've been getting on this is that the court-appointed questioners are not necessarily working particularly well in that they don't really have much training and they are also being exposed to quite traumatising content and not having any real support for that. Can you give us an update from your perspective on how this is going?

Mr MARK SPEAKMAN: Sure. We did have a pre-budget announcement to fund court-appointed questioners who will be different from those doing it at the moment. At the moment it is largely court officers who are doing it, who don't like doing it. They don't like getting involved. They don't like also that because they are court officers, the questions appear to a complainant to have the imprimatur of the court. So we are moving away from that, where we will have a hybrid model. We will have a team of trained departmental officers who will be court-appointed questioners. There will also be a panel of justices of the peace who will be court-appointed questioners. At courthouses where there is a large volume of this sort of work, we will probably have resident JPs doing this who are trained. At other courthouses where there may not be a sufficient volume of work to keep someone there full time, there will be a kind of fly-in squad of departmental court questioners who will go to those courts. There is also related to that an expanded audiovisual link program where I think we're upgrading or installing about 50 AVL facilities in courthouses in the next financial year. I just ask Mr McKnight whether there is anything on the hybrid model he wants to add?

PAUL McKNIGHT: No.

Mr MARK SPEAKMAN: Is there something on the training, perhaps?

KAREN WALLACE: Yes, we are looking at setting up the team by the end of the year. So with fundings come through—and I apologise for my voice; I haven't been talking in the last two days—we are about to recruit for those departmental staff and hopefully have them on board by 31 December. But there is an extensive training package in there and all those issues that you raised around support are part of the program as well.

Ms ABIGAIL BOYD: How many are you recruiting?

KAREN WALLACE: I'd have to come back to you on that because we're still going through that process. I think there are around about six or seven, maybe five I guess, but I will come back to you on that in terms of the dedicated staff. But as the Attorney has alluded to, it will be a hybrid model. So we're looking at other organisations, potentially justices of the peace as well. That is who we've been liaising with at the moment.

Ms ABIGAIL BOYD: So it's still in a stage of development?

KAREN WALLACE: That is absolutely correct. As the Attorney told you, we have been working with court staff at the moment who are probably not as happy about doing this role. So we're looking at people who are dedicated to it, with the right training.

Ms ABIGAIL BOYD: Thank you, that is very useful.

The Hon. SHAOQUETT MOSELMANE: During COVID there were significant delays in New South Wales court systems and there was significant backlog. What is the current status of the backlog in criminal trials in New South Wales district and supreme courts?

Mr MARK SPEAKMAN: Sure, just bear with me a moment.

The Hon. SHAOQUETT MOSELMANE: Sure, we've got seven minutes.

Mr MARK SPEAKMAN: It's not like a football match where I'm just being slow to get the ball when it's gone out of play or anything like that.

The Hon. SHAOQUETT MOSELMANE: No worries.

Mr MARK SPEAKMAN: In the case of the District Court, the pending trial caseload had reached a peak of around 2039 in 2016. We got it down to 1,399 in 2019. It's now at 1,466, so it's a bit above the pre-COVID bottom, if you like, but much better than 2,039. The time taken has crept up a bit—actually, I'd say it's probably stable. The median time in days for committal for outcome is fairly stable.

Time for justice, the latest *Report on Government Services 2022* is a little bit out of date, but the most recent year for which it reports shows us at 75 per cent of cases finalised in less than 12 months for criminal non-appeal in New South Wales. That compares with 66.9 per cent in Victoria. That's the District Court. For the Local Court, in the most recent year—which is 2020-21—we had 77.8 per cent of criminal cases finalised in less than six months. That's 77.8 per cent. That compares with 44.2 per cent for Victoria. There has been an increase in the time to justice, but that is now—and the number of cases pending trials is now slowly reducing.

The Hon. SHAOQUETT MOSELMANE: Attorney, I'm interested in particular with the 1,400 mark that you indicated at the last hearing, where you anticipated it would take a year to reach the pre-COVID figure of 1,400 in the District Court. You're still currently above that, isn't that right?

Mr MARK SPEAKMAN: That's correct.

The Hon. SHAOQUETT MOSELMANE: What's been the reason for the delay?

Mr MARK SPEAKMAN: Twice now COVID has seen a suspension of jury trials. It wasn't possible at the worst times of lockdown to have jury trials. When jury trials recommenced it was necessary to have more space for them, with different arrangements for empanelling juries and in some cases using courtrooms as jury deliberation rooms for social distancing purposes. That disruption has been the reason for the backlog increasing. But I might say I think the Chief Judge and his judges have done an extraordinary job in managing that backlog. When you think that the courts were closed for months and the backlog has increased only by a fairly modest amount, I think they've done an extraordinary job, and the current Chief Magistrate and his predecessor also in the Local Court have done an absolute—

The Hon. SHAOQUETT MOSELMANE: The same reasons apply for regional courts?

Mr MARK SPEAKMAN: It did, but I think regional courts in some cases reopened sooner than metropolitan courts because of different COVID restrictions in the regions compared with—

The Hon. SHAOQUETT MOSELMANE: Funding issues are not issues of delays?

Mr MARK SPEAKMAN: No, not at all. With seven extra District Court judges a couple of years ago—and this year—to help get that backlog down even further, there are three additional District Court judges being appointed for 12 months. But to avoid any controversy about appointing acting judges who are auditioning for permanency, what we're doing is—and the recruitment process is underway at the moment. The advertisements have gone out. I think the interview panel has either met or is about to meet. Appointing three permanent judges almost straightaway, in anticipation that three existing judges will retire sometime during the year, is how we get our three extra judges without offending people by using acting judges auditioning for permanency.

The Hon. ADAM SEARLE: I will hand the chair and the questioning back to Ms Higginson, noting that I took some of Ms Boyd's time earlier.

The ACTING CHAIR: Thank you. I'm informed the Government members aren't going to be taking their 15 minutes so this will take us to the duration.

The Hon. LOU AMATO: Thanking the Minister for what a great job he's doing.

The ACTING CHAIR: Well, that's right. I must say, it's very civilised in here. Attorney General, this question crosses a little bit into Corrections. However, I have thought about it and I do think this is a matter for you, but let me know otherwise. More than half of people who leave prisons in New South Wales return within two years. There's an enormous body of evidence noting the importance of addressing all the social drivers of incarceration to reduce recidivism. Are you able to detail or outline what funding, services and programs that you see in the sector as the AG overall are really going to address this and get to the heart of recidivism? We talk about it so much across the sectors, but what are we actually doing in terms of those social drivers and the underlying causes?

Mr MARK SPEAKMAN: The detail is probably best addressed by the corrections Minister, but I will have a go at some general comments. Certainly behavioural intervention programs in prison are critical: high-intensity programs, and those with domestic violence offenders, and having them all empirically evaluated; support in prison for mental health and substance abuse issues, and some of that will be in response to the ice inquiry; and support when prisoners leave, because if they've got nowhere to go and no job to go to, that's when they're most at risk. Evaluating parole, reintegration and home detention are important parts of that as well. Most of those evaluations and the day-to-day carriage are the responsibility of the corrections Minister, but obviously locking people up and throwing away the key is not the answer because they'll get out eventually.

The ACTING CHAIR: In your role, though, as Attorney, what do you see—not once somebody is in incarceration but actually trying to address this prior to. I know the issue is recidivism. However, where are we looking in terms of diversions and reinvestment—the holistic?

Mr MARK SPEAKMAN: Sure.

The ACTING CHAIR: We've seen the evidence. We've seen some of the economic advantages. If I can just remind us, we are spending $1.26 billion—

The Hon. PETER POULOS: Chair, you're encroaching into our 15 minutes.

The ACTING CHAIR: I'm sorry?

The Hon. PETER POULOS: I think you're encroaching into our 15 minutes.

The ACTING CHAIR: I thought you said you didn't want to?

The Hon. PETER POULOS: No, your time is up.

The ACTING CHAIR: My time is up. Could I just ask, then, if you're open to this: The incredible work of the Justice Reform Initiative with those incredible patrons is very new to me. I wasn't aware of the Justice Reform Initiative with those incredible patrons. Are you aware of the—

Mr MARK SPEAKMAN: Absolutely. I've met Mindy and Robert twice, and a third time in passing. I'm certainly aware of the broad multipartisan spectrum of patronal support.

The ACTING CHAIR: Do we share their laudable objectives?

Mr MARK SPEAKMAN: I think we all want to see reoffending reduced. In terms of what happens before someone goes to jail, that's why we reformed intensive correction orders in 2017 to avoid prerequisites of mandatory work when people either can't find work in regional areas or have mental health or substance abuse issues that preclude them from that. We've seen rates of intensive correction orders increase, and BOCSAR established that in its report a couple of years ago. That's very important. Our driver disqualification reforms, where I think we've seen something like a one-third reduction in the number of Indigenous people who are incarcerated for driving without a licence or while disqualified, are important reforms.

Alternative pathways for Indigenous offenders, with trialling the Walama Court and Youth Koori Court, are important as well. Alternative pathways for those with drug addiction issues with the Drug Court are important as well. I could go on and on. It's not just in the justice system; it's a whole-of-government response to get offending down. By the time someone is offending they have had either childhood trauma, education issues, substance abuse issues or mental health issues. Addressing those things is probably more important than what we can do in the justice system, without suggesting that there's not plenty we can do in the justice system.

The ACTING CHAIR: Thank you.

The Hon. PETER POULOS: Thank you, Chair. Good afternoon, Mr Attorney.

Mr MARK SPEAKMAN: Mr Poulos.

The Hon. PETER POULOS: Thank you for your very impressive and polished contribution today. Before we break for lunch, is there anything you wish to share with our Committee?

Mr MARK SPEAKMAN: No, unless you think there's anything I should clear up?

The Hon. PETER POULOS: No, it's too polished. You can't add anything further. Thank you for your time.

The ACTING CHAIR: Attorney General Speakman, thank you for attending the hearing. We are finished. The Committee will now break for lunch and will return at 2.00 p.m. for further questioning. Thank you everyone.

(The Attorney General withdrew.)

(Luncheon adjournment)

The ACTING CHAIR: We are back and have reconvened. Thank you, everyone. It is over to my colleagues on the left, the Opposition.

The Hon. ADAM SEARLE: Mr Tidball and Mr McKnight, perhaps unusually for this hearing I am going to refer to Budget Paper No. 2. I think somebody has to do this at some stage of the hearing as it is budget estimates. If you've got it—and this is so you can read along with me—it is at page 8-10 and this is about the key performance insights. I have some questions about what's in the budget paper. I'm happy for you to explore a couple of things. I know this was touched on briefly with the Attorney, that the percentage of Local Court criminal cases finalised within six months remains challenging. I think on the last occasion—looking at the transcript—we were talking about the buffetings of COVID and then, of course, there was the flooding, particularly on the North Coast, and there was a general dislocation that the courts were dealing with.

What I was interested in was that part of the page I have just referred to where it talks about the court making efforts to "reduce backlogs and is considering appropriate measures in consultation with partner agencies and stakeholders". I was wondering what other measures were being considered for implementation in the Local Court to assist them in dealing with this increased backlog. I can see the chart, and the backlog has stabilised, so I wanted to see what were the other measures the court was considering implementing?

MICHAEL TIDBALL: Thank you, Mr Searle. I meet with the heads of jurisdiction on a regular basis. There has certainly been a very active dialogue through the course of COVID, but even through the course of the floods in recent times, where the work of the courts was disrupted. But, pleasingly, it has recovered in terms of operation quite quickly. There is a close collaboration. There is a constant focus on efficiency but obviously without diminution of service. In terms of the challenges of the backlogs, given that there is a forecast recovery time, moving to that point obviously is a focus. What I might do, though, in terms of where those discussions are currently at, is refer to the Acting Deputy Secretary, Karen Wallace.

KAREN WALLACE: The thing with the Local Court—I apologise again for my voice, but at least I have one today as opposed to yesterday and the day before.

The Hon. ADAM SEARLE: We're winning.

KAREN WALLACE: The Local Court has recently had an extra eight magistrates put on. I think the last time we met there were still a number of magistrates outstanding. Now we've got 149 magistrates on the bench. Prior to June we put on a number of acting magistrates as well to help through the backlog. When we talk about recovery, I think we need to mention that—and I don't know if this has happened in Parliament or not—we've had a lot of sickness as well, so it's not only been COVID but infections as well. But what we've looked at is—if I talk about the pending defendant matters in the Local Court—it is really still quite high. We've got 27,669 pending defendant hearings, of which 10,112 involve a domestic violence offence or an application. But we are continuing to reduce the pending caseload.

I know the Chief Magistrate has been working closely with our partner agencies to work at options to reducing that backlog. I think that we've got a couple of things there. Firstly, the additional magistrates and also the other costs that are involved in that, so extra funding for legal aid and DPP have helped, as well as staffing and working closely with the partner agencies. But we have got a long way to go. In our world we are only just stepping out of the COVID world. We did go back to masks recently with the increase in infections in the community.

The Hon. ADAM SEARLE: Just refresh my memory. What is the backlog now for the Local Court?

KAREN WALLACE: If I have a look at it, it's taking around about 22 to 23 weeks in some locations to get a hearing date. So it is taking—

The Hon. ADAM SEARLE: Are these criminal matters or are they civil matters?

KAREN WALLACE: Criminal matters, yes.

The Hon. ADAM SEARLE: What's the civil—

KAREN WALLACE: I don't have the civil, I'm sorry. We have such a small civil workload in the Local Court. Only about 2 per cent or 3 per cent of matters go to the civil—when I talk about "civil" I mean default matters and all those sorts of things.

The Hon. ADAM SEARLE: Yes, and contract matters.

KAREN WALLACE: AVOs are included in the criminal space for the purposes of defended hearings.

The Hon. ADAM SEARLE: Do you have a regional breakdown of the backlogs? You know, like greater west?

KAREN WALLACE: That is possible to get. I don't have it available.

The Hon. ADAM SEARLE: If you could on notice, Mr Tidball, provide a geographical breakdown of the criminal backlogs?

MICHAEL TIDBALL: Yes, certainly, Mr Searle.

KAREN WALLACE: Yes.

The Hon. ADAM SEARLE: I understand that the civil jurisdiction is quite small, but I understand there is a—

MICHAEL TIDBALL: Yes.

KAREN WALLACE: Yes, there is. But let me say, the Chief Magistrate has been working towards the redistribution of resources as well as working on—

The Hon. ADAM SEARLE: Of course. So we've got the additional magistrates and the additional funding for Legal Aid and other things, but when the budget papers talk about considering other "appropriate measures", those measures are very much still being formulated for implementation?

MICHAEL TIDBALL: Correct.

The Hon. ADAM SEARLE: So it's work in progress?

KAREN WALLACE: What I can say is that, subject to everything staying the same, the time to justice will fall during 2022 and 2023.

The Hon. ADAM SEARLE: That's good. In the following paragraph—of course, you mention the additional magistrates, which increases the capacity of the court, and that will drive down the backlogs—it is mentioned that, "Further ongoing investment in court digitisation is expected to continue to deliver productivity gains and assist in offsetting growing caseloads." What is that ongoing investment in court digitisation? How much is it? What is it being spent on? And how do we expect that to assist in dealing with matters expeditiously? I assume part of it is the usual technology we currently have to do online matters, as has occurred during the lockdown, but maybe there are other things as well.

MICHAEL TIDBALL: Yes, if I can break that perhaps, Mr Searle, into two parts. There is the work coming out of the budget in 2020-21, which kickstarted or progressed the digital reform program, or the three-year work program, which is now underway, started or carried through under the New South Wales Digital Restart Fund with the following outcomes: online lodgement and new, modern digital applications for all jurisdictions; replacing approximately 450 paper-based forms; the implementation of the DCF, the digital case file, which will enable parties to provide court documents and evidence electronically and remove the need to attend registries to lodge; the movement of courts to common platforms and the extension and life of JusticeLink; and increased court capacity in judicial efficiency, improved by enabling small matters to be resolved online and, of course, the reduced number of physical appearances.

But, rolling forward to priorities for 2022-23, the programs prioritised implementation of the following across courts and tribunals: use of a DCF in civil matters in the Land and Environment Court and selected locations in the District Court; resolution of procedural matters for summary offences where there is no bail, such as requests for adjournment online rather than by physical appearance for matters listed at five locations, namely, Burwood,

Hornsby, Newtown, Wyong and the Downing Centre, with expansion to other locations in future years; digitisation for NCAT and transition to a single case management system; digitisation of the probate application process in the Supreme Court, including issuing a digital grant of probate; additional forms to be digitised in the IRC; and, finally, pilot of an electronic diary in the Local Court to replace the use of paper-based diaries in the courtrooms in that jurisdiction.

The Hon. ADAM SEARLE: It's a pretty ambitious reform agenda.

MICHAEL TIDBALL: It is indeed.

The Hon. ADAM SEARLE: Is the ultimate objective at some point to have all the courts and tribunals on common technological platforms for things like filing of initiating processes and evidence and the like?

KAREN WALLACE: At the moment, the case management system that we have in courts and tribunals is a common platform, except for NCAT, but will be by December. We are working closely together to make sure that, you know, what you learn in one jurisdiction can work in the other jurisdiction as well. It makes sense for us, particularly as you know with regional areas that we have. At those courts we sit all jurisdictions as well, so it makes sense for us to be on the one platform.

The Hon. ADAM SEARLE: Absolutely. I think even before I came into this place the Federal Court was accepting initiating processes and affidavits to be filed electronically. You'd get the court seal in your email. Obviously, the State courts haven't had the same level of attention—until now, perhaps. That's very good. In relation to the following page, page 11, which talks about the District Court, it mentions again the greater use of technology to drive down the pending criminal trial case load. Is that the same set of technological solutions, Mr Tidball, that you just addressed in the 2022-23 workspace?

MICHAEL TIDBALL: In my understanding it is, and I will just confirm that with Ms Wallace.

KAREN WALLACE: It is, yes.

The Hon. ADAM SEARLE: What are the criminal and civil backlogs in the District Court at present as we are emerging from COVID and the floods?

KAREN WALLACE: The District Court criminal case load is 1,466 pending trial matters and it's decreased from 1,624 in December 2021, so it's going down, which is good.

The Hon. ADAM SEARLE: Almost back to pre-COVID levels?

KAREN WALLACE: Yes, almost back, although we've got a little way to go. We're looking at being at pre-COVID levels by about between quarter four 2023 and quarter four 2024 for the criminal matters. Can I come back to you on the civil ones?

The Hon. ADAM SEARLE: Of course. Again, this is not a gotcha matter. I'm actually genuinely interested in the answers.

KAREN WALLACE: Yes.

The Hon. ADAM SEARLE: So, if you can't answer, just please provide the information on notice.

KAREN WALLACE: Yes, I will.

The Hon. ADAM SEARLE: And additionally, if you can, a regional breakdown.

KAREN WALLACE: District Court? Yes, we should be able to do something along the lines for the District Court, but I will have to take that on notice.

The Hon. ADAM SEARLE: I assume, like the Local Court, the District Court still has circuits, I think, in different parts?

KAREN WALLACE: Yes.

The Hon. ADAM SEARLE: So I assume you would be able to provide the information for those circuits.

MICHAEL TIDBALL: Happy to do so.

The Hon. ADAM SEARLE: That would be good. Not that it's mentioned here, but how is the Supreme Court tracking in the wake of COVID? I know they were also hard-hit by not being able to do in-person hearings, particularly in defended criminal matters. How are they recovering?

KAREN WALLACE: As at the end of June 2022, the waiting for a four-week criminal trial was 5.6 months, so that's an improvement from the waiting time at the end of June of 7.5 months. And the number of pending criminal trials has decreased by 6 per cent since June 2021. So, just because we're into stats, as at June 2022, there were 141 pending cases and the number of pending civil cases overall has increased by 5.5 per cent, so they've been dealing with it. The criminals have dropped but civil has increased by 5.5 per cent.

The Hon. ADAM SEARLE: As well as the number of pending cases in the civil jurisdiction increasing, is it taking longer to get to those civil matters as a result of maybe prioritising the criminal matters?

KAREN WALLACE: I'd have to take that on notice.

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

MICHAEL TIDBALL: I can respond in respect of civil matters.

The Hon. ADAM SEARLE: Yes, please.

MICHAEL TIDBALL: The waiting time for a civil appeal has increased to two months at the end of June.

The Hon. ADAM SEARLE: Okay.

MICHAEL TIDBALL: From zero.

The Hon. ADAM SEARLE: I know it probably mainly deals with appeals, but they presumably still have some action in the original jurisdiction on civil matters? Anyway, if you have some stats on that that you can provide on notice, that would be useful as well.

MICHAEL TIDBALL: Yes.

The Hon. ADAM SEARLE: How is the Land and Environment Court tracking against those sort of reporting stats? I know they have their class 5, which are their criminal matters, and then everything else.

KAREN WALLACE: I can give you overall figures in a moment, but there are two areas that I concentrate on, which are the class 1 proceedings and the class 5. Class 1 proceedings—they've increased but remain below pre-COVID levels, and the criminal prosecutions class 5 matters have increased to historical high levels. That's got a backlog of cases but, as at June 2022 overall, the pending trial case load for the Land and Environment Court was 1,107, which was a slight decrease from 2020. So you can see that within the Land and Environment Court there's bits of ups and downs between the class 1s through to class 8s.

The Hon. ADAM SEARLE: Overall, is the workload of the Land and Environment Court increasing, or is that just attributable to the COVID delays?

KAREN WALLACE: I think that one of the things is that within the Land and Environment Court you've got sort of short matters and then you've got sort of long matters, and so the class 5 matters, which are more complex and more judicial, they have increased. But they seem to—it's overall that there's been a slight decrease, but I can drill down into it for you, if you like.

The Hon. ADAM SEARLE: That would be useful and interesting. How many judges and comissioners are on the Land and Environment Court? It has six judges and—

KAREN WALLACE: There are definitely six judges.

The Hon. ADAM SEARLE: And how many commissioners?

KAREN WALLACE: We've just put on another two.

The Hon. ADAM SEARLE: I see the budget papers talk about another two commissioners in 2023-24.

KAREN WALLACE: Yes.

The Hon. ADAM SEARLE: Has that been brought forward to this year, or is that another two that will be put on next year?

KAREN WALLACE: I think that they were—there were two that were on and have been extended, as I understand.

MICHAEL TIDBALL: They were appointed, I believe, in September 2019, and four new acting commissioners were appointed for a period of 12 months in April 2020.

The Hon. ADAM SEARLE: So they're additional, but temporary.

MICHAEL TIDBALL: Yes. On 9 November 2020, five new acting commissioners were appointed for a period of three months—three years.

The Hon. ADAM SEARLE: Have they been extended, or are they still—

MICHAEL TIDBALL: On 14 October 2021, five new acting commissioners were appointed for a period of one year.

The Hon. ADAM SEARLE: That's good to know. I might ask some questions about Victims Services, just to change gear. Can you provide an update on the review of the Victims Rights and Support Act 2013—where that process is up to?

MICHAEL TIDBALL: Yes, indeed. Can you just repeat the question, Mr Searle?

The Hon. ADAM SEARLE: Certainly. The review of the Victims Rights and Support Act 2013—where is that review process up to?

MICHAEL TIDBALL: I'll ask Mr McKnight to respond.

PAUL McKNIGHT: An issues paper was released earlier this year and we are now getting submissions on that. If you give me just a second, I will tell you where we're up to considering those.

The Hon. ADAM SEARLE: Please.

MICHAEL TIDBALL: I'm happy to start talking to this, if it will assist the Committee.

The Hon. ADAM SEARLE: Please.

MICHAEL TIDBALL: So the review, as Mr McKnight has indicated, has commenced. The department publicly released a background paper inviting stakeholder feedback on the Act by the NSW Government "Have your say" website and the DC website on 29 April 2022. Written submissions on the paper were due by 11 July. There may be further stakeholder consultation as part of the subsequent stages of the review, including in relation to potential options for reform. The report will be tabled in Parliament within 12 months of the review being completed.

The Hon. ADAM SEARLE: Anything to add, Mr McKnight?

PAUL McKNIGHT: No, just that the submissions being received will be being analysed at the moment by the policy team who are conducting the review.

The Hon. ADAM SEARLE: Not that there is any obligation to do so, but will those submissions be published online so that people can see what the issues are that are being—

PAUL McKNIGHT: I am not sure what the process has been in relation to the statutory review.

The Hon. ADAM SEARLE: They are not usually, but in some cases they have been.

PAUL McKNIGHT: As a general proposition, we do try and publish submissions received to statutory reviews publicly. They are open reviews. It does depend on what process we've taken in the particular case and how we have portrayed those submissions to stakeholders, because obviously we don't—we like to tell people that their submission's going to be published if they make it. But, as a general proposition in the department, we prefer these processes to be open.

The Hon. ADAM SEARLE: Perhaps you could take on notice whether or not they are going to be published and, if so, when and where.

PAUL McKNIGHT: Happy to do that.

The ACTING CHAIR: I have a brief question, it is a bit of a continuation from where I was before with the Attorney. It is in relation to your department's role with justice reinvestment programs or projects. Understand it is largely to the corrections. Are you resourced to be looking at that and that justice reinvestment work, because I know some of those programs the Attorney was speaking about in terms of wraparound et cetera go straight to that justice reinvestment?

MICHAEL TIDBALL: If I can answer it in these terms, Ms Higginson, the responsibility—and I look to Anne Campbell to affirmingly nod—but it falls within Minister Ward's responsibilities and is looked after as a part of Miss Campbell's policy remit, where—I am reluctant to use the term best practice—a range of potential reforms and policy directions are pursued. It certainly fits within that part of the DCJ remit and we, of course, are, as was indicated by the Attorney General this morning, awaiting the review in respect of the ReINVEST program in the final quarter of this calendar year.

The ACTING CHAIR: Just on that, if it's okay, I knew there was an intersection of some sort and that we were—from where you view that work and how it's looking and the inquiries and investigations we are making at a departmental level in these initiatives, do you see that we are likely to edge towards a big investment in that work, or is that where we are looking in terms of the evidence of the success of those programs et cetera?

ANNE CAMPBELL: I think we need to see the evaluation first, which is due, as the secretary said, later this year. I think once we are seeing was it effective, did it do what it was intended to do, government can then make a decision in relation to that.

The ACTING CHAIR: Thank you. You are saying that is the particular project from Bourke, or these specific on-ground example programs that are being evaluated?

ANNE CAMPBELL: You are talking, I think, on a different topic. In terms of the justice reinvestment, there was an announcement recently by the Attorney of an additional $9.8 million. There are existing programs that obviously are operating. There is the Maranguka Justice Reinvestment project out in Bourke, and we provided, the Government's provided, the following funds to that program. I won't go through that because I think you are probably across that detail. The key Minister that is responsible for championing—they call it a "championing Minister"—is the New South Wales Minister for Health. He recently committed $320,000 for the second year of funding for this project under the Commonwealth Stronger Places, Stronger People program and that funding will be administered by the Department of Planning, Industry and Environment.

In addition to the recent financial contribution, the Government works with this program in a variety of ways. So there is a cross-sector champion—which, as I said, was Minister Hazzard, Minister for Health—and a cross-sector leadership group that comprises senior leaders from all levels of government, non-profits, philanthropy, business, community et cetera.

MICHAEL TIDBALL: Sorry, just for the sake of clarification, there is a real trick here with aligned terminology and I just want to get that very clear. There is the ReINVEST treatment program in respect of sexual violence, which is subject to evaluation and I have said due between now and the end of the year. I believe your question though pertains to justice reinvestment. So I just apologise if we have confused those two.

The ACTING CHAIR: No, that is absolutely fine, because naturally that is a key area too of interest. Really where I suppose I am getting to, and I think it is a broader direction of the department and the sector and where we are heading in terms of that reinvest. Thank you very much.

The Hon. ADAM SEARLE: Mr Tidball, I think during questions with the Attorney I handed up a letter that the Attorney had sent to the community legal centres. In the third paragraph towards the end of that sentence there is the reference to $2.2 million per annum government funding for critical service gaps to which indexation will also be applied. I'm told that there is a delay in the delivery of that money to community legal centres. I wanted to see whether that understanding is correct and what is the cause of the delay and when will the money be delivered if that understanding is correct?

MICHAEL TIDBALL: Ms Hitter from Legal Aid.

MONIQUE HITTER: Mr Searle, I'm not entirely sure I'm able to give you an answer to that question, so if I could take it on notice?

The Hon. ADAM SEARLE: Of course. As I said, I am just after the information. If you take it on notice that would be really good. I have some detailed questions on Victims Services. We will see how we go and if it becomes a theme of you having to take it on notice, I might just put them as supplementary questions. I will just see how we go. There's a number of different aspects of victims' support—for example, there's counselling, there's financial assistance, immediate needs, financial support, economic loss and recognition payments. For each of those aspects can you tell us how many applications have been received, have been determined and awarded, or are pending or lapsed or dismissed in the last financial year—that is, from 1 July 21 to 30 June 2022?

KAREN WALLACE: I don't have them in front of me but they are about to be produced for the annual report. So we are going to have more detailed information that you have been seeking.

The Hon. ADAM SEARLE: That will be really good. Maybe take them on notice.

KAREN WALLACE: I will.

The Hon. ADAM SEARLE: And you can provide them to me even if it's—

KAREN WALLACE: I do have some information here, by the way, that I can just say to you is that in terms of application by support type, if this meets what you have required. Recognition payments, recognition

applications are 15,207 for 2021-22. That was up from 13,155 from last financial year. Financial support applications were 9,388 applications, compared to 8,613 last year.

The Hon. ADAM SEARLE: A 12½ per cent increase.

KAREN WALLACE: I'll go with you on that one. Counselling—there's 22,741 compared to 18,978, so there was no overall of total applications. There could be multiple support types of 29,131 compared to 24,205. But, as I indicated to you, we will keep providing further details in the annual report.

The Hon. ADAM SEARLE: Okay. Again, this is not a gotcha moment. When do you expect the annual report to be available?

KAREN WALLACE: I did inquire about that. I think that it's due at the end of October—tabled.

The Hon. ADAM SEARLE: Okay, so you can answer on notice then. In relation to those different components, do you have that breakdown by gender and age of applicant?

KAREN WALLACE: I would have to take that one on notice.

The Hon. ADAM SEARLE: Of course. That's good. I'm told that that kind of data was published in 2017-18, but when I asked the question in March 2021, I think the answer was the Department of Communities and Justice doesn't hold the information in a readily accessible format, so I'm just wanting to see whether you still have that information in that format or—

KAREN WALLACE: I do know that the team have worked on producing a whole lot of information that will be presented in the annual report. What I intend to do is to let people look at that and see if there are particular areas that are missing from it. We've done the high-level stuff around it—there are subsets of it—take that on board and if there's information that's missing, we'll see if we can access that information.

The Hon. ADAM SEARLE: Okay, and by the same token, just as my question was whether or not that information will be broken down by gender and age, will that information also be broken down by the number of Aboriginal and Torres Strait Islander people who are applicants?

KAREN WALLACE: Yes, it will be.

The Hon. ADAM SEARLE: It will be. That's good. That's very good news. In 2021-22—that is the financial year just gone—what was the average payment for immediate needs?

MICHAEL TIDBALL: I can indicate that the total amount awarded in 2021-22 was $27.2 million, including in respect of economic loss $2.1 million and $400,000 of funeral costs. For immediate needs, $24.8 million awarded.

The Hon. ADAM SEARLE: So that's for immediate needs including for funeral expenses?

MICHAEL TIDBALL: Just repeating that, no, funeral costs were under economic loss.

The Hon. ADAM SEARLE: Okay. So $2.1 million for economic loss?

MICHAEL TIDBALL: Correct. Economic loss, $2.1 million and immediate needs, $24.8 million.

The Hon. ADAM SEARLE: And that's—

MICHAEL TIDBALL: For counselling, which I should add, 22,481 applications approved and some $27.9 million is paid.

The Hon. ADAM SEARLE: So we can do the maths based on all of that. And what about recognition payments?

MICHAEL TIDBALL: Recognition payments—there were 28,778 decisions and $60.9 million awarded in the year 2021-22.

The Hon. ADAM SEARLE: Okay. So with regard to applications for financial assistance for immediate needs, for financial support, for economic loss, recognition payments and counselling in that financial year, what is the shortest time to make a decision, that a decision was made? What was the longest? I guess we can work out the average.

MICHAEL TIDBALL: In terms of service standards—and I look to Ms Wallace to correct me if she has a different understanding—applications are registered within a day of lodgement. Counselling applications are then determined within one to two days. The average waiting time for calls to the victims assistance line is under two minutes and the median time to determine recognition payments has increased—sorry, the median time in determining recognition payments I actually don't have. I can't quantify that here; I actually don't have it.

The Hon. ADAM SEARLE: That's okay. Maybe I'll put that on as a supplementary and we can follow that up, but I'm happy for you to provide the answers to those things on notice as well if you can. How many applicants have responded to the client satisfaction survey for that last financial year, 2021-22, and how are they selected to respond? Is it generally open to every client or are they sort of selected on a common basis?

MICHAEL TIDBALL: I'm unable to assist. I could come back on that, Mr Searle.

The Hon. ADAM SEARLE: That's fine. You can take that on notice. Do you have any stats on how many people actually attended the counselling appointments that were approved for them? I assume people mostly use up what they have been approved to do, but I just wanted to see if there were any issues in regard to that.

MICHAEL TIDBALL: I do not have them with me here, but I'm sure we could provide it.

The Hon. ADAM SEARLE: That's okay. That's useful. By the same token, can you let the Committee know how many applicants actually accessed counselling and how they accessed it, whether it was by phone, by video or in-person appointments in that last financial year, 2021-22? How many counsellors are located in each regional, rural and remote area, along with the clients they assisted in that last financial year? How does it work? Do you fund the private sector counsellors or do you have a number of counsellors on your books? Is that how it works?

KAREN WALLACE: Yes, I believe so. They're listed on the website, but I don't know that level of detail so it looks like I'll have to take questions on notice, thank you.

The Hon. ADAM SEARLE: That's okay. As I said, I just get to ask the questions and if you can't help, then you get to come back. How many new Victims Services-approved counsellors were appointed in 2021-22 and where were they located?

MICHAEL TIDBALL: We would need to take that on notice.

The Hon. ADAM SEARLE: What is the total number of Victims Services-approved counsellors and location?

MICHAEL TIDBALL: Similarly, I just don't have the data. I'm happy to take it on notice.

The Hon. ADAM SEARLE: That's fine. Can you tell us the average waiting time between a counsellor being contacted and the first available appointment in which they see a client? I guess that's the average waiting time for a client to see a counsellor.

KAREN WALLACE: We'll have to take that on notice.

The Hon. ADAM SEARLE: That's okay. Can you tell us the number of applications for counselling where the victim-survivor is located in a correctional centre or a youth detention centre, including the number approved and the number of applicants who received counselling, again on notice?

KAREN WALLACE: On notice.

The Hon. ADAM SEARLE: That's okay. And can you also tell us the number or percentage of applications for counselling made more than a decade after the alleged act of violence and the number or percentage of these relating to domestic violence, sexual assault, child abuse and child sexual assault? Again, I assume you will be answering those on notice.

MICHAEL TIDBALL: Notice, yes.

The Hon. ADAM SEARLE: Given the granular level of detail that I'm asking for, it might just be easier if I put them on the notice paper as supplementary questions for you to come back otherwise we could be here—it's very satisfying in one sense for me to run through. It means I don't have type them up, but I think it just might be a better use of everyone's time, unless there are any objections to that course of action. I will hold my further questions and I will reduce them to writing—I'm sure you will be relieved to hear.

The ACTING CHAIR: I think this is looking very much like we may be finishing up. Does the Government have any desire to use its final time?

The Hon. PETER POULOS: I will be very brief, Chair, thank you very much. Very briefly, thank you to the departmental officials for being here today, for your professionalism and for your assistance to the Committee. Some of you may have taken some questions on notice. Are any of you in a position to share any information with the Committee at this stage?

PAUL McKNIGHT: I am. Mr Moselmane asked a question about attendance at a culturally and linguistically diverse round table. I can tell you the organisations that were represented at that round table. We

had the Chinese Australian Services Society, the Community Migrant Resource Centre, the Ethnic Communities' Council of NSW, the Immigrant Women's Speakout Association of New South Wales, the Immigration Advice and Rights Centre, Jannawi Family Centre, the Multicultural Disability Advocacy Association, Multicultural NSW, the Muslim women's association of Australia, Settlement Services International, south-west Sydney Women's Domestic Violence Court Advocacy Service, SydWest Multicultural Services, and the Western Sydney Migrant Resource Centre.

The Hon. PETER POULOS: Anyone else?

ANNE CAMPBELL: I have one. I think Mr Searle asked a question earlier today in terms of who the provider was for the electronic monitoring.

The Hon. ADAM SEARLE: Yes.

ANNE CAMPBELL: The name of the company is Buddi. They're the provider who lease equipment and systems to Corrective Services NSW.

The Hon. ADAM SEARLE: And that's B-U-D-D-Y or is it I-E?

ANNE CAMPBELL: Let me double-check.

PAUL McKNIGHT: I think it's B-U-D-D-I.

ANNE CAMPBELL: Yes.

The Hon. ADAM SEARLE: Interesting. Thank you very much.

The ACTING CHAIR: Thank you, government officers, for your attendance today. The Committee secretariat will be in touch in the near future regarding any questions on notice and any supplementary questions for you.

(The witnesses withdrew.)

The Committee proceeded to deliberate.