

PORTFOLIO COMMITTEE NO. 2 – HEALTH AND COMMUNITY SERVICES

Thursday, 26 October 2017

Examination of proposed expenditure for the portfolio area

DISABILITY SERVICES

CORRECTED PROOF

The Committee met at 14:00

MEMBERS

The Hon. Greg Donnelly (Chair)

The Hon. David Clarke
The Hon. Daniel Mookhey
The Hon. Dr Peter Phelps
The Hon. Bronnie Taylor

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

Corrections should be marked on a photocopy of the proof and forwarded to:

**Budget Estimates secretariat
Room 812
Parliament House
Macquarie Street
SYDNEY NSW 2000**

The CHAIR: Welcome to the public hearing of the inquiry into Budget Estimates 2017-18. Before we commence I would like to acknowledge the Gadigal people who are the traditional custodians of this land. I pay respects to the elders past and present of the Eora nation and extend that respect to other Aboriginal people present or those who may be joining us today on the internet.

I welcome officers from the Department of Family and Community Services to this supplementary hearing. The Committee will examine the proposed expenditure for the portfolio of Disability Services. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available.

In accordance with the broadcast guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives who may be present, or may come later, that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence, as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In these circumstances witnesses are advised that they can take a question on notice and provide an answer within 21 days. Any messages from advisers or members' staff who are seated in the public gallery should be delivered through the Committee secretariat. Transcripts of this hearing will be available on the web from tomorrow morning. Finally, I remind everyone to turn off their mobile phones for the duration of the hearing.

MICHAEL COUTTS-TROTTER, Secretary, Department of Family and Community Services, on former oath
CHRIS LEACH, Deputy Secretary, Disability Operations, Department of Family and Community Services, on former oath

PAUL O'REILLY, Executive Director, Commissioning, Department of Family and Community Services, affirmed and examined

SAMANTHA TAYLOR, Executive Director, National Disability Insurance Scheme Implementation, Department of Family and Community Services, affirmed and examined

The CHAIR: I declare the proposed expenditure for the portfolio of Disability Services open for examination. The questioning of the portfolio will run from now until 3.00 p.m. As there is no provision under budget estimates resolution to make an opening statement before the committee commences questioning, we will begin with questions from the Opposition.

The Hon. DANIEL MOOKHEY: Secretary, I am sure you would recall that in our main budget estimates hearings we had a fascinating discussion about the tenure of Mr Jim Longley.

Mr COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: At the time I think you made a statement to the effect that your understanding was that Mr Longley was not a paid director of RSL LifeCare but his remuneration from that organisation was solely in his capacity as a consultant.

Mr COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: I understand as well that you may or may not have been relying upon representations that Mr Longley made. Do you still hold to that statement?

Mr COUTTS-TROTTER: I listened carefully to Mr Longley's testimony before the Bergin inquiry. He made certain concessions which, from memory, were to the effect of despite his having received legal advice as a member of the board he conceded before the chair of the inquiry that he had, to some extent, failed in his duties as a director.

The Hon. DANIEL MOOKHEY: You mentioned earlier as well in that hearing that he had entered into a contract with the department which I think was negotiated by your predecessor.

Mr COUTTS-TROTTER: Yes, it was.

The Hon. DANIEL MOOKHEY: In the course of those negotiations, did he make representations to the effect that he was not at that time earning any additional income in his capacity as a director of RSL LifeCare?

Mr COUTTS-TROTTER: I do not know.

The Hon. DANIEL MOOKHEY: What steps did the department take to verify the accuracy of Mr Longley's representations at the time and since?

Mr COUTTS-TROTTER: At the time, I cannot comment. As you would recall, there are two policies that are relevant here. The first is a declaration of private employment. Mr Longley did declare consultancy as a source of private employment together with some other directorships that he held both in 2012 and then progressively, from memory, let go of in the following period. I satisfied myself that his declarations about private employment were appropriate. The second operative policy was whether those private engagements presented as an actual or perceived conflict with his role as the deputy secretary of the department. Again, I formed the view that they did not. The major area of his involvement, RSL-related issues, the department was not a direct funder of the RSL.

The Hon. DANIEL MOOKHEY: Perhaps I misinterpreted your answer at the last hearing but is it not the case that Mr Longley and all your direct reports are required to seek re-authorisation every year?

Mr COUTTS-TROTTER: They are, and Mr Longley did.

The Hon. DANIEL MOOKHEY: How many times did Mr Longley seek re-authorisation?

Mr COUTTS-TROTTER: Every year from the time I joined the organisation, which was July 2013.

The Hon. DANIEL MOOKHEY: That is probably a minimum of three years? In the course of those three declarations—2013 to 2015 and maybe 2016—did he repeat the representation to you that he was not earning income in his capacity as director and did you take any steps to verify whether that was accurate?

Mr COUTTS-TROTTER: To the best of my recollection I first spoke to Mr Longley about that when the matter was raised publicly in the media. As I recall, the first media story focused on directors of RSL LifeCare who were also directors of the RSL. Again, to the best of my recollection, that was the point where Jim explained to me that he was unpaid in his role as a director of RSL LifeCare but he did receive consultancy income from the organisation and that he and other directors who were in that position had legal advice to say that that was legal.

The Hon. DANIEL MOOKHEY: Did he provide you with that advice?

Mr COUTTS-TROTTER: No, I did not ask for it.

The Hon. DANIEL MOOKHEY: Did you independently commission any legal advice to test whether that was correct?

Mr COUTTS-TROTTER: No. From my perspective the two questions were: Was Jim disclosing private interests and employment, and did any of those present as a conflict of interest with his role as deputy secretary in the department? I was satisfied, based on what he had told me, that he had disclosed and it did not present as a conflict.

The Hon. DANIEL MOOKHEY: Mr Longley has left the employ of the department, has he not?

Mr COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: On what date?

Mr COUTTS-TROTTER: Jim left on 22 September.

The Hon. DANIEL MOOKHEY: Was that by mutual agreement or was he removed from his position?

Mr COUTTS-TROTTER: It was by mutual agreement.

The Hon. DANIEL MOOKHEY: Why was he not removed from his position?

Mr COUTTS-TROTTER: As a result of the step-down, reduction in size of the organisation, Jim's deputy secretary's role was going to be terminated at the end of November. Under law, the Government Sector Employment Act, he would have been entitled to a 38-week payment at the point of departure. I took the view, in discussion with Jim, that he needed to leave before that point. I also took the view that a payment of 20 weeks was appropriate, considering the interests of the organisation and the interests of taxpayers.

The Hon. DANIEL MOOKHEY: You said you took the view the he had to leave earlier. Why was that?

Mr COUTTS-TROTTER: I formed the view, after listening to Jim's testimony, and I have not concluded this view but I did put this view to Jim, that there is an expectation that people of seniority are very careful in the exercise of their judgement and are very careful to identify issues of conflict or partiality. I was concerned after hearing Jim's testimony that he may not satisfy that test. I put that to him formally. He did not respond to my formal submission to him of my view but we discussed it further and, as we have talked earlier, he agreed with me that he should leave, and leave early. I should stress for the record that I did not complete a process of forming a view about whether Jim's performance was below that expected of the deputy secretary. I had questions about that and I put them to him, but I did not complete a process that enabled me to form a view.

The Hon. DANIEL MOOKHEY: Was the dominant reason for his dismissal, for want of a better term, the redundancy of his commission or his conduct as revealed before the Bergin inquiry?

Mr COUTTS-TROTTER: It was not a dismissal, it was a resignation by mutual agreement.

The Hon. DANIEL MOOKHEY: Was the dominant reason for his resignation by mutual agreement from his evidence before the Bergin inquiry or from the impending redundancy of his position?

Mr COUTTS-TROTTER: The position was becoming redundant at the end of November. I formed the view that it was not good for Jim or for the organisation for him to continue in that role until then as a result of some of the questions raised in his testimony before the Bergin inquiry.

The Hon. DANIEL MOOKHEY: But the department paid him a 20-week redundancy package?

Mr COUTTS-TROTTER: The statutory arrangements are determined under the Government Sector Employment Act. There are three ways an executive can leave the public sector: dismissed for no reason, essentially the position disappears and you become redundant; as a result of misconduct, which is a very high test; or as a result of the employer, in this case me, forming a view, following a process allowing the person a degree of natural justice, that their performance was inadequate. It was apparent to me that the first test of misconduct was a very high threshold and I could not see evidence that would suggest that was an appropriate judgement.

The Hon. DANIEL MOOKHEY: I will stop you there. Did you seek legal advice?

Mr COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: Who did you seek that legal advice from?

Mr COUTTS-TROTTER: I sought legal advice inside the organisation but it was confirmed with advice from outside the organisation.

The Hon. DANIEL MOOKHEY: Can you make that advice public?

Mr COUTTS-TROTTER: No.

The Hon. DANIEL MOOKHEY: Please continue with your answer. I interrupted you.

Mr COUTTS-TROTTER: The second test or means by which an executive can leave is for poor performance, which, in a sense, is a lower threshold than misconduct but relates to performance at work. It would have required quite a difficult connection between performance outside work to satisfy that test. Really that was the framework of consideration, and based on my best judgement and the advice available to me I settled on, together with agreement with Mr Longley, a course of action that seemed the most appropriate.

The Hon. DANIEL MOOKHEY: If you had brought misconduct provisions under the Government Sector Employment Act you would not have paid Mr Longley the 20-week payment, would you?

Mr COUTTS-TROTTER: If you leave as a result of a finding of misconduct you receive no payment. If you leave as a result of a finding of poor performance you receive a 13-week payment.

The Hon. DANIEL MOOKHEY: Either way Mr Longley walked away, depending on which test you wish to apply, with seven weeks more than he was potentially entitled to or 20 weeks if the department had brought misconduct provisions?

Mr COUTTS-TROTTER: I formed a view, after really very serious consideration and judgement based on advice, that the course of action I eventually took was the appropriate one and, as I say, best for the organisation and best for taxpayers.

The Hon. DANIEL MOOKHEY: What was the monetary value of the 20-week payment?

Mr COUTTS-TROTTER: I would have to get that for you. I can respond on notice to that question.

The Hon. DANIEL MOOKHEY: You said you never finally concluded your view?

Mr COUTTS-TROTTER: No.

The Hon. DANIEL MOOKHEY: Did you ever discuss your preliminary view with the Minister or his office?

Mr COUTTS-TROTTER: I let the Minister's office know the process I was following. I did not discuss it in any great detail because I have employment responsibility. It is not a decision for them; it is a decision that must rest with me.

The Hon. DANIEL MOOKHEY: When you say you discussed it with the Minister's office, when did that discussion take place?

Mr COUTTS-TROTTER: At some point in mid-September.

The Hon. DANIEL MOOKHEY: With whom in the Minister's office did you have that discussion—by title or position—or was it with the Minister himself?

Mr COUTTS-TROTTER: From the best of my recollection, I spoke to the Minister's chief of staff.

The Hon. DANIEL MOOKHEY: Presumably you apprised both of them about the process you were intending to follow. Did you apprise them of the outcome of the process before you made the decision? Did you inform Mr Longley?

Mr COUTTS-TROTTER: As a courtesy and as a mechanism of communication and consultation—not seeking approval—I let them know what I had decided once I had decided it.

The Hon. DANIEL MOOKHEY: After you concluded your discussions with Mr Longley and you reached a mutual understanding, did you then inform the Minister's office that such an understanding had been reached?

Mr COUTTS-TROTTER: I told the Minister's office that I had reached a view that these were the appropriate terms under which Jim would leave the organisation, and I communicated that to them.

The Hon. DANIEL MOOKHEY: Did you inform the Minister's office that you had obtained legal advice, or did you share that legal advice with the Minister's office?

Mr COUTTS-TROTTER: To the best of my recollection, I said that I had sought legal advice, but I did not share it with anyone because it was legal advice provided to me in my role as the decision-maker.

The Hon. DANIEL MOOKHEY: Why did you decide on 20 weeks?

Mr COUTTS-TROTTER: It was my judgment about an appropriate point to secure agreement. I carefully weighed both the perceived fairness to Jim and the perspective of our colleagues in the organisation. Inevitably it was a judgment call based on the best advice and careful thought.

The Hon. DANIEL MOOKHEY: Was it an arbitrary choice? Did you employ a precedent about which you had been informed? The spectrum is zero weeks to 38 weeks—zero weeks being for misconduct, 38 weeks being for normal circumstances, and 13 weeks being for the other scenario you described. Why did you decide on 20 weeks? Was it because you thought that that would be the way to get Mr Longley to agree?

Mr COUTTS-TROTTER: No, I thought about the time and cost involved in pursuing processes and the likelihood of success and concluded that this presented the best position to satisfy a range of interests, not the least of which was that it was a good and fair judgment given my responsibilities as an employer.

The Hon. DANIEL MOOKHEY: In brief, Mr Longley was subjected to an independent inquiry which revealed scandalous misconduct by many people, including Mr Longley but not only him. It attracted a great degree of ire, a government response and intervention in the RSL. In the end, it involved one guy who happened to be a deputy secretary of a department—a very senior role—and the department concluded that that type of conduct was not misconduct by a public servant under the Act covering public servants. That leads me to ask what species of behaviour one must engage in for the department to launch misconduct proceedings?

Mr COUTTS-TROTTER: I cannot answer that question. I have laid out my decision-making for you as best I can.

The Hon. DANIEL MOOKHEY: Is there any chance you would be able to tell the Committee the monetary value of the payment before the hearing concludes today, given that we have 40 minutes left and it is not a hard question?

Mr COUTTS-TROTTER: I will see what we can do.

The Hon. DANIEL MOOKHEY: Thank you. Is there any aspect of the National Disability Insurance Scheme Act or Commonwealth, State, or Council of Australian Governments agreements that has as its objective the opportunity for State governments to exit their responsibility to disabled people?

Mr COUTTS-TROTTER: It was a recommendation of the Productivity Commission in delivering the report that initiated the National Disability Insurance Scheme. It was the view of the Every Australian Counts campaign that State governments should progressively get out of direct delivery of disability services.

The Hon. DANIEL MOOKHEY: After the completion of the National Disability Insurance Scheme rollout, what role do you envisage State governments having when it comes to disabled people and their families?

Mr COUTTS-TROTTER: A very important one. First, we retain the Disability Inclusion Act, which establishes rights for people with disability to get fair and appropriate access to government services and to be included in the community. We have an ongoing role. As a public agency we collectively have an ongoing role in working with the Commonwealth Government to support the maturation and development of the National

Disability Insurance Scheme [NDIS]. Of course, through the Disability Inclusion Act we also have an important role in making transparent the performance not only of State government agencies but also local government agencies in responding to the objectives of that legislation.

The Hon. DANIEL MOOKHEY: Therefore, you would agree with me that there is a continuing role for the State Government, albeit not in direct service delivery?

Mr COUTTS-TROTTER: Not in the direct delivery of services that are captured by the NDIS.

The Hon. DANIEL MOOKHEY: What is the role of the State Government in supporting advocacy for disabled people?

Mr COUTTS-TROTTER: The Government's policy position is clear. The Government's view is that the NDIS provides within individual plans for the funding of a range of services that are currently provided by advocate organisations; for example, the coordination of supports, approaching and getting access to mainstream services, and supporting people to build their decision-making capacities. Then there is the Commonwealth Government's \$130 million-a-year Information, Linkages and Capacity Building Fund.

The Hon. DANIEL MOOKHEY: That is \$130 million?

Mr COUTTS-TROTTER: That is nationally. On a population-sharing basis, we would expect one-third of that to be delivered in New South Wales. Of course, that enables sources that provide services linking people, their carers and their families to specialist disability services, mainstream services or, indeed, to the community to be funded and to continue to perform that role. Then there is the Commonwealth Government's National Disability Advocacy Program, funded to the tune of \$60 million over two years.

The Hon. DANIEL MOOKHEY: You outlined two sources of funding, the first being the capacity that is available to people in their plans, and the second being the Commonwealth government programs you have just described. Were they the reasons the Government reached the decision to terminate New South Wales government funding for disability advocacy next July?

Mr COUTTS-TROTTER: As I said, the Government's policy position is that, first, the NDIS makes people with disability visible in the community; it gives them a voice and it supports them to exercise their rights in the community. Secondly, there is capacity in individual plans, and that is \$6.4 billion worth of funding in New South Wales.

The Hon. DANIEL MOOKHEY: Of advocacy funding or plan-based funding?

Mr COUTTS-TROTTER: Of plan-based funding. Then there is resourcing through the Information, Linkages and Capacity Building Fund. That provides grants to non-government organisations to provide services that many of our advocacy groups provide now; that is, providing information to people with disability, their families and carers about specialist services, mainstream services, and community opportunities of one kind or another. Then there is the National Disability Advocacy Program. There is a massive amount of money available for people to do what they already do but by other means.

From memory, the Government invested \$1.5 million in advocacy groups to help them to get ready to change the way they support people. Many of the New South Wales advocacy groups are now registered as NDIS providers in this State. Then the Disability Advisory Council and the Carers' Advisory Council continue, and under the disability inclusion legislation there is an expectation that funded peak organisations in homelessness, transport, education, mental health and health care make sure that they are accessible and inclusive of people with disability. In other words, if a person with disability has a need for someone to stand up for them on a housing issue, there are a range of housing organisations that can and should be able to help them with that.

The Hon. DANIEL MOOKHEY: Indeed, but the point remains that the Government's position is still, for all the reasons, I presume, you have just outlined, that the \$13 million worth of funding that was being provided to the sector from the New South Wales Government will end next July and that decision is not being revisited?

Mr COUTTS-TROTTER: Yes, that is the Government's position.

The Hon. DANIEL MOOKHEY: In respect of the Government's position, did you undertake an impact assessment or any form of impact assessment as to what the consequences of removing that \$13 million would be to the sector?

Mr COUTTS-TROTTER: I am not sure about that.

Ms TAYLOR: We have done a range of—

The Hon. DANIEL MOOKHEY: But did you do one specifically about that?

Ms TAYLOR: For advocacy organisations?

The Hon. DANIEL MOOKHEY: Let us go back. You say that that remains government policy?

Mr COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: Was the New South Wales Government required to adopt that policy by the NDIA agreement?

Ms TAYLOR: The Government took the decision to enter into a national disability insurance scheme, the NDIS, based on the compelling position outlined in the Productivity Commission's 2011 report.

The Hon. DANIEL MOOKHEY: I am sure, but I am asking specifically whether or not the agreement that the New South Wales Government entered into in order to facilitate the creation of the NDIS required it to remove the \$13 million or is that a decision the Government made itself?

Ms TAYLOR: There was no requirement to end any particular funding source but there was a very clear decision taken, based on the design of the scheme, to cease funding and convert it into individualised arrangements for people with disability. The funding that forms the New South Wales contribution to the scheme relates to specialist disability funding. The guidelines for the programs that we currently fund and contract many non-government organisations [NGO], including those that you are referring to, are clearly transferable into the NDIS.

The Hon. DANIEL MOOKHEY: Have they been transferred into the NDIS?

Ms TAYLOR: No. Funding for advocacy and information supports have been deliberately retained until the end of the transition period to support people in that transition. Providers have been made aware of that. The Disability Inclusion Act makes the transition arrangements clear also.

The Hon. DANIEL MOOKHEY: Go back to the first question which was: Did the department undertake any impact assessment on what we now understand to be the discretionary choice of the New South Wales Government to end the \$13 million funding?

Ms TAYLOR: No, we did not undertake an impact assessment. However, what we did was to invest heavily in a range of support programs for organisations to determine their own impact and/or their boards to make an assessment about whether—

The Hon. DANIEL MOOKHEY: Did you undertake any assessment about the geographic impact of such a decision? Are there any areas or communities in New South Wales that have been more affected or less affected by that decision?

Ms TAYLOR: Only in a positive sense. The impact on regional distribution of resources through the NDIS means that where we have had extremely limited resources and footprint of market, that is resolved through the NDIS because it places all the necessary support costs in the hands of the individuals in the location in which they live. It means that there will be greater market, more revenue, more jobs in regional New South Wales and other places in the country as a consequence of that investment. In other words, our money will now follow the individuals as opposed to the geographic spread of the service providers as they have traditionally been. The market expands and the capacity to buy additional supports grows.

The Hon. DANIEL MOOKHEY: Given that no impact assessment was undertaken by the Government, and the Government presumably did not undertake a geographic assessment either, I was contacted by a group called IDEAS based in Tumut. They were explaining to me that the decision to remove the \$13 million funding is leading to the loss of 27 jobs in Tumut and that this is creating a great degree of instability for, obviously, the employees and the organisation but equally, if not more importantly, the people who depend on them. They make the point that this was an unnecessary decision and that the New South Wales Government's, for want of a better term, indifference towards their plight is resulting in real hardship to their community. Is the response of the New South Wales Government to those workers and their organisations and the people they care for essentially, "Do not worry because you are not going to use the money in your plans", or "Go and ask the Commonwealth"?

Ms TAYLOR: No, in that particular instance, IDEAS, whilst based in Tumut, provides a statewide—in fact, anyone can utilise that information service exclusively. The funding arrangement we have with them translates directly into the Information, Linkages and Capacity Building [ILC] component of the NDIS, which

the Secretary described. They are a very well-respected organisation and they will be very well placed to participate in rounds for translation of their funding and, in fact, growth of their service under the ILC.

The Hon. DANIEL MOOKHEY: Why are they complaining?

Ms TAYLOR: I cannot answer that. I have not spoken with that organisation about their particular perspective. We have though actively encouraged organisations that have the capability and the skills and the match to the Commonwealth's program for Information, Linkages and Capacity Building to participate in it. As Mr Coutts-Trotter said, \$130 million nationally, with a third of that money being within New South Wales, is a substantial growth in Information, Linkages and Capacity Building expenditure across the country. So there is more than ample opportunity for good organisations such as that to continue to do the good work they do to support people with disability to access information.

The Hon. DANIEL MOOKHEY: Has the local member made any representations about the plight of IDEAS at Tumut?

Ms TAYLOR: I will have to check our records to see if we have a representation.

The Hon. DANIEL MOOKHEY: Are you aware of any representations that have been made in respect to that organisation?

Ms TAYLOR: Not off the top of my head, no. We are aware that the organisation itself has written very recently to the Minister and has met with the Minister and we are reviewing that correspondence and will respond.

The Hon. DANIEL MOOKHEY: Have you received any representations from any Government members in the lower or the upper Houses in respect to the decision of the New South Wales Government to cancel the \$13 million worth of funding, that you are aware of?

Mr COUTTS-TROTTER: We will have to take that on notice and respond to you.

The Hon. DANIEL MOOKHEY: But are you aware of any?

Mr COUTTS-TROTTER: To the best of my knowledge, no. I will take that on notice.

Ms TAYLOR: We get representations on a number of matters from local members, the organisations or people to whom they relate. We will have to check that.

The Hon. DANIEL MOOKHEY: The Council for Intellectual Disability [CID] relies entirely on New South Wales government funding, is that correct, to the best of your knowledge?

Ms TAYLOR: I could not tell you. I am not familiar with their balance sheet.

The Hon. DANIEL MOOKHEY: Are you aware of their concerns that should this decision go ahead their organisation will be placed in serious jeopardy?

Ms TAYLOR: That would surprise me. The CID has, in fact, been very active in the national space and has been contributing, working alongside the National Disability Insurance Agency [NDIA]—for example, in assisting them with representing the interests of people with intellectual disability in their recent Participant and Pathway Review, which has resulted in some undertakings by the new chief executive officer [CEO] for improvement. They have also been very successful in some of the Information, Linkages and Capacity Building funding. Only last year the work that they have done with us on My Choice Matters attracted interest from the National Disability Insurance Agency to extend that particular fund by \$1.8 million and they have also been successful in getting around \$1 million in a peer-to-peer support program. That organisation again is very well positioned to add value in the new national space.

The Hon. DANIEL MOOKHEY: I return to the Longley matter, going back to the decision that you made to grant him a 20-week payment. He provided evidence to the Bergin inquiry that his employment is coming to a conclusion on 30 November. He provided that evidence on 12 September. You said that the date you entered into the arrangement with him was 22 September or thereabouts.

Mr COUTTS-TROTTER: It was effective from 22 September.

The Hon. DANIEL MOOKHEY: In essence, the New South Wales taxpayer ends up paying him from 22 September for 20 weeks, which takes us into April next year. He tells the Bergin inquiry that his employment is coming to a conclusion on 30 November. Why do you not wait for his position to terminate?

Mr COUTTS-TROTTER: Because on 30 November he, under law, would be eligible for 38 weeks pay at that point.

The Hon. DANIEL MOOKHEY: Was that in his contract?

Mr COUTTS-TROTTER: The Government Sector Employment Act sets out the three means by which senior executives leave the public sector.

The Hon. DANIEL MOOKHEY: He was employed. His contract was a government service employment contract, was it not?

Mr COUTTS-TROTTER: It is a replacement of the old contract system. Now, if you have an ongoing role as a senior executive and that role is terminated—made redundant in this case because we are getting out of the direct delivery of disability services—under law you are entitled to a 38-week payment, unless you are found to have engaged in misconduct or poor performance.

The Hon. DANIEL MOOKHEY: Was he the only deputy secretary of the department that was employed under a special purpose contract?

Mr COUTTS-TROTTER: It is not a special purpose contract. With the creation of the Government Sector Employment Act the old arrangements, SES contracts, were replaced by the new legislative employment framework.

The Hon. DANIEL MOOKHEY: You made the point earlier that there were circumstances to do with Mr Longley that your predecessor found to be exceptional.

Mr COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: Namely, he has a background in banking.

Mr COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: He has special skills that were not available.

Mr COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: The department entered into a contract with him that allowed him secondary employment, or the opportunity to seek secondary employment with consent.

Mr COUTTS-TROTTER: To be clear: The Government Sector Employment Act was not in operation for executives across the sector at that point. I would need to check, but I am fairly sure Mr Longley would have been engaged by my predecessor under the old arrangements. But the same principle applied: If you wanted to engage in secondary employment outside the public sector you had to seek and have the approval of your employer and you needed—if arrangements did not change—to have that reauthorised every year under policy, and it needed to be not a role that was in direct conflict with your role as a public servant.

The Hon. DANIEL MOOKHEY: In the contract that Mr Longley entered into, were there any deviations from the standard termination procedure in that contract?

Mr COUTTS-TROTTER: I do not know. I am obviously not making my point clear.

The Hon. DANIEL MOOKHEY: Maybe I am not making my question clear. When you say he was entitled to a 38-week payment should his employment have continued until 30 November, was that entitlement as a result of his contract or the contract's reliance on the Government Sector Employment Act?

Mr COUTTS-TROTTER: It is the law that applies to everyone of band one, band two, band three or band four executives in New South Wales. There is nothing special about Mr Longley's treatment. If he had been made redundant as planned at the end of November he would have been entitled to a 38-week payment.

The CHAIR: Mr Coutts-Trotter, so I am clear, you gave an answer to the Hon. Daniel Mookhey about the sources of potential funding for advocacy in New South Wales Disability?

Mr COUTTS-TROTTER: Yes.

The CHAIR: And Ms Taylor supplemented that answer. Ms Taylor, do I understand incorrectly that with respect to an individual's plan there is an apprehension that some part of that plan or some value of that plan is for advocacy? And, if the answer to that is "Yes", I am wondering where does that derive from and could you elucidate on that? What is the value within the plan imputed to what could be used for advocacy?

Ms TAYLOR: That is a good question. There are advocacy-like activities that support people with disability who need that bit of extra assistance to make decisions, plan, and access mainstream, and then there are advocates that are organisations that provide a range of different things. Within the National Disability Insurance Scheme [NDIS] the word "advocacy" does not exist because it is about the individual and what the individual needs in their life. If the individual needs assistance with planning or assistance with trying to navigate a service system that is complex and they do not have the same kind of informal supports that you or I, or anyone else in this room, might have there is a range of organisations that can assist them with that. When a planning conversation through the National Disability Insurance Agency [NDIA] occurs—

The CHAIR: That is with respect to their particular individual needs?

Ms TAYLOR: Absolutely. There would be an assessment made by the NDIA about the extent to which an individual had the capacity to, let us use the term, "self advocate".

The CHAIR: Articulate and advocate their needs.

Ms TAYLOR: Yes, for themselves. Or, whether they have a network to support them in doing that. If, from the circumstance of that individual, it appears they do not have that or they would benefit from, despite having a network, some capacity building to help them be more independent, the NDIA would put provisions within their plan to enable them to purchase that. Typically that starts with a local area coordinator who helps people think about what they could do and a support coordination component in a plan. Usually those kinds of things—in addition to some of the things that Mr Coutts-Trotter referred to such as individual skills development and training, coordination of supports, life and transition planning for different stages of life as people change and leave school, start a job or what have you—would form part of that package.

Under our current guidelines for funding individual advocacy, that one-on-one relationship I am describing, is the majority of what we fund organisations to do now. Our program guidelines and what rests within the NDIS are almost identical. The individuals that we would support under our current legislation and funding arrangements are the same individuals that sit within the NDIS. Many of the activities we currently fund rest within the scheme.

The CHAIR: For arguments sake let us use a different phrase that involves more macro advocacy for and on behalf of the cohort of the disabled we might be talking about, say in the context of lobbying a government of the day over potential legislative change: That is not caught up in any of this?

Mr COUTTS-TROTTER: No.

The CHAIR: That is apart from what is packaged up in the plan and apprehended to be part of the advocacy they are entitled to?

Ms TAYLOR: That is correct. Because it is a National Disability Insurance Scheme the Federal Minister for disability and the Federal Minister for social services are responsible for the delivery of the scheme within a governance structure that includes other participating jurisdictions' Ministers. There is a Commonwealth Act, it is not a State-based Act. The example you gave about influencing adjustments to legislation would fit well within the remit of the Federal Minister. That is where the National Disability Advocacy Program fits.

The Commonwealth is reviewing that program. It has agreed to an extension until 2020 to complete a review where it is doing massive national consultation on how that program needs to adjust to reflect the new arrangements under the scheme and the completion of the transition of State responsibilities into the national model. There is more to come in terms of how the national disability advocacy program looks, and the advocacy organisations across the country have been, throughout, invited to give their view about how that should look.

The CHAIR: The States in and of themselves, in terms of legislative capacity through their respective legislatures, have not surrendered the ability or desire to, from time to time, seek to pass laws relating to people with disability, have they?

Ms TAYLOR: No. The Disability Inclusion Act remains, and inbuilt into that inclusion Act is the Disability Council NSW. The council can draw on the voices of people with disability to assist it in advising government on how things need to change in the context both of the New South Wales general community and the mainstream services that the Government continues to operate with full expectation they will be inclusive of people with disability.

The Hon. DANIEL MOOKHEY: I am sure you would have noticed about two weeks ago, the program that went to air on 7.30 about the abuse of disabled children in New South Wales schools.

Mr COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: I am sure you, as well as the rest of us, were surprised and shocked by what you saw, or at least maintain that it was not in keeping with the intention of the New South Wales Government's policies.

Mr COUTTS-TROTTER: Any incident of abuse, exclusion or neglect of a child with disabilities is abhorrent.

The Hon. DANIEL MOOKHEY: I am sure that you are aware that these allegations have surfaced in the wake of an Ombudsman investigation into behaviour restraint in New South Wales schools.

Mr COUTTS-TROTTER: Yes.

The Hon. DANIEL MOOKHEY: Since that program went to air, has the Department of Education made any contact with the departments that you are responsible for in relation to that matter?

Mr COUTTS-TROTTER: We work with our colleagues in Education around these issues consistently. There have been discussions at an officer level, and I have had a brief discussion with some of my colleagues in Education about these things and related issues. We are particularly interested in the support that children in care get in the education system as well.

The Hon. DANIEL MOOKHEY: When you say that there has been contact at an officer level, what level of officer has there been contact at?

Mr COUTTS-TROTTER: We are regularly in discussion with colleagues in Education about the needs of children with disability.

The Hon. DANIEL MOOKHEY: In respect of these specific allegations, what did that discussion conclude?

Mr COUTTS-TROTTER: Fundamentally, this is a matter for Education to lead on. We provide any support we can, as we do with the Ombudsman or the Deputy Ombudsman.

The Hon. DANIEL MOOKHEY: Were you asked to provide any support in respect of these allegations?

Mr COUTTS-TROTTER: As I said, we are constantly working with our colleagues from Education.

The Hon. DANIEL MOOKHEY: I am asking specifically about these allegations. Let us be honest—there are quite a few of them. There were 280 over a 10-month period, so we are not talking about a small volume. Were you asked by the Department of Education for any advice or input about the appropriate response that it should be undertaking in respect to those allegations?

Mr COUTTS-TROTTER: We are constantly talking to Education, both from a disability perspective and a child protection perspective. The two come together in the kinds of cases that you are talking about.

The Hon. DANIEL MOOKHEY: Did the Minister ask you for a brief or any advice on the allegations—in particular whether there were any obligations for him or whether there had been any breaches of the Disability Inclusion Act or matters to do with child protection?

Mr COUTTS-TROTTER: I am happy to take on notice what advice we have provided the Minister on this.

The Hon. DANIEL MOOKHEY: To be fair, I was asking a separate question, which was: Did he ask for any advice?

Mr COUTTS-TROTTER: I am happy to take it on notice.

Mr LEACH: The Disability Reportable Incidents Scheme would not apply to the circumstances in schools. It applies only to disability accommodation and those services. Just to clarify, there is a slight difference in the ambit.

The Hon. DANIEL MOOKHEY: Can you expand upon that? When you say that the Disability Reportable Incidents Scheme does not apply, what do you mean?

Mr LEACH: Part 3C of the Disability Inclusion Act—

The Hon. DANIEL MOOKHEY: I understand—under that Act, not child protection.

Mr LEACH: No.

The Hon. DANIEL MOOKHEY: Sorry, that was the source of confusion. Has the department made any statements about those allegations or made any public commentary?

Mr COUTTS-TROTTER: No; not to the best of my knowledge.

The Hon. DANIEL MOOKHEY: Did the department weigh in, or make any submissions to the Ombudsman, in respect of the report he just produced about behaviour restraints?

Mr COUTTS-TROTTER: Mr Leach, I will lean on you on this one.

Mr LEACH: Not specifically about behaviour restraints. Disability is covered by a policy framework in New South Wales, which looks at restrictive practices, that can include restraint and seclusion, chemical restraint and other behaviour control techniques that can be applied to a person with disability.

The Hon. DANIEL MOOKHEY: Presumably your department has quite a bit of expertise in that.

Mr LEACH: Yes, it does.

The Hon. DANIEL MOOKHEY: Presumably that expertise has been garnered after many decades of experience of positive and negative aspects of those restraints.

Mr LEACH: Yes, that would be fair.

The Hon. DANIEL MOOKHEY: Why, then, did you not put in a submission?

Mr LEACH: We did not put in a submission because it was a matter for the Minister for Education primarily. Schools have their own processes in place to manage the participation of students with a disability in their sphere.

The Hon. DANIEL MOOKHEY: In respect of the reference you made, Mr Secretary, to the concern that you would have had for kids under care and the obligations, what did you discover after the discussions?

Mr COUTTS-TROTTER: There is a real challenge for children in the child protection system who have experienced trauma, which then affects their behaviour, to be well included in school communities. It is true in New South Wales and it is true around the nation. We participated in a roundtable discussion yesterday with the Ombudsman, the President of the Children's Court and others—including our colleagues in Education—to try to continue to work on helping schools to build a capability to meet the needs of children who have experienced trauma. It is fundamentally about building the capacity of school staff to understand the link between trauma and behaviour, and to understand the kinds of tools and techniques that you can use to help children feel safe, enable them to better manage behaviour and, as a result, to remain included in the school community and not to suffer too regular exclusion. Obviously that is in common, in some ways, with the behaviours that are a function of some disability as well.

The Hon. DANIEL MOOKHEY: In our main hearing we had quite a discussion about the development of disability—the disability inclusion plans by each agency that they are required to have under the Act—and we also had quite an extensive discussion about the various mechanisms that are in place to ensure that those plans are created, followed and implemented. By the way, I thank you for coming back with the detail we required on notice about the agencies and their participation. After the allegations on the 7.30 program went to air, did the department go back and check whether or not the Department of Education was meeting its commitments under the plan that it filed?

Mr COUTTS-TROTTER: I do not know. I am happy to take that on notice.

The Hon. DANIEL MOOKHEY: Given that we learnt in the previous rounds that that committee meets monthly, I think, has this matter been put on the agenda of the committee meeting that took place or the one that is about to take place?

Mr COUTTS-TROTTER: I am happy to take that on notice, unless Mr O'Reilly—

Mr O'REILLY: I would have to take that on notice, as well. The implementation committee meets at the end of November.

The Hon. DANIEL MOOKHEY: It meets monthly, does it not? Forgive me, I have been following quite a few portfolios so I might be getting my various committees wrong. Is it a quarterly meeting or is it a monthly meeting?

Mr O'REILLY: I do not have that information, but the next meeting is 29 November.

The CHAIR: If it is November, it does not appear to be quarterly.

The Hon. DANIEL MOOKHEY: Presumably this will be a matter for discussion at this meeting—or don't you know? Do you decide the agenda?

Mr O'REILLY: Yes, in consultation with the members.

The Hon. DANIEL MOOKHEY: Is the department going to nominate this as an agenda item? Am I the first person to ask you that question?

Mr O'REILLY: Yes. The department has not written the agenda yet, and we have not discussed it with the members, yet.

The Hon. DANIEL MOOKHEY: Consider it a representation made by me.

Mr O'REILLY: Thank you.

The Hon. Dr PETER PHELPS: Feel free to ignore it if you like.

The Hon. DANIEL MOOKHEY: To be fair, I do not think you need to say that, Dr Phelps. I think there is a very small chance that—

The Hon. BRONNIE TAYLOR: We have been so good, listening to you for an hour.

The CHAIR: Not quite an hour.

The Hon. DANIEL MOOKHEY: Not quite, give me some time. The Productivity Commission has shared some concerns that the Federal Government is not going to attain its enrolment target for the National Disability Insurance Scheme by 2019-20. It says that there is a reasonable chance that it is not going to reach that participation target of 475,000 NDIS participants by 2019-20. Do you share that view?

Ms TAYLOR: No.

The Hon. DANIEL MOOKHEY: Why do you not share that view?

Ms TAYLOR: With respect to the Productivity Commission [PC]—

The CHAIR: Lots of people say that.

Ms TAYLOR: Do they?

The CHAIR: Or "but". Sorry I interrupted you.

Ms TAYLOR: That is fine. Obviously we can only speak for New South Wales. In New South Wales the anticipated population eligible to receive individualised funding under the National Disability Insurance Scheme [NDIS] is around 140,000 people. That is the original modelling from the original PC review. Within our transition arrangement we have no expectation that that full population will be within the scheme at June 2018.

The Hon. DANIEL MOOKHEY: When do you expect them all to be in the scheme?

Ms TAYLOR: We do not know.

The Hon. DANIEL MOOKHEY: Do you maintain projections?

Ms TAYLOR: The scheme actuary does, yes. It has been an interesting journey. Because it is a human system, people come and go through the system in quite a fluid way. There is a certain cohort of people who are very constant within the service system, but there are many other people who move through it in different ways—they come and go into services. We have modelled that movement. Our bilateral agreement predicted that we would have, based on our existing clients and the churn in the system, an anticipated growth of new entry to the scheme of around 115,000 people coming in during the transitional period.

The Hon. DANIEL MOOKHEY: Some 115,000 coming in during the transitional period?

Ms TAYLOR: In the transitional period.

The Hon. DANIEL MOOKHEY: When does that transitional period terminate?

Ms TAYLOR: June 2018. That started way back from when we started the job.

The Hon. DANIEL MOOKHEY: The New South Wales Government target was 140,000 by when?

Ms TAYLOR: It is not a target; it is a capacity, if you like.

The Hon. DANIEL MOOKHEY: A projection. By when?

Ms TAYLOR: Whenever they come.

The Hon. DANIEL MOOKHEY: A minute ago you were taking exception to the views of the Productivity Commission—

Ms TAYLOR: Yes, but I can explain why.

The Hon. DANIEL MOOKHEY: And you were making the point that the New South Wales Government's population was projected to be 140,000.

Ms TAYLOR: Yes. If I can explain why I think the Productivity Commission recommendation on that matter was not—

The Hon. DANIEL MOOKHEY: Before doing that, let us conclude the first dialogue we had. Given that you expect 115,000 by June 2018, when do you expect the 140,000?

Ms TAYLOR: I cannot say. In fact, neither can the Productivity Commission nor the scheme actuary. All that we can do is model what we expect to be new entrants into the scheme.

The Hon. DANIEL MOOKHEY: When does the model suggest the 140,000 figure will be reached?

Ms TAYLOR: That is as yet unknown because we actually do not have full scheme data. Once New South Wales is fully transitioned there will be sufficient data for the scheme actuary to be able to model that. At the moment we are below the 115,000 individuals and that is not a performance issue.

The Hon. DANIEL MOOKHEY: How many are we at?

Ms TAYLOR: I will just remind myself of the numbers. At the end of September, 70,000 people with disability had joined the scheme, so were eligible, and 58,000 of those had approved plans or were within the early childhood gateway. We are at about 87 per cent of the bilateral estimate. That is consistent with our experience in the Hunter trial, where the tolerance was around 80 per cent to 90 per cent of our original estimates.

The Hon. DANIEL MOOKHEY: If we are at 70,000 as of September, with an expectation that we have got to be at 115,000 by June 2018, that means you are expecting the program to go up by 33 per cent in eight months?

Ms TAYLOR: Yes. We are only 60 per cent of the way through the transition, so we have 40 per cent of the way to go with about 30 per cent of the people to come.

The Hon. DANIEL MOOKHEY: Do you project there to be a proportion of the population eligible for entry into the NDIS, but who will not have entered by June 2018?

Ms TAYLOR: Yes.

The Hon. DANIEL MOOKHEY: How many?

Ms TAYLOR: The difference between our expected 115,000 and the 140,000.

The Hon. DANIEL MOOKHEY: Twenty-five thousand?

Ms TAYLOR: We expect them to come later, as they require. That is new incidents—children born with disability who require supports, and people who experience trauma and require supports.

The Hon. DANIEL MOOKHEY: Presumably if you fall 5,000 short, or however short, of the 115,000, that would be in addition to that number?

Ms TAYLOR: That is right. The provision does not change. But even if we exceed the estimated provision of 140,000, it is an insurance model so the expectation is that the scheme will cater for whoever requires it. That is simply a population—

The Hon. DANIEL MOOKHEY: Thank you for going through that detail. Finally, can you tell us why the Productivity Commission is wrong?

Ms TAYLOR: The Productivity Commission assumed that the full population would be within the scheme at the end of each of the States and Territories' transition agreements. The New South Wales agreement does not model a full population participation in the scheme by the end of our transition period.

The Hon. DANIEL MOOKHEY: The Productivity Commission made multiple references to what one might call "processing" issues that are slowing the entry of people into the scheme—that is, plans cannot be created in time and, as a result, people have shifted to phone-based planning in addition to face-to-face planning. Its argument appears to be that the scheme could go faster if those processing issues were alleviated. Do you share that view?

Ms TAYLOR: Yes.

The Hon. DANIEL MOOKHEY: Can you explain to the Committee the processing issues that are causing entry to be slow, specifically to New South Wales?

Ms TAYLOR: Entry is not slow to New South Wales. There is a lot of effort on the part of the National Disability Insurance Agency [NDIA], which administers the scheme, to ensure that people who are within our existing programs are able to move into the scheme. The system is quite clunky. I think the board and the new chief executive officer have been very clear that there needs to be change on the part of that agency to improve processes. Since the beginning we have objected strongly to the utilisation of things like phone planning. We are all aware of the very public failure of the information and communications technology the NDIA used at the beginning.

The Hon. DANIEL MOOKHEY: Do you object to the use of phone planning?

Ms TAYLOR: If it is not the individual's preference and they would prefer a face-to-face plan then absolutely. This is about choice and control and the empowerment of people with disability to have a respectful engagement. If their desire is for someone to meet with them to discuss their future, then that is what should occur.

Mr COUTTS-TROTTER: Mr Mookhey asked me for some figures. If Mr Longley had been made redundant, as planned, he would have received a 38-week payment, which before tax is estimated to be \$360,674—\$360,675 if you are rounding up; and a 20-week payment, which before tax is estimated to be \$194,158.

The Hon. DANIEL MOOKHEY: I appreciate the answer and the speed of the answer.

Mr COUTTS-TROTTER: Thank you.

The CHAIR: Thank you all for appearing before the Committee again today. I remind witnesses that any questions taken on notice are to be answered within 21 days.

(Witnesses withdrew)

(Committee adjourned at 15:07)