

PORTFOLIO COMMITTEE NO. 5 - LEGAL AFFAIRS

Tuesday 2 March 2021

Examination of proposed expenditure for the portfolio area

ATTORNEY GENERAL AND PREVENTION OF DOMESTIC VIOLENCE

CORRECTED

The Committee met at 9:30.

MEMBERS

The Hon. Robert Borsak (Chair)
The Hon. Lou Amato
Ms Abigail Boyd
The Hon. Scott Farlow
The Hon. Rose Jackson
The Hon. Trevor Khan
The Hon. Mark Latham
The Hon. Shaoquett Moselmane
Mr David Shoebridge (Deputy Chair)

PRESENT

The Hon. Mark Speakman, *Attorney General, and Minister for the Prevention of Domestic Violence*

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**

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The CHAIR: Welcome to the public hearing for the inquiry into budget estimates 2020-2021 initial hearings. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginals present. I welcome Attorney General Speakman and accompanying officials to this hearing. Today the Committee will examine the proposed expenditure for the portfolios of Attorney General and the Prevention of Domestic Violence. Today's hearing is open to the public and is being broadcast live via the Parliament's website. In accordance with broadcasting 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 that they must take responsibility for what they publish about the Committee's proceedings.

The *Guidelines for the Broadcast of Proceedings* are available from the secretariat. 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 witnesses 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. I remind Attorney General Speakman and the accompanying officers that they are free to pass notes and refer directly to advisers seated at the table behind them. Any messages from advisers or members' staff seated in the public gallery should be delivered through the Committee secretariat. We expect the transcripts of this hearing to be available on the web from tomorrow morning. Finally, could everyone turn their mobile phones to silent for the duration of the hearing.

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MICHAEL COUTTS-TROTTER, Secretary, Department of Communities and Justice, on former oath

CATHERINE D'ELIA, Deputy Secretary, Courts, Tribunals and Service Delivery, Department of Communities and Justice, sworn and examined

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

SIMONE WALKER, Deputy Secretary, Strategy Policy and Commissioning, Department of Communities and Justice, on former oath

BRENDAN THOMAS, Chief Executive Officer, Legal Aid NSW, sworn and examined

The CHAIR: Today's hearing will be conducted from 9.30 a.m. until 12.30 p.m. with the Minister, and from 2.00 p.m. until 5.00 p.m. with departmental witnesses, with questions from Opposition and crossbench members only. If required, an additional 15 minutes is allocated at the end of each session for Government questions. But I am advised that there are none. As there is no provision for any witness to make an opening statement before the Committee commences questioning, we will begin with questions from the Opposition.

The Hon. ROSE JACKSON: Thank you, Attorney. Minister, from which section of the budget is the \$6.9 million for the ReINVEST clinical trial funded?

Mr MARK SPEAKMAN: Which section of the budget?

The Hon. ROSE JACKSON: Yes, is that under the Prevention of Domestic Violence, does that come out of some kind of women's budget, is that an Attorney General's program—where is that money coming from?

Mr MARK SPEAKMAN: I think—

Mr COUTTS-TROTTER: I would need to double check that. It is from the department's budget as a whole.

The Hon. ROSE JACKSON: Obviously it is from the department's budget as a whole, but I just wondered if there was any more specific information as to what program goal, I suppose, or budgetary outcome that money was directed. I guess I am interested to know if it was specifically funded as a domestic violence prevention program or just a general criminal justice management project.

Mr MARK SPEAKMAN: I think you could treat it as part of our domestic violence suite of initiatives.

The Hon. ROSE JACKSON: Right, so it is intended as a domestic violence management program.

Mr MARK SPEAKMAN: Yes, but I should perhaps qualify that. The majority of participants in the program are domestic violence offenders, but it is not solely for domestic violence offenders. It is a program whose participants cover other violent offenders, the majority of whom are domestic violence offenders.

The Hon. ROSE JACKSON: That is correct, Minister. That is, in a way, why I am asking because, as you are probably aware, the program is not designed specifically as a domestic violence prevention program and does not have input from specialists and advocates in that field in its program design. So I am interested to know why a program that is not a specialist domestic violence program is receiving \$7 million of incredibly contested domestic violence funding.

Mr MARK SPEAKMAN: Domestic violence in New South Wales and Australia is an intractable problem. We have tried and continue to try many approaches to tackling this scourge. We know that a very high proportion of women, in particular—and also men, but women in particular—report that they have been victims of physical violence at the hands of a former or current intimate partner. We know that domestic violence and abuse, of course, can go beyond physical violence and that is why we are looking at coercive control at the moment. But the use of a well-known antidepressant has had promising indications in the past in controlling impulsive behaviour by violent offenders—

The Hon. ROSE JACKSON: Is that what you think domestic violence is?

Mr MARK SPEAKMAN: No, no—

The Hon. TREVOR KHAN: Just let him finish.

The Hon. ROSE JACKSON: Just a short fuse, men just having anger management issues—is that what you think domestic violence is?

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Mr MARK SPEAKMAN: Well, I am answering your first question. You can ask me that when I finish the answer to that question. What is clear is that use of this antidepressant has had initial positive preliminary results with violent offenders generally. With this particular program, it is a randomised trial where half the participants are taking a placebo drug and half are taking the actual antidepressant. It is a blind trial so until it is unblinded we will not be able to compare those two groups—the control group and the group taking the drug. But the preliminary results show that using this drug has reduced reported violent offending among the entire cohort by about one-third, so it has promising initial results. You make the point—I think you said it has not had input from domestic violence specialists. I think that is true in the sense that it has not had input from, say, frontline domestic violence workers who provide counselling or casework, but it certainly has had a plethora of peer reviews. The National Health and Medical Research Council has approved it and it has gone through about four peer reviews at the University of New South Wales. So it had a thorough investigation and analysis from medical experts before this trial was undertaken.

The Hon. ROSE JACKSON: Are you aware of reports from those frontline domestic violence workers that violent men are using their participation in this trial as a way to mitigate sentences and as a way to overcome child custody arrangements, which is putting their partners, former partners and children at risk? Are you aware of those reports?

Mr MARK SPEAKMAN: I have seen media reports, particularly I think there is an ABC journalist in the Illawarra who has reported some anecdotes about that. I am advised that the Kirby Institute, which runs this program, has contacted Dr Karen Williams, who has declined to provide further information about her patients. That is not to criticise her because there probably are patient-doctor confidentiality issues, but none of that has trickled to me, none of that has trickled to the Kirby Institute and, in fact, what the preliminary results show is a significant reduction in domestic violence offending, comparing the entire cohort undertaking this trial on the one hand with the general population.

The Hon. ROSE JACKSON: In a way I would question whether that is in fact the case, considering that the number of participants in the trial, I understand, is now as low as 100 or 120 and, in fact, as you say, only 50 per cent of those people are receiving the treatment; so we are talking about an extremely small number of actual participants in this trial. Do you think that that is a worthwhile expenditure of \$7 million of the Government's domestic violence budget when I could list here for you dozens of incredibly worthwhile projects that are scrounging around for funding from this Government?

Mr MARK SPEAKMAN: I think it is a very worthwhile investment. As I said before, we have an intractable problem with domestic and family violence in Australia and in New South Wales. The initial results from this are very promising. It builds on well-recognised knowledge in the medical field that this antidepressant can reduce impulsive behaviour. You raised the question of a small sample size. This will be a robust statistical exercise. Neither you nor I are statisticians. I am not qualified to opine about what is a minimum sample size for a robust statistical result, but that is what the Kirby Institute will do, and I think there will be input from the Bureau of Crime Statistics and Research [BOCSAR] as well in relation to that.

The Hon. ROSE JACKSON: I agree that we are not statisticians but we are political decision-makers. We have projects like the Walama Court for domestic violence where 1,300 women and children are unable to seek assistance; the Miranda Project in Penrith; and Staying Home Leaving Violence which is not even available statewide. I could go on, but you are aware of the fact that I could list a number of projects that are either underfunded or unfunded or have their funding run out in June and yet \$7 million is being given to a project that is providing an antidepressant to 100 domestic violence offenders. Do you think that is a good allocation of the anti-domestic violence budget?

Mr MARK SPEAKMAN: It is more than 100 people popping a pill; it is about—

The Hon. ROSE JACKSON: Probably only 60 actually, because if there are 120 participants it is half of them.

Mr MARK SPEAKMAN: If you are going to ask me a question please let me answer the question.

The Hon. TREVOR KHAN: Point of order: The point of order is the member is getting overly excited; she is intervening before the Attorney has any chance of answering and I ask you to restrain her.

The CHAIR: I do not intend to restrain her but I uphold the point of order.

The Hon. ROSE JACKSON: Apologies, Attorney, please continue.

Mr MARK SPEAKMAN: Thanks for that question. This is a \$7 million project over a number of years, a longitudinal study, out of a domestic violence budget of around \$530 million. So it represents a little over 1 per cent of our total investment in domestic violence prevention, intervention and general response. On top of that

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\$530 million, of course, is the hundreds of millions of dollars that are not specifically earmarked as domestic violence responses in hospitals, in education and in the police force. So it is a tiny proportion of our overall investment in fighting the scourge of domestic and family violence. It is a worthwhile investment because it has had promising initial preliminary results. The sample size is not as small as 60. One sample size will be those who complete the program over 12 months, but there are many hundreds of others whom I understand can be analysed where they have not completed the program for 12 months. Inferences, interpolations and extrapolations that statisticians can make that I cannot will, I understand, be made.

The Hon. ROSE JACKSON: Does it concern you that the only voices or the consultation that is occurring as part of the trial is with perpetrators and that there is no structure built into the trial that includes a voice for victims and survivors? Does that concern you?

Mr MARK SPEAKMAN: As I said before, the ethics and structure of this trial have been examined by a number of expert bodies; that includes the Kirby Institute, who have psychiatrists there and neurologists, and it includes the University of New South Wales' own ethics committee. Because part of the cohort is Indigenous, there is an Indigenous ethics committee that has looked at this. The National Health and Medical Research Council, which has previously punted this project, has looked at the ethics of this as well. So questions of ethics and safety have been well and truly examined leading to this trial.

The Hon. ROSE JACKSON: That may have been the case three years ago when the trial was developed and approved, but we have reports right now in our State that perpetrators are using participation in this trial to gain access to their partners, their former partners and their children and that is putting those people at risk. As the Minister, you have to take responsibility for that; you cannot punt it off to the University of New South Wales. Does it concern you, the reports of what is happening right now with participants in this trial?

Mr MARK SPEAKMAN: To answer that question I will make a number of points. The first is, no evidence has been provided to me to the effect that you describe, that participants are somehow using their participation in the trial to extract advantages. This trial does not pretend to be the kind of be all and end all and the magic pill because, as you have implied in one of your earlier questions, impulsive behaviour is not the only or the primary cause of domestic and family violence, but if it can be added to a suite of harm reduction measures then it should be investigated. It does not purport to arrive at a solution that eliminates domestic and family violence. This is a trial to see whether the use of this antidepressant will reduce domestic and family violence.

It follows from that that if it is a reduction and not elimination there will be participants in the trial who continue to engage in domestic and family violence, but that does not mean that the trial is adding to the danger of victim-survivors. I have not seen any evidence that it adds to that. You have identified gaps in services around New South Wales, and there are those gaps, but I cannot see anything in this trial that impedes the access of victim-survivors to whatever services and support are available at the moment.

The Hon. ROSE JACKSON: Could that not be because as part of the design of the trial the voices of victims and survivors are not included in the conversation? You say you are not hearing those reports, but as part of the very design of this trial no-one is asking the women if they are experiencing increasing violence or if they are experiencing increasing controlling behaviour. It is just not included.

Mr MARK SPEAKMAN: I do not think that is correct. It is true that the design of the trial did not build that in, and we see that as something that we should address, and BOCSAR is working with the Kirby Institute to formalise the views and feedback of partners and participants in the trial, but it is also true to say, talking to psychiatrists who are delivering the trial, that many partners are deeply engaged with the trial. They had 10 sessions with their male partner and they provide feedback along the way, but it is not structured and we are working with BOCSAR to try to develop a way so that that critical perspective of women and partners is captured as part of the evaluation.

The Hon. ROSE JACKSON: That is good to hear. I think you would understand, Minister and Mr Coutts-Trotter, that the participation of women in a consultation with the perpetrator in the room may not be the best way to capture data about what is really happening because, as you accepted, Minister, there are elements of control. There are elements of fear and silencing that run right through the domestic violence crisis that we are facing in this State and asking a woman in front of a perpetrator, "How are you feeling?" is not necessarily going to get the type of honest answer that we might need to form a good, genuine opinion about whether this is really working.

Mr MARK SPEAKMAN: Yes, there is always an element of risk about what a victim-survivor says in front of a perpetrator. Also, you cannot take self-reporting by a perpetrator as the gospel.

The Hon. ROSE JACKSON: Agreed.

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Mr MARK SPEAKMAN: We also know that domestic and family violence is notoriously under-reported and therefore criminal stats about offending and reoffending will under-report domestic and family violence. But when you are initially seeing reductions in domestic and family violence reoffending criminal stats of about a third, comparing the cohort that is in the program with the cohort that is not, that is such an enormous difference that I think it does point to the very real prospect that this program is having very positive results. A difference of that size cannot be ignored.

The Hon. ROSE JACKSON: Minister, I appreciate you have said that, other than media reports, you have not heard evidence that this trial is putting women at risk in the way that I have suggested. If that evidence were to be presented to you with other than my questions here today and perhaps some reporting in the media—and you were provided with that evidence—would you suspend this trial? Would you consider pressing pause here? Because it is a pretty serious suggestion that has been made that the Government is spending \$7 million on an anti-domestic violence program that is in fact putting women and children at risk.

Mr MARK SPEAKMAN: I have heard contention; I have not seen evidence. My approach as a lawyer is to look at evidence. If there is evidence of the kind that you suggest I am certainly happy to look at that and then I will get advice and weigh it up.

The Hon. ROSE JACKSON: I think, as I have suggested and as you have acknowledged, there can be some difficulty for women in coming forward and talking about their experiences of domestic violence because of some of the fear and control that perpetrators use in those intimate relationships. I think your suggestion that hard evidence, as it were, would need to be provided perhaps does not reflect the reality of what it is like for a woman who might want to report her experiences.

Mr MARK SPEAKMAN: I do not doubt that many victim-survivors struggle—we know that; it is notorious—to come forward to report to police or support services because they fear for their own safety or they do not know where to start, but I have not seen any evidence that any of that undermines the potential value that this program can have. Might I also make this point: If it is correct that impulsive behaviour has nothing to do with it and it is all deliberate action, then this is a trial that will rule that out. I would have thought many people who understandably say that domestic violence is about control and deliberate behaviour would welcome this trial as a way to prove that point if the trial shows there is no robust statistical difference in outcomes.

The Hon. ROSE JACKSON: My understanding is that the trial finishes in June this year. What assurances can you give the number of people who are working in the sector who have serious concerns about this trial that there will be a proper, robust, independent, transparent and public analysis of what has gone on in order to inform government decision-making going forward?

Mr MARK SPEAKMAN: I cannot say when it will end. It will not necessarily end in June, but the whole idea of this trial is that it is a robust, statistical trial. The Kirby Institute is one of Australia's leading medical research institutes. The data will be analysed by BOCSAR, which has a stellar reputation for excellence and expertise. It will be transparent, warts and all, because I as a Minister want to know whether this works. And if it does not work, I want to know that.

Mr COUTTS-TROTTER: And it will be peer-reviewed so it will be subjected to the independent review of other academics and specialists.

The Hon. ROSE JACKSON: In regard to funding decisions going forward, as I said, one of the main concerns that people have is that many of the organisations that I mentioned earlier—frontline organisations dealing with victims who are experiencing homelessness and severe distress—cannot get a pittance of funding for their programs going forward. What assurances can you give those kinds of organisations and victim-survivors who are seeking support from those organisations that they are not going to be starved of funding so that these kinds of big, multimillion-dollar projects to support perpetrators are going to be the priority of the Government going forward?

Mr MARK SPEAKMAN: Well, you say "support perpetrators", but if it reduces offending by perpetrators, it supports victim-survivors as well. It is only a little over 1 per cent of our total expenditure in this area and once we have the results of the trial, further decisions will be dependent upon what the trial shows and what, if any, difference it makes. But the preliminary results—not having unblinded the trial—showing the participants as a whole compared with nonparticipants are promising.

Ms ABIGAIL BOYD: I want to pick up on this reinvest program issue because, as you say, you are not a statistician. Like me, you are a lawyer. I do have a psychology degree but that is not sufficient either. But I do have a research scientist in my team with a very firm grip on statistics and that has helped me to get my head around this and to be quite alarmed by what I have read about the details. So although you are not a statistician, I would expect that before funding decisions are made there are people within your department with that expertise

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who could look at this and particularly the early results before the funding was given and really ask those questions. When you say that this has had a significant decrease in impulsivity, we are talking about people who have self-reported who we do not even know took the tablets. What gives you such confidence in the robustness of these results?

Mr MARK SPEAKMAN: I do not think that is correct. I think those initial results are based on crime stats of reoffending, not on self-reporting, and that is why this trial is so important. Because we are not relying on qualitative evaluations by victim-survivors or perpetrators, as important as they are, but on the actual reoffending data. I will invite Mr Coutts-Trotter to supplement.

Mr COUTTS-TROTTER: I really do not have much to add although we have been given updated data through the Kirby Institute that we could take on notice and see if we could provide that to the Committee.

Ms ABIGAIL BOYD: I think that would help because if you can dispel the concerns that would be obviously fantastic. But at the moment we are comparing known offenders, so these are people who have been already found guilty of a domestic violence offence who have been put on this trial of a low-grade sertraline. And then in the face of that, if you just look at that from the victim-survivor's perspective, they have gone to the trouble of going through the court process. The accused person has been found guilty and now that person is not in prison; they are on a trial or they are back in the community. When we look at the possibility of that person being found guilty again, do you not also have to take into account the likelihood of that victim-survivor going through that process again?

Mr COUTTS-TROTTER: Yes, but, as I understand it, it is a randomised control trial. So a group of offenders who are similar are randomised into the trial and then, within the trial, are randomised onto the drug or onto a placebo, and nobody involved in delivering that, including people close to the perpetrators, knows who is on the placebo and who is on the drug. So it is of extremely high quality. In fairness it would be good to allow the ReINVEST team to respond to some of the issues of concern that you have raised on the record because I think they would welcome the chance to address in some detail the concerns that you have raised on behalf of both your own office and in response to submissions made to you. I know that they would welcome that opportunity.

Ms ABIGAIL BOYD: Given the great potential risk, given that sertraline has been shown in many, many studies to actually increase the impulsivity and violence of some perpetrators and given the reports that we have heard, whether they have come straight to you or not, do you not think you have a responsibility to step in and take a really good look at this trial before a continues?

Mr COUTTS-TROTTER: Taking that one point, the research associated with sertraline, one of the psychiatrists involved in the trial is arguably the nation's leading expert on antidepressant drugs, and he and other senior psychiatrists associated with the trial, I know, would take a different view on the question of the evidence behind sertraline. I have no expertise in this area at all but I know that people who do would welcome the opportunity to respond in some detail.

Ms ABIGAIL BOYD: Are you aware that the producers of Zoloft—of sertraline—put this is a side effect. They actually say that you cannot use, or you should not use, this type of antidepressant with a population who are already showing aggression?

Mr COUTTS-TROTTER: The ethics committees that endorsed this trial, which considered that and other evidence bases, are National Health and Medical Research Council, the University of New South Wales Human Research Ethics Committee, the Aboriginal Health and Medical Research Council Ethics Committee, Corrective Services Ethics Committee, New South Wales Justice Health and Forensic Mental Health Network Ethics Committee and the New South Wales shared scientific assessments scheme. I simply report that to suggest that this is something that has had absolutely close consideration for the very concerns that you raise. The desire here is to avoid harm and to ask the question: Is there a response available that might reduce the incidence of violence and domestic violence?

Ms ABIGAIL BOYD: That would be fantastic.

Mr COUTTS-TROTTER: That would be fantastic.

Ms ABIGAIL BOYD: It would. I put it to you that the evidence is not there, but we can argue about that another time. Given that—

The Hon. TREVOR KHAN: After the trial is finished you might be able to do that.

Ms ABIGAIL BOYD: Excuse me. Given that everybody who has been involved in the trial so far does not have the same understanding that you do when it comes to the realities of domestic violence and the risks that

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it could pose to victim survivors, do you not have a responsibility to step in and check that these people actually safe?

Mr COUTTS-TROTTER: I think that there is an assumption there about the expertise of large groups of people associated with the trial at different points, saying that they lack an insight into some of the risks to victim survivors. I am not sure that that is a fair assumption at all. We do have close discussions now with the investigators and with the Kirby Institute. It is being led by BOCSAR which, as the Attorney General has indicated, has a great deal of expertise and a great deal of expertise in trying to understand how you get, in a research sense and in an evaluation sense, to the impact of interventions to try to prevent or mitigate domestic violence. There are discussions about safety planning for women associated with the trial. So I do think that expert people are trying to, fairly and in an open-minded way, consider all of the concerns about the trial but, to date, the evidence suggests that it might offer a really significant additional tool to help manage—

Ms ABIGAIL BOYD: And we can argue about the robustness of that evidence. I am struggling to understand how you can read a report about a child being beaten by one of the participants in this trial and not be at least worried about what happens if you are wrong. If this comes back and you do your analysis and it turns out that this trial was flawed, and people have been hurt in the process, do you not have a responsibility to step in before that happens?

Mr MARK SPEAKMAN: It would actually be delinquent of me to, as things stand, stop a trial, the preliminary results of which show a significant decrease in domestic violence reoffending. It does not purport to eliminate domestic violence offending. If I were looking for perfection, we would not trial anything. We would make the perfect the enemy of the good. In trying to avoid risk altogether, we would end up not looking at a trial that potentially can save lives and reduce domestic violence offending by a significant proportion.

Ms ABIGAIL BOYD: When you say "a significant decrease", are you talking about the initial trial results—that sample of 34 people where 14 of them dropped out before the end?

Mr MARK SPEAKMAN: I am talking about the offending data that Kirby relies upon, comparing the cohort that are undertaking the trial with a cohort that are not. As I mentioned before, we have not unblinded the trial, or Kirby has not unblinded the trial, so we cannot compare the placebo group with the drug-taking group, which is the ultimate aim of the trial, to see what the difference is there.

Ms ABIGAIL BOYD: I think I have my answer and I really hope that you are right and that all of this is wrong because I would hate to think of the consequences otherwise. Can we turn to something a bit different—the sexual consent law reform? As you know the Law Reform Commission report was published in September 2020 with those draft recommendations. What is the status now in terms of consultation?

Mr MARK SPEAKMAN: I do not know that there will be a lot more consultation. The Law Reform Commission consulted extensively to arrive at its recommendations. It is now for the department and me to finally analyse those recommendations, take them to Cabinet and arrive at a position. We have not arrived at a position. I have not been to Cabinet. But I anticipate that, whatever the outcome, that approach to Cabinet will happen within months and if there is legislation that will be most likely this year.

The Hon. MARK LATHAM: Attorney General, as first law officer in New South Wales and notional head of the criminal justice system, do you have rules in place about the police or prosecutors at DPP being involved in the collection of information about impropriety linked to their domestic partners in life?

Mr MARK SPEAKMAN: I would have to take that on notice in terms the precise details, but I imagine that there are codes of conduct within the DPP about that sort of thing. Was your question about DPP or police?

The Hon. MARK LATHAM: And police. In general, should anyone collecting information of an allegation be involved in a process where the allegations are being made against their domestic partner in life, or would you normally just recuse yourself from that process and avoid the conflict of interest, which is fairly obvious?

Mr MARK SPEAKMAN: I would have thought that if there is an investigation into domestic abuse of someone and the alleged—

The Hon. MARK LATHAM: No, not domestic abuse. It is your domestic partner—your boyfriend, your spouse, your de facto. Should a DPP officer or a police officer be involved in the collection of information concerning allegations against their domestic partner?

Mr MARK SPEAKMAN: Prima facie, no. I do not know what rules the police would have but, prima facie, there would be a conflict of interest. The bar rules and the solicitor rules would probably require a legal

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practitioner not to be engaged in that. So, prima facie, they should not be involved but I would have to look at the precise case that I suspect you are going to put to me.

The Hon. MARK LATHAM: You are pointing to a conflict of interest for the obvious reason that the natural instinct of a partner in life is to protect their partner and potentially tip them off about the nature of the allegations to try to help them beat any allegation.

Mr MARK SPEAKMAN: There is the potential there, yes.

The Hon. MARK LATHAM: The potential is there for that. Would you be equally concerned about a practice inside the Government where Ministers were involved in the collection of information concerning allegations of impropriety against their domestic partners in life—spouses, boyfriends or de factos?

Mr MARK SPEAKMAN: That is difficult to answer in the abstract. It is different where it is the police, who have a responsibility to prosecute if appropriate, or the DPP to run prosecutions. But it is pretty difficult to answer that question in the abstract.

The Hon. MARK LATHAM: Would you regard it as a conflict of interest for a Minister involved in the collection of information concerning allegations against their partner to then pass that on to any form of legal authority—for the same reason that the temptation is there to tip their partner off about the allegation?

Mr MARK SPEAKMAN: There might be the potential but it would depend upon what the information was, why the information came by that Minister, to whom they were forwarding it and for what purpose. I think it is hard to answer that in the abstract.

The Hon. MARK LATHAM: To give you the specific example, do you regard it as a conflict of interest for the Premier to have collected information concerning allegations of very serious impropriety against partner-in-life Daryl Maguire in July 2018?

Mr MARK SPEAKMAN: I cannot answer that in the abstract.

The Hon. MARK LATHAM: I am not asking you in the abstract. You said before you could not answer in the abstract and now I am giving you a specific example.

Mr MARK SPEAKMAN: You are, because I do not know what information she collected, for what purpose and to whom she passed it on. It is not really a legal question as much as you asking me for political commentary, which I do not think is appropriate for this hearing.

The Hon. MARK LATHAM: I think you are a lawyer and a politician and all of your comments are seen through that prism. Was your chief of staff involved in the meeting in July 2018 when Sarah Cruickshank, the chief of staff of the Premier, asked ministerial staff to forward information to the Premier's office concerning allegations of possible corruption by Daryl Maguire subsequent to the Canterbury council investigation?

Mr MARK SPEAKMAN: I am unaware of that, but I will have to take it on notice to see if that was the case.

The Hon. MARK LATHAM: But you would expect your chief of staff to be at the regular chiefs of staff meetings convened by the Premier.

Mr MARK SPEAKMAN: As I said, I am unaware of that but I will take that on notice to answer your question.

The Hon. MARK LATHAM: In the specifics, should the Premier have been involved in the collection of information about two matters—Charlie Cull from Niall Blair's office and Daniel Hill from the office of then planning Minister Rob Stokes—concerning allegations of possible corruption by Daryl Maguire? Should the Premier then have been involved in the process of passing that on to the ICAC?

Mr MARK SPEAKMAN: I will not provide a commentary on facts with which I am not familiar. You should pose those questions to the Premier.

The Hon. MARK LATHAM: I am posing them to you as the Attorney General. Did you not see the article in *The Australian* newspaper on 19 February that Gladys Berejiklian was told of boyfriend Daryl Maguire's conduct? It outlines how her office was involved in the collection of that material to pass on to the ICAC.

Mr MARK SPEAKMAN: That is a newspaper report. I do not know whether the facts in the report are correct or not. I will not comment on a hypothetical.

The Hon. MARK LATHAM: Would you be concerned if the facts were correct? Would you be very concerned about the obvious conflict of interest?

CORRECTED

Mr MARK SPEAKMAN: I will not comment on a hypothetical. You should put those questions to the Premier.

The Hon. MARK LATHAM: But you are in charge of the criminal justice system and criminal charges could be laid against Mr Maguire from the Cull and Hill matters. Should Daryl Maguire's partner in life have been involved in the collection of the information that was passed on to the ICAC, due to the obvious conflict of interest—you said it applies to the police and the DPP—that as a partner, the temptation is there to tip your partner off and help them beat the allegations?

Mr MARK SPEAKMAN: I understand the point you make but I do not know the facts. The Premier would know the facts of whatever she has or has not done and you are best placed to put those questions directly to her.

The Hon. MARK LATHAM: Will you investigate the facts? Are you concerned about this conflict of interest—

Mr MARK SPEAKMAN: That is not my role.

The Hon. MARK LATHAM: Can I please finish my question?

Mr MARK SPEAKMAN: Sorry, go ahead.

The Hon. MARK LATHAM: Your role obviously involves the criminal justice system. There were serious allegations collected by the Premier and her office from Charlie Cull and Daniel Hill that could potentially lead to criminal charges. We do not know the ICAC findings. Are you concerned that the Premier was involved at that level in that way?

Mr MARK SPEAKMAN: It is not my role as Attorney General to investigate potential criminal charges. Here in New South Wales, we separate politicians from the criminal justice system.

Mr DAVID SHOEBRIDGE: Except for the police Minister. He gets involved in the criminal justice system.

Mr MARK SPEAKMAN: If you have a concern about potential criminality, you should take up those issues with the police or report them to the ICAC. I have neither the resources nor more importantly the role to bring prosecutions or to investigate criminality. There is a separation of powers here.

The Hon. MARK LATHAM: I have reported it to the ICAC but having alerted you to the circumstances, which are very clear and public knowledge, you are saying you are not interested in this potential conflict of interest given the allegations of criminality and corrupt conduct against Daryl Maguire.

Mr DAVID SHOEBRIDGE: I will take a point of order if the Government will not: This is the Attorney General. The Attorney General is not the police and has no role in conducting investigations. These questions may all be very valid for the Premier but repeatedly asking the Attorney to become a police officer will not be very helpful.

The CHAIR: That is not really a point of order. That is your point, your position.

Mr DAVID SHOEBRIDGE: It is not in his ministerial portfolios and nor do we want him to become a Keystone Cop.

The CHAIR: Let me rule on that: It is up to the Minister, the Attorney, to decide what he will and will not answer. If the questioning line continues then it is up to him to do that.

The Hon. MARK LATHAM: Thanks, Chair. I am simply making the point the New South Wales criminal justice system should be completely clear of any conflict of interest, should it not?

Mr MARK SPEAKMAN: There would be a conflict of interest if I as Attorney General and in the same Cabinet as the Premier started personally investigating the Premier. No doubt I will not put this as eloquently as Mr Shoebridge was able to but I am not a policeman, I am not the DPP and I am not the Commissioner of Police. Those are matters for independent investigation by operational authorities that are independent of politicians. The Director of Public Prosecutions Act 1986 in New South Wales has the DPP making prosecution decisions independently of direction by me or any other politician. You should take up all of your concerns with the ICAC, which apparently you have, or with the police.

The Hon. MARK LATHAM: As a Minister, would you ever place yourself in a situation where you were collecting information about allegations of impropriety against your partner?

CORRECTED

Mr MARK SPEAKMAN: If there were matters of criminality that had come to my attention then it may well be appropriate to refer those to investigating and prosecuting authorities, but it is not appropriate for me as a politician to be running potential prosecutions or evidence-gathering exercises. That is for the police, ICAC and other integrity bodies.

The Hon. MARK LATHAM: But as an Attorney General, would you recuse yourself from the evidence collection process?

Mr MARK SPEAKMAN: I am not part of any evidence collection process at the moment, so there is nothing to recuse myself from.

The Hon. MARK LATHAM: No, I am putting it to you as a standard in government given your very important responsibilities as Attorney General.

The Hon. SCOTT FARLOW: Point of order: The Hon. Mark Latham's questions to the Attorney General are hypothetical. They do not relate to anything that is a matter under budget estimates and I ask that the member be called to order.

The Hon. MARK LATHAM: I am assuming the Premier's office spent money on all those meetings and the collection of the material about Daryl Maguire, which the Premier was then party to passing on to the ICAC. It was not without some budget cost.

Mr DAVID SHOEBRIDGE: It is a good question for the Premier, perhaps.

The CHAIR: I am sure the Premier will be questioned in due course. The Opposition.

The Hon. ROSE JACKSON: Minister, you must be pretty concerned by reports about what is happening in our Federal Parliament in relation to sexual assault in that building and the treatment of women who work in Federal politics. Is that something that is of concern to you?

Mr MARK SPEAKMAN: Absolutely.

The Hon. ROSE JACKSON: Have you spoken with your Federal counterpart about the alleged rape that occurred in New South Wales in 1988?

Mr MARK SPEAKMAN: No, I have not.

The Hon. ROSE JACKSON: Have you spoken with anyone in the Federal Government in relation to that allegation?

Mr MARK SPEAKMAN: No, I have not.

The Hon. ROSE JACKSON: One of the things that has come up as a result of the increased focus on the treatment of women, in politics particularly but in society in general, is the question of consent education. The Premier has said publicly on a couple of occasions that early education is critical and that she thinks it is pretty important that it occurs in our schools in the earliest years. Is that something that you would agree with?

Mr MARK SPEAKMAN: I would, yes.

The Hon. ROSE JACKSON: Why is it, then, that no primary prevention programs are being properly funded by the New South Wales Government in relation to sexual consent education?

Mr MARK SPEAKMAN: I am not sure that is correct, but in any event our domestic violence strategy and our sexual assault strategy are up for renewal this year. You do make an important point about the importance of education. We can have every criminal law statute on the books and we can have a policeman at every corner, but we cannot police a way out of these issues. At the end of the day, it has to be cultural change and education. So if your point is this is the absolutely critical starting point, then I one hundred per cent agree with you.

The Hon. ROSE JACKSON: Would you then agree that the fact that the LOVE BiTES program, which is one of this most pre-eminent school-based sexual consent and healthy relationships programs, is not funded by the New South Wales Government and, in fact, has not been since 2006? Is that the type of thing that might go to your point?

Mr MARK SPEAKMAN: Yes, my understanding is that LOVE BiTES is an excellent program. My understanding is that we do not directly fund it but we may fund non-government organisations by block grants that do provide that in schools.

The Hon. ROSE JACKSON: Is that adequate at this point?

Mr MARK SPEAKMAN: Sorry, can I finish the answer?

CORRECTED

Mr COUTTS-TROTTER: In the primary curriculum, I think around 6 to 10 per cent of the curriculum is PDHPE and there is 300 hours in senior secondary. LOVE BiTES is a well-regarded program. The funding arrangements to schools give schools an increasing control over an element of the budget that they can use to deliver the curriculum, and many schools—government and non-government—choose to engage LOVE BiTES to do just that. From memory, I think LOVE BiTES would say they worked with around 10,000 children and young people in New South Wales last year.

The Hon. ROSE JACKSON: I mean I—

Mr COUTTS-TROTTER: It is a significant part of primary prevention.

The Hon. ROSE JACKSON: Apologies, Mr Coutts-Trotter. I accept that that is what has happened to date. What has also happened to date is young women like Chanel Contos have done an online petition on Instagram which has been flooded—inundated—with stories about how what is happening to date is not adequate, is not working. I know that is what you are doing right now, but what is also happening right now is that young people in this State are crying out for better and more adequately funded sexual consent education in our schools. So are you going to respond to what these young people are crying out for, or are you just going to tell them, "We block fund NGOs"?

Mr MARK SPEAKMAN: No, as I said, our prevention of domestic violence strategy and our sexual assault strategy are up for renewal this year. My own philosophy is that, central to that, is primary prevention, particularly in schools. And as I have said before, as important as the criminal justice system is, at the end of the day, cultural change is more important.

The Hon. ROSE JACKSON: So the direct engagement and funding of organisations like LOVE BiTES and others might may well be on the table as part of that review. Is that what you are saying?

Mr MARK SPEAKMAN: Absolutely.

The Hon. ROSE JACKSON: Was it a mistake to abolish the Minister for the prevention of sexual assault? After all that we've seen, was that a mistake? Would you admit that now?

Mr MARK SPEAKMAN: In a sense, the position has not been abolished. Although it is not part of my title, I have lead responsibility for sexual assault strategy in New South Wales.

The Hon. ROSE JACKSON: That is why I am asking you. I mean, I know that you have responsibility for it. That is the basis of this question.

Mr MARK SPEAKMAN: That does not reflect some downgrading of the importance of the issue by the Government. It reflects, rather, the Premier's preference for shorter titles rather than titles that sound like you are the Minister for everything and the kitchen sink. So it is not a downgrading of the importance. The strategy is still there. I am still there as the lead Minister on the strategy. Obviously it is cross-portfolio with Education, Health and Police.

The Hon. ROSE JACKSON: I appreciate the title—not your title, because of course you were not the Minister for the prevention of sexual assault, Minister Goward was—is now shorter. But surely you would accept that it does send a message to the community that there was once—in fact, quite recently—a Minister explicitly for the prevention of sexual assault and now that position does not exist. Surely you accept that, "Oh well, it's a little bit easier on a business card" is not a particularly adequate response considering everything we have seen recently about this crisis.

Mr MARK SPEAKMAN: I think we are probably debating form over substance. The substance is that I remain the Minister with lead responsibility for the prevention of sexual assault. Prevention of sexual assault is obviously a top priority of this Government, not only for me but for the Premier and other Ministers who have a responsibility in this area like Police, Education and Health.

The Hon. ROSE JACKSON: If it is a priority, why have we not seen a Government response to the Law Reform Commission investigation into sexual consent laws?

Mr MARK SPEAKMAN: You will see one. It is important to have a considered response. I took this issue seriously enough to have the Law Reform Commission look at it very carefully. They, I think, took a couple of years to come up with their recommendations, so this is not something you do on the back of the envelope. It is not something I am going to do on the back of an envelope. I will look at these and take these recommendations very seriously.

The Hon. ROSE JACKSON: No urgency from you at all?

Mr MARK SPEAKMAN: No, sorry—

CORRECTED

The Hon. TREVOR KHAN: Point of order: The member should allow the Attorney to complete his answer before interjecting.

Mr DAVID SHOEBRIDGE: I thought he had.

Mr MARK SPEAKMAN: Yes. I think I have answered that question, in effect, by an answer to a previous question. I am giving you what the timetable is. It will go to Cabinet within months and, depending on what the response is—if it is a legislative response—I expect that will happen this year.

The Hon. ROSE JACKSON: Excuse my cynicism, but later in this hearing we are going to get to a number of topics that you have previously committed to address within months. There is a list as long as my arm, Minister, of things that we have been told previously you are going to get to within months. This is now just another one on that list, and despite everything we have seen and heard in the public recently, there is no additional urgency in relation to addressing the identified gap in our sexual consent laws.

Mr MARK SPEAKMAN: I reject the premise of your question.

The Hon. ROSE JACKSON: You don't think that there is a gap in our sexual consent laws?

Mr MARK SPEAKMAN: No, no. I reject—

The Hon. TREVOR KHAN: Point of order: The member asked a very lengthy question with a long lead-in. The Attorney seeks to answer, and she jumps down his throat. Now I understand the theatre of budget estimates—I've been here longer than anyone else—but really it requires a modicum of control by the member to get anything worthwhile out of this hearing.

The CHAIR: Yes, I remind Ms Jackson to please give the Attorney General a chance to answer her question, and then jump down his throat.

The Hon. TREVOR KHAN: With a further question.

Mr MARK SPEAKMAN: Thanks, Ms Jackson. The premise I reject is the lack of a sense of urgency, or that we are somehow nonchalant or blasé about this whole area. This is a complex area. It is why the Law Reform Commission took two years or so to do their report. It is not something I can respond to overnight but, as I have said before, my intention is, if there is a legislative response, to do that this year.

The Hon. ROSE JACKSON: Will you take on board the criticisms of the Law Reform Commission report in relation to the failure to adopt a Tasmanian model of positive consent? Is that something that is still on the table in terms of the Government's response?

Mr MARK SPEAKMAN: I will not rule out any response, but obviously the starting point is what the Law Reform Commission has recommended.

The Hon. ROSE JACKSON: Obviously, you would be aware that Ms Saxon Mullins has described the Law Reform Commission recommendations as "really disappointing and personally insulting". Do you reflect on her views about what the Law Reform Commission has recommended?

Mr MARK SPEAKMAN: I do, because at the end of the day, in this area of the law, you have got traumatised victim survivors who have to come forward. I think the starting point for all of us has to be respect—perhaps awe in some respects—at the courage that it takes for a victim survivor of sexual assault to come forward, and for someone like Saxon Mullins to play such an important part in the public debate in this area. So that is something I will take on board. My understanding is that most victims' groups and women's groups support what the Law Reform Commission proposes. There are other stakeholders like the Public Defenders and the Bar Association who say it goes too far. I will take all those stakeholder and community views on board but, as I said, this is something I want to resolve this year.

The Hon. ROSE JACKSON: I know that we do not have a firm date yet, for example, for supplementary budget estimates hearings, but can you give us some guarantee that both the issue of the review of the prevention of sexual assault and domestic violence strategy and the primary prevention question—and the legislative review and fixing the loopholes in the sexual laws consent question—you are going to be able to give us some substantial updates by mid this year? I'm sorry to push you on this but, as I said, when it comes to notification of breaches of privacy, section 293 of the Criminal Procedures Act, and the Coroner's Court—there are so many issues that we have here in front of us where you said you would do something a year ago and have not done anything. I want a firmer guarantee that this is not going to end up on that list, because this is too important.

Mr MARK SPEAKMAN: My expectation is that the sexual assault consent question will be dealt with this year. Our aim is to have a domestic violence and sexual assault strategy in place this year.

CORRECTED

The Hon. SHAOQUETT MOSELMANE: Following on from the domestic violence questions, one projection from the Bar Association is a drop in the number of finalisations within three months of domestic violence criminal offences. I will quote the figures:

Domestic violence-related criminal offences finalised by the NSW Local Court within three months of the first court appearance are forecast to fall from 54 per cent to 45 per cent.

Attorney, what do you propose to do in particular about the projected delay in finalisations of domestic violence offences?

Mr MARK SPEAKMAN: Thanks for that question. Look, I have a number of points to make about that. The first is: Pending a final hearing of an ADVO application, interim orders can be made by the court or police can make provisional apprehended domestic violence orders. During that waiting period there are safety measures in place to protect complainants. There has been a bit of a blowout in time to finalisation of domestic violence applications. That is true of criminal matters in the Local Court generally. To some extent that is due to COVID and the inability to have contested final hearings at the height of the pandemic. The Local Court and the Chief Magistrate have done a magnificent job catching up, as has the District Court and the Supreme Court. That is part of the delay.

One of the issues at the moment is the availability of audiovisual links [AVLs] and safe access rooms for domestic violence complainants to give their evidence. You may recall that last year we legislated to have alternative means in criminal domestic violence cases and associated ADVO cases for a complainant to give their evidence by alternative means, including by audiovisual link or by barriers in court. We are rolling out more AVLs across the State and more safe rooms to facilitate that happening, which will reduce delay. We are also facilitating getting measures in place from 1 September or earlier to abolish direct cross-examination of complainants by self-represented accused in criminal domestic violence hearings and associated hearings. There is also the question of resourcing the Local Court with magistrates.

The Hon. SHAOQUETT MOSELMANE: Definitely.

Mr MARK SPEAKMAN: Part of the budget process will be to look at whether we should increase the number of Local Court magistrates in New South Wales. That will be part of the budget process.

The Hon. SHAOQUETT MOSELMANE: I will certainly be asking questions about that. But, Minister, in relation to the blowout and COVID-19, there is no doubt that there is an impact right across the legal system. There is immediate urgency with the Local Court. The Local Court has been screaming out for support. In particular I am now asking questions about domestic violence and its prevalence and its significance in our communities, and the Local Court deals with this. There is a 10 per cent potential drop in the ability to be able to deal with those matters. There have to be some steps taken immediately to address those concerns with the Local Court. I mean, 10 per cent is a significant load on top of what the Local Court already does.

Mr MARK SPEAKMAN: I will identify the steps that are being taken and the steps that have been taken. An important point to make too is that the Local Court remains one of the most efficient courts in the country. Its finalisation times are among the highest of any magistrate courts in the country. So notwithstanding the very high pressure that the Local Court has been under, not only for DV cases but more generally, and notwithstanding COVID, it has done very, very well.

The Hon. SHAOQUETT MOSELMANE: Thanks to them for the hard work that they have done.

Mr MARK SPEAKMAN: I do thank them for their hard work.

The Hon. SHAOQUETT MOSELMANE: But it is the third Local Court annual review in a row. The Chief Magistrate has expressed extreme concerns at the totally inadequate level of resources provided to the Local Court. When are you going to provide them with appropriate resources? This is the third time. The Chief Magistrate has spelt out the inadequacies of the funding and the shortages—

The Hon. TREVOR KHAN: You have asked the question, let him answer.

The Hon. SHAOQUETT MOSELMANE: I am continuing my question.

The Hon. TREVOR KHAN: No, you're not. You're making a diatribe.

The CHAIR: Order! Either take a point of order or don't interject.

The Hon. TREVOR KHAN: Point of order—

The CHAIR: There is no point of order.

CORRECTED

The Hon. SHAOQUETT MOSELMANE: Attorney, the Chief Magistrate has expressed significant concerns on three occasions publicly. How will you address those concerns?

Mr MARK SPEAKMAN: That will be part of the budget process, whether we increase the number of magistrates. But as I said before, the Chief Magistrate and his team have done an exceptional job in minimising any blowout from COVID-19. Those resourcing issues are part of the annual budget process. They will be part of this process. But I am grateful for the work they have done in making sure that their time to finalisation is among the fastest in the country. Notwithstanding all of these resourcing issues and all of these pressures, it remains among the fastest in the country.

The Hon. SHAOQUETT MOSELMANE: Why can't we be straight and forward with the Chief Magistrate and tell him, "We will give you the 10 magistrates that you want"? They have been asking to address that particular question for a number of years. Why can't we be straight and forward? Why can't we be truthful?

Mr MARK SPEAKMAN: I as Attorney General do not get to make those decisions. I get to be an advocate within Government for resourcing. Ultimately it is up to the Expenditure Review Committee and the Treasurer and the Premier to make those decisions. Those discussions both with the Chief Magistrate and within Government with the Treasurer and the Premier will be part of the budget process.

The Hon. SHAOQUETT MOSELMANE: You presented the arguments to the Cabinet and they rejected it in Cabinet, do you mean? Is that what you are saying—for three years?

Mr MARK SPEAKMAN: I cannot say that because whatever discussions I have within that process are Cabinet-in-confidence. But I can say that I am well aware of the Chief Magistrate's concerns. I am well aware of the high volume and increasing volume of work that the Local Court has had to undertake in recent years. Appropriate resourcing of that will be part of the budget process.

The Hon. SHAOQUETT MOSELMANE: Attorney, the Chief Magistrate said:

There has been no real response from government other than advice from the Attorney General to the effect that he understands the basis of the request and is lending it his support.

What sort of support are you providing them?

Mr MARK SPEAKMAN: I cannot give you a description of what—

The Hon. SHAOQUETT MOSELMANE: This is what the Chief Magistrate is saying.

Mr MARK SPEAKMAN: Yes, I know that is what he says and I understand those observations, but I cannot disclose Cabinet-in-confidence discussions. But I can assure you I am well aware of the pressures that the Local Court faces. I am incredibly grateful for all of the work that they do and appropriate resourcing is part of the budget process.

The Hon. SHAOQUETT MOSELMANE: In that same foreword in the 2019 annual review, the Chief Magistrate wrote:

The year ending December 2019 saw yet another rise in criminal prosecutions brought before this jurisdiction - 7,711 more matters than in 2018, raising the total volume of criminal proceedings commenced to 346,930. In the special jurisdiction, the number of domestic and personal violence applications rose by 1,922 to 41,442 matters. The combined increase of 9,633 additional matters across the two jurisdictions in the 12 months since 2018 is almost the equivalent of an annual caseload for three magistrates. Yet, there are no additional magistrates to meet the rise in caseload.

How do you address that?

Mr MARK SPEAKMAN: I am aware of that increase in caseload and I am certainly well aware of what the Chief Magistrate has said in his annual reports and what he has said to me in our conversations. But addressing that will be part of the budget process. I note in the meantime, notwithstanding all of these intense pressures that the court has faced, its times to finalisation still remain among the fastest in the country.

Mr DAVID SHOEBRIDGE: Attorney, last year the police Minister had a public wobbly about proposals to change the law in relation to drug possession in New South Wales. There was a proposal for—I think it was described as diversion and de-penalisation. That was floated last year. Is that proposal now dead in the water?

Mr MARK SPEAKMAN: I cannot comment on what is discussed in Cabinet but I can give you this context—

Mr DAVID SHOEBRIDGE: I am going on what the police Minister said in public. He had a public wobbly about it all.

CORRECTED

Mr MARK SPEAKMAN: Recommendations 11 and 12 of the special commission into ice concern decriminalisation or, alternatively, a diversion scheme for low-level drug use and possession. Recommendation 11 was to decriminalise. Recommendation 12 in the alternative was to have a police diversion scheme that would have a number of elements. One was an appropriate threshold that was not too low and a requirement for admissions, among others. In our initial response to the ice inquiry we ruled out a number of recommendations. I think there were 109 recommendations. We have ruled out accepting five of them. Those other 104 remain on the table. We have given some public commentary, saying that we do not intend to decriminalise. I guess that de facto rules out recommendation 11. All our responses to the other recommendations are still to be determined. Our response to recommendation 12 is part of that.

I might emphasise that, wherever we land on recommendation 12, it is not the central part of the ice inquiry's recommendations or what our response will be. Overwhelmingly, the recommendations are health recommendations, about appropriate health treatments, resourcing and so on. This is an important part but not a dominant part of that response. It remains on the table. We may or may not go down that particular route. There are other diversionary approaches that are alternatives or supplements to that.

In particular, the ice inquiry has made a number of recommendations about court diversion, expanding the Magistrates Early Referral Into Treatment [MERIT] scheme, expanding the Drug Court scheme, Youth Koori courts, Walama courts and so on and maybe circle sentencing as well. At least with MERIT and the Drug Court, there is a strong empirical basis for concluding that they are effective in reducing reoffending and that diversion in those court schemes reduces offending and reduces drug use. So far as a pre-court diversion scheme is concerned, I note that the NSW Police Force in its submission to the ice inquiry indicated that it supported expanding the existing Criminal Infringement Notice Scheme to all drugs. It emphasised the need to have appropriate health diversions with that scheme and described the potential effect as profound.

Mr DAVID SHOEBRIDGE: But, Attorney, it is now 12 months. This was the Premier's own pet project, which you have responsibility for largely implementing. Twelve months after the report was handed down and almost nothing has happened in the space. The key recommendations have not been implemented, even the ones that you have accepted. How do you explain that to people, particularly in regional New South Wales, where there is such an absence of rehabilitation service and there is such a real problem, particularly with ice? How do you explain doing nothing for 12 months?

Mr MARK SPEAKMAN: The whole matter is under active consideration. If we were not serious about tackling this scourge, we would not have set up a special commission of inquiry. This just was not a drug summit talk—

Mr DAVID SHOEBRIDGE: But then you do not do anything with the recommendations.

The Hon. SCOTT FARLOW: Point of order: The Minister is answering the question.

Mr MARK SPEAKMAN: In terms of our determination to find solutions and our interest in this and our passion for this, we would not have bothered to set up a special commission of inquiry with all the powers of a royal commission if we were not serious about this. We could have had a drug summit, a talkfest, with a lot of people in a room, and go away and not actually resolve anything. We could have merely relied upon the results of inquests. But, no, we have set up a special commission of inquiry, which has had about 47 days of hearing, heard from hundreds of witnesses. We would not have invested all that time and money in an inquiry to do—

Mr DAVID SHOEBRIDGE: To do nothing for 12 months after you get the report?

Mr MARK SPEAKMAN: No. These recommendations are under active consideration.

Mr DAVID SHOEBRIDGE: Attorney, it is more than 12 months since the report was handed down. You have not fully implemented even a single recommendation from the ice inquiry. You say it is priority. How do you square those two things? Twelve months after, not a single recommendation fully implemented. No-one is made safer by an inquiry. They are made safer if you ever implement the recommendations.

Mr MARK SPEAKMAN: We have announced \$7.5 million for the rehab facility at Dubbo. We have announced—it is under construction—an expansion of the Dubbo courthouse, which is futureproofed for a potential drug court there.

Mr DAVID SHOEBRIDGE: None of them have opened.

Mr MARK SPEAKMAN: So it is not true that we have done nothing. I take your point, that it is now 12 or 13 months since we had the report. But all those recommendations—there is a plethora of them. Some 109 recommendations, only five of which we have expressly ruled out, remain under consideration.

CORRECTED

Mr DAVID SHOEBRIDGE: There is now the sixth that has been effectively ruled out, recommendation 11.

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: When will we see recommendation 12 implemented? It seemed we were quite close to getting that done last year. Has poisonous politics got in the way of sensible law reform here?

Mr MARK SPEAKMAN: I will not comment on whatever debate there has been inside Cabinet. But recommendation 12, like all the other 102 recommendations that we have not ruled out, remains under active consideration. The Premier had earlier said we would respond by the end of the year. That did not happen. But I have said we will respond this year. That remains the case.

Mr DAVID SHOEBRIDGE: Surely, that cannot be your deadline, sometime this year. You are not suggesting that 24 December 2021 would be an appropriate time to respond to the ice inquiry that was urgent and delivered its recommendations in February 2020.

Mr MARK SPEAKMAN: I would very much like to respond much sooner rather than later. But ultimately I am one of over 20 Cabinet Ministers. It is ultimately up to Cabinet to decide how and when it responds. But I am certainly keen to see a response sooner rather than later.

Mr DAVID SHOEBRIDGE: Minister, only a few short weeks ago Victoria passed the Change or Suppression (Conversion Practices) Prohibition Bill to finally outlaw LGBTIQ conversions. When will New South Wales do the same?

Mr MARK SPEAKMAN: We have no plans to do that.

Mr DAVID SHOEBRIDGE: Are you ruling out legislation that bans this appallingly abusive practice?

Mr MARK SPEAKMAN: I am not ruling anything in or anything out, but there are no current proposals for the Government to legislate in this area.

Mr DAVID SHOEBRIDGE: Are you concerned that there may be additional pressure in New South Wales with people being sent to New South Wales from Victoria for this appalling practice now that it has been outlawed in Victoria?

Mr MARK SPEAKMAN: As I said, there are no current plans to do anything in New South Wales.

Mr DAVID SHOEBRIDGE: That is not my question, though, Attorney.

Mr MARK SPEAKMAN: That is my answer.

Mr DAVID SHOEBRIDGE: It has been outlawed in Victoria. It is illegal, thankfully, to do it in Victoria. One of the potential options that therefore follows is that people will be sent to New South Wales and the appalling practice will increase in New South Wales. Have you reviewed that at all, the impact of the Victorian laws?

Mr MARK SPEAKMAN: I personally have not seen any evidence that that will happen—

Mr DAVID SHOEBRIDGE: Have you looked?

Mr MARK SPEAKMAN: No, I have not looked. Without being—

Mr DAVID SHOEBRIDGE: That probably answers why you have not seen it.

Mr MARK SPEAKMAN: No, no. Without being flippant, the reason I have not looked is that I have so much on my plate I can hardly scratch myself sometimes. That may sound like a flippant answer, but that is the reality why I have not looked at this. But there are no current plans for the New South Wales Government to legislate in this area.

Mr DAVID SHOEBRIDGE: Attorney, are you aware that the Victorian bill also, thankfully and finally, outlawed exorcism in Victoria?

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: Do you think it is okay for people to practise exorcism with all of the abuse that that involves in New South Wales?

The Hon. MARK LATHAM: That's The Greens.

Mr DAVID SHOEBRIDGE: One Nation may engage in it internally, I don't know. But do you have any plans to exorcise exorcism?

CORRECTED

Mr MARK SPEAKMAN: That may well be something that NSW Health will look at rather than my department. As I understand the case that has been put in Victoria, it is a mental health case. That is probably something that NSW Health would consider rather than Communities and Justice.

Mr DAVID SHOEBRIDGE: It is a mental health case because exorcism is by definition an abusive, oppressive practice normally by somebody in a position of spiritual power over another person in that same religious grouping. That is why. Why will you not move to outlaw it?

Mr MARK SPEAKMAN: If there were a movement in this area, it would probably come from the Health portfolio, not the Justice portfolio. That said, of course, the Victorian law goes far further than that. It is a very, very wide-reaching law.

The CHAIR: Thank you. Attorney, who was responsible for approving applications for legal assistance to Ministers and Parliamentary Secretaries appearing before the ICAC?

Mr COUTTS-TROTTER: It is decisions made by me under delegated authority, Chair.

The CHAIR: Decisions made by you?

Mr COUTTS-TROTTER: Yes.

The CHAIR: Minister, are you aware of the result of those decisions?

Mr MARK SPEAKMAN: Which one in particular?

The CHAIR: I will come to that.

Mr MARK SPEAKMAN: There are a number of routes. Section 52, I think, of the ICAC Act has been delegated to the secretary. There is the potential for ex gratia payments, as well, but I have not approved any ex gratia payments—which would be me, not the secretary.

The CHAIR: Yes, right. What information has to be provided with an application for legal assistance by a Minister or Parliamentary Secretary?

Mr COUTTS-TROTTER: I will take the question on notice to make sure I am accurate and detailed, Chair, but it is essentially the same information that needs to be presented by anybody making a similar application. I will take the question on notice and give you a comprehensive answer.

The CHAIR: Can you give me an indication of the sort of—I accept that you will take it on notice for the detail, but what sort of information would be provided?

Mr COUTTS-TROTTER: Is the person's evidence likely to be significant in the hearing? The purpose of providing legal support is to facilitate the operations of the ICAC and ensure that it is able—and participants in hearings are able—to effectively contribute.

The CHAIR: Minister, do you remember receiving an application for legal assistance from Mr Daryl Maguire prior to his appearance before the ICAC on 13 July 2018 in Operation Dasha, ICAC's inquiry into the Canterbury City Council?

Mr MARK SPEAKMAN: I do not remember. That is not to say I did not get it, but I do not remember.

The CHAIR: You do not remember? Mr Coutts-Trotter?

Mr COUTTS-TROTTER: It precedes my time as secretary of—

The CHAIR: It precedes your time?

Mr COUTTS-TROTTER: Yes.

Mr DAVID SHOEBRIDGE: Could you take it on notice?

Mr MARK SPEAKMAN: Certainly.

Mr COUTTS-TROTTER: Yes.

Mr MARK SPEAKMAN: My best recollection is that I did not, but I would have to check my notes.

The CHAIR: Your best recollection is what?

The CHAIR: That I did not see an application by Mr Maguire and was not aware of it, but I would have to refresh my memory by referring to what records I may have.

CORRECTED

Mr DAVID SHOEBRIDGE: Sorry. In relation to taking it on notice, could Mr Coutts-Trotter check if he or his predecessor—

Mr COUTTS-TROTTER: It would be my predecessor, another bloke with a hyphenated surname.

Mr DAVID SHOEBRIDGE: If you could take that on notice—

Mr COUTTS-TROTTER: Yes.

The CHAIR: I take it, then, that you do not know when his application was approved?

Mr COUTTS-TROTTER: I can check that for you, Chair, and confirm.

The CHAIR: Can you check that?

Mr COUTTS-TROTTER: Yes.

The CHAIR: Okay. You will take that on notice. Also, of course, who approved his application?

Mr COUTTS-TROTTER: Yes.

The CHAIR: Minister, did you formally or informally inform the Premier of Mr Maguire's application for legal assistance?

Mr MARK SPEAKMAN: I would have to check my records, but I am pretty confident at the moment that I did not because I do not recall the application. It follows, therefore, that I would not recall telling the Premier about the application.

The CHAIR: Could you take that on notice, too, if you do not recall?

Mr MARK SPEAKMAN: Certainly.

The CHAIR: Did you formally or informally inform anyone else of Mr Maguire's application for legal assistance?

Mr MARK SPEAKMAN: To my best recollection, no, but I will double-check with my records and take that on notice.

The CHAIR: Take that on notice, too? Alright, thank you. Did anyone in your office or anyone in your department formally or informally inform anyone in the Premier's office or the Premier's department of Mr Maguire's application for legal assistance?

Mr MARK SPEAKMAN: To my best recollection, so far as I was aware, no. But, again, I will have to check records and take that on notice.

The CHAIR: Mr Coutts-Trotter, I know you were not there. Can you elucidate on that?

Mr COUTTS-TROTTER: I can only describe the decisions that I have taken in the time I have held the role, and they come to me with advice from our legal team against the requirements of legislation. They are decisions that I take and, to the best of my recollection, I have communicated none of those decisions to anyone at a political level and would see no reason why I would.

The CHAIR: Thank you. Did the Premier disclose any conflict of interest to you concerning Mr Maguire's application arising out of the fact that Mr Maguire was her secret lover at the time?

Mr MARK SPEAKMAN: Well, my best recollection is that I did not know about the application, so the answer to that question is no.

The CHAIR: The answer is no? You do not want to take it on—

Mr MARK SPEAKMAN: You can take "the answer is no" whichever way—whatever my state of knowledge was about the application.

The CHAIR: Okay. Do you think that the Premier should have disclosed her conflict of interest?

Mr MARK SPEAKMAN: Look, you are now asking—disclose which conflict of interest to whom and when?

The CHAIR: Well, her relationship with Mr Maguire at the time and her obligation to disclose it to the ICAC.

Mr MARK SPEAKMAN: Look, I think they are outside my portfolio and you are best to ask those questions directly to the Premier.

CORRECTED

The CHAIR: We will be doing that, for sure. But I thought—in terms of you and/or your department having a role in relation to the approval of Mr Maguire's expenditure for legal support at the ICAC—that we may have got some answers in relation to that.

Mr MARK SPEAKMAN: As I said, my best recollection is that I had no role. If, when I look at my documents, that recollection turns out to be wrong—I can tell you now that I never had a conversation with the Premier about it, in any event.

The CHAIR: Okay, thank you. Have you got anything to add to that, Mr Coutts-Trotter?

Mr COUTTS-TROTTER: No, Chair.

The CHAIR: Nothing at all? Okay.

The Hon. MARK LATHAM: Could I ask Mr Coutts-Trotter to bring that information back after lunch?

Mr COUTTS-TROTTER: Which information is that?

The Hon. MARK LATHAM: The information about the legal assistance for Mr Maguire—all the matters you took on notice concerning your predecessor.

Mr COUTTS-TROTTER: Sure. We will do our very best, Mr Latham.

The Hon. MARK LATHAM: Thank you.

The CHAIR: Have you got some more?

The Hon. MARK LATHAM: I can carry on. A mention was made earlier on of the respectful relationships program in schools, LOVE BITES. What is the evidence base for that?

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

The Hon. MARK LATHAM: And are you aware—in advocating and developing the new domestic violence strategy and projecting these programs into schools—of the very comprehensive report commissioned by the Department of Education in 2019 by the Telethon Kids Institute into wellbeing and behavioural change programs in schools and their effectiveness?

Mr MARK SPEAKMAN: I am aware of it but I have not read it.

The Hon. MARK LATHAM: Right. Will you now read it and have a look at its conclusions: It is very hard to identify any of these programs that have an evidence base that is positive and successful?

Mr MARK SPEAKMAN: Now that you have directed my attention to it, I will read it.

The Hon. MARK LATHAM: Do you understand that many experimental things are tried in schools, all well-intentioned, but it does not necessarily mean that because you are doing it in a school it actually works?

Mr MARK SPEAKMAN: I certainly understand that point. Ideally—but I am not sure what a metric would be to measure success in this case. If it is attitudinal change, the best evidence of attitudinal change is what people do, not what people say. It could take a generation to demonstrate whether or not you had that attitudinal change. If it is asking participants, "Did this change your attitude to consent or women in some way?" then that evidence, if it exists, has some value. But, a bit like we were touching on before with ReINVEST, self-evaluation is not necessarily as robust as what people do, as distinct from what people say.

The Hon. MARK LATHAM: If it is taking a generation to find out whether or not the program is working, you are completely flying blind. What else do we do in the education system that takes a full generation to find out whether it gets a result for the students?

The Hon. ROSE JACKSON: Point of order, Mr Chair. This is not the education Minister. This is the Minister for the Prevention of Domestic Violence.

The Hon. MARK LATHAM: The Minister has given previous answers about the school system.

The CHAIR: The Minister can answer that.

Mr DAVID SHOEBRIDGE: To the point of order: Just because the Attorney has indulged Mr Latham with answers about schools does not mean it relates to his portfolio. We are here to consider the Attorney General's portfolio and the DCJ. It is a very broad portfolio but it does not include schools. It is outside the terms of reference.

The Hon. MARK LATHAM: Anyway, the Attorney is on record to say it takes a generation to find out. That is fine.

CORRECTED

Mr MARK SPEAKMAN: Well, could I answer your question?

The Hon. MARK LATHAM: Sure, yes.

Mr MARK SPEAKMAN: I am not a statistician. I am not an educator. But my understanding is that there are some things in education that you can measure; that is why you have NAPLAN tests. You can quantitatively measure spelling, maths abilities and so on.

Mr DAVID SHOEBRIDGE: Now I am going to take a point of order. If the Attorney is going to pretend NAPLAN is actually useful—

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: It is not in relation to his portfolio. NAPLAN does not do any of that.

The Hon. MARK LATHAM: It is more useful than your points of order.

Mr DAVID SHOEBRIDGE: It is clearly not in relation to the Attorney's portfolio.

Mr MARK SPEAKMAN: I do not want you to go away and think that what I am saying is, "Who knows? Let's just fly in the dark and come back in 20 years time and see how it all went." But it is harder, I think, to quantitatively evaluate in a statistically robust way a program about attitudes and culture, which is not to say you still cannot survey participants about how their attitudes have changed. I am just saying that it is not as reliable as what people actually do, as distinct from what they say they will do.

The CHAIR: Thank you.

The Hon. SHAOQUETT MOSELMANE: Thank you, Chair. I return to the Local Court, Attorney. This is the third year running where you have indicated that you will be addressing that review. I quote from an article of February 2021 where you say:

resourcing for the Local Court remains under review as part of the budget process.

When will this review finish, Minister?

Mr MARK SPEAKMAN: Annually. Every year there is a budget. The 2020-21 budget was obviously delayed because of COVID. It remains part of the budget process. Obviously, COVID and COVID priorities altered our spending initiatives for 2020-21.

The Hon. SHAOQUETT MOSELMANE: This relates to the matters that are crucial to the Local Court, particularly allocation of funding for magistrates. You indicated that you will be funding 10 magistrates.

Mr MARK SPEAKMAN: No, I did not say that.

The Hon. SHAOQUETT MOSELMANE: Then how will you address the shortfall in magistrates in the Local Court?

Mr MARK SPEAKMAN: As I said before, taking on board the increasing and high workload of magistrates, taking on board the Chief Magistrate's ongoing advocacy, taking on board the exemplary time to finalisation in the Local Court compared with its peers in other States, and dealing with the budgetary process, that will be a matter for this coming budget.

The Hon. SHAOQUETT MOSELMANE: But the Chief Magistrate has clearly said a number of times that they desperately need extra magistrates. Now the magistrates are being given extra work from the District Court. They have been given extra work as coroners. They have been given extra loads, and COVID-19 is another hurdle for them. They are suffering as a result of lack of funding. The Chief Magistrate is saying they need 10 magistrates. Are you saying, basically, you will not provide the Chief Magistrate any further magistrates for the Local Court?

Mr MARK SPEAKMAN: No, I have not said that. The Chief Magistrate could not be any clearer in what he thinks is appropriate resourcing for his court, and that is entirely appropriate for a head of jurisdiction to be advocating in that way, and I take his comments very, very seriously.

The Hon. SHAOQUETT MOSELMANE: Did he not previously—

Mr MARK SPEAKMAN: I have not finished.

The Hon. SHAOQUETT MOSELMANE: Sure.

Mr MARK SPEAKMAN: But addressing his observations will be part of the next budget process.

CORRECTED

The Hon. SHAOQUETT MOSELMANE: Did he not say somewhere—I just cannot put my hand on it—that if this matter is not addressed, they will take matters into their own hands?

Mr MARK SPEAKMAN: Did I say that?

The Hon. SHAOQUETT MOSELMANE: No, the Chief Magistrate.

Mr MARK SPEAKMAN: I do not know whether he said that or not.

The Hon. ROSE JACKSON: I think he did suggest that unless additional resources were provided the Local Court would have to start making its own decisions about delays in order to protect the health and wellbeing of magistrates. In fact, he put it in terms of an occupational health and safety question, Minister—

Mr MARK SPEAKMAN: Yes.

The Hon. ROSE JACKSON: —because of the extreme workloads being experienced by Local Court magistrates.

Mr MARK SPEAKMAN: That is entirely appropriate for him as the head of the jurisdiction to identify that. If he does not, who else will? I am certainly aware of those mental health and wellbeing issues. We saw the tragedy of two magistrates in Victoria suicide a couple of years ago. That is the last thing we would want to happen in New South Wales. So part of the budget process and appropriate resourcing for the Local Court is not only looking after the users of the court and making sure it is a safe workplace for judicial officers and others.

The Hon. ROSE JACKSON: Minister, I want to ask you about section 93Z of the Crimes Act 1900. Have there been any successful prosecutions in relation to the hate speech provisions?

Mr MARK SPEAKMAN: Yes and no. There is a little wrinkle on this. There have been two 93Z prosecutions with, I think, guilty pleas and convictions. Unfortunately, they were police prosecutions and did not obtain the consent of the DPP, which is a prerequisite to prosecution under section 93Z, so the police are in the process of having those convictions annulled. It is a matter for the police, but I expect they will re-prosecute those cases or at least—

The Hon. ROSE JACKSON: That is a pretty big stuff-up, Minister.

Mr MARK SPEAKMAN: Well, that is—

The Hon. ROSE JACKSON: Come on!

Mr MARK SPEAKMAN: I am not—

The Hon. SCOTT FARLOW: It is not in your responsibility.

The Hon. TREVOR KHAN: Is that a question or an explanation?

Mr MARK SPEAKMAN: I am not the—

The Hon. ROSE JACKSON: Would you agree that that is very concerning, Attorney, that that has occurred?

Mr MARK SPEAKMAN: Of course it is concerning that it has occurred. We are all human. We all make mistakes. It is a very unfortunate mistake, but I imagine now the police will want to re-prosecute, seek the consent of the DPP, but that is a matter for the police and the DPP.

The Hon. ROSE JACKSON: Have you had any discussions with the police Minister or your parliamentary colleagues about this concerning incident in which the first two successful prosecutions under hate speech provisions have in fact had to have the convictions annulled? Have you raised that?

Mr MARK SPEAKMAN: No, because this has only come to light in recent days.

The Hon. ROSE JACKSON: Can you give us any more information in relation to those convictions?

Mr MARK SPEAKMAN: One, I think, concerned hate speech on a bus of a racist nature. Do you know what the other one was?

Mr COUTTS-TROTTER: No, I am afraid I do not. My colleague Paul McKnight might.

Mr MARK SPEAKMAN: Mr McKnight?

Mr McKNIGHT: No, sorry. We would have to take that on notice.

CORRECTED

Mr MARK SPEAKMAN: I can tell you in neither case was there a custodial sentence. One, I think, had an intensive correction order and the other had a community correction order, and police are in the process of contacting the defendants and—

The Hon. ROSE JACKSON: Expressing their sincere apologies, I would hope.

Mr MARK SPEAKMAN: That is a matter for the police.

The Hon. SCOTT FARLOW: Not to the defendant.

The Hon. ROSE JACKSON: Staying on section 93Z, I do not even know how to describe these "yes and no" convictions, these successful unsuccessful convictions. So there have been those two convictions under that section that the police are seeking to annul. That is still not very many since the introduction of the section in 2018. The Government is touting its efforts to stop hate crime and hate speech, yet this section of the Crimes Act is very rarely utilised to target hate speech in the community. Is that something that you and the department are working on addressing?

Mr MARK SPEAKMAN: Last year Legal Aid NSW spent \$200,000 on a community awareness campaign about this section, and hate speech and vilification generally, so we want the community to know about it. But the fact that it is rarely used does not demonstrate that it is a failure. I mean, it could well be it is rarely used because people are not committing the offence or it is happening pretty—

The Hon. ROSE JACKSON: I was really hoping that you were not going to go there, Minister.

The Hon. TREVOR KHAN: Wait, wait.

Mr MARK SPEAKMAN: Well, hang on. But it does not demonstrate a defect in the defence per se. There may be things in our statute books that are rarely used, but if they are there to educate the community to have a statement of values, and the fact that there is an offence there with a criminal penalty that could be up to three years' imprisonment—so there is that deterrence—that is an effective piece of legislation. This was a piece of legislation that was unanimously supported in both Houses of Parliament a few years ago, and neither your party nor any crossbencher sought to move any amendments to it.

The Hon. ROSE JACKSON: Minister, I want to read to you a quote from a piece of correspondence that an elected representative in this State, a councillor from Cumberland City Council, received. I believe it was yesterday; it may have been the day before yesterday. I apologise that this will be racist language:

No pest control can get rid of you Chinese people unless we fumigate you altogether and kill you all at once and for all. This is the only way to allow Chinese people to die and to die with you first and the rest of all you Chinese people.

I feel disgusting even reading that. That is what is occurring right now in this State, targeting elected representatives doing their best in local government, and you are suggesting that hate speech is not a real problem.

Mr MARK SPEAKMAN: No, Ms Jackson, you are putting words into my mouth. I did not suggest that. What I did suggest was that when you say—I think you are saying—93Z is ineffective in some way, the fact that it has been rarely prosecuted to date does not demonstrate a lack of effect. It may demonstrate the relative rareness of the sorts of disgusting episodes that you have highlighted. It does not say it does not happen. The fact that episodes like that happen demonstrates the need for vilification legislation and, at the most extreme, criminal legislation. But it does not mean that it is happening everywhere in New South Wales. That has only come to light in the last couple of days, I think. It is a councillor in a western Sydney council.

The Hon. ROSE JACKSON: Yes, that is right and that has been reported to the police. So I suppose we will see what comes of that particular disgusting hate speech. But it links to an issue that you acknowledge, which is that the Asian Australian Alliance did do a report that indicates that in relation to anti-Asian racism, at least—although I think that we can assume that this is the case more broadly—90 per cent of people do not report being the subjects of hate speech. That was a report done by the Asian Australian Alliance. Most people just cop it; they ignore it, they do not report it. I hear what you are saying about the program that was run last year through Legal Aid to try to raise awareness, but I think you can accept that Asian Australians, Muslim Australians and Indigenous Australians, for example, are experiencing racism; they are victims of hate speech but that they are not reporting it and that our criminal law is not adequately providing them with the protection that they need from that kind of hate speech. It is just not working currently.

The Hon. TREVOR KHAN: Is that a question?

The Hon. SCOTT FARLOW: It was an adjournment speech. What is the question?

Mr MARK SPEAKMAN: You put a series of propositions and I think there is a non sequitur in there somewhere or other. I have not seen this survey but the results do not surprise me, if non-reporting is as high as

CORRECTED

90 per cent. It does not follow, though, that there is some problem with the criminal law. There could be a whole variety of reasons why people do not report—they let it go through to the keeper, they may have a lack of confidence in police following through with a prosecution; there could be a whole variety of reasons. But at the end of the day, a bit like I said with sexual assault, you cannot have the criminal law and the police on every corner in the community. At the end of the day, it is cultural and attitudinal. That is why Multicultural NSW is so important, and education in schools in developing tolerance and embracing diversity. At the end of the day, you cannot have a criminal law that makes people do this. And our criminal law, in any event, is focused on inciting and threatening violence. Other parts of the Anti-Discrimination Act deal with hate speech more broadly.

The Hon. ROSE JACKSON: And questions in relation to some of those broader challenges will be put to the other Ministers. But you are responsible for one tool in the toolbox, one part of the suite of responses that we have to hate speech and racist language, which is section 93Z of the Crimes Act. Yet despite the fact there have been no successful prosecutions—or two successful prosecutions that have had to be annulled—you do not seem to think that there is any problem in relation to how the law is working to protect people from hate speech.

Mr MARK SPEAKMAN: I do not think there is a problem, to my observation, with 93Z, which is dealing with inciting physical violence or threatening physical violence. It may be that the fact that it has been rarely prosecuted is because threats of that kind are uncommon. I do not say that they do not happen, but they are uncommon. We have in New South Wales Anti-Discrimination NSW, which deals with a whole variety of complaints and conciliates complaints. Racism is, I think, the second-highest number of type of complaint they deal with; disability is the highest. I do not think they have reported any increase in complaints about racial vilification in recent years. So, in terms of what is being reported, it does not appear to be trending upwards.

The Hon. SHAOQUETT MOSELMANE: Just following up, Attorney, on the number of magistrates, there was concern by the District Court on the shortage of judges. You have addressed that response by appointing seven new judges. There is clear concerns in the Local Court that the heavy burden—the heavy lifting—is really on the Local Court, where over 90 per cent of matters are dealt with. There are clear calls for more magistrates. Why will you not address the Local Court in the same manner as you have addressed the District Court?

Mr MARK SPEAKMAN: The question of Local Court resourcing will be considered in the upcoming budget process. As I have said before, I am very conscious of the increasing and high workload the Local Court faces, the comments of the Chief Magistrate and his advocacy. We will look at that in the budget process. I would note, in the case of the District Court, that at its worst it was among the slowest in the country. Those extra judges have reduced the backlog of cases in terms of criminal trials from about 2,100 to, as a ballpark figure, I think it is now around about the 1,500 or 1,600 mark. So that and other measures in the District Court have improved our early appropriate guilty plea reforms and sentencing reforms have improved the time for justice in the District Court. The situation in the Local Court was not and is not as bad because it remains among the fastest courts in the country. But that said, I know that the workload has gone up; I know it is an intense workload and I know there has been a bit of a drift in time for justice. All that will be looked at as part of the budget process.

The Hon. SHAOQUETT MOSELMANE: Minister, can you elaborate to me when you say that the matters with the Local Court will be addressed in the budget? How? What steps are you taking?

The Hon. TREVOR KHAN: He has already answered this question.

Mr MARK SPEAKMAN: In light of the data that I have, which is similar to the data you have, about workload—time to justice and what increases there have or have not been in the number of magistrates in recent years, I take all that and form a submission on the basis of that. It goes to the Expenditure Review Committee and they make a decision and we have a budget.

The Hon. SHAOQUETT MOSELMANE: If we go to the Walama Court matters—

Mr MARK SPEAKMAN: The Walama Court?

The Hon. SHAOQUETT MOSELMANE: Yes, Walama Court. In previous estimates, Attorney, the Government's position has been that the Walama Court cannot be established because of cost issues. The business case for the proposal stated that the cost of a pilot was \$19.3 million. Granted how much the Government spent on pork-barrelling the Stronger Communities Fund council grants, why will you not fund the Walama Court?

Mr MARK SPEAKMAN: You have asked a question with an initial premise that I do not accept, so just put that to one side—

The Hon. SHAOQUETT MOSELMANE: What is the initial premise that you do not accept?

Mr MARK SPEAKMAN: I will take the question as, "Why will you not fund the Walama Court?" Is that the question?

CORRECTED

The Hon. SHAOQUETT MOSELMANE: Yes.

The Hon. ROSE JACKSON: Yes, we will start with that.

Mr MARK SPEAKMAN: Okay. We have not made a decision on that. That is part of the response to the ice inquiry. Among numerous diversion recommendations that the ice inquiry made, establishing a Walama Court is one of them. In terms of the business case and the \$19 million figure you have quoted, that does not include the opportunity cost of redeployment of resources within Legal Aid, the DPP and so on. That is the extra cost that will be incurred without taking into account those opportunity costs. So those costs need to be taken into account as well. It is something—

The Hon. SHAOQUETT MOSELMANE: Any idea what those costs are?

Mr MARK SPEAKMAN: As a ballpark figure, probably about \$5 million or \$6 million. Mr Thomas is on the Walama Working Group so he can answer questions in detail. So that remains part of the mix but it is one of a number of diversionary measures that we are looking at. There is also the Youth Koori Court, the Drug Court, the MERIT—and we know that each of those programs is not generally available in New South Wales. The Youth Koori Court only operates at Parramatta and Surry Hills, MERIT is available to 80 per cent of defendants but not the other 20 per cent, and with the Drug Court there is an element of postcode lottery—it is available in three locations. Whatever decisions we make, we need to get the best bang for our diversion buck and make sure what choices we make will have the greatest impact on reoffending. The Walama Court is in the mix but it will compete with that. There is also justice reinvestment—the Just Reinvest Maranguka project in Bourke and the potential expansion of that to other sites in regional New South Wales and perhaps in western Sydney. So it is part of a suite of diversionary measures. But, at the end of the day, we cannot do everything, and we will make decisions on the basis of what we think—based on the empirical evidence—will give us the best results.

The Hon. ROSE JACKSON: Is it not fair, though, for us to conclude that, yes, you are not doing anything. In fact, you are doing nothing because all of those other things you mentioned, yes, you could do, but you are not doing any of them either. So when we ask about any of them you say, "Well, we could do the Walama Court," but you do not ever make a decision to actually fund any of them.

Mr MARK SPEAKMAN: Most of these have been recommended by the special commission of inquiry into ice and the decisions we make and the selections we make will be in response to that when we have a government response to those recommendations.

Ms ABIGAIL BOYD: I just wanted to pick up on where we left off in relation to the sexual consent law reform. In responding to my colleague's questions you point out quite correctly that we need a broader cultural reform and an attitudinal change, but would you agree that laws and changing the law help to set the standard of what is acceptable in society?

Mr MARK SPEAKMAN: I would accept that among the many roles that a law can have is a statement of values, a statement of standards, a statement of expectations. So a bit like with 93Z, even if a law is never prosecuted, if it is there on the statute books it can act as a deterrent and can be one instrument among many of social change.

Ms ABIGAIL BOYD: Agreed. When my colleague Ms Jackson was asking you about the process towards reforming our laws around sexual consent you said some things three times—once you said, "if there is a legislative reform"; the second time you said you want to resolve the issue this year; and the third time you said, "We want the issue dealt with this year." None of that makes me think you are actually going to change the law. Do you intend to correct our sexual consent laws?

Mr MARK SPEAKMAN: That is a matter for Cabinet. There has been no Cabinet discussion about that at the moment; it has not gone to Cabinet. I cannot pre-empt discussion with Cabinet colleagues, but a response to the Law Reform Commission will go to Cabinet sooner rather than later, and if that response is to legislate then I anticipate that legislation will be put to Parliament this year.

Ms ABIGAIL BOYD: Will you be recommending to Cabinet that there is legislative reform?

Mr MARK SPEAKMAN: I wish I could answer that question but I cannot pre-empt what I say to Cabinet here. What I put to Cabinet remains Cabinet in confidence.

Ms ABIGAIL BOYD: So we have no assurance that you will make the recommendation to Cabinet and we have no assurance that Cabinet will then push it forward? I understand the processes, but if you are a person in New South Wales who is looking at the revelations and the stories at the moment and wanting the Government to do more, what are you saying to them?

CORRECTED

Mr MARK SPEAKMAN: If you look at the revelations and the stories at the moment I think there will be many people screaming for action and screaming for law reform and screaming for cultural change, but I respect the Cabinet process. I wish I could sort of chew the fat here—

The CHAIR: Please feel free to.

The Hon. ROSE JACKSON: That is right. No-one is stopping you.

Mr MARK SPEAKMAN: I am certainly happy to hear what your views are and hear what your colleagues' views are and raise questions and so on, but I cannot foreshadow here or outside Cabinet what I will take to Cabinet. That is part of the Cabinet process that those submissions remain confidential and if I were to say to you what my recommendation would be to Cabinet I am breaching Cabinet confidentiality. But I can say that I will take recommendations to Cabinet sooner rather than later and if it transpires that Cabinet decides to legislate then I anticipate that legislation will be enacted this year.

Ms ABIGAIL BOYD: Understood, and, obviously, as members of this place we all understand the process, but the public do not really see this Cabinet process as being a valid obstacle to reform.

Mr MARK SPEAKMAN: I understand that. If you would like to be our communications officer, maybe you could—

Ms ABIGAIL BOYD: I would not. Obviously there are the laws and there is education and there is a bunch of other things; there is also government processes. One of the issues we had, I think it was late 2019, was a revelation that the New South Wales police were not capturing data on why sexual assault claimants were walking away. So why were they withdrawing? Unlike every other State and Territory in Australia, we were not able to say why sexual assault investigations did not lead to arrest or formal action. Has that improved? Have they done anything to fix that yet, do you know?

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

Ms ABIGAIL BOYD: Finally, on the reinvest issue, in the context of a different answer you said that obviously you advocate within government for funding, you are not responsible for funding by yourself for these things. Did you advocate for reinvest funding?

Mr MARK SPEAKMAN: I certainly approved it, I certainly endorsed it. Whether I was the prime advocate or not I do not recall.

Ms ABIGAIL BOYD: Did another Minister put forward reinvest for funding?

Mr MARK SPEAKMAN: Not to my recollection.

Ms ABIGAIL BOYD: How is the work progressing on technology for cross-examination of claimants by their accused, looking back at the reforms from last year?

Mr MARK SPEAKMAN: Progressing. I think we said it would take effect from 1 September or earlier if we could. At the moment I do not think we can do it any quicker than 1 September.

Mr COUTTS-TROTTER: Catherine D'Elia might update.

Ms D'ELIA: At this point we cannot do it any faster than 1 September. We are in the process right now of determining what that might look like and how it will work. There is some consideration being given as to what the functionality would have to be of any technology solution, not only from the perspective of a platform but also from the perspective of how it would operate within the courtroom itself. We have a team that is taking a look at that right now and, in fact, yesterday was one of the meetings that they had. So I know that they are working on it with the objective of having a solution for 1 September.

Ms ABIGAIL BOYD: And will that process involve consultation with Women's Domestic Violence Court Advocacy Services or other advocates for victim-survivors?

Ms D'ELIA: Part of the process is we are working with our DV team. It is early days yet in terms of what solutions are available. So we are starting that and then obviously we would need to do some consultation.

Ms ABIGAIL BOYD: Thank you. Turning to the COAG national women's safety task force, can you tell us what was discussed at the December meeting and what plans the task force has to improve safety for victim-survivors?

Mr MARK SPEAKMAN: I am not sure I am allowed to beyond whatever communiqué was published. The general approach with COAG has been that Ministers are to observe confidentiality about papers that go to COAG and discussions there. So it is a bit like a quasi Cabinet. It is the same rationale that we have a free and

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frank discussion, but beyond whatever is in a communiqué I cannot. The headline has been—I think this I can communicate—COVID funding and use of \$150 million of Federal COVID money that is being distributed around the States and Territories.

Ms ABIGAIL BOYD: And that \$150 million that was committed in March, which is now a year ago—it seems like it was only a few weeks ago—how much of that has actually been delivered?

Mr MARK SPEAKMAN: I will give you a headline answer and then ask Ms Walker to fill in the gaps. We are spending that in three tranches. The first tranche and the second tranche have been completely or largely delivered. The third tranche will be used partly to fund safe access rooms and infrastructure upgrades for a couple of our domestic violence complainants in court, and there will be an infrastructure program for the balance of it. The second tranche and the first tranche were not, by and large, infrastructure related—unlike that third tranche—they were looking at supplementing recurrent grants to existing recipients and additional recipients to deal with the increasing demand for frontline services during COVID. But I will let Ms Walker finish the answer.

Ms WALKER: The announcement in May 2020 was the announcement of the New South Wales additional COVID funding as well as the Commonwealth funding; 12.6 of that came from New South Wales and 8.8 from the Commonwealth and that money was delivered to existing DV services, including Staying Home Leaving Violence—services that work primarily with DV victims. That was a good and speedy way to—

Ms ABIGAIL BOYD: Sorry, just because I have limited time, if you would not mind, I will pick this up again with you this afternoon, but is there a headline figure for how much is left that has not been distributed yet?

Ms WALKER: We are working on tranche 3, which is 18.7 of the Commonwealth money and 2.2 of the New South Wales money. But certainly all of that has plans to be spent by 30 June. I can go into detail about the spend this afternoon.

Ms ABIGAIL BOYD: No worries. Attorney, have you been in discussions around a national definition of "domestic violence" across the States and Territories?

Mr MARK SPEAKMAN: No.

Ms ABIGAIL BOYD: Is that something that you are interested in progressing?

Mr MARK SPEAKMAN: Yes.

Ms ABIGAIL BOYD: Also the issue of national harmonisation of data collection—has that been an issue that you have been discussing?

Mr MARK SPEAKMAN: No. Well, we have discussed exchange of data between the State and the Commonwealth, between the Family Court and our local courts here and police, and harmonisation and enforcement of ADVOs across State and Territory boundaries, but I do not think data collection.

Ms ABIGAIL BOYD: To the manner in which data is collected and how it is reported?

Mr MARK SPEAKMAN: I do not think so.

Ms WALKER: There are a number of subcommittees of the different senior officers meetings that deal with data. I think during the COVID period our experience was that it was really hard across the different States and Territories to get a consistent view of reporting. So that is dealt with at an officer level, certainly with our data colleagues at BOCSAR heavily involved with that, and Family and Community Service Insights, Analysis and Research [FACSIAR] as well.

The Hon. MARK LATHAM: Attorney, to finish off the earlier evidence you were giving about bringing a new domestic violence strategy forward later in the year and the programs that you would be advocating in schools—given that over the past two years our excellent education Minister has made a very wise judgement that everything we do in schools must be evidence-based to guarantee that we are going to get a result, do you undertake to fit within that approach of only bringing forward programs in this space that have a clear evidential base?

Mr MARK SPEAKMAN: Ultimately what is taught in schools will be her decision rather than my decision. As I said before, as a lawyer I am driven by an evidence-based approach. But as I identified before with some of these prevention programs, you may not have the kind of statistical evidence you have with NAPLAN results or maths or English analysis. Ideally you would, but then you just have to go to first principles and use whatever evidence is available.

CORRECTED

The Hon. MARK LATHAM: On that evidence base, I am assuming as Attorney-General and with your domestic violence budget of \$530 million that you are now part of the outcomes-based budgeting system.

Mr MARK SPEAKMAN: Yes.

The Hon. MARK LATHAM: What are the outcomes that you can show in this portfolio for the expenditure over the past 10 years and most recently the past 12 months?

Mr MARK SPEAKMAN: Hopefully a trend in reducing domestic violence reoffending. That is one of the Premier's—

The Hon. MARK LATHAM: Well, "hopefully", but what is the trend? That is what I am asking. Outcomes are not hope; they are actual results.

Mr MARK SPEAKMAN: One of the difficulties in this area—and same with sexual assault—is that domestic violence as a crime is underreported and so is sexual assault. When you see changes in criminal stats for those two crimes, you cannot categorically say whether that change is because of an increase or decrease in the crime or alternatively a change in the reporting rate. But we know that other crimes are generally falling. DV stats are generally static over two years and five years. Look, I cannot say this categorically and I do not pretend because we just do not know with certainty. But if there is an increasing awareness of domestic violence and domestic violence rates are generally stable in terms of assault rates, you would say that we are having some impact. Domestic violence murder rates have fallen over the last five or 10 years. They are trending down.

Domestic violence assault is trending sideways in terms of reporting. It may be that because of a greater propensity to report the underlying rate is falling. A lot of the stuff in this portfolio is still work in progress. For a lot of the men's behaviour change programs, we are developing the empirical base. So we do not know whether our high-intensity programs in jails will or will not work but we are having BOCSAR analyse those. We do not know whether What's Your Plan, which is an app for Indigenous domestic violence reoffenders, will work but we are trialling those. Some of the ReINVEST program is an experiment as well. A lot of this, when you are asking, "You spent all this money. Where is your outcome?"—

The Hon. MARK LATHAM: Well, the Treasurer asks it too, doesn't he?

Mr MARK SPEAKMAN: He does, but a lot of this is work in progress.

The Hon. MARK LATHAM: With all those caveats built in—that is how you are reporting to the Treasurer with outcome-based budgeting. All those caveats are part of it.

Mr MARK SPEAKMAN: Yes.

The Hon. MARK LATHAM: On the evidential base you mentioned BOCSAR. Do you rely on them as the pre-eminent crime statistician, including in domestic violence in New South Wales?

Mr MARK SPEAKMAN: I would. FACSIAR, which is a statistical unit in the Family and Community Services side of the cluster, also gathers data as well.

The Hon. MARK LATHAM: But BOCSAR do fantastic work, don't they? They are a really good crime statistic organisation.

Mr MARK SPEAKMAN: They are.

The Hon. MARK LATHAM: On the agenda you are setting out for coercive control, you have described the most recent report of The Coroners Court Domestic Violence Death Review Team [DVDRT] and the finding of the 111 cases out of 112 coercive control preceding the murders as the clincher. When the report breaks down that data, what does it show?

Mr MARK SPEAKMAN: It shows that in 99 per cent or thereabouts of cases a domestic violence intimate partner homicide has been preceded by some form of domestic control. That is not necessarily domestic control by the killer. It could be domestic control by the homicide—sorry, I will go back once step. In most cases it would be coercive control by the killer. In some cases it will be by the victim of the homicide because the kind of rage of the victim-survivor of domestic violence—I am not justifying the homicide. I am just telling you what the stats show in terms of coercive control.

The Hon. MARK LATHAM: Yes, sure.

Mr MARK SPEAKMAN: I have not gone through all the detail of the evidence that Ms Boyd and others have heard on the coercive control committee, but as I understand it, the Coroner gave evidence that more than half of this coercive control did not involve physical violence. I have seen your comments, Mr Latham, where you have disaggregated that to say that it is primarily verbal assault.

CORRECTED

The Hon. MARK LATHAM: No, I did not disaggregate it. The report team disaggregated and I am asking you what that shows.

Mr MARK SPEAKMAN: I have not observed that.

The Hon. MARK LATHAM: You have not observed that? You have not read the report?

Mr MARK SPEAKMAN: No, please let me finish. I have seen your public commentary where you identify, as I understand it, socio-economic disadvantage—

The Hon. MARK LATHAM: No, I am not asking about my public commentary or socio-economic disadvantage. I am asking what is in the report.

The Hon. ROSE JACKSON: I say Z wrong and I get cut off. He jumps down his throat and no-one says boo.

The Hon. TREVOR KHAN: Take a point of order then.

The CHAIR: Order!

Mr MARK SPEAKMAN: No, no. This is—

The Hon. MARK LATHAM: What is your understanding of what is in the report?

Mr MARK SPEAKMAN: I am getting to that.

The Hon. MARK LATHAM: All of my commentary is accurate and well researched, you can be assured, but what about your understanding of this report?

Mr MARK SPEAKMAN: Well, if you let me finish the answer—I have seen your commentary where you identify socio-economic disadvantage as the prime driver of substance abuse, gambling and all these issues. As I understand it, you say that if you disaggregate the DVDRT report, that is what you will find if you scratch beneath the surface. We have done some analysis in my office to see whether that is the case. We have tried to identify—I had one of my poor advisers go through case by case trying to identify whether this person lived in a low socio-economic area and what background they had. We have not seen any clear evidence that that is the primary driver. Now I get, though, that you have got cases—

The Hon. MARK LATHAM: Seriously, that is what you are saying? Someone has read all of those cases studies and not identified the life of chaos, poverty, homelessness, drugs—

Mr MARK SPEAKMAN: No, you can identify it as a factor—

The Hon. MARK LATHAM: —unemployment, Aboriginality. Seriously?

Mr MARK SPEAKMAN: You can identify Aboriginality as a factor. We know that Aboriginal women are over 30 times more likely to be hospitalised from domestic violence than non-Indigenous people. But I do not think the evidence that the Coroner has presented or that report demonstrate that coercive control is some kind of furphy and that what we are looking at is people using rude words and upsetting each other. It is much more serious than that.

The Hon. MARK LATHAM: I would ask, firstly, can you table for the benefit of the Committee those case studies that your poor adviser, as you call them, has looked at?

Mr MARK SPEAKMAN: They are all in the DVDRT report.

The Hon. MARK LATHAM: No, but they are spread over a long period of time. You say that your office has done the work—the poor adviser.

Mr MARK SPEAKMAN: On an anecdotal basis. We are not statisticians. But that is my understanding of what you have done as well.

The Hon. MARK LATHAM: Well, no, I have used the data that is actually in the Domestic Violence Death Review Team report and their own disaggregation of the forms of coercive control and I am asking for your understanding of that breakdown.

Mr MARK SPEAKMAN: My understanding is that it does not demonstrate that this is merely a problem of verbal abuse and not patterns of more insidious coercive control.

The Hon. MARK LATHAM: It does not say they are not—

The Hon. SCOTT FARLOW: Point of order: Let the Attorney General finish.

CORRECTED

The Hon. MARK LATHAM: Ninety-five per cent of these cases involve verbally abusive language.

Mr MARK SPEAKMAN: But at the end of the day, that is for the committee to analyse. That is why I have set up a committee.

The Hon. MARK LATHAM: But you are the Attorney General who has described this data as "the clincher" and you are saying that it does not show a predominant factor of verbally abusive language. Is that your evidence to this Committee?

Mr MARK SPEAKMAN: My understanding is that what it shows is pervasive patterns of coercive control that go beyond mere verbal abuse as predating many instances of domestic violence in the department of homicide.

The Hon. MARK LATHAM: Have you read the report?

Mr MARK SPEAKMAN: I have.

The Hon. MARK LATHAM: So you did not see that 95 per cent of the cases involve verbally abusive language?

Mr MARK SPEAKMAN: They may involve that but that does not mean that is all they involve.

The Hon. MARK LATHAM: No, 57 per cent involve social abuse, and controlling movements and personal freedom, and 43 per cent involve financial abuse. But that 95 per cent of it comes from verbally abusive language, wouldn't just about every single murder in New South Wales—whether you are talking about drug dealers, bikies, people fighting about money, a domestic setting—be preceded by forms of verbal abuse?

Mr MARK SPEAKMAN: It may be on the occasion of that murder but not necessarily months or years out. But there is a pattern of it. Even on your stats, as I understand, you were talking about 57 per cent and 43 per cent—that is a high proportion.

The Hon. MARK LATHAM: They are not my stats, they are the stats of—

The Hon. SCOTT FARLOW: Point of order: Let the Attorney finish.

Mr MARK SPEAKMAN: The stats you have cited.

The Hon. MARK LATHAM: All I am doing is citing the stats that you apparently doubt were in the report. I am assuring you they were.

Mr MARK SPEAKMAN: The report shows that there is more than just verbal abuse commonly preceding domestic violence—

The Hon. MARK LATHAM: Yes, but 95 per cent of it is based on verbal abuse, which is not much of a finding, is it?

The Hon. SCOTT FARLOW: Point of order—

Ms ABIGAIL BOYD: Point of order: The time has expired.

The CHAIR: Order!

Mr MARK SPEAKMAN: No, I will respond.

Ms ABIGAIL BOYD: I think you are misunderstanding—

The Hon. MARK LATHAM: I am not misunderstanding anything. I am just reading out their numbers.

The CHAIR: Time has expired. Minister, if you could just respond quickly, we will move on.

Mr MARK SPEAKMAN: The report shows that it is more than just verbal abuse. Commonly there are other patterns of insidious—

The Hon. MARK LATHAM: But then you say 95 per cent of it is verbal abuse.

Mr MARK SPEAKMAN: Not just verbal abuse.

The Hon. MARK LATHAM: It is not much of a finding, is it?

The Hon. ROSE JACKSON: Point of order: Time has expired for crossbench questions.

The CHAIR: Order!

CORRECTED

The Hon. MARK LATHAM: If you lock up everyone who is verbally abusive, you will have to build 1,000 new jails.

Mr MARK SPEAKMAN: And that is why we have a committee.

The Hon. PENNY SHARPE: Thank you. I think your time is up, Mr Latham. Attorney, I am wanting to ask you about the Justice Advocacy Service. Are you familiar with that service?

Mr MARK SPEAKMAN: I am.

The Hon. PENNY SHARPE: You would be familiar that it is the service that is funded by the Government, with around \$5.5 million a year for the last two years, to support people with intellectual disability who come in contact with the criminal justice system, not just as perpetrators but as victims and as witnesses. It provides individual support people as people going through that process. Attorney, it is my understanding that the funding for this program is due to expire in June this year. Is that correct?

Mr MARK SPEAKMAN: It is a two-year program.

The Hon. PENNY SHARPE: Yes. Do you expect that it is going to be re-funded?

Mr MARK SPEAKMAN: We have had an evaluation of that program.

The Hon. PENNY SHARPE: Is that evaluation publicly available?

Mr COUTTS-TROTTER: It was provided in evidence to the disability royal commission. I am not sure whether a formal piece of advice to you, Attorney General, has been provided attaching it, but it was received by the department on 4 February.

Mr MARK SPEAKMAN: It has not trickled up to me personally yet.

The Hon. PENNY SHARPE: Right, no. I am not trying to trick you. I am just actually wondering whether the evaluation is available. I am actually interested in reading it because I have not seen it.

Mr COUTTS-TROTTER: It is available through the disability royal commission.

The Hon. PENNY SHARPE: I can find it there. I am sure the Minister's office can do that. Is it your expectation that that program will be re-funded?

Mr MARK SPEAKMAN: I have not received a brief from the agency yet, so I do not have its recommendations, but I will certainly take into account what this evaluation shows. My understanding is it is broader than the evaluation of the Cognitive Impairment Diversion Program that has been criticised by others for being too narrow in its cost-benefit analysis. This takes a more holistic approach and I will have the benefit of that evaluation.

The Hon. PENNY SHARPE: The Cognitive Impairment Diversion Program is a much smaller program. It was only operating out of two courts. It was only about \$1 million a year, if I recall, maybe a little bit less than that. This is a significant amount of money—\$5.5 million a year, \$11 million over two years. There is no funding forthcoming. What other supports will there be for people with cognitive impairment or people with intellectual disability through the court system?

Mr MARK SPEAKMAN: I cannot jump at shadows, and I understand why interested parties are keen to have some kind of funding commitment. It was a two-year program. I have now got an evaluation and I expect to be able to make a decision about its future funding in a timely manner.

The Hon. PENNY SHARPE: That then adds up to around \$11 million, if it is not funded, to support people with intellectual disability in contact with the criminal justice system. I understand that obviously the Intellectual Disability Rights Service is concerned about that, but I am interested in that as the shadow Minister for Disability Inclusion and all of the figures that we know and understand in relation to people with cognitive impairment and intellectual disability and their contact with the criminal justice system and the lack of support that there is. These programs actually were good things and have gone a long way to dealing with that. But you are saying to me today that I am going to have to wait and see.

Mr MARK SPEAKMAN: The agency only received the evaluation on 4 February. It may be there is a brief in my office but I have not seen it. When I get the brief, which I expect will be imminent—

Mr COUTTS-TROTTER: It will be.

Mr MARK SPEAKMAN: —I will look at it in a timely manner.

CORRECTED

The Hon. PENNY SHARPE: The other part of that is that my understanding is that it is supporting at least 26 staff, and I do not know how many volunteers but I suspect a significant number through that program. We are ticking into March. People need to make decisions. It is skilled work in relation to working with people with intellectual disability. We would not want to see them lost if there is a lag in funding decision-making.

Mr MARK SPEAKMAN: I certainly understand that. I understand that NGOs do not want to be told on 29 June that they suddenly need to sack all their staff.

The Hon. PENNY SHARPE: It happens more often than you think.

Mr MARK SPEAKMAN: Sadly, that is true. But I will look at it in a timely manner. I am very conscious of the good work it does and the importance of diversion and other appropriate support for people with cognitive impairment.

The Hon. PENNY SHARPE: I am not going to press it except to make the final point, which is that the thing about the justice service that I think is actually very innovative and that I do not see in many other places is that it is supporting people no matter where they are. This is not about perpetrator support. This is about people who are called as witnesses, it is about people who are victims themselves and it is individual support to people. We know through all of the evidence around people with intellectual disability that that is often what is required so that they can genuinely participate in a way that they understand and are very capable of doing. You probably need to take that as comment.

Mr MARK SPEAKMAN: They are comments that are well made.

The Hon. SHAOQUETT MOSELMANE: Can you just go back to Walama Court. Can I put it to you that the Law Society, the Bar Association the Police Association and the District Court all support the establishment of the Walama Court. Why is the State Government not supporting it?

Mr MARK SPEAKMAN: You can put that to me and that is all correct. As I said before, it is part of a number of alternatives, some or all of which we may embark on when we respond to the ice inquiry. As well as that, there is the prospect of a Youth Koori Court, expanding circle sentencing, expanding the MERIT program and expanding the Drug Court. There is a whole host of diversion programs and we have to pick and choose those that we think are going to be most effective.

The Hon. SHAOQUETT MOSELMANE: Do you support the Walama Court?

Mr MARK SPEAKMAN: I understand the concept of it but at the end of the day it is not an absolute, it is a relative exercise. Is a dollar in the Walama Court going to be as effective in reducing reoffending as a dollar in Drug Court or a dollar with MERIT? That said, reducing reoffending is not the only thing you consider. You would also look at what I will call the effect of community confidence in the justice system and community support for the justice system. On the one hand, you have to be careful that people do not think there is a kind of apartheid justice system where people who go through this stream are getting preferential treatment compared with those who are ineligible. But on the other hand, where there is a lot of disaffected members of Indigenous communities who do not trust the police and do not trust the courts, one argument for a stream like this or a Youth Koori Court is the increased community cohesion and community support for the justice system that it might engender.

The Hon. ROSE JACKSON: Is that what you think about the Walama Court, that it is an apartheid system of justice?

Mr MARK SPEAKMAN: No, I said you have got to be careful that anything you do does not attract that criticism. One aspect of the current Walama proposal is that eligible offenders would include some cohorts who if they were not in that stream would not be eligible for a non-custodial sentence. One issue with any Walama Court will be to design it so that, while you have Indigenous community and Elder involvement and close monitoring of offenders' compliance with the program, your prospects of going to jail or not remain the same no matter whether you are black or white or whatever you are. But that is a matter of detail, not an objection in principle to a Walama Court. Looking at the Youth Koori Court, that objection does not apply there. One of the great things about the Youth Koori Court—notwithstanding the lack of an empirical evidence base to show that it reduces reoffending, which BOCSAR is developing—is the community support and cohesion that it engenders.

The Hon. SHAOQUETT MOSELMANE: It is alarming, Attorney, to hear you compare the Walama Court with apartheid.

Mr MARK SPEAKMAN: No, I did not say that is my view. I said that is a potential criticism and that in any design of a Walama Court or any specialist court stream you have to make sure that whatever you do does not expose itself to such a criticism.

CORRECTED

The Hon. SHAOQUETT MOSELMANE: Do you have any ideological opposition to it?

Mr MARK SPEAKMAN: I do not have any ideological opposition to a court that involves Aboriginal Elders. No, I do not. We have seen circle sentencing, where you have Indigenous involvement, at the Local Court level. That has reduced reoffending. I do not have any ideological opposition. I would have a problem if for example a certain type of offence could be treated in the Walama Court and escape a custodial sentence, but if someone not in that stream had committed that offence then they would face a custodial sentence. But that is a matter of design and I think you can design it in such a way that eligible cohorts and eligible offences do not attract that problem.

The Hon. SHAOQUETT MOSELMANE: But you do see it as a separate system of justice, do you not?

Mr MARK SPEAKMAN: Not really, no. It would be a stream within—I can also tell you, and I do not think I am breaching confidence, that an alternative to a Walama Court is a Walama list in the District Court. The working group is looking at that as well.

The Hon. ROSE JACKSON: Those may be fair criticisms of this proposal if in fact justice was currently operating blindly. But surely, Attorney, you would accept that is not the case and the fact that Indigenous Australians are actively experiencing discrimination and disadvantage within our community and our justice system is a reason why those specialist programs are necessary.

Mr MARK SPEAKMAN: I am not quite sure what you are suggesting. If you are suggesting that judicial officers engage in some sort of conscious discrimination, I do not think that is the case. If there are unconscious biases in the system—there very likely are—the problem is way down the track. The problem is Aboriginal disadvantage to start with—in education, health, life expectancy and all those integers that lead to Aboriginal people being grossly over-represented among offenders. That is the main problem, not what happens in the justice system. The main problem is all of those anterior socio-economic disadvantages. That said, we want to make sure that the justice system does not worsen that. That is why, for example, you have to look at bail law. In a trial in Dubbo, Aboriginal people on bail can nominate a number of different kinship residences so that they are not indirectly discriminated against because of non-compliance with a bail condition as to residence. I do not deny that there are significant problems to address in the justice system, but overwhelmingly it is before you get to the justice system.

The Hon. ROSE JACKSON: Surely you would accept that it does worsen the experience. I am not interested in a theoretical exchange. Of course I agree with you that there are many contributing factors, but you are the Attorney General. Surely you must accept that the experiences of Indigenous people in the criminal justice system, which I accept are not because of conscious discrimination, do worsen their life experiences and that you have some responsibility to do something about that. These proposals go directly to that issue.

Mr MARK SPEAKMAN: They do, but we have done a number of things in the justice system to alleviate any disadvantage. Intensive corrections orders were expanded in 2018. The problem with the old regime was a mandatory work condition that disproportionately disadvantaged Indigenous people in remote areas where they could not get work. The driver disqualification scheme that we introduced in 2017 to make it easier for disqualified drivers to get their licences back has significantly reduced the number of Indigenous offenders in jail for driving while disqualified. All those sorts of measures, which are system-wide and are being evaluated by BOCSAR, will have a much bigger impact than a Walama Court. That is not to say do not do a Walama Court, but do not over-emphasise its relative importance. If a Walama Court goes ahead, it will be dealing with a very small cohort of offenders. What is much more significant and far more important is what we do in sentencing generally, with community-based sentencing and initiatives like driver disqualification.

The Hon. SHAOQUETT MOSELMANE: Attorney, I respect that you go on evidence-based research and that is very important, but I note the letter to you from the Law Society's Doug Humphreys in 2018 in which he quite clearly says that research suggests that the Indigenous sentencing courts have had an impact on strengthening informal social controls within Indigenous communities. One study found the courts were achieving positive criminal justice outcomes and that the processes that were most helpful for an offender to desist from criminal behaviour were those that included access to effective alcohol and drug rehabilitation programs and Elder support of the offender. That is what a Walama Court would provide. Is that not the case?

Mr MARK SPEAKMAN: That is the Law Society's contention. As I understand it, there is no direct and robust statistical evidence that shows a Walama Court will work. There is anecdotal evidence of a Victorian model where in an anecdotal and discursive way some people have said they value the program. There is also robust evidence that the Drug Court works. Proponents of the Walama Court seek to extrapolate from that that the Walama Court will work because they want a kind of intervention model that is like the Drug Court. One of the

CORRECTED

decisions we will make if we go down the diversion path is whether it is more effective just to roll out the Drug Court further around New South Wales before you start with a Walama Court—to stick with expanding the Drug Court and perhaps having an Indigenous list, rather than trying to adapt the Drug Court model to the Walama Court.

We have not made any decisions on that, but those are the kinds of competing considerations we have to take into account. While there is clearly robust evidence for a Drug Court, for Magistrates Early Referral into Treatment [MERIT] and circle sentencing, there is basically no direct and empirical evidence that a Walama Court works. We are getting BOCSAR to analyse the efficacy of its analogue, the Youth Koori Court. I am sorry, it is not BOCSAR. Mr McKnight will correct me. We are getting a statistical evaluation.

Mr McKNIGHT: That is right. A firm has been contracted to provide an evaluation of the Youth Koori Court.

The Hon. MARK LATHAM: Who has?

Mr McKNIGHT: I will take that on notice.

The Hon. SHAOQUETT MOSELMANE: Yes, take it on notice. Just a final question from me before I pass on to my colleague, Attorney. You have indicated there may perhaps be a Walama list. Is that a "perhaps" or is it definite?

Mr MARK SPEAKMAN: Mr Thomas can elaborate if he wishes, but that would not be a decision of Government. It would be a decision of the District Court, which controls its own practice and procedure, to set up a Walama list.

The Hon. SHAOQUETT MOSELMANE: Is it in discussion at the moment?

Mr MARK SPEAKMAN: There is discussion at the moment about that.

The Hon. ROSE JACKSON: Let us get to the hard evidence on the Drug Court. You have acknowledged publicly—I think on the anniversary of the Drug Court—how successful it was, so I will ask you about the Drug Court in Dubbo. It has been a source of ongoing frustration for that community since it was first promised or suggested back in 2015 by the then member for Dubbo. It is good that the Government has funded the alcohol and rehabilitation centre, but really the Drug Court was a central part of what that local community was campaigning for. It has the evidence base, so can you give us a commitment that Dubbo is getting its Drug Court?

Mr MARK SPEAKMAN: A bit like with Ms Boyd, I cannot give you a commitment ahead of a Cabinet decision, and I cannot identify what submissions and what discussions there are within Cabinet. But I will concede there is a very strong evidence base for the Drug Court and I will note that, apart from the residential rehabilitation facility in Dubbo, we are expanding the Dubbo courthouse so it will have the future capacity to host a Drug Court if that is what is decided.

The Hon. ROSE JACKSON: You are acknowledging that it works and you are suggesting that merely it is a budgetary decision.

The Hon. SCOTT FARLOW: Read between the lines.

The Hon. ROSE JACKSON: Sorry?

The Hon. SCOTT FARLOW: Read between the lines of what the Attorney General said.

Mr MARK SPEAKMAN: No, don't read between the lines.

The Hon. ROSE JACKSON: Part of the problem that we have is that there are a lot of important proposals that you acknowledge work, or say might work, or say we could give them a go, and the only kind of commitment we get is, "Oh well, maybe in the budget." Is that all that we get on this again: maybe in the budget?

Mr MARK SPEAKMAN: All these things are not being done in dribs and drabs. We have got a kind of smorgasbord of potential proposals to respond to the ice inquiry. I expect that the Government will respond in one hit to all those recommendations. That will be a response at the same time to Walama, circle sentencing, MERIT and the Drug Court. We will not be doing this in isolation. There will be a whole-of-government response to all those recommendations.

Mr DAVID SHOEBRIDGE: It is a smorgasbord that has been waiting 12 months to be eaten.

The Hon. ROSE JACKSON: You are leading that response, is that right? You are the lead Minister for the response to the ice inquiry.

CORRECTED

Mr MARK SPEAKMAN: I accept you have been waiting a while. The smorgasbord is not beyond its use-by date, and hopefully we will have a response sooner rather than later. But to answer your question, the health Minister and I are the lead Ministers.

The Hon. ROSE JACKSON: You are the lead Minister with the health Minister. We have been waiting over a year for the Government's response. By the end of this year, will we have a response to the ice inquiry?

Mr MARK SPEAKMAN: What I said at the end of last year was that this year there would be a response, and that position has not changed.

The Hon. ROSE JACKSON: And the Drug Court in Dubbo would be part of that response?

Mr MARK SPEAKMAN: Our response to a recommendation to expand the Drug Court, including to regional locations, I anticipate will be part of that response.

The Hon. ROSE JACKSON: I wanted to ask about the Government's response to the Law Enforcement Conduct Commission [LECC] inquiry in relation to police strip searches, but I think my time has expired.

The CHAIR: That is one of Mr Shoebridge's favourite topics. I would not want you to invade his space.

Mr DAVID SHOEBRIDGE: We may come back to that later. Minister, what is the current timing that you have for the introduction of laws to finally allow victims and survivors of historical child sexual abuse to overturn unfair settlements?

Mr MARK SPEAKMAN: I am very confident that it will be this year, and it is likely to be this session of Parliament.

Mr DAVID SHOEBRIDGE: There was a consultation process undertaken on a draft bill. A number of informed advocates, including the Australian Lawyers Alliance and others, critiqued the draft bill as being far too limited. How many submissions were there?

Mr MARK SPEAKMAN: There were about 16 submissions on the draft bill.

Mr DAVID SHOEBRIDGE: Can you provide the detail about who provided submissions and who was approached for submissions?

Mr MARK SPEAKMAN: I will just have to check that I am not breaching any confidences. Are you that person, Mr McKnight? There were about 16.

Mr McKNIGHT: I think the detail of that we would have to provide on notice.

Mr DAVID SHOEBRIDGE: Or you could provide it later in the day, Mr McKnight?

Mr McKNIGHT: Sure.

The Hon. TREVOR KHAN: Point of order: I know this is done as a matter of courtesy, but we actually have a resolution that deals with matters taken on notice.

Mr DAVID SHOEBRIDGE: No, I understand that. If it cannot be done later today it will be done on notice, but if we could get the list later today that would be useful.

The CHAIR: It is purely the choice of the Minister.

Mr DAVID SHOEBRIDGE: Yes. Are you proposing any changes to the draft bill as a result of those submissions?

Mr MARK SPEAKMAN: That is to be determined.

Mr DAVID SHOEBRIDGE: But the indication is that that will come this session?

Mr MARK SPEAKMAN: That is my expectation. It is not my guarantee, but I am extremely confident it will be this year and my expectation is this session.

Mr DAVID SHOEBRIDGE: All right. My final question on that is: Will the submissions be made public? I am more than happy if that is taken on notice.

Mr MARK SPEAKMAN: I will take that on notice.

Mr DAVID SHOEBRIDGE: Minister, who in the Cabinet is responsible for the implementation of the Optional Protocol to the Convention Against Torture [OPCAT]?

Mr MARK SPEAKMAN: That would be primarily the corrections Minister.

CORRECTED

Mr DAVID SHOEBRIDGE: In terms of your role as the Attorney General, what steps are you going to take to make sure that it is implemented by the deadline of January 2022?

Mr MARK SPEAKMAN: That remains under operational review. There is an issue with the Commonwealth. We as a subnational government are not a signatory to OPCAT; the Commonwealth is. We accept in principle OPCAT's operation in our custodial facilities, but if there were any need to embellish oversight we expect the Commonwealth to pick up the tab for its foray into an external treaty. Thus far, we have not had that commitment.

Mr DAVID SHOEBRIDGE: Is there any intention to have some kind of public engagement or submission process to help map out how New South Wales will comply with OPCAT?

Mr MARK SPEAKMAN: I will take that on notice because it is primarily a question for the corrections Minister.

Mr DAVID SHOEBRIDGE: Is it true that the current intention is to make the Inspector of Custodial Services the National Preventive Mechanisms [NPM] body in New South Wales?

Mr MARK SPEAKMAN: I will take that on notice.

Mr DAVID SHOEBRIDGE: My last question, if you are taking it on notice, is: Do you have faith that that office has the capacity to do it?

Mr MARK SPEAKMAN: Mr Khan is shaking his head.

The Hon. TREVOR KHAN: Sprung!

Mr MARK SPEAKMAN: I will take that on notice as well.

Mr DAVID SHOEBRIDGE: All right. I could say more. Attorney, what legal assistance is there to help First Nations people to navigate the Stolen Generations compensation scheme? What legal funding is provided either through the Aboriginal Legal Service [ALS] or Legal Aid?

Mr MARK SPEAKMAN: I will ask Mr Thomas to answer that.

Mr THOMAS: Our civil law division provides some extensive support to Aboriginal people navigating that scheme and we have since the scheme originated. I think we might provide some kind of support or representation to the majority of applicants to that scheme.

Mr DAVID SHOEBRIDGE: Is it the case that Legal Aid has the funds to provide assistance for everyone who has sought it?

Mr THOMAS: For support under that scheme?

Mr DAVID SHOEBRIDGE: Correct.

Mr THOMAS: I am not familiar with anybody who has sought assistance under that scheme that we have not provided assistance for.

Mr DAVID SHOEBRIDGE: Has there been any public statement by Legal Aid or outreach by Legal Aid to the First Nations community advising them of this service?

Mr THOMAS: Our Civil Law Service for Aboriginal Communities regularly promotes all civil law services to Aboriginal communities around New South Wales, and that includes talking to people about the assistance we can provide in making claims under the Stolen Generations scheme.

Mr DAVID SHOEBRIDGE: Given the level of trust that exists between the First Nations community and the Aboriginal Legal Service, have you given any consideration to providing a discrete pool of funding to ALS to provide that support for First Nations people to access the scheme?

Mr MARK SPEAKMAN: That issue has not been on my radar.

Mr DAVID SHOEBRIDGE: Will you consider giving ALS some funding so that the assistance can be expanded, given the age of the cohort of people who would be entitled to claim under this scheme? They are very elderly and, absent some significant increase in numbers, it is likely many will pass away before they get their claim on.

Mr MARK SPEAKMAN: I will ask Mr Coutts-Trotter to provide a brief and then I will consider it.

CORRECTED

Mr DAVID SHOEBRIDGE: Can you provide any data on how many claims have been made under the scheme to date and whether or not that is in line with what the expectations were in terms of the claims to date and what the total number of claims were expected to be under the scheme?

Mr THOMAS: I can certainly provide on notice the number of people we have assisted through the scheme, but I do not have access to the total number of claimants under the scheme.

Mr DAVID SHOEBRIDGE: Who would have that data?

Mr THOMAS: That sits in the Department of Premier and Cabinet as I understand it.

Mr DAVID SHOEBRIDGE: Do you know how many applicants have died waiting to access compensation, Mr Thomas?

Mr THOMAS: I do not know that, no. I do not know the answer to that. We certainly do advocate strongly on behalf of any clients that we have who are very elderly with the idea of expediting their claims so that they can be resolved before that occurs. It is a common issue because of the age—

Mr DAVID SHOEBRIDGE: Because their claim dies with them.

Mr THOMAS: Yes. Because of the age of the cohort of people who are making those claims, it is not an uncommon concern.

Mr DAVID SHOEBRIDGE: Could you identify how many of your clients that dreadfully unfortunate set of circumstances has occurred for?

Mr THOMAS: I am not familiar with any that have because we get it expedited, but I will certainly take it on notice and provide any details.

Mr DAVID SHOEBRIDGE: Attorney, in September 2019 Community Legal Centres lost its Care Partner funding and so it can no longer provide early legal advice and support in care and protection matters. Who has taken up that work?

Mr MARK SPEAKMAN: Legal Aid. My understanding is the volume of that work fell very significantly, but I will invite Mr Thomas to answer.

Mr THOMAS: The volume of that work did fall quite significantly. You might recall the program was initially funded to twice as many Community Legal Centres. It was halved halfway through because of a lack of demand. We took that work in-house two years ago. We have monitored the trends of care and protection work in Legal Aid to make sure that we are meeting the demand that we see. Last year was not a typical year in demand for any of our services, as you can imagine.

Mr DAVID SHOEBRIDGE: I accept that, Mr Thomas.

Mr THOMAS: But we have, nevertheless, continued to monitor care and protection work and where those referrals are coming from. We are confident we are meeting the demand that has come from that program, although the overall volume of care and protection work that we have received has fallen slightly.

Mr DAVID SHOEBRIDGE: Mr Thomas, do you have a discrete service that replicates that early legal support provision that Community Legal Centres were providing, or is it just part of the family law early intervention unit more broadly?

Mr THOMAS: It is part of our family law division generally. There is the early intervention, which does provide that early legal assistance. The similar early legal assistance is provided from all of our offices around New South Wales. A significant proportion of those Care Partner clients were referrals from Legal Aid, so what we effectively are doing is keeping those referrals in-house and managing them ourselves.

Mr DAVID SHOEBRIDGE: Is there a dedicated helpline or phone line for early legal support for child protection matters?

Mr THOMAS: There is—through our early intervention service.

Mr DAVID SHOEBRIDGE: Part of the broader early intervention service?

Mr THOMAS: That is right.

Mr DAVID SHOEBRIDGE: There is nothing specific for child protection?

Mr THOMAS: They do deal significantly with child protection matters.

CORRECTED

Mr DAVID SHOEBRIDGE: How many advices have been provided in care matters under that helpline since you took over the arrangement?

Mr THOMAS: I am happy to provide on notice all of our care and protection data that we look at, including those kinds of advice services through that line.

Mr DAVID SHOEBRIDGE: Do you provide face-to-face outreach?

Mr THOMAS: We do, although given the circumstance with the pandemic last year we withdrew a lot of our face-to-face outreach services. We are starting to re-establish those now.

Mr DAVID SHOEBRIDGE: Do solicitors attend case planning meetings with clients?

Mr THOMAS: They do from time to time, but I will have to take on notice the volume of that.

Mr DAVID SHOEBRIDGE: Do you provide advice on safety action plans for Temporary Care Agreements?

Mr THOMAS: My understanding is that we do, yes.

The Hon. MARK LATHAM: Attorney, is it one of the objectives in your portfolio to reduce the number of Indigenous people in New South Wales in various forms of permanent detention?

Mr MARK SPEAKMAN: Yes.

The Hon. MARK LATHAM: How do you think coercive control laws will impact on that goal?

Mr MARK SPEAKMAN: That is an interesting question. There is a prospective tension there. Any new criminal law may lead to more incarceration of people, but that is part of the reason why I have an inquiry—to look at these issues and come up with recommendations.

The Hon. MARK LATHAM: But you would expect, all other things being equal—given the disproportionately high incidence of domestic violence in Indigenous communities—that coercive control laws would add to arrests, trials and convictions?

Mr MARK SPEAKMAN: That is something that the Committee should look at.

The Hon. MARK LATHAM: But it stands to reason, doesn't it? It is a logical conclusion.

Mr MARK SPEAKMAN: It stands to reason that there is the potential, and that is one of the issues the Committee should look at.

The Hon. MARK LATHAM: You were interrupted earlier on. You were talking in response to the Hon. Rose Jackson about Indigenous incarceration rates in New South Wales. I think you were about to make reference—you got halfway through the word "economic". Can you finish that off in terms of your assessment of the relationship between socio-economic factors and Indigenous imprisonment rates in New South Wales?

Mr MARK SPEAKMAN: To be absolutely clear, I was not suggesting that imprisonment rates are not worsened by the justice system. But the biggest problems we have are all the poor education outcomes, poor housing outcomes, social abuse, low life expectancy. Ultimately the fence at the top of the cliff is going to be more effective than the ambulances at the bottom of the cliff. That said, there is evidence of, other things being equal, greater arrest rates for certain offences for Indigenous people when you factor out all of the other issues. We have to make sure that policing, the court system and the corrections system do not make a bad situation even worse.

The Hon. MARK LATHAM: Those socio-economic factors are big, aren't they?

Mr MARK SPEAKMAN: Absolutely.

The Hon. MARK LATHAM: Does that include in domestic violence?

Mr MARK SPEAKMAN: It does. You make the point, which I accept, that domestic violence is much greater in Indigenous communities. We see that across New South Wales. I think for Orana and the Far West, looking at the entire community, the DV rates there that are reported are over three times the general population. There are other relatively disadvantaged areas in New South Wales that have 1½ to two times the State average, so certainly there is an association.

The Hon. MARK LATHAM: And those disadvantage factors that you mentioned, most of which are prevalent in public housing estates where even white people live, do you think they are a driver of higher rates of imprisonment?

CORRECTED

Mr MARK SPEAKMAN: Of imprisonment?

The Hon. MARK LATHAM: Yes.

Mr MARK SPEAKMAN: Are you talking about domestic—

The Hon. MARK LATHAM: No, across the board. You have drawn a link between the socio-economic factors of Indigenous—I am saying, the factors you mentioned are also prevalent in public housing estates where even white people live.

Mr MARK SPEAKMAN: I think that is right.

Mr DAVID SHOEBRIDGE: What does "even white people live" mean?

The Hon. MARK LATHAM: We have had a focus on Indigenous—you wouldn't visit many public housing estates, living in Woollahra of course, but I am saying that even white people live in public housing estates.

Mr DAVID SHOEBRIDGE: "Even white people"—just the appalling nature of your question.

Mr MARK SPEAKMAN: Look, there is no—

The Hon. MARK LATHAM: You want to come out with me one day. It will be a real discovery for you.

Mr DAVID SHOEBRIDGE: No, I don't, Mark. I do not want to go out with you.

The Hon. MARK LATHAM: That would be right. You don't want to visit the poor.

Mr DAVID SHOEBRIDGE: That is the standard answer.

The CHAIR: Order! Please direct questions and comments to the Minister.

Mr MARK SPEAKMAN: As a general proposition, there is a clear association between the likelihood of criminal behaviour on the one hand and socio-economic disadvantage on the other hand.

The Hon. MARK LATHAM: You mentioned the factors in the court system that worsen the rates and you made mention of "unconscious bias". What is that?

Mr MARK SPEAKMAN: For example, in a bail application, that the court is not cognizant of the fact that kinship arrangements in Aboriginal communities might be different from a white community where you have one place of residence. There might be multiple—

The Hon. MARK LATHAM: Why is that unconscious? Wouldn't you actually know that difference because it is a fact that you have just mentioned?

Mr MARK SPEAKMAN: You might, but you may not pick that up. You may not pick up the cultural differences.

The Hon. MARK LATHAM: Isn't that ignorance as opposed to unconscious bias?

The Hon. SCOTT FARLOW: Point of order: The Hon. Mark Latham keeps interrupting the Minister as he is answering.

The Hon. MARK LATHAM: What is unconscious bias? I am trying to get to an answer.

The Hon. SCOTT FARLOW: Mark, just give him a fair run in answering the question.

Mr MARK SPEAKMAN: Is it ignorance? You could call it ignorance, you could call it unconscious bias. It is perhaps not being alive to differences that could contribute to criminogenic behaviour.

The Hon. MARK LATHAM: What is unconscious bias?

Mr MARK SPEAKMAN: Unconscious bias is—

Mr DAVID SHOEBRIDGE: It is often described as bias of which you are not conscious.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: Bias of which you are not conscious.

The Hon. MARK LATHAM: You have many voices in your head. I am trying to find out if the Attorney has them—

CORRECTED

Mr DAVID SHOEBRIDGE: Don't project.

Mr MARK SPEAKMAN: Whatever definition I give is going to be somewhat circular. It is outcomes or inclinations of which you are not overtly aware.

The Hon. MARK LATHAM: How many of your judicial officers suffer from this ailment?

Mr MARK SPEAKMAN: I don't know.

The Hon. MARK LATHAM: Do you suffer from it?

Mr MARK SPEAKMAN: Do I suffer? I probably do.

The Hon. MARK LATHAM: You do?

Mr MARK SPEAKMAN: I probably do.

The Hon. MARK LATHAM: What do you do to correct your bias on a daily basis?

Mr MARK SPEAKMAN: You keep learning and informing yourself.

The Hon. MARK LATHAM: You keep learning? That is a conscious process. This is unconscious, so you will never get to it, will you?

The Hon. SCOTT FARLOW: You need a conscious process to cure—

Mr MARK SPEAKMAN: I think it is probably an exercise in semantics.

The Hon. MARK LATHAM: Really?

Mr MARK SPEAKMAN: Yes, I do.

The Hon. ROSE JACKSON: You're so much smarter than him, Mark. You've got him!

The CHAIR: Order!

The Hon. MARK LATHAM: But that question of how many of your judicial officers have an unconscious bias—voices in their head telling them—

Mr MARK SPEAKMAN: No, no, no. I think—

Mr DAVID SHOEBRIDGE: You're projecting again.

Mr MARK SPEAKMAN: I am not saying that. Look, we have to make sure that the judiciary as a whole, in hearing evidence and in sentencing practices, does not unconsciously complicate whatever Indigenous disadvantage already exists. Primarily those disadvantages are socio-economic leading into the system.

The Hon. MARK LATHAM: Do you give them lots of training in the factors of Indigenous cultural—

Mr MARK SPEAKMAN: I think the judicial commission does give them cultural training. I think that is right.

The Hon. MARK LATHAM: And that is a conscious process.

Mr MARK SPEAKMAN: That is a conscious process to address potentially unconscious bias.

The Hon. MARK LATHAM: What about things that are unconscious?

Mr MARK SPEAKMAN: This is a bit like Donald Rumsfeld and known knowns, known unknowns and unknown unknowns.

The Hon. MARK LATHAM: It is a nonsense, isn't it?

Mr MARK SPEAKMAN: No, it is not a nonsense concept.

The Hon. MARK LATHAM: It is a nonsense concept.

Mr MARK SPEAKMAN: It is not a nonsense concept.

The Hon. MARK LATHAM: It's not?

Mr MARK SPEAKMAN: No.

The Hon. MARK LATHAM: What is your evidence base for it?

CORRECTED

Mr MARK SPEAKMAN: It is not a nonsense concept. You see BOCSAR analyses. I will have to take on notice the precise offences. But other things being equal, there are greater conviction rates for Indigenous people than for non-Indigenous people for certain offences, other things being equal. It is not a nonsense. It is not a nonsense. It is all a matter of perspective. I have said that the main driver of overrepresentation of Indigenous people in the justice system is socioeconomic disadvantage and I have disputed, if it were an assertion, that there is some kind of conscious bias or conscious racism of judiciary. But we have to be alive to the prospect that there is unconscious bias, that the background of Indigenous offenders is not picked up sufficiently in sentencing, for example.

The Hon. MARK LATHAM: It sounds like a significant problem in your assessment. Have you got any studies or research reports that quantify the nature of the problem?

Mr DAVID SHOEBRIDGE: He has already said he will take that on notice.

Mr MARK SPEAKMAN: I will take that on notice. But a lot of this cannot be—

The Hon. MARK LATHAM: So you can't—

Mr MARK SPEAKMAN: But I have referred to one BOCSAR thing, which I will dig out for you.

The Hon. MARK LATHAM: That did not draw a causal link to unconscious bias, you just said. It could be a conscious bias.

Mr MARK SPEAKMAN: A lot of this cannot draw a causal link. It is association. A lot of these BOCSAR analyses, you cannot necessarily establish a causal link. You just establish an association.

The Hon. MARK LATHAM: In your understanding of unconscious bias have you looked at the one big control group study we have had in Australia from the Behavioural Economics Team of the Australian Government and what they found about unconscious bias? Because that does seem to be the definitive piece of research three years ago.

Mr MARK SPEAKMAN: I have not read that, no.

The Hon. MARK LATHAM: If you have a look at that, will you reflect on the conclusion that the bias, if there was any, was against white elderly men? Is that something that squares with your theory of unconscious bias?

Mr MARK SPEAKMAN: That is unlikely, in my respectful opinion.

The Hon. MARK LATHAM: That is unlikely? So you think the Behavioural Economics Team of the Australian Government—

Mr MARK SPEAKMAN: I have not read that report.

The Hon. ROSE JACKSON: You are not a victim.

Mr DAVID SHOEBRIDGE: The whole society is stacked against you, Mark.

The Hon. ROSE JACKSON: You are a victim of nothing.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: Poor Mr Latham.

The Hon. MARK LATHAM: I am just giving you facts.

Mr DAVID SHOEBRIDGE: The world is stacked against him.

The Hon. MARK LATHAM: I know that is a strange world for Labor and The Greens, facts and research reports.

The Hon. ROSE JACKSON: This is why you never became Prime Minister: unconscious bias.

The CHAIR: Order!

Mr MARK SPEAKMAN: What is important is not only that justice is done, that it is seen to be done. That is why with the Walama Court, on the one hand you have to be very careful that people do not allege that it is giving preferential justice to the cohorts who are in that stream, but on the other hand, recognising its potential and the potential of other diversion programs to enhance community confidence and Indigenous community confidence in the justice system, when there is so much disaffection in Indigenous communities with the justice system.

CORRECTED

The Hon. MARK LATHAM: In the department's research, what has been found to be the most reliable predictor of domestic violence?

Mr MARK SPEAKMAN: I will have to take that on notice. Which particular research are you referring to?

The Hon. MARK LATHAM: The Australian Institute of Criminology says that 82 per cent of perpetrators have prior criminal convictions.

Mr MARK SPEAKMAN: That is true.

The Hon. MARK LATHAM: That is pretty high.

Mr MARK SPEAKMAN: Without getting into an ideological debate, the biggest indicator of domestic violence perpetration is gender. I am not going to get into the gender wars, but we know that 75 per cent of intimate-partner homicide and violence is males on others.

The Hon. MARK LATHAM: This was 82.

Mr MARK SPEAKMAN: They are not necessarily conflicting. You do not have to choose one route or another. You can address gender equity issues and attitudinal issues on the one hand. You can also address criminogenic issues, psychological issues, substance abuse issues on the other hand. They are not mutually exclusive. You do not have to pick one side or the other.

The Hon. MARK LATHAM: There are more men committing criminal offences than women. But the Venn diagram overlaps.

The Hon. ROSE JACKSON: I just wanted to ask, Minister, about the recommendations of the Law Enforcement Conduct Commission [LECC] in relation to strip searches and specifically recommendations 3, 11 and 15, all of which recommend Parliament consider amendments to legislation. As the Minister with joint carriage of the Law Enforcement (Powers and Responsibilities) Act [LEPRA], have you considered those recommendations?

Mr MARK SPEAKMAN: I have looked at those recommendations. I do not think I have an agency brief on those as yet. I will consider that in due course.

The Hon. ROSE JACKSON: The LECC released its report some time ago.

Mr MARK SPEAKMAN: Not that long ago, I think.

The Hon. ROSE JACKSON: Considering the delays we have seen in some of these other areas, I suppose, relative to the amount of time it has taken to fix the Coroner's Court—

Mr MARK SPEAKMAN: Couple of months ago.

The Hon. ROSE JACKSON: So yet again we are just getting that the department will give you a brief and then you will think about it.

Mr MARK SPEAKMAN: I do not know what you do, but I gather—

The Hon. ROSE JACKSON: Have you read the LECC report? I have read it. Have you read it?

Mr MARK SPEAKMAN: Yes, I have.

The Hon. ROSE JACKSON: And you had no—

The Hon. TREVOR KHAN: Point of order—

The CHAIR: I will take the point of order.

The Hon. MARK LATHAM: This is coercive control, trying to control your speech.

The Hon. TREVOR KHAN: Is there any unconscious bias in this?

The Hon. MARK LATHAM: We do need a law.

The Hon. TREVOR KHAN: Can the member stop interjecting and allow the Attorney to answer the question?

The Hon. MARK LATHAM: We are going to outlaw this.

Mr MARK SPEAKMAN: Sorry, what is the question?

CORRECTED

The Hon. ROSE JACKSON: Have you read the LECC report?

Mr MARK SPEAKMAN: Yes.

The Hon. ROSE JACKSON: Did you, in your reading of the LECC report, specifically recommendations 3, 11 and 15, but any others if they did, cause you to think, "Gee, the Parliament should do something about that. I should probably do something about that as Attorney General?" Did you think that when you were reading the report?

Mr MARK SPEAKMAN: There are, obviously, issues of concern that that report raises. That is something that will be workshopped with the department, with my colleague the police Minister, who has joint carriage of this legislation. We will deal with that in an appropriately timely manner. But the report has only been received a couple of months ago.

The Hon. ROSE JACKSON: In terms of time frames again, appropriately timely as in the end of this year or appropriately timely as in that it will just sit on your desk for three years like the Coroner's Court brief?

Mr MARK SPEAKMAN: I am sorry if you are somewhat cynical. But I am not going to put a time frame on it. But I will be dealing with it as appropriately as I can.

The Hon. ROSE JACKSON: Just one more quick question on domestic violence before I hand to my colleague Mr Moselmane. You mentioned in your response to questions from Mr Latham the issue around domestic violence figures in rural and regional New South Wales. You mentioned Orana. You mentioned the Far West. In Dubbo, which is in the Orana region, for example, emergency domestic violence accommodation—there are 50 people, women and children, on the waiting list. It can take a month to access that emergency accommodation. Do you think your Government is doing enough to ensure that there are essential services available for women in these areas that do experience particularly high rates of domestic violence?

Mr MARK SPEAKMAN: I will have to take particular areas on notice. But as a general proposition we are spending a record amount on domestic and family violence, \$530 million over four years. That includes substantial amounts for specialist homelessness services, caseworkers, counsellors and so on, women's domestic violence advocacy service. General budgeting issues will come up again this year. That will be part of the budgeting process. But we have put a lot of State and Federal money into a COVID response over the past 12 months to address issues like that. But you can always do more.

The Hon. ROSE JACKSON: There is another issue that has been raised by my colleague Mr Borsak, on behalf of Helen Dalton, the member for Murray. I think that in Hay there is no specialist domestic violence accommodation. The nearest is in Griffith, which is a two-hour drive away. So I suppose there are problems dotted across rural and regional New South Wales, which experience, as you acknowledged, much higher rates of domestic violence. Is that something that you are looking to urgently address as part of the budgetary process?

Mr MARK SPEAKMAN: We are always looking at service gaps, be it accommodation or other frontline services. Those are the sorts of issues we will address in the budget.

The Hon. ROSE JACKSON: Perhaps you could look at those ones as well.

The Hon. SHAOQUETT MOSELMANE: Attorney, in November 2015 the then privacy commissioner recommended the introduction of legislation for mandatory notification of serious breaches of privacy by State agencies. The Opposition proposed two bills. Both bills were opposed by your Government. Will this ever happen while you are in government?

Mr MARK SPEAKMAN: We have said publicly that we will have a mandatory notification scheme. There are a number of problems with Mr Lynch's private member's bills. One, there had not been consultation on it with interested parties. It differed from the Commonwealth's scheme in a number of ways. I think it looked at serious invasion of privacy rather than serious harm. But we have publicly committed to a mandatory scheme. I expect that will be legislated this year. But it may not be up and running operationally until next year.

The Hon. SHAOQUETT MOSELMANE: You have already conducted a discussion paper.

Mr MARK SPEAKMAN: Yes.

The Hon. SHAOQUETT MOSELMANE: Has that been tabled or has that been reported to various agencies?

Mr MARK SPEAKMAN: We have certainly consulted government agencies in arriving at this position.

The Hon. SHAOQUETT MOSELMANE: And so, it will be established this year?

CORRECTED

Mr DAVID SHOEBRIDGE: Shaoquett, there was a noise over here earlier.

The Hon. ROSE JACKSON: Last question.

The Hon. SHAOQUETT MOSELMANE: Last question?

The Hon. ROSE JACKSON: Yes.

Mr MARK SPEAKMAN: My expectation is that we will legislate this year, but to get it operational will probably be next year.

Mr DAVID SHOEBRIDGE: Attorney, there is no statutory time frame for the response to the Law Enforcement Conduct Commission's reports and the recommendations they have given. Given the LECC gave a series of recommendations in relation to legal and policy changes relating to police strip searches in December last year, do you have a time frame in which you will be responding, at least for those that are in your carriage?

Mr MARK SPEAKMAN: I do not have a time frame at the moment.

Mr DAVID SHOEBRIDGE: Will you publicly respond to the key recommendations?

Mr MARK SPEAKMAN: That is a matter the Cabinet will have to determine. I am one of two Ministers with carriage of the legislation.

Mr DAVID SHOEBRIDGE: Minister, one of the key recommendations was recommendation three in relation to the Law Enforcement (Powers and Responsibilities) Act. That is an Act for which you have ministerial responsibility?

Mr MARK SPEAKMAN: Joint responsibility, yes.

Mr DAVID SHOEBRIDGE: With the police Minister?

Mr MARK SPEAKMAN: Correct.

Mr DAVID SHOEBRIDGE: Minister, that recommendation was that there should at least be a definition of a strip search in the law. Do you accept that not having an exhaustive definition of strip search is a problem in the LEPPRA?

Mr MARK SPEAKMAN: Look, the LECC has identified what it says are the problems with the absence of a basic definition. That is something that I will look at and the police Minister will look at and form a view with Cabinet.

Mr DAVID SHOEBRIDGE: Well, it is a problem in day-to-day policing because some police think you can partially disrobe people in public and that is okay. That is not a strip search. Other police would say it is a strip search. Is the Government's policy now just to wait for that to be determined by the courts?

Mr MARK SPEAKMAN: No, no, no. We have got three recommendations that are addressed to government and the other recommendations are what I will say are operational recommendations for the police. It is now a matter for the police Minister and me to get advice from the Department of Communities and Justice, form views and then go to Cabinet with those views.

Mr DAVID SHOEBRIDGE: One of the other key recommendations was at least clarifying whether police can do what they currently repeatedly and routinely do, which is compel a person to squat, bend over and move their genitals or breasts during a strip search, to facilitate visual inspection. You think it is acceptable that the uncertainty in the law allows that kind of degrading direction to be given by police?

Mr MARK SPEAKMAN: Other things being equal, it is always better if the law is clear and certain than ambiguous and open to different interpretations, but our government response to that has not yet been formulated. We have had the report for a couple of months and I will be getting advice from DCJ.

Mr DAVID SHOEBRIDGE: This another "in the fullness of time" answer, is it, Attorney? "In due course, at the appropriate juncture"—

The Hon. SCOTT FARLOW: That is your commentary.

Mr DAVID SHOEBRIDGE: Is it another one of those answers?

Mr MARK SPEAKMAN: That is your commentary. I did not use those expressions.

The CHAIR: Mr Latham?

The Hon. MARK LATHAM: No. I am completed in my questioning, Chair.

CORRECTED

The CHAIR: Finished? No more unconscious bias?

The Hon. ROSE JACKSON: We have more questions. But, David, you have more.

The Hon. MARK LATHAM: I am very aware of what I am doing and where we are at.

Mr DAVID SHOEBRIDGE: Attorney, for some reason or another, Victims Services has stopped publishing critical data about how it operates. It used to have comprehensive data profiles published up until 2017-18. Last estimates I asked you about this and was told that you would take it on notice and it would be dealt with in due course. There still have not been comprehensive Victims Services datasets published for 2018-19 or 2019-20. Why not?

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

Mr DAVID SHOEBRIDGE: Do you agree that transparency is important in terms of the assistance given for victims? Do you agree on that?

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: Was there a conscious policy decision to cease reporting the data?

Mr MARK SPEAKMAN: Not one that I am aware of, but I will have to take that on notice.

Mr DAVID SHOEBRIDGE: Can you give a commitment to publish that data both retrospectively and going forward?

Mr MARK SPEAKMAN: I will give a commitment to get to the bottom of it and then respond.

Mr DAVID SHOEBRIDGE: I accept that. In the fullness of time? You will give an answer on notice. Can you provide a response on notice?

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: I think I have about a minute and a half and I think it is unworthy to go onto a whole new subject. Mr Coutts-Trotter, did you have anything to add?

Mr COUTTS-TROTTER: Not to that subject, Mr Shoebridge, but I do have an answer to the question asked by the Chair and Mr Latham about who made a decision, and when, to grant legal representation under section 52 of the ICAC Act to Mr Maguire. The decision was made by my predecessor as secretary of the then Department of Justice, Mr Andrew Cappie-Wood. He received advice on 5 July 2018 indicating to him that Mr Maguire had made an application under section 52 of the Act. The advice to him was to endorse providing legal support on the advice of officers of the department, and he did it that day, on 5 July. It is not unusual for advice of this nature, in my experience, to come very late. This was ahead of a hearing of the ICAC on Monday 9 July 2018.

The CHAIR: Just to recap, the application was made on 5 July?

Mr COUTTS-TROTTER: No. The decision was presented to my predecessor on 5 July. I will see if I can find out when the application was made, but it would be soon before that, I think, Chair.

The CHAIR: Okay. So 5 July is when he received it, but we do not know when he also decided it. Is that—

Mr DAVID SHOEBRIDGE: On the same day.

The CHAIR: On the same day?

Mr COUTTS-TROTTER: The departmental decision-maker made the decision on the same day. I should say: That is not unusual.

The CHAIR: No, that is fine.

Mr COUTTS-TROTTER: I am often asked to make decisions immediately.

Mr DAVID SHOEBRIDGE: There was a hearing on the ninth.

Mr COUTTS-TROTTER: Yes.

The CHAIR: Just for the sake of clarity, if you could tell me when they received it, from your records?

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

The CHAIR: Okay, thanks.

CORRECTED

The Hon. ROSE JACKSON: I think we are done.

The CHAIR: You are finished?

The Hon. ROSE JACKSON: We can keep going, but—

The Hon. MARK LATHAM: And in that revision of when he made the application, could you give an outline of other individuals mentioned in the application that might be supporting it?

Mr COUTTS-TROTTER: I will see what I can do. There are three things to bear in mind when considering an application under section 52: one is the potential for hardship; two is the importance of the evidence and the significance of the evidence to the ICAC; and the third is any other matters of public interest. Applications address themselves to those three indicators.

The Hon. MARK LATHAM: If we can get an outline of that third matter, that would be useful. Thanks.

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

The CHAIR: Any comments? Any questions from the Government?

The Hon. TREVOR KHAN: Let's get out of here.

The Hon. SCOTT FARLOW: I think there has been enough commentary.

The Hon. ROSE JACKSON: Until next time.

The CHAIR: On that point, we will wrap it up. I note there are a number of questions you have taken on notice. The secretariat will be in contact with you. You have got 21 days to respond, or sooner, if you want to.

Mr MARK SPEAKMAN: Thank you.

The CHAIR: Thank you. We will resume at two o'clock.

(The Minister withdrew.)

(Luncheon adjournment)

CORRECTED

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

The CHAIR: Welcome to the afternoon session. I note that the NSW Crown Solicitor Ms Karen Smith is here.

The Hon. ADAM SEARLE: I would like to ask some questions of the Crown Solicitor. Before I do that I have some documents here for Committee members and for the secretariat, and I have extracted a copy for the Crown Solicitor. For the assistance of the Committee members and the witness, these are documents that were produced to the Legislative Council pursuant to a resolution under Standing Order 52 [SO 52], and these documents were adjudged by the independent legal arbiter and by the House to not be privileged. They were tabled in the House and are publicly available documents. They may even have been canvassed in the media. Ms Smith, do you recognise these documents?

Ms SMITH: I do, but can I just clarify one thing about the status of the documents?

The Hon. ADAM SEARLE: Of course.

Ms SMITH: I do not know, obviously, what the Department of Premier and Cabinet [DPC] returned or the decisions, but I did notice the report of the independent arbiter that was tabled on 16 February referred to documents two and seven, and those being privileged.

The Hon. ADAM SEARLE: Withheld, yes. Just so we are all on the same page: I do not have access, and no-one has access, to the withheld documents. Obviously, members of the upper House can go and view them in the Clerk's room, but we cannot copy them, we cannot reproduce them and we cannot disseminate them. As far as I am aware, these are not them. These are documents that are currently in the level eight tabling office.

Ms SMITH: It is just that fact that I wanted to clarify, and I appreciate the position. It is just that the independent arbiter's report said those identified as items two and seven of the index, the ICAC has requested that they not be made publicly available at this point in time.

The Hon. ADAM SEARLE: Just so we are very clear: The House accepted the arbiter's recommendation that those documents not be produced.

Ms SMITH: Of course, I do not know, but the index that was attached to that report—

The Hon. ADAM SEARLE: They have a very similar descriptor.

Ms SMITH: Do they?

The Hon. ADAM SEARLE: They have a very similar descriptor, and you are not the only person who has noticed that. I have double- and triple-checked with the Clerk. These are two of the publicly available documents. There were 13 documents that were found to be—

The Hon. MARK LATHAM: Mr Chair, can I just add: It was my SO 52—

The Hon. ADAM SEARLE: Yes.

The Hon. MARK LATHAM: —and I can verify these are not items two and seven.

Ms SMITH: Right.

The Hon. TREVOR KHAN: So can I because I have looked at documents two and seven, and these are not them.

Ms SMITH: Okay.

The Hon. ADAM SEARLE: Are you comfortable now, Ms Smith?

Ms SMITH: Yes. I accept what you say, but I just do not want to be in a position where I am prejudicing anything that the ICAC may or may not do, not being myself aware of what the ICAC put to the independent legal arbiter.

The Hon. ADAM SEARLE: Be assured, I do not think any of us would want to do that—that is, prejudice any investigation.

The Hon. TREVOR KHAN: Perhaps for different reasons.

The Hon. ADAM SEARLE: Perhaps for the same reasons. Do not be so cynical. Anyway, I would like to ask some questions. So you recognise these documents?

CORRECTED

Ms SMITH: Yes.

The Hon. ADAM SEARLE: You are the author of the documents?

Ms SMITH: Yes.

The Hon. ADAM SEARLE: Can you tell the Committee the circumstances in which they came to be created?

Ms SMITH: I can, I think. I mean, the documents would speak for themselves as to the circumstances.

The Hon. ADAM SEARLE: Okay, I will put some propositions to you. Essentially, each document relates to a disclosure made by a ministerial staff member. Both of those were in connection with experiences—we will put it neutrally—they each had with Mr Daryl Maguire. Is that correct?

Ms SMITH: Yes.

The Hon. ADAM SEARLE: Obviously, in the wake of Mr Maguire's evidence to the ICAC in 2018 they came forward in response to a suggestion that anyone with information should come forward. Do you understand that to be the case?

Ms SMITH: Yes.

The Hon. ADAM SEARLE: Okay. One of these matters—I think it is the one relating to the education Minister's staff member, related to when that person worked for the planning Minister—involved Mr Maguire approaching the planning Minister's office, having been himself approached by Mr Matt Daniel, a planning consultant, about a planning proposal in Concord. Do you recall that?

Ms SMITH: I have to confess I do not recall the details of the factual circumstances.

The Hon. ADAM SEARLE: Okay. Take it from me, that is what that relates to. The second one relates to interactions of a staff member, then in the office of the trade Minister, with Mr Maguire about a company called United World Enterprises and a dispute it was having with its overseas owner, if you like. It was the position, as you understood it, that both of those matters reached the threshold at which the matter should be forwarded to the Independent Commission Against Corruption? Is that a view you formed?

Ms SMITH: Do you mean the section 11 threshold?

The Hon. ADAM SEARLE: Yes.

Ms SMITH: As I said, I cannot recall the details, but I would always encourage someone to err on the side of disclosure to the ICAC, particularly where it is known that the ICAC is investigating a particular subject matter.

The Hon. ADAM SEARLE: Okay.

Ms SMITH: So I do not really know about the section 11 threshold or not.

The Hon. ADAM SEARLE: Is that not something you would have had to have turned your mind to?

Ms SMITH: Not if the information is provided.

The Hon. ADAM SEARLE: Provided to the ICAC.

Ms SMITH: Yes.

The Hon. ADAM SEARLE: Just to be clear: Was your advice not sought about whether the material should be disclosed to the ICAC or was that an after-the-fact matter?

Ms SMITH: No. I cannot recall the precise circumstances in which I obtained the information in relation to either of them.

The Hon. ADAM SEARLE: Perhaps I could put it this way: Having read these documents, it appeared to me that the disclosures were made and advice was sought from you, presumably to the Premier, about whether or not these matters should be disclosed to the ICAC.

Ms SMITH: No.

The Hon. ADAM SEARLE: No? That was not the case?

Ms SMITH: No. I would think that someone has contacted DPC and said, "I've got information that may concern the ICAC investigation," and the question is: What to do?

CORRECTED

The Hon. ADAM SEARLE: But it was your view that they should be disclosed to the ICAC? That is the case, is it not?

Ms SMITH: That is right. I would always say it is far better to err on the side of disclosure and to provide the information to the ICAC. Generally, then, you do not have to consider whether the section 11 obligation is enlivened or not. It is preferable to simply provide it.

The Hon. ADAM SEARLE: Okay, but advice was provided on both of these matters also to the Secretary of DPC, Mr Reardon. You were aware of that, were you not?

Ms SMITH: I assume I would have been.

The Hon. ADAM SEARLE: Again, that advice was that these matters were legally required to be disclosed to the ICAC. Of course, it is a matter of record that Mr Reardon did forward them to the ICAC. So you do not dispute that they met the section 11 threshold?

Ms SMITH: I just cannot remember the factual circumstances. I can remember that there was information that was—I cannot even really recall the nature of the information, other than it was information that concerned the subject matter of the public inquiry.

The Hon. ADAM SEARLE: But it stands to reason that if it did meet the section 11 threshold at this stage then anyone holding that knowledge prior to whenever these documents were created—I assume about July 2018—particularly a public office holder, would have also been under that section 11 obligation, would they not?

Ms SMITH: Well, the section 11 obligation can be discharged by the head of agency. So if it is a Minister then the head of the agency can discharge it on behalf of that Minister. The obligation under section 11 rests with the principal officer of the agency.

The Hon. ADAM SEARLE: Well, that would be fine at this point in time but what if that office holder had that knowledge beforehand—say a year before they had the same knowledge about these matters? Presumably that person would still have been under that obligation.

Ms SMITH: Sorry, you are talking about the staff member was aware of the—

The Hon. ADAM SEARLE: Let us assume that another person had the same knowledge as the staff members, or approximately the same knowledge about those two matters as the staff members. That person would also be under a section 11 obligation, would they not, if they were a public office holder?

Ms SMITH: I think it depends on the circumstances you are in at the time, because once you know that the ICAC is investigating a particular matter and there is a certain amount of information in the public domain, then that affects how that section 11 obligation is discharged and what is prudent to disclose or not.

The Hon. ADAM SEARLE: In any case, it is your view, based on your experience, that it is always prudent to disclose matters to the ICAC if they are concerning?

Ms SMITH: It is just the approach I would take—to disclose—particularly when the ICAC has announced a public inquiry. If you have information that may or may not be relevant to that inquiry, it is preferable to inform the ICAC and then the ICAC can make its own decisions about whether it finds the information useful or not.

The Hon. ADAM SEARLE: What about if you had the same information but you were not aware that there was an ICAC inquiry—you were not aware of what the ICAC was doing? Both of these matters by themselves are sufficiently concerning, aren't they, that they would warrant disclosure to the ICAC?

Ms SMITH: I honestly cannot remember what the information was.

The Hon. ADAM SEARLE: Ms Smith, is it your evidence that you do not have any independent recollection of these two matters?

Ms SMITH: I do not have any independent recollection of the actual content of the disclosure.

The Hon. ADAM SEARLE: Do you want me to go into it a bit more? Would that assist? I think the United World Enterprises [UWE] matter involved Mr Maguire interacting with the office of the trade Minister, raising a dispute between UWE, a company that seemed to be based in Leeton, which was not in his electorate of Wagga Wagga, and a dispute it was having with a company, Bright Foods Limited, that owned 51 per cent of UWE. It was not clear from the documentation what the dispute was about. Nevertheless, Mr Maguire was seeking to get himself, it appeared, on a—the trade Minister was going to China on a trade mission and he wanted to attach himself to the same delegation in order to raise these matters with overseas bodies. Given that it had no connection

CORRECTED

at all with Mr Maguire's duties within the Government or as the member for Wagga Wagga, would that not seem to you to be curious and something that might warrant disclosure to the Independent Commission Against Corruption?

Ms SMITH: The fact that a Minister or Parliamentary Secretary was seeking information outside their portfolio or electorate?

The Hon. ADAM SEARLE: Well, outside the country. Did that not strike you as being odd?

Ms SMITH: Well, it might be but there might be an explanation. I guess, in the first instance—

The Hon. ADAM SEARLE: I am sure there was an explanation, but do you not think that would be odd?

Ms SMITH: Well, it might be but it might be something that you ask about.

The Hon. ADAM SEARLE: Something that someone having that knowledge would ask. That would be a prudent thing to do.

Ms SMITH: If you did not know why you are being asked to provide information.

The Hon. ADAM SEARLE: The other matter involved a company—I think it was called J Group—having an interest in a development proposal in Concord and apparently having some difficulties with the council and wanting to interact with the office of the planning Minister—then Minister Stokes. Instead of approaching Minister Stokes or his office directly, they appear to go through Mr Maguire to use Mr Maguire as a cut-out or the intermediary. Again, this is located in Concord, a long way from Wagga Wagga—no connection to Mr Maguire's parliamentary duties or his role, ostensibly, within the Government. Would that not strike you as being strange and worthy of some explanation or perhaps disclosure to the Independent Commission Against Corruption?

Ms SMITH: I am not sure about disclosure to the ICAC in and of itself, but it might be something you do ask about. There might be a perfectly innocent explanation. I do not know.

Mr DAVID SHOEBRIDGE: Arising from that, if you had been aware of the Premier's relationship with Mr Maguire at the time, would you have sent this briefing in this form to the Premier?

Ms SMITH: I cannot answer a hypothetical.

Mr DAVID SHOEBRIDGE: Well, it is not a hypothetical.

The Hon. ADAM SEARLE: It is a matter of record.

Mr DAVID SHOEBRIDGE: Now you know what you know, would you have sent this briefing to the Premier?

Ms SMITH: I think the record—the information—speaks for itself. I cannot say anything other than—

Mr DAVID SHOEBRIDGE: Well, we now know that at the time this communication was sent—this briefing was sent to the Premier about public officials going to the ICAC giving information that may well harm the interests of Daryl Maguire, the Premier was in a relationship with Daryl Maguire. Would you have exposed those government officials and the ICAC to that prejudice if you had known that there was that relationship between Mr Maguire and the Premier?

Ms SMITH: I do not think I would want to do anything that caused prejudice to an ICAC investigation, so definitely would not do that. But I also think that the Premier as the head of government needs to be informed about some things and that—certainly not prejudicing an ICAC investigation.

Mr DAVID SHOEBRIDGE: What checks and balances were in place to prevent the Premier from informing Mr Maguire about all the material that is contained in these documents?

Ms SMITH: Well, as a general proposition, public officials could only use information for the exercise of their public official functions.

Mr DAVID SHOEBRIDGE: Well, no, as a general proposition public officials are not given highly critical, sensitive information about the conduct of the ICAC investigations that involve people they are in a relationship with. That is true, is it not?

Ms SMITH: There is a general proposition that the ICAC investigations are conducted without forewarning.

CORRECTED

Mr DAVID SHOEBRIDGE: Without telling the partner of the person being investigated. That is true, is it not?

Ms SMITH: I cannot answer how the ICAC conducts its investigations.

Mr DAVID SHOEBRIDGE: I am going to ask you not about what the ICAC did but I am deeply troubled by the idea that you would repeat this kind of behaviour in the future if you knew that the person—the Minister, the Premier—that you were disclosing it to was in a close personal relationship with a person who is the subject of the ICAC inquiry. I am deeply troubled that you think this is okay going forward.

The Hon. SCOTT FARLOW: Point of order—

Mr DAVID SHOEBRIDGE: Can you tell me whether you would do it again in the future?

The Hon. SCOTT FARLOW: The Hon. David Shoebridge is asking a hypothetical of the witness, taking information and saying "if this happened in the future". The witness should be asked questions about what she knew at the time and how she responded at the time with the information she had, not with some hypothetical.

Mr DAVID SHOEBRIDGE: I press the question.

The CHAIR: I think it is up to the witness to answer or not. We have heard plenty of responses going along those lines. It is up to the witness. I think the question is in order.

Ms SMITH: Sorry, could you just repeat the question?

Mr DAVID SHOEBRIDGE: Would you do this again in the future or are there checks and balances that would prevent this kind of disclosure being made about an ICAC investigation to Ministers or Premiers, senior office holders, who are having a relationship with the subject of an ICAC inquiry? Are there any checks and balances that you have put in place to prevent this happening again in the future?

Ms SMITH: I think it is difficult for me to say because I will not always know if someone is the subject of an ICAC investigation. I can only do what I do with the information I have at the time that I do it and, in doing so, I would be guided by the principle of not wanting to prejudice an ICAC investigation but wanting to be able to ensure that there is information to the government of the day to enable the government of the day to do what it has to do.

The Hon. ADAM SEARLE: Ms Smith, just on that, did Ms Kate Boyd work beneath you in the legal section of DPC at this time?

Ms SMITH: Yes.

The Hon. ADAM SEARLE: She appears to be the author of advice given to Mr Reardon, the secretary of the department, containing the details of both of these matters on which you provided these briefings. Ms Boyd's advice to Mr Reardon was, and I am quoting directly from the documents, "As secretary of DPC you have a duty to report certain matters to ICAC". These matters are sent out. The substance of those briefings was that Mr Riordan was under a legal duty, a section 11 duty, to provide this information to the ICAC. What I am putting to you is that if Mr Riordan was under an obligation, having received this information, to report it to the ICAC, if a public office holder or another public official had the same information beforehand—say, the year before—they would also have been under the same section 11 obligation, would they not?

Ms SMITH: I do not think that is necessarily correct.

The Hon. ADAM SEARLE: So you are saying the defining feature is knowledge that the ICAC is actually investigating a matter. If that was the benchmark, Ms Smith, nobody would ever report anything to the ICAC because you do not know whether the ICAC is conducting an investigation. That is a ridiculous proposition, is it not?

Ms SMITH: No. What I am saying is sometimes there is additional information that influences whether or not you have reasonable grounds for suspecting corrupt conduct.

Mr DAVID SHOEBRIDGE: Ms Smith, the critical piece of information you did not have at the time that you made this disclosure to the Premier was that the Premier was in a close personal relationship with Mr Maguire. That was the critical missing piece of information, was it not?

Ms SMITH: That is correct—well, I was not aware.

Mr DAVID SHOEBRIDGE: And if you had had that information at the time would you have sent this disclosure to the Premier that detailed the ICAC investigation and what was happening in relation to the ICAC investigation if you had had that critical piece of information?

CORRECTED

Ms SMITH: I think there would be a range of things that would be—

Mr DAVID SHOEBRIDGE: You would not have, would you, Ms Smith? You just could not have—it would have been criminally negligent to send it across, would it not?

Ms SMITH: Well, I do not know about that.

Mr DAVID SHOEBRIDGE: I am deeply troubled by the prospect that you would repeat this again with that kind of information to hand. Are you telling me you would?

Ms SMITH: No, I am just having difficulty hypothesising that that is the one bit of information that would just change one thing; it would change a lot of different things, I suppose.

Mr DAVID SHOEBRIDGE: But one of the fundamental things it would change is you would not have tipped the Premier off about what was going on in the ICAC investigation.

The Hon. TREVOR KHAN: You cannot put that—

Mr DAVID SHOEBRIDGE: I withdraw that. You would not have told the Premier about—

The Hon. TREVOR KHAN: That is quite wrong, David.

Mr DAVID SHOEBRIDGE: You would not have told the Premier about who from the office of the education Minister or the office of the Minister for Industry and Trade—you would not have told the Premier the details about those officials going to the ICAC to give information involving an inquiry, a confidential inquiry, regarding a person whom the Premier had a close personal relationship with. You just would not have done that, would you, Ms Smith?

The Hon. TREVOR KHAN: It was a public inquiry by that stage, David.

Mr DAVID SHOEBRIDGE: You would not have told the Premier that these officials were going to the ICAC. That was not publicly known, was it?

Ms SMITH: What my concern was at the time of writing these, and whether it was for the best or not, I initiated writing the briefs because I was concerned the Premier might be asked questions about "are people providing information to the ICAC?" and might say no, they are not, or might answer it incorrectly because she was not aware that—

Mr DAVID SHOEBRIDGE: I am not critiquing what you did with the knowledge you had to hand. I want to be clear: I perfectly understand why you did, given the knowledge you had to hand, and I am not critiquing your actions at the time. I want to be clear: I am in no way critiquing your actions at the time. What I am suggesting to you is the Premier had not given you a critical piece of information, had she; she had not told you about her relationship with Mr Maguire? And that made your job, as it turns out, really problematic.

Ms SMITH: I do not agree with that characterisation. I do not expect to know the personal information of Ministers other than that which is either publicly available or I acquire in the course of my role because of a pecuniary interest disclosure.

The Hon. ADAM SEARLE: On that point though, you may not have that knowledge but it is quite relevant in this case, is it not, if you had had that knowledge? It would have had a bearing on the advice.

Ms SMITH: I do not think it would have had a bearing on the advice.

The Hon. SCOTT FARLOW: The advice is noting.

Mr DAVID SHOEBRIDGE: It would not have had a bearing on your decision to tell the Premier information that was not in the public domain about a ministerial adviser from the office of the education Minister and a ministerial adviser from the office of the Minister for Industry and Trade going to provide evidence to the ICAC about the person whom she was having a personal relationship with. It would not have impacted your advice. Is that seriously your evidence, Ms Smith?

Ms SMITH: No. If the circumstances were different there would have been so many things that were different that these briefs would not have even featured in that.

Mr DAVID SHOEBRIDGE: They would have gone to someone else, would they not?

Ms SMITH: Well, it would not—

Mr DAVID SHOEBRIDGE: It would have gone to someone else.

The Hon. TREVOR KHAN: You have got to allow her time to answer, David.

CORRECTED

Mr DAVID SHOEBRIDGE: Sorry, Ms Smith.

Ms SMITH: I cannot—it is very difficult for me to hypothesise on what might have happened with these briefs because there might have been so many different things that would have happened and I cannot comment on that, I do not know. So I think these briefs would have been neither here nor there on that.

The Hon. ADAM SEARLE: Just going back to my earlier point, which was: if a public official had the same information before this time—July 2018—and my proposition is they would have been under the same section 11 disclosure that Ms Boyd felt Mr Riordan was under, and you have got no reason to disagree with Ms Boyd's assessment, have you?

Ms SMITH: No.

The Hon. ADAM SEARLE: So in that situation why would that public office holder, having that same knowledge about these same matters, not be under an obligation to report it to the ICAC? The fact that people might know or not know about an ICAC inquiry being underway cannot be relevant to whether you have an obligation under section 11, surely?

Ms SMITH: The obligation—it is not that it is just public; it is that there might be information that has become public that makes a witness look at something in a different light. It might be looked at entirely innocently at the time but upon reflection, when there is further information, you would take a different approach.

The Hon. ADAM SEARLE: I accept that in the abstract. We have got the member for Wagga Wagga in both instances engaged in commercial matters that have nothing to do with being the member for Wagga Wagga approaching government officials and, apparently from the material, advancing the commercial interests of other people. Is that not a matter of concern that warrants—to take your approach of being prudent—disclosing it to the ICAC? That is simply not believable, Ms Smith, is it?

Ms SMITH: I cannot comment on—I was a conduit for information. I was not the recipient of the information itself.

The Hon. ADAM SEARLE: No, I am not criticising anything you have said or done.

The Hon. TREVOR KHAN: Point of order: She is entitled to finish her answer, Chair, before my good friend jumps into her again. She just needs time to be able to finish one answer before the next question is put.

The CHAIR: I will uphold the point of order.

Ms SMITH: I cannot really comment on what was in the mind of a witness at a particular point in time or why their views changed.

Mr DAVID SHOEBRIDGE: Could I ask about the Legal Aid budget and the Public Purpose Fund? What has been the trend of the Public Purpose Fund in the last three years?

Mr COUTTS-TROTTER: I speak as a trustee of the Public Purpose Fund. Unfortunately the earnings of the Public Purpose Fund are almost wholly determined by the prevailing interest rate and as interest rates have come down the earnings of the fund have been falling accordingly.

Mr DAVID SHOEBRIDGE: So what has been the financial impact on Legal Aid of the reduction in income of the Public Purpose Fund?

Mr COUTTS-TROTTER: The Public Purpose Fund under legislation has got a hierarchy of things that it needs to fund—first of all, regulatory activities. Then there are decisions that are discretionary to the trustees of the fund and having regard to the financial position of the fund. So if we can afford it we do it. That has created an issue in some funding for Legal Aid. Legal Aid over quite a number of years now has relied on the Public Purpose Fund for around 10 per cent of its income, so it is a significant feature in the Legal Aid budget. The consequences of the Public Purpose Fund not being able to make those discretionary payments are well understood, certainly by my colleague, Mr Thomas.

Mr DAVID SHOEBRIDGE: I know all this, which is why I am asking you about the numbers.

Mr COUTTS-TROTTER: You know all this. Oh, okay.

Mr DAVID SHOEBRIDGE: I specifically want to know the numbers. I know it is being crunched. I know there is not the same amount of money going. I know it is affecting Legal Aid's budget. I want to know how much, what the impact is and what the prognosis is.

Mr COUTTS-TROTTER: Mr Thomas, you go. It is your budget.

CORRECTED

Mr THOMAS: Yes, sure. The amount that the Public Purpose Fund has contributed to Legal Aid has varied over the last 10 years from \$41 million to \$31 million depending on the returns of the fund. Because of the state of the fund at the start of this financial year, it has had a significant effect on the Legal Aid budget for this current year.

Mr DAVID SHOEBRIDGE: So what was the contribution for this current year? I do not mind if it comes from the trustee or the department.

Mr THOMAS: From Legal Aid.

Mr DAVID SHOEBRIDGE: Sorry, yes.

Mr THOMAS: It was \$2.5 million this year.

Mr DAVID SHOEBRIDGE: \$2.5 million down from \$31 million?

Mr THOMAS: Yes.

Mr COUTTS-TROTTER: Yes.

Mr DAVID SHOEBRIDGE: There is a \$28.5 million shortfall. What made that up?

Mr THOMAS: It is a combination of things. We have a cash reserve from unspent Commonwealth funds that we have used to prop that up and the balance has been met by the Consolidated Fund by the Government.

Mr COUTTS-TROTTER: The hole was filled but we have got a challenge ahead of us.

Mr THOMAS: We have an ongoing challenge to fill that hole in the future.

Mr DAVID SHOEBRIDGE: So is there any money left in the hollow log—in the cash reserve that Legal Aid—

Mr THOMAS: Not enough to bail out the difference.

Mr COUTTS-TROTTER: No.

Mr DAVID SHOEBRIDGE: For this financial year, Mr Coutts-Trotter, putting your trustee hat on, what is the distribution going to be?

Mr COUTTS-TROTTER: It is a pretty tatty hat—the trustee hat—I must say.

Mr DAVID SHOEBRIDGE: Yes. What is the distribution we are looking at?

Mr COUTTS-TROTTER: The prospects of being able to make discretionary distributions in the coming year are close to zero, so the position of the trustees at the moment is that we will meet those obligations that were multi-year obligations, but for those that were decided year by year, we are just not in a position to make that commitment. There is work going on at the moment with Legal Aid and other parts of government to work that issue through.

Mr DAVID SHOEBRIDGE: Does that mean something in the order of \$2.5 million? Was that the multi-year funding element, Mr Thompson?

Mr THOMAS: That multi-funding element was funding beyond Legal Aid. Some of that was community legal centres [CLCs], the Public Interest Advocacy Centre [PIAC]—

Mr DAVID SHOEBRIDGE: That means no funding to Legal Aid.

Mr COUTTS-TROTTER: That is right. For the 2021-22 financial year that is the assumption. That is the position of the Public Purpose Fund, which means together with our department and the Treasury we are doing work to provide the Government with options on how to respond.

Mr DAVID SHOEBRIDGE: Will there be a commitment that the Legal Aid budget will not be cut?

Mr COUTTS-TROTTER: That ultimately will be a matter for the Government, but we have been tasked with Treasury to examine a whole range of options and how that budget hole could be filled.

Mr DAVID SHOEBRIDGE: Is one of the options on the table cutting Legal Aid's funding?

Mr COUTTS-TROTTER: Well, no, we are looking—

Mr THOMAS: It is not a cut so much as there is a hole by the disappearance of the Public Purpose Fund. The question is what fills the hole.

CORRECTED

Mr DAVID SHOEBRIDGE: We might have a semantic discussion about a cut or a hole but we can come back to that.

Mr THOMAS: A reduction in the budget.

The Hon. MARK LATHAM: I will come back to Karen Smith and the documents that were provided by the Hon. Adam Searle—the one that refers to a ministerial adviser employed in the office of the education Minister, that is, Daniel Hill. It has about two thirds of the way down the page a heading, "Consultation". It reads:

Legal branches consulted with the Premier's office, Sarah Cruickshank and Mr Crocker in preparing this brief.

What was the nature of the consultation?

Ms SMITH: I do not recall.

The Hon. MARK LATHAM: You do not recall. Do you recall the origins of this process? Sarah Cruickshank as the chief of staff to the Premier convened a regular meeting with all the ministerial chiefs of staff and said, "Well, Daryl Maguire has been exposed at the Canterbury council investigation for taking commissions. He has resigned from the Liberal Party. He is intending to resign from Parliament. If ministerial staff have got any matters relevant that could be a reasonable suspicion of corrupt conduct, they should forward them to the Premier's office." Do you recall that as the origins of these documents?

Ms SMITH: No.

The Hon. MARK LATHAM: You do not. You have got no memory whatsoever of why Sarah Cruickshank would be involved and you consulting with her about this process.

Ms SMITH: No, my recollection is I made the decision to prepare these briefs.

The Hon. MARK LATHAM: But where did you get that information from? Did Sarah Cruickshank give it to you? Having said that at the meeting of ministerial chiefs of staff, she collected the information, passed it on to you, you processed it and then wrote the brief to the Premier.

Ms SMITH: That is not my recollection, but it is a long time ago.

The Hon. MARK LATHAM: What is your recollection?

Ms SMITH: I obviously do not have access to records anymore. But my recollection is of having contact directly with at least one person.

The Hon. MARK LATHAM: How did they contact you?

Ms SMITH: I do not recall whether by phone or by email or—I do not recall.

The Hon. MARK LATHAM: Well, there must have been something that originated this whole process and it is on the public record. This was the call for items by Sarah Cruickshank at the meeting of the ministerial chiefs of staff. At that point, knowing what we now know about the close personal relationship between the Premier and Mr Maguire, it would have been appropriate, would not it, for the Premier to recuse herself at that stage and for you to then furnish this material to the Deputy Premier, who did not have a conflict of interest?

Ms SMITH: I do not even—I mean, the Premier has not signed these briefs. I do not know if the Premier did see them. I prepared them, but I do not even—I do not have a recollection. I do not know.

The Hon. MARK LATHAM: No, I am not asking whether she signed the briefs. I am putting to you that, given the information started with the process originated by the Premier's chief of staff, at that stage it would have been appropriate for the Premier to recuse herself from the process or offer to recuse herself from the process and hand it over to the next senior Minister, the Deputy Premier, who did not have a conflict of interest with Mr Maguire.

Ms SMITH: I would not comment on the process that the Premier or the Premier's chief of staff undertook, but my recollection is that there was at least one person who contacted me directly and in that role it was quite common that you would be contacted about governance or legal issues so that was—

The Hon. MARK LATHAM: Who was that person?

Ms SMITH: I cannot remember. I would have to—

The Hon. MARK LATHAM: You can remember that one person contacted you but you cannot remember who it was.

Ms SMITH: I think I know but I am not sure. And I am not sure if I should be saying the name either.

CORRECTED

The Hon. MARK LATHAM: Who do you think you know?

Ms SMITH: I do not want to—

The Hon. MARK LATHAM: What is the best estimation of—

The Hon. SCOTT FARLOW: Point of order: Ms Smith has indicated that she is not sure whether she should be saying the name or not. So I think that pressing this question becomes very difficult and Ms Smith has already said that she is not sure whether she has capacity or ability to even stab at who it might have been.

Mr DAVID SHOEBRIDGE: The solution here, then, is for Ms Smith, if she wants to, to take it on notice.

The CHAIR: There is no point of order. It is up to her how she answers it or does not answer it or takes it on notice.

The Hon. MARK LATHAM: What you are saying is you think you know who the person was but you are reluctant to say it.

Ms SMITH: I just do not want to prejudice anything that the ICAC is doing or not doing. I am not sure if the names—the names are not mentioned. I know you said these briefs are in the public domain but these names are not mentioned in the briefs, so I do not know—

Mr DAVID SHOEBRIDGE: To the point of order, which I do not think was finally resolved: In those circumstances, if the witness is concerned about potentially prejudicing an ICAC investigation, that would be very relevant circumstances for the witness to take the matter on notice and get some further advice about that, before providing an answer. She would be entitled to do that. It is matter for the witness.

The Hon. MARK LATHAM: Ms Smith, did you often give the Government advice about conflicts of interest?

Ms SMITH: I do not know about "often", but I have given advice from time to time.

The Hon. MARK LATHAM: That was part of your job. And if you had known the circumstances of what we know now, you would have given advice that this was a conflict of interest and should not have been handled out of the Premier's office?

Ms SMITH: I do not think I can comment about legal advice that I would or would not provide.

The Hon. MARK LATHAM: If you did furnish an advice that the Premier read, would you have expected, given what we now know she knew about Daryl Maguire, that she should have met her obligations under section 11 to report those matters to the ICAC, given that Mr Maguire at this time had been busted in the Canterbury council investigation and was resigning from the Parliament in disgrace?

Ms SMITH: The purpose of these briefing notes was to inform the Premier, the ICAC having already been notified of the information.

The Hon. MARK LATHAM: So you are not answering the question that I have asked.

Ms SMITH: I am saying that there would be no necessity for the Premier to pass this information on to the ICAC because the ICAC would have already received it.

The Hon. MARK LATHAM: On a separate matter, in your time at DPC, what was the process for receiving and dealing with pecuniary interest returns from members of the Executive Government?

Ms SMITH: The process? Do you mean related party disclosures for public servants or—

The Hon. MARK LATHAM: No, members of the Executive Government, Ministers and Parliamentary Secretaries have an obligation under the Ministerial Code of Conduct to furnish their various pecuniary interest returns. They normally pass on a copy of the one they have supplied to the Clerks of their House and further declarations as required as members of the Executive. What was the process for receiving and dealing with those pecuniary interests declarations?

Ms SMITH: In terms of writing to Ministers and seeking information—

The Hon. MARK LATHAM: No, what was your involvement?

Ms SMITH: The documents are available to the House. My involvement—I do not think there is much more to add to those documents.

CORRECTED

The Hon. MARK LATHAM: But were you the holder of the information? Did they end up in your filing system?

Ms SMITH: Yes.

The Hon. MARK LATHAM: Okay, so how did they get to you?

Ms SMITH: Ministers would write with information.

The Hon. MARK LATHAM: Directly to you?

Ms SMITH: It would depend, but usually to the Premier. It would depend on the nature of the disclosure. It could be to the Premier, it could be to the secretary—

The Hon. MARK LATHAM: But on some occasions they would write to the Premier and then the Premier's office would ultimately pass the information on to you as the custodian of this material, so that we could be sure the Ministers are complying with their obligations under the Ministerial Code of Conduct. That, in a nutshell, was the process.

Ms SMITH: Yes.

The Hon. MARK LATHAM: Could I ask you to have a look at this document, which I have got here and we can make a copy of it available to Ms Smith.

The CHAIR: Do you wish to table it?

The Hon. MARK LATHAM: I will table it. I hand it up to both the Chair and the witness. Just for the Committee's edification, it is a letter from Daryl Maguire to the Premier Gladys Berejikian dated 9 October 2017 where he is making known his declarations of pecuniary interest under the Ministerial Code of Conduct. You are noted here, below his letter to the Premier, as: "Attention: Karen Smith, Deputy Secretary, Cabinet and Legal". Then you will see in the right-hand bottom corner of the document, "received 10/10/17"—so a day after he sent it—and initials there that looked like "SC". Would you say they look like SC?

Ms SMITH: Yes.

The Hon. MARK LATHAM: Who would you expect they are?

Ms SMITH: That was the person who was my executive assistant at the time.

The Hon. MARK LATHAM: What was her name?

Ms SMITH: Sonia Cianci.

The Hon. MARK LATHAM: So that would be a standard set of initials that would appear on these documents?

Ms SMITH: Well I think if Sonia received it, yes. It looks like her writing to me.

The Hon. MARK LATHAM: It looks like her writing to you, thank you. You mentioned earlier, though, that the letter, having been addressed to the Premier, would initially go to the Premier's office. So is it your expectation that the Premier, in discharging her responsibilities to know about these potential conflicts of interest under the ministerial code, would make herself familiar with these declarations?

Ms SMITH: I do not know whether this particular letter was emailed to me. I note that it has got the street address of the Premier but then my email, so it may have been simply emailed to me. I do not know.

The Hon. MARK LATHAM: But you said earlier on that some of these went to the Premier.

Ms SMITH: They did.

The Hon. MARK LATHAM: And it is your expectation that the Premier looked at them, read them and made herself familiar with them?

Ms SMITH: No, when correspondence is addressed to the Premier—she does not open her own mail.

The Hon. MARK LATHAM: No, I am not saying that. I am saying that the Premier has clear obligations under the Ministerial Code of Conduct to know if there are potential conflicts that arise at Cabinet meetings and other forums. So to discharge those responsibilities, the Premier had to be aware of these pecuniary interest returns, didn't she?

Ms SMITH: I cannot answer whether the Premier saw this particular letter or not just by looking at this letter.

CORRECTED

The Hon. MARK LATHAM: No, I am not asking that but I am asking about your expectation in how the system worked. How could the Premier discharge her responsibilities under the Ministerial Code of Conduct to keep an eye on conflicts of interest if she was not aware of what was in the pecuniary interest returns?

Ms SMITH: The ministerial code places the obligation on the Ministers themselves, so Ministers are required to make disclosures. They are also required to notify the Premier of any potential conflict of interest and make disclosures. So the responsibility is on the individual.

The CHAIR: Time. We will have to come back to that.

The Hon. SHAOQUETT MOSELMANE: Chair, maybe we will go into something less intriguing but the Hon. Mark Latham can go back into those questions later. Can I ask Mr Coutts-Trotter, apart from the private breaches on record, have there been any further major breaches that you are aware of?

Mr COUTTS-TROTTER: By the Department of Communities and Justice?

The Hon. SHAOQUETT MOSELMANE: This is in relation to mandatory notification of breaches of privacy in not only your department but any other agencies that you are responsible for.

Mr COUTTS-TROTTER: I would have to take that on notice. If a small agency in the cluster that does not have a line of management to me had a privacy breach they would not necessarily disclose it to me. They would, however, meet their obligations to disclose it to the Privacy Commissioner. So there could be examples that I am unaware of.

The Hon. SHAOQUETT MOSELMANE: Are you aware of any at this stage?

Mr COUTTS-TROTTER: I really should take it on notice to make sure that I am accurate with you.

The Hon. SHAOQUETT MOSELMANE: The Minister, making comment in the papers, says that he is still working to determine the best approach to attend to this matter of mandatory reporting. Can you enlighten us about the approach that your department is taking?

Mr COUTTS-TROTTER: I will call on my colleague Paul McKnight—sorry to bounce this one to you, Paul—to describe the proposals that were developed, which as we learned this morning remain under consideration.

Mr McKNIGHT: That is right. The department has been working up a model for mandatory data breach notification with our colleagues at the Department of Customer Service, in consultation with the Information and Privacy Commission and with the Privacy Commissioner herself. We have released a public consultation paper on the issue.

The Hon. ROSE JACKSON: Is that the public consultation where submissions closed on 23 August 2019?

Mr McKNIGHT: Yes.

The Hon. ROSE JACKSON: It is obviously some time ago that the submissions closed, Mr McKnight.

Mr McKNIGHT: That is right. It is a pretty complex issue. There is also a range of things going on at the Commonwealth level that we are factoring into the process. That includes a review of the Commonwealth Privacy Act 1988 that is ongoing at the moment. We expect to be moving reasonably quickly now towards finalising a proposal in this area, but there is likely to be further consultation on the model involved.

The Hon. SHAOQUETT MOSELMANE: When you say "quickly", how quickly? Is it three months or six months?

Mr McKNIGHT: As soon as we can.

The Hon. ROSE JACKSON: What is the hold-up? When you say "as soon as we can", why would there be any barrier to you doing that right now?

Mr McKNIGHT: As you would be aware, there is a range of really quite complex issues involved in mandatory—

The Hon. ROSE JACKSON: I am—

The Hon. TREVOR KHAN: No, you have asked him a question. Let him answer.

The CHAIR: I am Chair, not you.

CORRECTED

The Hon. TREVOR KHAN: Point of order: If the member asks a question, the witness is entitled to answer that question before she jumps down their throat. She is jumping.

The CHAIR: That is right. Same answer as before.

Mr McKNIGHT: We are giving close consideration to the submissions that were given to us during the public consultation process and working through the practicalities of what a model ought to look like, to give assurance to the public that their privacy is protected and that data breaches are notified appropriately as well as ensuring that government departments and agencies where the obligation will sit can actually discharge that obligation in a sensible and operationally appropriate way.

The Hon. ROSE JACKSON: I do not mean to sound critical of you, Mr McKnight, because I am sure that you and your team are working on this. The problem that we have is that this was recommended by the Privacy Commissioner in 2015. There is some complexity about it but it is actually pretty basic at the core. If your personal data is publicly disclosed by the Government, you should be told about that. As you say, there are Federal models that go to that question. It is not even like New South Wales is a first mover here. In fact, I think we are a last mover. I am just interested to know a little bit more about why it is taking so long. I understand you are reviewing the 23 submissions you received in August 2019, but why is it taking so long?

Mr McKNIGHT: Obviously it is not just a question of reviewing the submissions. We are consulting with colleagues across government and with the Privacy Commissioner. We now have the advantage of some experience from the Privacy Commissioner in operating a voluntary data breach notification service, which is proving really helpful in designing the scheme. Although the proposition that people should be told when their private information is breached is a good principle and a very clear proposition, it is not without exceptions. There are some cases where more damage can be done through data breach notification than would be the case if people were not told. There are also questions about the standard to be applied and what level of data breach is relevant when you are assessing whether there has actually been a breach.

The Hon. SHAOQUETT MOSELMANE: Currently agencies are not required to report and this matter has been going on for five years, as my colleague raised. The number of submissions is only 23, which does not seem to be a huge task to undertake given that five years have passed.

Mr McKNIGHT: The case at the moment is that there is a high level of compliance by agencies with the voluntary breach notification scheme that the Privacy Commissioner has established. I think it has been a very helpful scheme. Agencies have found it very helpful to take the advice of the Privacy Commissioner about how to handle data breaches, for example. The Privacy Commissioner has been very active in working with agencies about how to manage the situations that they find themselves in and I think that has been a very instructive approach. I do not think it is the case that there is a gaping hole there because the voluntary scheme is actually reasonably effective. The Government has committed to a mandatory data breach scheme to ensure that those obligations really are in place. Working through what the detail of that scheme will be, how it will work on the ground and what the legislation needs to look like are issues that we need to work through really carefully to make sure that the scheme actually works for people.

The Hon. SHAOQUETT MOSELMANE: Mr McKnight, are you responsible for making the final report to the Minister?

Mr McKNIGHT: The work involved is policy advice to government and it happens in my team, yes.

The Hon. SHAOQUETT MOSELMANE: Can you tell us what stage you are at—whether it will be another three months or six months? You say "soon", which can be so flexible. It could be another nine months, a year or the year after.

Mr McKNIGHT: I do not think it will be that long. We expect a further round of consultation this year.

The Hon. SHAOQUETT MOSELMANE: When this year?

Mr McKNIGHT: I am afraid I cannot tell you that, sitting here right now, but I can give you a bit more of a timetable on notice.

The Hon. SHAOQUETT MOSELMANE: Please, if you would. Thank you.

The Hon. ROSE JACKSON: I will move on to another subject that we have raised before, section 293 of the Criminal Procedures Act 1986. Mr Coutts-Trotter, I am partially in your hands here as to which of your colleagues I should ask for an update. Like a number of other significant law reform issues, this has been raised before. The issues about the need for reform of this section have been well litigated. Is there anything you can tell us about what might happen?

CORRECTED

Mr COUTTS-TROTTER: There are greatly divided views on the need for or the form of reform to this section. Again, without sending my colleague Paul a hospital pass, it does sit with his team.

Mr McKNIGHT: Indeed, it does. We have been doing a lot of work on this section. It is a pretty complicated issue balancing the interests of complainants in sexual assault cases and the very real need to give them protection from inappropriate cross-examination while at the same time doing justice in the individual case to the accused. The Attorney General had instructed us to do work in this area following the decision of Judge Grant in *R v RB*, or the Jackmain case as it is now known, which we have been doing. We have circulated an issues paper around the legal community and to community-based stakeholders as well. We did that in late 2019 and submissions were received in February 2020. Further options were developed out of those submissions, so that was a fairly broad issues paper. The options paper was circulated in November 2020. We have now only just received final submissions on that paper. A range of options were included in that paper. Those options included no reform, so remaining with that provision, and adding an exception about false complaints because, you may recall, in the Jackmain case there was an allegation that the complainant had previously lied about her experience.

There are options about providing a more structured discretion to the court for dealing with some of the cases that arose. So we are currently reviewing that stakeholder feedback and will brief the Attorney on that. As the secretary says, there really is a divide amongst the stakeholders about how to progress this issue and it is a very complicated one. You may be aware that a number of law reform bodies over a large number of years have considered this issue and really have been unable to find a way forward that satisfied all the stakeholders. I think we are making progress on it, but it is not a simple issue.

The Hon. ROSE JACKSON: I appreciate that. The consultation that you did, are you able to give us any more information—or perhaps you could take it on notice—as to who was consulted? Who were those stakeholders?

Mr McKNIGHT: I am more than happy to take on notice that question. It would have been a group of legal stakeholders as well as peak bodies that have an interest in supporting complainants in sexual assault cases.

The Hon. ROSE JACKSON: And I am just clarifying that the tenor of the responses reflects that comment that you made in relation to there being various, divided opinions about the options as you described them—which of those to adopt. And that was reflected in the responses that you received.

Mr McKNIGHT: I have not myself personally reviewed the submissions at this point. I will get to do that at some point, undoubtedly. But my advice from the team is that there are divided opinions about what kind of reform is required here, or whether the reform—whether there should be a change.

The Hon. ROSE JACKSON: Obviously you would be aware that at some stage a matter in the District Court—I believe in Orange—was in fact stayed to try to provide some time for the Government to respond. I understand that matter has now proceeded because nothing happened, in a way. I guess I am just reflecting that the judicial community is evidently very keen to see the Government act in this space. In fact, I understand when that matter was stayed, although it has subsequently proceeded, prosecutors did not even object at that point because there was an interest in the Government proceeding with law reform.

The Hon. TREVOR KHAN: That was an issue when I was in practice but that does not mean anything more than that. It has been an issue for some time.

The CHAIR: Are you taking a point of order?

Mr McKNIGHT: When I say over a number of years—10 or 20 years—various law reform bodies have looked at this issue, and on each occasion the government of the day has determined not to make changes to the legislation. It is a difficult issue, not to be rushed. I think the situation of complainants in sexual assault cases and the way they are cross-examined, what material can be brought into court to question their veracity, and how that is dealt with, is a really important question. This section is one of the protections that sexual assault complainants have in coming forward to tell their story in a court. You will be aware that there are a number of pressures that bear on complainants in these cases that lead to prosecutions not proceeding because people are afraid of how they will be treated in a courtroom situation. Of course, there is also the countervailing consideration of how accused people are able to defend themselves. These are both really important issues of principle; how they are balanced and what we should do about section 293 is something we take really seriously.

The Hon. ROSE JACKSON: Indeed. In the fullness of time. Another fullness-of-time question: Coroner's Court, Mr Coutts-Trotter. I don't know if this is going to go to Mr McKnight as well. Just to recap, I understand that there is the considerably overdue statutory review that is now further delayed because of the joint DCJ-NSW Health task force looking at the matter, from how coronial inquests occur from go to whoa. Has there been any progress on the task force?

CORRECTED

Mr COUTTS-TROTTER: Yes, there has. Mr McKnight's teams are participants in that, as is my colleague Catherine D'Elia. But I will allow Paul to take the lead on that, if you don't mind.

Mr McKNIGHT: The task force was set up by Ministers. It is jointly chaired by the executive director of policy reform and legislation in my division. That used to be me, so I used to chair the task force until about nine months ago. Together with Doctor Kerry Chant, who you will know.

The Hon. ROSE JACKSON: I suppose she has been quite busy.

Mr McKNIGHT: She has been quite busy. But the task force itself has really got to grips with some really difficult issues. Its focus has been around ensuring that the remains of loved ones are released quickly to families in order for them to be able to have funerals and the post-mortem reports are more quickly provided. So it has had—the advice is in front of me is about four focuses. The first focus was around reducing the over-reporting of natural deaths. So this is to help doctors give death certificates where that is appropriate and so a couple of things happened here. There was an amendment, you may recall, to the Coroner's Act to remove the requirement to report a death when the person had not seen a medical practitioner for six months. There was also some work around educating general practitioners about how they could better discharge their responsibilities. Checking back with GPs, they are now less likely to report a death because the deceased had not seen a doctor. So we are getting some information out there.

The focus on reducing delays to the release of loved ones, again there was a Coroner's Act amendment to enable preliminary examinations to happen a bit more quickly. Forensic pathologists were given more access to medical records held by others so that they had a better picture of what was going on with a deceased person and to enable them to expedite their advice to the Coroner. The task force is considering expanding an expedited, centralised triage model, which is currently operating in Lidcombe. This has actually been put in place during the COVID pandemic. It speeds up the initial coronial decisions about whether a post-mortem is required or not, because the Coroner sits with a team of individuals and is given direct advice from a Health person and a police person. It is a great model. There are a couple of other things too.

What we have discovered out of this stream of work is that we have increased the number of post-mortem examinations happening within three days, so we have sped up that post-mortem examination process. Once those examinations happen, the body can be returned to the family. That has gone up by 27 per cent. We have also found that in rural and regional cases there has been a reduction in median time from admission to completion of the post-mortem examination, so that has gone down by 40 per cent. And from admission until the release of the remains to the family, that has gone down by 25 per cent. There has also been work in reducing the delays in finalising post-mortem reports. Forensic Medicine have recruited additional forensic pathologists to assist with this process and they have also implemented some process improvements. That is obviously a Health portfolio matter. What that has resulted in is the number of finalised post-mortem reports has gone up by 21 per cent, so 53 reports. The number of post-mortem reports awaiting finalisation greater than six months has gone down by 40 per cent.

They have also really focused on communication with family; so, really providing better information to families about how things are going. Forensic Medicine recruited two additional forensic social workers. They have commenced using a Forensic Medicine Social Work Model of Care. They have undertaken extensive engagement with funeral directors, with Aboriginal and Torres Strait Islander communities and with Muslim communities. They found that that has reduced the number of complaints received by Health Pathology by more than half. So the task force is actually producing I think some really important results.

Mr COUTTS-TROTTER: Just one further thing to add: We expect this week to be advertising to fill new roles for "Aboriginal coronial information support officer", which directly responds to the concerns from Aboriginal people about the quality of information that they get from the coronial jurisdiction. It is a complex process. Having these roles we think will significantly help people avoid some avoidable trauma from the process of dealing with the death of someone you love.

Mr DAVID SHOEBRIDGE: The Coroners Court, at least so far as I can understand, has been undertaking a review process where it is seeking to come up with a new series of protocols, whether it is by way of formal rules changes or just guidelines to deal with First Nations families. What is the status of that?

Mr COUTTS-TROTTER: This was the subject of some discussion when we appeared before the relevant parliamentary inquiry.

The Hon. TREVOR KHAN: The First Nations inquiry.

Mr COUTTS-TROTTER: The First Nations.

CORRECTED

Mr DAVID SHOEBRIDGE: The reason I ask is that the Coroners Court indicated in correspondence to that inquiry that it was going to be releasing publicly its position in February. I am asking now because it is 2 March.

Mr COUTTS-TROTTER: Sure. I do not have an update on the time frame, but there is the capacity for the Chief Magistrate to formalise a practice note—that is one process—and then there is the opportunity for the Coroner within her jurisdiction to develop a protocol. They are different and distinct things. I understand that a practice note is still under consideration. If one is produced, there would be a process of targeted consultation on that practice note before it was finalised. I am happy to take back and refer to the Coroner the question about the protocol.

Mr DAVID SHOEBRIDGE: Has there been any consultation about the protocol? There is very little information on the public record about it.

Mr COUTTS-TROTTER: My colleague Catherine D'Elia may know.

Ms D'ELIA: The protocol is actually a judicial decision, so it is being established by the State Coroner. She does need to consult with the Chief Magistrate. It is actually not a departmental protocol; it is a protocol that is being developed by the head of jurisdiction.

Mr DAVID SHOEBRIDGE: I suppose when I was talking about consultation I really was not thinking about with the Chief Magistrate. When you are talking about how to deal with First Nations families, that might be nice. It might even be necessary. But what I have not seen—and maybe it has happened or maybe it has not—is any kind of engagement with First Nations family members, major stakeholders or legal groups. Is it just happening entirely within the Coroners Court?

Ms D'ELIA: We would actually have to take that on notice because, for example, similar to listing practices, which are a decision for the head of jurisdiction, this protocol is actually being done by the head of jurisdiction. We would actually need to get the advice from her, so we would have to take that on notice.

Mr DAVID SHOEBRIDGE: I repeatedly make representations on behalf of First Nations families who come to the Coroners Court to seek to have their reasonable accommodation expenses and reasonable travel expenses met. It is a very ad hoc process. Often family members are in extreme emotional distress and then they suffer significant financial hardship, having to travel often from regional New South Wales to Sydney and then seek accommodation and travel costs. I am unable to see anywhere on the Coroners Court's website or on the department's website where there is any kind of access point for these family members to seek this kind of assistance and to seek this kind of necessary relief. Are you aware of any?

Mr COUTTS-TROTTER: Catherine, are you?

Ms D'ELIA: No, I am not aware of any.

Mr DAVID SHOEBRIDGE: Indeed, in most cases the only relief that ends up being provided is discretionary relief from Corrective Services—

Mr COUTTS-TROTTER: Often the case, yes.

Mr DAVID SHOEBRIDGE: —if a family member has died in custody.

Ms D'ELIA: I am unaware of any opportunity for financial relief but we do make accommodation when and where possible to be able to accommodate the families closer to home. We have on several occasions enabled families to use audiovisual equipment locally, closer to their home location, in order for them to engage with the matter being heard in the Coroners Court.

Mr DAVID SHOEBRIDGE: That is not an adequate response to a mother, if there is a seven-day coronial hearing at the Coroners Court in Lidcombe, to say, "You can sit in a room in Dubbo and look at it through an audiovisual link," is it, Ms D'Elia?

Ms D'ELIA: I cannot speak to the individual families' experiences but we have had quite positive feedback from some of the individuals who we made that available to.

Mr DAVID SHOEBRIDGE: Is that really your answer?

Mr COUTTS-TROTTER: In fairness to my colleague, she is trying to provide additional information about some of the accommodation that her teams have provided. I understand very clearly now the point you are making. I am happy to take it on notice, give it some consideration and respond to you.

Mr DAVID SHOEBRIDGE: Which department, if any, has overall oversight of the Government Information Public Access Act [GIPAA] scheme? Is it yours, Mr Coutts-Trotter?

CORRECTED

Mr COUTTS-TROTTER: The legislation is shared between two Ministers, the—

Mr DAVID SHOEBRIDGE: The Attorney General and?

Mr COUTTS-TROTTER: —Attorney General and the Minister for Customer Service.

Mr McKNIGHT: That is right. The Minister for Customer Service and the Attorney General administer the Act.

Mr COUTTS-TROTTER: Yes.

Mr McKNIGHT: If you are talking about the overall administration of the obligations under the Act, those obligations sit with the agencies concerned. It is on individual departments to comply with the Act or not. Obviously the Information and Privacy Commission [IPC], so the Information Commissioner, is responsible for ensuring the integrity of the scheme and overseeing its operation. The IPC now sits in the Customer Service cluster and is the responsibility of Minister Dominello.

Mr DAVID SHOEBRIDGE: But the IPC has no actual regulatory power to force changes or to direct agencies; they have recommendation power only, Mr McKnight.

Mr McKNIGHT: That is how the Act works.

Mr DAVID SHOEBRIDGE: Or doesn't work.

Mr McKNIGHT: That is the structure of the Act. Complaints about obligations under the GIPAA that are not met go to NSW Civil and Administrative Tribunal [NCAT].

Mr COUTTS-TROTTER: Yes.

Mr McKNIGHT: And NCAT has compulsory powers.

Mr DAVID SHOEBRIDGE: But NCAT cannot, for example, make a ruling about whether or not the Byzantine process that government agencies have set up, where you are required to create an online account with an agency, then enter all your details before you can put a GIPAA application in—NCAT does not have oversight of that, does it, Mr McKnight?

Mr McKNIGHT: NCAT would have responsibility for adjudicating on any complaint where the agency did not fulfil its obligations.

Mr DAVID SHOEBRIDGE: But they actually don't, Mr McKnight. Do you want to take that on notice or do you want to stick with the answer that NCAT has a general oversight of complaints about agencies?

Mr McKNIGHT: Sorry, that was not my answer. My answer was: NCAT would adjudicate on a complaint that came in front of it. The question you are asking is—

Mr DAVID SHOEBRIDGE: NCAT has a narrow statutory jurisdiction, Mr McKnight. It does not have a general complaints jurisdiction about GIPAA.

Mr McKNIGHT: That is right. So if the complaint is that the agency does not have a user-friendly interface for making GIPAA obligations, NCAT has no jurisdiction over that. You are right.

Mr DAVID SHOEBRIDGE: Correct. That is what I am asking you about. Mr Coutts-Trotter, are you aware of the fact that a whole series of agencies have now set up procedures where, if you want to get a GIPAA application up, you need to register an account, go through a long, tortuous process, provide a whole lot of personal details, then enter all of your credit card details on top of that and then they will allow you to submit a GIPAA application? Are you aware that this is—

Mr COUTTS-TROTTER: I am not closely familiar with the processes that different agencies are deploying, so I accept your description of them.

Mr DAVID SHOEBRIDGE: Is any part of Government responsible for looking at how the GIPA Act is actually being implemented? These kinds of bureaucratic procedures that are being put in place by agencies now are real barriers to people seeking access to information. Does your department have any overarching review of the GIPA Act?

Mr COUTTS-TROTTER: I will take that on notice. But to the best of my knowledge, no. But when I think about potentially comparable service quality issues, particularly those where people are wanting a quick and easy digital service—Department of Customer Service, Service NSW is front and centre and has identified a forward program of work to identify other ways people are currently dealing with Government that are frustrating to them and could be improved by improving the digital service that underpins it. So I am happy to do two things:

CORRECTED

one, take on notice whether that forward work program currently is looking at this issue or not and then, two, ask my colleague Emma Hogan in the Department of Customer Service whether it is appropriate that it should.

Mr DAVID SHOEBRIDGE: Thanks, Mr Coutts-Trotter. I have a series of quite detailed questions about victim support. But I think they probably are better served on notice rather than doing that.

Mr COUTTS-TROTTER: That would be good.

The Hon. MARK LATHAM: Mr Coutts-Trotter, coming back to the section 52 application by Daryl Maguire. How much money did he receive in the end?

Mr COUTTS-TROTTER: I am happy to take that on notice. There is a schedule that determines the maximum that is available to any applicant and it is expressed as a daily rate for, I think you get to choose, either a solicitor or a counsel. But I will take that on notice for you, Mr Latham.

The Hon. MARK LATHAM: You did not have that earlier on, when you told us the detail of Mr Cappie-Wood's approval under delegation.

Mr COUTTS-TROTTER: No, I am just recalling from the decisions that I have made myself that that is the arrangement.

The Hon. MARK LATHAM: But you have nothing specific there in front of you about this one that we asked prior to lunch.

Mr COUTTS-TROTTER: No, but I gave you what I could get quickly. I will respond to the rest of the questions on notice. I am happy to.

The Hon. MARK LATHAM: On notice you are going to find out when the application was lodged.

Mr COUTTS-TROTTER: Yes, indeed.

The Hon. MARK LATHAM: Can you also find out what was the nature of his prospect of hardship to the witness, given that he was a parliamentary secretary on, probably, around \$200,000 a year and certainly his partner thought he had significant financial assets and capability in life? What was the nature of the hardship under (2A) of section 52? You will take that on notice?

Mr COUTTS-TROTTER: Yes, I will. I will just pick up a point that someone else made. Part of the advice I take is just to ensure that there would be no prejudice to an ICAC inquiry in responding to that. Subject to some legal advice, but yes, subject to that, absolutely.

The Hon. MARK LATHAM: I think we know a fair bit about Mr Maguire's finances. If you go through the ICAC transcripts there is a lot there. He had to list the significance of the evidence that the witness was giving. Did he outline the fact that—

Mr COUTTS-TROTTER: I will take that on notice.

The Hon. MARK LATHAM: —the nature of the appearance he was making at the ICAC and the accusations against him, of which he would have been aware on the date you gave us earlier on? I think it was 6 July.

Mr COUTTS-TROTTER: All I could confirm was that my predecessor dealt with the recommendation to provide assistance on 5 July. But I will take that question on notice.

The Hon. MARK LATHAM: Could you also look at whether he provided any other supporting documents, references, statements, references to other people who he thought were supportive of this particular application under part 3, any other matter relating to the public interest?

Mr COUTTS-TROTTER: Okay, certainly.

The Hon. MARK LATHAM: Mr Coutts-Trotter, can I just take you to an issue that was raised with the Minister, that was the \$530 million expenditure on domestic violence programs? How long has New South Wales been engaged now in the domestic violence policy and program area to try to bring the rate down?

Mr COUTTS-TROTTER: How long have we had an explicit domestic violence strategy?

The Hon. MARK LATHAM: Yes, and activities, funding of programs and the like. Does it go back to Julia Gillard at the end of 2010, when they had a COAG agreement to which New South Wales was a signatory?

Mr COUTTS-TROTTER: You could be right on that. To be honest, I am not sure. Do you know, Simone Walker?

CORRECTED

Ms WALKER: No, I would need to get some detail about the history.

Mr COUTTS-TROTTER: We can confirm that.

The Hon. MARK LATHAM: You will take that on notice as well?

Mr COUTTS-TROTTER: Yes.

The Hon. MARK LATHAM: In terms of the Minister's statement, certainly for the \$530 million that is being spent annually now and the rate being static in the community, what sort of ongoing policy reassessment do you make? If you cannot bring the rate down with certain strategies, at what point do you look at other strategies?

Mr COUTTS-TROTTER: As the Attorney General referenced, we are having a look at the impact of a whole range of interventions. There are a lot of things that happen inside the justice system. Obviously, there are work and tactics deployed by police. For example—and I am sure when the police Minister is here Mr Shoebridge will ask questions about it—there is the Suspect Target Management Plan, which is an attempt by police to target people who are at high risk of reoffending. There is a specific program there targeting domestic violence offenders, and BOCSAR found that there is a strong correlation between that program, that kind of disruptive policing, and a reduction in domestic violence reoffending. There is a range of elements in the program that are subject to evaluation. I guess our view as an agency would be that within the budget that is available we would recommend to Government to move money to those things that are most likely to have the biggest impact based on whatever evidence we can gather or evaluations that we initiate.

The Hon. MARK LATHAM: Is there any pressure from the Treasurer or the Treasury to say that for spending more than half a billion dollars annually we need to do a lot better than a static rate?

The Hon. TREVOR KHAN: I thought the evidence was it was \$500 million, or whatever the figure is, over four years.

Mr COUTTS-TROTTER: It is \$538 million over four years. It is about \$160 million this year. But just to reiterate the point: It identifies some specific things that are being done in response to domestic violence, but it does not capture everything that the taxpayers spend in dealing with either trying to prevent or the consequences of domestic violence. It captures some but not all of that. The key outcome in accountability on that is reducing the number of domestic violence reoffenders. There is a lot of focus on that. That is something that the Attorney General and other Ministers, together with me and other senior people, meet with the Premier on every three months, to be held to account for what we did in the previous three months, to identify what is coming up and to generally talk about progress towards that target.

The Hon. MARK LATHAM: Given that 82 per cent of perpetrators have prior criminal convictions, what weight is given to—it seems to be the obvious policy issue. If they stay in jail longer, they will not commit as many of these atrocities.

Mr COUTTS-TROTTER: There is mixed evidence on the impact of prison on reoffending. The purpose of prison is not only to try to rehabilitate so you go once and do not come back. It is also a sanction. It also interrupts people's offending, and provides safety for individuals and for the community. But there is evidence to say that, for some people, community safety is, arguably, best served in diverting people from prison towards other kinds of interventions that actually have the effect of lowering people's likelihood of reoffending.

The Hon. MARK LATHAM: What is the data showing about domestic violence perpetrators in the community correction orders?

Mr COUTTS-TROTTER: I do not want to talk off the top of my head. I am happy to get the data about the likelihood of reoffending, depending on the nature of the sanction, what happens to you following conviction. I am happy to do that.

The Hon. MARK LATHAM: The various options that unfold: prison, the correction orders—

Mr COUTTS-TROTTER: Yes. Intensive correction orders. Indeed.

The Hon. MARK LATHAM: What is your view of those generally as to how they work? They are a real attempt, are they not, to divert people away from imprisonment.

Mr COUTTS-TROTTER: They are a real attempt—

Mr DAVID SHOEBRIDGE: That is asking for an opinion. That is actually outside the standing orders.

Mr COUTTS-TROTTER: There are—

CORRECTED

The Hon. MARK LATHAM: Are you serious?

Mr DAVID SHOEBRIDGE: It is. "What is your view?"

The Hon. MARK LATHAM: He is not the Minister. I am asking him for how they are working. You ask those questions every 10 seconds. How are they going?

Mr COUTTS-TROTTER: BOCSAR has done an interim evaluation. What they have concluded is that at this point they are not looking at outcomes on reoffending yet. They are looking at whether the objective, where appropriate, of diverting people away from short terms in prison is being achieved. The reason you would divert people away from short terms in prison is that, for some people, it severs their social connection. It pulls them out of a job and it increases the risk that they will not re-establish social connections and get back in the mainstream and avoid reoffending. So, there is a community safety objective behind that. BOCSAR is doing an outcomes evaluation and will be in a position to publish that research I think—

Mr McKNIGHT: November 2021 is the date.

Mr COUTTS-TROTTER: November 2021. So, late this year.

The Hon. MARK LATHAM: Late this year? Thank you very much. Just coming back to Karen Smith and your recollections about the documents that Mr Searle produced, what was your response as Crown Solicitor—and previously in the role of deputy secretary—when you had that news on 12 October last year about the Premier's testimony at the ICAC and what became public knowledge at that point?

Ms SMITH: No response as Crown Solicitor.

The Hon. MARK LATHAM: No response? But did it provoke your memory—kick your memory along—as to those events in July 2018?

Ms SMITH: No.

The Hon. MARK LATHAM: It did not help with refreshing your memory in any respect whatsoever?

Ms SMITH: No.

The Hon. MARK LATHAM: No? As General Counsel and Deputy Secretary, how many ICAC referrals were you involved in, other than the two that we discussed earlier on?

Ms SMITH: I do not have a number, but more than—

The Hon. MARK LATHAM: You do not have a number?

Ms SMITH: No.

The Hon. MARK LATHAM: Was it one, two, 10, 20? Were there others, other than those two?

Ms SMITH: There were very, very many referrals to the ICAC of information. It was part of a routine role in terms of correspondence.

The Hon. MARK LATHAM: That you were involved in—similar to those briefing notes?

Ms SMITH: No, no.

The Hon. MARK LATHAM: They were the only briefing notes of that kind?

Ms SMITH: No. I do not—

The Hon. MARK LATHAM: You do not know? This is a Carmen Lawrence stage memory fail, isn't it?

Ms SMITH: No, no.

The Hon. MARK LATHAM: This is really hard to believe, I have got to say.

The Hon. SCOTT FARLOW: I think that is unfair.

Ms SMITH: I need to—if you mean, "Were there any other briefing notes concerning this particular ICAC investigation?" not to my recollection, no.

The Hon. MARK LATHAM: Okay, thank you.

Mr DAVID SHOEBRIDGE: I just had two questions. Well, it is really the one question. Mr Coutts-Trotter, Domestic Violence NSW has repeatedly sought to access the memorandum of understanding

CORRECTED

between DCJ and the Family Court as it relates to child protection, as well as the Magellan manual from the Family Court.

Mr COUTTS-TROTTER: I was unaware of that, to be honest.

Mr DAVID SHOEBRIDGE: Would it be possible for the department to provide a copy of those documents to Domestic Violence NSW?

Mr COUTTS-TROTTER: I will just check with my colleague.

Ms WALKER: I am not aware of the request, but I am happy to look in to see where the request went to and what the concern was about providing the documents because, from my knowledge, that should be okay to do.

Mr COUTTS-TROTTER: Yes. It seems benign.

Mr DAVID SHOEBRIDGE: Alright, that is excellent. For assistance, I sent some correspondence to the Attorney on 19 January detailing that request.

Mr COUTTS-TROTTER: Oh, okay.

Mr DAVID SHOEBRIDGE: I am not critiquing the delay—

Ms WALKER: No, no.

Mr DAVID SHOEBRIDGE: I think, to be quite frank, Domestic Violence NSW had been making efforts to get it from the Family Court and they got caught up in some kind of bureaucratic miasma. And so the request is made to you.

Mr COUTTS-TROTTER: Okay.

Ms WALKER: Yes, we will take that. Thank you.

The Hon. SHAOQUETT MOSELMANE: Thank you, Chair. Just some follow-up questions to Simone Walker, if I may?

Ms WALKER: Of course.

The Hon. SHAOQUETT MOSELMANE: Are you aware of any voluntary redundancies in the Department of Communities and Justice?

Ms WALKER: I am certainly aware that my area, which is Strategy, Policy and Commissioning, is undergoing a very large restructure at this point in time, and that we absolutely expect there to be a series of voluntary redundancies through that process.

The Hon. SHAOQUETT MOSELMANE: When you say "a series", how many do you expect to voluntarily leave their jobs?

Ms WALKER: What we know as part of the restructure is that we need to reduce our employee-related expenses [ERE] by 175 positions.

The Hon. SHAOQUETT MOSELMANE: What is that proportion in terms of the current numbers in the department?

Ms WALKER: So, the numbers of ERE I have at the moment—employee-related positions—is about 851.

The Hon. SHAOQUETT MOSELMANE: So, if those numbers do not come to those 157, did you say—

Mr DAVID SHOEBRIDGE: It was 175.

Ms WALKER: It was 175.

The Hon. SHAOQUETT MOSELMANE: If they do not voluntarily go, what will happen? Will there be forced redundancies?

Ms WALKER: That is not what we are looking at, at the moment. What we know is that people who are not interested in taking a voluntary redundancy—we have actually had significant interest in early voluntary redundancies through the process. If people are not placed through the process, they do have an option to enter a mobility pathway. I am already actively working with my colleagues about other positions that may be available

CORRECTED

in DCJ because, for people that want to stay, we are keen to find alternatives for them. But that also goes to a sector-wide opportunity, as well.

The Hon. SHAOQUETT MOSELMANE: What is the time line? Is there a period in which you are hoping to achieve that?

Ms WALKER: Yes. So, 30 June.

The Hon. SHAOQUETT MOSELMANE: This June?

Ms WALKER: This year the restructure will be completed to ensure that we start the new year with our new structure in place, with people in appointed positions.

The Hon. SHAOQUETT MOSELMANE: Thank you.

The Hon. ROSE JACKSON: Just a quick follow-up on that: Are you able to provide any guarantees to us that the result of that restructure and those voluntary redundancies is not going to be further delays on the many projects that are to be delivered by DCJ in the fullness of time? I think you could recognise today, Ms Walker, that there have been a number of reviews and processes and things that are in train that we have asked about on a number of occasions and are still ongoing. Is this going to mean that those things are delayed even further?

Ms WALKER: I think it is a valid question, remembering that my area—Strategy, Policy and Commissioning—was really a place in the department where the old Family and Community Services and Justice came together. The requirement for us to make these changes was about efficiencies that could be gained through the system. So we are working hard with the teams and making sure that we prioritise the activities of Government—certainly a number of things that my colleague, Mr McKnight, has talked about—and also the Premier's Priorities, as well. We think we will be able to minimise the impact. What we know is that, during a period of restructure, it is often a difficult time for staff. That is the point where—if there is any slowdown, it would be during that time, but we have got a series of commitments that we need to meet and our staff are incredibly dedicated and will work hard to do that.

Mr DAVID SHOEBRIDGE: But you are cutting out 20 per cent of them. That is a huge hack into your workforce—a 20 per cent cut. You are doing the exact kind of work that Ms Jackson was asking about: statutory reviews, legislative policy work—

Mr COUTTS-TROTTER: No.

Ms WALKER: That actually more sits with Paul, I would have to say.

Mr COUTTS-TROTTER: That is more Mr McKnight's chamber, Mr Shoebridge.

Ms WALKER: I certainly have Justice components, the Premier's Priorities, child protection's service system, housing and homelessness; so, they are vital areas as part of DCJ. Just to reiterate, we have had really significant interest in early voluntary redundancies that we will be able to discuss with the broader staffing group in the next week or so. We are having active conversations with the Public Service Association because they have raised very similar concerns.

Mr DAVID SHOEBRIDGE: Would it be possible to give us, on notice, the work that is done through your department—

Ms WALKER: Sure.

Mr DAVID SHOEBRIDGE: —and the scale of the proposed redundancies?

Ms WALKER: Absolutely. I will take that on notice.

The Hon. SHAOQUETT MOSELMANE: And perhaps where the major voluntary redundancies will come from?

Ms WALKER: Yes. That is a bit of a process to work through because it depends what grade people have applied at and what the structure looks like going forward, but we do think over the next month we will be able to be clear with staff. I guess I want to be really clear with staff before putting it on the public record, as well.

Mr COUTTS-TROTTER: Yes.

Ms WALKER: But that should work with the time frame for taking it on notice—happy to.

The Hon. SHAOQUETT MOSELMANE: Thank you.

CORRECTED

The Hon. ROSE JACKSON: Mr McKnight, is there a similar process of substantial—or any—voluntary redundancies in your area, as well?

Mr McKNIGHT: No.

The Hon. ROSE JACKSON: Mr Coutts-Trotter, just on this: Obviously there are a number of issues, but two primary ones concern me, at least. One is that people are not forced. Positions are not forcibly made redundant—that people are not being sacked. It is good to hear Ms Walker indicating that that is not the preference at this time. But the second one is that issue of ensuring that the work of this massive department, which covers so many important areas and so many Ministers, is not further compromised by a staff squeeze. And so, if that is occurring, can you indicate what representations you will make to your numerous Ministers about that? And some assurances to us that you will—

Mr COUTTS-TROTTER: So, just for context, 22,500 full-time equivalent roles this year—we will drop 226 full-time equivalent roles in some areas, but we are hiring more people in community corrections, custodial services and the like. That is not to deprecate the challenges, the difficulties, that Ms Walker and her leadership team and the staff are experiencing in that division. They are real, and we have acknowledged from the get-go that there were duplications between some of the functions done in Family and Community Services and the Department of Justice in the division Ms Walker now leads. We have a responsibility to taxpayers as well to try to strike the right balance between the resources we call on from them and the work we do.

It is important work and it does need to be done in a timely fashion. We are acutely aware of that, and we also do not want to see this restructure impact on the diversity of our workforce. We do not want to lose people who are in identified or targeted Aboriginal roles. We do not want to lose people with disability. There are a lot of sets of interests involved. I am acutely aware of the point you make. We will absolutely do our darnedest to make sure that we come out of it having done this as decently as possible and maintaining a capability that the agency needs to serve the public.

The Hon. ROSE JACKSON: We will see. I have two more quick questions in relation to the Coroners Court because we did not get to the time line for the completion of the task force, specifically because we were told at the last estimates that the statutory—all of that work you described, Mr McKnight, was very good, but there is this other outstanding issue in relation to the structure of the Coroners Court that has been ongoing since the outstanding statutory review that has now been sitting on the Minister's desk for three years. The Minister has told us that that cannot proceed until the task force work is complete. So, is there a time line for that?

Mr McKNIGHT: The task force is now moving into an implementation phase to implement the things it has come up with and monitor those effects across the system. I think we can turn again to the statutory review once we have a little more information from the task force about any identified statutory implications of the things they want to do. I do not have a fixed time frame for how that will play out. We expect the task force to wrap up its work this year, but whether we can move faster on the statutory review or not is not yet clear to me. I think what the task force has done is really focus on the operations of the coronial system as a whole, so both the courts and how the health system interacts with it. I think that has given us quite a lot of information about where the sticking points are, and I think that will provide really helpful information in order to re-look at the statutory review and bring it, hopefully, to finality.

The Hon. ROSE JACKSON: The Minister himself conceded—at estimates in September 2019 he said, "The statutory review is well overdue." That was at that point, so it would be good to see that this year, I think. That is not really a question; I apologise, Mr McKnight. Quickly on the Coroners Court—I do not know if this is in your area or perhaps another—I want to ask about the compliance question because, looking at the DCJ website, for example, as I did before I came in here yesterday, there are a number of recommendations that coroners have made that require a response from government departments that are still awaiting a response, despite the fact that they are required to report within six months. I stopped counting after a while because you can scroll down and wait and wait. Does DCJ have some capacity to follow up with the other departments in relation to improving response times to coronial recommendations?

Mr McKNIGHT: We might have to take some of that on notice. I would say the system of reporting responses to coronial recommendations occurs under a Premier's memorandum issued some years ago now.

The Hon. ROSE JACKSON: Yes, it was Premier Rees, in fact.

Mr McKNIGHT: It has been in place for some time. The role of DCJ is to record those responses and make them public. It is not a role of the Attorney under their memorandum to enforce the regime, if you like. I have not looked at the schedule recently to see how compliance is going, but perhaps we can take on notice—

CORRECTED

The Hon. ROSE JACKSON: I can assure you it is not going well, although I accept your point: The suggestion is that the compliance should come from the Premier as the requirement for reporting is under a Premier's memorandum. Is that the suggestion that you are making—that it is not the Attorney's role?

Mr McKNIGHT: I am not sure I am making that suggestion. I am making a—

Mr COUTTS-TROTTER: No.

The Hon. ROSE JACKSON: Who is responsible for compliance then?

Mr McKNIGHT: I am not sure I can—

Mr DAVID SHOEBRIDGE: I think the answer is nobody.

Mr McKNIGHT: I am not sure I can answer that question.

Mr DAVID SHOEBRIDGE: It is right, is it not? There is nobody. No agency is set aside to have compliance.

Mr McKNIGHT: I would need to take that on notice. I have not looked at the Premier's memorandum in some time.

The Hon. SHAOQUETT MOSELMANE: I have a quick question on the Coroners Court. How many inquests were completed in the calendar year 2020?

Mr COUTTS-TROTTER: We may have that data to hand, Mr Moselmane. If not, we can give you that on notice.

The Hon. SHAOQUETT MOSELMANE: I am happy to have it on notice if you do not have it.

Ms D'ELIA: No, I have the number of deaths reported, but I do not—

Mr COUTTS-TROTTER: Okay, we will give you that on notice, absolutely.

The CHAIR: Mr Coutts-Trotter, do you know when the Andrews case report will be brought down?

Mr COUTTS-TROTTER: No, I note your interest in that, Chair. I have just—

Mr DAVID SHOEBRIDGE: I think it is 18 March.

The CHAIR: On 18 March? I just want to get it confirmed.

Mr McKNIGHT: That is the Edwards case.

The CHAIR: Yes.

Mr COUTTS-TROTTER: We will just see if we can confirm that for you now, Chair.

Ms D'ELIA: The inquest in the Edwards case has been adjourned until 18 March.

The CHAIR: Okay, thank you.

The Hon. ROSE JACKSON: Sorry, yes, apologies. You are unable to answer or you took on notice, Mr McKnight, the question around compliance?

Mr COUTTS-TROTTER: We took the question on notice. We will respond.

The Hon. ROSE JACKSON: Thank you. I have a couple more. The statutory review of NCAT was due to be tabled in 2020; it has not been. Apologies, I do not know where to go. Mr McKnight, I am sorry. I feel like I am unfairly targeting you.

Mr DAVID SHOEBRIDGE: You can make a complaint to NCAT.

The Hon. ROSE JACKSON: Any update on the NCAT statutory review?

Mr McKNIGHT: That work is actively happening at the moment. I do not have in front of me an ETA for that review, but we are working on it quite hard in consultation with NCAT and stakeholders at the moment.

The Hon. ROSE JACKSON: Fullness of time? This year? First half of this year? Can I push you on any time frame for the NCAT statutory review? This year?

Mr McKNIGHT: The issue with statutory reviews, as you would be aware, is once you start opening up the statute and start talking to people about the issues and then start to chase down what should happen about them, it is not always clear how long it will take to really get to grips with the problems and come up with solutions

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to those problems that are actually fit for purpose. So, although we do project-plan these things quite carefully when we undertake this work, it is the unexpected things that come up and other priorities as well that sometimes intervene with the work. So, I am reluctant to give you a timetable because it is actually unclear sometimes how these issues unfold.

Mr DAVID SHOEBRIDGE: Can you give us a list of the stakeholders that you have consulted with?

Mr McKNIGHT: I can take that on notice.

The Hon. SHAOQUETT MOSELMANE: Mr Coutts-Trotter, in October last year the Federal Government, the New South Wales Government and Campbelltown City Council issued a joint statement welcoming a \$1 million strategy—

Mr COUTTS-TROTTER: For the south-west Sydney justice precinct, yes?

The Hon. SHAOQUETT MOSELMANE: Yes, Campbelltown. What has happened to that?

Mr COUTTS-TROTTER: Rocking along. I will turn to my colleague Catherine D'Elia for an update.

Ms D'ELIA: Currently, there is a steering committee with the three levels of government. We have been working towards a strategic business case that should be finalised before the end of this financial year. That strategic business case will put forward a proposal as to what the solution would be with respect to a precinct in Campbelltown.

The Hon. SHAOQUETT MOSELMANE: Can you describe to us what this precinct is? Is it more than the Campbelltown courthouse?

Ms D'ELIA: The strategic business case right now is still in development and what we are looking at is what options it could possibly entail. So it could be an increase in the number of courtrooms simply for the New South Wales court system, or it could include the Commonwealth, or it could also include other agencies that would sit alongside and support the justice system. In fact, the Campbelltown council is interested in how else they can engage with us in terms of having place making types of departments, agencies and businesses that could be brought into the precinct as well.

The Hon. SHAOQUETT MOSELMANE: I may have missed the date. What date was it that you anticipate the case will be completed?

Ms D'ELIA: This financial year.

Mr COUTTS-TROTTER: This financial year we will achieve the business case, so by 30 June.

The Hon. ROSE JACKSON: Just a couple more questions, I think. I just wanted to ask whether security was still being provided at the Shane Fitzsimmons graffiti art/street art and is that being provided by DCJ? Minister Speakman may—

Mr COUTTS-TROTTER: No, I understand the relationship with Minister Speakman but I think that that is a matter for Transport.

The Hon. ROSE JACKSON: Okay. Just a couple of questions then in relation to homelessness. I just wanted to ask Ms Walker: Is there any intention, or is it under consideration, for the expansion of Staying Home Leaving Violence to be a statewide program? It is still available in only a limited, although growing, number of locations.

Mr COUTTS-TROTTER: Yes, 33 locations.

Ms WALKER: No plans at this point that I am aware of, knowing that Staying Home Leaving Violence was one of the very deserving recipients of the COVID-19 funding that came both from the New South Wales and Commonwealth governments. But we have not got plans underway for further expansion at this stage.

The Hon. ROSE JACKSON: I think we can recognise that there is now quite a bit of evidence coming through that there were increased numbers of domestic violence incidents and an escalation of the intensity of some already violent relationships as a result of COVID.

Ms WALKER: I think we probably just need to make the point that, certainly, service providers' experience was that the intensity of the experience of the victims they felt had increased in that period of time and that was reported and, thus, there was the response of the COVID funding. But the funding was also supporting the physical environments. When we look at the BOCSAR data, what we were expecting in 2020 was increases that were in line with increases in previous years. The charging around DV was equivalent to that, so that we did

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not see some of the very significant spikes that were anticipated, and that is the same in some of the other large jurisdictions as well.

The Hon. ROSE JACKSON: Yes, I appreciate that in regard to the reporting through BOCSAR that is the case. But as you acknowledged—and I can read through some of the quotes that have been put on the public record in relation to the women who are working in this field—in fact, for them it was, "one of the most difficult years on record", and that they were finding a significant increase in the number of women accessing their services. Those are obviously the services that you fund in a way—

Ms WALKER: Yes, the complexity and intensity is what they reported.

The Hon. ROSE JACKSON: Is that something that is being considered in ongoing funding once the COVID injection runs out? Where will a lot of these organisations be left in regard to their funding?

Ms WALKER: There are no plans for additional funding in this space, but when we think about our specialist homelessness services [SHS], they are being recommissioned and that recommissioning will occur prior to 30 June this year. So that is a number of the services that you are talking about—a considerable number of women's refugees and our SHS providers that provide short-term and transitional accommodation.

The Hon. ROSE JACKSON: Is any consideration being given to providing funding—ongoing, direct funding—to Women's Safety NSW?

Ms WALKER: I am going to hand that to Mr Thomas. That is his—

Mr THOMAS: There is a base level of funding that is provided to Women's Safety NSW. We have enhanced that every year through some program savings and we will be considering that again in the current budget. So the base funding for Women's Safety NSW is guaranteed; it is the additional funding which we still need to determine. There is a new chairperson who has been elected for Women's Safety NSW recently and I will be meeting her in the coming weeks to talk about that.

The Hon. ROSE JACKSON: The core funding, from what I understand, is only around \$100,000.

Mr THOMAS: It is \$113,000.

The Hon. ROSE JACKSON: Yes, so that is obviously not a substantial amount of money for a key organisation. But, as you indicated, I suppose there is consideration for providing them additional funding for their—

Mr THOMAS: That is right.

The CHAIR: Thank you very much for coming. Mr Coutts-Trotter, I note that you and your colleagues took a number of questions on notice. You have 21 days to respond to those.

(The witnesses withdrew.)

The Committee proceeded to deliberate.