PORTFOLIO COMMITTEE NO. 5 - REGIONAL NSW AND STRONGER COMMUNITIES

Wednesday 16 March 2022

Examination of proposed expenditure for the portfolio area

ATTORNEY GENERAL

CORRECTED

The Committee met at 9:30.

MEMBERS

The Hon. Robert Borsak(Chair)

Mr David Shoebridge (Deputy Chair)
The Hon. Lou Amato
The Hon. Shaoquett Moselmane
The Hon Peter Poulos
The Hon. Adam Searle

PRESENT

The Hon. Mark Speakman, *Attorney General*

*Please note:
[inaudible] is used when audio words cannote be deciphered.
[audio malfunction] is used when words are lost due to a technical malfunction.
[disorder] is used when members or witnesses speak over one another.

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

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

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

The CHAIR: Welcome to the additional public hearing of the Portfolio Committee No. 5 inquiry into budget estimates 2021-2022. Before I commence, I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to the Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginals present. I welcome Attorney General Mark Speakman and accompanying officials to this hearing. Today the Committee will examine the proposed expenditure for the portfolio of Attorney General.

Before we commence, I would like to make some brief comments about the procedures for today's hearing. Today's proceedings are being broadcast live from Parliament's website and a transcript will be placed on the Committee's website once it becomes available. In accordance with broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. All witnesses in budget estimates have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take a question on notice and provide the answer within 21 days. If witnesses wish to hand up documents, they should do so through the Committee staff.

Attorney General, I remind you and the officers accompanying you that you are free to pass notes and refer directly to your advisers seated at the table behind you. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing. All witnesses will be sworn in prior to giving evidence. Attorney General Speakman, I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of Parliament.

Mr MICHAEL TIDBALL, Secretary, Department of Communities and Justice, on former oath

Mr PAUL McKNIGHT, Deputy Secretary, Law Reform and Legal Services, Department of Communities and Justice, on former affirmation

Ms ANNE CAMPBELL, Acting Deputy Secretary, Strategy, Policy and Commissioning, Department of Communities and Justice, on former oath

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

Ms KAREN SMITH, NSW Crown Solicitor, on former affirmation

Mr PAUL O'REILLY, Acting Deputy Secretary, Courts, Tribunals and Service Delivery, Department of Communities and Justice, on former affirmation

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

The CHAIR: We will start the questioning with the Opposition.

The Hon. ADAM SEARLE: Mr Attorney, you might remember that last November I asked you some questions about the police prosecution of Kristo Langker. Do you remember that?

Mr MARK SPEAKMAN: I do.

The Hon. ADAM SEARLE: That was in the context of a discussion about the efforts by the police to put in place a suppression order on, if we can use the term, the publication of the coverage of various political commentary about the Government in relation to Mr Barilaro. Do you remember that?

Mr MARK SPEAKMAN: I do.

The Hon. ADAM SEARLE: It transpired in evidence that the Crown Solicitor had given advice to the police about whether that application had reasonable prospects, and I think the evidence was that it did not. The Crown Solicitor was a bit hesitant last time. Obviously we do not want to get into the details of the advice given to a client. But can I ask you, Mr Attorney—I think in the transcript you said you would inquire into when the advice was given. Can you or the Crown Solicitor tell us approximately the date at which the advice was given to the police service?

Mr MARK SPEAKMAN: I will invite Ms Smith to respond.

The Hon. ADAM SEARLE: Yes, of course.

KAREN SMITH: I would have to take that on notice.

The Hon. ADAM SEARLE: Okay. Do you think it is possible you could have inquiries made so that during the course of the day we can find out? I might do some follow-up questions. The issue here was whether or not the police had sought the legal advice prior to making the application or subsequently. I think it was their evidence that it was subsequent rather than beforehand. I think we agreed, Mr Attorney, that it is always prudent to get legal advice before embarking on such a matter. You would agree with that?

Mr MARK SPEAKMAN: As a general proposition.

The Hon. ADAM SEARLE: As a general proposition, yes. In relation to that matter, you were also a bit hesitant to make comment because the matter was before the courts. On 10 March the police withdrew the matter and agreed to pay costs. That suggests, doesn't it, that the application was unmeritorious? Would you generally agree with that?

Mr MARK SPEAKMAN: Apart from media commentary and social media commentary, I have had no involvement in that matter. I have never received—well, I will withdraw that. My best recollection is that I have never had a brief on the matter. I have never discussed it with any of my colleagues. I have never discussed it with the police. So, apart from media reporting, I am not au fait with the precise details of the matter. I think what you are implicitly doing now is, now that the charges have been withdrawn, inviting me to provide a commentary that I was unwilling to provide last time. I am still unwilling to provide that commentary. I do not think it is appropriate for me as the First Law Officer to be commenting on matters where I am not across the detail and I am not required to be across the detail.

The Hon. ADAM SEARLE: Sure.

Mr MARK SPEAKMAN: I understand impressions that can be given by withdrawing the charges, and I certainly understand the criticism of the police action in that matter. There is a suggestion that the gentleman

who was the subject of that charge might take civil action. I have seen on social media suggestions that the matter may be referred to the Law Enforcement Conduct Commission. At least at the moment, while there is a live prospect of the matter going to the Law Enforcement Conduct Commission, I do not think, as a member of the Executive, I should be giving any commentary that hints at whether the LECC should or should not uphold any complaint that is made. I think that runs the risk of an improper signal to an independent body that oversights the police.

The Hon. ADAM SEARLE: But the context of this is—we have the defamation action brought by Mr Barilaro in the Federal Court.

Mr MARK SPEAKMAN: Yes.

The Hon. ADAM SEARLE: Then you have, if you like, the arrest of the producer of the program that gave rise to the defamation action. I think I was exploring with you as the First Law Officer the appearance that the agents of the State, in the form of the police, appear to have been deployed against a political critic of the Government. Do you understand that criticism? Do you understand that that is how it looks?

Mr MARK SPEAKMAN: I understand that criticism, but I do not think it is appropriate for me to endorse that criticism or undermine that criticism. It may be different if LECC investigates the matter and makes findings. It might be appropriate then for me to comment, just as I did last year with Operation Monza, where there had been a LECC inquiry and a LECC report. I was willing then to offer my own disapproval of police conduct leading to that matter. At the moment, I think there is a live prospect that it will go to an independent commission to look at. I do not think it is appropriate for me to be giving signals to what that commission should or should not find.

The Hon. ADAM SEARLE: You are now the Minister responsible for that commission, aren't you?

Mr MARK SPEAKMAN: That is correct.

The Hon. ADAM SEARLE: That is new. You were not the Minister in November.

Mr MARK SPEAKMAN: That is correct.

The Hon. ADAM SEARLE: Under section 34 of that Act, the Minister can refer matters to the LECC for their review. Based on what you now know—what is in the public domain—are you sufficiently concerned about this matter to refer it to the LECC to make sure that there is public confidence?

Mr MARK SPEAKMAN: I will see whether any private citizen refers the matter to the LECC.

The Hon. ADAM SEARLE: You would not like to get ahead of it yourself?

Mr MARK SPEAKMAN: I think there is a fair chance that some such referral may happen. My present view is, if that referral were to happen, then I would not need to take further action. If it does not happen in due course, then I will consider what is appropriate.

The Hon. ADAM SEARLE: What is "due course"? What sort of time frame are we looking at?

Mr MARK SPEAKMAN: We are not talking about years and we are not talking about days. Somewhere in between: a couple of months.

The Hon. ADAM SEARLE: So we are not waiting for the Government's response to raising the age of criminal responsibility, for example, or some of those other matters? This has got a bit more urgency attached to it?

Mr MARK SPEAKMAN: I will deal with it promptly. I do not know that it has got urgency in the sense that it is something that requires a turnaround of days.

The Hon. ADAM SEARLE: How much money has the New South Wales Government expended on this matter? You have this police investigation, the police prosecution withdrawn and the police themselves have voluntarily, as I understand it, agreed to pay the costs in that matter. You have got the use of the court time. Do you have a rough estimate about how many millions of dollars this has cost the taxpayers of New South Wales?

Mr MARK SPEAKMAN: I do not. In terms of police resources, you are probably best to ask the police Minister that question. I understand his appearance has been postponed. Ms Smith may know the extent to which Crown Solicitor resources have been allocated. If you want me to, we can go away and work out the number of days and an hourly rate and pro rata. I could not do that on the spot—in terms of court resources.

The Hon. ADAM SEARLE: I would just be interested to know what is the total cost to the taxpayers of New South Wales of that matter insofar as you are able to ascertain.

Mr MARK SPEAKMAN: As I have not participated in any way in the matter, I do not know. I do not know, for example—

The Hon. ADAM SEARLE: It is no personal criticism of you.

Mr MARK SPEAKMAN: No. But I do not know, for example, now that there has been an order for costs—

The Hon. ADAM SEARLE: It has been fixed.

Mr MARK SPEAKMAN: —what the quantum of that will be.

The Hon. ADAM SEARLE: It was $12,000. There was no mystery about that. It was all dealt with very quickly, I understand, in the Magistrates Court. This whole matter arose because, according to Assistant Commissioner David Hudson, when he gave evidence to estimates, the police did not follow their own internal processes within the fixated persons unit. Is that a matter that concerns you as the Minister responsible for the police watchdog?

Mr MARK SPEAKMAN: As the Minister responsible for what?

The Hon. ADAM SEARLE: The police watchdog. The LECC.

Mr MARK SPEAKMAN: Again, I will see what private citizens do in the near future. If they do not, I will consider what action I should take in terms of a referral to the LECC.

The Hon. ADAM SEARLE: You are also, as the Attorney General, responsible for—if I might use the term broadly—the integrity of the legal system. Do you accept that?

Mr MARK SPEAKMAN: As a broad proposition.

The Hon. ADAM SEARLE: Are you concerned about what this matter has to say about the integrity of that process—about how the police have apparently embarked on this matter without perhaps taking legal advice and without, at least on their own conduct, having a strong case and withdrawing that matter?

Mr MARK SPEAKMAN: As I mentioned at the outset, I have not been involved in the matter. My best recollection is I have never been briefed about the matter. Obviously, I have read commentary in media. I have heard the evidence here last time, your questions last time and Mr Shoebridge's questions last time. That is something I will look at, but it may be that a private citizen might bring a complaint in the meantime.

The Hon. ADAM SEARLE: I think we established that, as a general proposition, as the Attorney General you are responsible for the integrity of the court system. Do you accept that as a general proposition?

Mr MARK SPEAKMAN: As a broad proposition. It does not mean, though, that operationally where, for example, over 300,000 criminal cases go through the Local Court every year, that I can be looking at the integrity of each and every matter. Obviously, there is a degree of delegation and broad oversight.

The Hon. ADAM SEARLE: But, obviously, where matters come to your attention, if they are sufficiently serious, you might take an interest?

Mr MARK SPEAKMAN: Depending on the circumstances, yes.

The Hon. ADAM SEARLE: One of those aspects of integrity is about the giving of evidence in court. It is a criminal offence, is it not, to interfere with a witness or to try to procure certain evidence—essentially, to coach witnesses?

Mr MARK SPEAKMAN: Broadly speaking, yes. That is correct.

The Hon. ADAM SEARLE: That is section 323 of the Crimes Act, I think. As the Attorney General, although they are an independent body, you are also the Minister responsible for the DPP, are you not?

Mr MARK SPEAKMAN: That is correct.

The Hon. ADAM SEARLE: Are you aware of another matter involving the police fixated persons unit—a prosecution brought by the DPP on the advice of the police, I think—that was broadcast last night?

Mr MARK SPEAKMAN: I have seen briefly, in my skimming of media clippings this morning, that there is something. I have seen a reference to a matter.

The Hon. ADAM SEARLE: We have got some video here that I might play for you. Is that okay with you?

Mr MARK SPEAKMAN: If you would like me to watch it.

The Hon. ADAM SEARLE: We might just play the video with the sound down. This is all in the public domain. This is proceeding inside a courtroom. It is from the court's CCTV. Down the bottom, you can see the police officer making signals to the witness, catching the witness' eye. This is a second witness also catching the officer's eye, causing the lawyer to turn around. Obviously, there are some things going on in the courtroom here. Subsequently, we have got the officer talking to people who have not yet given evidence. He seems to be doing all of, or most of, the talking. That is the same footage.

Mr MARK SPEAKMAN: Can I just interpose, Mr Searle? I am not sure whether it is a contravention of the Court Security Act for you to be playing this from CCTV. I am not saying it is or is not but—

The Hon. ADAM SEARLE: I do not think it is.

Mr MARK SPEAKMAN: —me sitting here and nodding my head is not acquiescence in any legal contravention that may or may not be taking place.

The Hon. ADAM SEARLE: My understanding is this is covered by parliamentary privilege. This is a proceeding in the Parliament.

The CHAIR: It is covered by parliamentary privilege.

Mr DAVID SHOEBRIDGE: We have seen the police charge in and arrest people with no notice, though, in those circumstances.

The Hon. ADAM SEARLE: Mr Shoebridge, I am asking the questions. Here you can see a police officer sending a text message—we do not know to whom or about what—and then someone who is a witness outside diving into their bag. Obviously, it looks like they might have heard their mobile phone go off. This is the key witness giving evidence. That is the police officer subsequently talking to people who have yet to give evidence. Something is going on in the courtroom, and then the officer subsequently goes and talks to people. I think that is essentially—you get the sense of it.

I believe that is the same officer that was involved in the arrest of Kristo Langker. That was a matter that seems ill conceived, and the police have withdrawn that. This was a matter also brought by the fixated persons unit. There was a conviction in that matter, but it was subsequently overturned by the District Court on the basis of insufficiency of police investigation, not on any other basis. There does seem to have been, at least in passing, if you read the judgement at paragraph 14, a query over the credit of the evidence, if I can put it neutrally like that. Having seen that, as the Minister responsible for the prosecution service that brought that prosecution on the advice of the police, and seeing the involvement of that same officer involved in the other matter we were discussing, are you now sufficiently concerned about the possible interference, the integrity of that proceeding, to refer this to the Law Enforcement Conduct Commission? Or do you need to consider that?

Mr MARK SPEAKMAN: I would need to consider that further.

The Hon. ADAM SEARLE: But is it something you will consider now?

Mr MARK SPEAKMAN: Now that you have raised it, I will consider that. It is not clear from that video—

The Hon. ADAM SEARLE: No, it is not.

Mr MARK SPEAKMAN: Obviously we have not got any sound, so I do not know what the officer was saying to the person outside.

The Hon. ADAM SEARLE: Agreed.

Mr MARK SPEAKMAN: And the witness—are you suggesting that at the same time as he is texting something she is looking at her phone?

The Hon. ADAM SEARLE: It looks that way.

Mr MARK SPEAKMAN: Yes.

The Hon. ADAM SEARLE: It looks like he sends a text to someone, she hears something go off in her bag—possibly her mobile phone message being received. When you review the material, it does look—at least it looks to me—like there is coaching of evidence, including catching the eye of two witnesses in the witness box in a court proceeding.

Mr MARK SPEAKMAN: Obviously it is grossly improper to coach a witness. To be honest, I cannot tell from that video that that has happened, but I will give that further consideration.

The Hon. ADAM SEARLE: Okay, but now that you are aware of it, it is something that potentially concerns you, as the Minister responsible.

Mr MARK SPEAKMAN: It is something that I will give further consideration to.

The Hon. ADAM SEARLE: But you would agree that it is important for the public to be able to have confidence in the integrity of evidence given in, particularly, criminal prosecutions but in all court proceedings.

Mr MARK SPEAKMAN: Absolutely. It is critical that there is confidence in the integrity of the criminal justice process, and that includes the witnesses telling the truth without interference.

The Hon. ADAM SEARLE: Yes. There is a reason why witnesses, particularly in criminal matters, wait outside the courtroom while earlier witnesses give evidence, is there not?

Mr MARK SPEAKMAN: That is right. Typically a witness will not go into court until they have given their evidence so that their evidence is not coloured by watching what other witnesses are saying or doing in court.

The Hon. ADAM SEARLE: Yes, and it would be an interference with that general proposition if somebody were to be briefing witnesses about what had happened in court?

Mr MARK SPEAKMAN: That is right. I mean, it is not improper, for example—in fact, it is what you should do—for someone to tell a witness, "You will go in the witness box. You'll be sworn in. Your counsel might ask you a few questions, and then counsel on the other side will cross-examine you." It is not improper to find out what the witness is likely to say, get their witness statement.

The Hon. ADAM SEARLE: To have proof of evidence, for example.

Mr MARK SPEAKMAN: Yes, proof of evidence, as you would know. But obviously it is improper for witnesses to be colluding or for coaching to be taking place.

The Hon. ADAM SEARLE: Yes. If it is the case that that has happened, that is a concern. And if it is the case that it involves the police, in this particular instance—if that were to be the case, that would also be a matter of concern?

Mr MARK SPEAKMAN: Yes. If, hypothetically, there were that coaching, then it is a concern. If, hypothetically, it is coaching by the police, then that would make it worse.

The Hon. ADAM SEARLE: If you were satisfied of that, would that be a matter that you would refer to the LECC, or would you wait for a member of the public to make that complaint?

Mr MARK SPEAKMAN: I would see whether a member of the public were doing it, but I would not be waiting for a long time.

The Hon. ADAM SEARLE: Now that you are aware of this matter, is it something that you will evaluate expeditiously?

Mr MARK SPEAKMAN: It is something I will get advice on promptly.

Mr DAVID SHOEBRIDGE: Nice to see you, Attorney, again.

Mr MARK SPEAKMAN: Likewise.

Mr DAVID SHOEBRIDGE: This is the budget estimates hearing that will not end. I think this is the third round, so welcome back.

Mr MARK SPEAKMAN: Thank you.

Mr DAVID SHOEBRIDGE: Attorney, going back to the Kristo Langker matter, we know that the State of New South Wales, through the police, has had to pay at least $12,000 in costs to Mr Langker for the legal expenses that he has incurred. We know that it was an appalling allegation to make against somebody—that they engaged in the crime of stalking—when there was never sufficient evidence for the police to proceed with that. Are you saying that after an instance like that, where the charges have been withdrawn, a substantial amount of public money is paid over to the defendant in a case that should never have been brought, there is no systemic review of it?

Mr MARK SPEAKMAN: No.

Mr DAVID SHOEBRIDGE: Your department does no systemic review. Is that what you are saying?

Mr MARK SPEAKMAN: I do not, as Attorney General. I was asked the question by Mr Searle about the integrity of the legal system. Given there are hundreds of thousands of cases that come to court every year, in

my office I do not have the resources to be looking at every case that has come to court. If charges have been withdrawn—

Mr DAVID SHOEBRIDGE: Attorney, to be clear, we are not talking about every case.

Mr MARK SPEAKMAN: Hang on, I have not finished my answer. If charges have been withdrawn, then you would think that means that police do not think they can prove their case. Whether or not the case should have ever been brought in those circumstances is not something that I, as an outsider, at the moment can opine on. I would expect that if a private citizen has a complaint about that they will take it to LECC. If they do not, I will consider what I may do.

Mr DAVID SHOEBRIDGE: LECC has no oversight of the courts. That is not LECC's job. LECC has no oversight of proceedings in courts. That is your job, Attorney.

Mr MARK SPEAKMAN: The implication here is that—I will just be clear. The suggestion you might be making is that the police have acted improperly in this matter. That is not any reflection on the court; that is a question of police action. I anticipate the fair chance that a private citizen will make some sort of complaint about that to LECC, so at the moment I will wait and see what happens in that respect. It is not a court oversight matter. It is a police oversight matter because no evidence was ultimately led in the court and the court was not required to make a determination.

Mr DAVID SHOEBRIDGE: No, but it was on the initiative of the court, admittedly commenced by the police. But it was the court proceedings and the power of the court that compelled Mr Langker to be there and to incur the legal costs. I do not understand why there is not a process in the Attorney General's department to at least do a basic review when the courts, on the face of it, have been abused like this by another government agency. Because if we are just relying on police investigating police, nothing will happen.

Mr MARK SPEAKMAN: If there has been an abuse of process by the police, you have an independent Law Enforcement Conduct Commission there to oversee that. You also have independent courts that, if the matter goes far enough, can make findings about an abuse of process. A litigant can contend in court that something is an abuse of process. So when you have courts potentially dealing with that issue, when you have an independent police oversight body dealing with that issue, you do not need a politician and his staffers, or indeed his department, overseeing that as well. You have two independent oversight mechanisms already: the courts, if a matter progresses far enough, on the one hand, and the Law Enforcement Conduct Commission on the other hand.

Mr DAVID SHOEBRIDGE: In this case it was simply a matter of accidental good fortune that Mr Langker managed to have sufficient resources to fully test the police case and challenge it in court. He just may have enough resources to bring another civil case, at yet more expense, to try to vindicate his rights. But are you saying that for those people who do not have those resources and are not able to bring a civil case there is just nothing?

Mr MARK SPEAKMAN: No, not at all.

Mr DAVID SHOEBRIDGE: Your department will not do anything, because you are saying it is up to them to challenge an organisation as powerful as the New South Wales police?

Mr MARK SPEAKMAN: No, I am saying there is a taxpayer-funded Law Enforcement Conduct Commission that is independent of government that can receive complaints from members of the public, without any need for vetting or imprimatur from the Executive. There is a mechanism there. I take your point about civil proceedings. Unfortunately, typically you need deep pockets to bring civil proceedings. I take that point. But so far as police oversight by the Law Enforcement Conduct Commission is concerned, you do not need a deep pocket to make that complaint.

Mr DAVID SHOEBRIDGE: You know that the Law Enforcement Conduct Commission investigates a fraction of the complaints. I think it is 2 per cent or 3 per cent of the complaints that it receives because it simply does not have funding to investigate more than 2 per cent or 3 per cent of the complaints. You know that, do you not, Attorney?

Mr MARK SPEAKMAN: I do not know that. It may well be that—

Mr DAVID SHOEBRIDGE: You are the Minister responsible.

Mr MARK SPEAKMAN: Hang on, I have not finished my answer. I do not know that. It may be that only a minority of complaints are investigated. But LECC would also have a vetting mechanism where if they do not think a complaint is sufficiently serious or well grounded they will not pursue it. If a complaint is made in this case—I do not want to hint at what LECC might do, but there is no reason to think LECC will not look at it.

Mr DAVID SHOEBRIDGE: You challenged my proposition that it is only a tiny fraction of the complaints that are referred to LECC that are investigated—

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

Mr DAVID SHOEBRIDGE: Let me finish. If it is not 2 or 3 per cent, what percentage of complaints end up being fully investigated by the LECC?

Mr MARK SPEAKMAN: I will have to take the percentage on notice. I did not challenge your proposition that only a small percentage end up being fully investigated. What I did challenge was the suggestion that it is a resourcing issue as distinct from filtering by LECC to work out what cases it considers are worthy of investigation and what cases are either well grounded or not sufficiently serious that warrant its intention.

Mr DAVID SHOEBRIDGE: The LECC has made it clear in its annual reports that it has insufficient funds to do the tasks which it has been assigned. It has said that in its own annual reports. You are not challenging that conclusion from the LECC, are you?

Mr MARK SPEAKMAN: The LECC and other integrity agencies at the moment have been consulted by government about what their baseline funding should be going forward. As you know, there have been parliamentary inquiries and an Auditor-General's report about the funding of integrity agencies. That is something the Government is looking at in the next budget.

Mr DAVID SHOEBRIDGE: Attorney, you have just seen a small part of the video evidence from the more recent trial where the actions of an officer who was one of the primary movers in the Kristo Langker prosecution again is engaging in actions which, on the face of it, appear to be highly problematic. You do not think that those facts together should motivate you to commence some investigation of what is going on in the courts?

Mr MARK SPEAKMAN: I will give that consideration. It was not entirely clear to me, watching that video, just exactly what happened. The fact that a policeman is speaking to witnesses outside court, unless you know what he is saying, what they are saying back and what it is about—you cannot necessarily jump to conclusions. The fact that someone in the witness box picks up their phone, I cannot—

Mr DAVID SHOEBRIDGE: That was not in the witness box; that was a witness outside.

Mr MARK SPEAKMAN: I cannot, sitting here, jump to conclusions and join the dots. I want to be very clear that if there is any coaching, I am not excusing that, and I am not saying it did or did not happen. I just cannot tell from that video what happened. As I said, I will give the matter further consideration. But on the basis of a video without sound, sitting here, I am not going to jump to conclusions right now.

Mr DAVID SHOEBRIDGE: Attorney, I am not asking you to form a conclusion, but I am going to ask you whether or not you would be willing to look at the very lengthy video, which you only saw a small fraction of, where the officer repeatedly comes out of the court and repeatedly speaks to witnesses waiting as the evidence is unfolding in court. Will you seek a review within your department of the evidence that shows that repeated behaviour by the officer?

Mr MARK SPEAKMAN: I will get advice from the department.

Mr DAVID SHOEBRIDGE: Can I indicate, the behaviour is particularly troubling because the officer appears to be repeating hand movements indicating critical elements of the case as given by witnesses and as conveyed by counsel in the course of the proceedings. I accept, as you say, we cannot draw conclusions from what is there, but I would suggest to you, and I would ask if you agree, there is sufficient there to commence an investigation.

Mr MARK SPEAKMAN: I cannot agree or disagree. There is insufficient there to form a conclusion, but you are not putting that to me—

Mr DAVID SHOEBRIDGE: I am not.

Mr MARK SPEAKMAN: You are saying will I investigate. I will get advice.

Mr DAVID SHOEBRIDGE: Last time we spoke about another example of what was unquestionably gross police behaviour involving court proceedings—which were the conclusions in Operation Monza where the police intentionally and deliberately harassed a solicitor on the way to court, which was the finding of the Law Enforcement Conduct Commission—you said you were seeking advice from the police themselves about whether or not they would take any action. It is now the better part of 12 months since that report was delivered. What advice have you received from police?

Mr MARK SPEAKMAN: I think I reported last time that I would ask the then police commissioner what, if any, action he proposed to take. He wrote back to me to say that he was not taking any reviewable action, I think it is called. LECC had recommended that the police commissioner look at doing that. Reviewable action I think is action that can be reviewed by the Industrial Relations Commission. The police commissioner—and I am paraphrasing loosely—told me in writing that he was not going to do that. I think they had been admonished or some such thing. The view I take is that it is fundamental that any participant in the legal system not be the subject of harassment for doing their job, and that extends not just to judicial officers; it also extends to lawyers. Defence lawyers play a vital role in our criminal justice system in terms of fair representation. It is not good enough, if police have a gripe against the clients, that they implement that gripe by harassing lawyers.

Might I say that Strike Force Raptor and the police generally do a fantastic job, but on this occasion they let themselves down. I think it is important that our legal processes stand up for defence lawyers and the integrity of the legal system in this respect. That is why I am consulting on extending other provisions of the Crimes Act that Mr Searle did not mention earlier to cover defence lawyers. The protection that is given against interference to judicial officers, for example, extended to defence lawyers.

Mr DAVID SHOEBRIDGE: So a senior officer in Strike Force Raptor plans an operation with other police officers at public expense to camp outside a solicitor's office on his way to court to defend a matter brought by Strike Force Raptor. They intentionally and deliberately harass him repeatedly on the morning before going to court. They engage in intimidatory action outside his office on his way to court. He is so fearful of his position that he tells the magistrate he cannot proceed on the day because he is frightened by what happens to him. The outcome from the legal system is the police commissioner has determined to admonish those officers. No charges. No fines. No serious action. They get an admonishment. That is the outcome, is it?

Mr MARK SPEAKMAN: That has been the outcome and in my view, given the recommendations of LECC that have not been implemented, I am now looking at reform to the Crimes Act so that someone in those circumstances has the protection of the criminal law.

Mr DAVID SHOEBRIDGE: That seems a sensible step forward, and I urge you to bring that legislation forward as soon as possible. But interference in the administration of justice is a criminal offence. Contempt of court is a serious criminal matter. Why have neither of those options been considered by you and your department, given the police in this case intentionally planned to intimidate a solicitor on his way to court in a case against themselves?

Mr MARK SPEAKMAN: I do not know what consideration has been given to criminal charges. I did get a brief about the matter, whether it would rise to the level of the section of the Crimes Act that Mr Searle referred to.

Mr DAVID SHOEBRIDGE: Section 323.

Mr MARK SPEAKMAN: Perverting the course of justice. I do not want to waive privilege over that advice.

Mr DAVID SHOEBRIDGE: I am not asking you to.

Mr MARK SPEAKMAN: But having received that advice, I do not think it would be a productive use of resources to prosecute. In the event, of course, I am not a prosecuting authority. I do not have the resources to prosecute. The DPP also, while they are a prosecuting authority, have to rely upon a brief from police. But having taken some preliminary advice on the matter, I do not think a prosecution here would have sufficient prospects of success to be worth bringing.

Mr DAVID SHOEBRIDGE: Attorney, a key reason for that is the police have refused to investigate it. They have not even commenced disciplinary action, let alone referred the matter off for a criminal investigation. We often talk about the failures of police investigating police. This is even worse. This is police refusing to investigate police and you are saying that, because there is no evidence there, despite gross and obvious malfeasance by the police, if they refuse to gather evidence about themselves it is a dead letter. Nothing can happen.

Mr MARK SPEAKMAN: No, I did not say that. I said the police elected or the commissioner elected not to take disciplinary action of a reviewable kind—for example, a dismissal or a demotion, or a suspension, but some kind of admonishment or something like that. I do not know what consideration police had given to bringing charges. It is a fair inference—no, I withdraw that. I, in a brief, had some preliminary advice that I do not want to waive privilege over. But, having seen that advice, I do not think a prosecution would be successful.

Mr DAVID SHOEBRIDGE: But that advice was in the absence of any brief of evidence or of any investigation because, as you point out, Attorney, it is not your department's job to investigate. In this case, it is the police's job to investigate. So what happens here? Is there just a big justice hole that these matters fall into?

Mr MARK SPEAKMAN: No, I do not think so. There is an internal affairs unit and internal disciplinary unit in the police.

Mr DAVID SHOEBRIDGE: But that is subject to the direction of the commissioner, who has already said nothing is happening.

Mr MARK SPEAKMAN: In terms of fact finding, the advice that I received was based on the facts as found by the Law Enforcement Conduct Commission. So that advice did not require a lot of further fact finding. There had been findings of fact by LECC on which that advice was based and on which LECC's recommendation to the commissioner was based. So even if the police had not investigated the matter, LECC had investigated the matter and, having found those facts, LECC did not recommend the bringing of criminal charges. It recommended disciplinary action, but it did not recommend the bringing of criminal charges. What I have said in these circumstances where, having taken advice, it did not seem that a prosecution was successful, and no disciplinary action being taken here—I am not seeking to retrospectively bring criminal proceedings here, but I want to consult on filling what appears to be a gap in the law, bearing in mind it may not just be as simple as inserting "defence lawyer" or "lawyer" into a definition of whatever it is now, "legal officer", because it may be in some circumstances a retribution against a lawyer should not be criminalised.

For example, if a client is unhappy that his or her lawyer is representing somebody else, they may say, "Well, I'm sacking you as my lawyer," because of action that someone has taken in a proceeding. So there may be circumstances where you do not want to criminalise across the board threats or retribution by someone against a lawyer. But in a case like this, a defence lawyer who is doing their job should not be harassed or intimidated, notwithstanding what the police think of their client. And, as I said before, in the overwhelming majority of the cases the police do a fantastic job, but on this occasion they let themselves down and the community.

Mr DAVID SHOEBRIDGE: Attorney, will you table the written response you got from the police commissioner?

Mr MARK SPEAKMAN: Yes, certainly. I do not have it here but I can certainly make it available.

Mr DAVID SHOEBRIDGE: If you could table it at some point today, that would be appreciated.

Mr MARK SPEAKMAN: Certainly.

Mr DAVID SHOEBRIDGE: Did you seek advice on whether or not the actions of the senior officer and other officers from Strike Force Raptor were potentially a contempt of court and actionable as contempt of court?

Mr MARK SPEAKMAN: I do not believe so. My best recollection is that I did not.

Mr DAVID SHOEBRIDGE: Can you provide any further detail about that on notice?

Mr MARK SPEAKMAN: Certainly.

Mr DAVID SHOEBRIDGE: What is the timetable for filling this gap in the law?

Mr MARK SPEAKMAN: This year, subject to consultation and subject to Cabinet approval. But, as I say, in principle, there is a gap to be filled. I gave an illustration of where an across the board criminalisation of some kind of retribution would not be appropriate and that is a matter of getting the drafting right.

Mr DAVID SHOEBRIDGE: I am not pushing back on that. I accept that there is a drafting challenge there. Attorney, unless I have missed it, has anybody been appointed as the modern slavery commissioner yet?

Mr MARK SPEAKMAN: Mr McKnight, who sits to my right, is the acting commissioner. A recruitment process is in place and we should have a permanent commissioner by April or May. Is that correct?

PAUL McKNIGHT: I hope so.

Mr DAVID SHOEBRIDGE: Interviews have happened?

PAUL McKNIGHT: No. The ad for the job is out at the moment and it closes in a week or so.

Mr DAVID SHOEBRIDGE: The time frame that you are working on, Mr McKnight, is—

PAUL McKNIGHT: As soon as possible.

Mr DAVID SHOEBRIDGE: With an end date of the end of May. Is that the kind of time frame you are looking at?

PAUL McKNIGHT: I would hope to reach that target, yes.

The Hon. SHAOQUETT MOSELMANE: Attorney, I will take you to the matter of the child sex offender list referral to the NSW Law Reform Commission. In 2019 the Law Enforcement Conduct Commission released a report into the management of the Child Protection Register under the Child Protection (Offenders Registration) Act 2000. You know the story. The commission found that since 2001 there have been hundreds and hundreds of errors. The NSW Police Force made over 700 errors, in fact, according to the report. There have been many breaches—child sex offenders being in the community unmonitored, and widespread unlawful use of intrusive powers under the Act. For those reasons the commission recommended that the New South Wales Government urgently refer the CPOR Act, and in a supplementary report issued this year the commission reiterated that reform was imperative and that substantial errors would continue to be made until the Act is reformed. Minister, the question is why have you allowed this serious situation to fester unresolved?

Mr MARK SPEAKMAN: I do not have responsibility for this register. There was a recommendation that I refer the reform of this register to the Law Reform Commission as Attorney General. I have not taken up that recommendation. At the moment, I currently do not intend to take up that recommendation. Police and the Local Court, among others, have been working on a regime to deal with the problems that you have identified, and that work is still underway. At the end of the day I do not have portfolio responsibility for the register. But to the extent I have been named in a report as someone who ought to refer it to the Law Reform Commission, at the moment I have not formed a view that all reasonable possibilities of that police work have been exhausted and we should take some different approach. Bearing in mind, once it goes to the Law Reform Commission, that is another year or two or more of consultation and report. Notwithstanding the extensive delay that has happened, I think there is still a better prospect of an expeditious outcome with police working on it with the courts than me sending it off almost to start all over again with the Law Reform Commission.

The Hon. SHAOQUETT MOSELMANE: Has that changed since November last year? In the November budget estimates you said that you do not intend to refer it to the Law Reform Commission and said, "I do not regard that as blocking me referring it to the Law Reform Commission, but rather me giving them the opportunity to develop a proposal … it is certainly my hope that there will be legislation next year." It seemed to be under your domain, wasn't it?

Mr MARK SPEAKMAN: No. As I said, I have got portfolio responsibility for the Law Reform Commission, which is why it was suggested I should refer the matter to the LRC. I do not have portfolio responsibility for this register. My understanding is work by the police and others is still underway. I am not ruling out entirely that I may not refer it to the Law Reform Commission, but at the moment the best prospects for an outcome are for the police and others to continue that work.

The Hon. ADAM SEARLE: Mr Attorney, last November I think I might have put it to you that Minister Elliott and the police were blocking you from doing so and you said—I think it was your evidence—"No, I think a better view is I am giving them the opportunity to address the issue." It has now been nearly five months. I note what you say about delays of matters that go to the LRC. Sometimes it is the graveyard of law reform—not always, though. But we have already lost half a year, just about. At what point in time will you form the view that the police are not being serious here or they are not going to come up with the goods and this matter ought to be looked at by the LRC?

Mr MARK SPEAKMAN: I certainly have not formed that view.

The Hon. ADAM SEARLE: I appreciate that.

Mr MARK SPEAKMAN: And I am nowhere near forming that view. To my observation, the police have genuinely tried to solve this problem and are still working hard at doing that.

The Hon. ADAM SEARLE: Do you still expect legislation to be in the Parliament this year?

Mr MARK SPEAKMAN: That is the aim.

The Hon. SHAOQUETT MOSELMANE: Attorney, it is clear that the LECC wants it referred to the Law Reform Commission and the police want it referred to a lesser reform process. There seems to be a toing and froing between various organisations but there is no resolution of this matter. Is the Government going to take steps to resolve this issue?

Mr MARK SPEAKMAN: In one sense my only role is whether or not to refer it to the Law Reform Commission. Everything else is within the portfolio responsibility of the police Minister. So there is only so far I can take it in answering your questions.

The Hon. SHAOQUETT MOSELMANE: The reason I ask is that the report clearly indicates there is serious risk to children as a result of the failure to resolve this issue. As the Attorney, as the first officer of the State, you would have some responsibility to push to resolve this issue to ensure that children are not facing potential threats and have significant concerns, as the various reports have mentioned.

Mr MARK SPEAKMAN: Obviously I want to see an expeditious and appropriate outcome. Even as Attorney General, one of my priorities has been dealing with child sex abuse, which is why we have implemented the overwhelming majority of recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. It is why last year we introduced legislation to reform the ability of past claimants to set aside unfair judgements. We have been extremely active in this area. This niche, though, of child sexual abuse sits with the police Minister. My narrow remit is to decide whether or not to refer it to the Law Reform Commission. At the moment I am not going to do that because there is a pretty good prospect that the police, the courts and others will come up with a solution that addresses the significant concerns that you have highlighted.

The Hon. SHAOQUETT MOSELMANE: When do you expect the police will come up with those solutions?

Mr MARK SPEAKMAN: I am not the police Minister or the police commissioner.

The Hon. SHAOQUETT MOSELMANE: I recognise that.

Mr MARK SPEAKMAN: I think the aim of government is to get it resolved sooner rather than later. Personally, as a Cabinet Minister, I would be disappointed if we have not fixed it up this year.

The Hon. SHAOQUETT MOSELMANE: It has been going on for around for two years, or perhaps more, Minister.

Mr MARK SPEAKMAN: That is right. I think there is an analogy of an Irishman who was asked, "How do you get to Dublin?" and he said, " I wouldn't start from here." If two years ago we knew where we would be now we might have done things differently, but we are where we are, and the most expeditious way forward from my viewpoint as the non-portfolio Minister is to have the police continue to work with the courts and others to come up with a solution rather than referring the matter to the Law Reform Commission.

The Hon. SHAOQUETT MOSELMANE: Will you be speaking to the police Minister about resolving this matter?

Mr MARK SPEAKMAN: Periodically I have discussions with the police Minister about a whole range of matters, and this will be one of them.

The Hon. ADAM SEARLE: Just on that, you accept that there is a crisis in the legislation, don't you?

Mr MARK SPEAKMAN: There are problems with the legislation that need fixing.

The Hon. ADAM SEARLE: More than problems. The LECC has issued not one but two reports saying that urgent changes are needed. You have got a situation where some people who are not on the register should be, and you have got potential predators not on the register. Apparently you have people on the register who should not be, and that is a gross miscarriage of justice for those people, and over 700 instances have been chartered. When I read the LECC reports there was a sort of sense of urgency, a sense of crisis. Do you think the police accept that there is a real urgency for this reform?

Mr MARK SPEAKMAN: I think so. It is unacceptable that there are false negatives and false positives and other errors in something as serious as a child sex offenders register. So I am confident they understand the gravity of the issue and the need for an expeditious outcome.

The Hon. ADAM SEARLE: Notwithstanding that you are not the portfolio Minister, we accept that, nevertheless you are a Minister, the Attorney, who could do something, albeit maybe not as quickly as others would want. But, if we get to the middle of this year, surely the window for legislation will be closing pretty quickly.

Mr MARK SPEAKMAN: It depends how difficult you are in the upper House, Mr Searle.

The Hon. ADAM SEARLE: I think, as you found with the public interest disclosure legislation, we can be very cooperative, Mr Attorney. Will you take it on notice, maybe confer with the police Minister, and give us your best estimate as to when we could expect something on this?

Mr MARK SPEAKMAN: Certainly.

The Hon. SHAOQUETT MOSELMANE: You did say you were hopeful last November that you would have legislation this year.

Mr MARK SPEAKMAN: That is right.

The Hon. SHAOQUETT MOSELMANE: Are you still hopeful?

Mr MARK SPEAKMAN: I am still hopeful.

The Hon. ADAM SEARLE: He is an optimistic kind of guy. Is that right Mr Attorney?

Mr MARK SPEAKMAN: The bottle half full, not the bottle half empty.

The Hon. SHAOQUETT MOSELMANE: With regards to the Special Commission of Inquiry into the Drug "Ice", the Dan Howard report was handed down in January 2021. Your Government ruled out five key recommendations and promised to consider the balance of the report. Twenty-five months later and there is still no formal response from your Government. In the last estimates in November, six months ago, regarding a time frame you said that good things come to those who wait. Minister, why a lack of response in this space?

Mr MARK SPEAKMAN: I think I said last November that, if it had not been sorted out by Christmas, I would be disappointed.

The Hon. ADAM SEARLE: You must be very disappointed.

Mr MARK SPEAKMAN: It was not sorted out by Christmas, and I am disappointed. I will be disappointed if it is not sorted out in the near future. There are over 100 recommendations for us to consider. The Government has been looking at those very, very closely. I am disappointed that we have not made a full response yet. I will continue to work very hard on getting that response out. Bear in mind that most of the recommendations are health recommendations, they are not law reform recommendations, so most of it is outside my portfolio.

We have announced the Drug Court in Dubbo, so there is some progress there. The Walama List is now starting in the District Court, so there is progress there. It is not as though nothing has happened. But I am disappointed that we have not been in a position to make a full announcement and I am hopeful that will be sooner rather than later. I remain very ambitious about this response. I think I have made my position crystal clear that we need a rethink on our approach to drugs. Whatever fantastic job the police do, they are just scratching the surface when they confiscate drugs that are being imported. We have had that evidence before the ice inquiry. There is no point throwing people with a substance abuse problem in jail and throwing away the key. We need to concentrate on diversion.

What form that diversion takes, whether it is pre-court or post-court or some combination of the two, is a matter for Cabinet and debate within Cabinet. But it is pretty clear that a lot of diversion cuts reoffending. The Drug Court has been an outstanding success. As I say, I remain ambitious not to normalise drug use, not to retreat, but to make sure that our taxpayer-funded interventions are actually having some effect. We know from Federal statistics that typically in the last 12 months one in seven Australian males in their 20s has used cocaine. So the idea that this is just some kind of a small group of marginalised substance abusers is totally wrong. That is why we need a whole-of-government response.

I have only got portfolio responsibility for the legal side of things and, overwhelmingly, it is a health response. I am confident we will get a good result. What the precise metrics of that will be is still subject to internal discussion but I am confident we are going to get a good result. I am confident we are going to do more in diversion. What we will do will be a matter for debate within Cabinet and taking expert advice but I am confident we will get somewhere.

The Hon. SHAOQUETT MOSELMANE: We know for a fact, Attorney, that household drug and alcohol use has increased during the lockdown. Apparently there was a significant increase, in particular, with the use of ice. What are you reports on that, given those circumstances? What steps are you taking?

Mr MARK SPEAKMAN: About what?

The Hon. SHAOQUETT MOSELMANE: On this issue that there is an increase in the use of ice.

Mr MARK SPEAKMAN: If there is an increase in the use of ice, that is a health issue. It is not a legal issue. So far as that adds to the whole matrix of reform in this area, we know the effect ice has on families and on users. It destroys relationships. People lose their kids, homes, partners and jobs. We know what misery it causes, but it does not follow that locking people up is going to solve their problem.

That is why our approach has to be not one of retreat but one of intervention, but intervention that has a factual basis for it. So the point you raise is yet another dimension to the overall problem.

The Hon. SHAOQUETT MOSELMANE: Minister, your government ruled out five key recommendations and questions have been asked as to what were the reasons behind rejecting the five recommendations. For example, recommendation 11 states:

> That in conjunction with increased resourcing for specialist drug assessment and treatment services, the NSW Government implement a model for the decriminalisation of the use and possession for personal use of prohibited drugs …

What was the reasoning behind your government rejecting this recommendation?

Mr MARK SPEAKMAN: When you have got more than 20 Cabinet Ministers, you might have 20 different reasons. But I think I could crystallise it this way: There is the risk if you decriminalise that you are normalising drug use. Many people would disagree with that, but there is the risk that that is the message you are conveying. I know Don Weatherburn, for example, the former head of BOCSAR, has suggested that you would see an increase in the number of users if you decriminalise. So we have ruled that out, but we have not ruled out other diversion—pre-court or court diversion—to recognise that, at the end of the day, drug use is a health issue and people use drugs for a whole variety of reasons, but they do not choose to use or not use drugs because of a criminal law process. So we are looking at, aside from criminalisation, decriminalisation and what else we can do in the diversion space.

The Hon. SHAOQUETT MOSELMANE: What is your reasoning as well in relation to recommendation 51, which states:

> That the *Drug Misuse and Trafficking Act 1985* (NSW) be amended to provide for supervised drug consumption services to be provided based on local need …

And, "That pregnant women be eligible to access drug consumption rooms … as clinically advised"?

Mr MARK SPEAKMAN: Cabinet has made a decision, so that is a form of diversion. You could look at decriminalisation as a kind of form of diversion as well.

The Hon. SHAOQUETT MOSELMANE: But this one was rejected by—

Mr MARK SPEAKMAN: That one was rejected because Cabinet formed the view that it may send the wrong signal about drug use.

The Hon. SHAOQUETT MOSELMANE: What about your view as the Attorney General?

Mr MARK SPEAKMAN: I do not have the liberty of personal views when Cabinet makes a decision. I support all Cabinet decisions as a member of Cabinet. What I am enthusiastic about is the other types of diversion that we are looking at—pre-court and court diversion—not just the idea of infringement notices that the police commissioner has supported. Music festivals, we have got a scheme now of infringement notices which, at least when it started, appeared to be generally accepted. We, of course, have had a hiatus in music festivals over the last couple of years with COVID, but there was general acceptance of that where offenders got a $400 fine and an infringement notice rather than go to court, rather than getting a criminal record. We know that Indigenous diversion programs like circle sentencing work. There is a recommendation there about the Youth Koori Court and we are taking up a Walama pilot. So there is a whole host of things we can do, apart from medically supervised injecting rooms, that have good prospects for diverting people from drug use.

The Hon. SHAOQUETT MOSELMANE: What about recommendation 80, "That the NSW Police Force cease the use of drug detection dogs at music festivals and implement other detection practices to target illicit drug supply"?

Mr MARK SPEAKMAN: We have rejected that because, on police advice, the use of that technique is an important part of detecting offenders.

The Hon. SHAOQUETT MOSELMANE: Going back to recommendation 51, "That pregnant women be eligible to access drug consumption rooms", you said that Cabinet rejected it but you saw it as a potential diversion.

Mr MARK SPEAKMAN: I did not say that. I said Cabinet rejected it and I said as a member of Cabinet I support all Cabinet decisions.

The Hon. SHAOQUETT MOSELMANE: What is your view on that one?

Mr MARK SPEAKMAN: Again, as a member of Cabinet I support all Cabinet decisions. But my view is that, generally, diversion is more important than criminal sanction, and that is why as a government we are

looking actively at forms of diversion, but what matrix that will take, what the design will look like, is still a matter of rigorous internal analysis.

Mr DAVID SHOEBRIDGE: Is the term "analysis" or "debate"?

Mr MARK SPEAKMAN: Both. When you analyse something you see the pros and cons of action and you debate those pros and cons and reach an outcome.

The Hon. SHAOQUETT MOSELMANE: Recommendation 97 states:

> That the NSW Government pilot, and have independently evaluated, a needle and syringe program in one or more custodial facilities in NSW.

Why was that recommendation rejected? What is the reasoning behind it?

Mr MARK SPEAKMAN: Again, it is a Cabinet decision and I support all Cabinet decisions. But there is a question there of the risk to corrections officers if there is a needle exchange program. That is the rationale for rejecting it.

The Hon. ADAM SEARLE: I think you said at the last estimates that if there was no action by Christmas you would be disappointed. I guess, to be fair to you, you did not specify which Christmas. Do you really think there are some prospects for action in the balance of this year before this Parliament expires?

Mr MARK SPEAKMAN: Absolutely. I said I would be disappointed and I am disappointed. I am ambitious and I remain ambitious. What that will look like will be the subject of analysis or, to take Mr Shoebridge's point, debate, but I am confident that we will land somewhere—whether it is perfect, whether it goes as far as people would like or goes further than some people would like, I think we will end up with a pretty good landing.

The Hon. ADAM SEARLE: Without revealing, obviously, deliberations within Cabinet, are you able to indicate what the causes of the delay are? Is it this debate and analysis that you have referred to or is there some other logistical—is it budgetary? Is it a policy discussion?

Mr MARK SPEAKMAN: I can certainly rule out that it is a budgetary issue. I can rule that out.

The Hon. ADAM SEARLE: That is welcome.

Mr MARK SPEAKMAN: Although there are obviously budgetary implications for some of these decisions. I mean, diversion costs money but chances are the diversion costs a lot less money than incarceration.

The Hon. ADAM SEARLE: Yes, thank you.

Mr MARK SPEAKMAN: So it is not budgetary decisions, it is policy decisions; it is evaluating the evidence and landing at a place that is in the interests of drug users—reducing their harm, getting them off drugs—and in the interests of the safety of the general public.

Mr DAVID SHOEBRIDGE: There is another way of saying diversion costs money but less than incarceration. The other way of saying it, is it not, Attorney, is that diversion saves money and allows resources to be spent on helping people rather than punishing them for addiction?

Mr MARK SPEAKMAN: You could say that, and there is a lot of merit in saying that. We know that, for example, the Drug Court is a cost-effective way of dealing with drug addiction issues, and the money you spend on intensive programs for drug users who have offended ends up being saved in the long run by the further crime you avoid, the housing cost you avoid, the unemployment benefits you have got to pay. So diversion can save money, but, of course, you cannot just speak in the abstract. It has got to be the right sort of diversion and you have got to make sure that any diversion program we embark on is empirically tested to show that its particular design is the best design you can have and it produces results.

Mr DAVID SHOEBRIDGE: Attorney, the ice inquiry was handed down or delivered to your government in January 2020.

Mr MARK SPEAKMAN: Correct.

Mr DAVID SHOEBRIDGE: We are now more than two years and two months after and we have not seen a coherent response from your government other than to reject a subset of recommendations. Do you accept that that is evidence of your government failing to live up to the promise that the former Premier made when the inquiry was established?

Mr MARK SPEAKMAN: I am not sure what promise she made in terms of timing. It is obviously—

Mr DAVID SHOEBRIDGE: But she promised to do something. The promise was not to have an inquiry and let it end there. The promise was to have an inquiry, then implement the recommendations.

Mr MARK SPEAKMAN: I think last time you asked me how much did the inquiry cost and I think I said over $10 million.

Mr DAVID SHOEBRIDGE: I think it is $11 million.

Mr MARK SPEAKMAN: We have not spent that sort of money to have a detailed expert report that took an enormous amount of evidence from experts to just sit on the shelf. We intend to act. I am disappointed that we have not been in a position to provide our comprehensive response, but I can tell you that below the surface there is a lot of furious paddling going on to get there, and we have already announced our response on the Drug Court in Dubbo, the Walama List, and there is more to come.

Mr DAVID SHOEBRIDGE: Attorney, none of the key recommendations from the ice report have been fully implemented. Last time I checked, about 95 per cent of them have not even been touched by your Government. That does rather look like spending $11 million to have a fancy-looking report on the shelf, does it not?

Mr MARK SPEAKMAN: If the end result is the report just sits there and goes nowhere, that would be valid criticism. I understand the criticism of that delay, but I am confident that we will get a good landing place.

Mr DAVID SHOEBRIDGE: Attorney, there has been a recent number of cases where New South Wales, in defence of historic child sexual abuse matters where the abuse predates 28 October 1983, which was when the Law Reform (Vicarious Liability) Act came into play, has pleaded the fact that for abuse that predates October 1983, the Crown is not vicariously liable for the actions of its servants. Has this concern been raised with you?

Mr MARK SPEAKMAN: It has, by you. You wrote to me in December. I apologise, I have not responded to your letter yet, but I have not had a chance to digest my brief.

Mr DAVID SHOEBRIDGE: I can provide you with yet more cases, if needed, of persons asserting that they were victims of historic child sexual abuse before 1983, where the failures or the abuse occurred by employees or agents of the Crown, who are being told by your Government that the Crown is not vicariously liable and that they have to sue those individuals personally, many of whom, of course, have deceased. Do you accept that that is wrong in principle, asserting those kinds of defences for historic child sex matters?

Mr MARK SPEAKMAN: I am surprised if that is the case. I know you have written to me. I have not seen your correspondence, and I have not seen the brief from the department, which, I think, is in my office, that advises me on the matter.

Mr DAVID SHOEBRIDGE: Mr McKnight or Mr Tidball, is anyone from the department aware of the matter?

PAUL McKNIGHT: I am aware that we have briefed the Attorney, yes.

Mr DAVID SHOEBRIDGE: You are aware that there is that gap in the law, that for, in this case, historic child sexual abuse matters where the abuse is said to have been by an employee of the Crown or the failure to act, the tortious action was by an employee or servant of the Crown before 1983, and that the Law Reform (Vicarious Liability) Act does not extend to that conduct before the Act commenced?

PAUL McKNIGHT: I am aware that you have raised that issue with the Attorney General. I am not aware of any particular cases in which that has caused an issue, where justice is failing to be done. But I would have to take on notice any detail around the issues that you are raising.

Mr DAVID SHOEBRIDGE: You can start by looking at the *State of New South Wales v DC*, which was an unsuccessful special leave application to the High Court. I am more than happy to provide you with other specific details. Have you sought advice on the substantive issue at play, the fact that the Law Reform (Vicarious Liability) Act, I think in section 3, expressly says that it does not extend to conduct before the commencement of that Act?

PAUL McKNIGHT: Sitting here, I am not able to get into the technical detail of your question, Mr Shoebridge. Perhaps I can take it on notice.

Mr DAVID SHOEBRIDGE: All right. Attorney, when can I expect a response to my correspondence in December?

Mr MARK SPEAKMAN: Sorry?

Mr DAVID SHOEBRIDGE: When can I expect a response to the—

Mr MARK SPEAKMAN: Before December.

Mr DAVID SHOEBRIDGE: No. We are talking here about victims of historic child sexual abuse, where New South Wales is taking a legal point to defeat legitimate claims. You are not suggesting that I have to wait 12 months for a response?

Mr MARK SPEAKMAN: Sorry, I thought you had put to me "in December".

Mr DAVID SHOEBRIDGE: No. I am asking, when will I get a response to my correspondence of December, where I raised these issues with your office?

Mr MARK SPEAKMAN: As promptly as possible.

Mr DAVID SHOEBRIDGE: Attorney, do you have the lead in the Coalition for raising the age of criminal responsibility or reviewing the campaign and the push to raise the age of criminal responsibility?

Mr MARK SPEAKMAN: I do.

Mr DAVID SHOEBRIDGE: When are we going to raise the age in New South Wales?

Mr MARK SPEAKMAN: The meeting of Attorneys-General in November resolved to work up a model of what raising the age to 12 would look like. We are going through that MAG process at the moment. There is no decision in principle by the Government to raise the age or not to raise the age. We are looking at what a model will look like, the attitude of other States and Territories and then make a decision. We know that the ACT is going to 14. The Northern Territory has said previously, in response to a royal commission, I think, that they are going to 12. Queensland, before their last State election, said they would not move. If there is a prospect for a harmonised approach across the country, that is something in the first instance I would want to explore and I think that is something that other Attorneys-General want to explore as well.

Mr DAVID SHOEBRIDGE: Your answer just made it clear that we already do not have that. We have the ACT going to 14, Queensland doggedly wanting to be able to still criminally prosecute 10-year-olds and the Northern Territory saying they are potentially moving to age 12. There is already no prospects of uniform national action. I would suggest to you that, if that is what you are waiting for, Attorney, that is an excuse for New South Wales not to act, because there is no prospect of uniform national action.

Mr MARK SPEAKMAN: I think I used the word "harmonised" rather than "uniform". It may be that you cannot get unanimity between States and Territories. But it may be that there is a sufficiently large cohort of States that resolve to stay at 10 or to go to 12 or to go to 12 with carve-outs. So the prospect for harmonised action by the majority of jurisdictions is still a real prospect.

Mr DAVID SHOEBRIDGE: Are you saying that there is a good for justice in New South Wales to keep the prospect open of prosecuting 10-year-olds because that will be the same law that applies in South Australia and WA?

Mr MARK SPEAKMAN: No.

Mr DAVID SHOEBRIDGE: You are not suggesting that that is part of your thought matrix on this, is it, that, just because WA and South Australia might want to prosecute 10-year-olds, we should too, for harmony?

Mr MARK SPEAKMAN: No. Some of these criminal law approaches, we do look for a harmonised approach. WA has been leading the work in this area. They were partway through preparing a report on raising the criminal age. So, for the last few years, this has been tossed around at the inter-jurisdictional level. Whether we move to 12 or not move to 12, at the end of the day, it does not have to be harmonised. But there is an advantage in exchanging knowledge and approach between different jurisdictions. Bearing in mind, in New South Wales, while understanding—perhaps just a couple of contextual things. On maybe only four or five nights a year is a 10- or 11-year-old in a youth detention centre in New South Wales. The numbers who are detained are extremely low. Generally, they are there on remand, rather than having been sentenced—typically, none in a year. That is the first context. The second context is that typically you are not getting 10- and 11-year-olds committing serious offences. They are just two contextual matters to the overall decision.

Mr DAVID SHOEBRIDGE: Attorney, you are quite right to point out that the number of 10- and 11-year-olds who are in custody is, thankfully, relatively modest in New South Wales. Do you have the numbers of 10-year-olds, 11-year-olds and 12- and 13-year-olds who have had criminal charges brought against them in the last 12 months? If Mr McKnight has the details, I am happy to get it from Mr McKnight, if that is easiest.

Mr MARK SPEAKMAN: No, I have a table of figures. For the 12 months to September 2021, the number of finalised criminal court appearances for 10-year-olds was three; 11-year-olds, 15; 12-year-olds, 56; and 13-year-olds, 207. There is a subset of those where an offence was proved. In the case of 10-year-olds, it was zero; 11-year-olds, one; 12-year-olds, 15; and 13-year-olds, 88.

Mr DAVID SHOEBRIDGE: Attorney, why is it taking the nation more than three years after the initial commitment was made to make some basic law reforms in the State of New South Wales, if you are only talking about raising the age to 12, that would prevent such a small number of prosecutions? In New South Wales we are talking about 19 prosecutions. Why is it so hard to change the system to stop trying to jail 10- and 11-year-olds?

Mr MARK SPEAKMAN: You are correct that the number of prosecutions that raising the age to 12 would affect is very small. It would be one proven offence in the last 12 months and 18 prosecutions overall. At the moment each jurisdiction—perhaps not including the ACT at 14 and maybe or maybe not Queensland at 10, but their position may have shifted—is trying to approach this at a harmonised level. Fruitful discussions continue between Attorneys-General.

Mr DAVID SHOEBRIDGE: But, of course, the numbers of 10- and 11-year-olds that are ultimately successfully prosecuted does not include the number of 10- and 11-year-olds who find themselves potentially arrested by the police, taken to the police station, the subject of police surveillance. Are those matters you are looking at when you are considering the benefits of raising the age?

Mr MARK SPEAKMAN: It is not just, as you say, a matter of prosecutions. It is also a matter of what an alternative regime would look like if the age were to be raised. That is not a matter of retreat but, again, perhaps comparable to our discussion on drug law, a matter of intervention and what appropriate service structure would be in place to deal with 10- and 11-year-olds who, at the moment, would go into the criminal justice system.

Mr DAVID SHOEBRIDGE: Have you reviewed what the ACT has done in that regard—detailed forward planning, additional resources going into their equivalent of DCJ in terms of diversionary, non-custodial resources to help the kids and ultimately make them, their families and society safer? Have you reviewed the ACT model?

Mr MARK SPEAKMAN: That is certainly a model we are looking at. The Western Australian Government had done a lot of work in preparing a paper for consideration by Attorneys-General. Again, this is why it is important to have a discussion at a national level to look at the different ideas that different jurisdictions can come up with for what diversion would look like if the minimum age were raised.

Mr DAVID SHOEBRIDGE: Attorney, could I just ask for some clarification about the numbers you gave? The initial numbers of three final convictions, I think it was, for 10-year-olds and 15 finalised convictions for 11-year-olds, were they cases that went to trial or there was a plea and therefore there was a conviction?

Mr MARK SPEAKMAN: My understanding—and Mr McKnight will correct me—is that finalised criminal court appearances would include a plea. They would not just be trials.

PAUL McKNIGHT: They do not include proven matters. So if the matter is a guilty plea, for example, if that is your question, that is not included in those matters. They are all finalised matters, so they will be finalised by plea, by hearing, by some form of diversion, by any final court outcome.

Mr DAVID SHOEBRIDGE: Where the charges have been proven?

PAUL McKNIGHT: No. For the three 10-year-olds—

Mr DAVID SHOEBRIDGE: Three 10-year-olds?

PAUL McKNIGHT: Yes, there were no charges proven against 10-year-olds in that period, but there were three charges brought and finalised by the court.

Mr DAVID SHOEBRIDGE: So what happened in those cases? You have three 10-year-olds taken to court, potentially put in jail, taken away from their families. What happened?

PAUL McKNIGHT: We have not had a young person in a detention centre who was 10 for some period, including on remand. I think what is likely to have happened—and I think I would need to take on notice the detail—is that the court used one of its diversionary outcomes, perhaps a caution or a conference, or perhaps it just dismissed the charge.

Mr DAVID SHOEBRIDGE: Mr McKnight, what about the 15 11-year-olds?

PAUL McKNIGHT: The same situation would apply. If the charge was not proven, the court would have finalised that in some other way.

Mr DAVID SHOEBRIDGE: So none of them got a custodial sentence?

PAUL McKNIGHT: There are some instances where 11-year-olds have been admitted into detention centres, typically on remand.

Mr DAVID SHOEBRIDGE: As to the 15 11-year-olds who had their criminal matters finalised in the 12 months to September 2021, did the criminal justice system end up sentencing any to any kind of custodial sentence?

PAUL McKNIGHT: I am afraid that the data I have about custodial instances and the data I have about court appearances do not align in time period, so I cannot trace those 15.

Mr DAVID SHOEBRIDGE: Then what, if any, evidence do you have, data do you have about custodial sentences for 10-, 11-, 12- and 13-year-olds?

PAUL McKNIGHT: It is probably easiest if we provide that data to you on notice. I can give you some numbers about remand—

Mr DAVID SHOEBRIDGE: If you have it there, Mr McKnight, if you want to table the document—

PAUL McKNIGHT: No. So admissions to remand in the period of 1 July 2020 to 30 June 2021—no 10-year-olds were admitted to detention centres on remand; nine 11-year-olds were admitted in those circumstances; 72 12-year-olds; and 212 13-year-olds. Sorry, I misspoke, those are all admissions. I have data on unique admissions as well. This relates to the data by person, so that—

Mr DAVID SHOEBRIDGE: So they were instances of either remand or custodial?

PAUL McKNIGHT: No, those were remand admissions only.

Mr DAVID SHOEBRIDGE: Those were remand. Do you have data for how many actual kids that happened to?

PAUL McKNIGHT: Yes. The numbers are for 10-year-olds, zero; 11-year-olds, six; 12-year-olds, 25; and 13-year-olds, 107. I am just looking for my sentenced data.

Mr DAVID SHOEBRIDGE: Mr McKnight, if it is easier to get the table prepared and then table it with us sometime before lunchtime to provide that—

PAUL McKNIGHT: I am sorry, I will not have time to do that.

Mr DAVID SHOEBRIDGE: Then I am happy to wait for you to read it out.

PAUL McKNIGHT: Sorry, I do not have the sentencing data with me. I do not have the sentencing data. I can provide that on notice.

Mr DAVID SHOEBRIDGE: Thanks.

The CHAIR: It is eleven o'clock. We will have a morning tea break and we will come back in 15 minutes.

(Short adjournment)

The CHAIR: We are on air again. Opposition questioning.

The Hon. ADAM SEARLE: Mr Attorney, turning to the modern slavery legislation, that legislation came into force and effect in January of this year. Is that correct?

Mr MARK SPEAKMAN: On 1 January.

The Hon. ADAM SEARLE: I think I understood Mr McKnight's evidence was that the recruitment for the substantive independent statutory officer is underway, applications close at the end of March and you hope to have someone in place by April or May.

PAUL McKNIGHT: To be precise, applications close on 29 March. The job ad is on LinkedIn and Seek so, if you have got good candidates, I would encourage you to—

The Hon. ADAM SEARLE: I will send them your way.

PAUL McKNIGHT: Absolutely.

The Hon. ADAM SEARLE: Is the department doing the recruitment or have you got an external consultant? From the ad, it looks like you are doing it yourself.

PAUL McKNIGHT: I am leading the recruitment process.

The Hon. ADAM SEARLE: I commend you for that. Quite often, with these sorts of things, there are recruitment consultants—about whom I have no complaint—but it is good and refreshing to see agencies doing recruitment.

PAUL McKNIGHT: I have already had a number of really high-quality inquiries about the job.

The Hon. ADAM SEARLE: That is good. Mr Attorney, during the parliamentary debate on the most recent iteration of the legislation, your ministerial predecessor, having responsibility, made the commitment to revisit with the Commonwealth, when they are doing the review of their legislation this year, the $50 million versus the $100 million threshold. Does that remain the Government's position? Is that a commitment you will maintain as the relevant Minister?

Mr MARK SPEAKMAN: If he has made that commitment. I have not changed or withdrawn that commitment.

The Hon. ADAM SEARLE: The commitment was made on 16 November last year.

Mr MARK SPEAKMAN: I think he sounded out the Commonwealth about reducing that threshold but, so far, to no avail.

The Hon. ADAM SEARLE: So that commitment has not changed?

Mr MARK SPEAKMAN: That remains, yes.

The Hon. ADAM SEARLE: That is good to know. The thorny issue of bail—we discussed that last time in relation to the case of Mr Baluch. I think, on notice, you answered some questions about that. That was essentially a Commonwealth DPP matter, but it did highlight an issue potentially in the system about people volunteering to have privately provided ankle bracelets. On 10 November, or thereabouts, you announced a high-level task force of police and others to scrutinise bail laws. Can you tell us who is on that group?

Mr MARK SPEAKMAN: Just to clarify something you said, it was not a new task force. There already was a Bail Act Monitoring Group that meets periodically. I asked that existing group to look at these matters. It is chaired by a director of DCJ, and it includes representatives from DCJ; Corrective Services; the Courts, Tribunals and Service Delivery division of DCJ; the Police Force; the Office of the DPP; Legal Aid; the Aboriginal Legal Service; the Department of Premier and Cabinet; the Supreme Court; the Children's Court; the District Court; and the Local Court. It was established, I think, with the Bail Act in around 2015. It has been a forum that has existed since that time.

The Hon. ADAM SEARLE: So that is an existing body, and you have asked it to look at these issues that were canvassed in estimates?

Mr MARK SPEAKMAN: I referred about half a dozen cases to it and asked it to consider what, if any, reforms to the Bail Act might be required or appropriate.

The Hon. ADAM SEARLE: Was the Baluch case one of those?

Mr MARK SPEAKMAN: That was one of those.

The Hon. ADAM SEARLE: Are you able to, perhaps on notice, give us a list of the other cases that you have referred, so we can have a look at the issues?

Mr MARK SPEAKMAN: I can tell you now. They were Daniel Middlebrook, Salim Hamze, Trent Jeske and Charbel Attie. I added two more to the list: Jason Williams and Ahmed Karim.

The Hon. ADAM SEARLE: Which court did all of these emerge from?

Mr MARK SPEAKMAN: One, I think, was the Supreme Court. They are mostly Local Court bail decisions.

The Hon. ADAM SEARLE: You have referred these six cases. Have you set a time frame or requested a time frame?

Mr MARK SPEAKMAN: No, I have not. I have received an interim report. I treat that report as Cabinet-in-Confidence. It has identified a number of issues, and I am looking at the group developing recommendations on those issues.

The Hon. ADAM SEARLE: Can you tell the Committee, leaving aside what is in that Cabinet-in-Confidence paper, what are the issues that you saw emerging from those six cases you referred? Obviously, there

is the issue of private companies providing ankle monitoring bracelets at the nomination of a defendant. That is one issue. Was that the major issue that emerged?

Mr MARK SPEAKMAN: That is the issue in the Baluch case—the extent to which a court should rely upon the offering of a privately run electronic monitoring device as a mitigating factor to mitigate risk to grant bail. Whether there should be any change or addition to the show cause offences—as you would know, the Bail Act that Attorney General Smith sponsored rewrote bail laws so that you would look at a risk assessment. After some controversy in relation to that, there were amendments that identified a whole lot of serious offences as show cause offences—the most serious offences. There is the question of whether there should be an expansion of those show cause offences—for example, whether the firearms offences that are covered are sufficiently broad. They are matters that are being looked at as well. Forfeiture of surety—when surety is put up for bail, looking at the circumstances of that. They are three areas that are being looked at, among others.

The Hon. ADAM SEARLE: Apart from the review by that existing bail monitoring group, has there been any other further investigation done about whether self-arranged private surveillance measures are an appropriate risk mitigation strategy, or are you just going to rely on that advice that you get?

Mr MARK SPEAKMAN: I do not know whether there has. There are a number of things you could do. You could, for example, legislate to create a presumption against relying on that or you could—once bitten, twice shy. With the precedent that case has set, I would expect judicial officers to be much more hesitant to rely upon electronic monitoring as a mitigating circumstance in future. One approach is to rely upon judicial notice of what has happened and take that into account in future bail decisions.

The Hon. ADAM SEARLE: That could be a bit of a risky strategy. Is there going to be a review into the outsourcing of electronic monitoring to private companies more generally?

Mr MARK SPEAKMAN: Probably not. This is not something that the State organises. It is something that accused proffer. It is different from parole, where there is electronic monitoring of sex offenders as a condition of parole—or in some domestic violence cases. This is not a State-sponsored activity. This is something that is proffered and, on one view, the court can say, "We are not satisfied as to the efficacy." I do not know operationally if the issue is with whether it is privately run or run by Corrections.

The Hon. ADAM SEARLE: I guess, the standard?

Mr MARK SPEAKMAN: The issue is that at the end of the day an electronic monitoring device can be dismantled.

The Hon. ADAM SEARLE: Apparently.

Mr MARK SPEAKMAN: They are not foolproof. It may be that with a sex offender who is not a flight risk, if the monitor comes off, then straight away, metaphorically and literally, alarm bells ring and there is an attempt to abscond by the offender in those circumstances. In a case here where there is a flight risk, I think, whether it had been Corrections doing it or privately run, that the problem is he disappears and tries to escape the jurisdiction.

The Hon. ADAM SEARLE: Indeed.

Mr MARK SPEAKMAN: So I think it is more the risk associated with electronic monitoring per se than whether it is privately or publicly run. But, as I say, there is that distinction between parole, for example, on the one hand, and something that an accused on a bail application proactively offers the court, on the other hand.

The Hon. ADAM SEARLE: Yes. In answer to questions taken on notice or possibly supplementary questions from last time, you provided a search of all bail orders made in 2020 and 2021 using the keyword searches "electronic monitoring" or "ankle monitoring" as a condition of bail. I think in 2020 there were 32 cases.

Mr MARK SPEAKMAN: That sounds about right.

The Hon. ADAM SEARLE: And in 2021 there were 47 cases, give or take. There were some limitations on the data. Are you able to say whether that electronic monitoring was all conducted by Corrections, or would most of those be private? Is the Baluch issue quite widespread? I assume so because you referred it off.

Mr MARK SPEAKMAN: I will take it on notice in case I need to correct my off-the-cuff answer. My off-the-cuff answer is I think they were all private. But the Baluch issue, it is the flight—

The Hon. ADAM SEARLE: The issue with bail is whether they are a flight risk, whether they are going to attend.

Mr MARK SPEAKMAN: That is the big issue.

The Hon. ADAM SEARLE: And he had significant means. I think that was the issue.

Mr MARK SPEAKMAN: Yes. That is the big issue.

The Hon. ADAM SEARLE: But you have the better part of 100 cases over the past two years. We do not know how many occurred this year. Your sense is that most of those would be private.

Mr MARK SPEAKMAN: Probably all or substantially all.

The Hon. ADAM SEARLE: In which case that is 100 people on bail subject to the electronic monitoring. Are there any minimum conditions that the electronic monitoring devices have to comply with? Pardon my ignorance, but is there an Australian standard that these have to meet?

Mr MARK SPEAKMAN: I do not know the answer.

The Hon. ADAM SEARLE: Or can you go and get them at Aldi and there is a risk that they can just be jimmied? This is a serious question. Is there quality assurance?

Mr MARK SPEAKMAN: I do not know the answer to that. I would be surmising that there would be. There may not be an Australian standard, but I would surmise that when a judicial officer is asked to grant bail subject to an electronic monitoring condition, the officer is told what the technical specifications of the monitoring are.

Mr DAVID SHOEBRIDGE: I don't think so.

The Hon. ADAM SEARLE: At the risk of contradicting you, I am making the reverse supposition that maybe judicial officers are assuming that this is handled by the Government. For what it is worth, that is the feedback I have had. Could you take this on notice?

Mr MARK SPEAKMAN: Certainly.

The Hon. ADAM SEARLE: Can you give us answers to the following: Is there is an accepted standard that devices have to meet? Is this something that the judiciary is aware of? We will take that as far as we can.

Mr MARK SPEAKMAN: Yes, I will take that on notice. But, as I said, it is different from parole where Corrections are saying, "We are going to impose electronic monitoring on a parolee as part of the State attempting to protect the public."

The Hon. ADAM SEARLE: Of course.

Mr MARK SPEAKMAN: Here, the State is not asking for anything. The police are not asking for it. In fact, typically they would oppose bail, notwithstanding electronic monitoring. This is the accused proffering electronic monitoring, saying, "Hey, I'm not a risk because you can stick a bracelet on my ankle."

The Hon. ADAM SEARLE: Yes. But of course the degree of comfort that the community can take from that might depend on the quality of the devices and the ease with which they can be dismantled. I assume that some would be high security. If you try to dismantle them, something nasty might happen. Others might just fall off like a cheap toy. I do not know.

Mr MARK SPEAKMAN: I think they are more than cheap toys, but none of them are foolproof. I suspect that a determined wearer of such a device can sooner or later dismantle them.

The Hon. ADAM SEARLE: Just to be clear, we want to know whether there is a standard that they have to meet, who is responsible for that and the degree to which the system is aware of all of those limitations.

Mr MARK SPEAKMAN: Sure.

The Hon. ADAM SEARLE: Going back to those 70- or 80-odd cases, I think—and certainly it was not the case in the Baluch matter—the police generally oppose these, or the prosecution opposes them. Of those cases in 2020 and 2021 and indeed any that have occurred this year, how many did the authorities appeal against, if they opposed them?

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

The Hon. ADAM SEARLE: Please. I am assuming police can challenge bail decisions where they are not successful, can they not?

Mr MARK SPEAKMAN: In theory.

The Hon. ADAM SEARLE: Can you tell us, again on notice, how many of those bail decisions are in fact appealed by the police or the prosecution?

Mr MARK SPEAKMAN: Certainly. By "those", do you mean the ones where there was an order for electronic monitoring?

The Hon. ADAM SEARLE: Yes, in the first instance, but, secondly, in relation to bail decisions.

Mr MARK SPEAKMAN: Bail generally.

The Hon. ADAM SEARLE: Yes. I am interested in that phenomenon.

Mr MARK SPEAKMAN: Just to be clear, an appeal against whether or not bail is granted, as distinct from bail conditions?

The Hon. ADAM SEARLE: Correct. Yes, bail is granted and then—thank you for reminding me, Attorney—perhaps also on the issue of bail conditions. I think that would be very useful as well.

Mr MARK SPEAKMAN: Okay.

The Hon. ADAM SEARLE: Sorry to give Mr Tidball and others more homework, but I think that would give us a fuller picture.

PAUL McKNIGHT: Can I clarify something about the Bail Act? What the Bail Act provides for is for prosecuting authorities—the police, in particular—to make a subsequent detention application if they feel that the bail decision was incorrect. They can make that either in the same court or they can go to the Supreme Court to make that. So it is not technically an appeal as such; it is a further application to detain the person who has got bail.

The Hon. ADAM SEARLE: Sure.

Mr DAVID SHOEBRIDGE: Is it de novo, Mr McKnight?

PAUL McKNIGHT: Exactly, yes.

The Hon. ADAM SEARLE: There are different terminologies applied to these. There are different types of appeals.

PAUL McKNIGHT: Sure.

The Hon. ADAM SEARLE: What I am interested in is any applications made by the police or the prosecution challenging grant of bail or challenging bail conditions, if we can use the word "challenging" in that encompassing term. So you have the interim report from the bail monitoring group. Is the ball now in your court or are you waiting for their final report? Will you give them some feedback about your initial views?

Mr MARK SPEAKMAN: The ball is in my court.

The Hon. ADAM SEARLE: Do you have a time frame in which you may move the ball back into somebody else's court?

Mr MARK SPEAKMAN: I do not have a precise time frame.

The Hon. ADAM SEARLE: Roughly?

Mr MARK SPEAKMAN: I know it is a matter of public interest, and I am keen to be as prompt as possible.

The Hon. ADAM SEARLE: What is the process from here? It is an interim report. Do you expect a final report to basically confirm it?

Mr MARK SPEAKMAN: You say "confirm" it. Without waiving Cabinet-in-Confidence protection—

The Hon. ADAM SEARLE: You cannot wear that privilege, Mr Attorney.

Mr MARK SPEAKMAN: It identifies issues rather than makes recommendations. So I need to go back to them to identify the precise areas I would like them to investigate further and come up with recommendations.

The Hon. ADAM SEARLE: So it is kind of a broadbrush "These are the issues." You go back and say, "Please colour these in."

Mr MARK SPEAKMAN: Yes.

The Hon. ADAM SEARLE: Then they will come back with—at least, you assume they will come back with a set of definitive recommendations, which you will then consider, adopt, modify, whatever.

Mr MARK SPEAKMAN: I do not know how definitive they will be, but I would anticipate a set of recommendations.

The Hon. ADAM SEARLE: You have given an indication of the organisations that are represented on the bail monitoring group. Given some of the experiences that I have had with interdepartmental working groups, they often have a shifting membership, depending on who is unlucky enough to be in the office when these are scheduled and so some of the focus can be blunted by shifting membership. Is there a fixed membership for this particular review or is it going to be subject to the same kind of—can I put it neutrally—interdepartmental vagaries?

Mr MARK SPEAKMAN: Just before Mr McKnight answers that, I might say, having received the report, I am looking at supplementing the membership of the group.

The Hon. ADAM SEARLE: Supplementing it in what way?

Mr MARK SPEAKMAN: I am yet to determine that.

The Hon. ADAM SEARLE: What considerations or issues gave rise to that inclination?

Mr MARK SPEAKMAN: I want to make sure that its recommendations are robust and driven by empirical evidence.

The Hon. ADAM SEARLE: So we are talking about someone else from BOCSAR?

Mr MARK SPEAKMAN: That is a possibility.

The Hon. ADAM SEARLE: Are we talking about someone with particular legal expertise who could advise about the practicality or the workability of a particular solution?

Mr MARK SPEAKMAN: All those are possibilities.

The Hon. ADAM SEARLE: I understand the ball is in your court, but I assume it will be a matter of days or weeks before you go back to them, given the public interest in this matter, given the Baluch controversy, given that there is now obviously a range of cases, some 80 cases if not 100 cases now in the system that might have the same vulnerability. I assume this is a matter you would not want to let drift?

Mr MARK SPEAKMAN: Correct.

The Hon. ADAM SEARLE: Can you give us a more definitive timeframe?

Mr MARK SPEAKMAN: No, I cannot, but I would certainly want to be landing a final position in the next couple of months.

Mr DAVID SHOEBRIDGE: A busy couple of months.

The Hon. ADAM SEARLE: A final position as to this initial advice or a final position as to a definitive course of action, at least in your own mind?

Mr MARK SPEAKMAN: A definitive course of action. That is not a promise or a warranty.

The Hon. ADAM SEARLE: You are not giving an undertaking to the court.

Mr MARK SPEAKMAN: To the court or anyone else, but that is the aim.

The Hon. ADAM SEARLE: Could I put these words in your mouth then? Is it your present inclination that you would be working diligently to have legislation to address any of these issues this year? Would that be a fair assessment?

Mr MARK SPEAKMAN: Yes. If the unthinkable were to happen and we lost Government, I would want to have resolved it from a legislative viewpoint this year.

Mr DAVID SHOEBRIDGE: Attorney, through you to Mr Tidball. Mr Tidball, you would be aware of the obligation on the heads of agencies to complete a written declaration about any actual or potential conflicts of interests under the Code of Ethics and Conduct for New South Wales government sector employees?

MICHAEL TIDBALL: Yes, I am.

Mr DAVID SHOEBRIDGE: And as the secretary, my assumption is you have completed such a declaration.

MICHAEL TIDBALL: I have indeed, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I am assuming, compliant with the code, you did it in writing?

MICHAEL TIDBALL: Yes, I did.

Mr DAVID SHOEBRIDGE: Who then did you provide that declaration to?

MICHAEL TIDBALL: To the Department of Premier and Cabinet.

Mr DAVID SHOEBRIDGE: That is an unambiguous obligation under the code on your part, is it not?

MICHAEL TIDBALL: Yes, it is.

Mr DAVID SHOEBRIDGE: Attorney, if Mr Tidball came to you and tried to give a verbal disclosure of his conflicts or potential conflicts of interest in lieu of a written disclosure, you would know that would be unacceptable, would you not?

Mr MARK SPEAKMAN: I would expect Mr Tidball to comply with his legal obligations, which would be to make a disclosure in writing.

Mr DAVID SHOEBRIDGE: That is unambiguously the case and it has been since at least 2015, has it not?

Mr MARK SPEAKMAN: That is my understanding.

Mr DAVID SHOEBRIDGE: Mr Tidball, do you know—and I am in no way suggesting you have done anything improper here, Mr Tidball—I am just testing the process.

MICHAEL TIDBALL: Yes.

Mr DAVID SHOEBRIDGE: Mr Tidball, do you know what, if any, penalty there is on an agency head for failure to disclose in writing conflicts and potential conflicts of interest under the code?

MICHAEL TIDBALL: I imagine that it would go to the core of the agency head's contract of employment.

Mr DAVID SHOEBRIDGE: Attorney, it would be a serious matter, would it not, if an agency head or a secretary in the DCJ cluster failed repeatedly to provide a written declaration of interest, as legally required, under the Code of Ethics and Conduct. That would be very serious matter, would it not?

Mr MARK SPEAKMAN: Well, it depends upon what the non-disclosure was. Any non-disclosure should not occur, but if it were a trivial non-disclosure, then it may not be a serious matter. It may still be a breach of the code that should not occur.

Mr DAVID SHOEBRIDGE: No, the failure under the code to at least annually provide the written declaration of actual and potential or perceived conflicts of interest, as you made clear, that legal obligation to provide the written declaration consistent with the code, that is a serious matter, is it not, Attorney?

Mr MARK SPEAKMAN: It is a weighty matter. I do not know whether you are leading to some particular example, so I do not want to comment in the abstract without knowing what the example is. But all public servants and Ministers should comply with their legal obligations so far as disclosure is concerned.

Mr DAVID SHOEBRIDGE: Mr Tidball indicated, I think quite properly, that the failure to do something so fundamental from a senior executive, to provide at least annually the written declaration of actual, potential and perceived conflicts of interest under the code, would go potentially to the employment contract—a very serious matter.

Mr MARK SPEAKMAN: Well, it is something that should not occur, but how serious it is would depend upon, among other things, what ought to have been disclosed and what was not disclosed.

Mr DAVID SHOEBRIDGE: Attorney, you are not suggesting that those core transparency requirements—which are not just there to identify an actual conflict of interest but are there to provide assurance to the public and the public sector that the right thing is being done and that disclosures are being made—that the failure to do that is only tested against whether or not there actually was a conflict of interest, are you? You are not seriously suggesting that?

Mr MARK SPEAKMAN: No, what I am saying is all Ministers and public servants should comply with their legal obligations, including those of disclosure. The failure to provide any return or disclosure form is a breach that should not occur. The gravity of that failure would be measured, among other things, against what should have been disclosed and was not.

Mr DAVID SHOEBRIDGE: The head of an agency has a particular obligation to lead by example on matters such as integrity and it is a core integrity issue, is it not, to disclose actual, potential or perceived conflicts of interest? The agency heads should be leading by example, should they not?

Mr MARK SPEAKMAN: Ministers and agency heads should lead by example. Disclosure is part of an integrity process within government. The gravity of noncompliance will depend upon, among other things, what should have been disclosed and was not.

Mr DAVID SHOEBRIDGE: Just yesterday the Law Enforcement Conduct Commission handed down its findings about former police commissioner Fuller and found that in 2017, 2018, 2019 and 2020 former police commissioner Fuller failed in his legal obligations to provide a written declaration of actual, perceived or potential conflicts of interest for an entire four years. That is an extremely serious matter, is it not?

Mr MARK SPEAKMAN: I have not seen the report and I would have to read the report to understand what the implications were of that nondisclosure and what ought to have been disclosed but was not.

Mr DAVID SHOEBRIDGE: It is not a question of what ought to have been disclosed. There is a standard form prescribed under the code which it is mandatory to complete and to sign a declaration that it was complete. This is not a hypothetical question. There is a standard, considered form that is required to be completed at least annually. You know that, do you not?

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: Well then, how on Earth—

Mr MARK SPEAKMAN: What you are trying to ask me to do is not identify whether or not there is a breach that should not occur, but opine that it is extremely serious or very serious. I would have to look at the LECC report and understand the gravity of what it was that ought to have been disclosed and was not.

Mr DAVID SHOEBRIDGE: No, Attorney, this is not about what should or should not have been disclosed. That is a secondary matter. The fundamental obligation for an agency head to comply with their obligations under the code, as you made clear, legal obligations under the code, to disclose actual, perceived or potential conflicts of interest, that of itself is an essential integrity matter and the failure to do it is a serious matter, or do you as Attorney General not treat it as a serious matter?

Mr MARK SPEAKMAN: I have just said no breach of mandatory obligations should occur. Its seriousness will depend upon the gravity or the implication of what it was that ought to have been disclosed and was not disclosed. That does not mean that it was not a breach that should not have occurred, but whether it is a very serious breach or a serious breach or a somewhat serious breach will depend upon what it was that ought to have been disclosed and was not.

Mr DAVID SHOEBRIDGE: Attorney, the Law Enforcement Conduct Commission ceases to excuse Mr Fuller for that failure to comply because he had a chat with the former police Minister and verbally disclosed that he had some horse racing interests. A verbal disclosure does not come close to complying with the requirements under the code, does it?

Mr MARK SPEAKMAN: That is my understanding.

Mr DAVID SHOEBRIDGE: Given that uncontradicted evidence of four years of failure to disclose in accordance with the code of conduct, in writing, actual, perceived or potential conflicts of interest, can you comprehend how the Law Enforcement Conduct Commission could have come to the conclusion that there were no adverse findings to be made against Mr Fuller?

Mr MARK SPEAKMAN: I do not think I can fairly answer that question without having read the report. I have said a number of times now that—it is somewhat circular, but no failure to comply with mandatory obligations should occur. The seriousness of any failure depends upon the gravity and the gravitas of what it was that should have been disclosed and was not.

Mr DAVID SHOEBRIDGE: What, if any, role does DCJ have over ensuring that these basic integrity matters are adhered to by the heads of agencies, including the police commissioner?

Mr MARK SPEAKMAN: I will let Mr Tidball answer that.

MICHAEL TIDBALL: I note that Ms Boyd is here from the Department of Premier and Cabinet, but my understanding is that in respect of those contracts DPC does not have a responsibility.

Mr DAVID SHOEBRIDGE: Ms Boyd, the Department of Premier and Cabinet failed to get a written declaration of the actual, perceived or potential conflicts of interest consistent with the code from the police

commissioner in 2017, in 2018, in 2019 and in 2020. What did DPC do in relation to that ongoing legal failure by the police commissioner?

KATHRYN BOYD: The Secretary of DPC's role is to accept the declarations from agency heads, being heads of departments and other agencies that are prescribed in schedule 1 of the Government Sector Finance Act, and that is done. Statutory officers are somewhat different under that Public Service Commission's direction. Whether they should be or not is a question for the Public Service Commission. But the legal position is slightly different in respect of agency heads compared to statutory officers like the commissioner.

Mr DAVID SHOEBRIDGE: The Public Service Commission gave a direction in 2015, at least according to the LECC, that all agency heads including the police commissioner had to provide such a declaration consistent with the code of conduct. You know that, don't you, Ms Boyd?

KATHRYN BOYD: I think there might be some uncertainty as to whether or not that direction applies to department heads and agency heads versus statutory officers like the Commissioner of Police, but I think these questions are probably better directed to the Public Service Commission because it is the Public Service Commission's direction.

Mr DAVID SHOEBRIDGE: Ms Boyd, you failed to get a declaration from the police commissioner—when I say "you", I mean DPC—for four years running, and there is not even a system in place to send a polite follow-up or to check about the absence of critical documentation like that. And the position now is, "There may be some legal ambiguity about it." Is that the situation we are in?

KATHRYN BOYD: No, I would not put it that way. There is a system in place for DPC to write to, of course, agency heads and statutory officers, and statutory officers do provide those declarations voluntarily. I would have to take that on notice and check what letters were provided to the commissioner in this instance, but it is incorrect to say there is not a process in place for that.

Mr DAVID SHOEBRIDGE: Did DPC chase up the police commissioner for the four years of noncompliance?

KATHRYN BOYD: I would have to check the records on that, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Will you provide, on notice—indeed, as my colleague Mr Searle suggests, if at all possible, today—first of all an answer, which should be extremely achievable, but secondly, if possible, any actual correspondence that came from DPC to the police?

KATHRYN BOYD: I will take that question on notice and get back to you as soon as we can, today.

Mr DAVID SHOEBRIDGE: You see, Attorney, integrity has been an ongoing issue with the New South Wales Government and, at different times, the New South Wales police for decades and decades. Here we have, I would have thought, an unambiguous integrity breach, and yet nothing has happened. Indeed the Law Enforcement Conduct Commission's report reads like it is the PR report for former Commissioner Fuller and gives him glowing commendations. How does this happen?

Mr MARK SPEAKMAN: Mr Shoebridge, if you are impugning the integrity of the Law Enforcement Conduct Commission—

Mr DAVID SHOEBRIDGE: I am impugning this report, which reads like a PR report for the police commissioner, and it is not even signed or authored. We do not know who authored it from the Law Enforcement Conduct Commission.

Mr MARK SPEAKMAN: Mr Shoebridge, you have asked me repeatedly about the seriousness of any noncompliance with mandatory disclosure obligations, and I had not seen this report until now.

Mr DAVID SHOEBRIDGE: Lucky you.

Mr MARK SPEAKMAN: And I still have not seen it. Mr McKnight provides me with an extract of the report's findings, and it found that there is clearly no substance in any of the allegations that have been made against Mr Fuller. At the end of the day Mr Fuller has served 34 years of loyal service with the NSW Police Force and he has been responsible for significant reform et cetera. The evidence does not support a finding of serious misconduct or any misconduct at all. I do not know how LECC arrived at those conclusions because I have not seen or read the report, but at least it would suggest that our independent oversight body has considered that, whatever noncompliance there was by Mr Fuller in his disclosure obligations, that does not amount to a finding of serious misconduct or any misconduct at all.

Mr DAVID SHOEBRIDGE: How can the repeated failure to comply with the code of conduct and the serious legal obligation under the code of conduct to complete a written declaration of interest not be misconduct or lead to a negative finding against the head of the person responsible for New South Wales police?

Mr MARK SPEAKMAN: I am at a disadvantage compared with you because I have not seen the LECC report or read it. If the question is, if there is a mandatory disclosure obligation, is it a breach not to comply? Obviously, it is circular reasoning—by nature of being mandatory, yes, if that occurred that is a noncompliance. Does it rise to the level of serious misconduct or any misconduct at all? Apparently not in the opinion of our independent oversight body.

Mr DAVID SHOEBRIDGE: The Law Enforcement Conduct Commission suggested that the complaints against Mr Fuller were malevolent attempts to cause him harm, and critiqued the ABC investigation, at least implicitly. Are you aware of the fact that the Law Enforcement Conduct Commission never contacted the ABC about these matters?

Mr MARK SPEAKMAN: I do not have operational oversight of how the independent oversight body of the Law Enforcement Conduct Commission conducts its inquiries. There is an inspector and, if the ABC or others are dissatisfied with the reasoning process or the consultation process or the lack of signatures on a report and so on, they are all matters that can be taken up with the inspector.

Mr DAVID SHOEBRIDGE: Surely, Attorney, you can find out, as one of the Ministers responsible for the LECC, at least who authored the report. It is an extraordinary proposition that the Law Enforcement Conduct Commission would deliver a report with such haste, within a month of the allegations airing, and not even indicate who authored the report. Surely you can find that out.

Mr MARK SPEAKMAN: If you want to ask me on notice who authored the report, you can ask me that on notice and I will get advice.

Mr DAVID SHOEBRIDGE: Consider it asked. Attorney, are you aware of a KPMG review of Marrickville Legal Centre that was initiated by Legal Aid?

Mr MARK SPEAKMAN: Not specifically. I am aware of issues surrounding Marrickville Legal Centre, and there are potential governance issues concerning that and an aborted program in which it was participating. I am not aware of a KPMG report.

Mr DAVID SHOEBRIDGE: Marrickville Legal Centre was, on my understanding, trying to expand its services and do a joint project to provide migrant legal services, something I would have thought you would endorse, Attorney?

Mr MARK SPEAKMAN: My understanding is, when we announced increased funding for community legal centres several years ago we invited applications for new projects. One of the successful bidders was a joint venture between Marrickville, I think, the Inner City Legal Service, Redfern and Kingsford—a four-way joint venture for providing free legal services in that migrant employment space. I will invite Ms Hitter to supplement in a moment. My understanding was that Legal Aid found—and I think Marrickville were going to take the lead role in that joint venture. There were governance and other issues surrounding Marrickville that led to termination of Marrickville but the project continues with the other three legal centres. It may have been rebadged and renamed but, in substance, the project continues with the other three legal centres running it and there has been no disruption to client services. Would you like to supplement?

MONIQUE HITTER: Yes, thank you. That is correct. The service itself is continuing to be run by the three other legal centres for the third and final year of the funding. Marrickville Legal Centre's involvement ended on 1 July 2021.

Mr DAVID SHOEBRIDGE: That was a decision of Legal Aid, Ms Hitter?

MONIQUE HITTER: It was a decision that was made in the context of a number of considerations. It was communicated to Marrickville Legal Centre that the funding would be discontinued to it on 1 July 2021.

The Hon. ADAM SEARLE: Mr Attorney, in relation to the coronial inquest into the deaths of John, Jack and Jennifer Edwards, the Coroner made a number of recommendations that the Government should do various things. Most of those were directed to the police, but one, recommendation 6, was:

> That the NSW Government take steps to update the list of prescribed offences in cl. 5 of the Firearms Regulation 2017 to include any personal violence offences or domestic violence offences defined in the *Crimes (Domestic and Personal Violence) Act 2007*.

I appreciate that you are no longer the Minister with carriage of that legislation but as Attorney General responsible for the Coroner's Court, are you aware of where the New South Wales Government is up to in terms of responding to this coronial recommendation?

Mr MARK SPEAKMAN: I have never had portfolio responsibility for firearms legislation.

The Hon. ADAM SEARLE: No, but under the DV Act you did at one stage. I think at the last estimates you did, but you no longer do.

Mr MARK SPEAKMAN: I think I have still got crimes, domestic and personal violence. I have still got that.

The Hon. ADAM SEARLE: I could not see it on the list in the allocation of Acts.

Mr MARK SPEAKMAN: I have still got that.

The Hon. ADAM SEARLE: In which case, where are you up to with recommendation 6?

Mr MARK SPEAKMAN: That sits with the police Minister. It is not incorporating into what I will call my legislation. Something from firearms, it is the reverse. It is the firearms regulation incorporating definitions from criminal legislation for which I have responsibility.

The Hon. ADAM SEARLE: This might because of the way in which the Coroner framed the recommendation. A lot of the recommendations are directed to the police force but this one is directed to the New South Wales Government.

Mr MARK SPEAKMAN: Because it is a regulation.

The Hon. ADAM SEARLE: Do you have any visibility or any understanding of where implementation of this recommendation is up to?

Mr MARK SPEAKMAN: Well, it is supported. I will have to get back to you on the precise time, but it is certainly supported.

The Hon. ADAM SEARLE: I think even the police service generally supports this. I do not think there is any opposition. It is a regulation which could be changed fairly easily. You will take that on notice?

Mr MARK SPEAKMAN: I will take that on notice.

The Hon. ADAM SEARLE: In relation to the Kathleen Folbigg matter—I can feel you wincing.

Mr MARK SPEAKMAN: No, not at all.

The Hon. ADAM SEARLE: You would be aware that on 3 March there was a petition sent to the Governor and to you requesting a pardon based on certain new material. My understanding is that certain scientific evidence was raised at the 2019 inquiry by Commissioner Blanche, showing that the two girls, Sarah and Laura, had a certain genetic mutation which might have impacted on their death. But the actual detailed scientific study was not available to Commissioner Blanche when he did that report. That study was published in November 2000. It seems to, on my understanding, suggest that there might have been a genetic mutation explanation for at least two of the deaths. I understand some more work is being done in relation to the other two children. The Australian Academy of Science has released a letter it sent to you about that evidence and I think it has offered to brief you. Is that correct?

Mr MARK SPEAKMAN: It has.

The Hon. ADAM SEARLE: Will you take up that offer to inform your evaluation of these matters?

Mr MARK SPEAKMAN: No. I am approaching this as carefully, as thoroughly and as promptly as possible. I have been criticised for sitting on the petition for 12 months. In my view, that criticism is unfair. We have had the petition for a year and some grounds are set out in that petition. But, from time to time, the petitioner has added to the material that she would like us to consider. I have been waiting effectively for the case to close rather than drip-feeding senior and junior counsel. I suspect that the principal material on which they rely was supplied with the submission but there have been delays in closing their case and providing more material. There has been some dispute in the media about how many pages they supplied. Is it us wanting more?

The petition, I think, had about 700 pages. They have either provided or, by cross-reference, referred to another 1,200 pages. I am told that Crown Solicitors who are acting for me in this consider that senior and junior counsel who have been briefed need to look at another 2,000 or 3,000 pages to get the context—primarily all that has gone on before. I am conscious that, if there were to be a successful petition—I am not saying one way or the other whether it is successful—the utility of that success diminishes day by day if someone is sitting in prison waiting for that. So I am conscious that it needs to be resolved as expeditiously as possible. But until a few months ago, the petitioner had not closed her case. Senior and junior counsel have now been briefed in the matter and I would anticipate being able to say something within a month.

The Hon. ADAM SEARLE: Okay.

Mr MARK SPEAKMAN: In terms of the offer from the Academy of Science, having taken advice, the view I took is that I should not be receiving submissions and having private meetings with third parties. It is a matter for the petitioner to identify what she wants to rely upon. She has identified that, to some large extent she wants to rely upon the material and arguments of the Academy of Science. And to the extent that she has indicated that is the case, that will be taken into account in reaching a decision. But having taken advice, it is not appropriate for me to be having private hearings with people for or against the petition. It is done on the papers. This is a process that comes after a trial, after two appeals to the Court of Criminal Appeal, a special leave application to the High Court, a judicial inquiry—there has been a lot. This has gone through many judicial hoops, but, that said, the fact that that has occurred in the past does not mean that what is said to be now new material will not be looked at thoroughly and fairly to arrive at a decision.

The Hon. ADAM SEARLE: When were senior and junior counsel engaged?

Mr MARK SPEAKMAN: Initially, we engaged Hament Dhanji who took then took a Supreme Court appointment.

The Hon. ADAM SEARLE: I think that is probably your fault.

Mr MARK SPEAKMAN: It is my fault. I will take this on notice, in case I need to adjust the answer. But broadly speaking, junior and senior counsel may have been retained earlier than when I say Ms Folbigg closed her case but they had only been actively looking at it probably about three months ago.

The Hon. ADAM SEARLE: I take what you say about you felt it was not appropriate, or you were advised it was not appropriate, to meet with third parties who might be advocates. But, as I understood the Academy of Science, although what they were seeking to do was identify you as the decision-maker, they were wanting to make sure that you had the scientific information about the genetic mutations. Is that something that maybe senior and junior counsel might be availed of?

Mr MARK SPEAKMAN: To the extent that the Academy of Science has put everything in writing, senior and junior counsel will be looking at that, and Crown Solicitors, to advise me. If, to put it in legal language, they think that I need further and better particulars on something, then I expect they would advise me on that, but at the moment I do not anticipate that is the case. I anticipate that we have everything we need to form a view.

The Hon. ADAM SEARLE: So you will form a view and then what is the process? You make a recommendation, is it, to the Governor or to the Court of Criminal Appeal?

Mr MARK SPEAKMAN: I make a recommendation to the Governor. I will be very clear on this: It is not a tick and flick.

The Hon. ADAM SEARLE: No, I appreciate that.

Mr MARK SPEAKMAN: It is an exercise of an Executive role, not a judicial role. But there are very grave consequences that I take very seriously.

The Hon. ADAM SEARLE: I understand. I might have had some involvement in a similar process many years ago. Mr Attorney, I guess an alternative to the Governor exercising certain functions would be to direct the conduct of a coronial in relation to the deaths of the children. I understand coronials did not occur. Is that a possible secondary process you might consider in this matter?

Mr MARK SPEAKMAN: I, as Attorney General, have a power to direct an inquest.

The Hon. ADAM SEARLE: You do.

Mr MARK SPEAKMAN: I do not think the power has ever been exercised. I do not think that is part of the application here. There are other procedural possibilities. The applicant could have made an application to the court directly for an inquiry, to the Supreme Court. So there are two avenues: They could go to the Governor via me or they can go to the Supreme Court. They have elected to come to the Governor. I will get advice and I am getting advice as to whether or not there should be any remedy or relief and, if so, what form that would best take.

The Hon. ADAM SEARLE: And what is the application to you? Is it for the royal prerogative of mercy or is it a pardon?

Mr MARK SPEAKMAN: It is the application for a pardon, which is effectively the royal prerogative of mercy.

The Hon. ADAM SEARLE: Alright.

Mr DAVID SHOEBRIDGE: And, Attorney, under our constitutional system it is technically the Governor's determination that the Governor would act upon the advice of the Executive Council and yourself.

Mr MARK SPEAKMAN: That is correct. I think, among other things, the Government can probe and ask questions, but at the end of the day—

The Hon. ADAM SEARLE: The Governor will act upon advice.

Mr MARK SPEAKMAN: The Governor acts on the advice of the Executive Council.

Mr DAVID SHOEBRIDGE: And it is your role to take a recommendation to Executive Council. That is how it will work, is that right?

Mr MARK SPEAKMAN: That is correct.

The Hon. ADAM SEARLE: It does not have to go through Cabinet first; it is the exercise of your legal functions.

Mr MARK SPEAKMAN: It may or it may not go through Cabinet.

The Hon. ADAM SEARLE: Okay. I will not press you further on that.

Mr MARK SPEAKMAN: I just stress that at the end of the day it is not a political decision. It is an Executive decision, not a judicial decision.

The Hon. ADAM SEARLE: I think I referred to it as the exercise of your legal powers as Attorney General.

Mr DAVID SHOEBRIDGE: Attorney, I think anyone hearing that exchange between you and Mr Searle would recognise the seriousness with which you take the matter.

The Hon. ADAM SEARLE: There is no criticism of that.

The Hon. SHAOQUETT MOSELMANE: Attorney, a couple of questions on the Walama Court. The original proposal was to have it as a legislated standalone court. Is that still the case?

Mr MARK SPEAKMAN: No. The District Court is embarking on a list, a Walama List, that does not require any legislative underpinning; it is effectively a practice note.

The Hon. SHAOQUETT MOSELMANE: So that means it can be easily abandoned if the decision was to abandon it, basically? It can be easily abandoned as a practice note?

Mr MARK SPEAKMAN: It could, but at the end of the day it would be a decision of the court to do that, not an Executive decision. I think people are very keen to embark on this; it has got a lot of support. It is a pilot that is going to run for a number of years.

The Hon. SHAOQUETT MOSELMANE: I know that you have supported it pretty heavily in the media.

Mr MARK SPEAKMAN: I think it is something that we have got to try. We all know the dreadful statistics about Aboriginal over-representation. We have to look at ways to achieve those Closing the Gap targets. We have got a target of reducing adult Aboriginal incarceration by 15 per cent by 2031. That is going to be a very, very challenging target, and measures like this, if you do not try them and see whether they will work, you will never know. The other important aspect of it is it is not just about reducing offending and reducing incarceration; it is also about having Aboriginal communities having confidence in fair treatment in the justice system.

The Hon. ADAM SEARLE: Mr Attorney, I appreciate you said there is a lot of support for the proposition, and there certainly is. When I chaired that First Nations deaths in custody inquiry that recommended support for this, I think all of the legal fraternities and a lot of stakeholders certainly supported the establishment of the Walama Court, but they rather had in mind that it be supported by legislation to make it more robust. Is there a particular reason why we have gone down this practice note and special list road?

Mr MARK SPEAKMAN: This will be robust. It will be evaluated by BOCSAR to see whether if people go down the Walama stream they are more or less likely to reoffend. I anticipate there will be qualitative evaluations as well by what I will loosely call users of the system—the accused, lawyers, judicial officers, victims, social workers and so on—how they feel it is going. But this will be a robust pilot. If we are to pour more money into this, if I or whoever in five Attorneys-General time—however many we have—have to go to ERC and say, "I want money for this," there is going to have to be an empirical underpinning. So I am determined to make sure that it is a robust pilot that gathers that empirical underpinning.

The Hon. ADAM SEARLE: We had this discussion last time that currently there is that lack of empirical—but we agreed, I think, last time that if you do not try something new you will just get the same old outcomes.

Mr MARK SPEAKMAN: Others might dispute, but I do not think there is any direct empirical underpinning for this at the moment. There is what I call circumstantial underpinning—the Drug Court works, circle sentencing in the Local Court works, there is BOCSAR evidence there that they reduce reoffending. So borrowing concepts from there gives you cause for optimism that this will work as well. But unless we try, we will never know. Of course, it is not just a matter of do you or do you not; it is also how, and if it needs recalibration in some way down the line to make it more effective.

The Hon. ADAM SEARLE: Is the reason you have embarked on this pilot process simply because there was hostility within the more conservative elements of the Government to an innovation of this kind and this was something you could do without that kind of approval?

Mr MARK SPEAKMAN: I think, to be fair, where it is untried—and I know Victoria has something similar, but my understanding, and I am happy to be corrected, is that there might be some anecdotal evidence supporting it, but there is no direct evidence here. You do not want to set in concrete something that may or may not work. We are doing this because we are optimistic that it will work. I want BOCSAR to analyse it so that there is an evidentiary base to expand it and make it permanent. But the Youth Koori Court, that is a pilot as well, and we have expanded that to Surry Hills from Parramatta and I am certainly keen to see more of that. So no, it is not a matter of appeasing conservative elements; it is more a matter of making sure that if we are going to expand something in the future it works.

The Hon. ADAM SEARLE: I think I was more suggesting you were being blocked by conservative elements from doing something a bit more adventurous, but this reflects your own more cautious, gradualist outlook.

Mr MARK SPEAKMAN: It is an evidence-driven outlook. We have to reduce Indigenous over-representation in the criminal justice system. We have to try things. But if, contrary to my optimism, this does not work, then we have to be prepared to pivot and put money into things that do work, which might mean to pivot more into circle sentencing, or more Drug Courts or Koori Courts or justice reinvestment. We want to make sure that we are reducing Aboriginal over-representation, but, in fairness to the taxpayer and in fairness to Aboriginal communities, we have to make sure that every dollar we spend is having that result, that we are spending it in the best way possible, which is why it is a pilot and why BOCSAR will evaluate it.

The Hon. SHAOQUETT MOSELMANE: Are there KPIs, Attorney, against which the Government will assess—

Mr MARK SPEAKMAN: Not really. One of the aims is to reduce reoffending. But, as I said before, that is not the be-all and end-all. I want to promote Aboriginal confidence in the justice system. That is part of it as well.

The Hon. SHAOQUETT MOSELMANE: Is there a time frame for reassessment of whether it is going to—

Mr MARK SPEAKMAN: That will take several years because you have got to do a longitudinal study of offenders. If you want to work out are they reoffending, you are going to have to do it over a period which allows a year, two years to see whether people who are convicted of offences have reoffended. You have also got to do it over a sufficiently large cohort so that the results are statistically robust.

The Hon. SHAOQUETT MOSELMANE: It certainly seems the hope of the *National Indigenous Times*, which said:

> If the Pilot is successful after a number of years it is hoped that it will develop into a permanent Walama Court.

Mr MARK SPEAKMAN: That is my hope. But, when I go to ERC, or whoever is Attorney General down the future goes to ERC, and they want money for this, chances are, with competing priorities, they will need to demonstrate that it works. When I say "competing priorities", I am not talking about versus spending money on roads or trains or schools or hospitals but competing priorities within the diversion space: Is this the best way to spend money? I am optimistic that it is going to be a good way, but that optimism needs to be backed up with data.

The Hon. ADAM SEARLE: How many years will the longitudinal study take?

Mr MARK SPEAKMAN: I have not got precise advice from BOCSAR, but I think it is going to take, certainly, a number of years.

The Hon. ADAM SEARLE: Are you able to provide us on notice with the BOCSAR framework so we just know what they are working with?

Mr MARK SPEAKMAN: Sure. Certainly.

The Hon. ADAM SEARLE: You mentioned the Youth Koori Court. Where is that pilot up to? I know it has been extended from Parramatta to Surry Hills. What is the latest on that?

Mr MARK SPEAKMAN: I think it is being evaluated. There is an evaluation due in April, I think.

PAUL O'REILLY: That is correct.

Mr MARK SPEAKMAN: There is an evaluation due in April, an outcomes and cost-benefit evaluation, which is expected next month.

The Hon. ADAM SEARLE: Just changing gear a little bit to the issue of strip searches, there has been, I think, a couple of LECC recommendations on that. Also I think the special commission of inquiry on ice also made some recommendations. The recommendations are that the Law Enforcement (Powers and Responsibilities) Act be amended to provide more specificity in its definition of strip searches and guidance as to when they can and cannot be used. I think you are still the Minister responsible for LEPRA.

Mr MARK SPEAKMAN: I think I have joint responsibility with the police Minister.

The Hon. ADAM SEARLE: You do, with the police Minister. The Police Force supports the thrust of those recommendations, I think. Why is it taking so long to get some action on this? Can you tell us? Given the body of work that has already been done and the problems that have been clearly highlighted, particularly in the two LECC reports, what time frame for action could we expect?

Mr MARK SPEAKMAN: I cannot give you a time frame. I hope to have the matter resolved this year.

The Hon. ADAM SEARLE: Again before the election, just in case.

Mr MARK SPEAKMAN: Just in case, before the election. There were numerous recommendations in that report. I think three were directed to the Government. On one view, those recommendations were about clarity rather than adding to or subtracting from strip search powers and—

The Hon. ADAM SEARLE: It was quite clear from the reports that the police either misunderstood or that strip searches that should not occur were occurring or they were not occurring in the safe way that they should have been.

Mr MARK SPEAKMAN: I think police will say that they have done a lot of work in operational matters to address some of the concerns in that report. But I accept that three recommendations directed to the Government are still outstanding.

The Hon. ADAM SEARLE: This was more than two years ago. Can you tell us what the hold-up has been? Is it the institutional resistance to change? Is it disputes between Ministers? Or is it just simply at the back of the queue?

Mr MARK SPEAKMAN: No, it is certainly not at the back of the queue. It is an important matter. On the one hand, you want police to have appropriate powers to investigate potential crimes. On the other hand—

The Hon. ADAM SEARLE: You want those powers to be exercised lawfully.

Mr MARK SPEAKMAN: Exercised lawfully and also in ways that—as I have said before, I have never been strip searched, I have never seen a strip search. But I can imagine it is potentially very traumatic for the subject of that search. We want to make sure it is used appropriately and not overused but also that police have clarity about what their powers are.

Mr DAVID SHOEBRIDGE: Attorney, the report made it clear the police did not know what their powers are. In fact, police officer after police officer after police officer gave evidence to the Law Enforcement Conduct Commission that they had no idea what was and what was not a strip search and what the laws were that permitted them to undertake a strip search. That is a very fair summary of the LECC report.

Mr MARK SPEAKMAN: I do not know if it is a summary of the entire report. But certainly that is a theme that emerged from the LECC report.

Mr DAVID SHOEBRIDGE: That is now years ago, and we still have very imperfect, very unclear laws about strip searches. When are we going to get it fixed?

Mr MARK SPEAKMAN: As I said, I have got joint responsibility for this Act. It is not just my prerogative to bring something to Cabinet. It is the joint responsibility of the police Minister and me. I would hope that we will resolve the matter this year.

Mr DAVID SHOEBRIDGE: Attorney, you recall receiving representations from the Bowraville families, the families of three children murdered in Bowraville.

Mr MARK SPEAKMAN: Yes.

Mr DAVID SHOEBRIDGE: Can you remind the Committee when those representations were received?

Mr MARK SPEAKMAN: I have received various representations—

Mr DAVID SHOEBRIDGE: When the most recent representations—

Mr MARK SPEAKMAN: I do not recall, but I think you are leading to and I would accept it was some time ago.

Mr DAVID SHOEBRIDGE: Mr McKnight may be able to assist.

PAUL McKNIGHT: I am sorry. I do not know.

Mr DAVID SHOEBRIDGE: Attorney, it was a very significant amount of time ago. There was an initial response drafted by your department, which, I think you accepted at the time, went in error. Is that right?

Mr MARK SPEAKMAN: That is correct.

Mr DAVID SHOEBRIDGE: Then that was withdrawn.

Mr MARK SPEAKMAN: That was about a year ago, I think.

Mr DAVID SHOEBRIDGE: Indeed. The families are still waiting. Given how much they have been through, how do you explain yet another year of delay to the families, this time in just getting a substantive response to their correspondence to you?

Mr MARK SPEAKMAN: What they have been through over 30 years is heartbreaking. I acknowledge your robust advocacy on their behalf over many years. I can only apologise that we have not had a response by now. To be honest with you, I do not expect a response within weeks. It is not just me as the Attorney General deciding to respond. There are implications for other parts of government. Unfortunately, a whole-of-government response has taken a very long time.

Mr DAVID SHOEBRIDGE: The former police commissioner, Scipione, who I had many disagreements with—but I acknowledge his work in going up and apologising on behalf of the New South Wales police for the appallingly inappropriate way the police investigation was initially handled. But that took years and years. How long is a reasonable amount of time for the families to wait for a response to their most recent request for, if not ultimate justice in court, a measure of justice through the executive functions of the Government? What is a reasonable time to wait?

Mr MARK SPEAKMAN: I cannot put some sort of precise time on that. They have been very patient in very extraordinary circumstances. I am grateful for that patience, and I am trying to get it resolved as quickly as I can.

Mr DAVID SHOEBRIDGE: Can you give an indication of what is causing the delay?

Mr MARK SPEAKMAN: No, I cannot. I cannot do that in terms, but I can say it is not just a matter of me making an executive decision as Attorney General. There are other parts of government that would have to be on board—I withdraw that—I have to explore the onboarding of other parts of government before something could be done.

Mr DAVID SHOEBRIDGE: Is that in train?

Mr MARK SPEAKMAN: That has been in train.

Mr DAVID SHOEBRIDGE: It has been in train? Is that in train?

Mr MARK SPEAKMAN: I have had discussions.

Mr DAVID SHOEBRIDGE: Can you undertake to give the families as detailed an update as you can within a matter of days rather than weeks? They have been contacting me through their representatives—through Jumbunna, whose work I acknowledge in this space—hoping for something other than a vacuum from the

Government. Can you at least undertake to give them a very clear update and some kind of reasonable time frame that they at least may be able to hold the Government to account on?

Mr MARK SPEAKMAN: I will endeavour to provide them with an update within weeks. I cannot put a time frame on a substantive response and I cannot go into the detail of who has said what within Government.

Mr DAVID SHOEBRIDGE: Do you think it unreasonable that the families get an unambiguous apology from the State of New South Wales as at least the start of a measure of restitution for what they have been through?

Mr MARK SPEAKMAN: I do not want to pre-empt what is in a substantive response, but certainly—I have met them several times. I have gone up there as well, not to Bowraville but to Coffs Harbour. I cannot imagine what it must have been like for those families, what they have been through, and I acknowledge their extraordinary patience in the last 12 months and their resilience. But I cannot pre-empt what might be in a whole-of-government, substantive response.

Mr DAVID SHOEBRIDGE: Attorney, it is not just the mums and dads and brothers and sisters. It is now the nephews and nieces. This intergenerational trauma is being handed down. They deserve a rapid resolution, as best you can, to at least this part of this ongoing, appalling saga that they have been through. Do you accept that there is that obligation on the State Government to, as rapidly as possible, with as much justice as possible, end this element of their ongoing, deep problems with the State of New South Wales?

Mr MARK SPEAKMAN: I do.

Mr DAVID SHOEBRIDGE: We were exploring the Marrickville legal aid. Is it true that something in the order of $340,000 was withdrawn from Marrickville Legal Centre as a result of that determination?

MONIQUE HITTER: Mr Shoebridge, the exact number I would have to take on notice. But I am advised that the program that Marrickville Legal Centre was involved in with the three other legal community centres was ceased on 1 July 2021, and the funding was reallocated by the Government to the other three legal centres for this financial year.

Mr DAVID SHOEBRIDGE: The funding to the legal centres under that arrangement had been in the order of $170,000 to each legal centre over each year. So having that taken from them last year and this funding this year—that is where I came with a figure of $340,000. Does that reflect your general understanding of the matter?

MONIQUE HITTER: I would have to take on notice the exact figure of the funding that was allocated to all four legal centres prior to 1 July 2021. But I can say that the pilot itself was reallocated—the funding for that pilot was reallocated after 1 July 2021 for the remainder of the third and final year.

Mr DAVID SHOEBRIDGE: Was Marrickville Legal Centre also required to pay back $85,000 of unspent monies from the first year of operation?

MONIQUE HITTER: I would have to take that on notice, I'm sorry, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: There was a KPMG report commissioned in relation to the matter. Is that right?

MONIQUE HITTER: That is right.

Mr DAVID SHOEBRIDGE: Will you table a copy of the KPMG report? I will probably actually ask that of the Attorney General. Will you table a copy of the KPMG report, Attorney?

Mr MARK SPEAKMAN: I will get advice on that. That would be my present intention.

Mr DAVID SHOEBRIDGE: Can you explain, Attorney, why Legal Aid has issued directions to not disclose the report?

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

Mr DAVID SHOEBRIDGE: Can anybody from Legal Aid explain that here today?

MONIQUE HITTER: I would like to take that on notice, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Were you aware of the direction to not disclose the report?

MONIQUE HITTER: I was not aware of that direction, but I will take that on notice and I will provide advice.

Mr DAVID SHOEBRIDGE: Did the report make adverse findings against Marrickville Legal Centre in relation to the funding that was withdrawn from them?

MONIQUE HITTER: The audit was commissioned in order to review the accounts of Marrickville Legal Centre after concerns were raised about the way in which the funding was governed by them through their accounts. That audit was in relation to concerns about their books, essentially, and the findings resulted in the discontinuation of the program in terms of its being allocated across all four legal centres.

Mr DAVID SHOEBRIDGE: In terms of it being allocated across all four legal centres, did the findings make adverse conclusions against Marrickville Legal Centre in relation to this funding?

MONIQUE HITTER: I would have to take on notice what the exact findings were, but as a result of that KPMG audit, the funding was discontinued.

Mr DAVID SHOEBRIDGE: I have not read the audit, but it is my understanding that it largely vindicated Marrickville Legal Centre and challenged some of the adverse imputations that had been addressed to them by Legal Aid. Can you tell me if that summary is right or wrong?

MONIQUE HITTER: Can I take that on notice, Mr Shoebridge?

Mr DAVID SHOEBRIDGE: Attorney, will you undertake to review this matter?

Mr MARK SPEAKMAN: I will undertake to review the matter. What I in substance do will depend on what the results of that review are.

Mr DAVID SHOEBRIDGE: Marrickville Legal Centre provides an essential legal outreach, including advice to recent migrants and refugees. Taking more than $400,000 of funding from them over the last two years is a very serious matter. Were you briefed upon the decision to take that from Marrickville Legal Centre?

Mr MARK SPEAKMAN: I was. I think an important point to make is that their core funding and ongoing relationship with Legal Aid is unaffected and the quantum of funding for this project is unaffected. What has changed is that instead of being a four-way joint venture including Marrickville as the lead CLC, the same services are being provided—the same quantum of investment is being made—but it is by three CLCs rather than four.

Mr DAVID SHOEBRIDGE: Marrickville picked it up midway through, didn't they, because there had been problems with the initial way in which it was directed through another legal centre? Marrickville were in the unfortunate centre of picking it up halfway through, weren't they?

Mr MARK SPEAKMAN: I do not know whether that is true or not.

Mr DAVID SHOEBRIDGE: Were you not briefed on that?

Mr MARK SPEAKMAN: I received a brief about this issue. I do not recall what I was told about whether Marrickville was a lead agency from the word go or whether that is something that happened over time.

Mr DAVID SHOEBRIDGE: Attorney, could you seek through those officers who will be here this afternoon to get an answer on the disclosure of the KPMG report today, if possible?

Mr MARK SPEAKMAN: I will do my best.

Mr DAVID SHOEBRIDGE: Where are we up to on OPCAT?

Mr MARK SPEAKMAN: There is still a bit of a stand-off on OPCAT. The corrections Minister might be more familiar with it than I am. New South Wales supports Australia being a signatory to OPCAT, but to the extent that it imposes a greater expectation about custodial services in New South Wales, we say that any extra initiatives that should be undertaken should be at the expense of the Commonwealth and not the State, and there is still that impasse.

Mr DAVID SHOEBRIDGE: When you say "impasse", has the Commonwealth flatly refused to pay for the extension of oversight to New South Wales to comply with our international obligations on preventing torture?

Mr MARK SPEAKMAN: Can I take that on notice so I can give you a more specific answer? Broadly speaking, my understanding is that the Commonwealth declines to pick up any bill there is for recalibrating oversight et cetera of custodial services in New South Wales.

Mr DAVID SHOEBRIDGE: Have you sought a review, or any kind of an assessment, about whether or not, if not total, a very substantial implementation of OPCAT could be done by strengthening the statutory

independence of the Inspector of Custodial Services and strengthening the independence of the inspector's funding without significant additional cost?

Mr MARK SPEAKMAN: I will have to take that on notice. I have received briefs from time to time on OPCAT, but the primary portfolio responsibility rests with the Minister for Corrections.

Mr DAVID SHOEBRIDGE: When can we expect a response? Or are we just going to have an indefinite stand-off and therefore a continued failure to implement Australia's international obligations to prevent torture?

Mr MARK SPEAKMAN: It cannot go on indefinitely because, sooner or later, there will be OPCAT inspectors who will want to come here. I think that will bring the issue to a head. They were going to come here a year or more ago, but COVID postponed their arrival.

Mr DAVID SHOEBRIDGE: Have you been given, or has the New South Wales Government been given, any notice of international OPCAT inspectors intending to visit Australia or New South Wales?

Mr MARK SPEAKMAN: We got notice over a year ago, I think. Then those OPCAT inspectors, because of COVID, cancelled their visit. We did not cancel their visit; they cancelled their visit. To update you, I would have to take that on notice.

Mr DAVID SHOEBRIDGE: Can you table with that notice any communication you have had in relation to those OPCAT visits?

Mr MARK SPEAKMAN: I expect so, but I will get advice.

Mr DAVID SHOEBRIDGE: Mr McKnight, you were giving evidence earlier about there being one 11-year-old who had, I think you said, charges completed or criminal proceedings completed. I am failing to remember the exact form of words. Perhaps you could remind me what the form of words used were for that one matter for an 11-year-old?

PAUL McKNIGHT: I am not sure what you are referring to, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: In relation to criminal proceedings and prosecutions against 10- and 11-year-olds, you indicated that there had been some 18 matters finalised and completed against 10- and 11-year-olds. Then you gave a separate category for another matter involving an 11-year-old.

PAUL McKNIGHT: I gave you figures in two categories: charges proven, and charges brought and finalised.

Mr DAVID SHOEBRIDGE: Was the charges proven the one matter? I am more than happy for you to revisit your notes on it.

PAUL McKNIGHT: Give me a second to remind myself of which note.

Mr DAVID SHOEBRIDGE: I would hand you my note, but it does not shed a lot of light. I am not entirely sure anybody, other than a hieroglyphics expert, could read it.

PAUL McKNIGHT: Mr Shoebridge, we are talking about minimum age of criminal responsibility, aren't we?

Mr DAVID SHOEBRIDGE: I am now deciphering it. It says, "Proved, 11 years, one."

PAUL McKNIGHT: Yes.

Mr DAVID SHOEBRIDGE: What was the charge?

PAUL McKNIGHT: I think I can tell you the category of charge. Proven charge, it was a theft or related offence of the category of charge.

Mr DAVID SHOEBRIDGE: That was the only charge proved in that 12-month period against a 10- or 11-year-old?

PAUL McKNIGHT: My advice is that was the only charge proven, yes.

Mr DAVID SHOEBRIDGE: Attorney, reflecting on that evidence, that the only charge proved against a 10- or 11-year-old in that entire 12-month period was a charge of theft, do you accept that there is something going wrong with our criminal justice system when it comes to kids aged 10 and 11? What are we doing charging an 11-year-old with theft?

Mr MARK SPEAKMAN: Unfortunately, I cannot pre-empt where the Meeting of Attorneys-General will land, and I cannot pre-empt where Cabinet will land. On the one hand, you could say, "Why are we bothering prosecuting 10- and 11-year-olds if there is such a small number?" I suspect, on the other hand, some police will say, "In extreme circumstances, we have to expose some kids to the criminal justice system, not because we want to have a criminal record for them and not because we want them incarcerated, but it is a way to get court ordered diversion." I do not know the difference between the 18, on the one hand, whose charges were finalised and, on the other hand, the one where there was a proven case. I do not know how those 17 are made up. I would be speculating. You could argue the toss both ways. You could say, "Why are we bothering to prosecute 10- and 11-year-olds where you get one charge of theft, which is potentially not a very serious charge?" On the other hand, others will say it is a way to bring kids to diversion that they otherwise might avoid.

Mr DAVID SHOEBRIDGE: But the whole purpose of the Raise The Age campaign is to get to that diversion and get to that intervention without taking kids to court.

Mr MARK SPEAKMAN: That is right.

Mr DAVID SHOEBRIDGE: That is the whole purpose. If the only explanation for why this is happening is that it is the only way to get the services to help some of the most marginalised and needy kids in the State, does that not confirm the problem and confirm the urgency?

Mr MARK SPEAKMAN: I am not putting my own case; I am putting the case that I imagine would be put. Related to that, if we are to raise the age and have some alternative diversion mechanism in place, then you want to be sure that the diversion somehow can be mandated and that, if you are getting rid of a court mandating of diversion, that there is some other mechanism in place. Rather than having a theory of let us divert these kids because we know that therapeutically it is much better and their cognitive abilities are not fully developed potentially until they are 25—it is not just a matter of saying, "Have some alternative mechanism in place," but making sure that that alternative mechanism is and will be picked up. That is the challenge. It is a substitute for court ordered diversion. We are only talking about the most extreme cases. The vast majority of young offenders will be dealt with under the Young Offenders Act and not through this process. In these extreme outliers, we have to make sure that, if there is to be some raising of the age, there is some element of mandating or compulsion or assurance that these kids are going to get that diversion and that it is not an opt-in situation.

Mr DAVID SHOEBRIDGE: So, Attorney, why don't we start building that now?

Mr MARK SPEAKMAN: That is what the MAG process is about—to develop a model of potentially raising the age of criminal responsibility to 12 and to know what that model looks like, so that, when Attorneys-General and Cabinets around the country decide to raise the age or not to raise the age, they have a very clear understanding of what the alternative mechanism is for dealing with 10- and 11-year-old offenders and that it is likely to produce results.

Mr DAVID SHOEBRIDGE: On a totally different matter, Victims Services used to publish annual data profiles, but they ceased doing it in 2017-18. Instead, we get very minimal data published in annual reports. Was that a conscious decision to not publish Victims Services data? If so, why?

Mr MARK SPEAKMAN: It is certainly not a conscious decision by me.

PAUL O'REILLY: I am not aware of it being a conscious decision. The way that the data is reported now is through the annual report. That is just the—

Mr DAVID SHOEBRIDGE: But with almost none of the detail that used to be there in the annual reports. Did it just happen by accident that 90 per cent of the data no longer gets reported?

PAUL O'REILLY: Not being in the role at the time, I cannot answer that. I can come back to you on notice.

MICHAEL TIDBALL: We are happy to take that on notice and report back.

Mr DAVID SHOEBRIDGE: Attorney, could you also indicate whether or not you will be reinstating that comprehensive reporting that used to happen, at least up until 2017-18?

Mr MARK SPEAKMAN: I will certainly respond to that question.

The Hon. ADAM SEARLE: Mr Attorney, do we have an update on that question I asked you earlier about the timing of the Crown Solicitor's advice to the police?

Mr MARK SPEAKMAN: Ms Smith?

KAREN SMITH: Yes, 28 October.

The Hon. ADAM SEARLE: Last year?

KAREN SMITH: It was 2021.

The Hon. ADAM SEARLE: Mr Attorney, what has been the impact of the floods on the court system? I know that, for example, Lismore and Casino courts will not be operational next week. I think Murwillumbah and Kyogle are going back online. How many cases are being deferred as a result of the dislocation across the system? I assume western Sydney is also impacted.

Mr MARK SPEAKMAN: Mr O'Reilly?

PAUL O'REILLY: The situation has improved. Last week we had 10 courthouses that were closed. They were mainly in the north. They were Maclean, Kempsey, Lismore, Ballina, Byron Bay, Murwillumbah, Mullumbimby, Casino, Singleton and also Windsor. This week's situation is better. We have only six closed. Casino and Lismore are the most seriously impacted. Maclean, Mullumbimby, Murwillumbah and Kyogle are also still closed but will be open soon. There are other courthouses around the State that have very minor impact but business is still running as normal. In western Sydney the impact is not significant at all. We have not yet calculated the impact on the backlog—or we have not yet calculated the backlog—because right now our staff and magistrates, in the main, as well as District Court judges in those areas are, to be frank, flat out managing the adjournments and the interlocutory matters as best they can, using AVL. But once there is some breathing space, there will be an opportunity to calculate the backlog impact.

The Hon. ADAM SEARLE: I understand. There is so much more I could ask.

Mr DAVID SHOEBRIDGE: Do Government members have any questions that they wish to put to the Attorney or to any of the officials here?

The Hon. PETER POULOS: Good afternoon, Mr Attorney. Thank you for your contribution today. Do you have any final comments or any additional information that you wish to provide to this Committee before the session concludes?

Mr MARK SPEAKMAN: No, I just thank everyone for their interest and their incisive questions.

Mr DAVID SHOEBRIDGE: I take that as the closing of the Government's interrogation. Attorney, thank you and thanks to all the officers who are here. A number of questions have been taken on notice. To the extent that any clarity can be provided during the course of today's hearing, we would greatly appreciate that. Otherwise, the obligation is to provide answers within 21 days. I indicate to the officers, apart from yourself, who will be here this afternoon that there is a chance we may conclude by 3.30 this afternoon. It depends upon the efficiency of questioning and the efficiency of responses.

The Hon. ADAM SEARLE: No undertakings are being given.

Mr DAVID SHOEBRIDGE: No undertakings are being given, but we will endeavour to do that. With that, we conclude this morning's hearings.

(The Minister withdrew.)

(Luncheon adjournment)

The Hon. ADAM SEARLE: Welcome back to the afternoon session of Portfolio Committee No. 5 – Regional NSW and Stronger Communities, examining the portfolio of the Attorney General. Mr Tidball, I want to explore a matter that has arisen in other estimates hearings—in particular, local government. It relates to the disclosure made by Hawkesbury City Councillor Sarah Richards. The matter was raised in budget estimates. I believe, from newspaper reports, that Mr Cassel, the Secretary of the Department of Planning and Environment, had taken on board that issue because OLG, I think, falls now within DPE. Mr Shoebridge read out an extract from the NSW Electoral Commission handbook, which stated that the Electoral Commission did not have "a role to play in determining whether or not any claims or statements made in a candidate information sheet are factual". On the basis of that, Mr Cassel said they would investigate. Now, according to today's media, OLG has indicated that it does not have any role in doing that. So the issue is: Does that mean that it was the Electoral Commission after all? Is that something you can take on notice and investigate?

MICHAEL TIDBALL: Thank you, Mr Searle. I do not have a great deal of knowledge of this matter, but I am certainly happy to take it on notice and report back to the Committee.

The Hon. ADAM SEARLE: I understand. That is okay. For your information, it relates to the veracity of claims made by candidates for local government, who have to make certain declarations.

MICHAEL TIDBALL: Mr Searle, I gather that Ms Boyd may be able to assist.

The Hon. ADAM SEARLE: Ms Boyd might have something to say? Excellent.

KATHRYN BOYD: I will clarify for the Committee's benefit: I am here today because the Department of Premier and Cabinet supports the Attorney in relation to the electoral legislation and other legislation that he jointly administers with the Premier. The Electoral Act and the election funding and disclosures Act are two of those Acts. It is an offence to knowingly make a false statement in one of those candidate information sheets.

The Hon. ADAM SEARLE: It is.

KATHRYN BOYD: The department's understanding is that the Electoral Commission is responsible for investigating and enforcing offences relating to New South Wales elections.

The Hon. ADAM SEARLE: There was an earlier iteration of this in relation to Mr Doueihi, who was then the mayor of Strathfield. It was about the veracity of his declaration. My recollection is OLG did investigate and they did refer that matter to what used to be the Local Government Tribunal, I think it is now part of NCAT. I am trying to get a line of sight. I know, because I was a candidate for local government a few times and I had to make certain declarations. If those declarations proved to be false, whose job is it to enforce them?

KATHRYN BOYD: The department's position would be that that is, strictly speaking, the Electoral Commission but there might be views that the Electoral Commissioner has in relation to that that you might want to test with him.

The Hon. ADAM SEARLE: You will take that on notice and you will come back to me?

MICHAEL TIDBALL: Yes, Mr Searle.

The Hon. ADAM SEARLE: Again, I just want to make sure I am asking the right person the right questions or to whom these should apply.

MICHAEL TIDBALL: Yes.

The Hon. ADAM SEARLE: In relation to the last couple of years, we have had a difficult couple of years with COVID and now obviously floods. Unusually for a budget estimates hearing I am actually going to refer to the budget papers briefly.

MICHAEL TIDBALL: Yes.

The Hon. ADAM SEARLE: Budget Paper No. 2, pages 7-11, 7-12. Essentially, the information there is that there were about 25,000 cases deferred in the Local Court because of the pandemic. I wanted to see if there was a line of sight on whether that backlog has been able to be addressed and where that might currently be up to?

MICHAEL TIDBALL: Yes.

The Hon. ADAM SEARLE: And if you could divide it between civil and criminal.

MICHAEL TIDBALL: Very happy to take that question because the matter of the continued operation of the courts through the various exigencies with COVID has been a challenge. We have worked very closely with the various heads of jurisdiction, but obviously that includes the Chief Magistrate. What I might do,

Mr Searle, is deal with high level and then drill down. Then, if your question goes to the specificity of the response to COVID and the manner in which the court has dealt with that, we can also respond to any questions on that.

The Hon. ADAM SEARLE: Yes.

MICHAEL TIDBALL: The data I have at very high level—this is BOCSAR data I should stress—running from October 2020 through to September 2021, compared with the 12 months prior, is that in terms of the criminal case load of the Local Court, registrations increased by 2.2 per cent. Finalisations increased by 13.4 per cent, which is about 23,000 matters. Registrations just outpaced finalisations by around 200 matters, equating to an annual clearance rate of 99.9 per cent. The clearance rate during the previous 12 months had been 90.1 per cent. I can talk about processing time if that would assist.

The Hon. ADAM SEARLE: Not so much. I was more interested in what is the outstanding backlog from the 25,000 that were dislocated because of COVID—that is the figure in Budget Paper No. 2, page 7-12.

MICHAEL TIDBALL: Right.

The Hon. ADAM SEARLE: I am happy for you to take it on notice if you do not have it because again, I just wish to stress, this is not a gotcha moment.

MICHAEL TIDBALL: I gather that my colleague Mr O'Reilly is very keen to add—

PAUL O'REILLY: Very keen is an interesting choice. I can certainly talk about that backlog, it has reduced, the COVID-related dislocated backlog that you described.

The Hon. ADAM SEARLE: Yes.

PAUL O'REILLY: The current reading on that is 11,000 sentence matters and 8,000 defended matters.

The Hon. ADAM SEARLE: That is 19,000 all up, so you have got it down by about a third or a quarter.

PAUL O'REILLY: Yes, as well as having a very high clearance rate for the incoming work.

The Hon. ADAM SEARLE: No criticism. On the record, the Local Court is well-known as a very hardworking and efficient jurisdiction, so there is no criticism of the court. I am just trying to get a handle on the issues.

PAUL O'REILLY: Sure.

The Hon. ADAM SEARLE: There is mention in the budget paper about new investment in additional magistrates in the current budget.

PAUL O'REILLY: Sure.

The Hon. ADAM SEARLE: I know the Attorney has made a number of appointments. I think there are still seven vacancies outstanding on the Local Court. Is that correct or not correct?

PAUL O'REILLY: Not quite correct. There were eight positions as part of that decision, four of them are already in place and working, and the other four are due to be in place through this month and April. So the eight will be in place by April is the plan.

The Hon. ADAM SEARLE: And that includes any filling of any vacancies in the previous establishment?

PAUL O'REILLY: Yes, but we are anticipating some retirements after that period, so that will have to be managed as well.

The Hon. ADAM SEARLE: One matter that I have pursued on a number of occasions, including in my current role as chair of the inquiry into the coronial jurisdiction, is the resourcing of the Coroners Court. I understand there were about 5.2 FTE coroners who were magistrates, but I understood that was to be increased to 6.2 in the near future.

PAUL O'REILLY: Yes.

The Hon. ADAM SEARLE: Has that occurred?

PAUL O'REILLY: There are six full-time coroners and two part-time positions—roughly one day each per week.

The Hon. ADAM SEARLE: That is good. In relation to the backlog in criminal trials in New South Wales, how many trials in each of the District and Supreme courts have been delayed as a result of the COVID situation, or indeed any situation?

PAUL O'REILLY: I can describe the backlog implications. It may not be in exactly the terms you put the question, but I will have a go.

The Hon. ADAM SEARLE: I ask the question, you can answer in any way you wish to and if we have any differences—

PAUL O'REILLY: We can follow up.

The Hon. ADAM SEARLE: Yes, absolutely.

PAUL O'REILLY: Okay. I should say that a lot of this summary of numbers, backlog and forecast for when we will have it resolved, uses indicative numbers that have to be verified. They are subject to review as we get more information as the numbers firm up, but this is the best information we have at the moment.

The Hon. ADAM SEARLE: Of course.

PAUL O'REILLY: In the District Court, the number of pending trials has increased from the pre-COVID period when there were 1389 pending matters. It is now 1625 but I should say, in the lead-up to COVID there was a huge reduction due to some heavy work undertaken in the court. There has been an increase in pending matters in the District Court. That is likely to return to those pre-COVID levels in between December 2023 and December 2024 is the current forecast based on indicative figures. That could be reviewed. That will depend on what happens with the current outbreak, I guess. If we get back to normal business in say, April or May, we anticipate around December 2023 we will get back to pre-COVID levels. But if there is, say, another three month delay, it would be longer than that. That is the best possible estimate.

MICHAEL TIDBALL: Can I just add that one of the peculiarities embedded in the data through this period has been that the court has had to variably respond to the different waves and outbreaks. In June 2020 the Chief Judge directed that from 1 June, in person appearances would be permitted for particular matters but still subject to the discretion of the judge. Then obviously online virtual court appearances were still encouraged, but then as of 17 January this year in person appearances were again suspended. So it has been a variable pattern since COVID started two years ago.

The Hon. ADAM SEARLE: Do you have any data of those matters that were put into the backlog, how many of those have been able to have rescheduled trials?

PAUL O'REILLY: I can certainly describe how many were vacated and how many we have picked up again, but whether it is a direct line, I am not sure.

The Hon. ADAM SEARLE: Okay.

PAUL O'REILLY: Our estimate is around 500 trials were vacated in the District Court through the entire COVID period. But since jury trials recommenced on 25 October 2021, in between October and the end of the calendar year, the end of the term, 100 trials were commenced. Since the law term began again in January up to now a further 145 trials have commenced. Seventy-two of those are completed. Occasionally we will cancel one because there has been an impact of COVID that impacts on the jury, but the pick-up has been quite good since October. Taking the Christmas break into account, and that is 245 that have been reactivated.

The Hon. ADAM SEARLE: So nearly half?

PAUL O'REILLY: Yes.

The Hon. ADAM SEARLE: That is good.

PAUL O'REILLY: Roughly speaking, yes.

The Hon. ADAM SEARLE: Working at that level, should we expect the backlog, all things being equal, to be essentially ruled off by the end of the year or middle of next year?

PAUL O'REILLY: No, as I said earlier, we are using the pre-COVID backlog or pending case load as the target to get back to, because, you may recall, in the short years before COVID-19 there were some reforms which really supported the District Court to achieve a big cut in the backlog and, that is the improvement point that the District Court is seeking to get back to. Again, depending on when we get back to normal, the best estimate we have now, subject to review, is between December 2023 and December 2024.

The Hon. ADAM SEARLE: What about the Supreme Court? What are the equivalents for there?

PAUL O'REILLY: For the Supreme Court, I will talk about criminal, civil and criminal appeal and civil appeal categories. In the criminal jurisdiction in the Supreme Court, efficiency is improving. There are 128 pending matters at December, which is 4.5 per cent less than the previous year. In 2021 the Supreme Court

completed 42 jury trials, with a further 34 scheduled between now and August. So they are really getting through the work. In the civil jurisdiction, there were 6,185 pending matters at December, which is actually an increase on the previous year—6 per cent. There are 219 pending matters in the criminal appeal court, which is an increase on the previous year. In the civil appeal court, we have 165 pending matters at December, which is 2.9 per cent less than the previous year.

The Hon. ADAM SEARLE: Do we have any idea about how many defendants are being kept on delayed remand due to the backlog in the criminal trials?

PAUL O'REILLY: Not with me.

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

MICHAEL TIDBALL: We can take that on notice, Mr Searle.

The Hon. ADAM SEARLE: I would also like to know, if we do know, the average length of that delayed or extra remand time occasioned by the backlog for each of the courts you have the data for. That would be very useful.

MICHAEL TIDBALL: Yes.

The Hon. ADAM SEARLE: There seems to have been, at least amongst judicial officers, mixed views about the efficacy of the online hearings. Some judicial officers have said it actually has improved things in that they have been able to watch people's demeanour. I think some of them have managed to record it themselves so they have been able to play things back and slow things down and watch witnesses in more detail than they are able to in an in-person hearing. Others say it is no good in terms of evaluating credit and candour and those sorts of difficult issues, particularly in matters of contested evidence or obviously criminal trials being the really good example. Has any consideration been given to evaluating some of the COVID responses, of necessity, to work out whether or not the adaptations to the legal system have made things maybe less fair or more fair or what the impacts have been?

MICHAEL TIDBALL: I should, in a moment, refer that question to Mr O'Reilly, who can give perhaps a more granular response than I, but I can certainly indicate that amongst the heads of jurisdiction which I have spoken to there is a real interest in, when things normalise, actually having a look back at the learnings and what it has meant. I think there is a willingness to interrogate those questions but nothing, to my knowledge, formal has been instituted at this stage.

PAUL O'REILLY: That is true. Part of that is our role as the administrators or the supporters of the judiciary in running their courts. We do have a program of digitising a lot of the processes and video linkages and tools to support that. We have accelerated some of that in response to COVID because that has allowed us to keep matters moving where it is appropriate to use video link and similar technology. We will keep that work going but all of it is done in consultation with the judiciary who clearly have views about that. We have been doing that work. It is progressing now, but again—a bit similar to one of my responses before the break—we really are focused on the doing at the moment.

The Hon. ADAM SEARLE: I appreciate that.

PAUL O'REILLY: As you would appreciate, some court lists are hundreds per day and if we lose a day in a court, it is a lot of work to reorganise all of that. The focus is on the doing, and we will shift to the measuring and evaluation shortly, but that would really be done hand in hand with the heads of jurisdiction.

The Hon. ADAM SEARLE: That is really good to hear because obviously it is a matter of great interest not just in the legal—

PAUL O'REILLY: And investment too. There is big investment in that, so we need to make sure it is the right move and that it is used in a way that supports the system and court users.

The Hon. ADAM SEARLE: Certainly. Mr Tidball, at previous budget estimates the then acting secretary of the department, Ms D'Elia, said that some of the things that government was doing to address court delays was to possibly look at renting additional office spaces. Were any additional spaces rented to deal with either backlogs or—Mr O'Reilly, you are probably the best person to direct the question to.

PAUL O'REILLY: We did rent the additional space to support the resumption of jury trials in October because we needed space that was adequate for running rapid antigen screening in a way that had enough physical space so people could report to the court, go to the room that had been allocated for RAT screening, and then, once they came through that, they would then go to the empanelling process for juries. In some locations, the courthouse has space for that. In others it really does not. A good example is the Downing Centre where there was

a hall hired across the road that was used for that. I cannot remember the exact number but a significant number of venues were hired and remain with us at the moment so we can keep those trials moving.

The Hon. ADAM SEARLE: How many extra rooms or properties, or however you have characterised them—how many were rented and for what period of time?

PAUL O'REILLY: From October, and they are still being rented. The exact number, I could not tell you. It is less than 20, I believe, but I will come back to you with the exact number. I will take that one on notice.

The Hon. ADAM SEARLE: Is it only in the CBD?

PAUL O'REILLY: Mainly in the CBD.

The Hon. ADAM SEARLE: Not in any of the regional or suburban—

PAUL O'REILLY: Yes.

The Hon. ADAM SEARLE: You have got the justice precinct, for example, at Parramatta. Is that one where you might have—

PAUL O'REILLY: I believe there is enough space in those buildings already but the juries in the District Court, for instance, have been running at 16 locations around the State, so we have hired venues in a number of locations to support that, but it might be better if I take it on notice and give you the list of locations.

The Hon. ADAM SEARLE: Absolutely. So the leases are still in place—that is good to know—until, did you say October?

PAUL O'REILLY: No, since October.

The Hon. ADAM SEARLE: From October, until—

PAUL O'REILLY: We would work with the Chief Judge of the District Court to navigate that and work out when they are no longer needed.

The Hon. ADAM SEARLE: These are only for District Court matters?

PAUL O'REILLY: Yes.

The Hon. ADAM SEARLE: Have you had to do the same things in terms of providing extra spaces for RAT testing and the like for either the local or the supreme courts, or is there enough space?

PAUL O'REILLY: No. In some places, or many places, both jurisdictions use the same facilities so we have been able to do that. The main thrust of additional venues was to support resumptions of trials in the District Court. That was the main reason for it.

MICHAEL TIDBALL: Can I supplement if I may? The performance of NCAT has been notable just in response to your questions through this experience. NCAT moved to conducting all stages of its hearings by phone as of 30 March. Face-to-face hearings are only conducted with prior approval of the President and, at this stage, that has continued through to now, but NCAT curiously has had a clearance ratio of 102 per cent, which indicates that—

The Hon. ADAM SEARLE: They are getting on top of the backlog.

MICHAEL TIDBALL: They are getting on top of the backlog, yes.

PAUL O'REILLY: There is no notable backlog from COVID in NCAT. It has really been very efficient.

The Hon. ADAM SEARLE: I will follow that up later.

Mr DAVID SHOEBRIDGE: Mr McKnight, I am sorry to go back to this dataset. I should have asked the series of questions all at once. But we are going back to the dataset about criminal proceedings against 10-, 11-, 12- and 13-year-olds.

PAUL McKNIGHT: Absolutely. I can answer one of the questions I took on notice earlier if you are interested in me doing that. The question you asked that I took on notice was how many children in the age group 10 to 13 had entered sentenced custody. The answer is none, in all those age groups, in that period.

Mr DAVID SHOEBRIDGE: The only time children aged 10 to 13 have been in jail in New South Wales is when they have been held on remand?

PAUL McKNIGHT: That is right.

Mr DAVID SHOEBRIDGE: Obviously there are observations on that, but it does not feel right asking for opinions in the absence of the Minister.

PAUL McKNIGHT: That will probably call for policy.

Mr DAVID SHOEBRIDGE: I think it might. In terms of the children aged 10 to 13 who were held in detention, all on remand it appears, do you have a breakdown to the extent to which they were identified as Aboriginal and Torres Strait Islander?

PAUL McKNIGHT: I do.

Mr DAVID SHOEBRIDGE: Could you let me know?

PAUL McKNIGHT: I can. There were two data sets I gave you, a data set of all admissions and a data set of unique admissions. For all admissions, there were no 10-year-olds who entered remand custody. For 11-year-olds, there was a total of nine: one was non-Aboriginal, seven were Aboriginal or Torres Strait Islander, and one was unknown. For 12-year-olds—we are still in all admissions here—there were 72 in total: 13 were non-Aboriginal, 56 were Aboriginal or Torres Strait Islander, and three were unknown.

Mr DAVID SHOEBRIDGE: Mr McKnight, I think I misrecorded the data for the 11-year-olds.

PAUL McKNIGHT: It was nine total: one non-Aboriginal, seven Aboriginal or Torres Strait Islander, and one unknown.

Mr DAVID SHOEBRIDGE: And then for the 13-year-olds?

PAUL McKNIGHT: You will recall the total was 212: 101 non-Aboriginal, 96 Aboriginal or Torres Strait Islander 96 and 15 unknown. Then for unique admissions, the numbers are lower. Again zero for 10- year-olds. For 11-year-olds, you will recall the total was six: one for non-Aboriginal children, four Aboriginal or Torres Strait Islander children, who were 11, and one unknown. For 12-year-olds, the total was 25: nine for non-Aboriginal, 13 Aboriginal or Torres Strait Islander children, and three unknown. For 13-year-olds, the total is 107: 52 for non-Aboriginals, 44 Aboriginal or Torres Strait Islander children and 11 unknown.

Mr DAVID SHOEBRIDGE: I think we can safely say, can we not, that is a grossly disproportionate representation of First Nations children being held in prison on that data?

PAUL McKNIGHT: The overrepresentation of Aboriginal people in the criminal justice system is real, yes.

Mr DAVID SHOEBRIDGE: Mr O'Reilly, do you have any court data on the overrepresentation of children in the Children's Court?

PAUL O'REILLY: Not with me, I do not believe, no.

Mr DAVID SHOEBRIDGE: Is it available? Is Children's Court data broken down into defendants being First Nations and non-First Nations?

PAUL O'REILLY: I would have to check that for you.

PAUL McKNIGHT: It would be.

Mr DAVID SHOEBRIDGE: Mr O'Reilly, will you give a breakdown, if you can, by offence category or by offence for Children's Court, based on whether the children being proceeded against identify as Aboriginal and Torres Strait Islander?

PAUL O'REILLY: Certainly.

Mr DAVID SHOEBRIDGE: If you can, will you do that for the past three financial years if that data is available?

PAUL O'REILLY: We will.

Mr DAVID SHOEBRIDGE: To whom do I direct questions in relation to victims' services?

PAUL O'REILLY: That is me.

Mr DAVID SHOEBRIDGE: Do you know how many internal and external reviews were lodged or have been lodged this financial year to date?

PAUL O'REILLY: I believe my number for reviews ends in June. I will just double check that. Yes, it is 2021. I do not have anything from July to December.

Mr DAVID SHOEBRIDGE: Is that going to be the situation for pretty much all data requests I make about victims' services?

PAUL O'REILLY: No. I will have some data up to December but not that particular one. This was asked in supplementary questions in November.

Mr DAVID SHOEBRIDGE: Indeed.

PAUL O'REILLY: And the data is in response to that.

Mr DAVID SHOEBRIDGE: One of the questions that was asked in supplementary estimates was about the consultation undertaken when changes were made to victims' services policies and what consultation was undertaken with victims and survivors. I could read the answer to that question but it would take some time. It just generally spoke about generic consultation. Do you have a policy in place, when changes are proposed to be made that have significant impact on victims' services? Do you have a policy that requires you to undertake consultation with victims and survivors to endeavour to understand what the impact will be?

PAUL O'REILLY: I am relatively new to this portfolio and I have not implemented such a policy. I am aware that the position is that the victims services team will use the Victims Advisory Board, which is the board established with the Attorney General, and also the victims of crime interagency group which includes government agencies and various peaks and legal centres. We will use those groups to consult.

Mr DAVID SHOEBRIDGE: Apart from those groups, there is no outward reach to the thousands and thousands of victims that have come through?

PAUL O'REILLY: There certainly has been. I have certainly been told about contact that our staff have had with victims in relation to changes, but I am not aware of any particular process.

Mr DAVID SHOEBRIDGE: Mr O'Reilly, will you provide on notice the number of internal and external reviews from 1 July 2021 to date?

PAUL O'REILLY: Yes, I can.

Mr DAVID SHOEBRIDGE: Will you also advise how many appeals have been made to either the Supreme Court or the Court of Appeal from determinations of victims' services for the same period?

PAUL O'REILLY: On notice, yes.

Mr DAVID SHOEBRIDGE: One of the reasons I am asking these questions is because all of this data was available at a very granular level up until the financial year 2018, and there is enormous frustration in the sector that they have no transparency on what is actually happening, minimal transparency on what is happening, at victims' services. Has that frustration been communicated to you, Mr O'Reilly?

PAUL O'REILLY: Not me personally. I have been in the role for a short period and it has not been communicated to me. As I said in a previous response, this change in the way data is presented publicly happened before I arrived. We will have to come back to you possibly with a rationale around why it happened.

Mr DAVID SHOEBRIDGE: I am sorry, I did not mean to talk over you. Mr Tidball, there are various obligations and general principles under the Government Information Public Access Act effectively requiring government agencies to proactively publish data and information such as this. Will you seek a review about whether the GIPA Act principles have been complied with in relation to victims' services data by that reduction in publication of data in the past four years?

MICHAEL TIDBALL: Yes. I hear your concern Mr Shoebridge and I am certainly able to commit to looking at the application of the GIPA Act. But going to the spirit of the question, it is apposite that there be appropriate transparency and data available to indicate the performance of the scheme, and I have taken that out of other questions as well.

Mr DAVID SHOEBRIDGE: Mr O'Reilly, I have got pages and pages of questions seeking, effectively, the data that used to be published. We could spend time going through that because of the frustration of the sector—and I do not blame you for it, noting when you came into the position.

PAUL O'REILLY: I understand.

Mr DAVID SHOEBRIDGE: We could wait after 3.30 p.m. to go through these questions. A far more effective response would be a kind of institutional response to reflect upon this to seek to provide as much transparency as possible.

MICHAEL TIDBALL: I hear that, Mr Shoebridge, and I am happy to commit to looking at the appropriate reporting framework for Victims Services.

Mr DAVID SHOEBRIDGE: Just so there is no ambiguity about where these concerns come from, as a result of changes that have been made in the last few years to Victims Services, there is now a far greater onus on victims of crime to present their own evidence, to do it in a 12-month time frame, and the sector that have communicated with me on multiple occasions say that this particularly impacts victims of domestic violence and sexual assault crimes, who are often not in a position to present that and they want to be able to see what has happened to those categories of offences and see if they are getting fair access to Victims Services. So I just want to be clear it is one of the primary concerns that we have in this space. Have those concerns ever been raised with you, Mr O'Reilly, about how particular categories of offenders have particular difficulty navigating the Victims Services system?

PAUL O'REILLY: Not personally to me, no, but then again it has been a short period and a lot of that was Christmas shutdown, so it is probably just a question of the time frame. I am not questioning your proposition.

Mr DAVID SHOEBRIDGE: No, but could I ask just for a response from you, Mr O'Reilly, and you, Mr Tidball, about what, if anything, we can expect in terms of the timing of review or the provision of data, if you could take that on notice?

MICHAEL TIDBALL: Certainly, and I should just make the point that Victims Services is not a standalone agency; it is part of DCJ, so it falls directly within my responsibilities. I would be prepared to commit—and I am looking to Mr O'Reilly when I say this—to look at this carefully over the next quarter.

Mr DAVID SHOEBRIDGE: Alright. Thanks, Mr Tidball. I appreciate it. Ms Boyd, did you manage to identify what, if any, communications had gone from DPC to the commissioner?

KATHRYN BOYD: I did. DPC did not write to the commissioner. The commissioner is employed by the Minister for Police. DPC writes to the heads of agencies that are employed, effectively, by the secretary of DPC. The secretary of DPC will write to all of the department secretaries inviting them to make their annual declaration in accordance with the Public Service Commission's direction. The DPC secretary will also write to office holders within the DPC cluster who are not required to make the declaration but inviting them to do so voluntarily. Given that the commissioner for police is not appointed or employed by the DPC secretary, there is no routine communication to that office holder in relation to annual declarations, but of course DPC encourages all public officials to make regular written disclosures, and that is best practice.

Mr DAVID SHOEBRIDGE: The code of conduct is unambiguous in this regard, requiring the Commissioner of Police, as well as a number of other separate agency heads, to provide the disclosure to DPC. You are aware of that, and I am happy to read out the section from the code of conduct if you require that.

KATHRYN BOYD: I think if you are referring to the Public Service Commissioner Direction No. 1 of 2015, there may be a bit of ambiguity in that regard in terms of the commissioner for police not being identified in schedule 1 of that direction, but that is really a question of form over substance. Of course, all heads of agencies ought to make appropriate conflict of interest disclosures and I think the LECC report, which I did have the opportunity to read over the break, indicates that the police commissioner did make verbal disclosures to his employer, being the Minister for Police, and that those interests did not result in any improper conduct on behalf of the commissioner.

Mr DAVID SHOEBRIDGE: The report that I read, Ms Boyd, said that once in 2019 the commissioner made some form of verbal disclosure to the Minister. Are you aware of any verbal disclosures that covered 2017, 2018, 2019 or 2020, apart from that one incident?

KATHRYN BOYD: No, I am not aware of any verbal disclosures.

Mr DAVID SHOEBRIDGE: Unless I misread the code and the LECC report, it made it very clear that the obligation was not to provide a verbal disclosure but a written disclosure.

KATHRYN BOYD: That appears to be the view of the LECC, that there was an obligation to provide a written disclosure, and it appears that the LECC has looked at the substance of the matter and, yes, while there was, in their view, a failure to provide a written declaration, the substance of it was that there was no improper conduct. But that is the view of the LECC and I do not wish to comment on the LECC's views in that regard.

Mr DAVID SHOEBRIDGE: What about the code of conduct itself that says any senior executive in the teaching service, the NSW Police Force, the transport service of New South Wales and any other service of the Crown must make a written declaration annually, contained in, I think, 3.5 of the code?

KATHRYN BOYD: Yes, I think that is right, but the code also specifies that statutory officers are not required to comply with that, and if you look in schedule 1 there is no reference to the Commissioner of Police in that schedule. So the matter has been raised with the Public Service Commission in terms of clarifying that, because I think we all agree that everybody in the public service should be making at least annual declarations of their private interests and managing—

Mr DAVID SHOEBRIDGE: Did the head of TAFE make annual disclosures?

KATHRYN BOYD: I think that is probably a question for the head of TAFE.

Mr DAVID SHOEBRIDGE: They are also employed by the Minister and therefore would not necessarily fall within the agency cluster in the way you say. So has the head of TAFE made annual disclosures?

KATHRYN BOYD: I am not aware of that. I think you would be better off asking the head of TAFE that question.

Mr DAVID SHOEBRIDGE: Does DPC have a register of who has made their code of conduct disclosures?

KATHRYN BOYD: We have records of who within the DPC cluster has made those declarations and we also have records of the secretaries that have. But I should stress that these obligations rest with the individual. DPC is not an enforcement body or an investigative body. We provide resources and guidance to the sector on these matters, as does the Public Service Commission, but, no, we do not have a register per se.

Mr DAVID SHOEBRIDGE: Did the previous police commissioner make disclosures in 2015, 2016 and 2017?

KATHRYN BOYD: I am not aware of that.

Mr DAVID SHOEBRIDGE: Would you make some investigations and advise us on notice?

KATHRYN BOYD: I will see what DPC holds, but, again, I am not sure that those would be required to be made to DPC prior to 2015 when the Public Service Commissioner's direction was made.

Mr DAVID SHOEBRIDGE: Which is why I asked you for 2015, 2016 and 2017.

KATHRYN BOYD: I can go and check, but I do not know.

Mr DAVID SHOEBRIDGE: I am not expecting you to know now, but you will provide an answer on notice?

KATHRYN BOYD: Yes, of course.

Mr DAVID SHOEBRIDGE: Including details of when those disclosures were made, if they were made?

KATHRYN BOYD: Yes.

Mr DAVID SHOEBRIDGE: Is DPC in the process of reviewing how disclosures are made by senior government agencies or are we just going to continue muddling on like this with ambiguity?

KATHRYN BOYD: I think that the relevant direction is a matter for the Public Service Commission and we definitely have raised the matter with the Public Service Commission in terms of that direction being some years old and requiring some clarification in terms of which obligations are mandatory and which are voluntary. So that work is being undertaken, but it might be more helpful for your purposes to ask the Public Service Commission that question.

Mr DAVID SHOEBRIDGE: When did you raise that with the Public Service Commission?

KATHRYN BOYD: I would have to take that on notice, but I believe members of my staff have reached out to the commission to alert them to the matter and I would have to check with them about when that occurred.

Mr DAVID SHOEBRIDGE: Was this matter raised with you before the LECC report was delivered yesterday?

KATHRYN BOYD: Yes.

Mr DAVID SHOEBRIDGE: You cannot provide any further detail on whether it was a month ago, 12 months ago—

KATHRYN BOYD: It is in the last 12 months, yes, definitely.

Mr DAVID SHOEBRIDGE: But you will give details of exact dates, as best you can, on notice?

KATHRYN BOYD: Yes, happy to do that.

The Hon. SHAOQUETT MOSELMANE: Thank you, Chair. Mr Tidball, I will ask you the questions and I am happy for you to share or refer to your colleagues or take on notice. I have a series of questions before me.

MICHAEL TIDBALL: Certainly.

The Hon. SHAOQUETT MOSELMANE: The most recent CSO annual report, 2021, has the percentage of people whose first language was not English going backwards, from 16.6 per cent in 2017 down to 11.4 per cent in 2021. What measures are in place to rectify this?

MICHAEL TIDBALL: Can I just ask you to repeat, if I may. Which report was it?

The Hon. SHAOQUETT MOSELMANE: This is the 2021 Crown Solicitor's Office annual report.

MICHAEL TIDBALL: I believe that I would need to take that on notice, but I note that the—

The Hon. SHAOQUETT MOSELMANE: There is a whole series of them. So I will ask them and—

MICHAEL TIDBALL: Yes. I think we will need to take that on notice.

KAREN SMITH: I am happy to respond if I can.

MICHAEL TIDBALL: Actually, the Crown Solicitor can respond.

The Hon. SHAOQUETT MOSELMANE: Great. Thank you.

KAREN SMITH: I absolutely understand the importance of inclusion and diversity. People from a non-English-speaking background is an important part of that. I think there is more work that we can and should be doing. That is an important part of our People and Culture function, to expand the diversity of our workforce.

The Hon. SHAOQUETT MOSELMANE: Would there be any particular measures that you would be taking to rectify this fall in the number of non-English-speaking background workers in the Crown Solicitor's Office?

KAREN SMITH: I think what we are addressing is diversity generally. We have got specific measures in relation to increasing the number of First Nations peoples working in the office. We are partnering with third parties to assist us to do that. We have got exemptions to be able to employ Aboriginal and Torres Strait Islander peoples in preferential treatment where we can. The reason for the fall in non-English-speaking background is difficult to pin down to one particular source. The numbers of people we employed generally dropped by a small amount. That may be part of it. The mix between lawyers and non-lawyers may be part of it. People's reporting may be part of it. I do not know. But the more diverse workforce we have, the better workforce we will have in terms of representing the people of New South Wales, representing the breadth of our clients and the people. So it is something I personally am strongly supportive of.

The Hon. SHAOQUETT MOSELMANE: Do you reach out to organisations like Multicultural NSW, for example, for assistance when you see that the diversity level is dropping in the Crown Solicitor's Office, or any other agency within the government departments?

KAREN SMITH: We certainly liaise strongly with the Public Service Commission and adopt their policies and procedures and take any advice or recommendations that we can get. We have a graduate program. That is our biggest source of new employment for lawyers. It is a widely respected program. That is where the majority of our new employment comes from, certainly in terms of lawyers coming into the organisation.

The Hon. SHAOQUETT MOSELMANE: Who do you publish it with?

KAREN SMITH: The graduate program? Who do we advertise—

The Hon. SHAOQUETT MOSELMANE: Yes.

KAREN SMITH: We go into universities, in law schools. We advertise it really, really broadly. We are really looking to get the best candidates we can and encourage people to come in and work in government.

The Hon. SHAOQUETT MOSELMANE: That takes me to the next question. You indicated a little about the First Nations people. Aboriginal and Torres Strait Islander representation is well below the 3 per cent benchmark and getting worse, falling from 3 per cent in 2016 down to 0.5 per cent in 2021. Again, what measures are you taking to rectify this?

KAREN SMITH: The percentages are very low. Because they are so low, it is affected by—one person can affect the percentage in a big way. But we are looking at having dedicated graduates from the First Nations people. It is really difficult to attract and retain First Nations graduates. They are in high demand. The work we do is really interesting and amazing work. The more First Nations people we can attract to the office the better, from my point of view.

The Hon. SHAOQUETT MOSELMANE: Can you tell me how many First Nations people work in the Crown Solicitor's Office? You said one person moving or leaving makes a difference in the percentage. How many are there? Do you know?

KAREN SMITH: I do. It might just take me a little moment to get it for you, but I do.

The Hon. SHAOQUETT MOSELMANE: No urgency. I am happy for you to take that on notice.

KAREN SMITH: I think I can get you that answer today. Just let me find it.

The Hon. SHAOQUETT MOSELMANE: Sure.

The Hon. ADAM SEARLE: I do not think time is of the essence this afternoon.

KAREN SMITH: Two.

The Hon. SHAOQUETT MOSELMANE: Two people. Out of—

KAREN SMITH: We have around 470 people.

The Hon. SHAOQUETT MOSELMANE: That is a very small number. I will go to the next one, which relates to people with disabilities. There has been no improvement in the overall percentage of CSO staff with a disability, 2.6 per cent in the last five years—less than halfway to the Premier's Priority of 5.6. For the last five years it has just been sitting on 2.6. There is no significant or any improvement, it seems, to reach the Premier's target of 5.6. Is the Crown Solicitor's Office taking any measures to improve that, to address this issue?

KAREN SMITH: We have an internship program where we get persons with recognised disabilities to come and work as paralegals or to work in the office. We are certainly keen to improve the diversity of our employees in that regard.

The Hon. SHAOQUETT MOSELMANE: If it is not working, are you looking at alternate ways of reaching out for people with disabilities that could work into—

KAREN SMITH: I do not think it is so much that what we are doing is not working. I just do not think it is quick. It is not immediate, and we are coming off a low base. So it takes time to see results. But we certainly are partnering with specialist third-party organisations to assist us both with First Nations people and with people with disabilities so that we can get people in the door and working for us. The more people we can get from diverse backgrounds, as I said, the better we will be as an office.

The Hon. SHAOQUETT MOSELMANE: The reason I asked that question is that, obviously, the Premier's Priority of 5.6 per cent would not have been plucked out of the air. It would have been based on some figures that would have been achievable to achieve the Premier's Priority of 5.6 per cent. It is sitting on 2.6 per cent. So I am sure there would be alternate approaches to reach out to people with disabilities to be employed in your office.

KAREN SMITH: I do not know. I think the programs that we have are very good and the people that we have coming through the programs that we have, they are very good. Certainly, we have had really positive feedback from the interns from these programs who are working with us. They may not always stay, but we would like them to. We definitely would like to see more people from different backgrounds working with us. There is definitely more we can do. There is always more that can be done. If people have suggestions about more things that we should be doing, I would be very happy to take those on board because I definitely support us doing everything we can to achieve the diversity targets that have been set.

The Hon. SHAOQUETT MOSELMANE: The next set of questions are to do with mental health. In 2020-21, CSO engaged a new EAP, employee assistance program provider, Benestar. What were the reasons behind this?

KAREN SMITH: I think we reviewed our existing program and re-tendered. The kind of work that we do means that it is very important that we have a strong and effective program that our staff can access.

The Hon. SHAOQUETT MOSELMANE: What were the total number of EAP service requests from CSO employees?

KAREN SMITH: I would have to take that on notice, but over what period?

The Hon. SHAOQUETT MOSELMANE: For the last year.

KAREN SMITH: The last financial year?

The Hon. SHAOQUETT MOSELMANE: My question is not specific, but for the last financial year.

The Hon. ADAM SEARLE: Maybe 2021 and year-to-date 2021-22.

KAREN SMITH: And that is the number of EAP requests?

The Hon. SHAOQUETT MOSELMANE: Yes, EAP service requests.

KAREN SMITH: I do not know that I will have that figure to hand, but I can take that on notice.

The Hon. ADAM SEARLE: On notice is fine.

The Hon. SHAOQUETT MOSELMANE: If you can, come back on notice with whether that is an increase on the previous year. What eyesight does CSO have over changes in employee welfare?

KAREN SMITH: Yes. Sorry, what was that question?

The Hon. SHAOQUETT MOSELMANE: What eyesight does CSO have over changes in employee welfare? I guess, oversight.

The Hon. ADAM SEARLE: Essentially, what do you do to make sure your employees are safe, well, healthy and satisfied?

KAREN SMITH: There are a number of things we do because it is really important. In terms of what we do, our people are everything. If we do not have a healthy, resilient and engaged workforce then we are not able to provide high-quality, cost-effective legal services, which is the purpose of us being here. We have a dedicated work health and safety officer, who has responsibilities for work health and safety, and she has put significant effort into COVID-safe plans for the office over the last 18 months or so. We have the PMES survey, which measures staff engagement, and we understand that the nature of the work that many of our lawyers are doing means that they are exposed to quite traumatic factual circumstances. That is a particular work health and safety issue for us to manage.

The Hon. ADAM SEARLE: Just on those issues—Mr Tidball, you are the cluster secretary.

MICHAEL TIDBALL: Yes.

The Hon. ADAM SEARLE: Obviously you are very new, so there is no criticism, but I would also like to understand what DCJ is doing more broadly. Particularly during the pandemic, you have had a situation where people are not so much working from home but also living at work. There has been an intensification of work, and my sense is that across the public sector there has been a very significant intensification of work—KPIs, throughput. This is a generalisation, of course, but there has been a massive productivity spike, at least initially in that first lockdown. I would like to see whether that is consistent with DCJ's experience. Also, what are DCJ and the other agencies associated with it doing to monitor staff welfare, to guard against burnout and that sort of thing? You will have the People Matter survey results.

MICHAEL TIDBALL: Yes.

The Hon. ADAM SEARLE: Those are the sort of things that we would like to start to develop a line of sight on as we hopefully move—I was going to say "beyond COVID" but I am not holding my breath—at least past these initial two rounds of COVID.

MICHAEL TIDBALL: Yes. I think that part of the question of a healthy workplace and wellbeing does turn on the question of a diverse workforce that is being well supported. One of the things that has genuinely impressed me coming into the organisation, particularly given the role that it has in serving communities across the State and particularly those with particular disadvantage, is the work that has been done to strengthen inclusion and the Inclusion Strategy 2021-2025. Without going into it now, that is a comprehensive document. In terms of targets and where that is at, I can speak to that as required or take it on notice. In terms of the care for our staff and their mental health and acknowledging the work of DCJ staff working with disadvantaged people—who are, of course, themselves strained during the COVID period and with impacts of the pandemic—there will be a portrayal of that. The impact of that will become clear in further PMES data as we move forward, and that is something which I could report on.

Having said that, I think the data indicates that there are some positive features in there. Something in which I have taken an interest as I have met, for example, with child protection teams or the central Sydney team

is the place of check-ins and heightened risk management. All of those sorts of things were factored in. In terms of the formality of that, clearly there was a degree of catch-up because some of this did develop under a very unique set of circumstances. But I would be very happy to take questions at a future hearing as I learn more and as the data becomes more abundant. Or if there are specific questions on data available to date, I am happy to take those on notice.

The Hon. ADAM SEARLE: I am glad you raised that because I have some. Consistent with the questions that were asked of the Crown Solicitor, do you have a line of sight on whether the percentage of employees whose first language was not English—whether in DCJ that has gone up or down or stayed relatively the same?

MICHAEL TIDBALL: Yes, I do, Mr Searle. I believe I have it on me now. Our workforce data shows that 9.5 per cent of DCJ employees shared that their first language—this was in the last survey—spoken as a child was not English. The public sector benchmark is 23.2 per cent. Notably the People Matter Employee Survey 2021 reported that 21 per cent of DCJ employees completing that survey shared that they spoke a language other than English at home. We actively monitor improvement in employee engagement scores for culturally and linguistically diverse employees through the survey. The overall employee engagement score for CALD employees was 70 per cent, higher than the 65 per cent score for all of our employees. I do have some other data, which I could keep working through. It is corresponding with disability and other groups as well.

The Hon. ADAM SEARLE: Please tell me about the disability experience and also your First Nations experience. Has it gone up or down, like the CSO?

MICHAEL TIDBALL: If I can firstly deal with Aboriginal and Torres Strait Islander employment, I am pleased to be able to advise the Committee that DCJ has made significant progress in improving the overall representation of Aboriginal people. In 2021 the estimated representation of Aboriginal people was 4.7 per cent, which is higher than the 3.7 per cent sector average in New South Wales—public sector benchmark of 3.3 per cent.

The Hon. ADAM SEARLE: Was that up on the previous year or down? I am happy for you to take that on notice.

MICHAEL TIDBALL: I would need to take that on notice, Mr Searle.

The Hon. ADAM SEARLE: That is fine, if you could.

MICHAEL TIDBALL: DCJ has also achieved the New South Wales public sector aspirational benchmark of 1.8 per cent Aboriginal representation in all salary bands, including senior leadership. DCJ has 5.6 per cent Aboriginal representation in the senior leadership pipeline, which includes employees at grades 9/10 and 11/12 and equivalent.

The Hon. ADAM SEARLE: Okay. Getting back to the work intensification issue, both here in Australia increasingly but also in some overseas jurisdictions one of the ways in which they have combatted work fatigue, if I can use that, is this notion of a right to disconnect. In this sense, what we have seen here is this creeping situation where—once upon a time, the after-hours email or the after-hours phone call would be out of the ordinary. Certainly in the public sector it has become the norm, and that has led to people feeling seriously overworked. This notion of drawing a line in the sand where at a certain time you are not really expected to answer the phone or respond to an email—in fact, people should not even be sending them after those times. Is that something that you might consider for your stressed workforce?

MICHAEL TIDBALL: Can I acknowledge that there has been a generally reported phenomenon throughout the economy and the population about the creep that has happened through the COVID period. Rather than me opining on it now, that clearly is something which I have an interest in. I would be happy to provide some subsequent advice on it. It is not something which at this juncture, in all honesty, I have had the opportunity to investigate.

The Hon. ADAM SEARLE: That is okay. We will have an ongoing conversation.

Mr DAVID SHOEBRIDGE: Mr McKnight, I think I should have had more coffee this morning because I have another question about that dataset.

PAUL McKNIGHT: What can I help you with?

Mr DAVID SHOEBRIDGE: Do you have any data about the longest period that a child aged 13 or under was held in detention? And do you also have the median period?

PAUL McKNIGHT: I have some length of custody data. I do not think I have data about the longest period. I have got some average data.

Mr DAVID SHOEBRIDGE: Why don't you give me what you have got?

PAUL McKNIGHT: In the 12 months to June 2021, the average number of days on remand for a 10-year-old was none, obviously, because there were none on remand. For an 11-year-old, it was 3.8 days; for a 12-year-old, it was 3.1 days; and for a 13-year-old, it was 7.1 days.

Mr DAVID SHOEBRIDGE: You do not have median times? You say you do not have maximum times there. Is that right?

PAUL McKNIGHT: I have average times.

Mr DAVID SHOEBRIDGE: Could you provide the maximum times as well on notice?

PAUL McKNIGHT: I would have to check whether that data was available or not. If it is available, I can provide it on notice.

Mr DAVID SHOEBRIDGE: Ms Hitter, I am going to show you two documents—actually, there are three documents. I will be careful how I describe them on record. One is a letter from the Legal Aid board from 9 March and another is a letter that went to the chair of the Legal Aid board on 21 December—so we have 9 March this year and 21 December last year. There is also some holding correspondence back from the chair of the Legal Aid board on 3 February 2022. I will show you the three documents. Are you familiar with those documents?

MONIQUE HITTER: I am.

Mr DAVID SHOEBRIDGE: The end outcome of that was that a request for review by the board in relation to those matters was declined by the chair of the board. Do we agree with that?

MONIQUE HITTER: The chair made a determination that it was not something that needed to be put before the board, yes.

Mr DAVID SHOEBRIDGE: If you look at the final paragraph of the 21 December correspondence—the request that, in the absence of the board looking at it, the matter be referred to the Attorney or to the Secretary of DPC. It is the final paragraph of the longer 21 December correspondence. Do you see that?

MONIQUE HITTER: I do.

Mr DAVID SHOEBRIDGE: Has that happened?

MONIQUE HITTER: Not to my knowledge.

Mr DAVID SHOEBRIDGE: Could the documents please be provided to the secretary?

MONIQUE HITTER: Sure.

Mr DAVID SHOEBRIDGE: Mr Tidball, I do not think it is appropriate to go into detail about the substance of these matters. It is fair to say matters of substantial concern were raised in the correspondence to the chair of the board. You will see from the most recent correspondence, which is the more darkly coloured copy, the response from the chair of the board. Do you see that?

MICHAEL TIDBALL: Yes, I do.

Mr DAVID SHOEBRIDGE: It shows that the matter did not go to the chair of the board and, indeed, in making that determination, the chair relied on a report from you, Ms Hitter. Is that right?

MONIQUE HITTER: I provided advice to the chair. That is correct.

Mr DAVID SHOEBRIDGE: Mr Tidball, one of the reasons this matter was raised with my office very recently was because there was a very real wish on the part of the person raising these concerns to have somebody outside of Legal Aid to review these matters. There was very real concern expressed back to me that, again, the decision was made entirely on information that has come from the agency where the concerns lie. Would you be in a position to seek further advice in relation to this and then, on notice, indicate what, if anything—and I am not asking for a course of action now—may be done in relation to this?

MICHAEL TIDBALL: Clearly, I am the Secretary of the Department. Can I express it this way because I am being very mindful of where my role starts and finishes? As the Secretary of the Department with a cluster responsibility I would certainly be happy to confer with the Attorney, who I believe is the appropriate person, and to seek to address that question of independence, which I believe is at the heart of what you are asking.

Mr DAVID SHOEBRIDGE: I am not expressing a view one way or another about Ms Hitter's involvement, the report or the conduct of the board.

MICHAEL TIDBALL: Of course.

Mr DAVID SHOEBRIDGE: But the request here is to have somebody outside of Legal Aid at least cast their eyes over these matters. Whether or not that is achievable and whether or not there is a process that can be done, you will consult with the Attorney and respond on notice?

MICHAEL TIDBALL: I hear you, and I will take that on notice. I am happy to, in appropriate terms, report back in due course.

Mr DAVID SHOEBRIDGE: Indeed. In no way am I dictating the nature of the response; it will be under advice. They are my questions.

The Hon. ADAM SEARLE: Mr Tidball, on the last occasion, on 1 November, when the Attorney and I were discussing the issue of the attempted police suppression order against the Friendlyjordies program, we were discussing the open justice project being conducted by the Law Reform Commission. There was an issues discussion paper put out, and there are a number of very good submissions on the Law Reform Commission website. The Attorney, I think, was hopeful at that stage that there would be a final report by Christmas. Again, to be fair to the Attorney, he did not specify which Christmas. I note that on the website this morning, and in weeks previous, there is still no final LRC report on open justice. Do you have any indication from the LRC when that might be forthcoming?

MICHAEL TIDBALL: With your permission, I would like to refer this to Mr McKnight.

The Hon. ADAM SEARLE: Please.

PAUL McKNIGHT: You will appreciate the Law Reform Commission is an independent body. It undertakes its deliberations free from whip cracking from the department, and it is reasonably important. At this stage we do not have a final date expected for that report, but I do know that they are working on finalising it as quickly as they can.

The Hon. ADAM SEARLE: Is it possible for you to take on notice that query? Obviously they are under no obligation to tell us. You cannot tell them when it is. But if you can ask, that would be very interesting and useful.

PAUL McKNIGHT: I am more than happy to get an indication for the Chair

The Hon. ADAM SEARLE: My next question is a bit odd. I was not expecting this. In another budget estimates hearing—Portfolio Committee No. 4 on Lands and Water on 9 March in relation to a question raised by my friend Mr Shoebridge—the issue came up about the Attorney General extending the interim arrangements in relation to the Catholic Metropolitan Cemeteries Trust. None of the departmental officials in PC 4 were able to assist Mr Shoebridge because their view was that this was a matter for the Attorney General. Mr Shoebridge asked whether the Attorney General had sought advice and, if so, what advice was given to the Attorney before extending the interim arrangements in relation to the Catholic Metropolitan Cemeteries Trust. Unless the Crown Solicitor was involved in that process, are you able to cast any light on this matter, either here today or on notice?

MICHAEL TIDBALL: Possibly with assistance, yes.

The Hon. ADAM SEARLE: That would be really good.

Mr DAVID SHOEBRIDGE: Thank you, Mr Searle—just pointing out my inadequacies.

The Hon. ADAM SEARLE: No. It is a very interesting issue.

PAUL McKNIGHT: I think it was probably a matter that you perhaps should have put to the Attorney this morning because—

The Hon. ADAM SEARLE: There are a number of matters that I should have put to the Attorney this morning. But time was against us; I had to prioritise.

PAUL McKNIGHT: It is not a departmental matter, as such.

The Hon. ADAM SEARLE: Just on that, Mr McKnight, the Attorney has a number of legal powers.

PAUL McKNIGHT: Sorry, I misspoke.

The Hon. ADAM SEARLE: But presumably he acts on advice from someone.

PAUL McKNIGHT: Yes, in his capacity as the Protector of Charities and the like, he seeks advice both from the department and from the Crown Solicitor's Office.

The Hon. ADAM SEARLE: My imperfect recollection is that when the Attorney exercises these legal powers, although the department might put—do not take this the wrong way—a policy lens over the top of it, the primary advice tended to come from Crown Solicitor's Office. Is that correct, Ms Smith? Do you have any recollection about this?

KAREN SMITH: I do know that we provide advice to the Attorney via the department on charitable trust matters.

The Hon. ADAM SEARLE: But what about this particular matter—extending the interim arrangements with the Catholic Metropolitan Cemeteries Trust?

KAREN SMITH: I do know of a matter involving cemeteries that is before the court. I am not sure if that is the matter you are talking about.

The Hon. ADAM SEARLE: No, it is not. These are the interim arrangements made under superseded legislation. I think temporary arrangements were extended to 2024.

Mr DAVID SHOEBRIDGE: Correct. This was a regulation-making power by the Attorney to maintain now-defunct regulations since Crown land changes to continue that arrangement in place so as the Catholic Metropolitan Cemeteries Trust continues to operate as it had before those legislative changes.

The Hon. ADAM SEARLE: We are interested in what motivated that. You would have thought the policy advice might have come from Crown Lands. They said it did not; they said it was the Attorney, which is fine. But the Attorney, presumably, acted with some input from you guys.

PAUL McKNIGHT: That information, I do not know. Perhaps it would be best if we took this question on notice and got the answer in writing from the AG.

The Hon. ADAM SEARLE: You certainly can. To assist, I have the relevant extract from the transcript of the PC 4 proceedings, which I am happy to hand up via the secretariat.

Mr DAVID SHOEBRIDGE: Has it been taken on notice on behalf of the department broadly, which includes the Crown Solicitor's Office?

PAUL McKNIGHT: On this occasion I think the answer will come back to you through the AG.

The Hon. ADAM SEARLE: That is fine. Have you got some questions? I have quite a few.

Mr DAVID SHOEBRIDGE: It flows from that. Ms Smith, there was some confusion in the Crown Lands hearing about whether or not proceedings were on foot in relation to CMCT trust property and the use of Catholic Metropolitan Cemeteries Trust funds. At one point it was indicated that there were proceedings on foot, and another time it was indicated that there may have been some legal advice exchanged. You indicated there were proceedings on foot. Can you tell me what those proceedings are and who the parties are?

KAREN SMITH: There are proceedings between the Rookwood General Cemeteries Reserve Land Manager and the Attorney General.

Mr DAVID SHOEBRIDGE: What is the nature of those proceedings?

KAREN SMITH: The proceedings are brought by the Rookwood General Cemeteries Reserve Land Manager, so the nature of those proceedings would be, I think, best asked of them. The Attorney General's interest in the proceedings is as the Protector of Charities.

Mr DAVID SHOEBRIDGE: The Attorney General must know the nature of the proceedings brought against him. I assume the department would know the nature of the proceedings brought against the Attorney.

KAREN SMITH: No, the Attorney General has sought to be joined to the proceedings as the Protector of Charities.

Mr DAVID SHOEBRIDGE: So was it declaratory? What is the nature of the proceedings?

KAREN SMITH: They are judicial advice proceedings concerning the management of the cemeteries.

Mr DAVID SHOEBRIDGE: Is it concerning the use of trust funds? The allocation of trust funds?

KAREN SMITH: No, I do not believe so. I think it is the nature of the trust.

Mr DAVID SHOEBRIDGE: Does it relate to assets held by the CMCT—the Catholic Metropolitan Cemeteries Trust?

KAREN SMITH: I do not think so, no.

Mr DAVID SHOEBRIDGE: Is the department in any way aware of any issues in relation to the use of the Catholic Metropolitan Cemeteries Trust funds, Mr McKnight?

PAUL McKNIGHT: I need to take that on notice.

Mr DAVID SHOEBRIDGE: Ms Smith, where are the Rookwood General Cemetery proceedings brought? In the Supreme Court?

KAREN SMITH: Yes.

Mr DAVID SHOEBRIDGE: In the equity division? Can you provide on notice the details of the proceedings?

KAREN SMITH: Yes.

Mr DAVID SHOEBRIDGE: Including the matter number. If you are able to, can you provide a copy of the filed pleadings, on notice? I am more than happy for you to take that on notice.

KAREN SMITH: I will take that on notice.

The Hon. ADAM SEARLE: If you are not able to do that, at least tell us what the matter number is.

Mr DAVID SHOEBRIDGE: I asked for that separately.

The Hon. ADAM SEARLE: Just turning back to victim supports, the longest time to determine an application for immediate needs in the financial year 2020-21 was 2,436 days, I think. Are you able to, on notice, advise as to what the delay was and what immediate needs that individual was seeking?

PAUL O'REILLY: Yes, we could take that on notice. I will do my best to answer that. But I would add, separate to that if it is okay, there has been a history of delays in responding to applications in Victims Services. Reforms implemented by the Commissioner over the past couple of years have really improved assessment times and service provision. But one of the issues there is that if a legacy or an old matter is resolved, the day count takes into account all of those days and the clock stops on the day it was resolved. So it is common for some applications to have very long time frames for that reason.

The Hon. ADAM SEARLE: Yes, but 2,000 days is a very long time.

PAUL O'REILLY: Of course it is, yes. So we will do our best to find an explanation. But for immediate needs, the current average time is 11 days.

The Hon. ADAM SEARLE: That is good. In 2021 apparently zero complaints were resolved through the commissioner. Is that because it is difficult to access the commissioner's dispute resolution function, or is there another explanation?

PAUL O'REILLY: I know that there are senior staff within the Victims Services team who review decisions and requests, respond to requests for review or deal with complaints. Whether the Commissioner has, herself, not responded to a complaint does not mean that the complaint was not managed or dealt with. Is there a particular complaint in relation to that?

The Hon. ADAM SEARLE: No, it was just more of a systemic—

PAUL O'REILLY: Process.

The Hon. ADAM SEARLE: Yes. In relation to victim support requests for counselling, financial assistance, immediate needs, financial support, economic loss and recognition payments—those four categories—can you tell us how many applications were received, awarded, pending or dismissed between 1 July 2021 and, roughly, the present?

PAUL O'REILLY: I can give you numbers up to December.

The Hon. ADAM SEARLE: That would be great.

PAUL O'REILLY: Yes, I can, from last July up to December. So for counselling, we have had 11,264 applications, with 98.6 per cent approval rate. For immediate needs, we have had 3,716 applicants. For economic loss, 4,800 applications. For recognition payments, there have been 7,570 applications. For each of those categories compared against the same period in the previous year—July to December in the previous year—

for counselling, that is an increase of 31.8 per cent. For the total financial assistance it is an increase of 29.1 per cent, and for recognition payment it is an increase of 30.9 per cent in applications.

Mr DAVID SHOEBRIDGE: Does the Court Security Act fall within the Attorney General's bailiwick?

PAUL O'REILLY: Yes.

Mr DAVID SHOEBRIDGE: On 11 March this year—so four days ago—a woman was arrested for allegedly posting an image from within the Downing Centre, which included the court list. On that court list was a matter of some notoriety—Mr Houston of a certain church. Was a complaint made to the department or was a complaint made to the courts that led to this woman's arrest, her searching and her detention for some five hours?

PAUL O'REILLY: I have not been briefed on this; I am not aware of this at all.

MICHAEL TIDBALL: And the same here, Mr Shoebridge. But for abundance of caution, we are happy to make that inquiry and advise the Committee.

PAUL O'REILLY: I am briefed on serious security matters regularly, but this one is not on my radar at all.

Mr DAVID SHOEBRIDGE: The woman in question was literally arrested at her home and police attended at her home within 36 hours of allegedly posting the image, which is allegedly a breach of section 9 of that Act. Is there a protocol between the courts and the police for the passage of such information, Mr O'Reilly?

PAUL O'REILLY: Only in that when any of us are aware of a crime we have a duty to report the crime. I need to know a lot more about this incident to really know if it is relevant, because if the police attended at the person's home and arrested the person at their home, I do not know who reported that person to the police. It may not have been the court. It could have been anybody, from the information I have so far.

Mr DAVID SHOEBRIDGE: The question I am asking you is whether or not a complaint went through to the court which was then communicated to the police.

PAUL O'REILLY: I do not know.

Mr DAVID SHOEBRIDGE: You do not know?

PAUL O'REILLY: No. Again, I have not been briefed on this matter at all.

Mr DAVID SHOEBRIDGE: I cannot tell you the frustration of the individual involved, who had been seeking for years to have the substantive matter dealt with for which she was attending court, but found indeed the police acted with such alacrity for an alleged breach of section 9 of the Court Act. But you will take it on notice about whether or not there was any complaint received by the courts or the department and, if so, whether or not that was the avenue through which the matter came to the police attention.

PAUL O'REILLY: Yes, happy to.

Mr DAVID SHOEBRIDGE: Do you know of any other matters where individuals have been prosecuted for the alleged breach of section 9 for the taking of photographs or images in the Downing Centre in the last, say, three years?

PAUL O'REILLY: I do not but, again, at the risk of repeating myself, I am new to this area so I am not aware of any cases. I would have to check whether there are any cases in the last three years.

Mr DAVID SHOEBRIDGE: Could you take that on notice?

PAUL O'REILLY: Sure.

The Hon. ADAM SEARLE: I have a lot of questions, which I will largely put on notice, but just to round us out for the next little while, can you tell us when the Victims Advisory Board met between 1 July 2021 and present time?

PAUL O'REILLY: I can, if you give me one moment. I do not have the days, but it met in July and again in October.

The Hon. ADAM SEARLE: So twice.

PAUL O'REILLY: Twice since July.

The Hon. ADAM SEARLE: Is there any sort of record published of what is discussed at these meetings or what are the issues to be discussed at the meetings?

PAUL O'REILLY: These were before my time so I cannot report on them myself, so I will have to take that on notice and come back to you. But they are generally used for consultation on policy and also for the advisory board to provide advice to the department and the Attorney General on issues in the community.

The Hon. ADAM SEARLE: I think Mr Tidball I will come back to you for this one and you can farm it out if it is not with you. How much funding was allocated in New South Wales from the $129 million worth of Commonwealth funding allocated to women's legal centres to respond to women experiencing family violence?

MICHAEL TIDBALL: I think we will have to take that on notice, Mr Searle. I do not have the figure with me at the moment.

The Hon. ADAM SEARLE: That is okay. When you are taking that on notice, could you give us the breakdown as to how much was allocated to Legal Aid NSW, the Aboriginal Legal Service and Community Legal Centres NSW, both in dollar terms and as a percentage of the overall amount of money?

MICHAEL TIDBALL: Yes.

The Hon. ADAM SEARLE: In the interests of time economy, I might reduce the rest of what I have got to supplementary questions and, depending on adequacy of answers, follow them up at the next occasion.

Mr DAVID SHOEBRIDGE: I think that is a position endorsed by the rest of the Committee, Mr Searle. It is now the Government's opportunity to ask the usual rigorous round of questions. Mr Poulos or Mr Amato?

The Hon. PETER POULOS: For the benefit of the Committee, Mr Deputy Chair, the Government will not be raising questions.

Mr DAVID SHOEBRIDGE: Any further questions will be supplementary and on notice. Is that right, Mr Poulos?

The Hon. PETER POULOS: We will consider it carefully.

KATHRYN BOYD: I wanted to finish an answer to a question that Mr Searle asked earlier about local government election offences.

The Hon. ADAM SEARLE: Yes, please.

KATHRYN BOYD: I have received a very helpful message from our friends at the Electoral Commission and they have confirmed that yes, the Electoral Commission does have the function of enforcing those offences. The bit in the candidate handbook that you referred to is actually in the section about the nomination process and candidates are advised that the returning officer in the Electoral Commission cannot determine for candidates whether they are or are not a property developer.

The Hon. ADAM SEARLE: Sure, it is their call.

KATHRYN BOYD: That has to be a factual assessment of the candidate, but that does not mean the Electoral Commission does not investigate offences about factual inaccuracies in those candidate information sheets.

The Hon. ADAM SEARLE: False declarations.

KATHRYN BOYD: Yes.

The Hon. ADAM SEARLE: That is very helpful, Ms Boyd. Thank you very much.

Mr DAVID SHOEBRIDGE: Are there any further answers?

The Hon. ADAM SEARLE: Before we go I will formally table the thumb drive that had the videos we dealt with earlier.

Mr DAVID SHOEBRIDGE: I thank all the witnesses for their attendance. There are 21 days in which to provide answers to questions on notice. The secretariat, as always, will be of assistance in giving you clarity about what those questions are. That concludes the hearing for today.

(The witnesses withdrew.)

The Committee proceeded to deliberate.