

PORTFOLIO COMMITTEE NO. 5 - JUSTICE AND COMMUNITIES

Wednesday 6 March 2024

Examination of proposed expenditure for the portfolio area

ATTORNEY GENERAL

CORRECTED

The Committee met at 9:15.

MEMBERS

The Hon. Robert Borsak (Chair)

Ms Abigail Boyd
The Hon. Susan Carter
Dr Amanda Cohn
The Hon. Anthony D'Adam
The Hon. Greg Donnelly
Ms Sue Higginson (Deputy Chair)
The Hon. Stephen Lawrence
The Hon. Natasha Maclaren-Jones
The Hon. Tania Mihailuk

PRESENT

The Hon. Michael Daley, *Attorney General*

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

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

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

CORRECTED

The CHAIR: Welcome to the fourth hearing of the Portfolio Committee No. 5—Justice and Communities for the additional round of inquiry into budget estimates 2023-2024. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the land on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. My name is Robert Borsak. I am Chair of the Committee. I welcome Attorney General Daley and accompanying officials to this hearing.

Today the Committee will examine the proposed expenditure for the portfolio of Attorney General. I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of those procedures.

To the witnesses, I welcome and thank you for making the time to give evidence. Attorney General, 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. Most witnesses do not need to be sworn as they have appeared at an earlier budget estimates hearing before this Committee. Other witnesses will be sworn prior to giving evidence.

CORRECTED

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, Deputy Secretary, Strategy, Policy and Commissioning, Department of Communities and Justice, on former affirmation

Ms CLAIRE BEATTIE, Acting Deputy Secretary, Transforming Aboriginal Outcomes, Department of Communities and Justice, on former affirmation

Mr CHRIS D'AETH, Acting Deputy Secretary, Courts, Tribunals and Service Delivery, Department of Communities and Justice, affirmed and examined

Ms MONIQUE HITTER, Chief Executive Officer, Legal Aid NSW, on former affirmation

Dr JAMES COCKAYNE, Anti-slavery Commissioner, affirmed and examined

Ms SALLY DOWLING, SC, Director of Public Prosecutions, affirmed and examined

The CHAIR: Today's hearing will be conducted from 9.15 a.m. until 5.30 p.m. We are joined by the Attorney General for the morning session from 9.15 a.m. until 1.00 p.m. with a 15-minute break at 11.00 a.m. In the afternoon we will hear from departmental witnesses from 2.00 p.m. until 5.30 p.m. with a 15-minute break at 3.30 p.m. During these sessions there will be questions from the Opposition and crossbench members only and then 15 minutes allocated for Government questions at 10.45 a.m., 12.45 p.m. and 5.15 p.m. We will begin now with questions from the Opposition.

The Hon. SUSAN CARTER: Good morning, Minister. Your colleague, the Hon. Penny Sharpe, answered a question from the Hon. Mark Banasiak in February this year in relation to the *North East Forest Alliance Inc v Commonwealth of Australia* case and she noted that, even though she was on leave, she had participated in a number of meetings with other Ministers planning for the outcome of this case as, "It was a significant court case and governments need to be prepared for all outcomes related to that." Do you agree that an important role of government is to monitor legal changes and be prepared for all outcomes?

Mr MICHAEL DALEY: Yes, I agree with that.

The Hon. SUSAN CARTER: As Attorney General, you have a role in assisting your Government to monitor important matters before the courts?

Mr MICHAEL DALEY: I do.

The Hon. SUSAN CARTER: Are you aware of the High Court decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs and Anor*?

Mr MICHAEL DALEY: I am.

The Hon. SUSAN CARTER: Were you and other senior members of the Government also watching this case?

Mr MICHAEL DALEY: Watching in what sense?

The Hon. SUSAN CARTER: Were you preparing for the outcome of this case and possible impact on community safety?

Mr MICHAEL DALEY: I'm not sure what your question goes to. Could you elaborate a little bit for me, Ms Carter, please?

The Hon. SUSAN CARTER: Minister, you would be aware that the applicant in that case, Mr NZYQ, is a convicted child sex offender in New South Wales, likely to make his home in New South Wales upon release. How did you monitor and plan for the outcome of that case to protect community safety?

Mr MICHAEL DALEY: I'm not sure that your question is well founded in that regard. This was a case that involved the Commonwealth in relation to the Commonwealth's powers. No State in Australia intervened in that matter under section 78B. That's all I can really tell you.

The Hon. SUSAN CARTER: Minister, the east forest alliance case concerned trees in New South Wales, whereas the NZYQ case concerned the possible release of a convicted child sex offender, and one concerns your Government and the other does not?

CORRECTED

Mr MICHAEL DALEY: I'm not sure you can make a correlation between those two cases, except for the statement of Ms Sharpe and my agreement today that my role generally is to oversee matters that are before the courts.

The Hon. SUSAN CARTER: Minister, were you aware that NZYQ, after pleading guilty in the District Court to sexual offence against a child, was sentenced to five years imprisonment, with a non-parole period of three years and four months. Upon completion of his custodial sentence and released to parole, he was taken into immigration detention. Are you aware of what conditions were placed on parole for NZYQ?

Mr MICHAEL DALEY: No. The Attorney General does not get briefed on the many, many hundreds of parole conditions that are—

The Hon. SUSAN CARTER: I would understand that.

Mr MICHAEL DALEY: Sorry, let me answer the question. I won't fluff, I won't waste your time, so don't interrupt me, please. The Attorney General does not get briefed on parole conditions in relation to the many people upon whom parole conditions are imposed. You know that, Ms Carter.

The Hon. SUSAN CARTER: Would you believe it would be a usual condition, given the nature of his offending, that he was to continue with some psychological counselling or treatment in relation to those sex offences?

Mr MICHAEL DALEY: You're asking me would that be a usual condition?

The Hon. SUSAN CARTER: Yes.

Mr MICHAEL DALEY: I'm not sure I can answer that question. What's a usual condition?

The Hon. SUSAN CARTER: What I'm asking you is: If he was on parole when he was taken into immigration detention and if, as would be entirely usual, there were conditions placed upon that parole, conditions that would not be able to be met because he was in immigration detention, would it not be then that his parole could be revoked and, if you had a watching brief on this matter, is it not true that he could have been picked up immediately upon release from immigration detention and taken into custody because of the breach of parole? Were you watching this, Minister?

Mr MICHAEL DALEY: Your presumption that I should have a watching brief on people in immigration detention or in prison with a view to their parole conditions is not well founded. I do not do that. Attorneys-General do not do that.

The Hon. SUSAN CARTER: Minister, we've discussed that your Government had a watching brief on a case about what was happening in forests. Is it not also appropriate that your Government has a watching brief on community safety?

Mr MICHAEL DALEY: That wasn't the question you asked me. The question you asked me was—

The Hon. SUSAN CARTER: I'm asking you that question now.

Mr MICHAEL DALEY: The question you asked me, Ms Carter, was whether—

The Hon. SUSAN CARTER: I'm asking you that question now, Minister.

Mr MICHAEL DALEY: —was whether I had a watching brief.

The Hon. SUSAN CARTER: Can I redirect to that question?

Mr MICHAEL DALEY: I didn't have a watching brief. People who do have watching briefs on parolees is the department of corrections.

The Hon. SUSAN CARTER: As the lead Minister in the DCJ cluster, were you working with the corrections Minister and others for a whole-of-government response to this case?

Mr MICHAEL DALEY: There are no lead Ministers in DCJ anymore, in terms of hierarchy of Ministers. Each Minister is responsible for their own statutory responsibilities, and the statutory responsibility for parole does not fall with me. You know who it falls with.

The Hon. SUSAN CARTER: Do you work with your colleagues for a combined whole-of-government response?

Mr MICHAEL DALEY: What does that mean?

CORRECTED

The Hon. SUSAN CARTER: Does it mean that if there is a very significant case, which would permit the release into the community of a convicted child sex offender who had yet to complete his parole conditions, it is an appropriate role for government to monitor this and then to be able to detain that offender until an appropriate solution for community safety can be found?

Mr MICHAEL DALEY: If there are parole conditions imposed upon someone and they are released into the community, the department of corrections does, in your words, keep a watching brief on those people and they do supervise them when they come out into the community, yes.

The Hon. SUSAN CARTER: Was NZYQ subject to parole supervision when he was released from immigration detention?

Mr MICHAEL DALEY: I can't talk about individual cases, and I don't know the answer to that because I'm not the Minister for Corrections.

The Hon. SUSAN CARTER: I would suggest, Minister, that there's no evidence that that happened at all. And, in fact, what I'm putting to you—

Mr MICHAEL DALEY: Then why ask me the question?

The Hon. SUSAN CARTER: Because what I put to you was not that he was going to be supervised on parole; I put to you that he was in breach of his conditions and, therefore, could've been immediately picked up and placed in detention again to protect community safety. I put to you: Who's watching for community safety in your Government?

Mr MICHAEL DALEY: It depends on the status of the person. If they are on the Child Protection Register, for example, when they are released into the community, they're watched by police. If they are a parolee, they are monitored by the department of corrections. If they are the cohort of people who were in immigration detention and they are released into the community, Australian Border Force has the responsibility for them. If they are on extended supervision orders, there is a regime for them. You are asking me a general question about a general species of people that are released into the community. There is no such thing. It depends on what orders the individual person is subject to.

The Hon. SUSAN CARTER: I was asking you a general question about community safety but thank you, Minister.

Mr MICHAEL DALEY: Community safety when it comes to parolees is guarded by the department of corrections, who do a very good job of monitoring those people.

The Hon. NATASHA MACLAREN-JONES: Thank you, Attorney General, and also to everyone here today. You would be familiar with the decision of *Kvelde v State of New South Wales*?

Mr MICHAEL DALEY: Not off the top of my head.

The Hon. NATASHA MACLAREN-JONES: In *Kvelde*, the court considered the validity of section 214A of the Crimes Act. In the second reading debate about this provision, you observed on 30 March 2022 that this was legislation for the common good and for the majority of the people. You said:

The only question before us tonight ... is whether the limitations are justified. That is the overarching question. As is always the case when a Parliament seeks to extend or deprive the liberties of citizens, the bill is about striking the right balance.

Given that you and all your Labor colleagues voted in favour of this legislation, you clearly took the view that section 214A struck the right balance between allowing peaceful protest and protecting freedoms of movement of non-protesters. Were you surprised then that the court did not consider the right balance had been struck and declared that so far as section 214A (1) (c) criminalised closure of part of a major facility, it was a permissible burden on political communication?

Mr MICHAEL DALEY: I'm sorry, I am aware of that case. I just thought it was pronounced differently, so that's what threw me.

The Hon. NATASHA MACLAREN-JONES: I apologise for that.

Mr MICHAEL DALEY: That was a long question.

The Hon. NATASHA MACLAREN-JONES: My question pertains to section 214A and whether or not the right balance has been struck, considering the court did not consider that that was the case.

Mr MICHAEL DALEY: Whether the right balance has been struck by the court?

CORRECTED

The Hon. NATASHA MACLAREN-JONES: Yes. In relation to this section, which was amended, the court interpreted that the right balance had not been struck—

Mr MICHAEL DALEY: In the drafting of the legislation?

The Hon. NATASHA MACLAREN-JONES: Yes.

Mr MICHAEL DALEY: Why don't I answer it this way, Ms Maclaren-Jones: We supported that legislation because we saw some of the behaviour that Extinction Rebellion and other mainly climate protesters but not all were bringing upon the city and the promise that Extinction Rebellion had made to shut the city down. We saw outrageous behaviour, like people stopping vans in the harbour tunnel and blocking traffic. We saw that replicated again this week in Melbourne. We saw people gluing themselves to Stoney Creek Road and chaining themselves to portainers in Port Botany and shutting all or part of that facility down.

We agreed with your Government, the government of the day, that a balance should be struck between allowing citizens the right to peaceful protest and assembly and not allowing them to go so far as to shut the city down and burden other citizens. We supported that legislation. Justice Walton and the Supreme Court heard the appeal against both section 214A of the Crimes Act and against regulation 48A of the Roads Regulation. He completely dismissed the challenge to the Roads Regulation, so I did hear yesterday that that judgement now made it okay for people to block seven or eight lanes of the Harbour Bridge and block the harbour tunnel and that now, because of Justice Walton's decision, they are able to do that. Can I just say for the record that that is not the case.

The application of the new laws so far as they relate to a main road, a highway, a freeway, a tollway, a bridge or a tunnel that joins any of them, or entering on, remaining on, climbing on, jumping from or trespassing on any part of the Harbour Bridge or any major bridge, tunnel or road—that all completely survives. None of that was impugned. The only thing that the judgement went to was subclauses 1 (c) and 1 (d) of section 214A of the Crimes Act, which deals with the disruption to major facilities. The lion's share, the overwhelming content of the laws as a whole that were passed by the Parliament survived that challenge. That's a good outcome.

The Hon. NATASHA MACLAREN-JONES: The decision of this case was a single-judge decision of the Supreme Court handed down on 13 December 2023. The decision struck down two aspects of the almost unanimous legislation, namely, that conduct is not unlawful if part of a major facility is caused to be closed, which you refer to, or if the conduct causes a person's attempting to use the major facility to be redirected. That means that six of the seven lanes on the Harbour Bridge being blocked is seen to be okay—

Mr MICHAEL DALEY: No, it's not. That's not true.

The Hon. NATASHA MACLAREN-JONES: It also means that if the Harbour Bridge access is blocked and people can be redirected to the Harbour Tunnel then that is not a criminal offence—

Mr MICHAEL DALEY: That is not true.

The Hon. NATASHA MACLAREN-JONES: Do you agree with it?

Mr MICHAEL DALEY: That is not true, no. The Harbour Bridge is specifically mentioned in section 144G of the Roads Act 1993. It does not come into the purview of section 214A of the Crimes Act.

The Hon. NATASHA MACLAREN-JONES: It's not seen as a major facility?

Mr MICHAEL DALEY: No, it's got its own specific legislative treatment in the Roads Act and the Roads Regulation 2018. Any accusation or assumption that the Harbour Bridge and the Harbour Tunnel or any main roads, highways or bridges or any of those species of infrastructure—main road, highway, freeway, tollway, bridge or tunnel—in the Greater Sydney region or the City of Newcastle or the City of Wollongong—for example, it says in the legislation the Spit Bridge across Middle Harbour or the Harbour Bridge. Any suggestion that they are now more prone to be attacked, if you like, by protesters is completely and utterly untrue.

The Hon. NATASHA MACLAREN-JONES: But if this decision is left to stand then there are significant impacts for the community for allowing these protesters to continue without any criminal sanctions.

Mr MICHAEL DALEY: That's not true. The absolute majority of section 214A survives. Subsection (1) states:

- (1) A person must not enter, remain on or near, climb, jump from or otherwise trespass on or block entry to any part of a major facility if that conduct—
 - (a) causes damage to the major facility, or
 - (b) seriously disrupts or obstructs persons attempting to use the major facility—

CORRECTED

All of that survives. It just relates to the closure of parts of facilities. We have to wait and see how that pans out in the future in relation to how that judgement affects protests going forward. I'm satisfied that the legislation, in its original intent to prevent the behaviour that I've described today, still does the job.

The Hon. NATASHA MACLAREN-JONES: The 28-day period for appeal is now over. Did you appeal the decision?

Mr MICHAEL DALEY: No, I did not.

The Hon. NATASHA MACLAREN-JONES: Why not?

Mr MICHAEL DALEY: Because, as I said, what we wanted to do was to make sure that the behaviour that Attorney General Speakman outlined in his second reading speech, the behaviour that we all witnessed—the outrageous and unacceptable behaviour of blocking the Harbour Tunnel; gluing yourself to Stoney Creek Road; all these ridiculous things; and these threats to close down the entire city—they were the behaviours that this legislation was crafted to prevent. It survived, firstly, including, as I said, all of the roads aspects of it. There's a review of the legislation coming up. From memory, that was supposed to have begun about two years from the passage of the legislation, which won't be very long now, so there is a review coming up.

The Hon. NATASHA MACLAREN-JONES: Do you have a date for that review to commence?

Mr MICHAEL DALEY: No, I don't. The statutory review is due to start on 24 April.

The Hon. NATASHA MACLAREN-JONES: How long would the review take?

MICHAEL TIDBALL: Six months.

Mr MICHAEL DALEY: Six months. Thirdly, after looking at the judgement carefully—and it's a long judgement, I have to say, and not all that easy to understand; you have to read passages of it a few times to understand what his Honour meant—and having taken the necessary briefings on this important matter, as you would expect me to have done, I was also alive to the possibility that if I appealed, it would have reopened the contest, the question, if you like, in the court of not only section 214A of the Crimes Act but the Roads Regulation as well.

To put it in simple vernacular, we might have lost the Roads Regulation as well. That is not to say that that might not happen at a future date. Anyone can still appeal this. The risk if I appealed was that we ended up with far less than what we have now. Given all of those things that I have just said to you about what the legislation still does, in its overwhelming majority, I decided not to appeal. There is a possibility at a later date, given what might be said coming out of the review, that we could legislate to improve it further. We can't, of course, reinsert the provisions that were impugned by the Supreme Court.

The Hon. SUSAN CARTER: Minister, could I just jump in?

Mr MICHAEL DALEY: No, I'm nearly finished, Ms Carter. The most prudent thing to do was to not appeal.

The Hon. SUSAN CARTER: Minister, I'm just uncertain because the appeal essentially struck provisions down as unconstitutional. How does a statutory review deal with a declaration that matters are unconstitutional?

Mr MICHAEL DALEY: It doesn't; I didn't say that.

The Hon. SUSAN CARTER: Sorry, what I heard you say was that you were going to review and possibly amend the Act, especially if there were problems going forward.

Mr MICHAEL DALEY: No, I did not say I'd review and amend the Act. I said that we would be open—

The Hon. SUSAN CARTER: What is the purpose of the statutory review if there are no amendments flowing?

Mr MICHAEL DALEY: Ask Mr Speakman.

The Hon. SUSAN CARTER: I'm asking you, with respect, Attorney General. It's your statutory review.

Mr MICHAEL DALEY: No, it's not. It's the Parliament's statutory review and it was put in by the Parliament because it was new and controversial legislation, so the Parliament had a view that it should be reviewed after two years.

CORRECTED

The Hon. SUSAN CARTER: But it cannot address the constitutional issues which could have been addressed on appeal.

Mr MICHAEL DALEY: I've just told you why it didn't appeal.

The Hon. SUSAN CARTER: I understand, and I'm asking you about the constitutional issues which remain unresolved.

Mr MICHAEL DALEY: The statutory review considers the policy intent of the legislation and how it is working. It will enable us to consider how the provisions are working and what, if any, amendments may be required.

The Hon. SUSAN CARTER: But it still leaves citizens in your electorate vulnerable to a blockade at Port Botany.

Mr MICHAEL DALEY: I wouldn't say that at all.

The Hon. SUSAN CARTER: Partial closure of a facility like Port Botany.

Mr MICHAEL DALEY: I'm satisfied that the legislation survives and can still do what it was designed to do. We have seen, since then, a blockade of part of Port Botany, and the police used other powers that they have under the Summary Offences Act to break up that gathering which was unlawful. This is not the only string in the bow of the police. There are other measures that they can use as well. They did, in fact, break up and move on a gathering at Port Botany that was not sanctioned under part 4 of the Summary Offences Act.

Ms SUE HIGGINSON: Good morning, Attorney, and everybody else.

Mr MICHAEL DALEY: Hello, Ms Higginson.

Ms SUE HIGGINSON: Thank you for being here. I wanted to clear one thing up on that, if it's all right with you, Attorney.

Mr MICHAEL DALEY: You can clear anything up you like.

Ms SUE HIGGINSON: That is one that—clearly when the Supreme Court of New South Wales declares something unconstitutional, it would be almost absurd for a government to then go and appeal that finding. I think that, at this point in time, I commend you on the action to date.

Mr MICHAEL DALEY: I'll take support anywhere I can get it in this room, Ms Higginson.

Ms SUE HIGGINSON: The other thing I wanted to point out, Attorney, is the case that was referred to, the *North East Forest Alliance Inc v Commonwealth of Australia* and the State of New South Wales. That was not a case simply about trees; it was about the arrangements between the Commonwealth and the State Government. Whilst its subject matter did involve trees, it was a case that Minister Sharpe, rightly, was very cognisant of, because it could have literally changed the arrangements between the Commonwealth and State Government in how we manage the environment.

But, Attorney, what I wanted to talk to you about briefly is young people and the age of criminal responsibility, and I'm sure that's no surprise to you. Attorney, I note your comments today in *The Daily Telegraph*—begrudgingly, to myself, I read it—and I note that you have made a clear statement that the current systems aren't working when we're looking at young people, crime and the assertions that the court system is failing—that police are getting it right, but the court's failing. But I just wanted to bring you to the fact that when we last met we talked about the Standing Council of Attorneys-General. I note that in the December meeting, it's very clear to everyone, Attorney, there's no journey of nationalisation or harmonisation. Everybody has gone their own way now. What are you doing, Attorney?

Mr MICHAEL DALEY: To be completely honest with you, we are a long way from raising the age of criminal responsibility in New South Wales.

Ms SUE HIGGINSON: Why is that when you look at the evidence, Attorney? Why?

Mr MICHAEL DALEY: If you go back, Ms Higginson, and have a look at all the comments I made in this room at the last estimates, those comments still stand in their entirety. I did point out to you at the time that raising the age, that's the easy bit; I could do that tomorrow. Tasmania have declared, as I understand it, that they're going to do it in 2029. That's easy. We can have Parliament pass a law tomorrow to raise the age of criminal responsibility, but what will that mean? That will mean that a young person, 13 years of age, that is arrested by the police for some wrongdoing can't be brought before the courts but should be sent to some other diversionary program. I hope one day we'll get there in New South Wales in terms of having the diversionary programs.

CORRECTED

Ms SUE HIGGINSON: How many young people, Attorney General, are in custody at the moment under the age of 16?

Mr MICHAEL DALEY: I can get you that.

Ms SUE HIGGINSON: I just wonder if you know what we're talking about basically. That's my question.

Mr MICHAEL DALEY: I do because we went through this on the last occasion and I pointed out to you that raising the age is the easy part. It's the diversionary treatments that are the hard part. In New South Wales, they don't exist. I don't want to get political here but the former Government made a decision not to do any work.

Ms SUE HIGGINSON: Attorney, is it your proposition then that because you don't have, currently, in your view, the right support systems in the community, that we should just keep locking up kids under the age of 16—under the age of 14?

Mr MICHAEL DALEY: What I've asked the department to do is to go and work with other departments in government to look at—

Ms SUE HIGGINSON: Attorney, how much does it cost each year—

The Hon. GREG DONNELLY: Point of order—

Mr MICHAEL DALEY: Just hold on.

The CHAIR: A point of order has been taken.

Ms SUE HIGGINSON: I'm just redirecting—

The Hon. GREG DONNELLY: Point of order!

The CHAIR: A point of order has been taken.

The Hon. GREG DONNELLY: It is with reluctance that I take the point of order but the member is talking over the Attorney in the answer that he's providing.

Ms SUE HIGGINSON: To the point of order—

The Hon. GREG DONNELLY: No, I haven't finished.

The CHAIR: Hang on. Let him finish.

Ms SUE HIGGINSON: It's my time.

The Hon. GREG DONNELLY: If you wish to redirect, you're entitled to do so but you need to indicate that. If you haven't indicated that, the Attorney is entitled to assume it's the question presented to him that he has to answer and he is entitled to be provided with respect and the opportunity to answer it.

Ms SUE HIGGINSON: To the point of order: I will state I'm redirecting when I'm clearly redirecting.

The Hon. ANTHONY D'ADAM: To the point of order: The opportunity to redirect should be available to a member but not before the Attorney has been afforded an opportunity to answer the first question that was asked. You asked a question; he barely got two words out of his mouth and then you redirected. It seems that that's clearly contrary to the procedural fairness ruling of this Committee.

The CHAIR: I think the member should redirect if she wants to but she should give the Attorney a chance to answer the question if he desires—if he actually wants to answer the question. He can answer the question any way he likes, or not answer.

Ms SUE HIGGINSON: Thank you, Chair.

Mr MICHAEL DALEY: I've forgotten what the question was now.

Ms SUE HIGGINSON: So have I now. I know what the question was. Attorney, do you know how much it currently costs—

Mr MICHAEL DALEY: No, the question before that which I was answering, which is really important. What was the gist of that question?

Ms SUE HIGGINSON: I was referring to how many young people currently under the age of 14 are incarcerated in New South Wales.

Mr MICHAEL DALEY: It was before that.

CORRECTED

Ms SUE HIGGINSON: And are you aware of the cost?

Mr MICHAEL DALEY: Before that I was talking about the work that I had asked my department to do in this regard. Would you like to know about that or not?

Ms SUE HIGGINSON: Certainly.

Mr MICHAEL DALEY: What I've asked the department to do is to go away and work with other departments; to come back and tell me and other Ministers the sorts of measures that could be and should be put in place to deal with these children; what that would require government to do; how many people would we need to work in those facilities; what types of people; the construction of buildings that would be required; transport; all of those things across the State to address these issues in communities across the State.

Ms SUE HIGGINSON: How long will that take? What's your time frame?

Mr MICHAEL DALEY: I haven't given them any particular time frame, but I expect that it will be back within a year—midyear. So probably mid-2024 or a little bit after.

Ms SUE HIGGINSON: Is that what your response is referring to in the Daily Tele today where you say "things aren't working" and you're doing things about it. Is that what you're doing?

Mr MICHAEL DALEY: That's one of the things, yes.

Ms SUE HIGGINSON: In the meantime, we'll just carry on locking young people under the age of 14 into Corrections centres when we know all of the evidence is that not only is it working but it's hurting young people. It's hurting families, and it's hurting communities. And, let's be real, the overwhelming representation of those young people is they are young people who are First Nations.

Mr MICHAEL DALEY: That's right. But in all of these considerations, there is one paramount consideration, Ms Higginson, and that is community safety, above all else. The Government will make no apologies for in this sphere of discussion and subject matter—

Ms SUE HIGGINSON: Attorney, can I just redirect you to that point?

Mr MICHAEL DALEY: —community safety is our number one consideration.

Ms SUE HIGGINSON: Attorney, how is 80 per cent recidivism rate community safety? This is just not in earnest, Attorney; it's not .

Mr MICHAEL DALEY: Your contention is that we should raise the age of criminal responsibility and let the children back out onto the street. There's a discussion in the Telegraph—

Ms SUE HIGGINSON: They're back out on the streets, Attorney, and they are reoffending; the rates are 80 per cent. The evidence is clear. To raise the age to be the primary driver to change the system—

The Hon. GREG DONNELLY: Is this a question or a speech?

The CHAIR: Order.

Ms SUE HIGGINSON: How can you continue in the face of the evidence, Attorney?

Mr MICHAEL DALEY: The primary driver to change the system is to make sure that there are programs on the ground that stop the intergenerational hopelessness and destruction. Some of these kids are born into completely dysfunctional families and they have absolutely no chance from the day they're born.

Ms SUE HIGGINSON: Your answer is to keep locking them up and criminalising them?

Mr MICHAEL DALEY: Community safety is paramount, and sometimes there are occasions—many occasions—where, for the sake of the young person and the community, given that there are no treatment facilities to send them to, it is better that they are incarcerated for their own safety and the safety of the community. But I'm hoping, in time, there will be facilities to take these children to so they can get drug and alcohol treatment, counselling, so they can deal with the fetal alcohol syndrome that they're born with, and all of the raft of very deep-seated issues that have caused them to offend in the first place. Until we get governments to be serious about early intervention and addressing the social drivers of crime, all that's happening is that government after government kicks this can down the road and makes it an issue for future generations.

Ms SUE HIGGINSON: Attorney, correct me if I'm wrong. Your plan is to spend 12 months looking at all the things that most people already know and then you will raise the age in 12 months time. Is that your plan?

Mr MICHAEL DALEY: No, I'm making no warranties at all about any plans this Government has to raise the age.

CORRECTED

Ms SUE HIGGINSON: Your Government will not be raising the age?

Mr MICHAEL DALEY: We'll do the work, but we're a long, long way from having any serious discussions about raising the age in New South Wales—a long way. In the meantime, I will get you the figures for how many children are incarcerated. Did you want that?

Ms SUE HIGGINSON: I think it's 228, Attorney. Thank you.

The Hon. TANIA MIHAILUK: Minister, there wouldn't be anyone incarcerated under the age of 12, in any event.

Ms SUE HIGGINSON: Yes, there are.

Mr MICHAEL DALEY: Ms Higginson has asked for those.

The Hon. TANIA MIHAILUK: We'll get the exact figures. Can I ask you a couple of quick questions? Minister, if I can reference you to some reports, recently, in *The Australian* in relation to what seems to be an ongoing situation between the ODPP and a number of judges that are raising concerns about the credibility of some of the evidence that's been presented before the courts in relation to a number of sexual assault cases. Have you or your office had any briefings in relation to this? I'm referring in particular to the Martinez case.

Mr MICHAEL DALEY: Yes, I am watching these discussions.

The Hon. TANIA MIHAILUK: At the moment, Minister, it appears that there is very vocal and public discourse between a number of judges in New South Wales and the ODPP—the DPP herself. I know she is present here, but I will forward her some questions later. It resulted in the DPP issuing a statement back in December in response to a comment that a particular judge made in relation to a case. I'm just wanting to know your view on the matter and whether you've had briefings of the DPP as to what precisely is going on here and why this dispute between a number of judges and her office has now become public warfare, to an extent?

Mr MICHAEL DALEY: I don't agree that it's public warfare. There are a small number of cases and a small number of judges who have raised these issues—

The Hon. TANIA MIHAILUK: There have been five in the last year alone—is that right, Minister? There have been five that have raised concerns about the type of evidence that has been brought before their courts.

Mr MICHAEL DALEY: Yes, and I think—correct me if I'm wrong—there are about 3,000—I withdraw that—

The Hon. TANIA MIHAILUK: Three thousand sexual assault cases? Is that what you're saying?

Mr MICHAEL DALEY: Over a thousand matters have proceeded to judgement in the District Court, so it's a small number. However—

The Hon. TANIA MIHAILUK: But it's highly irregular, Attorney General—wouldn't you agree—that you're now having such a public discourse where judges are making very pointed comments to the DPP in their judgements and, in return, the DPP makes a public statement? And now you've got statements being made to *The Australian*—anonymous statements—of staff being concerned about some of the actions that are taking place within the DPP's office. Does that not alarm you that perhaps there needs to be some intervention?

Mr MICHAEL DALEY: Intervention of what type?

The Hon. TANIA MIHAILUK: You're the leading law officer of the State. I would be concerned that there's very public—

Mr MICHAEL DALEY: All judgements are public—

The Hon. TANIA MIHAILUK: It is warfare. It's unheard of for a DPP to make a statement in relation to the credibility of a judge.

Mr MICHAEL DALEY: You might like to put those questions to the DPP.

The Hon. TANIA MIHAILUK: I will, in the afternoon.

Mr MICHAEL DALEY: As I said, there's a small number of cases. Judgements, by their nature, are always public. The DPP is an independent statutory office holder, not subject to my direction. Judges—

The Hon. TANIA MIHAILUK: But you must be hearing a lot of concern within the legal fraternity right now—

CORRECTED

Mr MICHAEL DALEY: Can you let me answer the question?

The Hon. TANIA MIHAILUK: —that there perhaps needs to be some sort of intervention.

Mr MICHAEL DALEY: Judges, of course, are independent as well, so they have the right to make whatever comments they wish to in respect to matters that are brought before them.

The Hon. TANIA MIHAILUK: I agree, Minister, without fear of any retribution or any further commentary from the DPP. I'm surprised that a statement was issued by the DPP in December in response to a judge's comment after a particular case and you're not involved in this as the chief law officer of the State. You're not concerned that there's open public warfare going on between judges and the DPP?

Mr MICHAEL DALEY: I don't consider it to be public warfare.

The Hon. TANIA MIHAILUK: It is when it's in the public domain, and now you've got people backgrounding *The Australian* that they have concerns as well about the office. What is the comment? The comment is, "Meritless cases are being brought before the courts."

Mr MICHAEL DALEY: You can ask the DPP about whether she considers that the cases were meritless. It's open to the DPP, when a judge makes a public statement, to issue a correction or an explanation or clarification. It's open to—

The Hon. TANIA MIHAILUK: How often does that actually happen? How often does that happen?

Mr MICHAEL DALEY: I don't keep statistics on that.

The Hon. TANIA MIHAILUK: Can you let me know? I'd like to know how many times in the last five years—

Mr MICHAEL DALEY: You can ask—

The Hon. TANIA MIHAILUK: I put it to you on notice; if you can give me that later.

Mr MICHAEL DALEY: You can ask the DPP that either now or this afternoon.

The Hon. TANIA MIHAILUK: The current DPP has only been there since 2021. I'm just asking, in the last five years, if your office can provide me with some information on how many times does a DPP make a public comment in response to a judge's—

Mr MICHAEL DALEY: If we can, yes, happy to do that. If we can, we will.

The Hon. TANIA MIHAILUK: That would be great, thank you, Minister. Can I ask you a couple of quick questions about the equality bill? Where is that up to now? Is it still with you in the office? This is Alex Greenwich's equality bill.

Mr MICHAEL DALEY: The Government is considering our position on it.

The Hon. TANIA MIHAILUK: Do you have any time frame on when you think that response will be made publicly available? It has been in the public domain now for about nine or 10 months.

Mr MICHAEL DALEY: Sooner rather than later, but we want to make sure we get it right. It's important.

The Hon. TANIA MIHAILUK: What do you mean by "getting it right"?

Mr MICHAEL DALEY: Make sure that we listen to stakeholders and come to an informed position on our view on it and its many iterations.

The Hon. TANIA MIHAILUK: A number of parties have already made an informed decision. My party, One Nation, is certainly opposing it. I know the Opposition is opposing it. It's been in the public realm now for about 10 months and it's caused a lot of concerns to a number of stakeholders. I would've thought by now you would've met with the stakeholders and a decision should be forthcoming.

Mr MICHAEL DALEY: We've met with many stakeholders and a decision will be forthcoming—sooner rather than later.

The Hon. TANIA MIHAILUK: But you're not going to let me know what that decision is now?

Mr MICHAEL DALEY: I can't. I don't know the answer to that question.

The Hon. TANIA MIHAILUK: Do you agree with any aspects of that legislation?

CORRECTED

Mr MICHAEL DALEY: You'll have to wait and see. It's not our bill; it's a private member's bill.

The Hon. TANIA MIHAILUK: It is a private member's bill, but it's something that the Labor Party has to make a decision on. Are they going to protect religious places of worship and religious institutions? Are they going to protect parental rights? This bill tears everything up. We know that, Minister.

Mr MICHAEL DALEY: Okay, that's a nice statement.

The Hon. TANIA MIHAILUK: Social engineering at its worst.

Mr MICHAEL DALEY: That's a statement. You've done well. You've got that on the public record, Ms Mihailuk.

The Hon. TANIA MIHAILUK: I'd like to what your thoughts are on the public record.

Mr MICHAEL DALEY: My thoughts are Cabinet's thoughts and Cabinet will express its thoughts when I stand up to lead for the Government.

The Hon. TANIA MIHAILUK: I feel that what the Labor Party does is just pussyfoot around with these types of legislation coming from Independents and not make a clear statement right from the get-go that it's not on, this type of social engineering.

Mr MICHAEL DALEY: You've done well. That's two public statements you've got on the record now with no question marks at the end of them.

The Hon. TANIA MIHAILUK: All right. I'll go back to the DPP, if you're more comfortable with those questions, Minister.

Mr MICHAEL DALEY: Sure.

The Hon. TANIA MIHAILUK: You didn't look very comfortable before. That's why I moved on to a topic where you might be ready for me.

Mr MICHAEL DALEY: You're very charitable—thanks!

The Hon. TANIA MIHAILUK: Charitable? You didn't look very comfortable. I've got a whole series of questions in relation to that.

Mr MICHAEL DALEY: You asked me the same question five times. I was getting a bit frustrated, that's all.

The Hon. TANIA MIHAILUK: What about the conversion bill? Where's that up to now?

Mr MICHAEL DALEY: Same answer as to the equality bill.

The Hon. TANIA MIHAILUK: Another Independent social engineering bill and we're still waiting for the Labor Party to make a decision on where they stand on that bill.

Mr MICHAEL DALEY: That's three statements now you've got on the public record. You're going well.

The Hon. TANIA MIHAILUK: Weren't you going to bring your own legislation forward? We had this discussion back in November, didn't we?

Mr MICHAEL DALEY: Yes, we did.

The Hon. TANIA MIHAILUK: And you said it was in a week's time.

Mr MICHAEL DALEY: It was.

The Hon. TANIA MIHAILUK: I think you actually teased the Committee by saying it was going to come up in a week, remember?

Mr MICHAEL DALEY: I was waiting for instructions.

The Hon. TANIA MIHAILUK: And there was nothing—nothing has come up.

Mr MICHAEL DALEY: Yes, that's right.

The Hon. TANIA MIHAILUK: You were waiting for instructions?

Mr MICHAEL DALEY: No, I was at the time waiting for instructions about what the time limit was.

CORRECTED

The Hon. TANIA MIHAILUK: Who do you get the instructions from? You're the lead, chief law officer of the State. Who do you get instructions from?

Mr MICHAEL DALEY: I'm part of a Cabinet, as you know.

The Hon. TANIA MIHAILUK: So you get instructions on the matters of law from your Cabinet?

Mr MICHAEL DALEY: No. I get instructions about the queueing of statutes that are coming before the House and the timetable.

The Hon. TANIA MIHAILUK: But this is your statute.

Mr MICHAEL DALEY: Yes, but I don't have the right to jump over the top of other Ministers.

The Hon. TANIA MIHAILUK: But you've brought on other statutes, so you do control what you bring forward. Aren't you going to bring your own bill?

Mr MICHAEL DALEY: Yes, we will shortly.

The Hon. TANIA MIHAILUK: That's the same answer you gave me in November.

Mr MICHAEL DALEY: That's right.

The Hon. TANIA MIHAILUK: Will this be the next answer that you give the next budget estimates?

Mr MICHAEL DALEY: I hope not. I don't expect so. We delayed it because we received requests in writing from some of the faith groups and other stakeholders for more time to consider it and they had to discuss it further with the Government, which is what we've been doing, which I'm sure you would applaud.

The Hon. TANIA MIHAILUK: I don't interfere in how you manage your relationships with these stakeholders, Minister. What I want to know is will we see anything come in March, in the next two weeks, or we can presume no?

Mr MICHAEL DALEY: I can't give you a definite timetable, other than to say it will be sooner rather than later.

The Hon. TANIA MIHAILUK: With the equality bill, will you bring your own version of that bill or you're going to make a decision outright on that particular piece of legislation?

Mr MICHAEL DALEY: You'll have to wait to see what we do with the equality bill. I've just answered that question.

The Hon. NATASHA MACLAREN-JONES: On 15 November 2023 you met with the Raise the Age NSW lead group, along with Minister Dib, Minister Jackson and Minister Harris. What was the outcome of that meeting?

Mr MICHAEL DALEY: I'd have to go back and have a look the notes, but the outcome—the meeting was just to hear from them their views about raising the age and to consult with them as a stakeholder.

The Hon. NATASHA MACLAREN-JONES: Young offenders are reported saying that they feel able to reoffend with impunity because they are not to be found criminally liable due to their age. Are you aware of this?

Mr MICHAEL DALEY: I'm aware of reports of that.

The Hon. NATASHA MACLAREN-JONES: Are you also aware of the terms being used, such as doli incapax, to describe why they won't be found criminally liable?

Mr MICHAEL DALEY: Yes.

The Hon. NATASHA MACLAREN-JONES: Do you have concerns that the law of doli incapax is not working in New South Wales?

Mr MICHAEL DALEY: I wouldn't put it that way. Doli incapax is a rebuttable presumption that strikes to—it's a common-law presumption. It's centuries old. What it does is seek to ascertain the mental capacity of a child that's alleged to have committed a crime. You'll be aware that in criminal law there are two aspects to criminal liability. One is called actus reus, which is whether the act that is alleged to have been done was in fact done. The second is mens rea, which is whether the alleged perpetrator of the act has the mental capacity to know the morality and understand right and wrong and what they were doing was wrong. Doli incapax recognises that young children develop at different ages. It's a test before the courts, if you like, where the prosecution puts forward a proposition that the child, based on evidence, does have the mental capacity at that age to understand

CORRECTED

the morality of the act that they're doing. The court then makes up their mind as to whether they do or whether they don't.

The Hon. NATASHA MACLAREN-JONES: But you've seen cases even today in the media where a mother was desperately saying she is trying to teach her young person or her child right from wrong. I'm asking whether or not you think it's working and, if not, what are you doing?

Mr MICHAEL DALEY: I think the issue with *doli incapax* in New South Wales is problematic in this regard. For adult offenders, if the court determines that the adult hasn't made out the *mens rea* aspect of it because they are suffering from a cognitive impairment or a mental health impairment, they get dealt with under alternative pathways. They don't get put through the criminal justice system and found guilty; they go through the provisions of the Mental Health and Cognitive Impairment Forensic Provisions Act. In New South Wales—and other jurisdictions in Australia, mind you—for children, where the prosecution, usually the police, fails to rebut the *doli* presumption, the children are released back onto the street, which means that they can keep going and going and going again. The Premier has said—

The Hon. NATASHA MACLAREN-JONES: The question is what is being done to address it?

Mr MICHAEL DALEY: What we need to do in New South Wales is to examine an alternative pathway, in the same way as I was talking to Ms Higginson a minute ago, to keep these children safe. If they are a danger to themselves and a danger to the community, it is not acceptable that they just keep going through a revolving door of being arrested by the police and finding their way back onto the street. The Premier has made statements in the last week to the effect that he is frustrated by that as well.

The Hon. NATASHA MACLAREN-JONES: I'm familiar with that, Attorney General. As I said before, we've seen the reports over the previous weeks and more recently about the increase of youth crime, particularly in regional parts of New South Wales. Do you concede that youth crime and recidivism in some parts of New South Wales has got out of control and your Government is not doing enough to combat it?

Mr MICHAEL DALEY: I think you need to be very careful with the second part of that question, Ms Maclaren-Jones.

The Hon. NATASHA MACLAREN-JONES: But I've asked you what you're doing.

Mr MICHAEL DALEY: I understand that. Can I just, without lecturing you, say that you need to be very careful with that second half of the question because I've got media reports here that took me two minutes to Google that describe from 2014 in *The Sydney Morning Herald* that country towns in northern New South Wales are in the midst of a tsunami of crime.

The Hon. NATASHA MACLAREN-JONES: There are families that are scared to leave their homes. Have you met with the Premier to discuss this issue?

Mr MICHAEL DALEY: Let's not get all political on this.

The Hon. NATASHA MACLAREN-JONES: I'm not. I'm asking if you've met with the Premier.

Mr MICHAEL DALEY: You are. When you say, "What's your Government doing about it" it carries—

The Hon. NATASHA MACLAREN-JONES: I've asked if you've met with the Premier to discuss this issue.

Mr MICHAEL DALEY: —an implication that we should have solved it within one year.

The Hon. NATASHA MACLAREN-JONES: Have you met with the Premier to discuss this issue? You've got families that are—

Mr MICHAEL DALEY: Yes, I have, many times. We've spoken about this with other Ministers and we are very concerned about it.

The Hon. NATASHA MACLAREN-JONES: Did you have the conversation with him before he went to Moree?

Mr MICHAEL DALEY: Yes, on many occasions.

The Hon. NATASHA MACLAREN-JONES: What was covered?

Mr MICHAEL DALEY: Conversations that I have with the Premier are confidential. You should be aware that there are quite a number of Ministers around the Cabinet table that have responsibility for these sorts of issues, whether they are—

CORRECTED

The Hon. NATASHA MACLAREN-JONES: Have you met with the police Minister?

Mr MICHAEL DALEY: On many occasions. And the commissioner and the deputy commissioner and assistant commissioners and the Chief Magistrate and the president of the Children's Court and the Aboriginal Legal Service and Legal Aid and a whole raft of stakeholders, both State and Federal.

The Hon. NATASHA MACLAREN-JONES: Have you met with the Minister for Families and Communities?

Mr MICHAEL DALEY: Yes, I have.

The Hon. NATASHA MACLAREN-JONES: It was reported in *The Daily Telegraph* as of yesterday: ... Premier Chris Minns has launched a fact-finding blitz, tasking multiple government agencies to immediately look at how to best tackle the crime surge.

The article later states:

The cabinet office has been tasked with leading a multi-government response with the Police department, Youth Justice, Regional NSW, the Attorney-General's office and the Department of Families and Community Services.

What conversations has the Premier had with you around this "fact-finding blitz"?

Mr MICHAEL DALEY: Many conversations.

The Hon. NATASHA MACLAREN-JONES: What has your department or you been tasked with doing to address this issue?

Mr MICHAEL DALEY: We have been addressed with finding some solutions in the short term to some issues that are raising their heads now and have been for decades in rural parts of New South Wales—not only with respect to children but also adults—and also to look at longer term solutions that might be brought to address all those issues that I spoke about with Ms Higginson a while ago.

The Hon. NATASHA MACLAREN-JONES: This fact-finding task that you're all working on: What's the time frame? When can the people of New South Wales get an indication of what your Government will be doing?

Mr MICHAEL DALEY: Sooner rather than later.

The Hon. NATASHA MACLAREN-JONES: Is that weeks, months?

Mr MICHAEL DALEY: This is being driven by the Premier. We are doing the work in earnest and it will be weeks, not months.

The Hon. NATASHA MACLAREN-JONES: We've heard several stories of multiple communities around kids who have been arrested multiple times and then released back into the street, which you also touched on, which has prompted calls for an overhaul of the State's bail laws. Is this something that you're looking at?

Mr MICHAEL DALEY: We're looking at everything, Ms Maclaren-Jones.

The Hon. SUSAN CARTER: Can I take you to the Director of Public Prosecutions Act 1986? Have you issued any guidelines under section 26 of that Act?

Mr MICHAEL DALEY: I'd have to go back and check. I'm not sure. Sally?

SALLY DOWLING: No.

Mr MICHAEL DALEY: No—

The Hon. SUSAN CARTER: There's an obligation for them to be gazetted and I couldn't see any in the Gazette.

Mr MICHAEL DALEY: The answer is no.

The Hon. SUSAN CARTER: How often do you consult with the DPP in accordance with section 25 of that Act?

Mr MICHAEL DALEY: We have a monthly meeting.

The Hon. SUSAN CARTER: When did that last consultation occur?

Mr MICHAEL DALEY: A couple of weeks ago, I think.

The Hon. SUSAN CARTER: Great.

CORRECTED

Mr MICHAEL DALEY: I will check—I'll give you the date, but it was about a couple of weeks ago.

The Hon. SUSAN CARTER: I don't expect detail, but you're able to describe in broad terms the content of those consultations?

Mr MICHAEL DALEY: No. Those discussions that I have with the DPP are confidential, but we raise issues of the day. The DPP will write to me on occasion or raise in meetings issues that have arisen from judgements that might require law reform—things like that.

The Hon. SUSAN CARTER: You would be discussing with the DPP matters of the day and matters arising in judgements in relation to concerns she may have about the conduct of certain matters in the District Court?

Mr MICHAEL DALEY: Yes, in general terms.

The Hon. SUSAN CARTER: Yes, in general terms?

Mr MICHAEL DALEY: Sometimes in specific terms.

The Hon. SUSAN CARTER: You would be aware that the DPP has publicly stated plans to report a judge to the Judicial Commission?

Mr MICHAEL DALEY: I am.

The Hon. SUSAN CARTER: Can you tell us what the bases of reporting a judge to the Judicial Commission are?

Mr MICHAEL DALEY: No, you can talk to the DPP about that or read the statute.

The Hon. SUSAN CARTER: Actually, thank you, I have read the statute. I was hoping you might also be familiar with that statute. Is it commonplace for complaints to the Judicial Commission about judges to be made public by the complainant?

Mr MICHAEL DALEY: I don't know.

The Hon. SUSAN CARTER: From your experience as somebody living in New South Wales, is it commonplace for complaints to the Judicial Commission about judges to be made public?

Mr MICHAEL DALEY: I can't answer that question unless I go back and do an examination of what's happened in the past.

The Hon. SUSAN CARTER: I suggest that it is not commonplace for those complaints to be made public. Is it common practice for judges to publicly question decisions by the DPP to commence certain prosecutions?

Mr MICHAEL DALEY: Is it commonplace?

The Hon. SUSAN CARTER: Yes.

Mr MICHAEL DALEY: I don't know what the definition of "commonplace" is. How often makes it commonplace?

The Hon. SUSAN CARTER: In your experience, how many times a year would you think that you would read a judgement where a judge has publicly questioned decisions by the DPP to commence proceedings?

Mr MICHAEL DALEY: I've never done an examination of the numbers or the frequency so I can't answer that question.

The Hon. SUSAN CARTER: Would you expect that it's commonplace for the DPP to respond via media statements?

Mr MICHAEL DALEY: I'll give you the same answer as the one I just gave you.

The Hon. SUSAN CARTER: Okay. I'm intrigued, Attorney General, because as the first law officer I would think you would have an interest in these matters, yet you seem to have no interest at all, or no knowledge at all, of what's happening in judgements, what the DPP is doing in media statements—

Mr MICHAEL DALEY: That was a nice political statement. Thank you very much. Is there a question anywhere in there?

The Hon. SUSAN CARTER: The question is—well, it is a statement. It's a statement of surprise that you are not more aware of what's happening in your portfolio—but I'll move on.

CORRECTED

Mr MICHAEL DALEY: I'm surprised that you can't formulate your questions with more accuracy—"Is it commonplace?"

The Hon. SUSAN CARTER: I'm sorry. How many times have you—

Mr MICHAEL DALEY: "Is it commonplace?" According to what standard?

The Hon. SUSAN CARTER: How many times have you seen a judge criticise a prosecution brought by the DPP in a judgement in the last two years?

Mr MICHAEL DALEY: I'd have to go back and have a look at that. I don't keep statistics, as I told you, on comments that judges make.

The Hon. SUSAN CARTER: How many times since you have become Attorney General have you been made aware of situations?

Mr MICHAEL DALEY: I'll have to go back. I can't answer this question in any different way.

The Hon. SUSAN CARTER: It doesn't matter how it is reframed, you still can't answer the question, Attorney General. Thank you very much.

Mr MICHAEL DALEY: You are asking me a question about frequency. I don't have the statistic at my fingertip. For the sake of accuracy, I will go back and check.

The Hon. SUSAN CARTER: Can I take you to section 4 of the DPP Act?

Mr MICHAEL DALEY: It is not my role to provide a rolling public commentary about these issues, as much as you'd like.

The Hon. SUSAN CARTER: Can I take you to section 4 of the DPP Act?

Mr MICHAEL DALEY: You can. I don't have it in front of me.

The Hon. SUSAN CARTER: I do. I can take you to subsection (3) where it provides:

The Director is responsible to the Attorney General for the due exercise of the Director's functions ...

Isn't it clearly your responsibility to discuss with the DPP matters in relation to the conduct of proceedings in the District Court and the way in which anything is discussed more broadly in the community?

Mr MICHAEL DALEY: Yes, and I do.

The Hon. SUSAN CARTER: Very good. What's the usual method of objecting to a judgement—to a decision of a court?

Mr MICHAEL DALEY: By whom?

The Hon. SUSAN CARTER: By a party to proceedings. If a party to proceedings has a problem with a decision, what's the usual method by which any objection is pursued?

Mr MICHAEL DALEY: I don't know what you mean by "usual", but one of the avenues would be that they could appeal it.

The Hon. SUSAN CARTER: Excuse me, I thought that you might be aware of the appeal process—exactly. Were you then surprised that when the DPP seems to have problems with the judgement of Judge Newlinds in the Martinez case, there was no action to appeal but, rather, there was a public statement that a complaint would be made to the Judicial Commission? Is that the normal method of complaining about a judgement?

Mr MICHAEL DALEY: All these questions proceed upon your presupposition that it is my role or my desire to provide rolling public commentary on these matters. It's not my role and I'm not going to. We're dealing with an independent statutory office holder and independent judicial officers. I'm not going to entertain this line of questioning, Ms Carter, as much as you would like me to.

The Hon. SUSAN CARTER: Minister, are you aware that the press release from the ODPP asserts that criticism of the DPP from judges can undermine public confidence in the administration of justice? Do you agree with that statement?

Mr MICHAEL DALEY: I'm not here to agree or disagree with the Director of Public Prosecutions.

The Hon. SUSAN CARTER: I'm asking you about your role in the administration of justice, Attorney General.

CORRECTED

Mr MICHAEL DALEY: If you want to question the Director of Public Prosecutions about that statement, she's sitting right there.

The Hon. SUSAN CARTER: Attorney General, what is your role in the administration of justice as Attorney General?

Mr MICHAEL DALEY: That's a bit open-ended, isn't it, that question?

The Hon. SUSAN CARTER: Can I take you to the words of Justice Kirby who, in an address in 1998, said, "The Attorney General is the traditional political guardian of the judiciary," and, "The Attorney General, as the traditional leader of the legal profession, should speak up where judges are unfairly criticised by politicians and others for doing their duty." Do you accept that that is your role as the Attorney General?

Mr MICHAEL DALEY: It could be. That's the opinion of one of the judges, and a highly regarded judge.

The Hon. SUSAN CARTER: Do you accept that you have a role to defend the independence of the judiciary?

Mr MICHAEL DALEY: Yes.

The Hon. SUSAN CARTER: Do you agree that the independence of the judiciary is designed to make sure that judges are independent of interference from the legislative or the Executive arm, so they are free to fulfil their duty?

Mr MICHAEL DALEY: Absolutely.

The Hon. SUSAN CARTER: And that this is an important part of our guarantee of freedoms in our country?

Mr MICHAEL DALEY: I agree with that wholeheartedly.

The Hon. SUSAN CARTER: Do you therefore agree with the statement that when criticisms are made publicly of judges, that can undermine public confidence?

Mr MICHAEL DALEY: It depends on the circumstance of the criticism and the content of it and all the context around it.

The Hon. SUSAN CARTER: Have you discussed this risk with the DPP in relation to public statements about complaints to the Judicial Commission about judges?

Mr MICHAEL DALEY: In what sense? It is a bit of a vague question. Be more specific, please.

The Hon. SUSAN CARTER: If the grounds, as I understand it, for a complaint to the Judicial Commission are about the ability or the behaviour of a judge, if a member of your executive, a senior member of your executive, publicly says, "I am making a complaint about a judge to the Judicial Commission," that implies that there is an issue either about that judge's ability or behaviour. Does that public—

Mr MICHAEL DALEY: I'm not going to entertain rolling public discourse about complaints to the Judicial Commission by the Office of the Director of Public Prosecutions or any other person or body. That is not my role.

The Hon. SUSAN CARTER: Are you going to defend your judges, Minister?

Mr MICHAEL DALEY: I think you'll need to frame that a little bit more accurately as well.

The Hon. SUSAN CARTER: Are you prepared to accept the responsibility that Justice Kirby outlines and be a defender of our system of justice, be a defender of the independence of the judiciary and speak up for your judges, Attorney General?

Mr MICHAEL DALEY: I'm going to let you have a little bit of rope here, Ms Carter, and you can explain to me in the time remaining about how you suggest I might do that. Are you suggesting that I should intervene in a complaint to the Judicial Commission or wander on down there with my wig on and defend the judge or what? That's a silly question.

The Hon. SUSAN CARTER: Minister, you would know, it's not my role to tell you how to do your job.

Mr MICHAEL DALEY: It's not your role but it is your role to frame questions which aren't puerile and are accurate, and that's a silly question.

CORRECTED

The Hon. SUSAN CARTER: Let me take you to the statements in Parliament that were made by your colleague Minister Cotsis. Let me take you to the fact that in response to those statements, the Supreme Court themselves felt that they needed to issue a press release pointing out that those statements were erroneous. Do you support the statements made by Minister Cotsis?

Mr MICHAEL DALEY: It's not my role to endorse, or otherwise, statements made by my ministerial colleagues. She made a statement in the House. The Chief Justice saw fit to issue a public statement on behalf of the Supreme Court. I understand that Ms Cotsis has given evidence before this Committee that she has, shortly after that, written to the Chief Justice and that's the end of the matter, and I'm not going to comment on it.

The Hon. SUSAN CARTER: Minister, it is your role, is it not, to defend the independence of the judiciary from attacks by members of the legislative arm and by members of the Executive arm? Are you resiling from that responsibility?

Mr MICHAEL DALEY: It depends on whether you consider that to be an attack, and I don't.

The Hon. SUSAN CARTER: You think that making statements that the Supreme Court has rebutted in relation to the time taken for matters and the skill level of judges—how would you characterise that other than as an attack?

Mr MICHAEL DALEY: I'm not an English teacher. I'm not characterising that essay as an essay. I've just told you I'm not going to enter into commentary on it.

The Hon. SUSAN CARTER: Minister, it would be very nice if you would take this discussion seriously. This goes to the whole system of justice.

Mr MICHAEL DALEY: No, you're—

The Hon. SUSAN CARTER: And you are just trying to make snide remarks.

The Hon. STEPHEN LAWRENCE: Point of order—

Mr MICHAEL DALEY: No, you're just trying to be political here.

The Hon. STEPHEN LAWRENCE: That's not a question; it's a tirade of criticism.

Mr MICHAEL DALEY: You've already tried this one out on Minister Cotsis. You didn't get anywhere there the other day and you're not going to today either.

The CHAIR: I uphold the point of order. The Minister can answer the question any way he likes, or not.

The Hon. SUSAN CARTER: Minister, do you respect your judges?

Mr MICHAEL DALEY: Of course I do.

The Hon. SUSAN CARTER: Do you publicly speak up for them?

Mr MICHAEL DALEY: I haven't had a requirement to do so but if I need to, I will.

The Hon. SUSAN CARTER: You haven't had the requirement when there has been criticism from members of your Executive to speak up for them?

Mr MICHAEL DALEY: On what occasion?

The Hon. SUSAN CARTER: On the occasion of public complaints by the DPP and on the statements by Minister Cotsis.

Mr MICHAEL DALEY: You've asked me that question about four or five times; I've answered it.

The Hon. SUSAN CARTER: I'm still looking for an answer.

Mr MICHAEL DALEY: I'm still looking for an accurately drafted question.

Ms ABIGAIL BOYD: Since before you were appointed as Attorney General, the domestic and family violence sector has been calling out for reform on the coercive control legislation that's due to be implemented.

Mr MICHAEL DALEY: As have you.

Ms ABIGAIL BOYD: As have I in line with the entirety of the domestic and family violence sector. What have you been doing to address concerns that, unless that legislation is redrafted, it will be actively dangerous?

CORRECTED

Mr MICHAEL DALEY: I don't accept your characterisation. I do accept that you have been a staunch opponent of this legislation from the outset. Parliament has overwhelmingly arrived at the view that the legislation, as it was presented and passed through the Parliament, should proceed, and that is what's happening.

Ms ABIGAIL BOYD: We had chats, though, didn't we, at the time, when Labor in the heat of pre-election fervour decided to back in this.

Mr MICHAEL DALEY: No, that's not fair, Ms Boyd.

Ms ABIGAIL BOYD: At the time the domestic and family violence sector was saying to you—

Mr MICHAEL DALEY: Some were.

Ms ABIGAIL BOYD: —that this was poorly draft legislation. No, the entirety of the domestic and family violence sector were telling you that. And at the time the only people who were telling you anything else, I believe, was the Bar Association.

Mr MICHAEL DALEY: No, that's—

Ms ABIGAIL BOYD: This has now become a pressing, pressing problem. What have you done to turn your mind to redrafting and putting in the amendments being requested?

Mr MICHAEL DALEY: I think you need to go back and read the answer that I gave to that very question here in the last estimates. I think I explained to you then that there was no intention whatsoever to redraft that legislation. The Parliament had overwhelmingly decided that it was going to be—

Ms ABIGAIL BOYD: No, you had. I'm sorry, but you had.

Mr MICHAEL DALEY: No, the Parliament.

Ms ABIGAIL BOYD: No, Parliament had decided that a coercive control offence was necessary. Parliament had not decided that that particular version should be implemented, except that Labor decided to back it in. If Labor had taken a stand at the time and listened, we would have had much better legislation. You're now in government. What have you done—

Mr MICHAEL DALEY: In your view.

Ms ABIGAIL BOYD: No, in the view of the entire domestic and family violence sector.

Mr MICHAEL DALEY: No, the domestic and family violence sector were not unanimous in the views that they put to me. Some of them wanted it delayed for five years.

Ms ABIGAIL BOYD: Who have you met from the domestic and family violence sector in relation to coercive control?

Mr MICHAEL DALEY: I'd have to look at my diary. I recently met with DVNSW.

Ms ABIGAIL BOYD: Yes, you have met with DVNSW, who are staunchly opposed to the legislation in its current form.

Mr MICHAEL DALEY: Yes, and when they sat down and spoke to me a few weeks ago, they were keen to hear about how the training was proceeding, particularly in relation to the police.

Ms ABIGAIL BOYD: Yes, terribly.

Mr MICHAEL DALEY: They did not ask me at the time—

Ms ABIGAIL BOYD: They've written you letters, haven't they?

Mr MICHAEL DALEY: —to undo the legislation. They were wanting to talk constructively about how the training was proceeding.

Ms ABIGAIL BOYD: That is a whole other issue, which we've covered in other estimates, about how poor that training is. Looking at your disclosure summary—you started off okay from July to September, actually telling us what your meetings were about. It talks about particular bills. Sometimes it's just discussion on various legal topics, but a lot of the time it's discussion on surrogacy, discussion on modern slavery et cetera. But then we get to October/December and it's just "discussion on portfolio-related matters". You've had less than two meetings a week, and it all just says "discussion on portfolio-related matters". Do you think that's adequate disclosure for the public?

Mr MICHAEL DALEY: It just depends on what the stakeholders are bringing to me.

CORRECTED

Ms ABIGAIL BOYD: Just "portfolio-related matters". You couldn't put in, for example—I don't know—what was the National Justice Project wanting to talk to you about? Can that not be more specific?

Mr MICHAEL DALEY: It depends on what they bring to me and what the nature of the discussions are.

Ms ABIGAIL BOYD: When will the New South Wales Government honour the 2023 Labor election commitment for an independent victims services commissioner?

Mr MICHAEL DALEY: That one is of the election commitments that we made. We intend to honour all of them. I can't give you a time frame on when that will be, but we will honour it.

Ms ABIGAIL BOYD: That's not very comforting, though, is it? You've given that commitment. Do people just have to wait until maybe the next election to see these things happen?

Mr MICHAEL DALEY: There's a statutory review going on in relation to the victims services legislation. That's happening and—

Ms ABIGAIL BOYD: I understand that that legislation was reviewed in July 2022. When can we see the results of that review?

Mr MICHAEL DALEY: When it's complete.

Ms ABIGAIL BOYD: But that was almost two years ago. Are you saying it's not complete—that review that was due in 2022?

Mr MICHAEL DALEY: When it's ready to be handed down, we'll hand it down. I'm not the sort of person that wants to sit around a statutory review, which is why I moved, for example, on the review of the coronial jurisdiction which was due in 2014.

Ms ABIGAIL BOYD: When are we going to see it?

Mr MICHAEL DALEY: I can't give you a time frame, sorry. I'm not trying to obfuscate. I just don't know the answer to that question.

Ms ABIGAIL BOYD: But you'd admit that that's taking a bit of a long time—two years?

Mr MICHAEL DALEY: Yes, it is, because there are a lot of moving parts and we want to make sure we get it right.

Ms ABIGAIL BOYD: Following the disability royal commission recommendations, will the New South Wales Government amend its legislative definitions of family and domestic violence to include relationships in which people with disability experience domestic abuse?

Mr MICHAEL DALEY: I'll have to take that on notice, Ms Boyd. It's not wholly within my own portfolio.

Ms ABIGAIL BOYD: Is that not something that you have been looking at as Attorney General—

Mr MICHAEL DALEY: I'll take that question on notice.

Ms ABIGAIL BOYD: —in relation, for example, to the coercive control offence and the fact that it doesn't work in its current drafting?

Mr MICHAEL DALEY: Mr Tidball can elucidate on that now, if you would like him to?

Ms ABIGAIL BOYD: Yes.

MICHAEL TIDBALL: Just very briefly, the department is, on behalf of all-of-government, whole-of-government, coordinating a response to all the recommendations. Each of those recommendations is in scope, including the one you've just referred to, and the person managing that process is Deputy Secretary Anne Campbell.

Ms ABIGAIL BOYD: I might come back to that this afternoon, but it is directly related to the flaws identified with the coercive control legislation as well. I understand that you decided back in Opposition that you were going to support that legislation in its current form, but so much has happened since then. We've had things like the Auditor-General and the LECC report in relation to how unprepared the police are; we've had the pulling of the contract that would have allowed police systems to be brought up to speed in order to allow them to adequately record coercive control incidents; we've had a change of definition of domestic and family violence at a national level; and now we've had the disability royal commission. What does it take for you to be convinced that we need to change this legislation before it's implemented?

CORRECTED

Mr MICHAEL DALEY: I think that's a bit of an open-ended vague sort of question. I can't answer that.

Ms ABIGAIL BOYD: I'm sorry, but what does it take in terms of new events to occur for you to reconsider a position you took two years ago?

Mr MICHAEL DALEY: I'm not sure how I can even answer that question, Ms Boyd.

Ms ABIGAIL BOYD: You could just answer it. What do you mean, you don't know how to answer it?

Mr MICHAEL DALEY: What would it take? Some catastrophic failure where the legislation for some reason can't be introduced or won't work.

Ms ABIGAIL BOYD: If people are crying out and telling you that this will actively harm women and children, please don't do it, that's not sufficient?

Mr MICHAEL DALEY: You've been saying that from day one.

Ms ABIGAIL BOYD: No, the experts who have worked in the field for decades are saying this. It's not just me.

Mr MICHAEL DALEY: Yes, and I'll take advice from principally the people who are sitting at this table.

Ms ABIGAIL BOYD: Can we talk about the review that was conducted in relation to the excellent campaign from Harry James and Jarad Grice in relation to the Your Reference Ain't Relevant campaign?

Mr MICHAEL DALEY: Yes.

Ms ABIGAIL BOYD: I thank you for meeting with those people and listening to them—that was fantastic—but I understand that the DCJ review was not conclusive. What process was undertaken by DCJ, if we're relying on them, to ensure that they were speaking with victim-survivors and advocates, and not just people who are already embedded in the legal system?

Mr MICHAEL DALEY: I might get Mr Tidball and Mr McKnight to take you through some of the details about the consultation. Firstly, I want to thank Harrison James and his colleagues for raising this important issue. They are certainly passionate, and they're busy. They've managed to take the discussion national. They contacted the Attorney-General of the Commonwealth and spoke to the Attorney-General from the Northern Territory. I had a very productive meeting with them and I told them that I was going to refer the question to the Sentencing Council for an expert review. I was grateful that they saw the value in that. I also promised them that I'd raise it at the next SCAG meeting, which happened to be about a week later, which I did, and I've now got that item officially on the agenda for the next meeting of Attorneys-General nationally. In relation to the specific consultations that occurred—

Ms ABIGAIL BOYD: Thank you, I'll come back in the afternoon perhaps because I only have a short period of time, but if you could tell me the basic time line for that Sentencing Council review—

Mr MICHAEL DALEY: I don't know. That will be up to Peter McClellan who chairs that, and they have a couple of references in front of them at the moment already. But certainly Mr James did express—and I don't want to verbal him, but he did realise that they'd have the opportunity to put a detailed submission before the experts. When we took Mr James and his colleague through—it's Mr Grice, isn't it?

Ms ABIGAIL BOYD: Yes.

Mr MICHAEL DALEY: When we took them through the composition of the Sentencing Council, there were partners there, there were victims groups and other groups there, not just legal pointy-heads.

Ms ABIGAIL BOYD: In the time I have left, just one last question: In the last budget estimates you commented that every court location in New South Wales has either a safe room or a safe waiting arrangement for people who have experienced domestic violence. However, I understand that those safe waiting arrangements can include meeting somebody outside at a particular spot in the garden.

Mr MICHAEL DALEY: Yes, I think that there are a small number that might have those rooms offsite, perhaps in a police station close by and things like that.

Ms ABIGAIL BOYD: Not even. Apparently, you meet somebody somewhere that is away from the court. What is being done to ensure that there is actually a safe waiting room within the court?

Mr MICHAEL DALEY: I'd have to take that on notice, but it's a good, important question. Thank you.

CORRECTED

The Hon. TANIA MIHAILUK: Attorney General, are you familiar with the Prasad direction?

Mr MICHAEL DALEY: Not off the top of my head, Ms Mihailuk.

The Hon. TANIA MIHAILUK: The Prasad direction was a practice available in criminal trials whereby a judge could inform a jury that it was open to acquit the accused at any point following the close of the prosecution case, if the evidence was considered insufficient to support a conviction.

Mr MICHAEL DALEY: Yes.

The Hon. TANIA MIHAILUK: The High Court actually ruled that the issuing of such a direction was unlawful. Would the Government be open to making this direction a statutory option for judges where judges are vested with the power at half-time to discontinue a matter where there's clearly insignificant evidence?

Mr MICHAEL DALEY: I have to take that on notice and get some advice on that.

The Hon. TANIA MIHAILUK: Can I also ask you about cost certificates, Attorney General? How many cost certificates have been awarded against the DPP in relation to sexual assault matters in the last five years? If you can't answer that, could you take that on notice?

Mr MICHAEL DALEY: I'll have to take that on notice.

The Hon. TANIA MIHAILUK: If you could also take on notice for me that when a cost certificate is awarded, where does that come precisely out of the budget? I'd like to know where in the budget it comes from.

Mr MICHAEL DALEY: It comes out of the global DCJ budget. But if I'm wrong—no, I'm right.

MICHAEL TIDBALL: Correct.

The Hon. TANIA MIHAILUK: Is your office notified when those sorts of awards are issued?

Mr MICHAEL DALEY: Usually, yes.

The Hon. TANIA MIHAILUK: At the end you're told what the amount is and why, is that right? I'm just asking. If you can take that on notice. I don't know what the process is. I'd like to know.

Mr MICHAEL DALEY: I'm not sure what the form process is. I just aware that I've been notified of a couple in the time I've been Attorney General.

The Hon. TANIA MIHAILUK: In relation to the Martinez case, did you make yourself familiar with what actually transpired there with that particular case?

Mr MICHAEL DALEY: Yes, I read the judgment.

The Hon. TANIA MIHAILUK: Are we expecting that this innocent man may potentially now be suing the Crown?

Mr MICHAEL DALEY: I don't know.

The Hon. TANIA MIHAILUK: No-one's been given any advice on whether that's happening?

Mr MICHAEL DALEY: I don't know.

The Hon. TANIA MIHAILUK: Because he was ultimately incarcerated for eight months—

Mr MICHAEL DALEY: I don't know, and that's not something—

The Hon. TANIA MIHAILUK: —on the advice of the DPP that they had reliable and credible evidence at the time. Attorney General, you've had a number of members of this Committee now raise with you the concerns that there is a very unhelpful public discourse at the moment happening between some of the judges in New South Wales and the DPP.

Mr MICHAEL DALEY: A small number, yes.

The Hon. TANIA MIHAILUK: Well, I beg to disagree with you on that, Attorney General, because when you're dealing with innocent people's lives being impacted, it doesn't matter what number it is, it's the fact that decisions are being made to prosecute that aren't subject to judicial review, as you know, and are turning people's lives upside down on the basis of—

Mr MICHAEL DALEY: The decisions are subject to the ultimate judicial review.

The Hon. TANIA MIHAILUK: —the fact that they're taking decisions that are not credible and not reliable evidence before these courts. The judges are trying to use any opportunity they can to send a message that

CORRECTED

there is something very wrong within the DPP and in their processes. What I want to ask you about is the guidelines, specifically the Prosecution Guidelines. Do you think it's worth a parliamentary inquiry reviewing those guidelines?

Mr MICHAEL DALEY: Not at this time, no.

The Hon. TANIA MIHAILUK: Would you be interested in reviewing them? You don't think that, given that there have been concerns raised by judges now, is it worth having revisit of those sorts of guidelines?

Mr MICHAEL DALEY: I have discussions with DPP about these guidelines and other issues from time to time.

The Hon. TANIA MIHAILUK: Yes, you discuss with DPP, but what about the rest of the legal fraternity that might give you some more insights into some of the concerns? That's why an inquiry could be worth it.

Mr MICHAEL DALEY: I think what you've got to do is look at each of the cases on their merits and not jump to the conclusion that there's warfare, that there's a shortcoming or that someone is doing their job or isn't doing—

The Hon. TANIA MIHAILUK: Attorney General, when you've got judges being ridiculed by a DPP because they're unhappy that they've made a comment in their particular judgment in relation to an innocent man being unfairly and wrongly prosecuted—

Mr MICHAEL DALEY: That's your characterisation and you can ask the DPP about that. I've said on numerous occasions this morning that I'm not going to engage in a running commentary on these matters.

The Hon. TANIA MIHAILUK: But you can't ignore it, Attorney General. I think it's come to a position where when it's such public warfare, it can't be ignored by the chief law—

Mr MICHAEL DALEY: That's your characterisation.

The Hon. TANIA MIHAILUK: Well, it's a fact, isn't it? It's a fact. Public statements were made. You have to accept that.

Mr MICHAEL DALEY: I'd hardly characterise that as warfare.

The Hon. TANIA MIHAILUK: It's been reported in newspapers now, and staff are leaking to those newspapers because they've got concerns about how matters are being presented before the court by the DPP. There are clearly concerns.

Mr MICHAEL DALEY: You can take the DPP through this in fine detail later on this afternoon and examine all the statements and all the issues that you wish to, but I've said up to six or seven times now that I'm not going to engage in a running commentary on this issue.

The Hon. TANIA MIHAILUK: When a comment is made by your DPP that a particular judge failed "to meet the minimum standards of temperance and impartiality expected of a judicial officer", which is a very strong allegation to make against a judicial officer, you don't think that warrants your intervention to be across what's going on here and to actually perhaps seek an inquiry into what is going on in the DPP?

Mr MICHAEL DALEY: If you're referring to the matter that's before the Judicial Commission, the Judicial Commission will examine that. I don't intend to engage in a running commentary no matter how many times you ask me the question or try to draw me out. You must understand that that is my answer.

Ms SUE HIGGINSON: Attorney, could I just turn to your powers in relation to ex gratia payments? What is your understanding of how you administer that function and power that you have when the justice system has failed an individual?

Mr MICHAEL DALEY: My understanding is that there's a Premier's memorandum that governs ex gratia payments.

Ms SUE HIGGINSON: Is that something that's available publicly?

Mr MICHAEL DALEY: I'd expect so.

MICHAEL TIDBALL: Yes.

Ms SUE HIGGINSON: Do you use that function in a proactive way?

Mr MICHAEL DALEY: In what sense?

CORRECTED

Ms SUE HIGGINSON: Where you know that the system has wronged a person or a person has suffered at the hands of the system unfairly and wrongly, do you reach out and proactively offer that capacity?

Mr MICHAEL DALEY: No. There's no-one in government that sits around and monitors cases where there may have been injustice done to parties and then reaches out and suggests to them that they should apply for an ex gratia payment, no. There is no proactivity in that.

Ms SUE HIGGINSON: Have you ever considered an ex gratia payment for the families of the victims of the Bowraville murders?

Mr MICHAEL DALEY: I'm not sure if they have applied for one or not. I would have to take that on notice.

Ms SUE HIGGINSON: Are you suggesting you haven't? You have never considered that?

Mr MICHAEL DALEY: Have I proactively considered that?

Ms SUE HIGGINSON: No, sorry. We've moved on. Have you considered an ex gratia payment to the families of the victims of the Bowraville murders?

Mr MICHAEL DALEY: I would have to take that on notice and see whether the Attorney General of the day, whether it was me or not, has. I don't know.

Ms SUE HIGGINSON: Just in relation to the Kathleen Folbigg matter, are you taking any steps in relation to that? I understand that you've made clear that's not a practice you would take, but is it a matter now where Ms Folbigg would have to go through another incredibly lengthy process or is this something that you're reaching out to her to help her in relation to the very obvious matter that's before the world at large?

Mr MICHAEL DALEY: I don't really like to sit in these forums, Ms Higginson, and discuss individual matters. But I can say that in relation to ex gratia payments I don't take a proactive role and I haven't in this instance either.

Ms SUE HIGGINSON: Has there been any progress from when we last spoke on the post-conviction review process?

Mr MICHAEL DALEY: I spoke about that already. No.

Ms SUE HIGGINSON: I think you said words to the effect—and I could be wrong and I don't want to verbal you—that you were getting your department to look into it and do work.

Mr MICHAEL DALEY: I said I was open to it. I said that on the day that I announced Ms Folbigg's pardon at the press conference, at which you were present, and I said on the last occasion we were here that it was something I was open to but that at this time I'd need to be persuaded that I needed to move on it. At the moment, it's not a priority. I haven't closed my mind to it but the more I look into it the less convinced I am that there is a pressing need for it at this time.

Ms SUE HIGGINSON: Nobody is doing any work internally to look at that need or that case that could be made, notwithstanding the representations that have been made to you that there is a case to have an improved system of post-conviction review?

Mr MICHAEL DALEY: My understanding is no.

Ms SUE HIGGINSON: Are you aware that outside the ACT there are 28 cases nationwide where compensation has been awarded for wrongful convictions and yet at the moment it is the ACT that has a system?

Mr MICHAEL DALEY: I was aware that there were a number of cases where compensation had been awarded, but I'm not sure where else that goes.

The Hon. NATASHA MACLAREN-JONES: Do you want your two minutes first, Ms Higginson, because you're on a roll?

Ms SUE HIGGINSON: Yes, if I can just press a bit more on this. Sorry, Attorney, are you suggesting that you don't think there is a case to improve our post-conviction review system at this point in time?

Mr MICHAEL DALEY: I'm not sure how I could improve upon the answer that I've just given you, Ms Higginson.

Ms SUE HIGGINSON: You said that you don't think there is a case at this point. I'm just trying to make that clear.

Mr MICHAEL DALEY: Yes.

CORRECTED

Ms SUE HIGGINSON: Right.

Mr MICHAEL DALEY: I don't say there's no case. I just say I'm open to it, but the more that I look into it, the less convinced I am that there's a need for us to act on it now.

Ms SUE HIGGINSON: What is that factor that's suggesting there isn't a need, particularly in the light of, say, the failings in the Kathleen Folbigg matter? What are you suggesting?

Mr MICHAEL DALEY: Because I'd need to be convinced that the current regime under the Crimes (Appeal and Review) Act is so deficient that it doesn't fulfil its statutory objectives. I'm not sure that's the case. I think the Folbigg case shows that it can and it does.

Ms SUE HIGGINSON: Can I interrupt there? You've heard the term "justice delayed is justice denied", Attorney. Does that concern you? I don't need to stipulate here the length of time of the injustice that Ms Folbigg experienced, along with others before her. How do you override that factor?

Mr MICHAEL DALEY: I don't want to reopen the iterations and the mechanics of the Folbigg case. But when you talk about delay, part of the delay was attended by the fact that the scientific evidence that played a major role in her exoneration didn't exist. Mr Bathurst told me that even while he was conducting his inquiry, brand-new, not formerly known evidence was rolling into his inquiry.

Ms SUE HIGGINSON: But Attorney, it was some six years from the point where the review, from the side—

Mr MICHAEL DALEY: We could go around the block about that.

Ms SUE HIGGINSON: Does the delay concern you, with the archaic current system that we have, with post-conviction reviews? Does the delay concern you, Attorney?

Mr MICHAEL DALEY: I'm not sure that—

Ms SUE HIGGINSON: And the accessibility?

Mr MICHAEL DALEY: I'm not sure that a better system presently exists in Australia—

Ms SUE HIGGINSON: Not in the UK, not elsewhere across the world? You've looked at those systems?

Mr MICHAEL DALEY: Not in any great detail, but enough to have received advice that they're not working as they all were originally envisioned to work in other jurisdictions—and that there's quite some cost attended to them, as well.

Ms SUE HIGGINSON: Is that advice available?

Mr MICHAEL DALEY: Some of it is just conversations with departmental staff and other practitioners.

The Hon. NATASHA MACLAREN-JONES: Attorney General, you said in response to a question from Ms Higginson—I think it was in relation to the age of criminality—you made a comment that many of these young people are troubled or come from troubled, dysfunctional families. You obviously showed concern for these young people. I'm interested to know whether or not you've met with Minister Washington to discuss, particularly, things like early intervention to support young people or families?

Mr MICHAEL DALEY: Yes. The Ministers, there are about seven or eight that loosely cover many of the issues that attend these sorts of issues.

The Hon. NATASHA MACLAREN-JONES: And this is specific to youth crime?

Mr MICHAEL DALEY: Yes, youth crime, homelessness, drug and alcohol, policing, all those sorts—there are a number of Ministers.

The Hon. NATASHA MACLAREN-JONES: Last month the Minister for Homelessness, and Minister for Youth announced a youth central agency that she'll be driving. Will that agency be responsible for youth crime?

Mr MICHAEL DALEY: I'm not sure. In what—

The Hon. NATASHA MACLAREN-JONES: Were you consulted on the announcement?

Mr MICHAEL DALEY: —sense, though?

CORRECTED

The Hon. NATASHA MACLAREN-JONES: She announced, as she called it, a "central youth agency". Everything to do with youth will be through that agency.

Mr MICHAEL DALEY: But what I'm trying to—when you say, "Will it be responsible for youth crime?", for what aspects of it?

The Hon. NATASHA MACLAREN-JONES: I'm looking to find out who is actually responsible for delivering outcomes for the Government in addressing youth crime. We have the Premier who has come out talking about a fact-finding blitz. All of these Ministers are within your department. I'm looking to find out who in your Government is in charge of addressing youth crime. We have families crying out for help. We have young people who are going in and out of the justice system. Somebody needs to take leadership. I'm asking whether or not that's you.

Mr MICHAEL DALEY: It's a number of Ministers. I hate the expression "whole of government". A multifaceted, coordinated response is perhaps a better way to describe it. There are a number of us who have a responsibility for various aspects of it.

The Hon. NATASHA MACLAREN-JONES: But who is driving it? Who is the leading Minister? Who is actually driving it? Is the Premier now in charge?

Mr MICHAEL DALEY: The Premier is always in charge, but there is an agreement amongst the relevant Ministers that we need to do better and come up with—

The Hon. NATASHA MACLAREN-JONES: But who is ultimately responsible for ensuring these outcomes are delivered? The way it sounds, all of you are passing the buck to each other. Someone must be responsible.

Mr MICHAEL DALEY: No, we are not passing the buck. The responsibility is not officially resting with one Minister. The department is doing work now, as I described earlier—

The Hon. NATASHA MACLAREN-JONES: But, ultimately, you are the chief law officer of this State. The buck should stop with you.

Mr MICHAEL DALEY: No, the response has Health responses in it as well. The Minister for Health and his department are preparing those responses. There are Youth Justice responses that Minister Dib is looking at. There are out-of-home care responses that Minister Washington is looking at.

The Hon. NATASHA MACLAREN-JONES: But who is in charge of bringing it all together and coming out with the whole of government—

Mr MICHAEL DALEY: All of us have agreed that DCJ should do some work to look at those responses.

The Hon. NATASHA MACLAREN-JONES: So you're passing it on to somebody else—on to the department.

Mr MICHAEL DALEY: Don't be silly.

The CHAIR: We'll take a break now and come back at 11.15 a.m.

(Short adjournment)

The CHAIR: The Attorney General has some answers to questions taken on notice.

Mr MICHAEL DALEY: Mr Chair, a question was asked by Ms Higginson about how many young people are in custody. As at 28 February 2024, under 16 years, there are 77 in detention; under 14 years, there are 12 in detention; under 12, there are zero in detention.

The Hon. TANIA MIHAILUK: Exactly what I said.

Mr MICHAEL DALEY: See, you're right again.

The Hon. NATASHA MACLAREN-JONES: It has been zero for years.

The CHAIR: Order! No exaltation.

Mr MICHAEL DALEY: The total young people, 228 in detention. Ms Mihailuk asked me, "Over the last five years, how many times did the DPP make public comments in response to a judgement?" Two media releases were issued according to the Office of the DPP's website. You can explore that further. Ms Carter asked,

CORRECTED

"Have you issued any guidelines under the DPP Act?" I think it was section 25, wasn't it? No, I haven't. So I can confirm that. "When did you last consult or meet with the DPP under section 25 of the DPP Act?"

The Hon. SUSAN CARTER: Section 26.

Mr MICHAEL DALEY: Section 25 of the DPP Act provides for a specific avenue for the director and the Attorney General to consult on matters with respect to the exercise of the director's functions. Meetings with a director may also occur, as they do with all other stakeholders, outside the scope of this provision. I have regular meetings with the Director of Public, as I do with many legal and other stakeholders. I last met with the Director of Public Prosecutions on 31 January.

Ms Mihailuk asked, "In the last five years, how many cost certificates were awarded against the Office of the Director of Public Prosecutions regarding sexual assaults?" Financial year '23, there were 21 matters where costs were awarded. In 2022, there were 20. Financial year '21, there were nine matters. Financial year '20, there were 32 matters. Financial year '19, there were 21 matters. Question: "When a cost certificate is awarded, where in the budget does that come from?" Answer: The budget for costs is from the Consolidated Fund. There is no formal process for notifying the Attorney General's office. The department administers the process. Question: "What is the formal process for notifying your office?" Answer: There is no formal process for notifying the Attorney General's office. The department administers the process. Do you need me to table those as well?

The CHAIR: Please.

Mr MICHAEL DALEY: By leave, I table those answers to questions taken on notice.¹

Document tabled.

Mr MICHAEL DALEY: These costs, I'm advised, are not all sexual assault costs. They're global costs for costs awarded generally.

The Hon. SUSAN CARTER: Thank you for those answers to questions. Can I just ask a follow-up question. If the cost orders come out of the consolidated DCJ budget, does that impact other operations of the department? Perhaps you can take that on notice and tell me, and also if we can—

Mr MICHAEL DALEY: I think the answer is that each year there's an anticipated allocation.

MICHAEL TIDBALL: There is an allocation.

PAUL McKNIGHT: There's a budget.

The Hon. SUSAN CARTER: So it would only be if it exceeds the budgeted cost, then it would impact on other operations.

Mr MICHAEL DALEY: Yes, and I think from having a look at those, you can see that over the four or five years that I've given you, they vary greatly. Some years would be under and some would be over, I would imagine.

The Hon. SUSAN CARTER: You noted that they were cost orders generally. Can you separate them out so we have the sexual assault ones as a separate category?

Mr MICHAEL DALEY: We'll take that on notice.

The Hon. SUSAN CARTER: If you could take that on notice, that would be very helpful. While we're revisiting, if I can take you back to the statement that was made on behalf of the Supreme Court in relation to the comments by your colleague the Minister for Industrial Relations, and if I can quote that statement reads in part:

With respect to the minister, there are a number of aspects of this statement relating to the Supreme Court that are not accurate and cannot go uncorrected as a matter of public record.

Do you have any role, Attorney General, in correcting statements on the public record where there are errors made in relation to the Supreme Court?

Mr MICHAEL DALEY: Errors made by whom?

¹ Please see [correspondence](#) received on 19 March 2024 from the Hon Michael Daley MP, Attorney General, regarding the tendered document.

CORRECTED

The Hon. SUSAN CARTER: Made by your colleague in the Executive. If there is a member of the Executive who makes criticisms of the Supreme Court which are found to be unfounded, as the defender of the administration of justice in New South Wales, do you have any role to speak publicly to correct the record?

Mr MICHAEL DALEY: That's a bit hypothetical.

The Hon. SUSAN CARTER: It's not hypothetical, with respect, because the Supreme Court needed to issue a statement only on 30 November.

Mr MICHAEL DALEY: You're putting it in the context of a statement made by Minister Cotsis, and I've told you that I'm not going to engage in any polemics or discussion about that.

The Hon. SUSAN CARTER: Is upholding respect for independence of the judiciary a matter of polemics?

Mr MICHAEL DALEY: I don't know that that impugns or endangers the independence of the Supreme Court in any way. That is drawing the longest of bows.

The Hon. SUSAN CARTER: Thank you for your view on that, and I have one last question. The amount allocated for the establishment and running of the new Industrial Court, what impact will this have on the budgets of existing courts?

Mr MICHAEL DALEY: You will have to wait until the budget comes out to see what that figure is.

The Hon. SUSAN CARTER: Sorry, when this Industrial Court was planned, weren't impacts on other courts contemplated?

Mr MICHAEL DALEY: You can talk to the Treasurer about budgetary impacts.

The Hon. SUSAN CARTER: Minister, is it not your budget—the budget for your department?

Mr MICHAEL DALEY: It is the Treasurer's budget.

The Hon. SUSAN CARTER: So you've got no oversight, no control over the budget for your department?

Mr MICHAEL DALEY: In what sense?

The Hon. SUSAN CARTER: In the sense that you say, "Treasurer, I need this much to run my department. I'm going to have this new court. I need an extra X," and he says yes or no.

Mr MICHAEL DALEY: No. The way the budget works is that departments—if I can use that word—are allocated a budget for their yearly activities. When a Minister proposes either a variation of the budget by way of over-expenditure of an existing budget or whether they are an aspect of the departmental budget or where they want to introduce a new program, a new policy—NPPs, they're called; new policy proposals—the Minister goes to ERC and argues or puts their case for an additional expenditure. Otherwise, in the normal course of the budget being prepared, Ministers propose budget bids to the Treasurer in loose terms and ask for the money.

The Hon. SUSAN CARTER: So the Industrial Court was pitched as an NPP?

Mr MICHAEL DALEY: I don't know if it was or whether they're just preparing it in the normal course of the budget.

The Hon. SUSAN CARTER: If you need to take that on notice, that's fine. I'm just interested in the impact of the Industrial Court on existing courts.

Mr MICHAEL DALEY: We'll take that on notice to give you an accurate answer.

The Hon. NATASHA MACLAREN-JONES: Most people's experience of the administration of justice is through the Local Court. I'm interested to know what the current wait times are.

Mr MICHAEL DALEY: Mr Tidball's got that at his fingertips.

MICHAEL TIDBALL: I can help with that. I will be running, though, not off ROGS data because the ROGS have not reported, Ms Maclaren-Jones, since the last estimates.

Mr MICHAEL DALEY: Do you want to explain what ROGS is?

MICHAEL TIDBALL: Yes, *Report on Government Services*. They publish cases pending. I provided those figures at the last estimates—last reported 30 June. If I can run off—for the Local Court, probably the best indicator is defended hearings. As at end of December 2023, which is the most recent data I have, there were around 21,550 defended hearings pending in the Local Court.

CORRECTED

The Hon. NATASHA MACLAREN-JONES: What's the average length of wait time for a domestic violence case?

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

The Hon. NATASHA MACLAREN-JONES: Attorney General, I put to you in relation to Waverley Court—which is in your electorate—are you aware of, first of all, how many cases are waiting at that court and, also, the length of wait time for a matter to be heard?

Mr MICHAEL DALEY: No, I'm not. It is my Local Court. It's in the electorate of Coogee, but that's neither here nor there. No, I'm not. I'll have to take that on notice.

The Hon. NATASHA MACLAREN-JONES: Has anyone raised with you the wait times in relation to that court?

Mr MICHAEL DALEY: For that court specifically, no.

The Hon. NATASHA MACLAREN-JONES: Do you have any wait times in relation to Bankstown Local Court?

Mr MICHAEL DALEY: No, I don't. I can get them. I just don't have them at my fingertips.

The Hon. NATASHA MACLAREN-JONES: Would anyone at the table have those figures?

Mr MICHAEL DALEY: No, not today.

The Hon. NATASHA MACLAREN-JONES: I put to you that Waverley court could potentially have a 12-month wait period for a matter to be heard. Are you aware of that?

Mr MICHAEL DALEY: If it's true—I'm not aware of it, no. I just told you that I wasn't aware of the wait times.

The Hon. NATASHA MACLAREN-JONES: Is that of concern to you—the wait time?

Mr MICHAEL DALEY: Of course it's of concern.

The Hon. NATASHA MACLAREN-JONES: What can be done to address it?

Mr MICHAEL DALEY: This has been a longstanding issue with the Local Court. It was exacerbated by COVID. I know that the Chief Magistrate and his deputies have worked very hard with their magistrates to get that list under control. I meet with the Chief Magistrate regularly regarding issues that impact the jurisdiction of the court and the ways that the New South Wales Government can support the operation of the Local Court. Since March 2022, two magistrates have been appointed in the Local Court, the first in September 2022, specifically as a Youth Koori Court magistrate, and then in November 2023, specifically as a circle sentencing magistrate. One of the things that's impacting on the Local Court is the significant increase in the number of sexual assault and domestic violence complaints. That is something that should concern all of us and does impact on the work that the magistrates do, and I want to take this opportunity to thank the magistrates who do a pretty thankless job but do a good job in terms of managing the heavy workload that they have.

The Hon. NATASHA MACLAREN-JONES: That leads me to the next area, which is that I think they estimate around 40 per cent of matters are related to domestic and family violence.

Mr MICHAEL DALEY: And the same impact in the District Court on sexual assault cases as well.

The Hon. NATASHA MACLAREN-JONES: Have you had any discussions with the Minister for Women in relation to this particular issue—the wait time and the impact it is having on courts—and what were the outcomes of those discussions?

Mr MICHAEL DALEY: I haven't raised with the Minister for Women the wait times in court because it's not really a matter for her, but we have general discussions about domestic and—

The Hon. NATASHA MACLAREN-JONES: Has she raised it with you?

Mr MICHAEL DALEY: She may have in conversation, but not in any official way.

The Hon. NATASHA MACLAREN-JONES: Have you considered establishing a domestic and family violence list?

Mr MICHAEL DALEY: We have had discussions about that over the last year.

The Hon. NATASHA MACLAREN-JONES: Was that with the Minister or—

CORRECTED

Mr MICHAEL DALEY: Just loose conversations. There have been suggestions put to me that we should have a specialist domestic violence court. I've spoken to the Chief Magistrate about that. His view is that you should not do that and that if you were going to move to any specialisation you would have maybe a specialist domestic violence list. But there are moves within the Local Court to educate magistrates on domestic violence issues, so to have them educated—

The Hon. NATASHA MACLAREN-JONES: What is your view in relation to a specific list?

Mr MICHAEL DALEY: A specific list?

The Hon. NATASHA MACLAREN-JONES: Yes.

Mr MICHAEL DALEY: I'd have to be guided by the experts on that, and the experts would be the magistrates themselves. If they thought that there were administrative arrangements we could make that were reasonably cost effective that could assist them, we'd have a look at that, but at the moment there is no move to do that.

The Hon. NATASHA MACLAREN-JONES: You indicated you have spoken to the Chief Justice—

Mr MICHAEL DALEY: The Chief Judge—Chief Magistrate, sorry.

The Hon. NATASHA MACLAREN-JONES: Yes, in relation to lists. Have you spoken to any other magistrates? You said you would be guided by—

Mr MICHAEL DALEY: Yes, I've had some informal conversations with one of the deputy magistrates as well.

The Hon. NATASHA MACLAREN-JONES: What was the view? Is it to support lists or—

Mr MICHAEL DALEY: We didn't come to any conclusive view. We just discussed the possibility of it and their views were, like the Chief Magistrate, that if the Government was of a mind to move in that direction, you wouldn't necessarily want to establish a specialist court, but you might want to have a specialist list within the court, and that's something that we'll look at.

The Hon. NATASHA MACLAREN-JONES: It is something that you're looking at?

Mr MICHAEL DALEY: Yes. There is no formal work going on about that at the moment, but that's something that is always in consideration.

The Hon. NATASHA MACLAREN-JONES: Attorney General, are you aware of the hearing delays pilot program that was run by the Coalition to address delays in court? Following the success of that program, the Coalition Government at the time had pledged funding for an additional five magistrates to address wait lists.

Mr MICHAEL DALEY: Can I briefly return to the previous question?

The Hon. NATASHA MACLAREN-JONES: Yes.

Mr MICHAEL DALEY: The question was what am I doing about it. I should also say, in fairness to my department, that the department does have regular discussions with the courts about these things and the department does have discussions with the courts about improving expertise in relation to domestic and family violence within the Local Court. Sorry, what was the question?

The Hon. NATASHA MACLAREN-JONES: In relation to the previous Coalition Government committing funding for five additional magistrates to address waitlists, I'm interested to know how many new magistrates have come on?

Mr MICHAEL DALEY: Since when?

The Hon. NATASHA MACLAREN-JONES: Since you've come into government.

Mr MICHAEL DALEY: I'd have to take that on notice. I don't think we've brought any new magistrates on with a view to reducing the wait time specifically for specialist matters. The note that Mr McKnight has given me says, "Following the interruptions to Local Court operations in 2020, the former Government approved the staged appointment of eight additional magistrates above the Local Court baseline. All eight appointments have been made, the last of these occurring in March 2022". The balance of the question I think I've just alluded to— "Since March 2022, two magistrates have been appointed in the Local Court, first in September 2022, specifically as a Youth Koori Court magistrate, and then in 2023, specifically as the circle sentencing magistrate. These additional appointments did not factor in the ongoing significant interruptions to court operations that occurred from June 2021 through to March 2022 due to the COVID-19 pandemic."

CORRECTED

In relation to domestic violence, there are embedded specialist domestic violence practices in the Local Court. The Local Court is currently trialling a domestic and family violence specialist list in several Local Court sites, and that's been led by Deputy Chief Magistrate Sharon Freund.

The Hon. SUSAN CARTER: Minister, how many prosecutions have there been under section 93Z of the Crimes Act?

Mr MICHAEL DALEY: I don't have them with me, unless someone wants to flick me a note. I think the Premier gave answers to that question the other day, if I'm not mistaken. I can get them for you.

The Hon. SUSAN CARTER: Thank you. Has any court flagged any issues with the operation of 93Z in those prosecutions?

Mr MICHAEL DALEY: Has any court?

The Hon. SUSAN CARTER: Yes.

Mr MICHAEL DALEY: No, not to me.

The Hon. SUSAN CARTER: What advice have you received from police that led you to seek changes to 93Z?

Mr MICHAEL DALEY: In terms of?

The Hon. SUSAN CARTER: You introduced amending legislation into the Parliament last year to amend 93Z.

Mr MICHAEL DALEY: I think I'll take you to my second reading speech.

The Hon. SUSAN CARTER: Thank you, Minister. I'm aware of that. I'm also aware that the police Minister in budget estimates in relation to that section said that there were and have been significant delays that were with the DPP. Are these delays the reason you sought to remove oversight of the DPP for prosecution of 93Z?

Mr MICHAEL DALEY: As I said, I explained all this in my second reading speech.

The Hon. SUSAN CARTER: It's just a simple yes or no question, Minister.

Mr MICHAEL DALEY: I said:

The New South Wales Government considers that removing the requirement for DPP approval to commence prosecutions under section 93Z continues to strike the right balance.

I went on to say:

Removing the DPP approval requirement will also make this offence consistent with the overwhelming majority of other offences in New South Wales, including the offence of displaying Nazi symbols in section 93ZA of the Crimes Act 1900, which includes no such requirement, and other serious and complex offences like fraud, which also include no such requirement.

The Hon. SUSAN CARTER: Thank you for reading that back to us, Minister. It doesn't really address the question. Were you concerned, based on advice you had received, that the problem with prosecutions under 93Z was delay in the DPP's office?

Mr MICHAEL DALEY: I wouldn't put it that way.

The Hon. SUSAN CARTER: Then what was the rationale for seeking change?

Mr MICHAEL DALEY: The concerns were that the procedure itself, which required the police to put the brief together and then send it to the DPP, have them consider it and then send it back again, was an unnecessary potential delay.

The Hon. SUSAN CARTER: In budget estimates police have given evidence that there were no briefs of evidence prepared for the protests on 9 October at the Opera House pursuant to 93Z because they were unable to identify any individuals who may have committed an offence under the Act. This has nothing to do with the threshold test in 93Z. Why then are you reviewing the legislation when enforcement is the issue, not the legislation?

Mr MICHAEL DALEY: The two concepts that you've just spoken about there are unrelated. One is about what I just called the potential administrative delay in sending the brief back and forth and the other relates to the police acquiring the necessary evidence from the incident at the Opera House to commence prosecution per se. They're not related issues.

CORRECTED

The Hon. SUSAN CARTER: So you seeking to amend section 93Z had no relationship at all to your response as a government to the events on 9 October at the Opera House?

Mr MICHAEL DALEY: Not in my mind, no. And I'm the one that brought the legislation. If I had, I would have said so in the second reading speech.

The Hon. SUSAN CARTER: That's very interesting. I note that you've announced a further review of section 93Z. You put out a media release on 19 January, which said:

The review comes in the wake of concerns raised by some community groups about the effectiveness of section 93Z.

What concerns are these, Minister?

Mr MICHAEL DALEY: These are the concerns that those community groups expressed to the Premier.

The Hon. SUSAN CARTER: Which community groups were they?

Mr MICHAEL DALEY: You would have to ask the Premier that. I can try and get those on notice.

The Hon. SUSAN CARTER: It's your media release, Minister.

Mr MICHAEL DALEY: I know that but what happened was that while I was on leave over the Christmas break the Premier met with some of these groups—and before, as I understand it. I won't verbal him. Arising from those concerns, he announced while I was on leave that it was going to be referred to the Law Reform Commission. When I returned from leave, I accepted that instruction from the Premier to refer it, and I did.

The Hon. SUSAN CARTER: Were you consulted at all, Minister?

Mr MICHAEL DALEY: I was on holidays.

The Hon. SUSAN CARTER: We heard earlier that the Hon. Penny Sharpe when she was "on actual leave" was still involved in meetings concerning her portfolio. There was no effort to reach out to you about an important matter like this?

Mr MICHAEL DALEY: If the Premier wants to meet with certain groups and issue a direction to his Attorney off the back of those consultations to do something, then, as the Attorney, I comply with the directions of the Premier.

The Hon. SUSAN CARTER: When did you return from leave?

Mr MICHAEL DALEY: I would have to get the exact date.

The Hon. SUSAN CARTER: Had you returned from leave prior to the issuing of the press release?

Mr MICHAEL DALEY: I don't think so.

The Hon. SUSAN CARTER: So a press release was issued in your name while you were on leave?

Mr MICHAEL DALEY: No, I issued the press release after I returned from leave.

The Hon. SUSAN CARTER: So you returned from leave and then you issued the press release about the review?

Mr MICHAEL DALEY: Yes.

The Hon. SUSAN CARTER: I note that in November last year I moved that the—

Mr MICHAEL DALEY: If I'm incorrect in respect of that, I will correct the record. But that's my recollection. I wouldn't have issued a press release while I was not the Attorney General.

The Hon. SUSAN CARTER: I moved that section 93Z should be referred to an upper House committee for review. Your Government voted against this. But on 19 January, some 50 days later, your Government announces a review of the legislation. What changed in 50 days?

Mr MICHAEL DALEY: The Premier had, as I just explained, a meeting with certain stakeholders and they spoke about the operations of section 93Z.

The Hon. SUSAN CARTER: You can't tell us what these concerns were or who the stakeholders were that make a total change in government policy in 50 days?

Mr MICHAEL DALEY: Did you ask the Premier these questions the other day?

The Hon. SUSAN CARTER: With respect, Minister, it's your portfolio and the press release went out under your name. It would seem you would be the person to ask.

CORRECTED

Mr MICHAEL DALEY: No, because I just explained to you that the reason for the review came about because the Premier met with certain stakeholders and when I returned from leave the Premier had directed me—

The Hon. SUSAN CARTER: And the terms of reference of the review, Minister, did you settle those?

Mr MICHAEL DALEY: No, the department settled those.

The Hon. SUSAN CARTER: The department or Mr Bathurst?

Mr MICHAEL DALEY: I looked at them and I approved them.

The Hon. SUSAN CARTER: So the terms of reference would display the concerns that the community stakeholders have? Where can we see the terms of reference?

Mr MICHAEL DALEY: They should be on the website.

The Hon. SUSAN CARTER: And they were settled before the review or they were settled after the matter was sent for review?

Mr MICHAEL DALEY: When I refer the matter to the Law Reform Commission, I then issue terms of reference.

The Hon. SUSAN CARTER: So they were settled at that time?

Mr MICHAEL DALEY: Either at the time or shortly thereafter.

MICHAEL TIDBALL: At the time.

Mr MICHAEL DALEY: I write a letter saying, "Mr Bathurst, I refer this matter to you and here are your terms of reference."

The Hon. SUSAN CARTER: Can we get copies of that?

Mr MICHAEL DALEY: They're on the website, but, sure.

The Hon. SUSAN CARTER: Can you direct us to it? That would be lovely.

Mr MICHAEL DALEY: Yes, no worries.

Ms SUE HIGGINSON: Attorney, we heard evidence in an estimates inquiry at the end of last week that there actually is one child incarcerated at the moment who is at the age of 12. That was evidence presented by Paul O'Reilly at the Youth Justice budget estimates hearing. That may be a new figure. I just thought I'd make you aware of that.

Mr MICHAEL DALEY: Sure. Mr McKnight has just suggested to me that the numbers can fluctuate on a daily basis.

Ms SUE HIGGINSON: They can. I just wanted to briefly bring you back, Attorney, to the matter of Ms Folbigg. I know that you don't like commenting on individual cases but this is a case that obviously the entire nation has been watching and has eyes on. I just want to know whether you would be taking some proactive steps to engage with Ms Folbigg or whether the full burden, once again, will be on her to try and access some justice from the State of New South Wales after her wrongful imprisonment?

Mr MICHAEL DALEY: I've already explained, Ms Higginson, that I do not take a proactive role in inviting people to apply for ex gratia payments.

Ms SUE HIGGINSON: Thank you. I understand that's—

Mr MICHAEL DALEY: That applies in this instance as well.

Ms SUE HIGGINSON: So you won't be reaching out to Ms Folbigg?

Mr MICHAEL DALEY: No, I won't.

Ms SUE HIGGINSON: You will wait for her, and she'll have to carry that extra burden to be able to get on with her life?

Mr MICHAEL DALEY: You can characterise it that way, but it's not appropriate—

Ms SUE HIGGINSON: How would you characterise it, Attorney?

Mr MICHAEL DALEY: I don't need to characterise it. I've answered that Ms Folbigg will need to avail herself of the avenues that are available to any and all citizens in New South Wales in her situation.

CORRECTED

Ms SUE HIGGINSON: I want to ask you about your views in relation to civil suits that are brought against the police for misconduct. There are almost 500 civil suits against the police for misconduct in a year. Do you think that reflects that we've got a poor system happening in terms of accountability? I know this is a matter for the police, but in terms of our court system and the civil suits—and you as Attorney General—are you satisfied with that system that we have at the moment?

Mr MICHAEL DALEY: What system? You've asked me three different things there.

Ms SUE HIGGINSON: That there are around 500 civil suits against the police for misconduct per year.

Mr MICHAEL DALEY: Yes. Am I satisfied as to what?

Ms SUE HIGGINSON: That system of accountability, does that concern you that there are individuals walking around having to engage in accountability for police misconduct through the civil court system?

Mr MICHAEL DALEY: That's one avenue. The other avenue is that they can refer the police officer's conduct to the Law Enforcement Conduct Commission.

Ms SUE HIGGINSON: Certainly.

Mr MICHAEL DALEY: They can write to their local member, meet with their local member. There are various avenues.

Ms SUE HIGGINSON: Are you concerned that that number—do you know how many civil suits have been commenced in the year so far since 1 July?

Mr MICHAEL DALEY: Against police? No. The Attorney General of the day does not ordinarily get briefed in respect of those matters. The police Minister might, I'm not sure. But no.

Ms SUE HIGGINSON: I've heard from many members of the community that Crown solicitors acting for the police will consistently leverage these non-disclosure agreements in their settlement negotiations. Are you aware of that?

Mr MICHAEL DALEY: Sorry, say that again?

Ms SUE HIGGINSON: The Crown solicitors will leverage non-disclosure agreements in all of those police accountability civil suits.

Mr MICHAEL DALEY: I'm not sure. I'd have to take that on notice.

Ms SUE HIGGINSON: Without being too hypothetical here, if that was the case and that is a practice—and it is the practice—do you think that's an appropriate practice, given we're talking about police accountability and where it intersects with the civil system?

Mr MICHAEL DALEY: The concept of a full and final settlement usually is attended by some agreement as to the constraint of future action.

Ms SUE HIGGINSON: But what about this idea of non-disclosure? Attorney, I'm just wondering whether you have any concern or it's a priority that, at the moment, the State is literally forking out hand over fist with police accountability with anywhere up to 500 civil suits. There's no disclosure around that and the costs of that, and the Crown sols and prosecutors are engaging these non-disclosure orders consistently.

Mr MICHAEL DALEY: Yes, you're asking me about something that I don't have any knowledge of, Ms Higginson, but I'm happy to take whatever question you want on notice.

Ms SUE HIGGINSON: Does it concern you, if that was the case that we've got this large—

Mr MICHAEL DALEY: It's not prudent for me to say, "I don't have any knowledge of the matter but I'm concerned about it." That doesn't make sense. I've said I will take it on notice.

Ms SUE HIGGINSON: Last year a police officer drove, apparently, allegedly drunk, wrecked a police car and then committed insurance fraud to ostensibly cover it up. The magistrate who heard the case has suppressed that person's identity for 40 years. Does it concern you that we won't know the identity of a senior police officer who—

Mr MICHAEL DALEY: I don't know the reasons why the magistrate has done that so I don't know whether I should be concerned on it. There might be very good reasons. It might be that the police officer—and I'm completely hypothesising here—was a member of a plain-clothes or undercover squad and the publication of his name might make him known to outlaw motorcycle gangs or something and endanger his life. In that instance, I wouldn't be concerned. But you're asking me to guess as to what might have happened and I don't know.

CORRECTED

Ms SUE HIGGINSON: So 40 years doesn't concern you? Is there a comparison in terms of time frames for suppression? I think the standard on secret Federal Cabinet documents is 20 or 30 years max—40 years?

Mr MICHAEL DALEY: These orders are made at the discretion of the judicial officer.

Ms SUE HIGGINSON: I just want to turn quickly, if I can, to the coronial inquiry into the Black Summer fires and whether you know and can tell the Committee what are the total costs of the New South Wales coronial inquiry into the Black Summer fires, excluding the costs for legal representation of government agencies?

Mr MICHAEL DALEY: God, I'd have to take that on notice.

Ms SUE HIGGINSON: If you could, what I'm looking for there is the total cost incurred by the New South Wales Government in funding representation to the NSW Fire Service, the National Parks and Wildlife Service, Forestry Corporation, Fire and Rescue NSW and any additional costs for other entities whose representation in the coronial was funded by the New South Wales Government.

Mr MICHAEL DALEY: Sure.

Ms SUE HIGGINSON: During the inquiry it has been stated throughout the hearings that in the case of many fires, the inquiry was limited to the cause and origin of fires and that specific response and management issues in many fires would not be investigated. Was the extent limited by financial or budgetary constraints? Is that your understanding?

Mr MICHAEL DALEY: I don't know. My understanding is that the Coroner would set the rules and terms of reference for that inquiry, and that's a matter for them.

Ms SUE HIGGINSON: Is there any relationship between how we fund those coronials and the exercise of those decisions on the part of the Coroner that you are aware of?

Mr MICHAEL DALEY: I'm not sure what you're getting at, Ms Higginson.

Ms SUE HIGGINSON: I'm trying to understand the relationship between the cost of that coronial and whether the scope was limited due to the costs that were allocated to that coronial.

Mr MICHAEL DALEY: I think you'd probably best get that answer if you wrote to the Coroner. I don't know that I'm able to answer that. I hazard that the answer is, absolutely not. The Coroner has a statutory responsibility to discharge his or her responsibilities in relation to the obligations under that Act, and that she wouldn't be constrained by costs to government in doing that.

Ms SUE HIGGINSON: Just in relation to that then, can you also—

Mr MICHAEL DALEY: But that's a matter that you should put to the Coroner.

Ms SUE HIGGINSON: Will do. Can you also explain, in the application of the Mt Wilson RFS Backburn Survivors Group, why you determined that they did not meet the special circumstances in their application for representation?

Mr MICHAEL DALEY: I would have to go back and have a look at that brief. I received that brief quite some months ago. I can take that on notice.

Ms SUE HIGGINSON: In doing so, could you please provide an explanation as to why that request was delayed nine weeks, until basically the close date of the hearings—why the delay in determining that application?

Mr MICHAEL DALEY: Yes, happy to take that on notice.

Ms SUE HIGGINSON: Also, in that, if you could also answer, did the Attorney General grant funding for any community group or community representatives at the coronial hearings, and how many, and what the total costs were?

Mr MICHAEL DALEY: Sure.

The Hon. TANIA MIHAILUK: Attorney General, just back on the Martinez case, I wanted to ask for your thoughts—and you may not respond—on the fact that the defendant in that case thought the subpoena under section 222 of the Criminal Procedure Act had particular information adduced in evidence, and that was that the complainant who brought on the sexual assault complaint against him, which the DPP then chose to prosecute, had six other complaints. For some reason the DPP objected to that information becoming publicly available in that case. Are you familiar as to why that happened?

CORRECTED

Mr MICHAEL DALEY: I certainly do not intend to go into discussion about any actions before any court, but I would hazard that the DPP would welcome that question this afternoon.

The Hon. TANIA MIHAILUK: Yes, we'll be asking her in the afternoon. The reason I'm asking you this is that, of course, some of that frustration was vented by the judge in his judgement—Newlinds. The DPP, of course, has now referred this judge to the Judicial Commission. What are the grounds normally to refer a judge to the Judicial Commission as you understand them, Attorney General?

Mr MICHAEL DALEY: I'd have to go back and read the Act and read the rules.

The Hon. TANIA MIHAILUK: But it's a pretty serious referral, right? Ordinarily it could even lead to a judge being removed by Parliament.

Mr MICHAEL DALEY: Yes, it's serious.

The Hon. TANIA MIHAILUK: It's very serious.

Mr MICHAEL DALEY: Yes, it is.

The Hon. TANIA MIHAILUK: In this instance, if it ends up that the Judicial Commission in fact perhaps might say that the judge's comments were fair and that there aren't going to be any adverse findings from the Judicial Commission, would you, as the AG, commission an inquiry into the DPP?

Mr MICHAEL DALEY: You're getting way ahead of yourself. There's no way I'm going anywhere near that with a barge pole, sorry. It would absolutely be inappropriate for me to answer that question.

The Hon. TANIA MIHAILUK: Do you agree then, Attorney General, that in considering a costs application in a criminal trial, a judge must decide if there were reasonable grounds for the prosecution to commence proceedings?

Mr MICHAEL DALEY: I believe that's probably one of the considerations, yes.

The Hon. TANIA MIHAILUK: Can you explain how a judge doing their job in deciding a cost application could be grounds for a complaint to the Judicial Commission?

Mr MICHAEL DALEY: No, I'm not going to entertain those musings today, Ms Mihailuk. I've made that pretty clear, sorry.

The Hon. TANIA MIHAILUK: It doesn't worry you at all that the DPP would do that and make a public announcement of it?

Mr MICHAEL DALEY: I've just told you I'm not going to entertain these musings today, Ms Mihailuk.

The Hon. TANIA MIHAILUK: You're the chief law officer of the State and I think people within the legal fraternity do want to know your view on this.

Mr MICHAEL DALEY: There is a process that was put in place for occasions like this. Let the process take its course.

The Hon. TANIA MIHAILUK: When do we expect an outcome from the Judicial Commission?

Mr MICHAEL DALEY: I don't know.

The Hon. TANIA MIHAILUK: Do they inform your office ordinarily prior to making their statements public?

Mr MICHAEL DALEY: I don't know what the formal processes would be. I assume that they would.

The Hon. TANIA MIHAILUK: Can we get some advice on that?

Mr MICHAEL DALEY: I'll take that on notice. In any event, even if they don't formally notify me, I'll know within minutes anyway.

The Hon. TANIA MIHAILUK: What, once it hits the media?

Mr MICHAEL DALEY: I would imagine so, once it's made public, if they make it public.

The Hon. TANIA MIHAILUK: How many have you had to deal with, these sorts of judicial complaints, in your time? None so far?

Mr MICHAEL DALEY: I'd have to have a look at that. I don't know. I don't know the answer to that. They're rare.

CORRECTED

The Hon. TANIA MIHAILUK: Are there any other referrals to the Judicial Commission in the last nine months that you're aware of?

Mr MICHAEL DALEY: Of judges?

The Hon. TANIA MIHAILUK: Yes, of judges.

Mr MICHAEL DALEY: I'd have to take that on notice.

The Hon. TANIA MIHAILUK: If you could take that on notice, and by who, if they're in an official position.

Dr AMANDA COHN: The Australian Medical Association has recently called on State and Territory governments to ban conversion practices that intend to change, alter or suppress a person's sexual orientation or gender identity. They have stated that there is strong agreement among the medical profession in Australia that conversion practices have no medical benefit or scientific basis, and that there is evidence of significant harm resulting from such practices. There was bipartisan support for a ban before the election last year. When will we see legislation before the Parliament?

Mr MICHAEL DALEY: I've received a question in that regard already this morning and I've said that sooner rather than later but I can't give a specific time frame.

Dr AMANDA COHN: Are you able to outline what consultation process has been undertaken for the legislation?

Mr MICHAEL DALEY: I can take that on notice because it has been substantial but some of the—I'm not trying to dodge the question. There are some of the groups that have consulted with us who don't want their identities known so I just have to be careful about what I say. I'll take that on notice.

Dr AMANDA COHN: I'll wait for that answer on notice and pass back to Ms Higginson.

Ms SUE HIGGINSON: Attorney, you come from the party of organised labour. What do you think the role of protest and demonstration really is in civil society?

Mr MICHAEL DALEY: For citizens to be able to express themselves freely in the community that they, in fact, own.

Ms SUE HIGGINSON: How do you reconcile that at the moment with your answers a bit earlier in relation to maintaining these anti-protest laws that you were very opposed to earlier on in periods of Opposition—looking at the anti-protest law trajectory through the last three terms of Parliament. Are you interested or open to enshrining the right of civil society to protest like in the ACT and Victoria?

Mr MICHAEL DALEY: I'm not sure there's a need, Ms Higginson. Freedom of assembly and speech are recognised by the New South Wales Government as important rights that are integral to a democratic system of government. All New South Wales citizens today enjoy a common law right to peaceful assembly, and this right is further protected by the implied freedom of political communication in the Australian Constitution.

Ms SUE HIGGINSON: How do you actually reconcile this view with the fact that we've got laws currently sitting on the law books that nannas—and let's face it, they're nannas—in our State have gone to the Supreme Court and obtained a ruling that part of those laws that are currently on the books are unconstitutional? You've had advice not to challenge that finding. Will it be your intention to repeal that part of the anti-protest laws?

Mr MICHAEL DALEY: No.

Ms SUE HIGGINSON: You're just going to leave them sitting there?

Mr MICHAEL DALEY: Yes. There will be a review underway in April.

Ms SUE HIGGINSON: In April, that's right, which will take six months.

Mr MICHAEL DALEY: A statutory review—it will look at the normal things that statutory reviews do. But there'll be no move by this Government to repeal these laws.

Ms SUE HIGGINSON: Hang on, so you're saying there's a review but there'll be no—what if the review suggests you repeal these laws?

Mr MICHAEL DALEY: I don't think that is what the scope of the review is. The review sees whether the intent of the legislation has been met, and this is sort of a mechanical review. But I can tell you that there'll be no repeal of these laws, because I don't want to see Harbour Bridge, the Harbour tunnel blocked. I don't want to

CORRECTED

see Sydney shut down. The Extinction Rebellion said that they want to do it. I don't want to do that, and these laws prevent that sort of behaviour.

Ms SUE HIGGINSON: Can I redirect you, Attorney?

Mr MICHAEL DALEY: Sure.

Ms SUE HIGGINSON: You said yourself that there are plenty of other ways of dealing with behaviour that may or may not be determined criminal that are not these draconian, deliberate anti-protest measures that, let's face it, the Berejiklian and then the Perrottet Government introduced, some of which—many of which—you and your colleagues in NSW Labor are clearly on the record for saying that they are excessive, they're harsh, they're draconian and they're unnecessary. They're anti-protest laws. And now you're suggesting that you're okay with those.

Mr MICHAEL DALEY: No, you've asked me whether they'd be repealed.

Ms SUE HIGGINSON: I have.

Mr MICHAEL DALEY: That was the question. The answer is no, they won't be. I'm being completely honest with you.

Ms SUE HIGGINSON: Even though you know right now you've got sitting on New South Wales law books draconian laws that the Supreme Court has said are unconstitutional.

Mr MICHAEL DALEY: No. You've called them draconian. The Supreme Court has—

Ms SUE HIGGINSON: The Supreme Court called them "chilling".

Mr MICHAEL DALEY: —impugned a very small aspect of them.

Ms SUE HIGGINSON: So it's okay to have impugned laws sitting on our law books that have a chilling effect?

Mr MICHAEL DALEY: Effectively they're not on the law books because if they're prosecuted now, you won't be found guilty pursuant to them.

Ms SUE HIGGINSON: Attorney, they're on the law books. If I google them—a simple google—they're sitting there as a law—an impugned law. Will you repeal that at least? Surely that's good government.

Mr MICHAEL DALEY: That aspect of what to do as a mechanical process with the words that sit on the statute book, in light of His Honour Justice Walton's judgement, will be dealt with by the statutory review.

The Hon. NATASHA MACLAREN-JONES: The Premier is widely reported as saying that the police have the powers to rip off balaclavas and expose people's faces. Do you agree that the police have the power to forcibly remove or, in his words, "rip off" face coverings?

Mr MICHAEL DALEY: No, I think Deputy Commissioner David Hudson gave evidence about this the other day in police estimates, and I would need to have that transcript before me before I quote what he said. My understanding is that the police don't have the right to walk up and order someone to remove a face covering, but they do have the right to ask a person to identify themselves and, if that requires removal of a face covering, then they have the power to require the face covering to be removed for the purposes of identification.

The Hon. NATASHA MACLAREN-JONES: In light of the fact that the Premier has come out saying that police have the power to rip face coverings off people, have you met with the Premier? Are you intending to introduce legislation?

Mr MICHAEL DALEY: They do have the right to rip them off in certain circumstances which I've just described to you, and I'm sure that's what the Premier was referring to.

The Hon. NATASHA MACLAREN-JONES: But you're not sure. Have you met with the Premier about his comments?

Mr MICHAEL DALEY: No.

The Hon. NATASHA MACLAREN-JONES: Did you provide the Premier with a briefing regarding the intervention of the NZYQ High Court case?

Mr MICHAEL DALEY: Did I provide him with a briefing?

The Hon. NATASHA MACLAREN-JONES: Yes.

Mr MICHAEL DALEY: No, I didn't.

CORRECTED

The Hon. NATASHA MACLAREN-JONES: When asked in budget estimates, the Premier said he couldn't recall and had to take it on notice, so you're advising that you have not met with the Premier. Did you provide his office with any briefing in relation to the matter?

Mr MICHAEL DALEY: I didn't. I don't know if my staff spoke to his staff about that. I would have to make inquiries about that. I don't know what communications there may or may not have been between DCJ and the Cabinet Office, so I can take both of those aspects on notice, but I didn't provide the Premier with a briefing on the NZYQ case.

The Hon. SUSAN CARTER: The police Minister was asked about the inadequacy of bail laws, which currently allow young offenders to be bailed out only to reoffend again, and she indicated that she had met with you about this issue. Do you recall that meeting?

Mr MICHAEL DALEY: What page of the transcripts are we on? Did someone bring them down?

The Hon. SUSAN CARTER: Do you recall that meeting with the police Minister?

Mr MICHAEL DALEY: Sorry, can you restate that question? I was looking for the transcript. I thought they were here, but they're not.

The Hon. SUSAN CARTER: The police Minister was asked about the inadequacy of bail laws, which currently allow young offenders to be bailed out only to reoffend again, and she said she had met with you about this issue. Do you recall the meeting?

Mr MICHAEL DALEY: We discuss the issues relating to youth and regional crime often, sometimes by ourselves, sometimes with staff, sometimes with the police, so there have been a number of occasions we've discussed all manner of aspects of youth crime and regional crime.

The Hon. SUSAN CARTER: The Minister said:

We have to somehow work on a way, a strategy, to stop kids reoffending. They're staying in the system for too long, as you have said again and again and again, and then they're ending up obviously in jail.

What are you doing about this?

Mr MICHAEL DALEY: I've been through all of this this morning. I refer you to my earlier answers.

The Hon. SUSAN CARTER: Could you summarise what you're doing about this?

Mr MICHAEL DALEY: I've already explained to you that the Premier has tasked certain departments and my office with undertaking some work. I indicated to you this morning that that work will be forthcoming shortly. I don't really want to repeat myself again.

The Hon. SUSAN CARTER: The police Minister said that strengthening of bail laws is your responsibility. Are you looking into this?

Mr MICHAEL DALEY: We're looking at a whole range of measures in relation to the issues that I have expressed this morning that concern me, the Premier, the Minister for police and the Government.

The Hon. SUSAN CARTER: Does that include bail laws?

Mr MICHAEL DALEY: Yes.

The Hon. SUSAN CARTER: Have you had meetings with the police Minister regarding legislation to outlaw the nazi salute and other symbols?

Mr MICHAEL DALEY: No, because those provisions are already on the statute books.

The Hon. SUSAN CARTER: Have you been briefed by police on what is needed to enforce this legislation?

Mr MICHAEL DALEY: No.

The Hon. SUSAN CARTER: Have you provided any information to the police or the police Minister about the operation of those laws?

Mr MICHAEL DALEY: Discussions like that go on all the time between the police department and DCJ, and amongst Ministers themselves, but have I given a formal briefing to the police about these matters—is that the question? No.

The Hon. SUSAN CARTER: The police Minister said that this is part of the review into section 93Z. Is that correct?

CORRECTED

Mr MICHAEL DALEY: That's part of the terms of reference into 93Z. That wasn't the question you asked me.

The Hon. SUSAN CARTER: If I can take you back to your earlier evidence in relation to the terms of reference for 93Z, I think I recall you said that when the matter was referred for review you sent it with the terms of reference attached.

Mr MICHAEL DALEY: I'd have to go back and have a look at that, but I just need to correct the record. The media release on 19 January was in the name of the acting Attorney General Ron Hoenig and the Premier while I was on leave, and then when I came back I referred.

The Hon. SUSAN CARTER: Yes, because the media release indicates that the terms of reference for the review are currently being developed with Mr Bathurst, so they would not have been available at the time the reference was made.

Mr MICHAEL DALEY: At the time the media release on 19 January was issued you're talking about?

The Hon. SUSAN CARTER: What was the delay between the media release of the review and the matter actually being referred for review?

Mr MICHAEL DALEY: Waiting for me to get back from holidays so I could review it.

The Hon. SUSAN CARTER: No, sorry, what was the time period, not the reason for the time period?

Mr MICHAEL DALEY: I will take that on notice.

The Hon. SUSAN CARTER: Thank you very much. Is it usual for a matter to be sent to review and then the terms of review workshop with the person who will do the review?

Mr MICHAEL DALEY: I'm not sure that was the case. I'll take that on notice.

The Hon. SUSAN CARTER: The press release indicates they are currently being developed with Mr Bathurst, who was the person to whom it had been referred for review.

Mr MICHAEL DALEY: The press release was issued, as I understand, by the acting Attorney General, not me.

The Hon. SUSAN CARTER: I'm asking you about general practice when a matter is referred for review. Is it normal practice that the person who will conduct the review actually also works up the terms of the review?

Mr MICHAEL DALEY: I'll have to take that on notice.

The Hon. SUSAN CARTER: Thank you very much.

The Hon. NATASHA MACLAREN-JONES: As of December last year the youth detention population was 174, and this came out of evidence that was given during the Youth Justice budget estimates. Of those, 45 had been sentenced but there were 129 being held on remand. When questioned, the Minister for Youth Justice said that it was your responsibility. My question is: Why are there so many young people being held in—

Mr MICHAEL DALEY: Sorry, what was my responsibility? What was the context of the question?

The Hon. NATASHA MACLAREN-JONES: Young people in remand. Out of 174 young people who have been charged, 45 have been sentenced and 129 were being held in remand. When asked about why the number was so high, the Minister for Youth Justice said it was your responsibility.

Mr MICHAEL DALEY: I would have to have a look at the transcript and see what the context of that discussion was. I still don't understand. What's my responsibility?

The Hon. NATASHA MACLAREN-JONES: The question was, and it's a quote from the shadow Minister:

I'll move on to remand. As of December last year the youth detention population—and I'm sure it has changed since then—was 174. Of those 174, 45 had been sentenced, but 129 were held on remand. Why are so many young people being held in custody, waiting for their day in court?

The Minister's response was:

I think it comes to an issue of remand, and it is a decision that has been made obviously by the courts. That is something for the Attorney General.

My question is: Why are there so many young people waiting?

CORRECTED

Mr MICHAEL DALEY: They are very short remand periods, but that goes to a whole range of inquiries about offending. The mechanical answer is that there are more people on remand because the police have arrested and brought more people before the courts. That's the mechanical answer. If you're asking me to go into the reasons for that—

The Hon. NATASHA MACLAREN-JONES: Yes.

Mr MICHAEL DALEY: I'm not sure that I can. It could be the fact that the police have changed their operational capabilities and they're getting through more workload or they're targeting offenders more effectively and apprehending them.

The Hon. NATASHA MACLAREN-JONES: Have you looked at why there are so many in remand?

Mr MICHAEL DALEY: These are the subject of quite some detailed studies by BOCSAR. It could well be that because economic times are tough, there are more people shoplifting and things like that, for example.

The Hon. NATASHA MACLAREN-JONES: But I'm asking you specifically about these statistics, which came from December. I assume they're probably around the same now, maybe more. Have you actually looked at why there are so many young people in remand? Have you met with the Minister for justice? Have you met with the Minister for police? Have you looked at it?

Mr MICHAEL DALEY: I'm trying to answer that question now. There could be any number of reasons. For example, when BOCSAR statistics are released and figures show that—

The Hon. NATASHA MACLAREN-JONES: Can I ask what you're doing about it? Maybe that's an easier question.

Mr MICHAEL DALEY: Haven't we just spent half the morning talking about this?

The Hon. NATASHA MACLAREN-JONES: Yes. We seem to go around in circles.

Mr MICHAEL DALEY: What am I doing about it? Outside of the Premier's direction, this is something that I've told you: that the Department of Communities and Justice are doing some work for various Ministers. I'm looking at support services and diversionary measures. In addition to that, I'm not going to go into the detailed answer I gave you before. You can go and have a look at that afterwards.

The Hon. NATASHA MACLAREN-JONES: Attorney General, I might move on to the fact that—

Mr MICHAEL DALEY: Hang on, don't interrupt me. You've asked me a question.

The Hon. NATASHA MACLAREN-JONES: I have limited time and you have covered this work group.

Mr MICHAEL DALEY: In addition to that, I will just quickly refer you to the work that the Premier has asked us to deal with, which we've spoken about.

The Hon. NATASHA MACLAREN-JONES: I know. We've covered that off. As I said, I'll move on to the next question. So 61.5 per cent of young people who are in custody are Indigenous. When the Minister for Aboriginal affairs was questioned in regard to this, he said, "I know the Attorney General looks at these things more closely." His interpretation would be that you are responsible for this working group that the Premier has tasked. Is that correct?

Mr MICHAEL DALEY: The one that I spoke to this morning?

The Hon. NATASHA MACLAREN-JONES: Yes, the one you've been referring to as the solution for everything to do with youth crime.

Mr MICHAEL DALEY: No, that's being coordinated by the Cabinet Office. Various Ministers have been asked to make contributions to that work.

The Hon. NATASHA MACLAREN-JONES: When Minister Harris was asked specifically about Indigenous young people and Youth Justice matters in relation to them, the response from the Minister was:

I haven't received anything specifically, but there is a group of Ministers, with Minister Daley as the Attorney General ...

His understanding is that you are responsible, but you're now saying the Premier is.

Mr MICHAEL DALEY: I'm not sure if you can glean from that answer that he said I was responsible. But I'm happy to say I'm one of the leads and that I'm fervent about it and I do want to take a leading role, you bet. Yes, 100 per cent.

CORRECTED

The Hon. NATASHA MACLAREN-JONES: But you're passing it onto somebody else.

Mr MICHAEL DALEY: But in respect of the work that the Premier announced last week, after he went to Moree, that's a different project altogether.

The Hon. NATASHA MACLAREN-JONES: So there are two working groups now?

Mr MICHAEL DALEY: No, there are not two working groups. There's a group that the Premier put together last week to come up with some solutions after he went to Moree. Generally speaking, as I've explained to you now for about the fifth time this morning, there are about seven or eight Ministers that have overlapping responsibilities for Justice and Youth Justice and we've asked the Department of Communities and Justice months ago to do some work to look at support services and diversionary measures for young people. I don't think that's terribly confusing.

The Hon. SUSAN CARTER: The Minister for Indigenous affairs has said that any new laws that would be needed to deal with the problem of child sexual abuse in Indigenous communities in country New South Wales are your responsibility. What steps are you taking?

Mr MICHAEL DALEY: You've conflated two issues there. One is whether there are any new laws in my responsibility and what steps am I taking. I have answered that question.

The Hon. SUSAN CARTER: What steps are you taking towards the development of any new laws?

Mr MICHAEL DALEY: I've just answered. I spent half the morning answering that question and I've just answered it right then. I will rest on my answer.

The Hon. SUSAN CARTER: Minister, other than talking about it with people, what concrete steps are you taking to address this real problem facing our children?

Mr MICHAEL DALEY: I've answered that so many times this morning I can't begin to even count. We're almost up to double-digit figures now.

The Hon. NATASHA MACLAREN-JONES: We might move on, Attorney General. An election commitment made by the Labor Party in 2022 was to deliver an independent victims commissioner. What steps have you taken to implement this?

Mr MICHAEL DALEY: I've answered that question already. I think Ms Higginson might have asked me about that this morning already. I've answered it.

The Hon. NATASHA MACLAREN-JONES: I missed the answer.

Mr MICHAEL DALEY: I said that it was an election commitment and that we intend to honour all our election commitments.

The Hon. NATASHA MACLAREN-JONES: Has it been budgeted for?

Mr MICHAEL DALEY: You'll have to wait to see what's in the budget. I said that it is something that we are working on in conjunction with a review of the Act.

The Hon. SUSAN CARTER: I might jump in. Minister, we don't need to know the amount. Will it be in the budget?

Mr MICHAEL DALEY: You'll have to wait to see what's in the budget.

The Hon. SUSAN CARTER: Did you put in an NPP for this program to appear in the budget?

Mr MICHAEL DALEY: I will take that on notice.

The Hon. NATASHA MACLAREN-JONES: The Minister for Women has said that she's working with you regarding a New South Wales strategy for reducing elder abuse. What's your view on this?

Mr MICHAEL DALEY: My view on what?

The Hon. NATASHA MACLAREN-JONES: The strategy on the prevention of elder abuse.

Mr MICHAEL DALEY: It's an important piece of work and it will be continued, but I'm not the lead Minister for that.

The Hon. NATASHA MACLAREN-JONES: The Minister for Women said she's worked with you on the New South Wales strategy to reduce elder abuse.

CORRECTED

Mr MICHAEL DALEY: That would have been worked on by the department, not directly with me. The New South Wales Government has, however, established a working party alongside community representatives to advise on the NSW Law Reform Commission's review of the Guardianship Act 1987. The guardianship review report made recommendations for the review of the guardianship framework. We're also working with Commonwealth and other State and Territory governments to implement a plan to respond to the abuse of older Australians—2009 into 2023. The coalition of the Attorneys-General is considering proposals for a form of enduring power of attorney laws. The Commonwealth is leading this work and SCAG will receive further information on those proposals.

The Hon. NATASHA MACLAREN-JONES: We also discussed in estimates *BA v The King*. I followed up with the Minister for Women and she said:

I'm aware that the Attorney General is working through that decision and the impacts that decision has and the way that it relates to our laws.

I wanted to know what has happened with that.

Mr MICHAEL DALEY: We discussed this at the last estimates. I reported then that the Government would have some legislation to bring before the Parliament to address the implications of *BA v The King*.

The Hon. NATASHA MACLAREN-JONES: But do you have a time frame for that?

Mr MICHAEL DALEY: No, I don't, but it's not something that I wanted to have delayed. When it's ready, we'll bring it, because it's an important—

The Hon. NATASHA MACLAREN-JONES: Are you in discussions with the Minister for Women on that?

Mr MICHAEL DALEY: Yes—well, am I? We've had discussions. The result of those discussions is that legislation is being prepared.

The Hon. NATASHA MACLAREN-JONES: But you have no time frame?

Mr MICHAEL DALEY: No—but sooner rather than later, I hope.

The Hon. SUSAN CARTER: Minister, you've conducted closed consultations about your conversion practices bill. Will you be holding public consultations before the bill is introduced?

Mr MICHAEL DALEY: No.

The Hon. SUSAN CARTER: Why not?

Mr MICHAEL DALEY: Because, as I said earlier, I received advice from the department on consultation on various projects, generally about the best way to go forward. My advice was that a closed consultation to a—I was almost about to say a "small" targeted group was the best way to go, but I think, correct me if I'm wrong, there are about 150 groups that ended up making a contribution to that. In addition to that, in the initial consultation phase there were a number of groups—I can't tell you how many—that expressed that they were very, very happy to work with the Government to consult with and craft the legislation but that they would prefer their identities were not made known. That was one of the considerations as well. But there's been extensive consultation on this.

The Hon. SUSAN CARTER: I understand that as a consideration for a private consultation phase, but why, on something that impacts every member of the community, and about which I think everybody in the community is really interested, would you not have open public consultations about this important matter?

Mr MICHAEL DALEY: Could I just explain why?

The Hon. SUSAN CARTER: No, with respect, Minister, I heard reasons for why you had chosen to initially begin with the private consultation. I'm asking now why there's no public consultation—and will there be a public exposure draft of the bill before it's presented to Parliament?

Mr MICHAEL DALEY: I've just explained to you why it was that we went for closed—

The Hon. SUSAN CARTER: Initially for a private—

Mr MICHAEL DALEY: No, not initially. Initially and ongoing—I've explained that.

The Hon. SUSAN CARTER: I haven't heard an answer, with respect, Minister, for why you wouldn't be opening this discussion to the whole community and providing an exposure—will an exposure draft be provided before the bill is presented to Parliament?

CORRECTED

Mr MICHAEL DALEY: I don't think that's the plan. I'll correct the record if I'm wrong, but I don't think that's the plan. I think we'll be bringing legislation.

The Hon. SUSAN CARTER: Is there a reason why you're not circulating it broadly?

Mr MICHAEL DALEY: Because we're satisfied that we've consulted with the groups that we needed to consult with. We're satisfied with the degree of consultation and the issues that were raised. We are satisfied that there has been a very high-quality and productive discussion and that the stakeholders we've consulted with—which is very, very broad, I have to say—have really valued the in-earnest discussions that we've had with them.

The Hon. SUSAN CARTER: Will your bill respect parents' rights so that parents are empowered to have important conversations with their children about their sexuality and not fear that they will be sent to prison for being a parent?

Mr MICHAEL DALEY: Yes, those rights will be protected.

The Hon. SUSAN CARTER: Excellent, thank you.

Mr MICHAEL DALEY: But you'll have to wait to see the bill.

The Hon. SUSAN CARTER: I wait with bated breath, Minister.

The Hon. NATASHA MACLAREN-JONES: You've got a few bills there waiting.

The Hon. SUSAN CARTER: Yes. In respect of the equality bill, will you be supporting that bill's attempt to legalise prostitution near schools and places of worship?

Mr MICHAEL DALEY: As I explained this morning, the Government will announce its position on that bill and the various aspects of it in due course.

The Hon. SUSAN CARTER: Do you have a time frame on that, Minister?

Mr MICHAEL DALEY: Sooner rather than later, but I can't put a time frame on it. Again, that's a bit like the conversion practices bill. There's a lot of consultation happening behind the scenes. We are accepting a huge volume of submissions and we're having a lot of meetings with stakeholders about that. We don't want to give a definitive timetable because it's the discussions and the outcome of those discussions that should drive the timetable—not just having a tokenistic timetable per se that the discussions have to fit into. They have to have a life of their own. We are very pleased with the consultations we've had. I want to thank Alex Greenwich, the member for Sydney, for the cooperative way that he has engaged with us as well—and very, very respectful.

Ms SUE HIGGINSON: Attorney, can I just ask, you committed, I think, to a review of NCAT prior to the 2023 election. Is that still a review you are committed to?

Mr MICHAEL DALEY: I would have to just go back and see what the terms of the review we promised—it wasn't a review of NCAT per se; I think it was a review of certain practices of NCAT.

Ms SUE HIGGINSON: Yes.

Mr MICHAEL DALEY: It was a review of the role of NCAT in rental disputes. It was an election commitment that complements a broader package of reforms being led by the Department of Customer Service that aim to make the rental system safe and fairer for tenants.

Ms SUE HIGGINSON: Is that happening?

Mr MICHAEL DALEY: What's the latest on that?

MICHAEL TIDBALL: It is happening. I think we would need, on the specifics, to take it on notice.

Mr MICHAEL DALEY: Yes, I don't have the timetable for you.

Ms SUE HIGGINSON: If you could take it on notice.

Mr MICHAEL DALEY: Yes, I will.

Ms SUE HIGGINSON: It is because there is great interest.

Mr MICHAEL DALEY: There sure is. We didn't make that commitment in vain. I intend to do it.

Ms SUE HIGGINSON: If you could confirm when the review will take place and that accessibility to renters remains within the scope of that review. I understand that's what you are articulating, but if you could confirm that.

CORRECTED

Mr MICHAEL DALEY: Sure, yes. I can do that.

Ms SUE HIGGINSON: There is concern out there about what's happening.

Mr MICHAEL DALEY: I think we haven't yet finalised the terms of reference, but we are not far off.

Ms SUE HIGGINSON: Attorney, there was a poll I think yesterday or the day before—

Mr MICHAEL DALEY: I knew someone would go here.

Ms SUE HIGGINSON: —that said people are giving up on Labor. One of the things that I think the manager of the poll said as the reasons were that Labor's not performing, or it's going too slow, and people were expecting progress. What is your agenda? What are you doing as the principal legal officer of this State? I know that on your Labor profile you boast about introducing some of the toughest laws in the country.

Mr MICHAEL DALEY: Do I? What profile are you reading there?

Ms SUE HIGGINSON: It's a profile. It was something that you had put on your NSW Labor profile in the past.

Mr MICHAEL DALEY: Did I?

Ms SUE HIGGINSON: It's the NSW Labor profile of you. Perhaps you want to change that. Maybe you want to change that now, Attorney, now that you are actually in office and the Attorney.

Mr MICHAEL DALEY: You probably read the ALP website more than I do.

Ms SUE HIGGINSON: It literally says "some of the toughest laws in the country". That's you; you introduced them. But I want to know, and I think all of New South Wales wants to know, Attorney, what is your agenda for the next three years? What is on your plate? What do you want to do as the first principal law officer of New South Wales for all of us over the next three years?

Mr MICHAEL DALEY: We have spoken about a whole raft of matters that I'm attending to at the moment. It would be fair to say that one of the things that really drives me is something that we've spent most of the morning talking about, and that is to have the Government play a really proactive role in addressing the causes of crime.

Ms SUE HIGGINSON: So—

Mr MICHAEL DALEY: Hold on. You've just asked me the most open-ended of questions.

Ms SUE HIGGINSON: Great. Keep going.

Mr MICHAEL DALEY: That gives me an enormous amount of liberty. If you want to ask me a question like that, let me have the time and don't interrupt me. Otherwise, interrupt me and—

Ms SUE HIGGINSON: Let's do it. The causes of crime, Attorney. What are you doing about it?

Mr MICHAEL DALEY: No, that wasn't the question. The question was what are my goals for the balance of this term. One of the things that I really want to do is to have governments of the day, of whatever persuasion, do more about early intervention. I get to see juveniles and adults at the very end of the justice system. When they come to my court and go to Anoulack's jails, it's all over by then. What I want to see is governments paying attention to the causes of crime. There is no little kid who grows up and says, "When I get older I want to go to jail." They don't. They go to jail because they are from dysfunctional families. They get sexually assaulted. I visited the Walama Court early in my term and spoke to one of the youngsters who came before the court and a bloke [EVIDENCE EXPUNGED BY RESOLUTION OF THE COMMITTEE [6 MARCH 2024]], who was 21 years old. He had been to five foster homes in his life and had been sexually assaulted at every single one of them. It's no wonder he's in jail.

What I want to do is to have governments, of all persuasions, from time to time take seriously their responsibilities in addressing the causes of crime and making sure that all the pastoral care that should go to families goes to them, that kids are properly educated, that drug and alcohol problems are dealt with, and all these things that are driving youth crime in the bush now. There is no easy fix to this. It won't be done in a year or two or 10. We've seen some projects like the Maranguka project in Bourke.

The Hon. NATASHA MACLAREN-JONES: A very good program.

Mr MICHAEL DALEY: Yes, it's a great program, and it's been in operation now for 10 years and the green shoots are just starting to appear. These are very slow-moving programs. What you need to do is to start

CORRECTED

now and make sure that you invest in and conceive of programs that will survive the decades through changes of government, whatever they might look like. That's the thing that really drives me.

Ms SUE HIGGINSON: So what are you doing? What's the Attorney General's office actually doing? I understand they're the things—

Mr MICHAEL DALEY: Sue, I've told you this morning a number of times what we're doing. I don't want to just keep repeating myself. I've asked the Department of Communities and Justice to work with other departments to look at the programs that we might bring to bear to support young people, to care for their parents, to provide pastoral care for them, and all those sorts of things.

Ms SUE HIGGINSON: This is the work that you've instructed your department to do that you'll see in 12 months time?

Mr MICHAEL DALEY: I don't know that I'll put a time frame on it, but we can't even talk about wanting to do these things if we don't know what they are, what form they will take, where they'll be built, how much money they will cost, and the sorts of resources that we need to bring to bear.

Ms SUE HIGGINSON: Precisely. These are the things you've asked your department?

Mr MICHAEL DALEY: Yes.

Ms SUE HIGGINSON: I'm just trying to get an honest view.

Mr MICHAEL DALEY: This is the stuff that they're working on. We need a whole heap of psychiatrists and psychologists and counsellors on the ground in New South Wales. There's a shortage of them. Challenges like this, these are the things that we need to look at. This is what I've asked the department to look at. The law and order stuff—the courts, the DPP—that stuff largely takes care of itself. I have a supervisory role over all of that. But what do I really want to do? That's what I really want to do.

Ms SUE HIGGINSON: At the moment you're suggesting there's no need for reform in those sectors across the courts?

Mr MICHAEL DALEY: No, I'm not suggesting that. I'm saying largely they take care of themselves because the statutes guide my responsibilities. The hard part is the unchartered territory of bringing new resources and a new way of thinking and a new will to the causes of crime.

Ms SUE HIGGINSON: On that, at the moment the Transforming Aboriginal Outcomes program that is working across agencies—and I will speak with Ms Beattie later on and I know there's some fantastic work that is happening—what's your understanding of how that role works within your responsibilities?

Mr MICHAEL DALEY: All of those issues overlap. What works for young black children works for young non-Aboriginal children as well.

Ms SUE HIGGINSON: What's your understanding of the funding for the Transforming Aboriginal Outcomes program at the moment? Does that end in June?

Mr MICHAEL DALEY: I'd have to take that on notice.

Ms SUE HIGGINSON: If you could, because my understanding is that the funding for that work ends in June, so I don't know whether that—

Mr MICHAEL DALEY: I'll take that on notice. But you asked me about my goal. Things like Justice Reinvestment, that's the hope of the team, programs like that.

Ms SUE HIGGINSON: Have you got plans to be rolling these out throughout the whole State? Are there certain areas you're focused on in terms of transforming outcomes for Aboriginal peoples in the justice system?

Mr MICHAEL DALEY: Yes. I notice that the Feds have funded Justice Reinvestment. We've also entered into a partnership with the Paul Ramsay Foundation to expand that out to additional sites. But what we want to do is get an idea of other programs like this that government needs to invest in, and also, I have to say, have NGOs coordinated better. In the first couple of weeks that I was Attorney General, I went to Kempsey to talk to stakeholders out there in relation to youth crime and Aboriginal crime—Aboriginal youth crime and social issues, in particular.

One of the things that was brought home to me by the police and other stakeholders was that there's sometimes a myriad of NGOs on the ground who provide services to youth, Aboriginal youth and things like that, but no-one really maps or coordinates their efforts or has an idea of the quantum of funding or the specific

CORRECTED

programs, so they might be overlapping. They don't, sometimes, talk very well to each other. Sometimes they do; sometimes they don't. But there's no consistency. That's another thing that we want to have a look at, as well. I think the Premier made some comments about that last week in respect of his visit to Moree and the efforts that he wants to bring to bear in that regard.

Ms SUE HIGGINSON: At the moment, Attorney, it costs over three-quarters of a million dollars per child to keep them incarcerated. Do you not think that even a small part of that money could literally be reallocated instantly if you were to raise the age of criminal responsibility tomorrow? For example, that money could literally be provided into various NGOs' hands to do a better job than what police and Corrections are currently able to do when it's very clear—and you've admitted and everyone across the State is admitting—this is the system that's failing young people and the recidivism rate? Is there not just a straight-out, clear economic argument that that money should be better spent outside of the criminal justice system and that's something you could do tomorrow, apparently?

Mr MICHAEL DALEY: Sure. We could save a bucket of money by not locking people up. But I've said to you at the outset that community safety is our paramount concern. If you've got kids that continually reoffend and are a danger to themselves and to the community, it just doesn't make any sense to keep leaving them on the street where they're in danger.

Ms SUE HIGGINSON: Yes, but it's making less sense to lock them up with 81 per cent recidivism rate.

Mr MICHAEL DALEY: It makes better sense to have programs to divert them away from the justice system in the first place.

Ms SUE HIGGINSON: For three-quarters of a million dollars, we're looking at over 725,000 bucks per year, per kid. What's stopping us from literally putting that straight into diversionary programs?

Mr MICHAEL DALEY: There are two different concepts. One is long-term measures that governments can invest in and should invest in. The other is what to do in immediate terms with the young offender that's in front of you. They're two different things. I think you're conflating them.

Ms SUE HIGGINSON: I don't think they're conflating at all. There's a deadlock. I'm just not sure that you're providing any assurance here that you understand the deadlock of this continuing incarceration of young people, notwithstanding all of the evidence that it's failing; notwithstanding all of the unbelievable cost that it's costing us. You don't actually have a fulsome plan about how to get out of the deadlock.

Mr MICHAEL DALEY: That evidence says that there's a better way to deal with—

Ms SUE HIGGINSON: Every other State is doing it, Attorney—every State now.

Mr MICHAEL DALEY: No, they're not.

Ms SUE HIGGINSON: Which one is not?

Mr MICHAEL DALEY: Queensland is not doing it.

Ms SUE HIGGINSON: Oh, Queensland.

Mr MICHAEL DALEY: I think Western Australia is equivocating now. All the evidence says there are better ways to deal with children outside of the criminal justice system, so the next step in that quest is to find what are the better ways of dealing with them and to put them in place in New South Wales.

Ms SUE HIGGINSON: Is WA still doing some of that work that was committed to under the former MAG—sorry, the Meeting of Attorneys-General before it became the—

The Hon. SUSAN CARTER: SCAG.

Ms SUE HIGGINSON: SCAG.

Mr MICHAEL DALEY: No, that work is finished, Mr McKnight informs me.

Ms SUE HIGGINSON: Did that work get completed? Do you know?

PAUL McKNIGHT: Yes, the report was issued after the December SCAG meeting.

Ms SUE HIGGINSON: That's right. Have you taken any advice from that report about what's required and how to do it, and what the ACT is doing around the wraparound services? Or are we just starting from fresh with this new taskforce?

CORRECTED

Mr MICHAEL DALEY: No, we're being informed by all of that work. I'm keen to see what alternative pathways the other States put in place to deal with young offenders other than incarcerating them. I'm keen to see that. But, as yet, there are not too many examples on the ground in Australia about how to do it. There is one that I've become aware of in the Northern Territory that I think the Salvation Army runs, which I want to go and see as soon as I can. But there's not any great success, I don't think, across Australia in alternative treatments for young people in the criminal justice system. And until that work is ready, we wouldn't even begin contemplating raising the age.

Ms SUE HIGGINSON: I know this is going to feel like we're really overlabouring, but I just don't—

Mr MICHAEL DALEY: We're talking years—years and years.

Ms SUE HIGGINSON: So years and years.

Mr MICHAEL DALEY: Yes.

Ms SUE HIGGINSON: We're just going to keep failing, using the current system, for years and years and years?

Mr MICHAEL DALEY: It will take years before we've got an alternative pathway up, yes. I could fluff around here and pretend that we're working on it and not give you any time frame, but I don't want to leave you or any member of the public under any illusion that there's a quick fix to these problems. There's not. They are deep-seated problems that have been decades and decades and decades in the making, and they haven't been properly addressed.

Ms SUE HIGGINSON: Attorney, how do you reconcile your view with the views of attorneys-general from those other States who have made the decision to raise the age and those that have got on with it?

Mr MICHAEL DALEY: They can make the decision to raise the age. As I've said, that's the easy part. The hard part is what you do with—what is the alternative regime. I'm keen to see what they're doing. You can't compare a jurisdiction like New South Wales and the ACT. From here to Moree, you could drive across the ACT three times. The geographical distance imposes limits and challenges for New South Wales that small jurisdictions like the ACT don't have.

Ms SUE HIGGINSON: Okay, so we're not going to raise the age. Just so that we're clear—and I know this is going back to my colleague's point, but we really aren't clear—at the moment you're part of what the Premier announced, which is some kind of taskforce with the various departments, and you're all looking at ways to deal with young vulnerable people who are committing crimes or at risk of committing crimes, and that's going to take years and years?

Mr MICHAEL DALEY: No. The work that the Premier has tasked us to do will come to fruition shortly. But in the longer term we need to look at a whole range of programs and investment right across New South Wales for the future. That work—the work that I'd asked and other Ministers agreed and asked DCJ and other departments to do—predated the Premier's announcement last week about the work that he's asked the Cabinet Office and other Ministers to do arising from his visit to Moree.

Ms SUE HIGGINSON: So, as a result of that, this work is aimed at diverting young people from police contact, or from the system, or from incarceration—what are the kinds of terms?

Mr MICHAEL DALEY: The Premier's work, are you talking about?

Ms SUE HIGGINSON: Yes.

Mr MICHAEL DALEY: I'd have to refer you to the statements that the Premier has made and that I've already read into the *Hansard* this morning. I don't want to go back over old ground.

Ms SUE HIGGINSON: That is basically those statements made to the media.

Mr MICHAEL DALEY: Yes.

Ms SUE HIGGINSON: Where's the accountability? Obviously we're here now. How do we measure the success of what the Premier's announced to the media of what we're going to be doing to further this State in terms of outcomes for young people at risk?

Mr MICHAEL DALEY: How do you measure success? There are various ways—

Ms SUE HIGGINSON: If we don't know what we're doing, if it's not clear what we're doing—we've just got those comments from the Premier.

Mr MICHAEL DALEY: You'll have to wait and see what we announce.

CORRECTED

Ms SUE HIGGINSON: Wait and see?

Mr MICHAEL DALEY: Yes.

Ms SUE HIGGINSON: All right. We will do that then. We'll wait and see. Is it your desire to see less numbers at some point of young people?

Mr MICHAEL DALEY: That's a cracking indicator of how many people are getting into trouble: fewer people being arrested by the police, fewer people being incarcerated, fewer people being prosecuted. Yes, I really want those numbers to drop and we have responsibilities under the Closing the Gap agreement, for example, in respect of those. But there are other measures as well. Happy, functional families that are raising well-adjusted children and things like that—they are measures too. They're hard to measure, but those sorts of things result in citizens leading happy, successful lives and staying out of the criminal justice system.

The Hon. SUSAN CARTER: Minister, you discussed before, as I think you put it, the broad but closed consultation in relation to the conversion practices bill. How many women's groups were included in that consultation?

Mr MICHAEL DALEY: I'll take that on notice.

The Hon. SUSAN CARTER: Okay. If certain community groups wished to be part of that consultation, were they all able to be part of that consultation and have their voices heard?

Mr MICHAEL DALEY: No, not every group, no.

The Hon. SUSAN CARTER: Why is that? Why were certain groups excluded?

Mr MICHAEL DALEY: I've explained why we went through—

The Hon. SUSAN CARTER: Minister, with respect, you haven't explained why certain groups would be excluded from having their views heard on an important matter of public policy.

Mr MICHAEL DALEY: I've explained that already this morning. I'm not going back over old ground.

The Hon. SUSAN CARTER: Could you explain why, for example, an advocacy group such as Women's Forum Australia was not permitted to be part of the consultation?

Mr MICHAEL DALEY: I just told you I'll take on notice whether women's groups were involved in that.

The Hon. SUSAN CARTER: Thank you. The equality legislation—I am very encouraged by your, I think, beautiful statement of the nature of democracy really, where you're talking about the broad consultation that is occurring. I can certainly confirm it's occurring in our inboxes and in our meetings as well. Does this ongoing consultation mean that this bill won't be coming on for debate in March?

Mr MICHAEL DALEY: I don't know what the timetable is for that bill being brought on. You'll have to wait and see. I think I've made that clear this morning.

The Hon. SUSAN CARTER: I think we're waiting to see a lot of things, Minister, with respect. Perhaps I can go to another matter.

Mr MICHAEL DALEY: Just to remind you, it's not a Government bill.

The Hon. SUSAN CARTER: No?

Mr MICHAEL DALEY: This seems to be causing some angst in the community—about the Government's equality bill. It's not the Government's equality bill. It's Mr Greenwich's bill. It's not mine and it's not the Premier's and it's not the Government's. It's a private member's bill.

The Hon. SUSAN CARTER: Which, as I understand it, is due to lapse this month if it's not debated—unless, of course, the Government agrees to an extension of time.

Mr MICHAEL DALEY: We'll wait and see.

The Hon. NATASHA MACLAREN-JONES: Do you intend to agree to an extension of time?

Mr MICHAEL DALEY: I've just said we'll wait and see.

The Hon. NATASHA MACLAREN-JONES: I'll take that as a yes.

The Hon. SUSAN CARTER: For whom are we waiting to make these decisions?

CORRECTED

Mr MICHAEL DALEY: For Mr Greenwich. It's his bill.

The Hon. SUSAN CARTER: Thank you.

Mr MICHAEL DALEY: It's in the queue to be debated before the Parliament. A private member's bill in the lower House goes into a chronological queue. But we are working cooperatively and productively with Mr Greenwich to manage some of the issues that have arisen in the consultation. It's a matter for Parliament, not for me or the Government, as to whether there's an extension. We might have a view on that, but if there's going to be an extension it will be put to a vote on the floor of the Legislative Assembly, where all members can have their say.

The Hon. SUSAN CARTER: On another matter, have judicial salaries been frozen as part of your two-year pay cap?

Mr MICHAEL DALEY: Yes.

The Hon. SUSAN CARTER: When did you discuss this with the heads of each jurisdiction?

Mr MICHAEL DALEY: I didn't.

The Hon. SUSAN CARTER: So how were they informed of this change?

Mr MICHAEL DALEY: I'm not sure how they were informed. I would have to go back and have a look.

The Hon. SUSAN CARTER: Is that a respectful way to deal with the judiciary?

Mr MICHAEL DALEY: Well, the Government made a decision as part of its budgetary processes to embark upon savings measures, and the top echelon, if I can put it that way, of public servants' salaries were frozen for two years, including mine and everyone sitting around this table.

The Hon. SUSAN CARTER: If you were a union official, would you be happy if an employer told their employees to read about changes to pay and conditions in the newspaper or on X?

Mr MICHAEL DALEY: I've never been a union official, so I don't know.

The Hon. SUSAN CARTER: Can you perhaps put yourself in the position of a union official? I'm sure that you have many colleagues who are in that position.

Mr MICHAEL DALEY: I could put myself in the position of Mike Baird, who made the same decision a few years ago to cap everyone's salaries at 2.5 per cent, which caused enormous damage to the public sector in New South Wales, and, on top of that, sacked about 30,000 people. So you're not really coming to this argument with clean hands, Ms Carter.

The Hon. SUSAN CARTER: Attorney, are Federal judges also the subject of a wages cap?

Mr MICHAEL DALEY: I don't think so.

The Hon. SUSAN CARTER: Does it concern you then that we might be missing out on judicial talent in New South Wales if there's a wages cap in New South Wales but not for Federal appointments?

Mr MICHAEL DALEY: If you have a look at the people that I have appointed since I've been the Attorney General, I think it would be pretty hard, with all modesty, to argue that we're missing out on talent going to the bench.

The Hon. SUSAN CARTER: I have the deepest respect for the judiciary and I invite you to express that respect as well by defending them publicly.

Mr MICHAEL DALEY: I talk to the members of the judiciary all the time. They know how much I respect them.

The Hon. NATASHA MACLAREN-JONES: Attorney General, in response to a supplementary question at the last budget estimates, you were asked for a jurisdiction that had similar programs to the drug diversion programs here in New South Wales. The example provided was the Police Drug Diversion Initiative in South Australia yet South Australia currently has a higher level of prosecutions for drug-related offences than New South Wales. Would you say this is a good example of successful justice reform?

Mr MICHAEL DALEY: I'd have to go back and have a look at what the question was and what the answer was. But if you're asking me if the drug diversion scheme that we introduced that was a policy of the former Government that began last week or the week before is a good policy, yes, it is. I think we've discussed this at length at the last estimates hearing.

CORRECTED

The Hon. NATASHA MACLAREN-JONES: South Australia has a higher number of drug-related hospital admissions per capita than New South Wales. Given that this is a shared justice and health initiative, does the lack of positive health outcomes in a similar jurisdiction concern you?

Mr MICHAEL DALEY: I'm not sure I'm in a position, as I sit here, to compare the different schemes. But the whole rationale for the program is to make sure that people steer clear of the criminal justice system and are diverted to treatment. Treatment, if it works, means that they won't end up in hospital. It's a good scheme.

The Hon. NATASHA MACLAREN-JONES: Attorney General, previously you gave quite a lengthy response about an almost frustration at the lack of support that is available, particularly to young people to divert them away from crime and various other things. You also referred to the Maranguka program, which was a joint agency of health, DCJ and police and was led by the Ministers at the time. It was quite successful. My question to you is: Are you frustrated with some of your colleagues and their lack of focus on the importance of early intervention?

Mr MICHAEL DALEY: Absolutely not. What I am focused on is that in 2024 at 5.00 p.m. in Moree, the only government agency that's working on the ground there is the police. I think that governments of all persuasions should have done better by this day and age to have had services on the ground to deal with young people who are breaking the law.

The Hon. NATASHA MACLAREN-JONES: Did you raise that with your colleagues?

Mr MICHAEL DALEY: I have raised it with many people. I have raised it with colleagues. We all agree with that. We do want to thank the police for the incredible work they do. I've been a Minister for Police. I know how hard they work. It's lamentable that we're about 3,000 officers down. I was alarmed to see the Premier give evidence in estimates the other day that, in the last four years, something like 2,000 constables and 750 sergeants have left the Police Force. That's lamentable as well. I'm not frustrated at my colleagues; I'm frustrated at the former Government for having not progressed this at all. State and Federal governments of all persuasions over the last 50 years haven't done a very good job. I know it's slow going and it will be slow going, but this Government intends to make a start. I just want to emphasise that there's no quick fix. You don't measure success in this regard in months—it's years, but we want to make a start.

The CHAIR: Unfortunately, questioning of the Minister is now over. I note that you have taken a lot of questions on notice. The secretariat will be in contact with you in relation to return. Do you have some answers?

Mr MICHAEL DALEY: I might take a minute to read these answers to questions taken on notice into the *Hansard*, Mr Chair. Ms Higginson requested clarification around the number of people in detention. What I said earlier is that, as at 28 February, the following number of young people were in youth detention: under 16 years, 77 in detention; under 14 years, 12 in detention; under 12 years, zero in detention; and total young people, 228 in detention. To clarify, there are no young people under 12 years old in detention. At that time—that is, as at 28 February—there was one 12-year-old in detention.

Ms Boyd asked me a question to the effect, "In the last budget estimates you commented every Local Court location either has a safe room or safe waiting arrangement for persons who experienced domestic and family violence. What's been done to ensure there is a safe waiting room/arrangement within the court?" The answer is that all courts have either a safe room or safe waiting arrangements, either inside the courthouse or offsite at the police station. Five court locations are too small to include a dedicated safe room and heritage requirements prevent construction.

Ms Carter asked what the impact would be of the Industrial Court on the budget and existing courts, and whether the Industrial Court was pitched as an NPP. The answer is that the Government is exploring options that would manage costs while also ensuring that the standard of new facilities meets operational requirements. This includes consideration of funding arrangements.

Ms Maclaren-Jones asked, "What is the domestic violence waiting time in courts?" BOCSAR data shows the median number of days from arrest to finalisation for Local Court appearances involving a DV charge finalised in 2023 was 155 days. Ms Maclaren-Jones also asked how many cases are waiting at Waverley court and what is the wait time, and what is the wait time at Bankstown Local Court. The answer is that, as at January 2024, the delay at Bankstown is 20.5 weeks and Waverley is 25.9 weeks. This is the time between listing for hearing and the hearing taking place.

In relation to conversion practices, Ms Carter and Ms Cohn asked me a question regarding the conversion practices bill/reforms and what consultation process has been undertaken. My answer is that on 22 May 2023, the Department of Communities and Justice and the Ministry of Health established the LGBTQ+ conversion practices

CORRECTED

ban working group. The working group includes representatives from the Cabinet Office, the Department of Education, Multicultural NSW and Anti-Discrimination NSW.

Almost 150 organisations were engaged in the consultation work that took place between 31 July and 25 August 2023. The confidentiality of the process sought to facilitate frank discussion and contributions from stakeholders to inform the Government's development of legislation. A large number and a wide range of stakeholders were invited to sector-specific round tables, which took place across August 2023. Stakeholders include members of the health, education, legal and government sectors, faith and multicultural organisations, and LGBTQ+ community advocacy organisations.

On the issue of Martinez and the complaint to the Judicial Commission, Ms Mihailuk asked me what the grounds are for referring a judge to Judicial Commission. The answer is that section 15 of the Judicial Officers Act 1986 provides that any person may complain to the commission about a matter that concerns or may concern the ability or behaviour of a judicial officer. Additionally, per the Judicial Commission website:

The *Judicial Officers Act* 1986 provides a means for people to complain about the ability or behaviour of judicial officers (but not their decisions) and to have those complaints examined by an independent body.

The Judicial Commission can only examine complaints about the ability or behaviour of a judicial officer. Common causes of complaint to the Judicial Commission about the ability or behaviour of judicial officers that may have affected the performance of judicial or official duties include failure to give a fair hearing; bias; incompetence; inappropriate comments or questions; collusion; discourtesy; or unreasonable delay. Further, the police Minister's office has advised that the NSW Police Force is 1,500 officers understrength, not 3,000. That concludes my answers to questions on notice.

The CHAIR: Thank you. That's all your questions on notice.

Mr MICHAEL DALEY: I thank the Committee members for their courtesy this morning. It was a good hearing, I think.

The CHAIR: We'll call an end to it now and start again at two o'clock.

(The Attorney General withdrew.)

(Luncheon adjournment)

The CHAIR: Before we start, I have a little script to read. The Committee has resolved to expunge the name and other identifying sensitive information of an individual identified in relation to a District Court matter during the morning session of this hearing. The Committee has resolved that this individual's name be expunged from the transcript of evidence and the recording, that media not report on the comments made, and for members of the public not to repeat them. Any act or contravention of the Committee's resolution may not be covered by parliamentary privilege and may constitute an unauthorised disclosure and therefore represent a potential contempt of Parliament. We will proceed to Opposition questions.

The Hon. SUSAN CARTER: Ms Dowling, it's going to be hard to see you, isn't it? I'm interested in 93Z and I'm wondering if you can tell me how many briefs of evidence you've received from police for prosecutions under 93Z.

SALLY DOWLING: Since its introduction, the ODPP has received 13 briefs.

The Hon. SUSAN CARTER: How many of those have you chosen to authorise for prosecution?

SALLY DOWLING: In 11 of those matters a recommendation to lay charges was made.

The Hon. SUSAN CARTER: You said yes to 11?

SALLY DOWLING: We advised police on the laying of charges in 11 matters.

The Hon. SUSAN CARTER: And they proceeded to court?

SALLY DOWLING: Excuse me for a moment. Two matters were returned to police and 11 matters were dealt with by my office.

The Hon. SUSAN CARTER: The two that were returned to police, what was the reason for returning them to police?

SALLY DOWLING: That's privileged. I would rather not answer that question.

CORRECTED

The Hon. SUSAN CARTER: That's fine. The 11 that were dealt with by your office, they were dealt with, as in, authorised to proceed?

SALLY DOWLING: That's right.

The Hon. SUSAN CARTER: And you don't know the disposition of them after that?

SALLY DOWLING: Two of them have proceeded summarily and resulted in convictions in the Local Court. Both of those matters are subject to appeal. One has been overturned on a conviction appeal for a fairly technical reason; the other one is listed for a conviction appeal on 28 March.

The Hon. SUSAN CARTER: And the other nine you understand are still in the system awaiting trial somewhere?

SALLY DOWLING: I will have to take that on notice, but I should be able to respond to that this afternoon.

The Hon. SUSAN CARTER: If you could, I would be very grateful. That would be very helpful. I'm just really trying to get a picture of what's happening with 93Z and how it's working, because you would be aware that the police Minister, in estimates testimony, said, "There were and have been significant delays that were with the DPP." Do you understand that?

SALLY DOWLING: It may be helpful for me to explain the process that happens between police and my office. When police want advice on whether a charge should be laid or whether there is a sufficiency of evidence, the brief of evidence is forwarded to my office, it's then allocated to a solicitor and the whole of the brief is considered in giving that advice on whether the test for prosecution, which is in the Prosecution Guidelines—that is, are there reasonable prospects of conviction and is the prosecution in the public interest? Advice is given on both of those aspects of the prosecution test and that advice is provided to police. Necessarily, given the volume of work that my office undertakes, that process takes some time. It's often the case that other charges have already been laid in relation to the same conduct. They can be laid by police without that need for a sanction or advice. I assume that that is what the deputy commissioner is referring to when he was talking about delay. There is a delay in the process, and that's the normal delay that inheres in the provision of proper legal advice based on the whole of the brief of evidence.

The Hon. SUSAN CARTER: Can you give us some rough estimate of what time delay we are looking at?

SALLY DOWLING: We have a protocol for the provision of advice, and it depends on the complexity of the particular brief. I'd have to check the actual time frames in that, but I will revert to you shortly.

The Hon. SUSAN CARTER: I would be grateful. Thank you very much. From the—I think you said—consideration of 13 briefs, did you identify any issues with the operation of the provision itself that caused you concern or that you flagged as difficulties?

SALLY DOWLING: No. Each matter is considered on its own merits and by reference to the terms of the section. The broader operation of the provision is a matter which I understand is the current subject of review by the NSW Law Reform Commission, but it doesn't arise in a case-by-case analysis that we undertake.

The Hon. SUSAN CARTER: Are you aware of any adverse comments that may have been made by judges in relation to the two prosecutions under 93Z where they found difficulties with the threshold test or the operation of the section?

SALLY DOWLING: I'm not aware of that.

The Hon. SUSAN CARTER: So the only difficulty with 93Z that comes out of your office's experience would be the perceived difficulty with the police in terms of the delay this adds to the process?

SALLY DOWLING: I don't see any difficulty from my office's perspective, but I understand the frustrations of the police.

The Hon. SUSAN CARTER: In terms of any delay that's experienced by the police, is that an issue that could be addressed by additional resourcing for your office?

SALLY DOWLING: The issue has gone away now because the sanctioning of the director is no longer required, so those charges can be made by police at the police station.

The Hon. SUSAN CARTER: If the section was still as it was, is that an issue that could be dealt with by additional resourcing for your office?

CORRECTED

SALLY DOWLING: In terms of the length of time taken to provide advice?

The Hon. SUSAN CARTER: Yes.

SALLY DOWLING: I will never say no to more funds for my office. I'm sure everything could be done faster with more lawyers.

The Hon. SUSAN CARTER: I'm sure that if the police are experiencing delays in this, there would be other issues as well because I imagine you must have a considerable amount of work.

SALLY DOWLING: We handle 18,000 matters per year. The volume of work that my office, my lawyers handle is extraordinary. Giving proper considered advice in complex issues such as the operation of 93Z, which is a relatively complex criminal provision, that takes time.

The Hon. SUSAN CARTER: I'm very sympathetic. Good legal advice takes consideration and time, absolutely. Can I take you now to the judgement in Crown and DS which was a judgement from Judge Wass in September 2022. Are you familiar with that judgement?

SALLY DOWLING: I am.

The Hon. SUSAN CARTER: The judge made some observations in relation to a sexual assault case. She referred to the Prosecution Guidelines, and I'm quoting from her now when she said that "in my view, the test to prosecute failed on each of those important indicia". She went on to say:

That is a troubling matter. The bringing and continuation of unmeritorious cases in abrogation of the prosecutor's responsibilities ... imposes a burden not only on the criminal justice system, but on all of those involved in it ...

What's the process in your office? This judgement is handed down. Because of the comments, is it automatically brought to your attention or is there a review process at all? How does it work?

SALLY DOWLING: Every solicitor with carriage of a particular matter has an obligation to bring a matter to my attention if it has controversial comments in it or if that solicitor forms the view that consideration should be given to a Crown appeal. I'm sure you are aware that there is a lot of law from the High Court to the effect that Crown appeals should be brought only on the rare occasion and they should be brought for the purpose of elucidating or clarifying the law. A high degree of restraint is required on the part of the Crown, and that is something that is always at the front of my mind when considering whether to appeal. The process of finding a bill—to use the old parlance in our office—has changed since 2018, when the early appropriate guilty plea scheme was introduced. In a broadbrush explanation—

The Hon. SUSAN CARTER: Sorry, I'm not trying to interrupt you; I'm just conscious we have limited time. I value the broad description but I guess I'm really looking at the review process and the mechanisms.

SALLY DOWLING: What I was wanting to explain to you is that there are points in time in the life of a particular matter in the ODPP at which these decisions to prosecute are overtly considered but they are also considered all through it.

The Hon. SUSAN CARTER: Sorry, I'm not traversing the decision to prosecute.

SALLY DOWLING: You want to know about—

The Hon. SUSAN CARTER: I'm traversing, what are the internal processes? So the solicitor comes and brings this to your attention or to an intermediary.

SALLY DOWLING: Depending on the level of solicitor who has the handling of it, a report will be done. A second report will be done by that person's more senior solicitor.

The Hon. SUSAN CARTER: Do you remember, in this case, did it go to a superior or come straight to you?

SALLY DOWLING: I'd have to check back on that.

The Hon. SUSAN CARTER: It's a couple of years ago.

SALLY DOWLING: Then it comes to what's called within our office Director's Chambers, which is comprised of myself and my three deputy directors, who are all Senior Counsel, and we have seven extremely able solicitors who are working with us in that section.

The Hon. SUSAN CARTER: What do you do then? What's the review process?

SALLY DOWLING: One of those solicitors will do, also, a report and then a decision will be made whether to appeal or not. That decision is made by a deputy director.

CORRECTED

The Hon. SUSAN CARTER: I'm not talking about appeal. There is a criticism here of the way that your officers worked.

SALLY DOWLING: Thank you. I apologise.

The Hon. SUSAN CARTER: What is the internal process in terms of, "Did we do a good job? Does a staff member need more support? Does somebody need more training?" How do you respond, as a management pathway, I suppose, to quite a significant critique of work that comes from the office.

SALLY DOWLING: There are a number of different responses that will happen with this criticism.

The Hon. SUSAN CARTER: In this case what responses were there?

SALLY DOWLING: I'd have to take that on notice.

The Hon. SUSAN CARTER: Yes, thank you.

SALLY DOWLING: There is a register that's kept of judicial criticisms. And the individual practitioners who are involved in that decision, an analysis is done on the papers. They are counselled. We reassure ourselves that they understand what went wrong in this particular matter. A decision may be made that there is a broader training and development deficit that needs to be addressed, in which case that will be developed. It may be as simple as an all-staff email. It may be training at one of our internal conferences. It may be having an external practitioner, such as a judge—

The Hon. SUSAN CARTER: Can you tell me, what was the outcome of this judgement? Was there training at an internal conference? Was there an all-staff memo? Was it an individual staff issue?

SALLY DOWLING: I'll have to take that on notice, in relation to this particular one. I can indicate that it is my position, and that of the Solicitor for Public Prosecutions and the Senior Crown Prosecutor, that there is no systemic problem with the way in which—

The Hon. SUSAN CARTER: I'm just trying to step through and look at the evidence piece by piece. In this matter, were costs awarded against the DPP?

SALLY DOWLING: Costs are not awarded against the DPP. A cost certificate is issued in accordance with the Costs in Criminal Cases Act, and then that—

The Hon. SUSAN CARTER: Was a cost certificate issued in this case?

SALLY DOWLING: My understanding is it was, yes.

The Hon. SUSAN CARTER: Was the cost judgement reported?

SALLY DOWLING: I don't know.

The Hon. SUSAN CARTER: Are you able to provide us with a copy of the cost judgement?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: That would be great. I also understand there's reports of another—

SALLY DOWLING: I'm sorry to interrupt you, the costs judgement is the judgement to which you are referring, and that's *R v DS* [2022] NSWDC 441.

The Hon. SUSAN CARTER: Are you aware of a judgement of Judge Lerve, I believe, in 2023?

SALLY DOWLING: I am.

The Hon. SUSAN CARTER: I couldn't locate that. Is that a reported or unreported judgement?

SALLY DOWLING: I don't know if it's on New South Wales Caselaw.

The Hon. SUSAN CARTER: Are you able to provide me with a copy of that and any judgement in relation to a cost certificate that was made?

SALLY DOWLING: Do you know the name of the case to which you are referring?

The Hon. SUSAN CARTER: I don't, no. Perhaps it's in your register of judicial criticism, I think you said it was called. I presume it would be recorded in there and you could identify it from there.

SALLY DOWLING: I'm assuming that you're referring to a decision called *R v Cowled*.

The Hon. SUSAN CARTER: I just know the name of the judge.

CORRECTED

SALLY DOWLING: Yes, this is a decision of Judge Lerve.

The Hon. SUSAN CARTER: If I could be given a copy of that.

SALLY DOWLING: If I can cut to the chase, if you're referring to the judgements of the judges that have been referred to in the media, then that is the decision.

The Hon. SUSAN CARTER: Yes, thank you. Was there a cost certificate awarded in that case?

SALLY DOWLING: There was, yes.

The Hon. SUSAN CARTER: Were similar criticisms made in relation to prosecutions by Judge Lerve in that case?

SALLY DOWLING: No, I do not accept that. I refer you to paragraph 84 of the judgement.

The Hon. SUSAN CARTER: I'd love to see it when it's available. I don't have it. Perhaps we can have that on notice.

SALLY DOWLING: It is somewhat difficult to have this discussion if you don't have the judgement.

The Hon. SUSAN CARTER: Which is why I asked if I could have copy.

SALLY DOWLING: I can certainly make it available.

The Hon. SUSAN CARTER: That would be great, thank you. You're aware that this matter has been ventilated in the press. I'm wondering, are you able to review your register of judicial criticism—is that what it's called?—and identify if there are any other matters where there have been similar issues raised by judges in relation—

SALLY DOWLING: I'm not aware of any other matter.

The Hon. SUSAN CARTER: Are you able to review that register and check for us?

SALLY DOWLING: I don't need to because I am familiar with what's in that document and I am not aware of any other.

The Hon. SUSAN CARTER: Good.

SALLY DOWLING: May I make one point in relation to these four judgments? I have not received any complaint of this kind directly from any of these judges or from the Chief Judge of the District Court about the particular criticisms.

The Hon. SUSAN CARTER: Can I ask you about that? Do you commonly receive complaints directly from judges?

SALLY DOWLING: I do.

The Hon. SUSAN CARTER: In what circumstances?

SALLY DOWLING: They often call me up and will say, "I have a concern about a matter that has resolved"—never a current matter—"or about the way in which something happened."

The Hon. SUSAN CARTER: You said you haven't received anything directly in relation to sexual assault matters. What matters have you received complaints from judges about?

SALLY DOWLING: I'd have to take that on notice.

The Hon. SUSAN CARTER: Sorry, this is something you just raised.

SALLY DOWLING: Yes, but there could be complaints—and I don't have—

The Hon. SUSAN CARTER: If you can take it on notice—

SALLY DOWLING: I'm trying to answer your question.

The Hon. SUSAN CARTER: I'm sorry, you just said you can't answer the question because you need to take it on notice.

SALLY DOWLING: And I'm elaborating on my answer, if you'd let me please finish.

The Hon. SUSAN CARTER: I'm very conscious that we have very little time, so if you could take it on notice and provide a list of all the matters which judges have raised with you as criticism of the operation and

CORRECTED

the prosecution, I would be very grateful for that list. Can I take you to the judgement in *R v Martinez* in December 2023? I think you're familiar with that matter as well. Judge Newlinds, I note, said in that case:

Most importantly, I do wish to record that I am left with a deep level of concern that there is some sort of unwritten policy or expectation in place in the Office of the Director of Public Prosecutions of this State to the effect that if any person alleges that they have been the subject of some sort of sexual assault then that case is prosecuted without a sensible and rational interrogation of that complainant so as to at least be satisfied that they have a reasonable basis for making that allegation, which would include to at least being satisfied that the complainant has a correct understanding of the legal definition of sexual assault or sexual intercourse without consent.

That is a very strong statement from a judge. What was the process initiated in your office in response to that statement?

SALLY DOWLING: It was to have a close examination of the whole of the trial, including the brief, and to consider whether there was any justification for that remark, which there isn't.

The Hon. SUSAN CARTER: Was there any management action flowing from that in terms of an education program, an all staff email, counselling of a particular staff member who was involved?

SALLY DOWLING: I am hesitant to say too much about this particular matter, for obvious reasons.

The Hon. SUSAN CARTER: Sorry, what reasons are they?

SALLY DOWLING: I think that you know what reasons they are.

The Hon. SUSAN CARTER: I don't, which is why I'm asking you.

SALLY DOWLING: It is the subject of a complaint to the Judicial Commission.

The Hon. SUSAN CARTER: Does that mean that you can't tell us what management decisions you took in your office in response to this comment by the judge?

SALLY DOWLING: The response that I took was to consider the judge's comments, which I think are completely unwarranted and misguided. That being the case, leaving aside the obiter dicta remarks in this judgement, which were very offensive to the integrity of the 480 solicitors in my office and 110 Crown prosecutors, in addition to myself, I also of course considered whether the Prosecution Guidelines were fit for purpose—

The Hon. SUSAN CARTER: Sorry, so you considered the judgement. There was nothing in terms of staff training and there was nothing in terms of an individual staff member. The consideration went to the fitness of the Prosecution Guidelines themselves.

SALLY DOWLING: I haven't finished my answer.

The Hon. SUSAN CARTER: That's why I'm asking you that question. Was that the response?

SALLY DOWLING: No, that's not. My team and I read the entire transcript and looked at the circumstances of that particular prosecution because, of course, all of the—

The Hon. SUSAN CARTER: Was there staff counselling as a result?

SALLY DOWLING: I'm still speaking, Ms Carter.

The Hon. SUSAN CARTER: I'm asking you to get to the point, with respect.

SALLY DOWLING: I'm sorry, I'm trying to do my best. The view taken within my office is that those comments were unjustified and that there was nothing about this prosecution—

The Hon. SUSAN CARTER: You've said that. What flowed from it? Can I ask specific questions? Was there staff training instituted as a result of this judgement?

SALLY DOWLING: There's constant staff training.

The Hon. SUSAN CARTER: Was there staff training instituted which flowed from this judgement?

SALLY DOWLING: There was the routine and constant staff training on the application of the Prosecution Guidelines.

The Hon. SUSAN CARTER: So nothing specifically in relation to this judgement. Was there an all-staff email which flowed from this judgement?

SALLY DOWLING: I believe there was an all-staff email rejecting the damaging comments of the judge.

CORRECTED

The Hon. SUSAN CARTER: Could you provide a copy of that for us, please?

SALLY DOWLING: In due course. I would have to take that on notice.

The Hon. SUSAN CARTER: Was there counselling of an individual staff member as a result of this judgement?

SALLY DOWLING: I will also have to take that on notice.

The Hon. SUSAN CARTER: Great. Thank you. You said you also then reviewed the Prosecution Guidelines as a result of this judgement?

SALLY DOWLING: Correct.

The Hon. SUSAN CARTER: And what was the result of that consideration?

SALLY DOWLING: That my view and that of the rest of my team is that the Prosecution Guidelines are fit for purpose and appropriately set out the test for prosecuting in New South Wales.

The Hon. SUSAN CARTER: And there was a cost certificate in this matter?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: Thank you.

Ms SUE HIGGINSON: I think this might be either for Mr Tidball or Mr McKnight. I want to go back to what the Minister was telling us all about in relation to the Premier's comments in Moree. In particular, what are the details of the work that the department—under his command and responsibility—are doing to lead to the outcomes that the Premier has instructed that are happening?

PAUL McKNIGHT: I think, as the Attorney General indicated this morning, we're working across government, closely with the Cabinet Office, on a range of options for government to consider. I think the Attorney said this morning that everything was being considered, so that's the work that we're undertaking at the moment.

Ms SUE HIGGINSON: Can you help me understand, what does that actually mean?

MICHAEL TIDBALL: Can I supplement that, if I may, Ms Higginson?

Ms SUE HIGGINSON: Please, Mr Tidball.

MICHAEL TIDBALL: What Mr McKnight said is absolutely the case. I would add separately that I am working closely with my colleague, the secretary of the Premier's Department. We've also been touching base with CAPO about some of those challenges and the nuances of dealing with the challenges within the context of Closing the Gap targets and the partnership that we are keen to develop. So there is that work. There is then a broader context around that, recognising that there are a number of stakeholders that legitimately should be part of an engagement process. But the work, quite genuinely, is very much still in the developmental stage.

Ms SUE HIGGINSON: In that development stage—I'm just really trying to understand what the heck we are doing and what we're going to do. I understand that it sounds very much like there's a lot of goodwill. That's what it sounds like, and I think people are really glad to hear that. But how will it actually start to walk out from, say, the Attorney General's office, from your office as the secretary, from Ms Beattie's input and role? What will we see in terms of—say, for example, let's move from the north-west. Let's go to the Northern Rivers, for example—one region. Are we looking at how we will get the input from that region about what's happening?

I'm talking about young people here. I'm talking about people under the age of 18—young people—and their intersection with the criminal justice system or, before that, their vulnerabilities. I understand we're trying to take a whole-of-government approach to it, but what is likely to play out in the next couple of months that is any different to what was happening last month in terms of understanding what it is we're going to try to do to improve things? I'm still not exactly sure what we're trying to improve yet. The Minister indicated that figures of young people intersecting with the criminal justice system would be one outcome, and happy families was going to be another outcome, but what are we actually doing to protect those young people? My interest, as you know, is the ones that are 14 and under that are going to keep banging up against the criminal justice system.

PAUL McKNIGHT: I think there are two processes underway that the Attorney was alluding to this morning. One process is some work that we're doing in the immediate term, coordinated by the Cabinet Office, around some acute issues of regional crime involving young people. The other process is the process that we are leading out of DCJ to look at alternatives to the criminal justice system for those children in that age range—the 10 to 14 age range—who are presenting with harmful behaviours and are currently coming into the criminal justice system. That second piece of work is longer term, obviously, and is involving a whole range of departments,

CORRECTED

including Health, Education, Regional NSW, the Advocate for Children and Young People—the list is quite long. It is really looking at the alternatives that the AG was talking about this morning in terms of the way in which we might respond to the behaviours that they are presenting.

Ms SUE HIGGINSON: This is very helpful. With that work, we're focusing on diversions and early detection. Is that what I'm hearing?

PAUL McKNIGHT: The work doesn't assume that the minimum age of criminal responsibility will be raised. The AG set out the Government's policy on that this morning.

Ms SUE HIGGINSON: Are we still looking at police being one of the very early indicators of when a young person comes on the radar?

PAUL McKNIGHT: I think, Ms Higginson, you referred this morning to the report that SCAG released. It had three main aspects to it when it was talking about the kinds of principles that should apply to harmful behaviours that young people are exhibiting. There's a set of principles around first response, where young people present in a kind of acute situation—they are found committing a crime, for example. The second set of situations is a longer term response, where it's identified that young people need not just an initial response but a longer term therapeutic response.

The third aspect is the kinds of services that need to be in place to support victims of that activity because it's harmful activity that's happening and there needs to be some response to that. It is inevitable, I think, that those harmful behaviours are often going to come to police attention in the first instance. Police are, as you would be aware, the 24/7 service that's out there in the community and are often the people that are first to see harmful behaviour whenever it's presented. Whatever response we have needs to take account of that reality on the ground for police. Does that make sense?

Ms SUE HIGGINSON: Yes, absolutely. What will be the system of this work? Are you going to just be engaging with existing youth services? It sounds like you've got good people lined up doing the work—the youth advocate and DCJ et cetera—but what about further into the community? What will be the process?

PAUL McKNIGHT: This is really an initial piece of work looking at what's out there. We've looked at what's out there and we're now beginning to think about what could be needed and where those gaps are.

Ms SUE HIGGINSON: Where is the work that has collated what's out there?

PAUL McKNIGHT: That work is underway. We're in a situation where we're really doing work about the issues and what kinds of services might be needed.

MICHAEL TIDBALL: Ms Higginson, part of the challenge I'm having responding to this today is, in all honesty, both pieces of work—these issues in the current iteration are very contemporary. I acknowledge that in reality they're not contemporary but the profile of the issues now, and in this permutation, is very recent. This work is in a very early stage. It's difficult to—you may perceive that we're holding back. We're actually genuinely in the early stages. One of the things I will say about it is, with the best will in the world and with all the complexity and the history, clearly some different things need to be done.

PAUL McKNIGHT: Can I clarify as well that these are two different pieces of work: the acute piece and the longer term piece.

Ms SUE HIGGINSON: So the acute piece is what the Premier announced is happening. Are we actually referring to it as a task force? I'm serious. For example, if I want to make inquiries on behalf of my constituents in one month's time, how do I communicate and ask for details? Literally, "Dear Minister, I am inquiring about the"—what would I refer to it as? Or will that become known?

PAUL McKNIGHT: Look, I would describe the work that's going on as a piece of inter-agency cooperative work that's being coordinated by the Cabinet Office. I think that's how the Attorney referred to it this morning.

Ms SUE HIGGINSON: It's inter-agency cooperative work that relates to young people and crime? Is that how we would—I'm so sorry. I can see the look on your face and I feel like I'm making an absolute fool of myself.

PAUL McKNIGHT: Not at all.

Ms SUE HIGGINSON: I'm honestly trying to understand a bit better. Ms Campbell?

ANNE CAMPBELL: I'm just going to add to this. This is not to do with that particular question, but in terms of what we're currently doing in this space. You may recall we talked about justice reinvestment earlier

CORRECTED

today. On 22 January we announced \$7.5 million, so there's now a Justice Reinvestment Grant Program. That will prioritise three-year proposals led by Aboriginal and Torres Strait Islander community-controlled organisations to help develop local solutions to curb the high rates of not just adults but young people in contact with police, courts and prison.

Ms SUE HIGGINSON: Ms Campbell, how much was that?

ANNE CAMPBELL: It was \$7.5 million.

Ms SUE HIGGINSON: At the moment, is there any place consideration for that or is that across—

ANNE CAMPBELL: Not at this stage. It's across the State.

Ms SUE HIGGINSON: Anywhere? Okay, great. The acute work that is happening—that will assess what's already in the pipeline, such as projects like what Ms Campbell identified?

PAUL McKNIGHT: At this point, Ms Higginson, I'm afraid these are questions that will need to be put to Ministers. This is work that's being done in order to inform Ministers to allow them to make policy decisions. You're leading me into territory I can't go into.

Ms SUE HIGGINSON: No, I appreciate that. In your capacity—in that law reform capacity that you have—would you likely, for this kind of work, be suggesting ways for broad community input and feed-in and taking a place-based approach to some of the issues that are being identified as the "problems"?

PAUL McKNIGHT: I'm not quite sure what you're asking me, Ms Higginson. Would we provide fulsome policy advice that canvasses all the options and issues that are out there? Absolutely. I'm not sure I can go much further than that.

Ms SUE HIGGINSON: One of the parts of the question I think I'm asking is the recognition—I think I'm probably crossing over in estimates here and some of the things I think Ms Beattie and others have spoken about in terms of place-based—you know, place presents very distinct issues we're dealing with.

PAUL McKNIGHT: Indeed. There is a broad range of work going on across government in a place-based context, in a service delivery context, in a law reform context, all designed to make the criminal justice system and social policy services as a whole better. That would be a very broad question about government policy overall, I think. I think, as the Attorney said this morning, everything is on the table and everything is being considered—all options.

Ms SUE HIGGINSON: Can I ask of you, Ms Dowling, are you aware of the issue of police prosecutions, and I'm talking about police prosecutions—I'll get there in a sec to your office's role—where allegations are made of a domestic violence nature, then they are retracted, and then police are laying charges against the person who has made the retraction on the basis of the retraction only? Have police and police prosecutors and crime managers asked your office at all for any advice in relation to those kinds of matters?

SALLY DOWLING: As you know, my office is responsible for prosecuting indictable offences in the District Court and the Supreme Court. In some circumstances the ODPP has entered into agreements with other agencies to take over and prosecute certain summary offences in the Local Court and Children's Court. That does not currently include prosecution of persons who are accused of making false allegations in domestic violence matters. My office and I recognise that there are complex public policy issues involved in the investigation and prosecution of domestic violence offences. It's my evidence to this Committee that these are matters for police to grapple with, because they are the ones on the ground doing that investigating.

Any questions of how the police deal with those types of prosecutions and the laying of those charges really should be directed to the police Minister or the police commissioner. At the moment there is no proposal on foot within my office or elsewhere, as far as I am aware, to refer any particular category of offences to the ODPP for prosecution, other than those that are currently contained in the relevant MOU between the Commissioner of Police and myself.

Ms SUE HIGGINSON: No contact has been made for advice or assistance from police or crime managers at this point?

SALLY DOWLING: I will have to take that question on notice. I'm personally not aware of any particular request for advice in a particular matter, but I can make that inquiry for you.

Ms SUE HIGGINSON: The reason I raise it is I have put this question to the police Minister and to deputy commissioners and the commissioner, and they expressed real concern that that could be happening. There was some evidence given that there is a process of reviewing those cases and looking at those cases. It would concern me if they were not seeking advice from the Office of the Director of Public Prosecutions. That's all.

CORRECTED

SALLY DOWLING: Sure. The majority of those matters, in my understanding, are summary matters and, in the normal course, would be likely to be dealt with by police. I'm not saying that they may not be referred to for advice in particular cases. I'll see if I can find that information.

Ms SUE HIGGINSON: Does your office receive many requests or any requests for advice in summary matters from police?

SALLY DOWLING: Yes.

Ms SUE HIGGINSON: Is that common?

SALLY DOWLING: Yes.

Ms SUE HIGGINSON: Would they be matters that involve domestic violence?

SALLY DOWLING: They run the entire criminal calendar. They may be novel matters or evidentiary issues and would include domestic violence matters in particular instances.

Ms SUE HIGGINSON: Thank you. I've only got a minute so I feel like I won't do much justice but perhaps, Ms Beattie, if you could assist me in understanding—are you part of this new work in relation to what we've been talking about with young people? Is that something that has come your way yet? I realise it's very early.

CLAIRE BEATTIE: Yes, I think it is indeed early. I think they're at the scoping phase of this work. However, in terms of the work that Transforming Aboriginal Outcomes does with my good colleagues over here, we do work with Health. We do currently also meet with Education colleagues, even in the early childhood space, to talk about—the ACFCs is a good example where we are working with Education in that space. We currently do work across government on issues that relate to First Nations people and Closing the Gap.

Aboriginal Affairs do a great job, as you know, of pulling those strings together and making sure government talks to each other about Closing the Gap. As to the matter you were speaking about just then, I'm not sure of what it's called or what it looks like at this point but I can say, in my day job and in my team's day jobs, they work across government to work with First Nations people and to hear the voices of community. It would be silly for us to work in silos. You can't behave like that. So the current work does look like that, but I don't know what this work is because it hasn't been fully scoped—from what I'm hearing.

The Hon. SUSAN CARTER: Ms Dowling, I think we were talking about the decision in Martinez, which was handed down on 5 December last year, and then you had considered that response in the office and then 10 days later, I understand, you issue a press release criticising the judgement in which you flag that you intend to make a complaint to the Judicial Commission. Has this complaint been made?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: What were the grounds of the complaint?

SALLY DOWLING: I don't propose to discuss the complaint because it is sub judice.

The Hon. SUSAN CARTER: Is the Judicial Commission a court, Ms Dowling? It's an executive administrative body, isn't it?

SALLY DOWLING: It is. However—

The Hon. SUSAN CARTER: So are matters before it sub judice then if it's not a court?

SALLY DOWLING: I do not consider it to be appropriate to ventilate the details of that complaint in a public forum such as this because it is for consideration by the Judicial Commission.

The Hon. SUSAN CARTER: Why then did you choose to put out a public press release indicating that you were making that complaint?

SALLY DOWLING: There's a difference between the making of the complaint and the content of the complaint.

The Hon. SUSAN CARTER: Is it commonplace for people to issue public statements that they're about to make complaints to the Judicial Commission?

SALLY DOWLING: I don't know. I can't answer that.

The Hon. SUSAN CARTER: In your experience over the last five years, how many times would you have seen a press release of somebody indicating they're about to complain about a judge to the Judicial Commission?

CORRECTED

SALLY DOWLING: As I said, I can't answer that question.

The Hon. SUSAN CARTER: In my experience, I can say this is my first time I've come across this actually. You said that you had conversations with judges. What other means were at your disposal to discuss issues that you thought arose from this judgement?

SALLY DOWLING: As you know, an appeal lies from the orders of the court not from the reasons of the court.

The Hon. SUSAN CARTER: Appeal is one avenue. What other avenues did you have?

SALLY DOWLING: No, I'm just saying an appeal didn't lie in this matter.

The Hon. SUSAN CARTER: Okay, we're taking appeal off the table. What other avenues did you have at your disposal?

SALLY DOWLING: I considered that this was the appropriate one.

The Hon. SUSAN CARTER: What other avenues did you consider before you chose to put this press release out?

SALLY DOWLING: I considered that this was the appropriate course of action.

The Hon. SUSAN CARTER: But what other avenues did you consider? Surely you didn't just go, "Judgement. Think. Press release." What other avenues did you consider?

SALLY DOWLING: I'm aware of the provisions of the Judicial Officers Act. I'm aware also—

The Hon. SUSAN CARTER: Thank you. What other avenues did you consider?

SALLY DOWLING: I considered that this was the appropriate one.

The Hon. SUSAN CARTER: What other—with respect, you're not answering the question.

SALLY DOWLING: I'm sorry, I can't take this any further.

The Hon. SUSAN CARTER: The question is, what other avenues did you consider before issuing a press release about a complaint to the Judicial Commission about a judge?

SALLY DOWLING: I felt that this was the appropriate one, and this was the one that I took.

The Hon. SUSAN CARTER: After considering what other avenues?

SALLY DOWLING: Obviously I considered the obvious one of an appeal, which wasn't available.

The Hon. SUSAN CARTER: Yes. Did you consider discussing matters with the head of the jurisdiction?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: Did you consider discussing matters with the Attorney General?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: And you ruled that out because?

SALLY DOWLING: I didn't say I ruled those out.

The Hon. SUSAN CARTER: But you chose this path?

SALLY DOWLING: I did.

The Hon. SUSAN CARTER: Why did you choose to make it public?

SALLY DOWLING: Because of the public nature of the criticism of my office and the very, very damaging effect that had on the lawyers of the ODPP, who are diligently applying the Prosecution Guidelines and are acting ethically in the service of the State of New South Wales.

The Hon. SUSAN CARTER: You thought the way to deal with damaging publicity was to attract more publicity?

SALLY DOWLING: No. I felt that it was necessary for me to stand up for my staff.

The Hon. SUSAN CARTER: How does making a complaint about a judge stand up for your staff?

CORRECTED

SALLY DOWLING: I'm sorry, I'm making a complaint about the conduct of the judge. We've already been through that. I issued a media statement in response to a lot of media interest directed to my office to make it clear that I categorically rejected the suggestions made by the judge—which, of course, had not been made in any other forum with me about prosecution practices generally—and issued a media statement to that effect.

The Hon. SUSAN CARTER: You indicated your concerns that the judge misapprehended the operations of the ODPP?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: And presumably the DPP Act?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: And then I think we come to the matter of Smith in February of this year and Judge Whitford, who seemed to have similar issues with a matter that was before him. Was that matter also the subject of a costs certificate?

SALLY DOWLING: I think the costs application is being made, is my understanding, but has not yet been determined.

The Hon. SUSAN CARTER: Is that listed yet?

SALLY DOWLING: I don't think so. I'm sorry, I withdraw that. It is a costs judgement in the Judge Whitford matter.

The Hon. SUSAN CARTER: Would we be able to get copies of all of those judgements?

SALLY DOWLING: Sure.

The Hon. SUSAN CARTER: Would it be possible also to get a list of all matters in which costs certificates have been awarded in sexual assault cases over, let's say, the last five years?

SALLY DOWLING: Certainly.

The Hon. SUSAN CARTER: Thank you. That would be very helpful. Thank you very much. In Smith, Judge Whitford indicates that he raised concerns while the case was still on foot. He raised concerns with the solicitor advocate. Was that brought to your attention or to the attention of anybody in the office at the time that these matters were raised?

SALLY DOWLING: Not that I'm aware of.

The Hon. SUSAN CARTER: Is it, in your experience, normal that a judge would question why a prosecution had been brought while the matter's running?

SALLY DOWLING: No; unusual. Could I just also inform you of an aspect of that trial that you may not be aware of—

The Hon. SUSAN CARTER: This really isn't a matter of trials. This is not an avenue to relitigate the trials. What we're trying to look at here is the response to these criticisms and whether there are steps in place that are appropriate to respond to these criticisms.

SALLY DOWLING: Thank you. May I address that point? There are two issues that are coming up in relation to these judgements. They are the substantive question about whether the Prosecution Guidelines are being applied in a particular case, and then there is the criticism or the suggestion that there is an unwritten policy at play and the manner in which those assertions are made.

The Hon. SUSAN CARTER: Excuse me, Ms Dowling. I see that criticism made in the Smith case. Was that also a feature of the Wass judgement, the Lerve judgement and the Newlinds judgement?

SALLY DOWLING: Yes, the Newlinds judgement; not the Lerve judgement.

The Hon. SUSAN CARTER: So only in the Newlinds and the—sorry, the Martinez and the Smith judgements, talking about concern about secret policies operating. I think—was it Judge Whitford who called it an opaque and secret policy in the bringing of cases?

SALLY DOWLING: Yes, and it is that aspect—

The Hon. SUSAN CARTER: And your management response to that—because that's a fairly significant criticism. Your management response to that was what?

SALLY DOWLING: I know, because—

CORRECTED

The Hon. SUSAN CARTER: No, sorry. Your management response—what discussions were had with the solicitors?

SALLY DOWLING: Let me start off. Let me answer your question because—

The Hon. SUSAN CARTER: About management response? Yes, please.

SALLY DOWLING: These are complex, difficult issues that you are asking me about—

The Hon. SUSAN CARTER: Yes.

SALLY DOWLING: —and you need to let me finish my answer. I know that there are no secret policies because I am in chambers and myself and my deputies are making these decisions. The suggestion that there are secret policies or opaque policies is completely preposterous. However, in the face of judicial criticism, it is always appropriate to self-examine and to consider whether we are doing things properly and whether we can do things better. To that end, I have directed that an audit of all matters that have been committed for trial, currently committed for trial, be conducted by senior, experienced Crown prosecutors and solicitor advocates assisting them to make sure that every brief that is going to trial now in every sexual assault matter in the State satisfies the tests in the Prosecution Guidelines. So we're doing an audit.

The Hon. SUSAN CARTER: That direction was given after the most recent of those five cases.

SALLY DOWLING: That's right.

The Hon. SUSAN CARTER: Any other management response? Is staff training occurring?

SALLY DOWLING: There is the general reminder that the only policy is the prosecution guideline policy.

The Hon. SUSAN CARTER: Yes, an all-staff email, I understand from the press, has been issued?

SALLY DOWLING: That's right.

The Hon. SUSAN CARTER: Does it concern you that your all-staff emails end up in the daily newspapers?

SALLY DOWLING: It is a big organisation and there is a high degree of public interest in the activities of my agency.

The Hon. SUSAN CARTER: What does that suggest about office morale?

SALLY DOWLING: I don't think it suggests anything.

The Hon. SUSAN CARTER: You think it is perfectly normal that all-staff emails are leaked to newspapers?

SALLY DOWLING: I think that is the experience of many offices of directors of public prosecutions across Australia and the common law world.

The Hon. SUSAN CARTER: You would then understand that not all of your staff agree with your statement about the Prosecution Guidelines being adhered to and that there are no secret and opaque policies. I quote from one staff member who has been quoted in *The Australian* on 4 March:

The issue was systemic, and young prosecutors were often pressured to press on with rape cases even when they knew they had no hope.

The staff member said:

At a guess, at least 80 per cent of cases proceed even if there are issues with the complainant's credibility or even if the complainant is ambivalent about giving evidence.

What do you say to that statement from someone in your office?

SALLY DOWLING: I reject that statement. I would also like to tell you that the Crown prosecutors of New South Wales yesterday issued a statement saying they overwhelmingly reject the assertions attributed to an unnamed employee, including that pressure is placed on solicitors to progress unviable allegations. The Crown prosecutors expressed their confidence in the ODPP as a highly professional prosecution agency, and its solicitors as highly skilled and professional lawyers. A similar statement has just been issued by the Solicitor for Public Prosecutions, who leads the team of 480 solicitors, who equally reject that assertion.

The Hon. SUSAN CARTER: In Martinez, how long did the accused spend behind bars?

SALLY DOWLING: I believe the judgement says that he was remanded for eight months.

CORRECTED

The Hon. SUSAN CARTER: If we concede there may be one grain of truth in the statement about 80 per cent of cases proceeding even if there are issues with the complainant's credibility, what sort of personal cost does that place on a complainant who goes through that process and then finds that they do not receive the outcome that they wanted? What sort of personal cost is involved with the accused in those cases?

SALLY DOWLING: I reject entirely that there is any grain of truth in the premise that you put to me.

The Hon. SUSAN CARTER: Let's just hypothesise for a moment because certainly there are a number of judges who have suggested that this may be the case. Hypothesising, what is the human impact on the complainant? What is the human impact on the accused, in the case of Mr Martinez on remand for eight months?

SALLY DOWLING: The impact of litigation is significant on everybody concerned.

The Hon. SUSAN CARTER: And what impact in cases which may not have met the standards of the Prosecution Guidelines?

SALLY DOWLING: I don't accept that there are those prosecutions.

The Hon. SUSAN CARTER: What impact is there on the valuable resource which is court time of bringing matters that may proceed even if there are issues with credibility or if the complainant is ambivalent about giving evidence? What is the impact on court time?

SALLY DOWLING: As I said, I don't accept that that is the case.

The Hon. SUSAN CARTER: What is the impact on court time of matters proceeding if they are not properly founded?

SALLY DOWLING: I don't propose to answer a hypothetical where I have already disagreed with the base proposition.

The Hon. SUSAN CARTER: Do you believe that there are any issues which require a management response in your office in relation to decisions about how the Prosecution Guidelines are exercised or the decision to bring cases?

SALLY DOWLING: That's the subject of the current audit.

The Hon. SUSAN CARTER: Therefore, the audit has been called because you do believe there are management issues in your office about the way the Prosecution Guidelines work.

SALLY DOWLING: No. The audit has been called in order to investigate this issue.

The Hon. SUSAN CARTER: Why did it take until the fifth case for you to trigger that response?

SALLY DOWLING: Because I don't accept there is a failure of the application of the guidelines. However—

The Hon. SUSAN CARTER: You're doing an audit for a problem you don't believe exists?

SALLY DOWLING: I'm doing an audit, as a prudent manager would do, to satisfy myself that there is not a problem, and if I do find that there is a problem, then to fix it.

The Hon. SUSAN CARTER: Would a prudent manager have acted earlier?

SALLY DOWLING: I don't think so.

The Hon. SUSAN CARTER: You don't think so?

SALLY DOWLING: I don't accept that.

The Hon. SUSAN CARTER: All right. Would a prudent manager have issued a public statement advising they were bringing a complaint about a judge to the Judicial Commission?

SALLY DOWLING: Yes, I think so.

The Hon. SUSAN CARTER: In respect of that claim, if the particular judge is referred to the Conduct Division, that then will become very public. What happens to a claim to the Judicial Commission if, essentially, "nothing to see here" and the claim is dismissed? What public statements are made then?

SALLY DOWLING: You would have to ask the Judicial Commission.

The Hon. SUSAN CARTER: Will you be making a public statement to advise the same public who saw your press release if that claim is dismissed?

CORRECTED

SALLY DOWLING: I'll have to consider that at the time.

The Hon. SUSAN CARTER: Are there any reasons why you would not do that, given the public nature of your claims about the judge?

SALLY DOWLING: As I said, I'll consider that at the appropriate time.

The Hon. SUSAN CARTER: You are not committing to publicly stating the outcome if the outcome is in favour of Judge Newlinds?

SALLY DOWLING: I'll consider it at the time.

The Hon. SUSAN CARTER: All right. Thank you, Ms Dowling.

The Hon. NATASHA MACLAREN-JONES: I might move on to courthouses. Is the Government intending to close any courthouses either this year, the 2023-24 period, or planning for 2024-25?

MICHAEL TIDBALL: No, not to my knowledge.

The Hon. NATASHA MACLAREN-JONES: What are the Government's plans regarding courthouses presently not being used in Kogarah, North Sydney and Balmain?

MICHAEL TIDBALL: Subject to any elaboration by my colleagues, I would need to take that on notice.

The Hon. NATASHA MACLAREN-JONES: Are there any plans to expand Tweed Heads Court House?

MICHAEL TIDBALL: To expand it? Not to my knowledge. No, not of which I have knowledge.

The Hon. NATASHA MACLAREN-JONES: Also, I wanted to get an update on the south-west Sydney legal precinct—if a site has been selected and where the plans are up to.

MICHAEL TIDBALL: Other than what is on the public record, there is nothing additional that I can add.

The Hon. NATASHA MACLAREN-JONES: On coercive control, as covered offsite this morning, just to confirm whether or not the new coercive control laws will come into effect on 1 July?

MICHAEL TIDBALL: Yes, they will, noting that the offence of domestic abuse came in—have I got the right term?—on 1 February.

The Hon. NATASHA MACLAREN-JONES: We had some discussion this morning about workloads and wait times in courts. I'm interested to know if there's any work that's been done and if there will be any additional burden to local courts in hearing cases with the new laws coming in?

MICHAEL TIDBALL: My discussions with the taskforce would lead me to the view that the focus which we're doing in expounding and explaining the law of coercive control in the 1 July commencement, as well as the training that we're doing throughout with stakeholders and with other criminal justice agencies is that—the focus is on getting it right. I would imagine that it's not anticipated that there will be a significant number of matters in the establishment phase and first couple of years that come forward. I'm not expecting there to be a large flow of matters. It's an important law, it's a symbolic law and there will be matters we would anticipate which are prosecuted. But in terms of impact on court waiting times and resources of courts, we do not expect that to bring particular pressure.

The Hon. NATASHA MACLAREN-JONES: Have any contingencies been put in place for additional resources in the event that there is an uptake in matters?

MICHAEL TIDBALL: The implementation work of the monitoring role of the taskforce will look very closely at specific matters and the work and matters arising from the implementation of the legislation, but it would be restricted to that work as well and, within that, the review process each year.

The Hon. NATASHA MACLAREN-JONES: Is the taskforce intending to do a review of resourcing workload six or 12 months in?

MICHAEL TIDBALL: I believe that falls within the brief of the taskforce, yes, absolutely.

Ms SUE HIGGINSON: Can I just ask about ex gratia payments and when the Minister makes a determination to make one? Who in the department is responsible for assisting the Minister in making that decision?

CORRECTED

PAUL McKNIGHT: If an ex gratia payment is to be considered by the Attorney General—noting that Ministers generally can authorise ex gratia payments. But if it comes within the Attorney General's area, my legal team will advise on it and they may seek advice from the Crown Solicitor's Office as well in that process.

Ms SUE HIGGINSON: So it's only when an application by somebody is made that it's relevant to the Attorney General and then you would look at it and you would get advice and provide that advice?

PAUL McKNIGHT: Yes. Ex gratia payments are made when someone comes to government and says, "As a result of government action, I have suffered a detriment and you ought to recognise that by making a payment to me ex gratia." It's a payment that is not founded in law. If there's a legal remedy, then the person would go to the courts for that. It is, as it says, an act of grace.

Ms SUE HIGGINSON: If the members of your staff were responsible for looking into something for the Attorney General, what would assist them in providing that advice? Would they be looking at previous ex gratia payments or the terms? Are there any internal working documents that would assist in providing the advice?

PAUL McKNIGHT: That's a good question. I think it goes to the nature of the payments that are made as acts of grace. Each application is very much considered on its own merits. The case that the person puts to the Minister justifying that payment is very closely considered. We are really looking for, as I say, acts of government that have caused detriment and that there's some moral obligation to do right by the person.

Ms SUE HIGGINSON: How do we grapple internally, when we're assisting the Attorney General, with, say, my version of what would be gracious and somebody else's version of what would be gracious, where it's very clear—I'm not actually trying to be funny here.

PAUL McKNIGHT: No.

Ms SUE HIGGINSON: No, I know you don't think I am. But in terms of where it's very clear, say, that the State has wronged somebody and that's because the system has just—they're the settings, it didn't work and somebody's really suffered in the hands of the State, where does the ultimate discretion get weighted and measured in how we get through the system?

PAUL McKNIGHT: For me, the question that we ask ourselves in looking at these is, what is the right thing to do? It really is that basic. What should happen in this case? What is the right thing to do in this case? Each case will be very different. The concept of ex gratia payments covers a wide range of situations. We can't reduce it to a set of guidelines. We can't reduce it to a set of legal-like principles. The question is: What is the right thing?

Ms SUE HIGGINSON: I'm not suggesting to reduce anything, but do you think it would be beneficial at all to have some sort of stipulated objective criteria that we can look through?

PAUL McKNIGHT: The thing about act-of-grace payments is that they are designed to cover those situations which are not contemplated by the law, not contemplated by legal rights but are really designed to allow us to make payments when it's the right thing to do. It has to respond very flexibly to a range of situations. I don't think that trying to reduce the concept of act-of-grace payments to a set of guidelines is a thing that you could easily do.

Ms SUE HIGGINSON: No, I'm not suggesting it would be easy.

PAUL McKNIGHT: But I think the mechanism is designed to be flexible and to allow government to do right by the people coming to it.

Ms SUE HIGGINSON: How many ex gratia payments have been made under the Attorney General since March last year?

PAUL McKNIGHT: I would have to take that on notice.

Ms SUE HIGGINSON: Thank you.

PAUL McKNIGHT: It does happen, and it happens in a range of different kinds of circumstances. Let me take that on notice and give you a bit of commentary and some numbers.

Ms SUE HIGGINSON: Thank you, I'd be very grateful. I feel like it's a bit of a mystery zone and yet it seems like it's such an important element of the act of justice on the part of the State. I think the common understanding is that when all avenues have been exhausted and all things have been done, yet somebody has been failed by us, this is the mechanism to try to do something, even though we obviously can't ever properly compensate somebody from the wrongful actions of the State or the harmful actions of the State. But it's a measure.

CORRECTED

PAUL McKNIGHT: I think that's a reasonable characterisation. The only thing I would take issue with in that is this concept of "wrongful actions of the State". It is not always the case that the State has done wrong in ex gratia payments. Sometimes there has been an administrative oversight or—

Ms SUE HIGGINSON: I'd call that a wrong. If I was the victim of that administrative oversight, I'd call it a wrong.

PAUL McKNIGHT: Indeed, but not an intentional wrong. Some human error has occurred. It has arisen in the context of the operations of government. It isn't always the case that the government has done wrong. It's just that something's occurred and, in the circumstances, to do right by the person we make an ex gratia payment. That's how I would characterise it. It isn't necessary to point to wrongdoing in order to justify ex gratia payments.

Ms SUE HIGGINSON: That's very, very helpful. As I said, it feels like it's this mystery zone, so it's very helpful to have some more understanding. I was just wondering, this obviously isn't an element that comes under Corrective Services, but something that somebody has raised with me is Balund-a, the facility in the Northern Rivers that is, I think, essentially a diversionary project. Are you aware of that? Is that on your radar?

PAUL McKNIGHT: I have some knowledge of it. I'm not sure I'll be able to answer your question though.

Ms SUE HIGGINSON: My understanding—and the only reason I'm raising it here now is some optimistic lens—of the program, and somebody raised it with me literally in my home zone last week, is that it is described as an "innovative residential diversionary program for male offenders over the age of 18". I'm just curious whether this is precisely the sort of thing you are looking at in terms of the young offenders and juveniles? The Minister mentioned earlier something towards the effect of, "We need to look at whether we have to build things." That struck me a bit, like, "Hang on, we have correctional centres, we have facilities. I don't know what he's referring to." But it sounds like all things are in the scope.

PAUL McKNIGHT: Yes, Balund-a, as I understand it, is a corrections program.

Ms SUE HIGGINSON: It is.

PAUL McKNIGHT: I'm not sure I would want young people put into the corrections system. Apart from that, as I say, all options are being considered, including therapeutic options.

MICHAEL TIDBALL: In terms of program design and any take-outs of that that might be applicable to, say, Youth Justice, thank you for the tip. We will have a look at it, bearing in mind that, as you I think know, Ms Higginson, there is a real challenge at the moment in the Youth Justice system around remand for obvious reasons. Our overall numbers—notwithstanding what I acknowledge as a very high proportion of Aboriginal offenders, which is a real challenge, the real issue is what we do with those kids who are on remand.

Ms SUE HIGGINSON: It's really confronting trying to grapple with a government policy that says, "We are not looking at raising the age"—and I will throw this in, and I don't expect you to comment, so please don't—"when the frustration of the evidence suggests that perhaps it would really be beneficial to do that." But the Attorney General said earlier, "Whether we have to build things," I just am very concerned about what that meant. But, that said, that's why I turned to Balund-a, because if what you are being charged with the responsibility of doing is looking at all of the options to try to improve Youth Justice outcomes and youth wellness outcomes, but that we are contemplating building more facilities or something, then, yes, it was just a real concern.

But Balund-a—literally somebody who works in Youth Justice and youth crime in the Northern Rivers came to me last Friday and suggested that that facility should be something that is focused on young people, because apparently, anecdotally, the success there is that it is a really tremendous program, and the focus is on First Nations young people. I am seeing heads nodding. That's in the scope, to look at how we would get lessons well learned?

PAUL McKNIGHT: Absolutely. We draw on lessons from everywhere that we can, so yes. I think the challenge when you are thinking about ways in which you might respond to young people who are presenting harmful behaviours as an alternative to the criminal justice system is thinking about ways in which you might work with those young people that doesn't replicate the criminal justice system. We have a criminal justice system. If that's appropriate, then that's what should be used.

If we want different ways of working with young people, then we really do have to think about what's different in the system. What will make a difference? How can we work with young people in a new way that is more effective and deals with both their offending behaviour but also the underlying issues that they present with? Because we know, as you know, the young people who come into—particularly the pointy end—the criminal justice system have high levels of victimisation, high levels of drug and alcohol issues, high levels of mental

CORRECTED

health issues, high levels of cognitive impairment. If we are really to work with those young people effectively, we need to be working in those spaces to make a difference in their lives in ways that are innovative and different from the criminal justice system.

Ms SUE HIGGINSON: Is there anything already in front of you that is something that you can point to and say, "Hey, this is something that we really need to be focusing more on"? I know Ms Campbell was saying about the Justice Reinvestment program. If we're determined to spend another \$7.5 million—which is probably an underspend, all things considered—clearly there are good indications that that should continue. Are there any other programs specifically focused on young people that you think would be high on the list initially?

PAUL McKNIGHT: Just sitting here, I wouldn't identify a particular program. I imagine you discussed at length these kinds of issues in the Youth Justice hearing with my colleague Mr O'Reilly who's very articulate about the kinds of things that Youth Justice are doing for young people in the therapeutic space. If we were working particularly with Aboriginal young people, you can talk to my colleague Ms Beattie over here about ways in which we might empower Aboriginal-controlled organisations to work more effectively with young people. I think what I'm talking about here is a kind of strategic stance that we might take to try and move all of our systems in the right direction.

Ms SUE HIGGINSON: Ms Beattie, do you think that, at this point, the empowerment—I know we spoke the other day in one of the estimates about the Productivity Commission's findings that the primary failure of the Closing the Gap outcomes improving at the moment is because we haven't yet quite handed power to First Nations people to take control of their own outcomes and their own lives. Do you see that in this space, with the justice space and the young people, the success will come through more support, resource and power to ACCOs?

CLAIRE BEATTIE: I think, yes, and thank you for the question. In the last budget estimates, in Minister Washington's budget estimates, I referred to the Productivity Commission report that was recently released in which it talked deeply about self-determination for First Nations people. It talked about working with ACCOs, funding ACCOs, long-term funding for programs. It also talked about Indigenous data sovereignty and Indigenous data governance, and all of that, as you quite rightly outlined, is about self-determination and sharing power if not returning power to First Nations people to make decisions about their own communities and their own people and their own lives.

I am very hopeful, listening to the Attorney General this morning—and again couching that I'm new to this space; I'm going on to eight weeks now—what I see is a coalition of the willing. What I am delighted to see, and I mean earnestly, is my colleagues around me such as Mr McKnight, such as Ms Campbell who truly want to listen to areas like Transforming Aboriginal Outcomes when we say things like, "How do we do things in co-design or co-creation as opposed to consultation?" Mr Tidball and I have spoken about how we reframe the relationship or how we add the ability for First Nations voices, and he's indeed committed to working in a different way, as he mentioned in previous budget estimates, with our national partnership partners, so AbSec and ALS.

I do generally see a shift—I don't know what was before me; I can't speak to that—in perhaps the movement towards understanding Aboriginal ways of knowing, doing and being. That can only happen through First Nations people being at the table, whether it's through AbSec, ALS or my good partners in CAPO. It's Aboriginal people in government, speaking up and saying, "Do we know what's happening in that community? Have we actually listened?" I think, lastly, to add to the scope of what we might be doing, obviously through people like the young people's advocates, hopefully we'll ask young people what they want. It would be lovely particularly for Aboriginal young people to decide their own aspirations, because it's been a while since I was young so I wouldn't know.

Ms SUE HIGGINSON: Yes, it feels like for all of us in the room it was a long time ago, and combined, it's even longer. I was just wondering then, Mr McKnight, is there work happening within AGs or is it Minister Dib alone to look at the young offenders legislation? Or is that something that you would look at as well in terms of reviewing that?

PAUL McKNIGHT: The Young Offenders Act—just to correct your reference, you talked about AGs; we're very much the Department of Communities and Justice. I just wanted to correct you there because that link between what was the old community side and the justice side of the department and us coming together, I think is a real opportunity for working together on common issues that we are beginning to exploit considerably. It is really important to us to have that identity as a department. That was a bit of an aside to your question.

Ms SUE HIGGINSON: No, it's really good because, even as close as I am, it's hard to know what you're all doing, what you're all up to.

PAUL McKNIGHT: It is a big department.

CORRECTED

MICHAEL TIDBALL: Can I just add one comment, if I may, quickly? You're absolutely right in what you say, Paul. You people have heard me say this so many times, but the compelling realisation I've come to is that the artery that runs right through DCJ is impact of trauma—from early intervention, child protection, out-of-home care, Youth Justice and the final basin is the adult prison system. If you have the levers and common oversight of programs and a group of people working together who are focused on targets and innovating together, that's when you can hopefully try and move some of those numbers. But we are talking about the same people—and I know you know it and I know the Committee knows it, but it is a real life cycle.

Ms SUE HIGGINSON: Can I just get the one answer on the Young Offenders Act?

PAUL McKNIGHT: The Young Offenders Act has been under review. That review was conducted by the Department of Communities and Justice, including my team and the Youth Justice team with police. That review remains under Government consideration.

Ms SUE HIGGINSON: Have you been given any time line indication? Is there a desired time frame—to do it soon or it's not high priority?

PAUL McKNIGHT: The review itself is under consideration by Government.

The Hon. NATASHA MACLAREN-JONES: I might just cover off a bit on Legal Aid offices. I was interested to know if there were any plans for any new Legal Aid offices to be opened this financial year or next?

MONIQUE HITTER: I can answer that question. We don't have any current, firm plans on foot to open any new offices. However, we are aware that there are big service gaps in parts of the State that we are looking at ways to try to fill. But we don't have any firm plans to open an office in any new location at this point.

The Hon. NATASHA MACLAREN-JONES: Where were those service gaps?

MONIQUE HITTER: The far South Coast is an area that we've identified as being one where there are service gaps. There are other places in the State as well, around the far North Coast as well. In that Tweed area, there is very high demand. In north-west New South Wales there are considerable service gaps as well. Those are three areas that we're aware that we need to focus on, if we can.

The Hon. NATASHA MACLAREN-JONES: Is that data information that you gather on an annual basis?

MONIQUE HITTER: We're always looking at the data. We've got various sources that we can look at, including the data that we get from LawAccess NSW, which is our telephone contact centre, and seeing where the calls are coming from. We also talk to our partners in other parts of the legal assistance sector. We have a good sense of where legal services are located and who is going where, and therefore we can see where the demand is that we could look to try to meet in a more fulsome way.

The Hon. NATASHA MACLAREN-JONES: Is it possible to provide to the Committee a breakdown of the demand for those areas at a certain time, so on 31 December, what that demand is?

MONIQUE HITTER: I can have a look at trying to provide that information to the Committee, yes, sure.

The Hon. NATASHA MACLAREN-JONES: You said the far South Coast. I assume with the North Coast one of the issues is floods, but what are the challenges, or are there any trends that you've identified with other areas, like the far South Coast, that are impacting on demand?

MONIQUE HITTER: I think if you look at where legal services are located down the far South Coast, we have a legal aid office in Nowra and then we don't have any other legal aid office until one at Wagga Wagga, but nothing really then to the border, so you can see that is quite a large part of the State. If we were able to open an office somewhere on the South Coast, we would certainly be interested in doing that, but at this point in time it would obviously be subject to a number of different considerations.

The Hon. NATASHA MACLAREN-JONES: Are there any plans to close any offices either this financial year or next?

MONIQUE HITTER: No.

The Hon. NATASHA MACLAREN-JONES: Are there any plans for reduced staff at any of the offices either this financial year or next?

MONIQUE HITTER: To reduce staff? Not that I'm aware of, no.

CORRECTED

The Hon. NATASHA MACLAREN-JONES: In relation to rural and regional areas, and you have touched on the north, south and out west, is there a higher demand for legal practitioners in the regions? What challenges are there, particularly around funding, because National Legal Aid has come out saying in its report that there is underfunding? How are you finding that impacting on those regions?

MONIQUE HITTER: There is certainly over time—and the Law Society has also been doing some work on this—a reduction in the availability of private practitioners in regional New South Wales, and we are aware that there is a supply issue. That supply issue is concentrated in different areas of the State and I'm very happy to provide the Committee with more detail on that.

The Hon. NATASHA MACLAREN-JONES: That would be great.

MONIQUE HITTER: But we certainly are seeing that there is a supply and a market failure issue in some areas of the State. We're very conscious of that and doing what we can, and working with the Law Society, in order to alleviate that because, without those private practitioners, it is very difficult for us to cover the entire State.

The Hon. NATASHA MACLAREN-JONES: What work, if any, is being done in relation to trying to recruit private practitioners?

MONIQUE HITTER: We offer all sorts of things. We offer training. We offer support and mentoring, if they would be interested in that. We try to make it as easy as possible to do business with Legal Aid NSW and have done a lot of things over the last few years to make it easier to transact with us so that it is a more appealing prospect to work under a grant of legal aid. We are looking at different ways in which we can attract private professionals by talking about the kind of work we do that is rewarding work and work that we hope private practitioners would find fulfilling and want to do.

The Hon. NATASHA MACLAREN-JONES: Using the far South Coast as an example, do you find that the challenges of having an office in Nowra but not anything close to Eurobodalla or Bega have an impact on the recruitment and—

MONIQUE HITTER: Of private practitioners?

The Hon. NATASHA MACLAREN-JONES: Yes.

MONIQUE HITTER: I think what we see is that in the far South Coast it is getting more difficult to attract private practitioners to do legal aid work. That is why we are looking at that area quite specifically to see what we can do to supplement the failure—or not the failure, but the challenges that we have in attracting private practitioners. That might be opening an office, but no firm decision has been made at this point.

The Hon. NATASHA MACLAREN-JONES: What are the challenges to recruiting them?

MONIQUE HITTER: To recruiting private practitioners? The National Legal Aid work at a Commonwealth level certainly pointed to the fees that we are allowed to or can pay private practitioners based on our ability to pay private practitioners. I think that is the same in the State jurisdiction as well.

The CHAIR: We might take a break and come back in 15 minutes.

(Short adjournment)

The Hon. SUSAN CARTER: Welcome back. I have some questions about the consultation in relation to the conversion practices bill, I think it is. Is that you, Mr McKnight, or is that you, Mr Tidball?

PAUL McKNIGHT: It is me. I think we had a conversation about this last time, Ms Carter.

The Hon. SUSAN CARTER: We certainly did. In fact, I had some follow-up questions from the questions on notice.

PAUL McKNIGHT: Fantastic.

The Hon. SUSAN CARTER: Let me find the right pieces of paper. There's way too many of them. I noticed that you gave me some general information about who was involved in the consultation process.

PAUL McKNIGHT: Yes.

The Hon. SUSAN CARTER: I don't see women's groups there. How many women's groups are involved?

PAUL McKNIGHT: Women's groups were certainly involved in the process.

CORRECTED

The Hon. SUSAN CARTER: As a percentage of the numbers of people who were consulted? You'd understand it's important to me to know that number and important to 50 per cent of the population.

PAUL McKNIGHT: Indeed, and there would have been a variety of women involved in giving their views.

The Hon. SUSAN CARTER: Perhaps, Mr McKnight, you could take on notice the percentage of women's groups—that is specifically women's groups, not women who happened to be there in another capacity—who were part of the consultation?

PAUL McKNIGHT: Do you have a particular definition of "women's groups" in this context, Ms Carter?

The Hon. SUSAN CARTER: I'm happy for you to apply a broad definition in terms of a group of women who congregate together for the welfare and betterment of women.

PAUL McKNIGHT: Great. I will do what I can.

The Hon. SUSAN CARTER: Thank you very much. I'm happy to have discussions with you about that definition if it proves difficult to identify. I'm wondering too, you identify broadly academics, including in medicine.

PAUL McKNIGHT: Yes.

The Hon. SUSAN CARTER: Were there any practising doctors who were involved in the consultation?

PAUL McKNIGHT: I don't have a list of the doctors that were involved in the consultation, but I imagine there were practising medical doctors involved.

The Hon. SUSAN CARTER: Perhaps you could take that on notice.

PAUL McKNIGHT: I'm happy to do that.

The Hon. SUSAN CARTER: So how many people were consulted in total?

PAUL McKNIGHT: In total, almost 150 organisations were involved.

The Hon. SUSAN CARTER: Perhaps you could let me know how many doctors and what specialties: how many paediatricians, how many psychiatrists, how many geriatricians—how many of all the different specialties?

PAUL McKNIGHT: Indeed. I'm happy to take on notice what I can provide you in that area.

The Hon. SUSAN CARTER: When you say what you can provide me, you don't have a full list of everybody who was consulted?

PAUL McKNIGHT: Not in front of me.

The Hon. SUSAN CARTER: I understand, but when you say you're happy to provide me with what you can, I wonder whether you may have problems providing some of that detail on notice. I just wanted to clarify that now. In my head you have in your office a complete list of the close to 150 people or groups who were consulted.

PAUL McKNIGHT: That's organisations.

The Hon. SUSAN CARTER: So you can just pick from that according to the categories. Am I wrong with that?

PAUL McKNIGHT: I think we can probably do something along those lines. We'll see what we can provide.

The Hon. SUSAN CARTER: So you'll be able to give me a list of doctors and specialties?

PAUL McKNIGHT: I'm taking your question on notice, Ms Carter.

The Hon. SUSAN CARTER: But you'll be able to fulfil it?

PAUL McKNIGHT: I'll do my best.

Ms SUE HIGGINSON: Will you send a photo of your office?

The Hon. SUSAN CARTER: I'd love it. Let's have a tour. Let's have a view. And psychologists?

CORRECTED

PAUL McKNIGHT: Indeed.

The Hon. SUSAN CARTER: And particular specialties in which they may happen to practice?

PAUL McKNIGHT: Indeed.

The Hon. SUSAN CARTER: Great. Thank you very much. I noticed that you said in your answers to questions on notice that as the process was confidential, the identity of specific stakeholder participants is not being disclosed.

PAUL McKNIGHT: Yes.

The Hon. SUSAN CARTER: I've spoken to some stakeholders that, based on our conversations, I would've expected to be there. In fact, we had a particular conversation in relation to specialist ministries and faith communities who work with people who are LGBTIQ, and you said you expected that they had been included. When I spoke to some of them—I don't mean a comprehensive list of them—none of them had been included. Could you also provide me with a list of specialist groups in faith communities who work with the LGBTIQ community?

PAUL McKNIGHT: As I said, I won't be able to provide you with a list of people consulted.

The Hon. SUSAN CARTER: Perhaps you can provide me with the number of specialist groups within faith communities who work with the LGBTIQ community.

PAUL McKNIGHT: I will see what we can provide you in terms of the number of LGBTIQ faith groups.

The Hon. SUSAN CARTER: I'm struggling with the nature of a closed consultation about a matter of great public importance. I'm struggling with how a list could be constructed that claims to consult broadly but would exclude a faith group that works with LGBTIQ people in the biggest faith group in New South Wales.

PAUL McKNIGHT: I'm not sure what you are referring to, Ms Carter.

The Hon. SUSAN CARTER: I'm referring to Courage, which is a group in the Catholic church, which I believe is the biggest faith community in New South Wales. They work exclusively with LGBTIQ people. When I spoke to them, assuming they'd know about the consultation, they said, "No, we weren't invited. We had nothing to do with this." How can you have a consultation when you're excluding groups within the largest faith community in New South Wales which works exclusively with LGBTIQ people?

PAUL McKNIGHT: The groups that were consulted in this matter were first identified by the working group that was led by DCJ and Health and they put together a list of—

The Hon. SUSAN CARTER: And then was there a more open call to check any holes in that group?

PAUL McKNIGHT: They put together a list of people to consult. Those who were consulted then suggested further groups to include on that list, and those groups were included. That is how we came to the list of people to whom we sent the paper.

The Hon. SUSAN CARTER: Isn't this, Mr McKnight, exactly the problem that we often have and exactly why we need to adopt more inclusive practices in this place? When we start with the group of people who always talk about things and they go, "Maybe this person, maybe that person", we inadvertently, unconsciously exclude people who actually would have had a valuable input into this process. That is one of my concerns, and we touched on it last time, about this being a closed consultation for a very broad issue that affects everybody in the community.

PAUL McKNIGHT: I think you canvassed that question with the Attorney this morning at some length, Ms Carter.

The Hon. SUSAN CARTER: I wanted to do it in more detail with you because we had limited time with the Attorney. When I went out and engaged with some of these stakeholders and they didn't know about it, it caused me greater concern. If the process that leads to the drafting of the bill is flawed, can we have confidence that the bill is really one that will speak to the whole community?

PAUL McKNIGHT: I feel, Ms Carter, that the 150 organisations that provided input into this bill consisted of the breadth of views in the community on this question. There were academics, there were CALD organisations, education groups and faith groups, including all of the major—

CORRECTED

The Hon. SUSAN CARTER: But not a faith group that represents the largest faith group, as I've said before, and that works with the LGBTIQ community. They weren't there, and neither was EnCourage; they were not represented either, according to their representatives.

PAUL McKNIGHT: The faith community, including all the major denominations—their voices were—

The Hon. SUSAN CARTER: But specialist ministries who deal with LGBTIQ people and who would understand the intersection of those issues were not there. I'm only raising this because this is the bit I know. These are the groups that I can see I would have expected to be in the consultation and I would have expected to have a seat at those round tables and they were not there. And so then I start thinking, "Who else wasn't there?" I raise issues about this process because we have seen it in this place before where we don't consult broadly enough and we—I'm sure entirely inadvertently—exclude people and that then risks it being quite a flawed process. In terms of LGBTIQ groups, were groups like the LGB Alliance Australia included?

PAUL McKNIGHT: I don't have that list in front of me.

The Hon. SUSAN CARTER: Perhaps you could check that.

PAUL McKNIGHT: But I'm confident that a broad range of LGBTIQ+ advocacy groups were included.

The Hon. SUSAN CARTER: I understand from their representatives who've been to see me and a number of other people that they were not included in the consultation. I understand from a number of women's groups who actually made submissions and sought to have their voices heard that they were told their voices were not welcome. As a woman, I find it very distressing to hear that certain women's voices are being excluded from this discussion.

PAUL McKNIGHT: I'm unclear of the situation you refer to. There were 150—just under—organisations who made submissions or who were involved.

The Hon. SUSAN CARTER: I'm aware of the number. We've discussed the quantum. I'm going not to the quantum but to the representative quality and if, in a very small time and with a very small sample space, I can identify people who actively asked to be involved in the consultation and were told, "No seat at the table for you"; and if there were also people who were not asked who are clearly the people that are going to be most interested in this legislation and nobody reached out to them. Then I'm told this morning, "No, the only consultation will be private. We won't have a public consultation about this." If you wanted a private consultation, step one, and then open it up more broadly for more input. What is the reasoning to exclude people from having their views heard about this very important matter?

PAUL McKNIGHT: At risk of repeating myself—

The Hon. SUSAN CARTER: I'd ask you not to. I'd ask you to answer the question. Why would people's voices be excluded from being heard in what is a matter of interest to the whole community?

PAUL McKNIGHT: The consultation process I think reached a large number of organisations identified as having a very diverse range of views in the community. The sensitivity of the consultation issues determined that the consultation would be confidential and that we would not identify the list of consultees.

The Hon. SUSAN CARTER: Mr McKnight, I accept all that. But, with respect, it's not going to my question. We've heard today about the extent of the work that's been done on very important matters to do with child safety and with juvenile crime and the really complex issues. I think it was described as, the first step is the scoping strategy and then it moves out from there. If we see the closed consultation as the scoping stage, is there going to be a broader consultation where other voices can be heard? Can I suggest that with legislation of this kind, it's even more important?

As I understand the intent of the legislation—and I haven't seen a draft of it and I have no idea what's in it, other than bits and pieces that one hears, and they're never to be trusted—it's really, yes, there will be, I presume, criminal penalties. There may be civil remedies; I'm not aware. But I feel, or my understanding is, that this legislation is as much as anything designed to drive social change and to educate about attitudes. If you're not bringing the whole community with a very public process along with you in this, how can you expect that aspect of the legislation to actually succeed?

PAUL McKNIGHT: The legislation will, in due course, implement a government election commitment. The department's role, of course, is to support the further development of that policy and to implement the Government's policy in that regard. That's what we've been doing in this context.

The Hon. SUSAN CARTER: Can I take you to that statement you just made in relation to implementing Government election policy? I apologise, I wasn't prepared for this question so I don't have the exact quote in

CORRECTED

front of me, but I recall that in the election campaign Mr Minns drew a clear distinction between the Victorian model that he said would not be followed and that a unique New South Wales approach to this issue would be developed. Can you provide some assurance to us that that, in fact, is the election promise being fulfilled and that the New South Wales model is not based on the Victorian model in any way?

PAUL McKNIGHT: You're asking me now to canvass Government policy.

The Hon. SUSAN CARTER: I'm asking a follow-up question to the statement you made, Mr McKnight.

PAUL McKNIGHT: Indeed. The Attorney gave a fairly fulsome answer this morning about the status of this work.

The Hon. SUSAN CARTER: We perhaps have a different definition of the word "fulsome". I'm asking you for an answer now.

PAUL McKNIGHT: I think I would refer to the Attorney's statements this morning.

The Hon. SUSAN CARTER: Could you perhaps summarise that for me because, with respect, I found it difficult to get a clear understanding of exactly what work was being done by the Attorney this morning.

PAUL McKNIGHT: I think I'll leave the Attorney's words to stand for themselves.

The Hon. SUSAN CARTER: Could you perhaps repeat them for me so that I'm aware of exactly to what you are referring? It was quite a long session this morning. I'd love to know exactly what you are referring to, Mr McKnight.

PAUL McKNIGHT: I think I'll leave that to the lovely people at Hansard.

The Hon. SUSAN CARTER: You must have had some statement in your mind, sir, when you said that. What was the statement you had in your mind—the statement that the Attorney had made that you wish to associate yourself with?

PAUL McKNIGHT: I think the Attorney gave quite a good answer about where this work was up to and what the Government's intention was.

The Hon. SUSAN CARTER: He didn't address the specific question that you raised of consistency with the election promises, and that's the question I'm asking you.

PAUL McKNIGHT: I'm not going to comment on the policy, Ms Carter.

The Hon. SUSAN CARTER: Can you tell me whether—because I understand from the consultation paper as well as looking at conversion practices with LGB people—it also looks at gender dysphoria and transsexuality? Can you confirm that the legislation also looks at that?

PAUL McKNIGHT: I think the Government's policy is announced—that that's in scope.

The Hon. SUSAN CARTER: Will there be an affirmative model required, or will the watch and wait model also be available?

PAUL McKNIGHT: I can't answer these questions, Ms Carter. You're asking me for material about Government policy.

The Hon. SUSAN CARTER: I am asking you for information about a matter of great public importance, is what I'm asking you.

PAUL McKNIGHT: Indeed, and they are questions that should have been put to the Attorney this morning.

The Hon. SUSAN CARTER: Thank you very much for your time.

The Hon. NATASHA MACLAREN-JONES: Could I get an update on the Just Reinvest projects in Nowra and Kempsey?

ANNE CAMPBELL: Yes, I'll just find out for you. I've got it here, Ms Maclaren-Jones. Recruitment of the justice reinvestment staff in Kempsey and Nowra, we've finalised the program logic and the theory of change for Nowra and Kempsey, the development of justice reinvestment circuit breakers in Nowra and Kempsey, establishment of local governance arrangements in Nowra and Kempsey, development of justice reinvestment implementation plans, and establishment of an outcomes framework. I'll just see if I've got any more concrete detail. I can maybe provide the rest of the update on notice.

CORRECTED

The Hon. NATASHA MACLAREN-JONES: Yes, that's fine. I might go to the Parramatta Justice Precinct. At the last estimates in a supplementary question we were advised that it was in the planning stage. I just wanted to find out if there was any further update or a date for completion.

MICHAEL TIDBALL: I would love to have that in my head, Ms Maclaren-Jones. I don't. Can I please take that on notice?

The Hon. NATASHA MACLAREN-JONES: Yes, that's fine. Has there been any increase in the Trustee and Guardian's fees and charges in 2023-24? Are there any plans for 2024-25?

MICHAEL TIDBALL: I should be able to take that. Just by way of context, proposed changes to regulated fees by TAG charged to customers were made in 2021. They related to fees that had not changed since 2016. The revenue from these changes was intended to strengthen TAG's capacity to provide better outcomes for customers by enabling it to manage the growth in demand and complexity of the services it provides. The first changes to fees, which impact at clauses 11 and 28 of the regulation, commenced in January 2022. These included changes to fees for drafting wills, powers of attorney, enduring guardian appointments and managing customer investments. Wills, power of attorney and enduring guardianship document preparation fees increased by 5 per cent for straightforward new requests and 7 per cent for complex new requests from 1 September 2023. These new fees are less than the maximum fees set out in the current regulation.

Ms SUE HIGGINSON: Could I ask—and I'm not sure who would know—about the NCAT review and the rents in relation to the rental tenancies? From what I gathered this morning, it might be you, Mr D'Aeth. I think the Minister might have taken some things on notice, but has anything started? Is there work happening? I have no visibility of it. Are you able to give me some?

CHRIS D'AETH: I think the secretary's going to take that.

MICHAEL TIDBALL: Did you want to—

CHRIS D'AETH: No, I'm very happy to—

MICHAEL TIDBALL: This is dangerous because you may know something I don't know. My evidence will be totally consistent with the Attorney's of this morning in that there is certainly an intention to proceed with that review but it is work yet to be finely scoped and, critically can I say, worked through with NCAT and the president of NCAT in order that it is carefully scoped with her in consultation, and that it is yet to proceed and, to my knowledge, to be scoped but it is certainly intended that will proceed.

Ms SUE HIGGINSON: So it's fair to say not yet but it's on the—

MICHAEL TIDBALL: Not yet but happening.

Ms SUE HIGGINSON: I'm just wondering in relation to the funding or the allocation for the NSW Land and Environment Court, are you hearing anything around the allocation for that jurisdiction that it's coping within its current fiscal allocations or that it's under pressure from the allocations or is the department satisfied that things are plodding along fine?

MICHAEL TIDBALL: I, for my part, would never say that any jurisdiction has the resources that it would ideally request.

Ms SUE HIGGINSON: Because of course you'd have the Chief Judge of any jurisdiction on your back saying, "It's not enough. We don't have enough."

MICHAEL TIDBALL: But I certainly would acknowledge that, in the case of the Land and Environment Court, in terms of the planning priorities of the State and movements in other areas of what I would characterise as public policy, there are impacts that can flow into that jurisdiction.

Ms SUE HIGGINSON: Yes.

MICHAEL TIDBALL: I meet very regularly with Justice Preston, the Chief Judge, and also recently sat on a selection committee for commissioners, and that gives you a real sense of the pipeline when you sit there for a couple of days doing that. Can I say there are pressure points in a lot of places. They cannot be addressed quickly but there is an awareness that the needs of that jurisdiction will grow, and that's probably all I should say at this juncture.

Ms SUE HIGGINSON: Suffice to say, it is on the radar that we've got a large body of government policy that is going to have a massive impact.

MICHAEL TIDBALL: It is certainly on the radar and it is an unusually sensitive jurisdiction to other systemic changes outside of the court, if that makes sense.

CORRECTED

Ms SUE HIGGINSON: Yes, okay, that's good to know because it's obviously a jurisdiction I've worked in and I'm just cognisant, working at this end of it, thinking, "Goodness gracious, there are serious impacts that are likely to eventuate in the coming period." I asked some questions, and I know they were taken on notice, just about the bushfire coronial that took place. I'm just curious as to some of the decisions that the Attorney made. I'm happy for you to confer on this. Is it better to just leave those questions on notice?

MICHAEL TIDBALL: Can I confer with Mr McKnight for a moment?

Ms SUE HIGGINSON: Of course.

MICHAEL TIDBALL: Ms Higginson, I have a clear recollection of it. I'm nervous that the fount of all wisdom on these matters doesn't remember it quite as—I took an interest in it because I knew it would be a matter of concern. I think the smart thing for me to do is to take it on notice.

Ms SUE HIGGINSON: I've got a couple of extra questions. Would you prefer me to put those now on notice or as supplementary questions?

MICHAEL TIDBALL: If you want them on the record, of course that's respected but very happy to—I will need to take this on notice to give you an accurate and complete response.

Ms SUE HIGGINSON: I did put questions but I didn't quite get to the last two. There were two further questions to be taken on notice. One of those is: Communities is one of the major stakeholders affected by bushfire disasters. Will the Attorney General establish a funding scheme to provide legal representation opportunities for community interests during coronial or other related inquiries into bushfires? Obviously this is in anticipation of our future. Finally, is the Attorney General confident that the New South Wales coronial inquiry into the 2019 and 2020 bushfires will serve the interests of the community? They were specific questions and particularly developed in consultation with directly affected participants in the coronial and people who lost a lot during that period. Thank you. I am happy to hand back to the Opposition.

The Hon. NATASHA MACLAREN-JONES: In relation to the number of District Court judges—because we covered off magistrates this morning—has there been any change in numbers for 2023-24 or are there any planned changes for 2024-25?

MICHAEL TIDBALL: For the District Court.

The Hon. NATASHA MACLAREN-JONES: And also for the Children's Court magistrates.

MICHAEL TIDBALL: If Mr D'Aeth wishes to gazump me, he is most welcome to.

CHRIS D'AETH: I'm turning as quickly as I can.

ANNE CAMPBELL: Ms Maclaren-Jones, while they're looking for that, I thought I'd recorrect what I said earlier in terms of Kempsey and Nowra. I actually gave you the milestones for 2023-24, not where it's currently up to. There have been a few delays in the implementation, partly because some of that funding went across to Justice Reinvest NSW and the CEO resigned recently. There's now a new CEO. So it's now back on track. They're currently doing the recruitment of the staff in both those locations. They're finalising the program logic and consultation has commenced in those two communities.

The Hon. NATASHA MACLAREN-JONES: Thank you.

MICHAEL TIDBALL: In relation to the District Court, is your question about case load or judges?

The Hon. NATASHA MACLAREN-JONES: Judges numbers.

MICHAEL TIDBALL: The increase there would be commencing 2023-24. Funding of \$13.57 million over the next four financial years is provided for the appointment of three ongoing additional District Court judges to support the expansion of the Child Sexual Offence Evidence Program. Two judges have recently been appointed and a third judge is yet to be appointed. Judge Brady commenced appointment on 9 February and Judge Barrow on 12 February.

The Hon. NATASHA MACLAREN-JONES: In relation to the Children's Court magistrate, has there been an increase or will there be one for 2024-25?

MICHAEL TIDBALL: I can't speak prospectively. In terms of an increase, I probably should take that on notice—not that I recall and it's not in my notes.

The Hon. NATASHA MACLAREN-JONES: That's fine. Also have there been any changes to Supreme Court judges or are there any planned?

MICHAEL TIDBALL: You're talking about resources?

CORRECTED

The Hon. NATASHA MACLAREN-JONES: Yes.

MICHAEL TIDBALL: No.

The Hon. NATASHA MACLAREN-JONES: The other thing is in relation to promoting Sydney as a destination for international arbitration. Is there any work being done in that?

MICHAEL TIDBALL: I should declare I have form when it comes to Sydney as an arbitral venue. For my part, as secretary, I have been engaging with some of the leaders in that space. There's no advice that I have advanced upwards, but I am in discussion about tighter coordination and also looking at a range of things, including changing geopolitics and changes in the regions. There's a dialogue in which I'm engaged. It is not something I have formally progressed at this stage, but I appreciate the importance to the esteem of our very, very capable local profession, which is respected throughout the world and offers a lot to this region, and clearly recognising that there is also a benefit to the Sydney economy and the New South Wales economy. But it's work that I do intend to take forward to Government in due course.

The Hon. NATASHA MACLAREN-JONES: I've just got a couple more. In the last estimates—supplementary questions—in relation to the Victims Rights and Support Act review, it was indicated that it was underway. Is there a time frame for completion of that review?

PAUL McKNIGHT: No.

The Hon. NATASHA MACLAREN-JONES: Is there a reason why there's no time frame?

PAUL McKNIGHT: I want to say no.

The Hon. NATASHA MACLAREN-JONES: You usually have an end date at some stage. Will it be done in this term of government?

PAUL McKNIGHT: There was some consultation kicked off in 2022, and a range of submissions were made in that context. Those submissions continue to be considered, and the options continue to be considered by Government. It's a complex review.

The Hon. NATASHA MACLAREN-JONES: I might come back to that another time. I have two other questions before I hand over. Following on from discussions at the last estimates in relation to the impact of the ACT's changes around their drug laws and driving and the impact it's having on the border community—as in the Monaro and Queanbeyan area—it was stated in supplementary questions that a communication strategy would be implemented to educate New South Wales residents, particularly about the ACT drug laws. Has that been done?

PAUL McKNIGHT: Yes. I think the question last time was in the context of the implementation of the New South Wales Early Drug Diversion Initiative, which has now started, as you know. In the context of that, there are communications in the sense that websites for DCJ, Health and St Vincent's have all been updated. And there is some social media occurring in relation to that, including, as I understand it, some social media that has some geotagging to target residents in those border areas.

The Hon. NATASHA MACLAREN-JONES: But there's nothing specific about the drug law changes that occurred in the ACT? At the time we were hearing reports they were expecting an increase in potential—was it road fatalities?

The Hon. SUSAN CARTER: Yes, road fatalities.

PAUL McKNIGHT: We're not expecting any road fatality issues.

The Hon. SUSAN CARTER: You would recall the evidence that was given by the police commissioner last time, who was very concerned because, from memory, something like 80 per cent of road fatalities in the ACT are drug related. There were concerns about what was happening in the border areas around the ACT, because it's a fairly porous border, as you know.

The CHAIR: Build a wall!

The Hon. SUSAN CARTER: The communication strategy that we understood was to make sure that the residents of the New South Wales areas surrounding the ACT were aware of the different laws for drugs in the ACT as to New South Wales. We were looking for an update on that communication strategy.

PAUL McKNIGHT: I'm not aware of the police commissioner's evidence in that regard, I apologise. As I recall it, the questions put to us about that were, in my understanding, the potential for confusion for ACT residents and New South Wales residents as to the different laws in place once our drug diversion program had commenced. It may be that we've—

CORRECTED

The Hon. SUSAN CARTER: And we were told there'd be a communication strategy to resolve that confusion.

PAUL McKNIGHT: Indeed, and so I've outlined the communication activity that we're proposing in that area.

The Hon. SUSAN CARTER: Is there specific information for the border communities about the differences between the ACT and New South Wales?

PAUL McKNIGHT: Our communication strategy is very much about clarifying the New South Wales laws for New South Wales residents.

The Hon. SUSAN CARTER: But not distinguishing them from the ACT laws?

PAUL McKNIGHT: Clearly, our laws are not ACT laws.

The Hon. SUSAN CARTER: But clearly, if you live in Queanbeyan, it's useful to have an understanding of both if they are different.

PAUL McKNIGHT: Sure. I'm sure the residents of Queanbeyan are conscious of the border. The broad answer is, yes, we are clarifying the application of our laws.

The Hon. SUSAN CARTER: Sorry, can I just clarify? Are you clarifying the New South Wales laws, or are you also drawing attention to the way in which they differ from the ACT laws?

PAUL McKNIGHT: I might take the detail of those communications on notice, perhaps.

The Hon. NATASHA MACLAREN-JONES: And also the cost of the communications campaign.

PAUL McKNIGHT: I will take that on notice. I'm not sure we'll be able to identify a cost, but I'll do what I can.

The Hon. SUSAN CARTER: Can I inquire why you wouldn't be able to identify costs for a specific communications project?

PAUL McKNIGHT: Maybe we can. I'll clarify that on notice.

The Hon. SUSAN CARTER: I hope you can. It's government money being spent, so—

PAUL McKNIGHT: It may not—

The Hon. SUSAN CARTER: I have some questions perhaps for Mr Tidball in relation to the experience and operation of section 91Q of the Crimes Act. Would that be for you, or who would I address those to?

MICHAEL TIDBALL: I am relieved to advise it's going to be Mr McKnight.

PAUL McKNIGHT: Could you remind me what 91Q is?

The Hon. SUSAN CARTER: It's commonly called the revenge porn section.

PAUL McKNIGHT: Okay, yes.

The Hon. SUSAN CARTER: I want to put on record that my interest existed prior to the arrival of Ms Swift on our shores, but there is an emerging problem identified in a number of areas, particularly targeting young women—image-based assault, I believe it's being called. Essentially, people have always been able to take a photo and alter it. It used to be the scissors and the magazine, but now, of course, very sophisticated methods are available. If I can find two different ways in 30 seconds on the internet then, believe you me, other people can find a lot more. Has anybody looked at whether section 91Q is broad enough to capture those using AI to alter images? Has anybody looked at the adequacy of these provisions to prosecute anybody distributing images made using these AI programs?

PAUL McKNIGHT: That's a really interesting question. I will have to take it on notice. Those issues have not come directly to my attention so far, but that isn't to say that we haven't been doing some work in the space.

The Hon. SUSAN CARTER: I believe that one of the barriers to prosecution under that provision may actually be reporting. I wonder whether this is in a long line of areas where the person who has been harmed feels embarrassed or ashamed or isn't clear of what the reporting lines are. I wonder whether any work that you investigate could be ways of assuring those harmed that they're not the ones at fault, there are remedies available for them, they are doing the right thing by bringing these things to the attention of relevant authorities and they will be heard and listened to.

CORRECTED

PAUL McKNIGHT: I think that's a really constructive thought. Some of that is for the police and police practice, but these are issues also that I think we take very seriously in a broader context of combating sexual assault and sexual crimes. There is a comprehensive government strategy around sexual assault and to take a strategic approach to these issues. That's in Ms Campbell's area. She might be able to give you better detail.

ANNE CAMPBELL: Under the NSW Domestic and Family Violence Plan 2022-2027, there are a number of actions in that plan. One of them is the development of resources to assist parents and caregivers in having conversations with children and young people about in person and online sexual violence, respectful relationships, coercive control, consent and pornography.

The Hon. SUSAN CARTER: What's being done in the area of pornography? That is a major driver of violence against women.

ANNE CAMPBELL: I'm happy to take that on notice. I know there is quite a little bit of work going on on that. I think your comment around AI and those sorts of things is a real issue in this space that we are really examining more closely at the moment.

The Hon. SUSAN CARTER: I'd love to be updated on that.

Ms SUE HIGGINSON: Could I ask a very broad and slightly open question to Dr Cockayne? I just wonder if you could assist the Committee by telling us how you think your office and commission is tracking. What are some of the key immediate priorities that you're focused on at the moment?

JAMES COCKAYNE: I'd say we're a work in progress. This is a brand-new government modality. We're only the second jurisdiction in the world with this kind of function. We're soon to have a Federal commissioner as well, which will also change the space we operate in. The legislation is being brought to life thanks to the hard work of my team of about 12 and the considerable support of the department that backstops us administratively. Our priorities at the moment are set out in our strategic plan that was published in June of last year. There are five priorities: building prevention capacity, enabling remedy, fostering responsible business practices, changing the narrative, and fostering a community of purpose. In each of those areas we're now developing project work. For example, in building prevention capacity, we're beginning to look at the ways that frontline government agencies provide training and support to frontline workers. We have a new project called It's Healthy to Fight Slavery. It is working with healthcare providers, both public and private, in that space.

Around fostering responsible business practices, the legislation—the Modern Slavery Act 2018—gives me a monitoring role in relation to over 400 public entities, all New South Wales agencies, local councils, 10 universities, State-owned corporations and a number of others. They have now existing mandatory modern slavery due diligence and reporting obligations. We have just worked with them for the last year and a bit to develop a 200-page guidance document and a public spreadsheet that allows them to understand which categories of goods that they're procuring may be high risk. The guidance sets out the detailed steps that they should take in order to meet their statutory obligations of reasonable steps and then also sets out various reporting obligations.

We have work emerging around renewable energy value chains. The Act gives me a power to develop codes of practice. I'm developing a code of practice with the Clean Energy Council, again to provide comfort and assurance to actors in the market to know what does good due diligence look like and how do we manage risks along those value chains. We're also developing a community of purpose, as I said, working with the sector and in particular trying to centre the voices of people with lived experience. We have an incredible lived experience practice lead in my team, who's an employee of the department and someone with lived experience. We have an advisory panel of about 29 people, of whom 20 per cent have declared lived experience. There may be others who do or do not have declared lived experience. We're working with all of them to try and bring their voices into the policy development and programming space.

We have a policy role. For the last year, we've developed 10 different legislative and departmental inquiry submissions to annual reports in the strategic plan. We've undertaken seven regional visits around the State to date. We think it's very important that I'm the New South Wales Anti-slavery Commissioner, not the Sydney Anti-slavery Commissioner. Risks look very different in different parts of the State and in different communities. There are different vulnerabilities, which means people are being exploited in different ways.

I think, for me, an overarching priority, Ms Higginson, is to think about how we improve reporting—something that's come up in the discussions today in a number of contexts. We believe there may be as many as 16,400 people in New South Wales who have suffered modern slavery, but, on average, the Australian Federal Police—which is the main reporting channel—gets about 100 reports from New South Wales each year. This suggests to us that between 80 and 98 per cent of cases are simply not being reported, and there is a variety of reasons for that.

CORRECTED

One is, simply, people are not comfortable to come forward. They fear retaliation. These are people who are being treated as if they are owned by another person. That's the golden thread, in a way, in modern slavery offences. They really face a hard time coming forward, and when they do come forward they may not be understood or believed. We may be missing cases that are presenting but people are not self-identifying as victims of modern slavery; they're presenting as victims of domestic family violence, workplace exploitation, domestic abuse and those kinds of things. This comes back to the point that we need to train up frontline workers. We see a good initial response from police, from health care and from other actors, to lean in on that issue, but there is a lot of work ahead. As I said, it's very much still a work in progress.

Ms SUE HIGGINSON: Is there any relationship—it's always tricky; you don't want to ask the wrong question. I'm getting to a human rights perspective here. At the moment, New South Wales doesn't have human rights legislation in a single place, whereas States like Queensland and Victoria do. Is there anything that has come up through your work that would suggest that is something that could be beneficial to your work, obviously, in addition to the Modern Slavery Act and your office?

JAMES COCKAYNE: Yes. We try to include a human rights perspective in all of our work and our policy analysis. There is a human right to be free from modern slavery. That's a right incumbent on Australia. As you say, we have a Federal system, so there is complexity in how that translates to our jurisdiction, but that's a right that exists for people in this country. The right to be free from slavery is one of the three rights in international law that are applicable at all times in all places. There is no derogation from that right whatsoever.

I think the second part of the question is about operational response. What we see at the State level is that State governments control a number of the services, activities and assets that people need access to when they're trying to exit and recover from modern slavery. That's things like access to housing, access to health care, legal aid and other forms of support. A human rights perspective can be helpful, for example, in the housing context, to think about when it is that people should have a right to access crisis transitional housing. But I think it's also fair to acknowledge that it only gets us so far. To state that there is a right doesn't tell us how we can realise that right, so we have an important conversation going on now with Homes NSW to think about, for example, how we can achieve anti-slavery objectives through all of the important work that they're developing.

Ms SUE HIGGINSON: Fantastic. You are suggesting that there aren't many other commissions or offices elsewhere, and the lived experience is clearly something that is instrumental in feeding your programs. Where else have you had to look and access for best practice and the things that you've managed to develop? Some of the things are incredibly impressive. Where have they come from mostly?

JAMES COCKAYNE: Thank you for that positive reflection. We look a lot to our international partners. I'm very fortunate to have spent a large part of the last two decades living and working in the United States, which has quite advanced programming in this area and quite active involvement of people with lived experience. There was a visit recently by the US ambassador to counter trafficking in persons. We engaged with her. We've helped a number of people with lived experience, including First Nations people with lived experience of practices that today would be called modern slavery. We engaged with her to understand also what's going on in the United States. There's some important activity in the United Kingdom, as well—a very active civil society in the United Kingdom. That's the other jurisdiction where there has been an Independent Anti-Slavery Commissioner. I'm in close touch with the incumbent and know several of the former anti-slavery commissioners.

The other thing I would say is that we look adjacent. There's a lot of work in the domestic, family and sexual violence space where we can learn a lot from the ways that they engage with people with lived experience. I have regular interactions with Commissioner Cronin at the Federal level and with Dr Hannah Tonkin, the Women's Safety Commissioner in New South Wales, to discuss how there are intersections between the work that we're all doing and how we can support each other.

The Hon. SUSAN CARTER: I have probably two questions following up, Dr Cockayne. Perhaps this is the start of a conversation. As I understand it, you're focusing on modern slavery in the supply chain?

JAMES COCKAYNE: It's one of our areas of focus, yes.

The Hon. SUSAN CARTER: If the product, for want of a better word, is suspected to be a product of slavery overseas, that's of concern?

JAMES COCKAYNE: Yes.

The Hon. SUSAN CARTER: You've identified the difficulties with reporting. I've been made aware of—I don't want to overstate it—possibly something in the region of five to 10 cases a year where people travel overseas from New South Wales and receive organ transplants. They've, at least on one occasion, as I understand it, been able to book in for a heart transplant in two weeks' time. There are well-founded concerns, as far as I've

CORRECTED

been able to establish, that those providing the organs are not doing so freely. There's no point explaining the organ, but is it possible to establish some sort of reporting mechanism so that health practitioners who come into contact with those people are able to perhaps report to your office? Then we could look at how these supply chains are being advertised in New South Wales. Is that something that you could be working with?

JAMES COCKAYNE: Yes, they can report to our office at any time.

The Hon. SUSAN CARTER: Great.

JAMES COCKAYNE: Depending on the exact scenario that you're outlining, it's possible that there's a violation of the Human Tissue Act 1983 in New South Wales, which is listed as one of the modern slavery offences in schedule 2 to the Modern Slavery Act 2018. The Act gives me quite considerable discretion about what to do with information I receive. I may or may not choose, in any given circumstance, to pass that on to police—there might be good reasons not to. I don't, however, have investigative power of my own in specific cases, but on general issues the legislation says I can certainly consider it and then report to Parliament. There's a number of things we could potentially do to support people in that circumstance and I'd welcome any approach.

The Hon. SUSAN CARTER: Great, thank you. I may be in touch, if that's okay?

JAMES COCKAYNE: Please do.

The CHAIR: I think we've come to the end of our questioning today. Government members are indicating they have no questions.

PAUL McKNIGHT: Chair, I have the answer to a question I took on notice earlier about section 91Q. I'm pointed by colleagues to section 91N, which describes the coverage of that section as including an intimate image "that has been altered to appear to show a person's private parts, or a person engaged in a private act". There is an extended definition of that section that allows—

The Hon. SUSAN CARTER: That was my reading of it, but it's lovely to have that confirmation. My understanding is it would extend—

PAUL McKNIGHT: The information has come from the DPP so I think it's particularly authoritative.

SALLY DOWLING: I also have a response to a question on notice in relation to the referral of section 93Z matters from police. In relation to the balance of the nine matters that we spoke about, police were given advice as to sufficiency in those nine matters. No charges under 93Z have been laid by police in respect of those matters. We don't have data going to the time between receipt of those briefs and advice to police; it depends on the complexity of the individual matter. However, the new MOU that was executed last year stipulates a time frame of between two to six months to provide advice, depending on the complexity of the brief.

The CHAIR: I am told there were more questions taken on notice. You will be contacted by the secretariat for responses in due course. Thank you very much for coming today.

(The witnesses withdrew.)

The Committee proceeded to deliberate.