

GENERAL PURPOSE STANDING COMMITTEE NO. 4

Thursday, 6 October 2016

Examination of proposed expenditure for the portfolio area

ATTORNEY GENERAL

CORRECTED PROOF

The Committee met at 11:45

MEMBERS

The Hon. R. Borsak (Chair)

The Hon. D. Clarke

The Hon. T. Khan

The Hon. S. Mallard

The Hon. S. Moselmane

Mr D. Shoebridge

The Hon. L. Voltz

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

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

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

The CHAIR: Welcome to the public hearing for the inquiry into budget estimates 2016-17. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginal people present. I welcome officers of the Department of Justice to this supplementary hearing. Today the Committee will examine the proposed expenditure for the portfolio of Attorney General. Today's hearing is open to the public and is being broadcast on the Parliament's website. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography.

I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside their evidence at the hearing. I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence because such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could answer only if they had more time or if they had certain documents to hand. In these circumstances, witnesses are advised that they can take the question on notice and provide an answer within 21 days. Any messages from advisers or members' staff seated in the public gallery should be delivered through the Committee's secretariat. Transcripts of this hearing will be available on the web from tomorrow morning. Mobile phones should be turned off for the duration of the hearing. All witnesses from departments, statutory bodies or corporations will be sworn prior to giving evidence. I remind Mr Severin, Mr Thomas, Ms Torres, Mr Evans, and Mr Grant that they do not need to be sworn because they were sworn at earlier budget hearings of this Committee. I invite Ms D'Elia to swear an oath or to make an affirmation.

PETER SEVERIN, Acting Secretary, Department of Justice, on former oath

WAYNE EVANS, Acting Chief Financial Officer, Department of Justice, on former oath

BRENDAN THOMAS, Deputy Secretary, Justice Strategy and Policy, Department of Justice, on former oath

SAMANTHA TORRES, Acting Deputy Secretary, Arts and Justice Services, Department of Justice, on former oath

BILL GRANT, Chief Executive Officer, Legal Aid Commission, on former oath

CATHERINE D'ELIA, Acting Deputy Secretary, Courts and Tribunal Services, Department of Justice, sworn and examined

The CHAIR: I declare the proposed expenditure for the portfolio of Attorney General open for examination. The questioning will run from 11.45 a.m. until 12.45 p.m. There is no provision under the budget estimates resolution to make an opening statement before the Committee commences questioning. Therefore, we will begin with questions from the Opposition.

The Hon. LYNDA VOLTZ: I do not know who should answer this question.

The Hon. TREVOR KHAN: Take a punt.

The Hon. LYNDA VOLTZ: I will give it a go. Mr Severin might know the answer, but I doubt it. I say that only because he is the acting secretary of the department and I know where he usually works. Since the Attorney General was appointed there have been 14 judicial appointments to the District Court, and 70 per cent of the appointees have a prosecution background. Is it the Government's policy that District Court judicial appointees should have a prosecution background?

Mr SEVERIN: That is a question entirely for the Attorney General to answer. I will take it on notice and refer it to the Attorney General for a response.

Mr DAVID SHOEBRIDGE: We get the same answer from the Attorney General. Your answer is almost a replica of the answer given by the Attorney General.

The Hon. LYNDA VOLTZ: You are obviously well briefed on this issue. Is there now a departmental policy with regard to these appointments?

Mr SEVERIN: There has been absolutely no indication to me about a departmental policy that in any way discriminates one way or the other in relation to the background of candidates considered for those appointments, other than those set out in law.

The Hon. LYNDA VOLTZ: Please take on notice whether 70 per cent of the appointees have a prosecution background. Obviously I am not asking for the names, but I would like a breakdown of the appointee's background.

Mr SEVERIN: I will take that question on notice.

The Hon. TREVOR KHAN: That does not guarantee how they will perform on the bench.

The Hon. LYNDA VOLTZ: Why are people at Camden being required to travel for two hours to get to a local court?

Ms D'ELIA: Camden Court House is the subject of refurbishment.¹

The Hon. TREVOR KHAN: It is a building site.

Ms D'ELIA: The work needs to be done to reopen it.

The Hon. LYNDA VOLTZ: Which local court is being used in place of Camden Court House? Is it Moss Vale Court House?

¹ In [correspondence](#) to the committee dated 14 October 2016 Ms Catherine D'Elia provided the following clarification: *The sittings of Camden Courthouse are a subject for the Chief Magistrate. Matters from Camden Local Court, with the exception of Apprehended Violence Order applications, were moved to Picton Local Court at the direction of the Chief Magistrate in July, 2014. In June, 2016 Picton Local Court was severely damaged by flood waters rendering it unusable. At the direction of the Chief Magistrate matters from Camden previously listed at Picton were transferred to Moss Vale. Applications for Apprehended Violence orders have remained listed at Camden 2 days per month. Picton Courthouse is currently the subject of refurbishment and will reopen early in 2017.*

Ms D'ELIA: The listings have been moved at the direction of the chief magistrate. I am not sure off the top of my head which matters have been moved to which courts.

The Hon. LYNDIA VOLTZ: I am told they have been moved to Moss Vale Court House, but that there is spare capacity at Campbelltown. Why have they been moved to Moss Vale rather than Campbelltown?

Ms D'ELIA: The chief magistrate decides where matters are heard.

The Hon. LYNDIA VOLTZ: Can you take on notice whether there is spare capacity at Campbelltown and whether court cases that would have been heard at Camden are now being heard at Moss Vale?

Ms D'ELIA: I will take that question on notice.

The Hon. LYNDIA VOLTZ: Is the department currently undertaking any consultations in regard to section 20D of the Anti-Discrimination Act?

Mr THOMAS: We are not undertaking any further consultations on the Anti-Discrimination Act.

The Hon. LYNDIA VOLTZ: So you have undertaken consultations?

Mr THOMAS: No.

The Hon. LYNDIA VOLTZ: You said that you are not undertaking any further consultations. So you have undertaken none and you will not undertake any further consultations?

Mr THOMAS: No.

The Hon. LYNDIA VOLTZ: So no review of section 20D of the Anti-Discrimination Act is being undertaken?

Mr THOMAS: There is no further review of that section of the Act. There was targeted consultation—

The Hon. LYNDIA VOLTZ: There was a consultation?

Mr THOMAS: —towards the end of last year of those who made submissions to the parliamentary inquiry. However, there are no further consultations.

The Hon. LYNDIA VOLTZ: Who undertook those consultations?

Mr THOMAS: The department.

The Hon. LYNDIA VOLTZ: What was the outcome?

Mr THOMAS: We received 17 submissions from interested parties and they were subject to that consultation.

Mr DAVID SHOEBRIDGE: I think the question asked who were the targeted stakeholders.

Mr THOMAS: Those who had made submissions to the parliamentary inquiry.

Mr DAVID SHOEBRIDGE: The list, I think, is what we are after, Mr Thomas.

Mr THOMAS: Yes, I do not have that with me.

The Hon. SHAOQUETT MOSELMANE: Will you take it on notice?

Mr DAVID SHOEBRIDGE: Mr Thomas needs to verbalise his answers; nodding his head does not work for Hansard. The question was: Will you take it on notice?

Mr THOMAS: I will take it on notice.

The Hon. LYNDIA VOLTZ: You received 17 submissions. Who did you meet and consult with?

Mr THOMAS: We did not have face-to-face consultations.

The Hon. LYNDIA VOLTZ: So you had 17 submissions. Did anything happen to those 17 submissions if you did not have consultations?

Mr THOMAS: Those submissions have formed advice to the Government, and the Government is considering its response.

The Hon. LYNDIA VOLTZ: When you said there was no review, you took submissions, you wrote advice to the Government and the Government is reviewing that advice?

Mr THOMAS: It is considering the response to the inquiry.

The Hon. LYNDIA VOLTZ: Is that to the government inquiry? Which inquiry?

Mr THOMAS: Sorry, in response to the Legislative Council's Committee on Law and Justice report.

The Hon. LYNDIA VOLTZ: Were they submissions to your department or were they submissions to the Legislative Council.

Mr THOMAS: To the department.

The Hon. LYNDIA VOLTZ: To the department?

Mr THOMAS: Sorry, the responses we received from those interested parties were to the department.

The Hon. LYNDIA VOLTZ: There was an upper House inquiry and then there was a separate submission process to your department?

Mr THOMAS: We sought the views of those who had made submissions to the upper House inquiry.

The Hon. LYNDIA VOLTZ: You sought further views from those who made submissions to the upper House inquiry to form your response to the inquiry itself. Is that correct?

Mr THOMAS: That is right.

The Hon. LYNDIA VOLTZ: So the advice you have written is really only in regards to the upper House inquiry?

Mr THOMAS: That is right.

The Hon. LYNDIA VOLTZ: So there has been no review by your department of section 20 of the Anti Discrimination Act?

Mr THOMAS: There has not.

The Hon. LYNDIA VOLTZ: Only your response as required under the upper House committee?

Mr THOMAS: That is right.

The Hon. SHAYNE MALLARD: Excellent report.

Mr DAVID SHOEBRIDGE: It was an excellent report—very old but excellent report. On that, Mr Thomas, you say that the department is responding to the upper House inquiry, but you have created a whole separate process. When did that process start for reaching out to stakeholders?

Mr THOMAS: It was done at the end of last year, 2015.

Mr DAVID SHOEBRIDGE: Who chose the stakeholders?

Mr THOMAS: The department chose to seek the views of those who had made submissions to the inquiry.

Mr DAVID SHOEBRIDGE: Everybody who had made a submission to the inquiry?

Mr THOMAS: The 17, in my understanding, that had made submissions to that inquiry.

Mr DAVID SHOEBRIDGE: When you were looking at concerns about the Anti Discrimination Act and issues of vilification, who from the Muslim community did you speak to?

Mr THOMAS: I do not recall who those 17 parties were.

Mr DAVID SHOEBRIDGE: Do you know of anybody from the New South Wales Muslim community who was reached out to in the course of that consultation?

Mr THOMAS: I cannot answer that question. I do not have the list of individuals in front of me.

Mr DAVID SHOEBRIDGE: Could you provide on notice what consideration was given to reaching out specifically to members of this State's Muslim community in seeking consultation on changes to the Anti Discrimination Act?

Mr THOMAS: I will take that on notice.

Mr DAVID SHOEBRIDGE: The Attorney took a number of questions on notice at the last budget estimates, and one in particular was about the changes to the Victims Services scheme and the retrospective

opening up of the scheme to a certain class of victims. On each occasion the answer given by the Attorney on notice is: "I am advised that Victims Services will provide data profiles in relation to the reassessment of victims compensation claims in October 2016", and then there is a reference to a URL. Acting Secretary, do you understand that it is the purpose of budget estimates for answers to be provided to parliamentarians?

Mr SEVERIN: Absolutely.

Mr DAVID SHOEBRIDGE: Do you believe it is appropriate in providing answers to budget estimates to simply indicate a URL where an answer may be provided in the future?

Mr SEVERIN: I certainly consider it appropriate for the Attorney to identify what information she wishes to provide in response to a question. It is not that any information is being withheld, so the answer is yes.

Mr DAVID SHOEBRIDGE: Is the data available now?

Ms TORRES: Yes, the data is available on the Victims Services website in relation to statistical analysis for the Victims Support scheme, community engagement and awareness work by Victims Services and multicultural profile.

Mr DAVID SHOEBRIDGE: How many victims who were eligible was the department unable to contact?

Ms TORRES: That is not in this listing, I am afraid. I can take that on notice. They were 15,143 people who lodged 16,000 applications. I am told 771.

Mr DAVID SHOEBRIDGE: Who were unable to be contacted?

Ms TORRES: Yes.

Mr DAVID SHOEBRIDGE: Of the 771 who were unable to be contacted, did any of them make an application for reassessment?

Ms TORRES: That I cannot answer at this stage, but I will come back to you on notice.

Mr DAVID SHOEBRIDGE: If they have not made an application for reassessment, that is it—the window is closed and they have lost their opportunity. Is that right?

Ms TORRES: The department has made every effort to contact everybody who is eligible for reassessment. If we are unable to contact them and we have attempted to do so, I am not sure what more is expected.

Mr DAVID SHOEBRIDGE: Ms Torres, my question is quite simple. Could you answer my question?

Ms TORRES: Yes.

Mr DAVID SHOEBRIDGE: So that is it? They have lost their rights?

Ms TORRES: I do not believe they have lost their rights. They are unable to exercise them if we cannot contact them. That is not the same as losing them.

Mr DAVID SHOEBRIDGE: They had a 12-month window of opportunity in which to exercise their rights. If they did not exercise their rights within those 12 months, they lost them. Am I missing something here?

Ms TORRES: No, I do not believe you are missing something, but the time frame was set in legislation.

Mr DAVID SHOEBRIDGE: They had 12 months to exercise their rights. If they did not exercise their rights for reassessment in those 12 months, they lost the right. Correct?

Ms TORRES: They lost access to reassessment, yes.

Mr DAVID SHOEBRIDGE: Of the 771, you do not know why they have not exercised their rights because you have been unable to contact them?

Ms TORRES: Yes.

Mr DAVID SHOEBRIDGE: What if someone had compelling personal reasons—they might have been suffering a mental breakdown as a result of the crime that they were a victim of and they were unable to exercise their rights within those 12 months, is it the Government's position that that is it? Regardless of their state of mind, regardless of their capacity, they have lost their right?

Ms TORRES: My understanding is that we are operating within the confines of a 12-months window, so I cannot comment on the Government's position.

Mr DAVID SHOEBRIDGE: What consideration was given to the fairness of a hard and firm 12-months deadline given you are dealing with victims of crime, many of whom will be suffering psychological consequences and other difficult circumstances as a result of being a victim of crime? What consideration was given to the justice of that, Acting Secretary?

Mr SEVERIN: I was not personally involved in the decision-making processes and the considerations that led to the decision-making process, so I would have to take that on notice, unless any of my colleagues can answer your question.

Mr THOMAS: My recollection was the Government made a decision to end it after the 12 months, on 31 August this year. All of those individuals who were subject to reassessment had had their claims originally dealt with through the former victims compensation scheme. I do not know whether or not any of those who were not contacted had received payments under that former scheme, but some of them may well have received those payments and chosen not to apply for reassessment. But the close was 31 August.

Mr DAVID SHOEBRIDGE: But my question was: What consideration was given to fairness, given the cohort of vulnerable victims of crime we are dealing with?

Mr THOMAS: There was a lot of consideration given to the fairness of the contact of individuals under the scheme and the effort the department made to contact as many of those as it possibly could.

Mr DAVID SHOEBRIDGE: But 771 were not contacted.

Mr THOMAS: There were certainly attempts to contact them in every way we could possibly make to contact those people. There were more than 15,500 people that were contacted through that scheme and we could not ultimately contact that 771.

Mr DAVID SHOEBRIDGE: Which is why a fair and decent and humane process would allow for an opportunity for people who, through no fault of their own, were unable to exercise their rights in those 12 months. That would be fair, would it not, Mr Thomas?

Mr THOMAS: An extension to that deadline is a matter for the Government to make a decision.

Mr DAVID SHOEBRIDGE: But as the state of play now, that is it. Regardless of the most compelling personal circumstances, they have lost their right. Is that the state of play, Mr Thomas?

Mr THOMAS: They cannot apply for reassessment under that scheme.

Mr DAVID SHOEBRIDGE: Commissioner, it is nice to have you here, and I do not mean this disrespectfully, but since when has the Commissioner for Corrective Services been the Acting Secretary of the Department of Justice?

Mr SEVERIN: I started acting a fortnight ago and I finish next Tuesday.

Mr DAVID SHOEBRIDGE: Is there a set hierarchy that has you filling the position of acting secretary or is it a decision of the Attorney? How is it that you got the appointment?

Mr SEVERIN: It is a matter for the Secretary—

Mr DAVID SHOEBRIDGE: Sorry, obviously not the Attorney, my mistake. The police Minister, the justice Minister?

Mr SEVERIN: It is a matter for the Secretary to identify who he wishes to act in his position and that generally is a deputy secretary—I am one of those—and the appointment is confirmed by the Secretary of the Department of Premier and Cabinet. I am not aware what level of consultation the Secretary undertook with Ministers who have oversight of the Department of Justice.

Mr DAVID SHOEBRIDGE: So you do not know whether or not the Minister for Justice was consulted about your acting appointment?

Mr SEVERIN: I do not know that.

Mr DAVID SHOEBRIDGE: Are you aware of any other times in history where the Commissioner for Corrective Services was also the Acting Secretary of the Department of Justice?

Mr SEVERIN: I am aware of two occasions where I acted in this role before this time. It is my third time that I have been acting in this role. Prior to that, my understanding is that there was not a Department of

Justice, there were different departments, being the Department of Attorney General and Justice, the Department of Corrective Services—and it is only in recent years, I think 2009. So I am not aware that there was ever another acting arrangement made before the current machinery of government arrangements came into play.

Mr DAVID SHOEBRIDGE: Within this scheme—and I might ask this of you, Mr Thomas—is the Commissioner for Police an assistant secretary or a deputy secretary?

Mr THOMAS: He is not, no.

Mr DAVID SHOEBRIDGE: So who are they?

Mr SEVERIN: The Deputy Secretary of our department, the Deputy Secretary of Courts and Tribunal Services, the Deputy Secretary of Arts and Justice Services, the Deputy Secretary of Justice Policy, the Deputy Secretary of the Organisational Performance group, the Deputy Secretary, Commissioner for Corrective Services, and the Deputy Secretary of Gaming, Racing and Emergency Services.

Mr DAVID SHOEBRIDGE: So you are the only uniformed, if I could put it that way, or commissioned deputy secretary?

Mr SEVERIN: That is correct.

Mr DAVID SHOEBRIDGE: Commissioner, given the scope of the Department of Justice, given the courts and tribunals and a vast array of civil matters, do you see a potential conflict in having the Commissioner for Corrective Services sitting in that titular role as the acting secretary?

Mr SEVERIN: No, I do not see any conflict of interest there.

Mr DAVID SHOEBRIDGE: Do you not believe that there are potentially significant conflicts between the interests of Corrective Services and, for example, the interests of the courts and the police?

Mr SEVERIN: There are obviously different statutory responsibilities and there is a separation of power between the administrative arm of government and the judiciary. However, from a machinery of government and administrative perspective, the Secretary of Justice has got responsibility for all those elements of justice and associated functions that are part of the Department of Justice from time to time, such as Arts in this particular situation, and some other statutory bodies that are traditionally part of the responsibility of the Attorney General.

The Hon. SHAOQUETT MOSELMANE: I will just jump in on a couple of other matters that my colleague raised earlier about the appointments of District Court judges. By appointing 70 per cent of the judges who had a defence or a prosecution background, is not the Attorney General effectively restricting the pool from which the court can choose?

Mr SEVERIN: I would have to take that on notice. But a District Court judge is a District Court judge and can adjudicate across the whole spectrum of the law as it is dealt with by the District Court.

The Hon. SHAOQUETT MOSELMANE: My understanding is that in the District Court there is a significant civil jurisdiction and you would expect that a significant number of judges or appointees would have a civil law background, would you not?

Mr SEVERIN: Again, I need to take that on notice.

The Hon. SHAOQUETT MOSELMANE: You can take this one on notice as well and tell us whether there is a pattern, whether historically other Attorneys General have decided to appoint judges who have a prosecution background as opposed to a balance of a prosecution and civil background to the District Court.

Mr SEVERIN: I will take that on notice.

Mr DAVID SHOEBRIDGE: The NSW Trustee and Guardian, who is responsible for that in this group?

Mr SEVERIN: The current chief executive of the Trustee and Guardian is on leave.

Mr DAVID SHOEBRIDGE: Out of the six of you here who is responsible?

Mr SEVERIN: Ultimately it would be myself. Obviously I have limited knowledge of the Trustee and Guardian. You are welcome, of course, to ask any question and if need be I will take that on notice.

Mr DAVID SHOEBRIDGE: Mr Thomas, you do not have day-to-day responsibility?

Mr THOMAS: I do not have any day-to-day responsibility of Trustee and Guardian, no. But we will endeavour to answer any questions you have as best we can.

Mr DAVID SHOEBRIDGE: I have been advised that the NSW Trustee is in the process of implementing a call centre to take over the responsibilities of individual managers and individual case managers. Are you aware of this?

Mr SEVERIN: No, I am not. I would have to take that on notice.

Mr DAVID SHOEBRIDGE: Given the vulnerable people that the Trustee deals with and the nature of their caseload, do you think it is appropriate that the responsibility of individual managers be handed over to a call centre?

Mr SEVERIN: Again, I can answer in a very general context and that is that it is my understanding that very careful consideration is given to ensuring that every citizen who accesses the Trustee and Guardian services, who is under the jurisdiction of the Trustee and Guardian, that their needs are very carefully considered and appropriately dealt with. However, the detail of your question in relation to the link to the call centre I will take on notice.

Mr DAVID SHOEBRIDGE: I asked the Attorney General last time she was here:

What advice have you or anyone in your department sought about possible breaches of section 316 of the Crimes Act relating to the practice of blind reporting as used by the New South Wales police regarding child sexual abuse?

The Attorney General opted to take that on notice and then answered:

I am advised by the Department of Justice that it sought advice from the NSW Bureau of Crime Statistics and Research on available statistics on finalised charges under section 316 of the Crimes Act 1900 (NSW).

What was the advice you received from BOCSAR?

Mr THOMAS: I do not have that advice with me, but I will endeavour to provide you with the numbers that we got from the Bureau of Crime Statistics.

Mr DAVID SHOEBRIDGE: You came to the supplementary hearing having given that answer on notice, and you did not bring the advice with you. Did you prepare for these supplementary hearings?

Mr THOMAS: We certainly did, but I do not have that advice with me.

Mr DAVID SHOEBRIDGE: Questions were also asked and taken on notice about the Ellis defence. Mr Cappie-Wood and the Attorney took on notice a question on how many occasions the Ellis defence has been used in New South Wales. First of all, are you aware of what the Ellis defence is?

Mr THOMAS: Yes.

The Hon. TREVOR KHAN: He said yes, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: I did not hear. There is quite a distance: You are much closer to Mr Thomas than I am.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: Mr Thomas, the answer that eventually came was:

I am advised that the Department of Justice is aware of one decision in the past five years in which the so-called Ellis defence was relied on by a religious institution to successfully defeat a claim for historical child sexual abuse.

First of all, what was that decision?

Mr THOMAS: Again, Mr Shoebridge, I do not have it with me—unless one of my colleagues does.

Mr DAVID SHOEBRIDGE: Again, did you not think that this would be the nature of the supplementary questions? Did you not think to prepare for this hearing?

Mr THOMAS: I do not have that case with me. Sorry, Mr Shoebridge.

Mr DAVID SHOEBRIDGE: Would you provide that on notice?

Mr THOMAS: Yes, we will.

Mr DAVID SHOEBRIDGE: Secondly, whilst there may be one reported case where the Ellis decision was relied upon in a formal judgement, are you aware of whether it is a practice of religious institutions relying upon the Ellis defence in the course of settlement negotiations or litigation but not ultimately coming to judgement?

Mr THOMAS: I do not know of a practice, and I do not know that we would necessarily have records of those discussions in settlement negotiations.

Mr DAVID SHOEBRIDGE: Have you considered any of the reports from the royal commission into the use and abuse of the Ellis defence?

Mr THOMAS: The department certainly has considered those reports.

Mr DAVID SHOEBRIDGE: Could you provide me with the department's response to the royal commission's findings and conclusions on the Ellis defence?

Mr THOMAS: Those responses are a matter for the Government, so we will provide you with the Government response when the Government prepares and settles a response.

Mr DAVID SHOEBRIDGE: When will Government be providing a response to the royal commission's recommendations on redress?

The Hon. TREVOR KHAN: That is probably not a question for any of these witnesses here, Chair. That is a matter for the Minister and Cabinet.

The CHAIR: Are you taking a point of order?

The Hon. TREVOR KHAN: I am taking a point of order. There are matters that Mr Shoebridge quite legitimately has concerns about but what he is asking now is beyond the scope of these witnesses to give evidence on, and he knows it.

The CHAIR: Thank you, Mr Khan. I am sure that they will say that if that is the case.

Mr DAVID SHOEBRIDGE: When will the Government be providing a response, as far as you know, to the redress recommendations from the royal commission?

Mr THOMAS: The Government has made an announcement that it is considering its response to the redress recommendations—

Mr DAVID SHOEBRIDGE: Yes, but that is not a response, Mr Thomas.

Mr THOMAS: —and its design of a scheme, and that is a matter for Cabinet to determine.

Mr DAVID SHOEBRIDGE: Are you aware of what timetable has been put in place?

Mr SEVERIN: We are not.

The Hon. LYNDA VOLTZ: I asked the Attorney General about board appointments under her portfolio that were inquorate. Other than the Law Reform Commission, were there any other boards in the Attorney General's purview that were inquorate because there had been no appointments to them?

Mr SEVERIN: Sorry, I do not have that information available. I need to take that on notice, unless any of my colleagues can answer.

The Hon. SHAOQUETT MOSELMANE: But that question was asked before.

Ms TORRES: It is not a matter of being inquorate for this particular board. The anti-discrimination board at the moment has no members other than the president, in fact a temporarily appointed president, but the board is still functioning under the terms of the legislation.

The Hon. LYNDA VOLTZ: How many appointments is it without?

Ms TORRES: Four.

The Hon. LYNDA VOLTZ: Four.

The Hon. SHAOQUETT MOSELMANE: To go back to the question with regard to the move of the County Court to Picton, why is the Local Court for Camden now at Moss Vale?

Ms D'ELIA: Sittings of the Local Court are determined by the Chief Magistrate, so he makes the decision as to where the matters are heard.

The Hon. SHAOQUETT MOSELMANE: So that was not the decision of the Attorney General.

Ms D'ELIA: No.

Mr DAVID SHOEBRIDGE: The Chief Magistrate of the Children's Court, gave evidence on Tuesday of last week to a child protection hearing in which he advised the Committee that he does not have the

power to appoint magistrates to the Children's Court: that power rests only with the Chief Magistrate of the Local Court. Is that your understanding of the current law, Mr Thomas, Ms Torres and Ms D'Elia?

Ms D'ELIA: The magistrates of the Children's Court are appointed to the Local Court, and it is the Chief Magistrate who then appoints them to the Children's Court.

Mr DAVID SHOEBRIDGE: Has the Government received a request from the Chief Magistrate of the Children's Court to change that arrangement so that it is the Chief Magistrate of the Children's Court who chooses the magistrates for his court—or her court, as the case may be?

Ms D'ELIA: I would have to take that on notice. I am not aware of correspondence between the Children's Court and the Government.

Mr DAVID SHOEBRIDGE: Is the Government considering a change to allow for the Chief Magistrate of the Children's Court to be the officer responsible for choosing magistrates for his court as opposed to the Chief Magistrate of the Local Court? You probably want to take that on notice.

Ms D'ELIA: I was just about to say I cannot answer that and I would have to take it on notice.

Mr DAVID SHOEBRIDGE: In the course of the budget estimates, I asked the following of the Attorney General:

Madam Attorney, what steps have been taken to ensure that the Criminal Records Amendment (Historical Homosexual Offences) Act 2014 is being effectively implemented?

The Attorney took it on notice and then provided the following non-answer:

I am advised that the Department of Justice provided information to stakeholders at the time the scheme commenced and information is available on the Department of Justice website at <http://www.justice.nsw.gov.au>. The Department of Justice continues to work with relevant stakeholders to assist in improving awareness of the scheme. The operation of the scheme has been monitored since its commencement and ensuring the scheme operates effectively is the subject of ongoing consideration.

What "ongoing consideration"?

Mr SEVERIN: Again, I am not across the detail of the particular issue, and neither are any of my colleagues, so I will take that on notice and refer it back to the Attorney General.

Mr DAVID SHOEBRIDGE: Again, did none of you prepare for this supplementary budget estimates hearing? Did you not read the non-answers that were given?

Mr SEVERIN: We certainly read the answers that were provided.

Mr DAVID SHOEBRIDGE: Which "relevant stakeholders" is the department working with in terms of implementing what was celebrated at the time as being a fundamental improvement and necessary reform for Justice in New South Wales?

Mr SEVERIN: I need to identify that and take that on notice.

Mr DAVID SHOEBRIDGE: Whereabouts on the website of the Department of Justice do I find that information?

Mr SEVERIN: I think the link to the Justice website was provided in the answer.

Mr DAVID SHOEBRIDGE: No, it was not. Do you have the answers there?

Mr SEVERIN: I do have the answers.

Mr DAVID SHOEBRIDGE: Please look at them now. Do you believe that it is grossly disrespectful of the Parliament for the Executive to simply provide the standard Justice website, that is, justice.nsw.gov.au for such an important question about an important historical reform that has been asked of the Executive? Do you accept that that is grossly disrespectful of Parliament?

Mr SEVERIN: I understand what you are saying. I do not accept that that is grossly disrespectful of Parliament. However, in response to your question I will ensure that the direct link to that particular part of the website is provided in the response that we have taken on notice.

The Hon. LYNDIA VOLTZ: Ms Torres, you said that the Antidiscrimination Board had no appointments. Were there any other boards? Was that the only one under the Attorney General?

Ms TORRES: That is the only one I am aware of.

The Hon. LYNDIA VOLTZ: Will you take that question on notice and inform the Committee whether any other appointments are still to be made?

Ms TORRES: Yes.

Mr DAVID SHOEBRIDGE: Commissioner, are you aware that on Friday last week Corrective Services issued a circular under section 44B of the Public Health Regulations?

Mr SEVERIN: Yes, I am.

Mr DAVID SHOEBRIDGE: The first part of that circular provided, if you like, a get-out-of-gaol-free card for minimum floor space for gaol cells where there have been two-ups and three-ups—

The Hon. TREVOR KHAN: Point of order: At this stage, if I am not mistaken this is a budget estimates inquiry into the Attorney General's portfolio. Is Mr David Shoebridge going beyond the budget estimates for Attorney General.

The CHAIR: He may well be. I will allow him to ask the question first.

The Hon. TREVOR KHAN: This Committee is established under a resolution and Mr Severin is here as the acting secretary, not in any other—

The CHAIR: I take your point. I am only saying I would like to hear the question in full and then I will rule on it.

Mr DAVID SHOEBRIDGE: Is that your understanding of the effect of that circular, Commissioner?

Mr SEVERIN: Yes.

Mr DAVID SHOEBRIDGE: That is my only question.

The Hon. TREVOR KHAN: It was a good question.

The CHAIR: Just in the wrong place.

Mr DAVID SHOEBRIDGE: The answer is good. The answer is bad, but the answer is what I wanted.

Mr SEVERIN: Mr Chair, if I could just ask for clarification? A full question was not put to me. There was simply a question put to me in relation to a circular that relates to another portfolio.

The Hon. TREVOR KHAN: Don't encourage him to do any more.

Mr SEVERIN: I am aware of that circular. That is all I have been answering.

Mr DAVID SHOEBRIDGE: No, my question was: Was it a get-out-of-gaol-free card for minimum floor space requirements for prisoners under the public health laws? That was my question and your answer was "yes."

Mr SEVERIN: As Commissioner the answer is no.

Mr DAVID SHOEBRIDGE: That is different from yes.

The CHAIR: That line of questioning is outside the scope of this budget estimates hearing. I note that you have taken a number of questions on notice. The secretariat will be in contact with you to confirm those questions, to which you will have 21 days to respond.

(The witnesses withdrew.)

The Committee proceeded to deliberate.