

# **BUDGET ESTIMATES 2022**

## **Additional hearings**

**Questions taken on notice  
Portfolio Committee No. 5 – Regional NSW and  
Stronger Communities**

**Attorney General**

**Hearing: Wednesday 16 March 2022**

**Answers due: 5pm Tuesday 12 April 2022**

## KRISTO LANGKER

### Transcript page 2

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

**Mr MARK SPEAKMAN:** I do.

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

**Mr MARK SPEAKMAN:** I do.

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

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

**The Hon. ADAM SEARLE:** Yes, of course.

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

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

## ANSWER

I am advised:

As advised in session, the Crown Solicitor's Office provided advice to NSW Police on 28 October 2021, see page 38 of the Portfolio Committee No. 5 - Regional NSW And Stronger Communities 16 March 2022 Uncorrected Transcript.

## LAW ENFORCEMENT CONDUCT COMMISSION

### Transcript page 8

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

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

**Mr DAVID SHOEBRIDGE:** You are the Minister responsible.

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

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

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

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

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

## ANSWER

I am advised:

In the 2020/2021 year the following statistical analysis was provided relating to investigations processes of the Law Enforcement Conduct Commission (LECC):

- Total complaints assessed - 3,276
- Total new integrity investigations or enquiries - 66
- Percentage of total complaints investigated by the LECC - 2.01%
- Matters assessed by the LECC and referred to the NSW Police Force for investigation but monitored and oversighted by the LECC - 2,005

## **OPERATION MONZA**

### **Transcript page 10**

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

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

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

**Mr MARK SPEAKMAN:** Certainly.

### **ANSWER**

I am advised:

I did not seek advice from the Department of Communities and Justice (DCJ) on whether the actions of senior officers from Strike Force Raptor were a contempt of court.

## CHILD SEX OFFENDERS REGISTER

### Transcript page 12

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

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

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

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

**Mr MARK SPEAKMAN:** Certainly.

### ANSWER

I am advised:

This question should be directed to the Minister for Police as the Minister with responsibility for the *Child Protection (Offenders Registration) Act 2000*.

## HISTORIC CHILD SEX OFFENCES

### Transcript page 16

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

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

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

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

### ANSWER

I am advised:

Section 3 of the *Law Reform (Vicarious Liability) Act 1983* (the Act) states that the Act does not apply to a tort committed by a person or arising out of a wrongful act or omission occurring before the Act commenced. The extent to which the Act precludes the State from being vicariously liable for historic child abuse occurring before 1983 involves consideration of the common law as well as the legislation. DCJ has provided preliminary advice to the Attorney General on the issues raised in Mr Shoebridge's correspondence and it remains under consideration.

## AGE OF CRIMINAL RESPONSIBILITY

### Transcript page 18

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

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

**Mr DAVID SHOEBRIDGE:** Where the charges have been proven?

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

**Mr DAVID SHOEBRIDGE:** Three 10-year-olds?

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

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

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

## ANSWER

I am advised:

In the 12 months to September 2021, there were three finalised appearances for 10 year old defendants in the Children's Court. In all three of these finalised appearances, all charges were withdrawn by the prosecution.

## AGE OF CRIMINAL RESPONSIBILITY

### Transcript page 19

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

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

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

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

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

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

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

**PAUL McKNIGHT:** No, those were remand admissions only.

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

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

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

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

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

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

**Mr DAVID SHOEBRIDGE:** Thanks.

### ANSWER

I am advised:

In the 12 months to September 2021, of proven court appearances in the Children's Court, the following number of defendants received a custodial sentence:

10-year-old defendants: there were no proven finalisations.

11-year-old defendants: there was one proven finalisation, and no custodial sentence.

12-year-old defendants: there were 15 proven finalisations, and no custodial sentences.

13-year-old defendants: there were 88 proven finalisations, and four custodial sentences.

## **OPERATION BAIL**

### **Transcript page 20**

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

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

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

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

**Mr MARK SPEAKMAN:** That was one of those.

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

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

## **ANSWER**

I am advised:

The list of cases referred are: Mostafa Baluch, Daniel Middlebrook, Salim Hamze, Trent Jeske, Charbel Attie, Jason Williams, Ahmed Karim and Stanley Russell.

## **ELECTRONIC MONITORING OR ANKLE MONITORING**

### **Transcript page 21**

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

**Mr MARK SPEAKMAN:** That sounds about right.

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

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

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

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

### **ANSWER**

I am advised:

Electronic monitoring bail conditions involve an accused person making an arrangement with a private company to provide services. The accused person then presents this arrangement to the court, on the basis of evidence, in the hope that the court will find that this arrangement is sufficient to mitigate any bail concerns posed by the accused.

Under these arrangements, the private company attaches an electronic monitoring device to the accused. If the accused person tampers with the device, enters a location that they are prohibited from entering, or leaves a location that they are prohibited from leaving, the device sends notification to the company and to a nominated police officer, who can respond.

## BAIL SUBJECT TO ELECTRONIC MONITORING

### Transcript page 22

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

**Mr MARK SPEAKMAN:** Probably all or substantially all.

**The Hon. ADAM SEARLE:** In which case that is 100 people on bail subject to the electronic monitoring. Are there any minimum conditions that the electronic monitoring devices have to comply with?

Pardon my ignorance, but is there an Australian standard that these have to meet?

**Mr MARK SPEAKMAN:** I do not know the answer.

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

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

**Mr DAVID SHOEBRIDGE:** I don't think so.

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

**Mr MARK SPEAKMAN:** Certainly.

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

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

**The Hon. ADAM SEARLE:** Of course.

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

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

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

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

**Mr MARK SPEAKMAN:** Sure.

## **ANSWER**

I am advised:

Electronic monitoring involves the use of specialised equipment and monitoring services provided by private companies. There is currently only one company known to be providing these services in Australia (Attenti Group).

Courts are required to make decisions on the basis of evidence put before them by the parties. In the case of electronic monitoring, courts receive expert evidence from an officer of the company explaining the technical and operational features of the electronic monitoring service. That evidence may be tested by the prosecution through cross-examination. The prosecution may also present competing evidence in its case, for example, evidence concerning limitations of the technology, or case studies in which it has not been effective.

## APPEAL OF BAIL DECISIONS

### Transcript page 22-23

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

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

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

**Mr MARK SPEAKMAN:** In theory.

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

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

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

**Mr MARK SPEAKMAN:** Bail generally.

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

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

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

**Mr MARK SPEAKMAN:** Okay.

## ANSWER

I am advised:

There is no provision under the *Bail Act 2013* (NSW) to appeal against the granting of bail, or the making of a specific bail condition. However, where a person is granted bail, the prosecution may make a detention application, either to have bail revoked or to have further or different conditions imposed. Section 40 of the *Bail Act* provides for a stay of a decision to grant or dispense with bail where a prosecutor intends to make a detention application to the Supreme Court for serious offences defined in that section.

From 1 January 2020 to date, there have been 33 detention applications made to the Supreme Court. Of those detention applications, two related to bails that included an electronic monitoring condition.

## CODE OF CONDUCT DECLARATION

### Transcript page 27

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

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

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

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

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

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

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

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

## ANSWER

I am advised:

A response to this question on notice was given at the hearing (see page 47 of the transcript):

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

KATHRYN BOYD: I did. DPC did not write to the commissioner. The commissioner is employed by the Minister for Police. DPC writes to the heads of agencies that are employed, effectively, by the Secretary of DPC. The

Secretary of DPC will write to all of the Department Secretaries inviting them to make their annual declaration in accordance with the Public Service Commission's direction. The DPC secretary will also write to office holders within the DPC cluster who are not required to make the declaration but inviting them to do so voluntarily. Given that the Commissioner for Police is not appointed or employed by the DPC Secretary, there is no routine communication to that office holder in relation to annual declarations, but of course DPC encourages all public officials to make regular written disclosures, and that is best practice.”

## LAW ENFORCEMENT CONDUCT COMMISSION

### Transcript page 28

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

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

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

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

**Mr DAVID SHOEBRIDGE:** Consider it asked.

### ANSWER

I am advised:

The Law Enforcement Conduct Commission (**LECC**) is an independent statutory body and is not subject to the direction or control of a Minister. Questions regarding operational matters, including who the author of a specific report is, should be directed to the LECC.

I note that the LECC's report on Operation Kurumba, available on the LECC's website, includes a letter from the Chief Commissioner of the LECC to the Presiding Officers dated 15 March 2022 furnishing a copy of the report.

## THE CORONIAL INQUEST INTO THE DEATHS OF JOHN, JACK AND JENNIFER EDWARDS

### Transcript page 29

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

That the NSW Government take steps to update the list of prescribed offences in cl. 5 of the Firearms Regulation 2017 to include any personal violence offences or domestic violence offences defined in the Crimes (Domestic and Personal Violence) Act 2007. I appreciate that you are no longer the Minister with carriage of that legislation but as Attorney General responsible for the Coroner's Court, are you aware of where the New South Wales Government is up to in terms of responding to this coronial recommendation?

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

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

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

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

**Mr MARK SPEAKMAN:** I have still got that.

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

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

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

**Mr MARK SPEAKMAN:** Because it is a regulation.

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

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

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

**Mr MARK SPEAKMAN:** I will take that on notice.

**ANSWER**

I am advised:

This is a matter for the Minister for Police.

## **KATHLEEN FOLBIGG MATTER – ACADEMY OF SCIENCE RECOMMENDATIONS**

### **Transcript page 30**

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

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

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

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

### **ANSWER**

I am advised:

The Crown Solicitor's Office has advised that Hament Dhanji SC and Joanna Davidson were briefed in April 2021. Tim Game SC was briefed in September 2021, following the appointment of Hament Dhanji SC to the Supreme Court of NSW. Kathleen Health was also engaged as a second Junior Counsel in September 2021. An updated brief (12 volumes) was provided to Mr Game SC, Ms Davidson and Ms Heath in October 2021.

In addition to the briefing dates noted above, between 8 July 2021 and 17 December 2021, the Crown Solicitor's Office briefed senior and junior counsel after receipt of further material provided by Ms Folbigg's legal representatives in support of the petition. The final material was received from Ms Folbigg's legal representatives on 16 December 2021.

## WALAMA COURT

### Transcript page 32-33

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

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

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

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

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

**The Hon. SHAOQUETT MOSELMANE:** It certainly seems the hope of the National Indigenous Times, which said: If the Pilot is successful after a number of years it is hoped that it will develop into a permanent Walama Court.

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

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

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

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

**Mr MARK SPEAKMAN:** Sure. Certainly.

**ANSWER**

I am advised:

BOCSAR intends a two armed randomised controlled trial to evaluate the effectiveness of the Walama List. The time-frame for this trial will be determined by the rate of accrual of eligible and consenting participants.

## MARRICKVILLE LEGAL AID/MARRICKVILLE LEGAL CENTRE

### Transcript page 35-36

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

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

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

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

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

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

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

**MONIQUE HITTER:** That is right.

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

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

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

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

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

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

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

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

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

**MONIQUE HITTER:** The audit was commissioned in order to review the accounts of Marrickville Legal Centre after concerns were raised about the way in which the

funding was governed by them through their accounts. That audit was in relation to concerns about their books, essentially, and the findings resulted in the discontinuation of the program in terms of its being allocated across all four legal centres.

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

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

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

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

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

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

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

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

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

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

**Mr DAVID SHOEBRIDGE:** Were you not briefed on that?

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

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

**Mr MARK SPEAKMAN:** I will do my best.

## **ANSWER**

I am advised:

Marrickville Legal Centre (MLC) did not have funding in the order of \$340,000 withdrawn.

The total annual funding for the Migrant Employment Legal Services (MELS) was \$533,563 per annum for a three-year period, from 1 July 2019 to 30 June 2022. When funding to MELS ceased in 2021-22, the annual funding was split between the three other participating Community Legal Centres (CLCs)—Inner City Legal Centre, Kingsford Legal Centre, and Redfern Legal Centre—to provide alternative employment law services for migrant and vulnerable communities. The funding that would have been provided to MLC, had MELS continued, in 2021-22 is \$133,390.

There was no unspent MELS project grant funding from MLC from 2019-20 (the first year of the project grant). MLC returned \$85,054 of excess surplus generalist funding from 2019-20, unrelated to the MELS project. Excess funding was returned in accordance with the funding agreement, as MLC had not sufficiently explained how this would be used in addition to its other \$125,959 of unspent funding from 2019-20.

KPMG marked its report private and confidential, with instructions that 'it should not be shown, copied, provided, disseminated, given to or relied upon by any person or entity without the express consent which may be held in the absolute discretion of KPMG'. However, KPMG's consent has now been obtained to release the report to the Attorney General and the NSW Parliament, with redactions to protect individual MLC staff members. Legal Aid NSW also sought the views of MLC before releasing this report. MLC requested that the report be released with further substantial redactions. Legal Aid NSW did not agree, and has followed the advice and consent given by KPMG to only redact the names of MLC staff.

The KPMG report made findings in relation to: verification of financial information/reports provided by MLC to Legal Aid NSW being inconsistent with MLC's financial records; MLC not having disclosed unspent project funds; and unauthorised expenditure that had not been approved by Legal Aid NSW or the project's Steering Committee. Legal Aid NSW and MLC have since taken action to address those findings.

To correct a comment made during the Budget Estimates hearing, it is not accurate to say that funding was 'discontinued' as a result of the KPMG review. The decision not to provide further funding to MLC, but to fund an alternative migrant employment

law project proposal provided by other CLCs, was made on 29 July 2021, independent of the KPMG review.

## OPCAT

### Transcript page 36-37

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

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

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

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

**Mr DAVID SHOEBRIDGE:** Have you sought a review, or any kind of an assessment, about whether or not, if not total, a very substantial implementation of OPCAT could be done by strengthening the statutory independence of the Inspector of Custodial Services and strengthening the independence of the inspector's funding without significant additional cost?

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

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

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

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

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

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

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

## **ANSWER**

I am advised:

The Commonwealth Government has offered limited one-off funding over two years to establish a National Preventive Mechanism, but has not committed to ongoing funding of the Mechanism.

The functions of, and funding for, the Inspector of Custodial Services is a matter for the Minister for Corrections. Discussions between the Commonwealth and jurisdictions about operational issues relating to OPCAT, including any formal arrangements under an inter-governmental agreement, are ongoing.

No communications have been received about rescheduling the visit of the UN Sub-committee on the Prevention of Torture to Australia.

## VICTIMS SERVICES ANNUAL DATA PROFILES

### Transcript page 38

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

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

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

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

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

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

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

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

### ANSWER

I am advised:

Consistent with s 13(5) of the *Victims Rights and Support Act 2013* (NSW), the work of the Commissioner of Victims Rights is included in the annual report of the Department of Communities and Justice. The Department will consider further the appropriate reporting on the work of the Commissioner of Victims Rights.

## **ELECTORAL COMMISSION**

### **Transcript page 40**

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

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

### **ANSWER**

I am advised:

The NSW Electoral Commission has broad investigatory powers under Part 9 of the Electoral Funding Act 2018 (EF Act), including to require the production of documents. The Electoral Commission may exercise its investigatory and other functions under the EF Act for the purpose of enforcing compliance with the Local Government Act 1993 and regulations under that Act in connection with elections.

## **ELECTORAL COMMISSION**

### **Transcript page 40**

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

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

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

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

**MICHAEL TIDBALL:** Yes, Mr Searle.

### **ANSWER**

I am advised:

The NSW Electoral Commission is responsible for investigating and enforcing offences relating to NSW elections, including local government elections.

Any questions in relation to specific investigations should be directed to the NSW Electoral Commission.

## COURT BACKLOG

### Transcript page 40

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

**MICHAEL TIDBALL:** Yes.

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

**MICHAEL TIDBALL:** Very happy to take that question because the matter of the continued operation of the courts through the various exigencies with COVID has been a challenge. We have worked very closely with the various heads of jurisdiction, but obviously that includes the chief magistrate. What I might do, Mr Searle, is deal with high level and then drill down. Then, if your question goes to the specificity of the response to COVID and the manner in which the court has dealt with that, we can also respond to any questions on that.

**The Hon. ADAM SEARLE:** Yes.

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

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

**MICHAEL TIDBALL:** Right.

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

## ANSWER

I am advised:

The Local Criminal Court COVID-19 pending matters is estimated at approximately 11,100 sentence matters and just under 8,000 defended hearings as of February 2022.

## **DELAYED REMAND OF DEFENDANTS DUE TO BACKLOG IN CRIMINAL TRAILS**

### **Transcript page 43**

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

**PAUL O'REILLY:** Not with me.

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

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

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

**MICHAEL TIDBALL:** Yes.

### **ANSWER**

I am advised:

The remand population is as follows:

- As of December 2021, there were 4,446 adults held on remand awaiting the finalisation of their court matter.
- The current remand population is 193 persons lower than the pre-COVID level of 4,639 as of December 2019.

The median days from charge to finalisation for defendants refused bail at finalisation are as follows:

- For matters finalised in the Local Court via defended hearing, time to finalisation was 270 days for calendar year 2021. This compares with 243 days for calendar year 2019, an increase of 27 days.
- For matters finalised in the District Court via trial, time to finalisation was 742 days for calendar year 2021. This compares with 693 days for calendar year 2019, an increase of 49 days.
- For matters finalised in the Supreme Court via trial, time to finalisation was 952 days for calendar year 2021. This compares with 910 days for calendar year 2019, an increase of 42 days.

## RENTING ADDITIONAL SPACE

### Transcript page 43-44

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

**PAUL O'REILLY:** We did rent the additional space to support the resumption of jury trials in October because we needed space that was adequate for running rapid antigen screening in a way that had enough physical space so people could report to the court, go to the room that had been allocated for RAT screening, and then, once they came through that, they would then go to the empanelling process for juries. In some locations, the courthouse has space for that. In others it really does not. A good example is the Downing Centre where there was a hall hired across the road that was used for that. I cannot remember the exact number but a significant number of venues were hired and remain with us at the moment so we can keep those trials moving.

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

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

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

**PAUL O'REILLY:** Mainly in the CBD.

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

**PAUL O'REILLY:** Yes.

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

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

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

**PAUL O'REILLY:** No, since October.

**The Hon. ADAM SEARLE:** From October, until—

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

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

**PAUL O'REILLY:** Yes.

## ANSWER

I am advised:

17 external venues across 16 locations in NSW were used for the purpose of Rapid Antigen Screening for Trial Participants. Rapid Antigen Screening venues were located at:

- Albury
- Armidale

- Bega
- Broken Hill
- Campbelltown
- Coffs Harbour
- Dubbo
- Grafton
- Orange
- Parkes
- Parramatta
- Port Macquarie
- Sydney CBD (2 venues)
- Tamworth
- Taree
- Wollongong.

Use of the external venues has now ceased.

14 external venues have been used for the purpose of Jury Operations, 6 of which are still currently in use. Off-site venues for jury operations were located at:

- Albury,
- Armidale ( in use as 28 March 2022),
- Bega (in use as 28 March 2022),
- Broken Hill,
- Campbelltown (in use as 28 March 2022),
- Dubbo (in use as 28 March 2022),
- Grafton,
- Griffith,
- Lismore,
- Orange,
- Port Macquarie (in use as 28 March 2022),
- Tamworth (in use as 28 March 2022),
- Taree, and
- Wollongong.

## CHILDREN'S COURT DATA

### Transcript page 45

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

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

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

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

PAUL KNIGHT: It would be.

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

**PAUL O'REILLY:** Certainly.

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

**PAUL O'REILLY:** We will.

## ANSWER

I am advised:

A data table is provided in Attachment - Children's Court finalisation by offence type and Aboriginality.

## VICTIMS SERVICES REVIEWS

### Transcript page 46

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

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

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

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

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

**PAUL O'REILLY:** Yes, I can.

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

**PAUL O'REILLY:** On notice, yes.

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

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

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

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

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

**PAUL O'REILLY:** I understand.

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

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

**Mr DAVID SHOEBRIDGE:** Just so there is no ambiguity about where these concerns come from, as a result of changes that have been made in the last few

years to Victims Services, there is now a far greater onus on victims of crime to present their own evidence, to do it in a 12-month time frame, and the sector that have communicated with me on multiple occasions say that this particularly impacts victims of domestic violence and sexual assault crimes, who are often not in a position to present that and they want to be able to see what has happened to those categories of offences and see if they are getting fair access to Victims Services. So I just want to be clear it is one of the primary concerns that we have in this space. Have those concerns ever been raised with you, Mr O'Reilly, about how particular categories of offenders have particular difficulty navigating the Victims Services system?

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

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

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

## **ANSWER**

I am advised:

The Department of Communities and Justice has outlined its compliance with obligations under *the Government Information (Public Access) Act 2009* (the Act) in its 2020-21 Annual Report.

The Information and Privacy Commission NSW monitors the compliance of NSW public sector agencies with the Act. The Commission periodically publishes compliance reports evaluating agencies' compliance with the Act.

From 1 July 2021 to 28 February 2022:

1,314 applications for internal reviews were lodged and 1,293 were determined.

65 applications for external reviews were lodged and 39 were determined.

No appeals were made to the Supreme Court and Court of Appeal between 1 July 2021 and 28 February 2022.

## **CODE OF CONDUCT DISCLOSURES TO DPC**

### **Transcript page 48-49**

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

**KATHRYN BOYD:** We have records of who within the DPC cluster has made those declarations and we also have records of the secretaries that have. But I should stress that these obligations rest with the individual. DPC is not an enforcement body

or an investigative body. We provide resources and guidance to the sector on these matters, as does the Public Service Commission, but, no, we do not have a register per se.

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

**KATHRYN BOYD:** I am not aware of that.

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

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

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

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

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

**KATHRYN BOYD:** Yes, of course.

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

**KATHRYN BOYD:** Yes.

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

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

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

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

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

**KATHRYN BOYD:** Yes.

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

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

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

**KATHRYN BOYD:** Yes, happy to do that.

## ANSWER

The Department of Premier and Cabinet does not hold a record of a private interest declaration from the Police Commissioner in 2015, 2016, and 2017.

The [Public Service Commissioner Direction No 1 of 2015](#) (the Direction) requires heads of government sector agencies listed in the Schedule to the Direction, including the Commissioner of Police, to implement the [Code of Ethics and Conduct for NSW Government Sector Employees](#) (the Code) and to require employees to comply with the Code. Among other things, the Code requires that senior executives provide a written private interest declaration at least annually.

The Code applies to government sector employees, not statutory officeholders. This is acknowledged in section 1.1 of the Code, and reflects the fact that the Public Service Commissioner may only give a direction to the head of a public service agency *in relation to the employees of that agency* (section 13, *Government Sector Employment Act 2013*).

The Commissioner of Police is a statutory office holder appointed under the *Police Act 1990* (NSW). This means that the Police Commissioner is not required to provide a private interest declaration, but may do so voluntarily.

Every year, the Department of Premier and Cabinet writes to those senior executives in the cluster who are required under the Code to provide a private interest declaration, as well as NSW Government Department Secretaries who must make declarations to the Secretary of DPC, to remind them of their obligation to do so. At the same time, DPC writes to statutory officeholders in the DPC cluster who are not required to provide a declaration inviting them to do so on a voluntary basis.

The [Public Service Commissioner Direction No 1 of 2015](#) (the Direction) is made by the Public Service Commissioner. DPC has engaged with the Public Service Commission in 2021 and 2022 in relation to the application of the Direction and the Code to the NSW government sector. DPC wrote to the Public Service Commissioner on 13 July 2021 and officers of DPC had discussions on this matter with the PSC in February 2022. DPC will continue to engage with the Public Service Commission in this regard.

## **CROWN SOLICITOR'S OFFICE**

### **Transcript page 49**

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

**MICHAEL TIDBALL:** Certainly.

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

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

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

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

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

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

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

**MICHAEL TIDBALL:** Actually, the Crown Solicitor can respond.

### **ANSWER**

I am advised:

The response to this question was given in session - see page 49-51 of the Portfolio Committee No. 5 - Regional NSW And Stronger Communities 16 March 2022  
Uncorrected Transcript.

## **CROWN SOLICITOR'S OFFICE**

### **Transcript page 50**

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

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

**The Hon. SHAOQUETT MOSELMANE:** No urgency. I am happy for you to take that on notice.

### **ANSWER**

I am advised:

As advised in session, the Crown Solicitor's Office currently employs two First Nations people. Please see page 50 of the Portfolio Committee No. 5 - Regional NSW and Stronger Communities 16 March 2022 Uncorrected Transcript.

## **MENTAL HEALTH**

### **Transcript page 50-51**

**The Hon. SHAOQUETT MOSELMANE:** The next set of questions are to do with mental health. In 2020-21, CSO engaged a new EAP, employee assistance program provider, Benestar. What were the reasons behind this?

**KAREN SMITH:** I think we reviewed our existing program and re-tendered. The kind of work that we do means that it is very important that we have a strong and effective program that our staff can access.

**The Hon. SHAOQUETT MOSELMANE:** What were the total number of EAP service requests from CSO employees?

**KAREN SMITH:** I would have to take that on notice, but over what period?

**The Hon. SHAOQUETT MOSELMANE:** For the last year.

**KAREN SMITH:** The last financial year?

**The Hon. SHAOQUETT MOSELMANE:** My question is not specific, but for the last financial year.

**The Hon. ADAM SEARLE:** Maybe 2021 and year-to-date 2021-22.

**KAREN SMITH:** And that is the number of EAP requests?

**The Hon. SHAOQUETT MOSELMANE:** Yes, EAP service requests.

**KAREN SMITH:** I do not know that I will have that figure to hand, but I can take that on notice.

**The Hon. ADAM SEARLE:** On notice is fine.

**The Hon. SHAOQUETT MOSELMANE:** If you can, come back on notice with whether that is an increase on the previous year. What eyesight does CSO have over changes in employee welfare?

**KAREN SMITH:** Yes. Sorry, what was that question?

**The Hon. SHAOQUETT MOSELMANE:** What eyesight does CSO have over changes in employee welfare? I guess, oversight.

## **ANSWER**

I am advised:

Employees of the Crown Solicitor's Office made the following employee assistance program engagements:

- 2020/21- 31 engagements (64 hours)
- 2021/22 - YTD : 22 engagements (72 hours)

## DCJ AND PMES

### Transcript page 52

**The Hon. ADAM SEARLE:** Obviously you are very new, so there is no criticism, but I would also like to understand what DCJ is doing more broadly. Particularly during the pandemic, you have had a situation where people are not so much working from home but also living at work. There has been an intensification of work, and my sense is that across the public sector there has been a very significant intensification of work—KPIs, throughput. This is a generalisation, of course, but there has been a massive productivity spike, at least initially in that first lockdown. I would like to see whether that is consistent with DCJ's experience. Also, what are DCJ and the other agencies associated with it doing to monitor staff welfare, to guard against burnout and that sort of thing? You will have the People Matter survey results.

**MICHAEL TIDBALL:** Yes.

**The Hon. ADAM SEARLE:** Those are the sort of things that we would like to start to develop a line of sight on as we hopefully move—I was going to say "beyond COVID" but I am not holding my breath—at least past these initial two rounds of COVID.

**MICHAEL TIDBALL:** Yes. I think that part of the question of a healthy workplace and wellbeing does turn on the question of a diverse workforce that is being well supported. One of the things that has genuinely impressed me coming into the organisation, particularly given the role that it has in serving communities across the State and particularly those with particular disadvantage, is the work that has been done to strengthen inclusion and the Inclusion Strategy 2021-2025. Without going into it now, that is a comprehensive document. In terms of targets and where that is at, I can speak to that as required or take it on notice. In terms of the care for our staff and their mental health and acknowledging the work of DCJ staff working with disadvantaged people—who are, of course, themselves strained during the COVID period and with impacts of the pandemic—there will be a portrayal of that. The impact of that will become clear in further PMES data as we move forward, and that is something which I could report on.

Having said that, I think the data indicates that there are some positive features in there. Something in which I have taken an interest as I have met, for example, with child protection teams or the central Sydney team is the place of check-ins and heightened risk management. All of those sorts of things were factored in. In terms of the formality of that, clearly there was a degree of catch-up because some of this did develop under a very unique set of circumstances. But I would be very happy to take questions at a future hearing as I learn more and as the data becomes more abundant. Or if there are specific questions on data available to date, I am happy to those on notice.

## **ANSWER**

I am advised:

The Department of Communities and Justice Inclusion Strategy 2021-2025 is available at: <https://www.dcj.nsw.gov.au/resources/policies.html>

## **ABORIGINAL AND TORRES STRAIT ISLANDER EMPLOYMENT**

### **Transcript page 52**

**The Hon. ADAM SEARLE:** Please tell me about the disability experience and also your First Nations experience. Has it gone up or down, like the CSO?

**MICHAEL TIDBALL:** If I can firstly deal with Aboriginal and Torres Strait Islander employment, I am pleased to be able to advise the Committee that DCJ has made significant progress in improving the overall representation of Aboriginal people. In 2021 the estimated representation of Aboriginal people was 4.7 per cent, which is higher than the 3.7 per cent sector average in New South Wales—public sector benchmark of 3.3 per cent.

**The Hon. ADAM SEARLE:** Was that up on the previous year or down? I am happy for you to take that on notice.

**MICHAEL TIDBALL:** I would need to take that on notice, Mr Searle.

**The Hon. ADAM SEARLE:** That is fine, if you could.

## **ANSWER**

I am advised:

In 2020, the representation of Aboriginal and/or Torres Strait Islander people in our workforce was 4.5%. In 2021, this increased to 4.7%.

## **AVERAGE NUMBER OF DAYS ON REMAND**

### **Transcript page 53**

**PAUL McKNIGHT:** In the 12 months to June 2021, the average number of days on remand for a 10-year-old was none, obviously, because there were none on remand. For an 11-year-old, it was 3.8 days; for a 12-year-old, it was 3.1 days; and for a 13-year-old, it was 7.1 days.

**Mr DAVID SHOEBRIDGE:** You do not have median times? You say you do not have maximum times there. Is that right?

**PAUL McKNIGHT:** I have average times.

**Mr DAVID SHOEBRIDGE:** Could you provide the maximum times as well on notice?

**PAUL McKNIGHT:** I would have to check whether that data was available or not. If it is available, I can provide it on notice.

## **ANSWER**

I am advised:

The longest period that a child aged 13 or under was held in detention was 107.6 days, with the median time being 17.6 hours. The longest detention period for an 11-year-old was 22.5 days, with the median time being 18.1 hours. The longest detention period for a 12-year-old was 44.5 days, with the median time being 16 hours. The longest detention period for a 13-year-old was 107.6 days, with the median time being 18.7 hours. These figures are taken from a live data base and figures are subject to change.

## **CHAIR OF THE LEGAL AID BOARD CORRESPONDENCE**

### **Transcript page 53-54**

**Mr DAVID SHOEBRIDGE:** Mr Tidball, I do not think it is appropriate to go into detail about the substance of these matters. It is fair to say matters of substantial concern were raised in the correspondence to the chair of the board. You will see from the most recent correspondence, which is the more darkly coloured copy, the response from the chair of the board. Do you see that?

**MICHAEL TIDBALL:** Yes, I do.

**Mr DAVID SHOEBRIDGE:** It shows that the matter did not go to the chair of the board and, indeed, in making that determination, the chair relied on a report from you, Ms Hitter. Is that right?

**MONIQUE HITTER:** I provided advice to the chair. That is correct.

**Mr DAVID SHOEBRIDGE:** Mr Tidball, one of the reasons this matter was raised with my office very recently was because there was a very real wish on the part of the person raising these concerns to have somebody outside of Legal Aid to review these matters. There was very real concern expressed back to me that, again, the

decision was made entirely on information that has come from the agency where the concerns lie. Would you be in a position to seek further advice in relation to this and then, on notice, indicate what, if anything—and I am not asking for a course of action now—may be done in relation to this?

**MICHAEL TIDBALL:** Clearly, I am the secretary of the department. Can I express it this way because I am being very mindful of where my role starts and finishes? As the secretary of the department with a cluster responsibility I would certainly be happy to confer with the Attorney, who I believe is the appropriate person, and to seek to address that question of independence, which I believe is at the heart of what you are asking.

**Mr DAVID SHOEBRIDGE:** I am not expressing a view one way or another about Ms Hitter's involvement, the report or the conduct of the board.

**MICHAEL TIDBALL:** Of course.

**Mr DAVID SHOEBRIDGE:** But the request here is to have somebody outside of Legal Aid at least cast their eyes over these matters. Whether or not that is achievable and whether or not there is a process that can be done, you will consult with the Attorney and respond on notice?

**MICHAEL TIDBALL:** I hear you, and I will take that on notice. I am happy to, in appropriate terms, report back in due course.

## **ANSWER**

I am advised:

The most appropriate avenue for external review of this matter is the NSW Public Service Commission. Section 83(2) of the *Government Sector Employment Act 2013* enables the Public Service Commissioner to 'conduct an inquiry (or appoint someone else to conduct an enquiry) into any matter relating to the administration or management of a NSW government sector agency...'

## **OPEN JUSTICE PROJECT**

### **Transcript page 54**

**The Hon. ADAM SEARLE:** Mr Tidball, on the last occasion, on 1 November, when the Attorney and I were discussing the issue of the attempted police suppression order against the Friendlyjordies program, we were discussing the open justice project being conducted by the Law Reform Commission. There was an issues discussion paper put out, and there are a number of very good submissions on the Law Reform Commission website. The Attorney, I think, was hopeful at that stage that there would be a final report by Christmas. Again, to be fair to the Attorney, he did not specify which Christmas. I note that on the website this morning, and in weeks previous, there is still no final LRC report on open justice. Do you have any indication from the LRC when that might be forthcoming?

**MICHAEL TIDBALL:** With your permission, I would like to refer this to Mr McKnight.

**The Hon. ADAM SEARLE:** Please.

**PAUL McKNIGHT:** You will appreciate the Law Reform Commission is an independent body. It undertakes its deliberations free from whip cracking from the department, and it is reasonably important. At this stage we do not have a final date expected for that report, but I do know that they are working on finalising it as quickly as they can.

**The Hon. ADAM SEARLE:** Is it possible for you to take on notice that query?

Obviously they are under no obligation to tell us. You cannot tell them when it is. But if you can ask, that would be very interesting and useful.

**PAUL McKNIGHT:** I am more than happy to get an indication for the Chair

## **ANSWER**

I am advised:

The NSW Law Reform Commission is working to finalise the Open Justice review in the coming months.

## CATHOLIC METROPOLITAN CEMETERIES TRUST

### Transcript page 54-55

**The Hon. ADAM SEARLE:** My next question is a bit odd. I was not expecting this. In another budget estimates hearing—Portfolio Committee No. 4 on Lands and Water on 9 March in relation to a question raised by my friend Mr Shoebridge—the issue came up about the Attorney General extending the interim arrangements in relation to the Catholic Metropolitan Cemeteries Trust. None of the departmental officials in PC 4 were able to assist Mr Shoebridge because their view was that this was a matter for the Attorney General. Mr Shoebridge asked whether the Attorney General had sought advice and, if so, what advice was given to the Attorney before extending the interim arrangements in relation to the Catholic Metropolitan Cemeteries Trust. Unless the Crown Solicitor was involved in that process, are you able to cast any light on this matter, either here today or on notice?

**MICHAEL TIDBALL:** Possibly with assistance, yes.

**The Hon. ADAM SEARLE:** That would be really good.

**Mr DAVID SHOEBRIDGE:** Thank you, Mr Searle—just pointing out my inadequacies.

**The Hon. ADAM SEARLE:** No. It is a very interesting issue.

**PAUL McKNIGHT:** I think it was probably a matter that you perhaps should have put to the Attorney this morning because—

**The Hon. ADAM SEARLE:** There are a number of matters that I should have put to the Attorney this morning. But time was against us; I had to prioritise.

**PAUL McKNIGHT:** It is not a departmental matter, as such.

**The Hon. ADAM SEARLE:** Just on that, Mr McKnight, the Attorney has a number of legal powers.

**PAUL McKNIGHT:** Sorry, I misspoke.

**The Hon. ADAM SEARLE:** But presumably he acts on advice from someone.

**PAUL McKNIGHT:** Yes, in his capacity as the Protector of Charities and the like, he seeks advice both from the department and from Crown Solicitor's Office.

**The Hon. ADAM SEARLE:** My imperfect recollection is that when the Attorney exercises these legal powers, although the department might put—do not take this the wrong way—a policy lens over the top of it, the primary advice tended to come from Crown Solicitor's Office. Is that correct, Ms Smith? Do you have any recollection about this?

**KAREN SMITH:** I do know that we provide advice to the Attorney via the department on charitable trust matters.

**The Hon. ADAM SEARLE:** But what about this particular matter—extending the interim arrangements with the Catholic Metropolitan Cemeteries Trust?

**KAREN SMITH:** I do know of a matter involving cemeteries that is before the court. I am not sure if that is the matter you are talking about.

**The Hon. ADAM SEARLE:** No, it is not. These are the interim arrangements made under superseded legislation. I think temporary arrangements were extended to 2024.

**Mr DAVID SHOEBRIDGE:** Correct. This was a regulation-making power by the Attorney to maintain now-defunct regulations since Crown land changes to continue that arrangement in place so as the Catholic Metropolitan Cemeteries Trust continues to operate as it had before those legislative changes.

**The Hon. ADAM SEARLE:** We are interested in what motivated that. You would have thought the policy advice might have come from Crown Lands. They said it did not; they said it was the Attorney, which is fine. But the Attorney, presumably, acted with some input from you guys.

**PAUL McKNIGHT:** That information, I do not know. Perhaps it would be best if we took this question on notice and got the answer in writing from the AG.

**The Hon. ADAM SEARLE:** You certainly can. To assist, I have the relevant extract from the transcript of the PC 4 proceedings, which I am happy to hand up via the secretariat.

**Mr DAVID SHOEBRIDGE:** Has it been taken on notice on behalf of the department broadly, which includes the Crown Solicitor's Office?

**PAUL McKNIGHT:** On this occasion I think the answer will come back to you through the AG.

## **ANSWER**

I am advised:

This is a matter for the Minister for Lands and Water.

## **PROCEEDINGS BETWEEN THE ROOKWOOD GENERAL CEMETERIES RESERVE LAND MANGER AND THE ATTORNEY GENERAL**

### **Transcript page 55-56**

**KAREN SMITH:** There are proceedings between the Rookwood General Cemeteries Reserve Land Manager and the Attorney General.

**Mr DAVID SHOEBRIDGE:** What is the nature of those proceedings?

**KAREN SMITH:** The proceedings are brought by the Rookwood General Cemeteries Reserve Land Manager, so the nature of those proceedings would be, I think, best asked of them. The Attorney General's interest in the proceedings is as the Protector of Charities.

**Mr DAVID SHOEBRIDGE:** The Attorney General must know the nature of the proceedings brought against him. I assume the department would know the nature of the proceedings brought against the Attorney.

**KAREN SMITH:** No, the Attorney General has sought to be joined to the proceedings as the Protector of Charities.

**Mr DAVID SHOEBRIDGE:** So was it declaratory? What is the nature of the proceedings?

**KAREN SMITH:** They are judicial advice proceedings concerning the management of the cemeteries.

**Mr DAVID SHOEBRIDGE:** Is it concerning the use of trust funds? The allocation of trust funds?

**KAREN SMITH:** No, I do not believe so. I think it is the nature of the trust.

**Mr DAVID SHOEBRIDGE:** Does it relate to assets held by the CMCT—the Catholic Metropolitan Cemeteries Trust?

**KAREN SMITH:** I do not think so, no.

**Mr DAVID SHOEBRIDGE:** Is the department in any way aware of any issues in relation to the use of the Catholic Metropolitan Cemeteries Trust funds, Mr McKnight?

**PAUL McKNIGHT:** I need to take that on notice.

**Mr DAVID SHOEBRIDGE:** Ms Smith, where are the Rookwood General Cemetery proceedings brought? In the Supreme Court?

**KAREN SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** In the equity division? Can you provide on notice the details of the proceedings?

**KAREN SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** Including the matter number. If you are able to, can you provide a copy of the filed pleadings, on notice? I am more than happy for you to take that on notice.

**KAREN SMITH:** I will take that on notice.

**The Hon. ADAM SEARLE:** If you are not able to do that, at least tell us what the matter number is.

**Mr DAVID SHOEBRIDGE:** I asked for that separately

## **ANSWER**

I am advised:

In the matter of *Rookwood General Cemeteries Reserve Land Manager (ABN 65 969 157 751) v Attorney General for New South Wales*, Supreme Court of NSW (Equity Division) Case number 2021/00353046, no pleadings have been filed in the proceedings and the matter was commenced by Summons.

## VICTIMS SUPPORT DETERMINATION TIMEFRAMES

### Transcript page 56

**The Hon. ADAM SEARLE:** Just turning back to victim supports, the longest time to determine an application for immediate needs in the financial year 2020-21 was 2,436 days, I think. Are you able to, on notice, advise as to what the delay was and what immediate needs that individual was seeking?

**PAUL O'REILLY:** Yes, we could take that on notice. I will do my best to answer that. But I would add, separate to that if it is okay, there has been a history of delays in responding to applications in Victims Services. Reforms implemented by the commissioner over the past couple of years have really improved assessment times and service provision. But one of the issues there is that if a legacy or an old matter is resolved, the day count takes into account all of those days and the clock stops on the day it was resolved. So it is common for some applications to have very long time frames for that reason.

**The Hon. ADAM SEARLE:** Yes, but 2,000 days is a very long time.

**PAUL O'REILLY:** Of course it is, yes. So we will do our best to find an explanation. But for immediate needs, the current average time is 11 days.

### ANSWER

I am advised:

The application as lodged did not contain evidence to support the medical expenses claimed. Following various internal and external review processes, the claim was finally determined and dismissed.

## SECTION 9 OF THE COURT ACT

### Transcript page 57

**Mr DAVID SHOEBRIDGE:** The woman in question was literally arrested at her home and police attended at her home within 36 hours of allegedly posting the image, which is allegedly a breach of section 9 of that Act. Is there a protocol between the courts and the police for the passage of such information, Mr O'Reilly?

**PAUL O'REILLY:** Only in that when any of us are aware of a crime we have a duty to report the crime. I need to know a lot more about this incident to really know if it is relevant, because if the police attended at the person's home and arrested the person at their home, I do not know who reported that person to the police. It may not have been the court. It could have been anybody, from the information I have so far.

**Mr DAVID SHOEBRIDGE:** The question I am asking you is whether or not a complaint went through to the court which was then communicated to the police.

**PAUL O'REILLY:** I do not know.

**Mr DAVID SHOEBRIDGE:** You do not know?

**PAUL O'REILLY:** No. Again, I have not been briefed on this matter at all.

**Mr DAVID SHOEBRIDGE:** I cannot tell you the frustration of the individual involved, who had been seeking for years to have the substantive matter dealt with for which she was attending court, but found indeed the police acted with such alacrity for an alleged breach of section 9 of the Court Act. But you will take it on notice about whether or not there was any complaint received by the courts or the department and, if so, whether or not that was the avenue through which the matter came to the police attention.

**PAUL O'REILLY:** Yes, happy to.

**Mr DAVID SHOEBRIDGE:** Do you know of any other matters where individuals have been prosecuted for the alleged breach of section 9 for the taking of photographs or images in the Downing Centre in the last, say, three years?

**PAUL O'REILLY:** I do not but, again, at the risk of repeating myself, I am new to this area so I am not aware of any cases. I would have to check whether there are any cases in the last three years.

**Mr DAVID SHOEBRIDGE:** Could you take that on notice?

**PAUL O'REILLY:** Sure.

## **ANSWER**

I am advised:

Breaches of Section 9 of the *Court Security Act 2005* are prosecuted by the NSW Police Force. Information on social media may be brought to the attention of staff of the Office of the Sheriff of NSW and may be referred to NSW Police for further investigation of a potential breach of section 9 of the *Court Security Act 2005*. Between March 2019 and March 2022, there were 14 incidents in the Downing Centre referred to NSW Police for further investigation under Section 9 of the *Court Security Act 2005*.

## **VICTIMS ADVISORY BOARD**

### **Transcript page 57-58**

**The Hon. ADAM SEARLE:** I have a lot of questions, which I will largely put on notice, but just to round us out for the next little while, can you tell us when the Victims Advisory Board met between 1 July 2021 and present time?

**PAUL O'REILLY:** I can, if you give me one moment. I do not have the days, but it met in July and again in October.

**The Hon. ADAM SEARLE:** So twice.

**PAUL O'REILLY:** Twice since July.

**The Hon. ADAM SEARLE:** Is there any sort of record published of what is discussed at these meetings or what are the issues to be discussed at the meetings?

**PAUL O'REILLY:** These were before my time so I cannot report on them myself, so I will have to take that on notice and come back to you. But they are generally used for consultation on policy and also for the advisory board to provide advice to the department and the Attorney General on issues in the community.

## **ANSWER**

I am advised:

No record is published from the Victims Advisory Board meetings.

## **WOMEN'S LEGAL CENTRES**

### **Transcript page 58**

**The Hon. ADAM SEARLE:** I think Mr Tidball I will come back to you for this one and you can farm it out if it is not with you. How much funding was allocated in New South Wales from the \$129 million worth of Commonwealth funding allocated to women's legal centres to respond to women experiencing family violence?

**MICHAEL TIDBALL:** I think we will have to take that on notice, Mr Searle. I do not have the figure with me at the moment.

**The Hon. ADAM SEARLE:** That is okay. When you are taking that on notice, could you give us the breakdown as to how much was allocated to Legal Aid NSW, the Aboriginal Legal Service and Community Legal Centres NSW, both in dollar terms and as a percentage of the overall amount of money?

**PAUL O'REILLY:** Yes

## **ANSWER**

I am advised:

The Australian Government allocated \$39.326m to NSW for the delivery of dedicated legal assistance services to women over the remaining life of the National Legal Assistance Partnership 2020–2025. This funding has been allocated across the NSW legal assistance sector in the following manner:

- Legal Aid NSW – 61% (\$23.955m)
- Community Legal Centres – 24% (\$9.337m)
- Aboriginal Legal Service NSW / ACT – 15% (\$6.034m).

## Number of finalised court appearances\* in the NSW Children's Court by Most Serious Charge in that finalisation (ANZSOC Division) and Aboriginality of the defendant

Most serious charge in the finalisation	Aboriginality	Jul 2018 - Jun 2019	Jul 2019 - Jun 2020	Jul 2020 - Jun 2021
Homicide and related offences	Aboriginal	0	0	0
	Non-Aboriginal	2	2	3
	Unknown	0	1	1
	<b>Total</b>	<b>2</b>	<b>3</b>	<b>4</b>
	% Aboriginal	0%	0%	0%
Acts intended to cause injury	Aboriginal	582	520	617
	Non-Aboriginal	664	700	826
	Unknown	37	32	45
	<b>Total</b>	<b>1283</b>	<b>1252</b>	<b>1488</b>
	% Aboriginal	45.4%	41.5%	41.5%
Sexual assault and related offences	Aboriginal	39	48	43
	Non-Aboriginal	112	117	117
	Unknown	7	4	5
	<b>Total</b>	<b>158</b>	<b>169</b>	<b>165</b>
	% Aboriginal	24.7%	28.4%	26.1%
Dangerous or negligent acts endangering persons	Aboriginal	17	12	12
	Non-Aboriginal	19	33	25
	Unknown	15	8	12
	<b>Total</b>	<b>51</b>	<b>53</b>	<b>49</b>
	% Aboriginal	33.3%	22.6%	24.5%
Abduction, harassment and other offences against the person	Aboriginal	27	15	8
	Non-Aboriginal	25	23	37
	Unknown	1	4	3
	<b>Total</b>	<b>53</b>	<b>42</b>	<b>48</b>
	% Aboriginal	50.9%	35.7%	16.7%
Robbery, extortion and related offences	Aboriginal	163	166	195
	Non-Aboriginal	252	271	354
	Unknown	0	3	7
	<b>Total</b>	<b>415</b>	<b>440</b>	<b>556</b>
	% Aboriginal	39.3%	37.7%	35.1%
Unlawful entry with intent/burglary, break and enter	Aboriginal	323	243	215
	Non-Aboriginal	118	126	99
	Unknown	5	8	7
	<b>Total</b>	<b>446</b>	<b>377</b>	<b>321</b>
	% Aboriginal	72.4%	64.5%	67.0%
Theft and related offences	Aboriginal	423	324	350
	Non-Aboriginal	304	332	333
	Unknown	16	24	17
	<b>Total</b>	<b>743</b>	<b>680</b>	<b>700</b>
	% Aboriginal	56.9%	47.7%	50.0%
Fraud, deception and related offences	Aboriginal	69	65	65
	Non-Aboriginal	74	62	83
	Unknown	3	0	4
	<b>Total</b>	<b>146</b>	<b>127</b>	<b>152</b>
	% Aboriginal	47.3%	51.2%	42.8%
Illicit drug offences	Aboriginal	76	69	43
	Non-Aboriginal	183	170	168
	Unknown	8	15	11
	<b>Total</b>	<b>267</b>	<b>254</b>	<b>222</b>
	% Aboriginal	28.5%	27.2%	19.4%
Prohibited and regulated weapons and explosives offences	Aboriginal	27	32	26
	Non-Aboriginal	42	58	55
	Unknown	1	3	5
	<b>Total</b>	<b>70</b>	<b>93</b>	<b>86</b>
	% Aboriginal	38.6%	34.4%	30.2%
Property damage and environmental pollution	Aboriginal	177	125	111
	Non-Aboriginal	191	170	129
	Unknown	13	9	12
	<b>Total</b>	<b>381</b>	<b>304</b>	<b>252</b>
	% Aboriginal	46.5%	41.1%	44.1%
Public order offences	Aboriginal	238	215	204
	Non-Aboriginal	194	247	260
	Unknown	11	13	13
	<b>Total</b>	<b>443</b>	<b>475</b>	<b>477</b>
	% Aboriginal	53.7%	45.3%	42.8%
Traffic and vehicle regulatory offences	Aboriginal	22	14	31
	Non-Aboriginal	38	11	27
	Unknown	11	6	13
	<b>Total</b>	<b>71</b>	<b>31</b>	<b>71</b>
	% Aboriginal	31.0%	45.2%	43.7%
Offences against justice procedures, government security and government operations	Aboriginal	779	757	640
	Non-Aboriginal	712	635	628
	Unknown	2	9	7
	<b>Total</b>	<b>1493</b>	<b>1401</b>	<b>1275</b>
	% Aboriginal	52.2%	54.0%	50.2%
Miscellaneous offences	Aboriginal	9	1	7
	Non-Aboriginal	4	5	3
	Unknown	0	1	1
	<b>Total</b>	<b>13</b>	<b>7</b>	<b>11</b>
	% Aboriginal	69.2%	14.3%	63.6%

\*The persons included in the table above are not a count of unique people. Each person appears only once for each finalised court appearance (for either their principal offence or most serious unproven offence) but if a person has more than one finalised court appearance in the reference period they will appear in the table multiple times.

Source: NSW Bureau of Crime Statistics and Research

Reference: ak22-21241

Please retain this reference number for future correspondence

**NOTE 1:** Data sourced from the NSW Bureau of Crime Statistics and Research must be acknowledged in any document (electronic or otherwise) containing that data. The acknowledgement should take the form of **Source: NSW Bureau of Crime Statistics and Research**

**NOTE 2:** For information about Criminal Courts crime data please see our 'Criminal Courts - Glossary' webpage.