

**Attorney General – Budget Estimates 2022-2023 – Answers to questions on notice**

**Question 1 - Operation Tusk Supplementary Report**

**Transcript page 4 - 6**

The Hon. ADAM SEARLE: So in that case, given the drag of time that it's taken, why haven't you taken the initiative to at least try and draw this process together?

Mr MARK SPEAKMAN: As I said, hindsight is a wonderful thing. Clearly, back in 2019 Government did not anticipate that the matter would not have been resolved by now. I would have to refresh my memory about what discussions I had in 2019 with that then police Minister.

The Hon. ADAM SEARLE: Or even 2020 or 2021.

Mr MARK SPEAKMAN: I'd have to refresh my memory on that.

The Hon. ADAM SEARLE: Could you? And come back to us?

Mr MARK SPEAKMAN: Yes, sure. But primarily the police Minister at the time recommended that the Police Force conduct the review because they had the capacity and the expertise and he thought that there would be a more expeditious and possibly informed outcome with that operational expertise than if the matter went to the Law Reform Commission.

The Hon. ADAM SEARLE: In these discussions that led up to that decision by the Government, were you provided with any time frames by the police Minister about when he or his successor thought that this matter would be resolved?

Mr MARK SPEAKMAN: I would have to refresh my memory on that.

The Hon. ADAM SEARLE: If you could, and come back to us on notice, that would be really good. Since the time the Government took that approach of leaving it with the police and the police Minister, have you sought periodic updates from the police Minister or his administration about this matter?

Mr MARK SPEAKMAN: I have had periodic updates, I believe. I'd have to refresh my memory about when and how often and—

The Hon. ADAM SEARLE: That's okay. It's not a gotcha.

Mr MARK SPEAKMAN: —I can't recall to what extent I sought them or received them, but I've had periodic updates.

The Hon. ADAM SEARLE: On notice, could you give us a narrative about what you sought—

Mr MARK SPEAKMAN: Sure.

The Hon. ADAM SEARLE: —what you received and when the most recent one was?

Mr MARK SPEAKMAN: Sure.

The Hon. ADAM SEARLE: That'll be really good. So I will take it up with the police Minister about whether or not we can expect legislation this year, but, if we don't, what conclusions do you think the wider public should draw about this failure of Government over a three-year period to fix this problem?

**Answer**

I am advised:

Throughout my time serving as Attorney General, I have communicated frequently with Ministers for Police, and my office communicates frequently with the Office of

the Ministers for Police, on a wide range of matters, as with all Cluster Ministers. It is not possible to provide an exhaustive list itemising all communications on this matter.

The then Minister for Police wrote to me in March 2020 indicating that the Minister anticipated the review led by NSW Police would be completed and a bill introduced into Parliament in the 2020 Spring Session of Parliament. I understand that due to the COVID-19 pandemic this deadline was not achievable.

My office and I discussed this matter with the current Minister for Police and his office following his appointment to the portfolio.

My Office has sought and received information on the progress of this work by NSW Police from the Office of the Minister for Police on more than four occasions throughout 2022.

In addition, the Department of Communities and Justice (DCJ) is represented on an interagency working group established and led by NSW Police. DCJ has provided periodic updates on the working group to me and my Office since 2020.

## **Question 2 - Coercive Control**

### **Transcript page 11**

The Hon. SHAOQUETT MOSELMANE: The reason I raise that concern is clearly there have been reports in the papers. One in The Sydney Morning Herald is entitled "Lack of police training could stymie success of coercive control laws". Clearly, they're raising this issue now and not raising it in six months' time, once the law is proclaimed.

Mr MARK SPEAKMAN: That's right. I completely accept that. That's why the legislation won't start on assent. It will start on a date to be proclaimed, which my current expectation would be at least 12 months. As I said, to give people some comfort that it's definitely going happen and not be archived somewhere, I'm happy to put a finish date on that and, if people want to make sure it's not too rushed because of the need for, among other things, police training, a not-before marking.

The Hon. SHAOQUETT MOSELMANE: Do we have any understanding as to how many officers and staff will be provided training?

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

### **Answer**

I am advised:

Questions on the scale of training for NSW Police are best addressed to the Minister for Police.

I refer to the NSW Government's response to the Joint Select Committee on Coercive Control which stated that:

Prevention of coercive control must remain a priority.

A whole-of-government approach to reduce the number of victims and perpetrators of abuse is critical, and is already occurring, including through the work of the NSW Government's Domestic and Family Violence Delivery Board.

We recognise the importance of comprehensive and appropriate training on coercive control across our systems and community.

A public awareness campaign about coercive control will be developed and delivered in consultation with stakeholders, including with culturally and linguistically diverse and First Nations communities and organisations.

The Department of Education will review school programs about respectful relationships to ensure these include content about coercive and controlling behaviour.

Work is already underway to review and improve the Domestic Violence Safety Assessment Tool, and to deliver the NSW Police Force and Women's Domestic Violence Court Advocacy Programs co-location pilot program at five trial sites followed by formal evaluation. We will give additional consideration beyond the pilot to further co-location.

These commitments underscore the NSW Government's determination to tackle the scourge that is domestic abuse in our community.

The NSW Government supports the Committee's recommendation 19, which stated that:

That the NSW Government implements tailored training on identifying, recording and responding to coercive control for police officers, judicial officers and prosecutors, and workers in the domestic abuse, health care, housing, education and child protection sectors. The training should be repeated regularly.

### **Question 3 - Coercive Control consultation**

#### **Transcript page 13**

The Hon. SHAOQUETT MOSELMANE: It certainly has impacts in many ways in various communities. In terms of the multicultural communities, I don't know whether they have had significant understanding or interaction with this or whether that consultation process included CALD communities. I haven't seen it, for example, in the Arabic media that there is this particular legislation on coercive control coming through. You indicated, and I would say the same, that I wouldn't have known what it was initially until I read up on this. Communities out there would not know what coercive control is. In terms of the consultation process, has it reached out to those CALD communities?

Mr MARK SPEAKMAN: I believe the joint select committee certainly did. I can refer you to the list of stakeholders who provided submissions and gave evidence at the

hearing, but they included CALD stakeholders. I'll let you look at that list. If you want to, I can provide it.

The Hon. SHAOQUETT MOSELMANE: Sure.

### **Answer**

The Joint Select Committee on Coercive Control received submissions including from:

- Ethnic Communities' Council of NSW - the State-wide peak body representing culturally and linguistically diverse (CALD) communities
- Muslim Women Australia - a specialist provider of domestic and family violence (DFV) services for CALD and faith-based communities
- Indian (Sub-Cont) Crisis & Support Agency – a non-government organisation for the South Asian Community in Australia, which assists people of Indian Subcontinent origin who are in crisis through advocacy and case management services
- Multicultural Disability Advocacy Association of NSW Inc. - a state-wide advocacy service for all people with disability, their families, and carers, with a specific focus on people from CALD and non-English speaking backgrounds
- Settlement Services International - a community organisation and social business that supports newcomers and other Australians to achieve their full potential. It is a recognised voice for DFV and multicultural communities in NSW and national advocacy.
- Immigration Advice and Rights Centre - a community legal centre specialising in the provision of advice, assistance, education, training and law and policy reform in Australian immigration and citizenship law.

The Joint Select Committee also received evidence including from the following witnesses:

- Ethnic Communities' Council of NSW - Mr Peter Doukas OAM, Chair.
- Muslim Women Australia - Ms Nemat Kharboui, Manager, Strategic Support.
- Multicultural Disability Advocacy Association of NSW - Ms Sera Yilmaz Systemic Advocate and Policy Officer, Disability Royal Commission Advocate.
- Settlement Services International - Dr Astrid Perry, Manager Strategy Policy.
- Immigration Advice and Rights Centre - Ms Jessica Shulman, Senior Solicitor.
- Indian (Sub-Cont) Crisis & Support Agency - Ms Kittu Randhawa, Project Leader.

The NSW Government's consultation on our exposure draft bill to criminalise coercive control has continued this important engagement with CALD community members and representatives. I refer to the evidence provided by the Deputy

Secretary to Estimates, at transcript pages 44-45, about the targeted consultation undertaken on the drafting.

#### **Question 4 - Coercive Control**

##### **Transcript page 13**

PAUL McKNIGHT: The department is currently undertaking targeted consultations, as the Attorney General said. So far there have been 10 targeted consultations. Those are either targeted meetings or round tables. A further 10 are planned before 31 August. I can tell you that one of those round tables was targeting the culturally and linguistically diverse community. We have also targeted legal stakeholders, we targeted the domestic and family violence sector. Aboriginal women have had a specific round table. There has been a round table with the LGBTQIA+ sector. Tomorrow there will be round tables targeting groups representing older people in the disability sector. Towards the end of August there will be two regional visits, mostly to target Aboriginal groups in Kempsey and Dubbo. I think there was a legal stakeholder round table also planned in Dubbo. We are very active, talking to people about this legislation.

The Hon. SHAOQUETT MOSELMANE: And the CALD community that you are targeting, has that meeting happened?

PAUL McKNIGHT: It has. It happened on 10 August.

The Hon. SHAOQUETT MOSELMANE: Was it a broad cross-section of CALD community presence?

PAUL McKNIGHT: I would have to take on notice who was represented at that meeting. My note doesn't cover the detail of who was there.

The Hon. SHAOQUETT MOSELMANE: We will come back to that.

##### **Answer**

I refer to the answer provided by the Deputy Secretary at transcript pages 44-45.

#### **Question 5 - Meeting with Dr Howard in relation to the ice inquiry recommendations**

##### **Transcript page 18**

The Hon. ADAM SEARLE: Mr Attorney, the subject matter of the Special Commission of Inquiry into the Drug 'Ice', you would accept that that is a pretty important inquiry?

Mr MARK SPEAKMAN: Yes.

The Hon. ADAM SEARLE: It went for 14 months, but it has now been 30 months since that report was delivered. I understand that when Dr Howard delivered his report he tried to see the Premier but wasn't able to. He had to deposit the report at

reception at 52 Martin Place. He wasn't able to see the Premier on that occasion. I believe he has reached out to the Premier—the former Premier, at least—on a number of occasions but wasn't able to secure a meeting. Have you met with Dr Howard in relation to the ice inquiry recommendations?

Mr MARK SPEAKMAN: No. I did meet Dr Howard before he provided his report. I have not met him since then. I may have written to him.

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

Mr MARK SPEAKMAN: I'll take that on notice.

### **Answer**

I am advised:

I met with Professor Howard in March 2019 to discuss the terms of reference of the Special Commission of Inquiry into the Drug 'Ice' to the extent these related to the justice system.

To the best of my recollection I have not received any correspondence from, or sent any correspondence to, Professor Howard.

### **Question 6 - Recommendations from the Special Commission of Inquiry into the Drug 'Ice'**

#### **Transcript page 19**

The Hon. ADAM SEARLE: Given that Dr Howard hasn't been able to meet at least with the former Premier—I don't know whether he has tried to meet with the current Premier—he hasn't been able to meet with the health Minister and you haven't sought to meet with him because I intuit you seem to be convinced about what he has to say, how come no-one in the Government wants to speak to him about the report?

Mr MARK SPEAKMAN: You would have to ask individual Ministers that. I can't answer for what they choose or choose not to do.

The Hon. ADAM SEARLE: I am only asking you in a representative capacity, you understand, Mr Attorney?

Mr MARK SPEAKMAN: And I have provided my answer.

The Hon. ADAM SEARLE: How many of the recommendations do fall within your portfolio?

Mr MARK SPEAKMAN: Can I take the precise number on notice?

The Hon. ADAM SEARLE: Sure.

### **Answer**

I am advised:

There are 15 recommendations from the Special Commission of Inquiry into the drug 'Ice' for which the Attorney General can be considered the lead or co-lead minister.

## **Question 7 - Jury Act amendment**

### **Transcript page 24-25**

Ms ABIGAIL BOYD: Good. I'm glad. Can I ask you about something totally different? I want to ask you about deaf jurors. I understand that the NSW Law Reform Commission wrote to the Government asking them to amend the Jury Act to allow deaf people to serve on juries. Why has that recommendation not yet been implemented?

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

Ms ABIGAIL BOYD: Thank you. Do you agree that it's important that we do allow for deaf and hard-of-hearing people to be jurors?

Mr MARK SPEAKMAN: Where possible, but I will have to take on notice that whole area.

Ms ABIGAIL BOYD: Thank you. Are you aware that Article 29 of the United Nations Convention on the Rights of Persons with Disabilities effectively seeks to guarantee that deaf and hard-of-hearing people can serve on juries? And, also, that the UN Committee on the Rights of Persons with Disabilities found that the exclusion of deaf people from jury duty was a failure of the New South Wales Government and a breach of Australia's obligations under the convention? They actually had that in a finding.

Mr MARK SPEAKMAN: I'll take all that on notice if I may.

### **Answer**

I am advised:

The Government's position is to continue to support and promote the inclusion of people with a disability in jury duty where possible. A person's eligibility to serve as a juror is a matter for consideration on a case-by-case basis depending on the particular circumstances of the trial, including the nature of the evidence to be presented.

## **Question 8 - Drink spiking**

### **Transcript page 25**

Ms ABIGAIL BOYD: Thank you. If I could ask you very quickly about drink spiking. Do tell me if this is not really a question for you, but I understand that there's been a marked increase in drink spiking at licensed venues since we came out of lockdown and also that there's been a concerning, really horrifying, number of incidents where young women have been spiked with a needle in certain clubs and pubs, particularly around Newcastle. Are you aware of this and do you know if the Government is taking any action to address it?

Mr MARK SPEAKMAN: It's probably a matter for the police Minister. If you want me to list the various crimes that would be committed, I can take that on notice, but it

would be assault among others. But in terms of an increase in crime reporting, that is operationally I think a matter for the police Minister.

## **Answer**

I am advised:

As advised during the Estimates hearing, questions about the instances and policing of drink spiking are best addressed to the Minister for Police.

There are a number of offences in the *Crimes Act 1900* that may apply to drink spiking, depending on the circumstances of each individual case. For example, these include:

- The section 38A offence of 'Spiking food or drink', which carries a maximum penalty of 100 penalty units and/or 2 year's imprisonment.
- The section 38 offence of 'Using intoxicating substance to commit an indictable offence', which carries a maximum penalty of 25 years' imprisonment.
- The section 39 offence of 'Using poison, intoxicating substance or other noxious thing to endanger life or inflict grievous bodily harm', which carries a maximum penalty of 10 years' imprisonment.
- The section 41 offence of 'Using poison, intoxicating substance or other noxious thing to injure, cause distress or pain', which carries a maximum penalty of 5 years' imprisonment.

The charge laid in each individual case would be a matter for NSW Police and the Office of the Director of Public Prosecutions.

## **Question 9 - Electronic Monitoring**

### **Transcript page 26**

The Hon. ADAM SEARLE: Okay, well, we'll just come back to that. In your answers to questions on notice you indicated that there was currently only one company known to be providing these services in Australia—the Attenti Group. Do they also deal with the ankle bracelets that are supervised by probation and parole? Are they the same?

Mr MARK SPEAKMAN: Do you mean do they monitor them or do they manufacture them?

The Hon. ADAM SEARLE: Do they make them? Is it the same manufacturer? Are we talking about the same devices?

Mr MARK SPEAKMAN: I don't know the answer.

The Hon. ADAM SEARLE: If you could take that on notice.

MICHAEL TIDBALL: I believe not. I believe they're a separate company.



## **Answer**

I refer to Deputy Secretary Campbell's advice to the Estimates hearing, at transcript page 45, that the provider who leases equipment and systems to Corrective Services NSW is Buddi.

Questions about providers to Corrective Services NSW are best addressed to the Minister for Corrective Services.

## **Question 10 - CLC program**

### **Transcript page 29**

MONIQUE HITTER: My understanding is that indexation payments to the CLC program are at different rates depending on the source of funding that the CLC program contains. For example, there is 1.7 per cent indexation on the Commonwealth funding, 2.5 per cent on State funding and 2.5 per cent on Public Purpose Fund funding.

The Hon. ADAM SEARLE: Mr Attorney, is it the case that you are saying that, to the extent that the money comes from the State Government or from the Public Purpose Fund, the 2.5 per cent indexation has been delivered?

MONIQUE HITTER: That's my understanding.

Mr MARK SPEAKMAN: That's my understanding and that's Ms Hitter's understanding but I'll check that. I might just make these supplementary observations. Community Legal Centres NSW has been in contact with my office in the last couple of weeks drawing our attention to the current inflation rate and the impact that that will have on the operations. We're looking at that at the moment and what an appropriate response would be to that.

## **Answer**

As advised:

I am considering the issue of indexation on community legal centres funding and hope to be in a position to advise CLCs of the application of indexation shortly.

## **Question 11 - Kathleen Folbigg legal representation**

### **Transcript page 30**

Ms ABIGAIL BOYD: Given everything you have just said about not providing the pardon but given the widespread support and the fact of new evidence et cetera, it's important that we fund Ms Folbigg's representation in a fulsome manner to allow her to actually participate in this inquiry. When you announced the inquiry, you talked about it being transparent, public and fair. Yet I understand that the amount of funding that has been provided to Ms Folbigg's representation is severely lacking and is not allowing them to represent her fully. What is the reasoning for that?

Mr MARK SPEAKMAN: I'll observe that the inquirer, Mr Bathurst, described her legal assistance as "not ungenerous". So I don't know that I agree with your characterisation of whatever assistance she's got as "severely lacking". There are legal restrictions on Legal Aid NSW disclosing whether someone has applied or has legal aid, but those restrictions appear to be somewhat academic because it has all been out in the open at one of the directions hearings for the inquiry. I might ask Ms Hitter to describe the legal representation that Ms Folbigg is getting, which I understand is the same as she had at the last inquiry in terms of numbers and seniority of representatives.

Ms ABIGAIL BOYD: If you could also comment on the number of days of representation as well.

MONIQUE HITTER: I would have to take the number of days on notice, I'm afraid.

Ms ABIGAIL BOYD: I understand that the preparation period was set at 35 days and not the requested 72 days. My understanding is that there's a lot of work being done now completely pro bono.

MONIQUE HITTER: If I may take that question on notice. The Legal Aid Commission Act does prevent me from providing information about grants of legal aid and the terms of the grants of legal aid. If I can provide that information, please, as a response to a question on notice, I can just circumscribe the information that is allowed to be in the public arena and the information that's not.

Ms ABIGAIL BOYD: I understand that one of her counsels is not being paid at full rates but is instead being paid at half the set rates. If you could come back to us on why that would be as well.

MONIQUE HITTER: Absolutely.

### **Answer**

I am advised:

The Legal Aid Commission Act 1979 prevents Legal Aid NSW staff from disclosing information about whether legal aid has been granted or the extent of funding provided to third parties beyond the client and their solicitor.

### **Question 12 - Funding for Community Legal Centres (family law/family violence funding)**

#### **Transcript page 31**

The Hon. ADAM SEARLE: I am happy to ask questions. Mr Attorney, why has the Government increased funding for some social services to increase the Fair Work Commission minimum wage rate increases of 4.6 per cent and super guarantee increases from 10 per cent to 10½ per cent but not for community legal centres? Are you aware of that?

Mr MARK SPEAKMAN: I'm not aware of the former—I withdraw that. The former is not in my present memory.

The Hon. ADAM SEARLE: Perhaps you should take it on notice and come back to us.

Mr MARK SPEAKMAN: I am sort of aware of the latter. That is something we're taking into account in responding to communications we had in the last couple of weeks from CLC NSW.

The Hon. ADAM SEARLE: Why has there been a delay in decisions to allocate \$4 million a year in family law/family violence funding to CLCs and when can we expect a decision to be made on that?

Mr MARK SPEAKMAN: Ms Hitter might answer that question.

The Hon. ADAM SEARLE: Of course.

MONIQUE HITTER: I'm sorry, Mr Searle, could you repeat the question?

The Hon. ADAM SEARLE: Why has there been a delay in allocation of the \$4 million for family law/family violence funding to CLCs?

MONIQUE HITTER: I believe that the application process is still in train.

The Hon. ADAM SEARLE: So you're still waiting for applications from CLCs; is that what you're saying?

MONIQUE HITTER: I think we are waiting for the process to determine those applications to be completed, to the best of my knowledge.

The Hon. ADAM SEARLE: If that turns out not to be correct, feel free to answer further on notice.

MONIQUE HITTER: I will. Thank you

### **Answer**

I am advised:

The process to determine the applications from Community Legal Centres for the allocation of Commonwealth Family Law/ Family Violence funding (FLFV) and NSW funding for critical service gaps for the period 1 January 2023 to 30 June 2025 is underway and we are waiting for the process to be completed.

I am advised that the anticipated timeline to complete evaluation is mid to late September. This depends on availability and is subject to change.

In response to a request from Community Legal Centres NSW, the due date for applications for the annual funding of \$4 million for Commonwealth FLFV and \$2.2 million for NSW critical service gaps for 2022-23 was postponed from November 2021 to 7 April 2022. Given the request for an extension to submit applications, a six-month rollover of the 2021-22 Commonwealth FLFV and NSW critical service gaps funding for the period of 1 July 2022 to 31 December 2022 was approved.

### **Question 13 - Justice Connect funding**

#### **Transcript page 31**

The Hon. ADAM SEARLE: Justice Connect, I understand, is a not-for-profit service and a CLC that's funded through DCJ. I also understand that it's being defunded. Can you shed any light on why that would be, if correct?

MONIQUE HITTER: I have no knowledge of that.

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

#### **Answer**

I am advised:

The Department of Communities and Justice (DCJ) has contracted Justice Connect to provide support to NSW community organisations through their Not for Profit (NFP) Law service since 2016 via a range of one-off and time-limited funding arrangements. Justice Connect was most recently, in June 2021, granted \$1 million to deliver free legal advice to small and medium sized NFP organisations in the NSW health and community sectors as part of the Social Sector Transformation Fund (SSTF) Advisory and Information Service. The advice included direct, one-on-one support and sector wide seminars and production of guidance materials.

The SSTF was a one-off COVID-19 pandemic grant program to support the NGO sector to pivot their operations and invest in improvements such as digital upgrades, as well as respond to COVID-19 related workforce issues that confronted NGOs.

### **Question 14 - Independent Children Lawyers**

#### **Transcript page 34**

Ms ABIGAIL BOYD: I just wanted to talk to you about independent children's lawyers. I don't know if you are aware of the hearing that the children and young people's committee held two Fridays ago looking into the disconnect and problems between New South Wales child protection laws and the way that Family Court custody decisions have been made, and I know that this is something we have talked a little bit about in the past. In that inquiry, we heard very concerning evidence about the role of independent children's lawyers. Basically we were hearing that it wasn't always the case that a child's views were being conveyed by the children's lawyer.

Mr MARK SPEAKMAN: To the Family Court.

Ms ABIGAIL BOYD: When we drilled into it, we found out that the training for these lawyers was really quite minimal, so five years' experience in child protection matters, but not as a representative of a child; some online training; and then a one-day course where some mention of DV and sexual assault was covered. In other jurisdictions they do require the representatives of children to have significantly more experience. Is this an issue that you have looked into? Do you have any interest in

trying to, I guess, extend the training requirements for independent children's lawyers?

Mr MARK SPEAKMAN: The answer to your second question is I certainly have an interest in looking at it, but I will have to take the matter generally on notice.

### **Answer**

I am advised:

Children's representatives in NSW care and protection matters are referred to as Direct Legal Representatives (DLRs) or Independent Legal Representatives (ILRs). Children's representatives in Commonwealth family law matters are referred to as Independent Children's Lawyers (ICLs).

The Legal Aid NSW care and protection panel requires individual practitioners to have:

- five years post admission experience, or
- specialist accreditation in Children's Law, and
- a current Working with Children Check (WWCC).

To be eligible for specialist accreditation in Children's Law, applicants must have been engaged in the practice of law on a full-time basis for at least five years; and in each of the three years preceding the application, must have been engaged in the area of law in which accreditation is sought.

As a result of recent changes made by Legal Aid NSW, individual practitioners on the care and protection panel must also have:

- completed the Care and Protection: Representing Children module on the Lawyer Education Series;
- completed the Care and Protection: Representing Parents Module on the Lawyer Education Series;
- a satisfactory referee report from a suitable referee confirming five years post admission experience in the Care and Protection jurisdiction; and
- completion of the Legal Aid NSW Care and Protection Child Representation Workshop which involves:
  - a full day of interactive training based around a fictional matter that is worked through from start to finish;
  - participants must have read the training materials prior to the day as they must satisfactorily complete the course;
  - the trainers are experienced child representatives who assess the participants on their level of engagement, excellent verbal communication skills and a demonstrated understanding of the role of the ILR and DLR; and
  - Children's Court clinicians, registrars and Magistrates attend the day to share their experiences and engage with the group.

The care and protection panel requirements include the necessary skills, experience and training required for ILRs and DLRs to fulfil their obligations to act in the best

interests of the child in accordance with the *Children and Young Persons (Care and Protection) Act 1988*.

The Legal Aid NSW ICL panel requires independent practitioners to have:

- five years post-admission experience in family law, with at least 75% of total workload in family law;
- successful completion of the national ICL training course within the last two years;
- completion of the Legal Aid NSW ICL Nuts and Bolts training course (after successful completion of phase 1 and 2 and by invitation); and
- a current WWCC.

The ICL panel requirements include the necessary skills, experience and training required for ICLs to represent the child's best interests in accordance with the *Family Law Act 1975* (Cth).

### **Question 15 - Court Appointed Questioners**

#### **Transcript page 34**

KAREN WALLACE: Yes, we are looking at setting up the team by the end of the year. So with fundings come through—and I apologise for my voice; I haven't been talking in the last two days—we are about to recruit for those departmental staff and hopefully have them on board by 31 December. But there is an extensive training package in there and all those issues that you raised around support are part of the program as well.

Ms ABIGAIL BOYD: How many are you recruiting?

KAREN WALLACE: I'd have to come back to you on that because we're still going through that process. I think there are around about six or seven, maybe five I guess, but I will come back to you on that in terms of the dedicated staff. But as the Attorney has alluded to, it will be a hybrid model. So we're looking at other organisations, potentially justices of the peace as well. That is who we've been liaising with at the moment.

#### **Answer**

I am advised:

The Department of Communities and Justice (DCJ) will recruit five roles for the dedicated team as part of the NSW Government's hybrid delivery model where the role of Court Appointed Questioner is undertaken by:

- a. a new dedicated Court Appointed Questioner team within DCJ;
- b. Justices of the Peace; and
- c. any viable technological options to undertake this role.

## **Question 16 - Local Court backlog**

### **Transcript page 38**

The Hon. ADAM SEARLE: Do you have a regional breakdown of the backlogs? You know, like greater west?

KAREN WALLACE: That is possible to get. I don't have it available.

The Hon. ADAM SEARLE: If you could on notice, Mr Tidball, provide a geographical breakdown of the criminal backlogs?

MICHAEL TIDBALL: Yes, certainly, Mr Searle.

### **Answer**

I am advised:

As at 31 August 2022 the number of pending criminal cases in the Local Courts by region is\*;

Greater Metro/Metro - 43,363

Hunter/North - 21,896

Illawarra/South - 14,694

West/South West - 9,443

\* Local Courts are broken down by regions broadly covering the following:

- Greater Metro/Metro which includes Sydney, Penrith, Parramatta, Liverpool and Katoomba (excluding Campbelltown and Sutherland)
- Hunter/North, which includes Tamworth, Coffs Harbour, Lismore, Newcastle, Gosford, and surrounds
- Illawara/South, which includes Campbelltown, Sutherland, Wollongong, Nowra Queanbeyan, Bega, and surrounds
- West/South West, which includes Wagga Wagga, Orange, Dubbo, Griffith, Bathurst, Albury, Broken Hill, and surrounds

## **Question 17 - District Court backlog**

### **Transcript page 39**

The Hon. ADAM SEARLE: What are the criminal and civil backlogs in the District Court at present as we are emerging from COVID and the floods?

KAREN WALLACE: The District Court criminal case load is 1,466 pending trial matters and it's decreased from 1,624 in December 2021, so it's going down, which is good.

The Hon. ADAM SEARLE: Almost back to pre-COVID levels?

KAREN WALLACE: Yes, almost back, although we've got a little way to go. We're looking at being at pre-COVID levels by about between quarter four 2023 and quarter four 2024 for the criminal matters. Can I come back to you on the civil ones?

The Hon. ADAM SEARLE: Of course. Again, this is not a gotcha matter. I'm actually genuinely interested in the answers.

KAREN WALLACE: Yes.

The Hon. ADAM SEARLE: So, if you can't answer, just please provide the information on notice.

KAREN WALLACE: Yes, I will.

The Hon. ADAM SEARLE: And additionally, if you can, a regional breakdown.

KAREN WALLACE: District Court? Yes, we should be able to do something along the lines for the District Court, but I will have to take that on notice.

The Hon. ADAM SEARLE: I assume, like the Local Court, the District Court still has circuits, I think, in different parts?

KAREN WALLACE: Yes.

The Hon. ADAM SEARLE: So I assume you would be able to provide the information for those circuits.

MICHAEL TIDBALL: Happy to do so.

### **Answer**

I am advised:

As at the end of August 2022, there were 5,820 civil cases pending, compared with 6,595 at the end of December 2019.

The District Court publishes its review of the operations of the civil jurisdiction in its annual review available at:

<https://www.districtcourt.nsw.gov.au/district-court/publications/annual-reviews.html>

Additionally, civil finalisations are reported in the Report on Government Services available at: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2022/justice/courts>

The number of pending criminal trial as at the end of July 2022 was as follows:

- Sydney - 602
- South West Sydney - 314
- Newcastle - 275
- Wollongong - 67
- Lismore - 99
- Dubbo - 69
- Wagga Wagga - 72



## **Question 18 - Supreme Court backlog**

### **Transcript page 39-40**

The Hon. ADAM SEARLE: That would be good. Not that it's mentioned here, but how is the Supreme Court tracking in the wake of COVID? I know they were also hard-hit by not being able to do in-person hearings, particularly in defended criminal matters. How are they recovering?

KAREN WALLACE: As at the end of June 2022, the waiting for a four-week criminal trial was 5.6 months, so that's an improvement from the waiting time at the end of June of 7.5 months. And the number of pending criminal trials has decreased by 6 per cent since June 2021. So, just because we're into stats, as at June 2022, there were 141 pending cases and the number of pending civil cases overall has increased by 5.5 per cent, so they've been dealing with it. The criminals have dropped but civil has increased by 5.5 per cent.

The Hon. ADAM SEARLE: As well as the number of pending cases in the civil jurisdiction increasing, is it taking longer to get to those civil matters as a result of maybe prioritising the criminal matters?

KAREN WALLACE: I'd have to take that on notice.

The Hon. ADAM SEARLE: If you could take that on notice—

MICHAEL TIDBALL: I can respond in respect of civil matters.

The Hon. ADAM SEARLE: Yes, please.

MICHAEL TIDBALL: The waiting time for a civil appeal has increased to two months at the end of June.

The Hon. ADAM SEARLE: Okay.

MICHAEL TIDBALL: From zero.

The Hon. ADAM SEARLE: I know it probably mainly deals with appeals, but they presumably still have some action in the original jurisdiction on civil matters? Anyway, if you have some stats on that that you can provide on notice, that would be useful as well.

MICHAEL TIDBALL: Yes.

### **Answer**

I am advised:

As at the end of July 2022:

The waiting time from the date of the Supreme Court arraignment hearing for a defended criminal matter requiring at least 4 weeks of trial time is 4.6 months as at 31 July 2022 (compared with 5.6 months in June 2022).

The waiting time from the date of initiating process to hearing for a civil matter (Equity Division) requiring a 2-day hearing is less than one month as at 31 July 2022.

The waiting time from the date of initiating process to hearing for a civil matter (Common Law Division) requiring a 5-day hearing is 4.8 months from as at 31 July 2022 (compared with 5.6 months in June 2022).

The waiting time from the date of initiating process to hearing for a civil appeal (Court of Appeal) is 2.0 months as at 31 July 2022 (compared with 2.0 months in June 2022).

The waiting time from the date of initiating process to hearing for severity appeals (Court of Criminal Appeal) is 2.2 months as at 31 July 2022; for conviction appeals the waiting time was 4.4 months as at 31 July 2022.

## **Question 19 - Land and Environment Court**

### **Transcript page 40**

The Hon. ADAM SEARLE: Overall, is the workload of the Land and Environment Court increasing, or is that just attributable to the COVID delays?

KAREN WALLACE: I think that one of the things is that within the Land and Environment Court you've got sort of short matters and then you've got sort of long matters, and so the class 5 matters, which are more complex and more judicial, they have increased. But they seem to—it's overall that there's been a slight decrease, but I can drill down into it for you, if you like.

The Hon. ADAM SEARLE: That would be useful and interesting. How many judges and commissioners are on the Land and Environment Court? It has six judges and—

### **Answer**

I am advised:

Overall registrations for the Land and Environment Court were 1,342 in 2021 (compared to 1,121 in 2020 and 1,363 in 2019).

This is broken down as follows:

- Class 1 – 779 in 2021 (compared with 732 in 2020 and 904 in 2019)
- Class 2 – 123 in 2021 (compared with 90 in 2020 and 91 in 2019)
- Class 3 – 116 in 2021 (compared with 82 in 2020 and 84 in 2019)
- Class 4 – 124 in 2021 (compared with 92 in 2020 and 102 in 2019)
- Class 5 – 192 in 2021 (compared with 116 in 2020 and 164 in 2019)
- Class 6 & 7 – 6 in 2021 (compared with 7 in 2020 and 17 in 2019)
- Class 8 – 2 in 2021 (compared with 2 in 2020 and 1 in 2019).

## **Question 20 - The review of the Victims Rights and Support Act 2013**

### **Transcript page 41**

MICHAEL TIDBALL: So the review, as Mr McKnight has indicated, has commenced. The department publicly released a background paper inviting stakeholder feedback on the Act by the NSW Government "Have your say" website and the DC website on

29 April 2022. Written submissions on the paper were due by 11 July. There may be further stakeholder consultation as part of the subsequent stages of the review, including in relation to potential options for reform. The report will be tabled in Parliament within 12 months of the review being completed.

The Hon. ADAM SEARLE: Anything to add, Mr McKnight?

PAUL McKNIGHT: No, just that the submissions being received will be being analysed at the moment by the policy team who are conducting the review.

The Hon. ADAM SEARLE: Not that there is any obligation to do so, but will those submissions be published online so that people can see what the issues are that are being—

PAUL McKNIGHT: I am not sure what the process has been in relation to the statutory review.

The Hon. ADAM SEARLE: They are not usually, but in some cases they have been.

PAUL McKNIGHT: As a general proposition, we do try and publish submissions received to statutory reviews publicly. They are open reviews. It does depend on what process we've taken in the particular case and how we have portrayed those submissions to stakeholders, because obviously we don't—we like to tell people that their submission's going to be published if they make it. But, as a general proposition in the department, we prefer these processes to be open.

The Hon. ADAM SEARLE: Perhaps you could take on notice whether or not they are going to be published and, if so, when and where.

PAUL McKNIGHT: Happy to do that.

### **Answer**

Written submissions received on the current statutory review of the *Victims Rights and Support Act 2013* are intended to be published on DCJ's website, unless those submissions were requested to be kept confidential.

### **Question 21 - Community Legal Centre funding**

#### **Transcript page 21**

The Hon. ADAM SEARLE: Mr Tidball, I think during questions with the Attorney I handed up a letter that the Attorney had sent to the community legal centres. In the third paragraph towards the end of that sentence there is the reference to \$2.2 million per annum government funding for critical service gaps to which indexation will also be applied. I'm told that there is a delay in the delivery of that money to community legal centres. I wanted to see whether that understanding is correct and what is the cause of the delay and when will the money be delivered if that understanding is correct?

MICHAEL TIDBALL: Ms Hitter from Legal Aid.

MONIQUE HITTER: Mr Searle, I'm not entirely sure I'm able to give you an answer to that question, so if I could take it on notice?

## **Answer**

I am advised:

I refer to the response to Question Taken on Notice 12.

## **Question 22 - Victim support services – applications**

### **Transcript page 42**

The Hon. ADAM SEARLE: Of course. As I said, I am just after the information. If you take it on notice that would be really good. I have some detailed questions on Victims Services. We will see how we go and if it becomes a theme of you having to take it on notice, I might just put them as supplementary questions. I will just see how we go. There's a number of different aspects of victims' support—for example, there's counselling, there's financial assistance, immediate needs, financial support, economic loss and recognition payments. For each of those aspects can you tell us how many applications have been received, have been determined and awarded, or are pending or lapsed or dismissed in the last financial year—that is, from 1 July 21 to 30 June 2022?

KAREN WALLACE: I don't have them in front of me but they are about to be produced for the annual report. So we are going to have more detailed information that you have been seeking.

The Hon. ADAM SEARLE: That will be really good. Maybe take them on notice.

KAREN WALLACE: I will.

## **Answer**

I am advised:

From 1 July 2021 to 30 June 2022:

### **(a) Counselling**

- i. Received: 22,741
- ii. Approved: 22,642
- iii. Number of pending applications during this period cannot be determined.
- iv. Lapsed: 0
- v. Dismissed: 36

### **(b) Financial assistance - immediate needs**

- i. Received: 9,388\*

\* Data on applications received for financial assistance is combined for immediate needs, economic loss, and funeral expenses as it cannot be readily broken down because they are often submitted on a single application.

- ii. Approved: 6,432 (17,652 claim items)
- iii. Number of applications pending during this time period cannot be determined.
- iv. Lapsed: 0
- v. Dismissed: 6,209 (with 19,892 claim items)

Note: The outcome of a financial assistance claim may include an award of eligible claim items and dismissal of others.

(c) Financial support - economic loss

- i. Received: 9,388\*

\* Data on applications received for financial assistance is combined for immediate needs, economic loss, and funeral expenses as it cannot be readily broken down because they are often submitted on a single application.

- ii. Approved: 857 (2,384 claim items)
- iii. Number of applications pending during this time period cannot be determined.
- iv. Lapsed: 0
- v. Dismissed: 1,258 (3,355 claim items)

(d) Recognition payments

- i. Received: 15,207
- ii. Approved: 13,846
- iii. Number of applications pending during this time period cannot be determined.
- iv. Lapsed: 2,517
- v. Dismissed: 14,641

**Question 23 - Victim support services**

**Transcript page 43**

The Hon. ADAM SEARLE: Okay, so you can answer on notice then. In relation to those different components, do you have that breakdown by gender and age of applicant?

KAREN WALLACE: I would have to take that one on notice.

The Hon. ADAM SEARLE: Of course. That's good. I'm told that that kind of data was published in 2017-18, but when I asked the question in March 2021, I think the answer was the Department of Communities and Justice doesn't hold the information

in a readily accessible format, so I'm just wanting to see whether you still have that information in that format or—

KAREN WALLACE: I do know that the team have worked on producing a whole lot of information that will be presented in the annual report. What I intend to do is to let people look at that and see if there are particular areas that are missing from it. We've done the high-level stuff around it—there are subsets of it—take that on board and if there's information that's missing, we'll see if we can access that information.

The Hon. ADAM SEARLE: Okay, and by the same token, just as my question was whether or not that information will be broken down by gender and age, will that information also be broken down by the number of Aboriginal and Torres Strait Islander people who are applicants?

KAREN WALLACE: Yes, it will be.

### **Answer**

I am advised:

Applications received 1 July 2021 to 30 June 2022:

(a) by gender:

- i. counselling: female: 18,373; male: 4,052; other/undisclosed: 316.
- ii. financial support: female: 8,111; male: 1,187; other/undisclosed: 90.
- iii. recognition payments: female: 11,987; male: 3,057; other/undisclosed: 163.

(b) by age (at the time of act of violence):

- i. counselling:
  - under 18 years: 8,403
  - 18-25 years: 3,723
  - 26-35 years: 4,605
  - 36-45 years: 3,346
  - 46-55 years: 1,692
  - 56 years and above: 877
  - unknown: 95

- ii. financial support:
  - under 18 years: 670
  - 18-25 years: 1,849
  - 26-35 years: 3,059
  - 36-45 years: 2,184
  - 46-55 years: 1,040
  - 56 years and above: 530
  - unknown: 56

- iii. recognition payments:
  - under 18 years: 4,153
  - 18-25 years: 2,745
  - 26-35 years: 3,757,
  - 36-45 years: 2,533

46-55 years: 1,282  
56 years and above: 696  
unknown: 41

- (c) from applicants who identify as Aboriginal and Torres Strait Islander: \*
- i. counselling: 3,537
  - ii. financial support: 1,679
  - iii. recognition payments: 2,953

\*It is optional for applicants to disclose whether they are of Aboriginal or Torres Strait Islander origin.

## **Question 24 - Victim support services**

### **Transcript page 44**

The Hon. ADAM SEARLE: Okay. So with regard to applications for financial assistance for immediate needs, needs, for financial support, for economic loss, recognition payments and counselling in that financial year, what is the shortest time to make a decision, that a decision was made? What was the longest? I guess we can work out the average.

MICHAEL TIDBALL: In terms of service standards—and I look to Ms Wallace to correct me if she has a different understanding—applications are registered within a day of lodgement. Counselling applications are then determined within one to two days. The average waiting time for calls to the victims assistance line is under two minutes and the median time to determine recognition payments has increased—sorry, the median time

The Hon. ADAM SEARLE: That's okay. Maybe I'll put that on as a supplementary and we can follow that up, but I'm happy for you to provide the answers to those things on notice as well if you can. How many applicants have responded to the client satisfaction survey for that last financial year, 2021-22, and how are they selected to respond? Is it generally open to every client or are they sort of selected on a common basis?

MICHAEL TIDBALL: I'm unable to assist. I could come back on that, Mr Searle.

The Hon. ADAM SEARLE: That's fine. You can take that on notice. Do you have any stats on how many people actually attended the counselling appointments that were approved for them? I assume people mostly use up what they have been approved to do, but I just wanted to see if there were any issues in regard to that.

MICHAEL TIDBALL: I do not have them with me here, but I'm sure we could provide it.

The Hon. ADAM SEARLE: That's okay. That's useful. By the same token, can you let the Committee know how many applicants actually accessed counselling and how they accessed it, whether it was by phone, by video or in-person appointments in that last financial year, 2021-22? How many counsellors are located in each regional, rural and remote area, along with the clients they assisted in that last

financial year? How does it work? Do you fund the private sector counsellors or do you have a number of counsellors on your books? Is that how it works?

KAREN WALLACE: Yes, I believe so. They're listed on the website, but I don't know that level of detail so it looks like I'll have to take questions on notice, thank you.

The Hon. ADAM SEARLE: That's okay. As I said, I just get to ask the questions and if you can't help, then you get to come back. How many new Victims Services-approved counsellors were appointed in 2021-22 and where were they located?

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

The Hon. ADAM SEARLE: What is the total number of Victims Services-approved counsellors and location?

MICHAEL TIDBALL: Similarly, I just don't have the data. I'm happy to take it on notice.

The Hon. ADAM SEARLE: That's fine. Can you tell us the average waiting time between a counsellor being contacted and the first available appointment in which they see a client? I guess that's the average waiting time for a client to see a counsellor.

KAREN WALLACE: We'll have to take that on notice.

The Hon. ADAM SEARLE: That's okay. Can you tell us the number of applications for counselling where the victim-survivor is located in a correctional centre or a youth detention centre, including the number approved and the number of applicants who received counselling, again on notice?

KAREN WALLACE: On notice.

The Hon. ADAM SEARLE: That's okay. And can you also tell us the number or percentage of applications for counselling made more than a decade after the alleged act of violence and the number or percentage of these relating to domestic violence, sexual assault, child abuse and child sexual assault? Again, I assume you will be answering those on notice.

MICHAEL TIDBALL: Notice, yes.

### **Answer**

I am advised:

From 1 July 2021 to 30 June 2022:

(a) The shortest time to determine an application for:

- i. immediate needs was 0 days (determined on the day it was lodged)
- ii. financial support for economic loss was 0 days
- iii. recognition payment was 1 day
- iv. counselling was 0 days



(b) The longest time\* to determine an application for:

- i. immediate needs was 3,271 days
- ii. financial support for economic loss was 3,116 days
- iii. recognition payment was 3,290 days
- iv. counselling was 865 days

(c) The average time\* to determine an application for:

- i. immediate needs was 40.3 days (median was 12 days)
- ii. financial support for economic loss was 113.3 days (median was 26 days)
- iii. recognition payment was 877 days (median was 753 days)
- iv. counselling was 3.2 days (median was less than 2 days)

\*Note: Many applications are incomplete when lodged and are not ready to be determined. Therefore, these figures represent the time taken from when an applicant has lodged an application (which may be incomplete) to when an application is determined. There were 1,589 responses to client satisfaction surveys that were sent during 2021-22.

In relation to which clients surveys are sent to, refer to my previous answer to supplementary question 6(a), March 2022 Budget Estimates hearing.

In 2021-22, the number of clients who attended\* a counselling session was 25,117.

\*Data on attendance is based on the number of applicants who had at least one counselling session invoiced as at 30 June 2022 for an appointment in FY2021-22.

From 1 July 2021 to 30 June 2022, the number of applicants who accessed\* counselling:

- (a) By phone was 10,521
- (b) By video was 6,788
- (c) In person was 18,002

\*Note: Applicants may utilise multiple types of counselling in the course of a year.

As at 30 June 2022:

- (a) 519 active Approved Counsellors located in Sydney/Blue Mountains, and
- (b) 653 active Approved Counsellors located outside of Sydney/Blue Mountains.

Suitably qualified persons, in private practice, are approved under the *Victims Rights and Support Act 2013* to provide counselling services.

The number of new Victims Services Approved Counsellors appointed between 1 July 2021 to 30 June 2022 was 252. Of these, 138 were located outside

Sydney/Blue Mountains. Further breakdown of locations outside Sydney/Blue Mountains is not available in a readily accessible format.

There were 1,172 active Victims Services Approved Counsellors as at 30 June 2022.

In relation to average waiting time for counselling appointment, refer to my previous answer to supplementary question 7(f), March 2022 Budget Estimates hearing.

In relation to applicants located in a correctional centre or a youth detention centre, refer to my previous answer to supplementary question 7(g), March 2022 Budget Estimates hearing.

The number (and percentage) of applications for counselling made more than 10 years after the act of violence between 1 July 2021 to 30 June 2022 is 6,018 (26.46% of all counselling applications). Of these, 5,647 (93.84%) related to domestic violence, sexual assault, and child sexual abuse.