

# PORTFOLIO COMMITTEE NO. 5 - LEGAL AFFAIRS

Monday 1 November 2021

Examination of proposed expenditure for the portfolio areas

## ATTORNEY GENERAL AND PREVENTION OF DOMESTIC AND SEXUAL VIOLENCE

**CORRECTED**

The Committee met at 9:30.

### MEMBERS

The Hon. Robert Borsak (Chair)  
Ms Abigail Boyd  
The Hon. Trevor Khan  
The Hon. Natasha Maclaren-Jones  
The Hon. Shaoquett Moselmane  
The Hon. Adam Searle  
Mr David Shoebridge (Deputy Chair)

### MEMBERS PRESENT VIA VIDEOCONFERENCE

The Hon. Lou Amato

### PRESENT

**The Hon. Mark Speakman**, *Attorney General, and Minister for Prevention of Domestic and Sexual Violence*

[inaudible] is used when audio words cannot be deciphered.  
[audio malfunction] is used when words are lost due to a technical malfunction.  
[disorder] is used when members or witnesses speak over one another.

## **CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS**

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

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



**The CHAIR:** Welcome to the public hearing for the inquiry into budget estimates 2021-2022. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to the Elders past, present and emerging of the Eora nation and extend that respect to other Aboriginals present. I welcome Attorney General Mark Speakman and accompanying officials to this hearing. Today the Committee will examine the proposed expenditure for the portfolios of Attorney General and Prevention of Domestic and Sexual Violence.

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

If witnesses wish to hand up documents, they should do so through the Committee staff. Attorney General, I remind you and the officers accompanying you that you are free to pass notes and refer directly to your advisers seated at the table behind you. With reference to audibility for today's hearing, we have witnesses in person and via videoconference. I ask Committee members to clearly identify who questions are directed to. I ask anyone appearing remotely to please state their name when they begin speaking. Could everyone please mute their microphones when they are not speaking.

Finally, could everyone please turn their mobile phones to silent for the duration of the hearing. All witnesses will be sworn prior to giving evidence. Attorney General Speakman, I remind you that you do not need to be sworn as you have sworn an oath to your office as a member of Parliament. I remind the following witnesses that you do not need to be sworn as you have been sworn at an earlier budget estimates hearing before this Committee: Ms Catherine D'Elia, Acting Secretary, Department of Communities and Justice [DCJ]; and Ms Anne Campbell, Acting Deputy Secretary, Strategy, Policy and Commissioning, Department of Communities and Justice.

**CATHERINE D'ELIA**, Acting Secretary, Department of Communities and Justice, on former oath

**ANNE CAMPBELL**, Acting Deputy Secretary, Strategy, Policy and Commissioning, Department of Communities and Justice, before the Committee via videoconference, on former oath

**PAUL McKNIGHT**, Deputy Secretary, Law Reform and Legal Services, Department of Communities and Justice, affirmed and examined

**BRENDAN THOMAS**, Chief Executive Officer, Legal Aid NSW, before the Committee via videoconference, sworn and examined

**KAREN SMITH**, NSW Crown Solicitor, before the Committee via videoconference, affirmed and examined

**The CHAIR:** Welcome, Attorney.

**Mr MARK SPEAKMAN:** Good morning.

**The CHAIR:** Questions from the Opposition?

**The Hon. ADAM SEARLE:** Good morning, Mr Attorney.

**Mr MARK SPEAKMAN:** Good morning.

**The Hon. ADAM SEARLE:** Mr Attorney, this morning you were in the newspaper discussing the flight while on bail of Mostafa Baluch.

**Mr MARK SPEAKMAN:** Yes.

**The Hon. ADAM SEARLE:** You expressed some concerns about the bail decision made by the magistrate, noting of course that the Magistrates Court is very busy. Are you able to tell us about what evidence the magistrate had before it from the police in order to reach that particular decision?

**Mr MARK SPEAKMAN:** I have read the—sorry, just repeat the question.

**The Hon. ADAM SEARLE:** The question was about the sufficiency of evidence before the court in making that bail determination.

**Mr MARK SPEAKMAN:** I have not seen the evidence, but I have read the transcript. There was, I think, evidence of whatever prior offending the accused had; a proposal that the accused be electronically monitored by a private company; the accused's proposal for surety, which was, I think, \$4 million related to, I think, a house at Bayview that was offered as security for that; and submissions were made as to the strength of the prosecution case.

**The Hon. ADAM SEARLE:** The police were asked some questions on Friday about this matter, and the police Minister, I think, or the police commissioner indicated that advice was sought from the Crown Solicitor about the prospects of appealing the bail decision. I think the evidence on Friday was that the evidence—

**The Hon. TREVOR KHAN:** I think it was the Director of Public Prosecutions [DPP].

**The Hon. ADAM SEARLE:** It was the DPP—and that the chances were not strong. Can you explain to us why that might have been the case, given the amount of money involved, given the resources of the accused?

**Mr MARK SPEAKMAN:** I have not seen whatever advice the DPP has given, so I would only be speculating.

**The Hon. ADAM SEARLE:** Could you take that on notice, perhaps, and come back to us about that matter?

**Mr MARK SPEAKMAN:** Sure.

**The Hon. ADAM SEARLE:** You mentioned, both in the article and this morning, about the ankle-monitoring bracelet being one maintained by a private company. Pardon my ignorance about this. Is this standard practice in New South Wales now, for the State to outsource this function?

**Mr MARK SPEAKMAN:** It was the Commonwealth DPP that appeared in the Baluch matter. No, my understanding is that where there is electronic monitoring of someone on parole, for example, that is done by Corrective Services. Electronic monitoring is typically not a bail condition and, typically, rather than prosecutors seeking to impose that condition, it is the accused who offer that up and offer to pay for it themselves as a risk-mitigation factor and an argument as to why there is not an unacceptable risk if they are given bail. But,

generally speaking, electronic monitoring is not used for people who are on bail. Typically, prosecutors oppose bail being granted on the basis that the risk is mitigated by electronic monitoring.

**The Hon. ADAM SEARLE:** On this occasion, was it the defendant who put up this proposal?

**Mr MARK SPEAKMAN:** That is my understanding.

**The Hon. ADAM SEARLE:** If you could just double-check that on notice, that would be very useful.

**Mr MARK SPEAKMAN:** Sure.

**The Hon. ADAM SEARLE:** I would like to ask you some questions about the prosecution of Mr Kristo Langker, the producer of the Friendlyjordies YouTube program. Are you familiar with that matter?

**Mr MARK SPEAKMAN:** I have no involvement in it.

**The Hon. ADAM SEARLE:** No, I understand.

**Mr MARK SPEAKMAN:** I am only familiar to the extent that I have read and seen newspaper articles and media articles.

**Mr DAVID SHOEBRIDGE:** That is only because the application to shut it all down failed, so that is good news.

**The Hon. ADAM SEARLE:** We will come to that.

**The CHAIR:** This takes you back to your university days, does it?

**The Hon. ADAM SEARLE:** In that matter there was an application by the police to suppress the actual presenter of the program, Mr Jordan Shanks, from continuing to make video product about this. In looking at the application, the application was put on various bases. One of them was that Mr Langker and Mr Shanks "held a negative agenda against the complainant, Mr John Barilaro, the Deputy Premier. They have created and aired numerous videos that are derogatory in relation to the complainant's political position." There are quotes in support, looking at the views on the YouTube channel: "Just when you thought they couldn't be more corrupt", "whoever guessed Australia would openly tolerate crooked cops and crooked politicians?"

At the end there is an assertion that "It is clear from this broadcast that his comments are not designed to be a critique or for entertainment. They are deliberately designed to cause public bias." So most of the grounds put by the police in favour of this suppression order appeared to be political in nature, rather than based on concerns about the administration of justice. Do you, as the first law officer, have concerns about the resources of the State being deployed against journalists like this?

**Mr MARK SPEAKMAN:** That was a matter for police. When they make those applications, they are independent of my office. I do not think I have had any discussions with any of my colleagues or agencies about the matter. I do not think it is appropriate for me to comment on the specifics of that matter when it is still before the court.

**The Hon. ADAM SEARLE:** Sure. Let's move away from the specifics of that matter. Let's just look at the use of suppression orders to shut down dissent against the Government in this sort of way. Is that the sort of thing that people should be concerned about in a democracy, leaving aside however this particular matter ends up? Of course, in this matter the magistrate, I think, dismissed that, or I think the police withdrew it and it was dismissed, so it does not sound like it had a very strong basis. Should there be a higher threshold before such applications are made in the future?

**Mr MARK SPEAKMAN:** I cannot answer that question directly without getting into the merits of whatever application was made as to whether the application was or was not on reasonable grounds. As a general proposition, open justice is a cornerstone of our legal system.

**The Hon. ADAM SEARLE:** In fact, there is even a Law Reform Commission discussion paper about this matter.

**Mr MARK SPEAKMAN:** That is right, and the Law Reform Commission is due to report on that probably by the end of the year. In any of these matters you weigh up, on the one hand, the public's interest in open justice and confidence in the justice system when there is transparency and openness but, on the other hand, on occasions there will be an appropriate basis to suppress evidence if there is a national security issue or as we do with the identities of vulnerable witnesses or youth offenders. I cannot comment on what is the appropriate balance in that case without descending into the merits of that case, which I do not think is appropriate to do while the matter is before the court.

**The Hon. ADAM SEARLE:** Okay. The criminal prosecution is before the court but the court has finalised its decision with relation to the suppression application. On this matter the police have told this estimates hearing on Friday that they did not get independent legal advice until after the application was made but that they did subsequently get advice—I think it was from the Crown Solicitor's Office. The advice they received was—this is my summation of their evidence—essentially that it was unmeritorious or unlikely to succeed. Should the police be required in these sorts of matters to get independent legal advice before they make an application to the court, given that this is not about someone's physical safety? This is a prosecution of a journalist making political criticisms of the Government and one of the Government's leading figures at the time. So there is no sense that anyone's personal safety is at risk.

**Mr MARK SPEAKMAN:** I know you want to divorce this issue from the criminal prosecution. I think it is difficult, though, to make a comment on that without potentially trespassing into that. Is it prudent to get independent legal advice? It is always prudent to get independent legal advice if you are taking matters to court, but what legal advice the police obtained here, and what that legal advice said, I do not know.

**The Hon. ADAM SEARLE:** I understand that, Mr Attorney. I guess what I am saying is that as a matter of policy, before the police do this sort of thing, shouldn't they be required to get independent advice so that the court's time is not taken up with applications like this by the State?

**Mr MARK SPEAKMAN:** That is probably a question better directed at the police Minister or the police commissioner and you may well have done that on Friday—

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

**Mr MARK SPEAKMAN:** —about appropriate use of police resources. But I do not think I can comment on that without, again, descending into the detail of the case.

**The Hon. ADAM SEARLE:** All right. This matter had flowed from the use of the fixated persons unit, and we have investigated this over a couple of estimates. It seems that since 2017 it has investigated over 214 individuals and about half of those matters appear to be political referrals or referrals by Ministers and MPs and, of course, a number of individuals have ultimately been charged. Looking at this matter though, although it is still before the courts, you have got a university student who is a producer of a satirical news program being prosecuted on the basis, as I understand it from Friday, that his approaching Mr Barilaro for comment—which is all on video—somehow harmed Mr Barilaro's psychological wellbeing. I cannot see what Mr Langker did that is different to what The Chaser has done or what news programs have done—chasing people down the road with a microphone shoved in their face. Whatever the desirability of that, what Mr Langker has done does not seem to be that much different. Yet the police have felt that this was so serious as to warrant a prosecution.

**Mr DAVID SHOEBRIDGE:** For intimidation.

**The Hon. ADAM SEARLE:** For intimidation and harassment. A 65-kilogram university student has apparently meant to have intimidated Mr Barilaro by asking him to comment.

**The CHAIR:** A 110-kilogram Mr Barilaro.

**The Hon. ADAM SEARLE:** I acknowledge that. Given what appears to be the unlikelihood of a successful outcome in that matter by the police, nevertheless, that is what is before the courts. You are the Minister for the prevention of domestic violence. Many women fleeing domestic violence get intimidated, stalked and harassed by their current or former intimate partner. It does not seem very many of these fixated persons unit matters seem to have been deployed to assist them. So, as the relevant Minister, what level of assurance can you give to people fleeing domestic violence [DV] that the resources of the State will actually give them the same protection that Mr Barilaro seems to be receiving?

**Mr MARK SPEAKMAN:** Again, I cannot comment on the Barilaro and Friendlyjordies case and the merits or otherwise of the police prosecution because that matter is before the court. I think it is probably a long bow to draw between that case and domestic violence complainants. Domestic violence complaints make up about 40 per cent—as a rough ballpark figure—of the work of general duties officers in the NSW Police Force. Every police command or police district has a domestic violence liaison officer. Every region has—I will paraphrase—a special force or a special unit to go after high-risk offenders. So more resources of the NSW Police Force have been devoted to combating domestic violence than ever before.

Large campaigns with apprehended domestic violence order [ADVO] compliance checks—you will see that the numbers of those compliance checks have gone up much more rapidly than domestic violence prosecutions. Breach ADVO prosecutions have gone up much more rapidly than the underlying rate of domestic violence prosecutions. So there is, I think, plenty of evidence that the police are taking this very seriously. Can

they do better? No doubt they can. The Auditor-General at the moment is looking at police responses to domestic violence, and the Government will certainly be interested in what the Auditor-General has to say on that topic.

**The Hon. ADAM SEARLE:** Going forward, do you think that the same level of resourcing will be provided to victims of DV—where they are being harassed and intimidated by their former partners—and that they will get this kind of same level of protection?

**Mr MARK SPEAKMAN:** One of the offences for which prosecutions have increased significantly is stalking and intimidation, which I think is fairly substantial evidence that police are actively prosecuting domestic violence. In fact, others would criticise them for discretionary policing that goes too far. Others would say that the fact that recorded stalking and intimidation offences have gone up significantly when others have not is evidence of policing practice rather than underlying changes in the rate of domestic violence. So I am confident that police are more and more prosecuting and protecting victim-survivors. But no doubt there are matters that can be improved and procedures that can be improved, and that is why I have got an Auditor-General inquiry at the moment.

**The Hon. ADAM SEARLE:** As the first law officer, though, are you concerned that the resources of the State are being deployed against a journalist who has been criticising the Government on the basis of its political agenda?

**Mr MARK SPEAKMAN:** Implicit in that question is a supposition that the case against the journalist is unmeritorious, and that is a matter before the court.

**The Hon. ADAM SEARLE:** Okay. So once this matter is resolved, we may have to return to this for a longer discussion then. Attorney, in relation to the ice inquiry, it has been something like 21 months since the final report has been provided. Why is it taking your Government so long to release its final response to that inquiry?

**Mr MARK SPEAKMAN:** I hope I will be able to say that good things come to those who wait. I think a final response is imminent. It is an incredibly important area of the law and, probably more importantly, of health. There are over 100 recommendations. There has been vigorous analysis within government of those recommendations, and I would hope that we will be in a position shortly to release our response.

**The Hon. ADAM SEARLE:** Can you indicate any general time frame for the Government releasing its response?

**Mr MARK SPEAKMAN:** I cannot give you a precise date, but I could say sooner rather than later and I would be disappointed if it was not this year.

**The Hon. ADAM SEARLE:** What do you say to stakeholders that have said this has just taken too long for the Government to come forward with its response?

**Mr MARK SPEAKMAN:** I understand and I feel their angst. But, hopefully, we will get a good landing on health and criminal justice outcomes that will be worth the wait.

**The Hon. ADAM SEARLE:** There have been recent media reports that the Government is considering legislation to expand the police's drug diversion program to include heroin and ice, in line with the recommendations of the ice inquiry. Will the Government be including all drugs in such a program?

**Mr MARK SPEAKMAN:** That is a matter for Cabinet. I cannot pre-empt that. But I have made my general position pretty clear that this is ultimately a health issue. Yes, the criminal justice system has a role to play, particularly in dealing with importers and traffickers. But, ultimately, locking someone up and throwing away the key will not solve their addiction problem. What form diversion will take pre-court, post-court, court diversion permutations and combinations—they are matters for Cabinet. I cannot pre-empt what Cabinet may decide or what my discussions will be and have been with Cabinet colleagues.

**Mr DAVID SHOEBRIDGE:** And the hope is that Labor will not be totally unmeritorious and smash any minor movement in this place, as they have done every other time we have had reform in this place.

**The Hon. ADAM SEARLE:** I think I am asking the questions, David. You will get your chance.

**Mr DAVID SHOEBRIDGE:** That is the hope, that Labor does not politicise it and tear down reforms.

**The Hon. ADAM SEARLE:** On that happy note—

**Mr DAVID SHOEBRIDGE:** Because that is the history of it.

**The Hon. ADAM SEARLE:** Minister, in its interim response to the Special Commission of Inquiry into the Drug "Ice", the Government announced that it would reject several of the final report's recommendations.



One of those recommendations was that the New South Wales Government should establish a statewide, clinically supervised substance testing, education and information service, with various branches. Can you explain to the Committee the reasoning behind the rejection of those recommendations?

**Mr MARK SPEAKMAN:** The rationale for rejecting pill testing is the signal that it may send of normalising drug use. There is another recommendation there though about broader analysis of substances that are seized and the Government's response to that will be part of the final response.

**The Hon. ADAM SEARLE:** One of the recommendations that was ruled out also was that the Police Force should cease the use of drug detection dogs at music festivals. That was, I think, based on the idea that young people carrying drugs would panic and ingest them rather than ditching them in other ways. Can you explain to the Committee again the rationale in rejecting that recommendation?

**Mr MARK SPEAKMAN:** That is one rationale that is offered. I think another rationale, that the police contend for, is that the use of sniffer dogs is an effective form of drug detection.

**Mr DAVID SHOEBRIDGE:** Despite being wrong two-thirds of the time?

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

**Mr DAVID SHOEBRIDGE:** How can you call that effective?

**The Hon. ADAM SEARLE:** Attorney, the current Cannabis Cautioning Scheme, which gives discretion to police to caution for possession of cannabis, appears to have led to a disproportionate number of First Nations people being issued with fines. For example, between 2013 and 2017, I think 40 per cent of the people issued with cautions were non-Indigenous and only 11 per cent of First Nations people were issued with cautions. There seems to have been a disproportionate outcome in the cautioning scheme. What are you doing to address that going forward?

**Mr MARK SPEAKMAN:** Just to be clear, the cautioning scheme does not include imposition of fines. There are two formal cautions. Look, on one view, I would have thought it is a positive thing if a higher than the population proportion number of Indigenous people are being diverted through a cautioning scheme. So they are not being criminalised, they are not getting a criminal record, they are not being hauled before the courts, but they are given, on the first and second caution, information about drug services. But they are not subject to any criminal sanction if they receive a formal caution.

**The Hon. ADAM SEARLE:** I will come back to that.

**Mr DAVID SHOEBRIDGE:** Did you want to finish that, Adam?

**The Hon. ADAM SEARLE:** No, I will come back to it. It is all good.

**Mr DAVID SHOEBRIDGE:** Attorney, it is nice to see you, and Ms D'Elia and the other witnesses. Thank you for coming today.

**Mr MARK SPEAKMAN:** Thank you, and you.

**The Hon. TREVOR KHAN:** That is the only nice thing he will say today.

**The Hon. SHAOQUETT MOSELMANE:** That is the only nice thing he will say.

**The Hon. TREVOR KHAN:** It is all downhill from here.

**Mr DAVID SHOEBRIDGE:** Shaoquett, that is a delightful tie. Ms Smith, did you or your office provide advice to the police about their application for a suppression order in the Jordan Shanks matter?

**Ms SMITH:** I do not think I can comment on advice I have provided to my clients.

**Mr DAVID SHOEBRIDGE:** I am asking you if you provided advice, not the content of the advice.

**Ms SMITH:** I have certainly been involved in that matter. But if you wanted to ask questions about the advice, I would ask you to ask that of my clients.

**Mr DAVID SHOEBRIDGE:** I am asking when you were asked to provide the advice to your client—and your client, in that case, being the NSW Police Force, Ms Smith?

**Ms SMITH:** I would ask you to ask questions about any advice I have provided to any clients to the clients themselves, including matters relating to timing and content or anything to do with it.

**Mr DAVID SHOEBRIDGE:** Well, Ms Smith, I am asking you. When did you provide advice—

**Ms SMITH:** I know—

**Mr DAVID SHOEBRIDGE:** Let me finish. When did you first provide advice to the NSW Police Force regarding the suppression order that it was seeking in respect of Jordan Shanks?

**Ms SMITH:** As a legal practitioner, I am bound by the legal professional rules, I am bound by a duty of confidentiality and a duty to my client, so I cannot answer questions about any advice I have provided to any client.

**Mr DAVID SHOEBRIDGE:** Ms Smith, can you shed any light on whether or not the time frame that the NSW Police Force has asserted, being that it first sought advice from you after it had commenced the suppression order proceedings—can you shed any light on whether or not that evidence from the NSW Police Force is accurate?

**Ms SMITH:** I am not familiar with the evidence that the police gave on Friday. But, in any event, I cannot comment on anything to do with advice I have provided. That is a matter for my client.

**Mr DAVID SHOEBRIDGE:** Attorney, have you satisfied yourself whether or not the police's position, which was that they did not seek any legal advice until after the suppression order application had been filed—given that that advice was sought from your own department, have you satisfied yourself as to whether that police position is accurate?

**Mr MARK SPEAKMAN:** I have not been asked to. I have no involvement in the case. When you say advice was sought from my department, the Crown Solicitor operates independently of me and of public servants like Ms D'Elia and Mr McKnight. So, as a practical matter, Ms Smith is not someone who reports to me or is part of my department.

**Mr DAVID SHOEBRIDGE:** I am going to ask you now: Is the police position that they first sought advice from the Crown Solicitor after commencing the suppression order proceedings accurate?

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

**Mr DAVID SHOEBRIDGE:** Will you make inquiries?

**Mr MARK SPEAKMAN:** I will make inquiries.

**Mr DAVID SHOEBRIDGE:** Did you or your department have any role in the application brought by the Department of Premier and Cabinet to have the bulk of last week's ICAC hearings and this week's ICAC hearings, to the extent they relate to any Cabinet-in-confidence documents or discussion about Cabinet-in-confidence documents, as private hearings, in camera? Did you have any role in that?

**Mr MARK SPEAKMAN:** Did I have any role?

**Mr DAVID SHOEBRIDGE:** Yes.

**Mr MARK SPEAKMAN:** No.

**Mr DAVID SHOEBRIDGE:** Were you aware of the application being made by the Department of Premier and Cabinet the week before last week's ICAC hearing started?

**Mr MARK SPEAKMAN:** No.

**Mr DAVID SHOEBRIDGE:** When did you first become aware that the Department of Premier and Cabinet had sought to have the bulk of last week's ICAC hearings in private and not available to the public?

**The Hon. TREVOR KHAN:** That is loaded, David. That is not consistent, actually, with how this thing is run.

**Mr MARK SPEAKMAN:** If that be the case, until an application was made by Ms Berejiklian's barrister on Friday morning, I was unaware of any application to keep any part of last week's evidence confidential, private, suppressed—however you want to put it.

**Mr DAVID SHOEBRIDGE:** Were you aware of the submission made by the Department of Premier and Cabinet on or before 14 October of this year, which is referenced in the judgement or report of Commissioner McColl, that all matters in relation to Cabinet-in-confidence documents and discussion about Cabinet-in-confidence documents should be in private hearings?

**Mr MARK SPEAKMAN:** To the best of my recollection, no.

**Mr DAVID SHOEBRIDGE:** Are you aware that this was an application not made by former Premier Gladys Berejiklian but in actual fact by the New South Wales Government through the Department of Premier and Cabinet?

**Mr MARK SPEAKMAN:** To the best of my recollection, no.

**Mr DAVID SHOEBRIDGE:** Are you saying now is the first time you have become aware of that?

**Mr MARK SPEAKMAN:** To the best of my recollection, yes.

**Mr DAVID SHOEBRIDGE:** Are Mr Maguire's legal costs before ICAC still being met by the people of New South Wales?

**Mr MARK SPEAKMAN:** Yes. I will qualify that. I do not know whether all his legal costs are being met. I do not know whether there is a gap between that part that the State is funding, on the one hand, and what he might be personally incurring, on the other hand.

**Mr DAVID SHOEBRIDGE:** Ms D'Elia, do you know how much has been paid to date?

**Ms D'ELIA:** I would have to take that on notice.

**Mr DAVID SHOEBRIDGE:** Do you know what the cap is for any particular day for the legal costs?

**Ms D'ELIA:** I can give you a sort of general response. Where approved, applications under section 52 of the ICAC Act are generally approved for assistance by either a solicitor or junior counsel at the following prescribed rates: \$180 per hour plus GST for a preparatory attendance to maximum of three hours and \$240 per hour plus GST to a maximum of 1,440 plus GST for attendance before ICAC.

**Mr DAVID SHOEBRIDGE:** Attorney, the Premier's memorandum on ex gratia legal assistance in relation to Ministers requires that, before an application can be successful, the incident which gives rise to the proceedings must relate to the Minister's official functions. Are you aware of that as the Premier's memorandum?

**Mr MARK SPEAKMAN:** Without refreshing my memory with the document in front of me, that is my general understanding.

**Mr DAVID SHOEBRIDGE:** Ms D'Elia, are you aware of the Premier's memorandum?

**Ms D'ELIA:** Yes.

**Mr DAVID SHOEBRIDGE:** In what way does Mr Maguire's conduct, which is now being repeatedly reviewed by ICAC, relate to his Parliamentary Secretary functions or any of his official functions as a member of Parliament? How on earth is Mr Maguire having his legal costs paid by the people of New South Wales?

**Mr MARK SPEAKMAN:** My understanding is his legal costs are not being paid under the Premier's memorandum; he has been granted assistance under section 52 of the ICAC Act as a witness in a public inquiry.

**Mr DAVID SHOEBRIDGE:** What are the criteria that need to be satisfied before a witness such as Mr Maguire has their legal costs paid by the people of New South Wales under section 52 of the ICAC Act?

**Mr MARK SPEAKMAN:** Under section 52 of that Act:

(2) The Attorney General—

or his or her delegate; in this case, it was my delegate—

may approve the provision of legal or financial assistance to the applicant if of the opinion that this is appropriate, having regard to any one or more of the following—

- (a) the prospect of hardship to the witness if assistance is declined,
- (b) the significance of the evidence that the witness is giving or appears likely to give,
- (c) any other matter relating to the public interest.

**Mr DAVID SHOEBRIDGE:** In terms of the public interest, it is now abundantly clear that the conduct for which Mr Maguire is being held to account was conduct that had no legitimate connection with his work as a Parliamentary Secretary, no legitimate connection with his work as a member of Parliament. How is it that he is still having his legal costs paid, then?

**Mr MARK SPEAKMAN:** The decision to grant him legal assistance was not one made by me but under delegation by the then secretary of the department. In all these—

**Mr DAVID SHOEBRIDGE:** Is that Mr Coutts-Trotter?

**Mr MARK SPEAKMAN:** Mr Coutts-Trotter.

**The Hon. TREVOR KHAN:** He gave evidence on the last occasion.

**Mr MARK SPEAKMAN:** In all these cases, given the potential controversy about granting legal assistance to any current or former politician, it has been my practice to keep well away, completely away from the decision-making and delegate it either to the Solicitor General or the secretary of the department.

**Mr DAVID SHOEBRIDGE:** Very wise, Attorney.

**Mr MARK SPEAKMAN:** I have confidence, in each of those, that they will make an appropriate decision, be it an application under the Premier's memorandum or an application under section 52.

**Mr DAVID SHOEBRIDGE:** Attorney, when was that decision made by Mr Coutts-Trotter?

**Mr MARK SPEAKMAN:** I would have to—

**Mr DAVID SHOEBRIDGE:** I think Mr McKnight might be able to assist.

**Mr McKNIGHT:** We would have to take that on notice. I think questions of timing in relation to Mr Maguire were taken on notice last time and the Committee was provided with some information. But I would need to go back.

**Mr DAVID SHOEBRIDGE:** Sometime in 2018, though, was when the application was approved.

**Mr McKNIGHT:** I do not have that information in front of me.

**Mr DAVID SHOEBRIDGE:** Attorney, now we have so much more information about Mr Maguire's behaviour. I use "behaviour" in as neutral a term as I possibly can. Will you ask the delegate to review whether it continues to be in the public interest to have Mr Maguire's legal costs paid for by the people of New South Wales?

**Mr MARK SPEAKMAN:** I think it is very important that in these cases before ICAC there is no political interference one way or another with the provision of legal assistance. I intend to keep at arm's length from that. It has been—

**Mr DAVID SHOEBRIDGE:** I am asking if you will seek a review.

**Mr MARK SPEAKMAN:** I have just said I do not intend to involve myself in any decisions about legal assistance to any witness to ICAC. It is important that politicians or that Ministers keep well away from those decisions. It is typically a condition of legal assistance that, if there is a criminal finding against the witness, based on the allegations before ICAC, there is a clawback of legal assistance that has been given.

**Mr DAVID SHOEBRIDGE:** Attorney, the problem with that is, whatever the view of the public interest may have been when the initial grant was made, we now know so much more about this man's behaviour as a member of Parliament and as a Parliamentary Secretary that any fair consideration of the public interest now would likely come to a very different result than what happened in 2018. Are you telling me there is no process to review the continued payment of Mr Maguire's legal costs by the people of New South Wales, notwithstanding what happens in ICAC?

**Mr MARK SPEAKMAN:** The public interest is in witnesses getting legal advice, rather than the public interest in his actions. It is not appropriate for me to change an arms-length practice of leaving these decisions to the secretary or the Solicitor General acting in the public interest, rather than me putting a political lens on the matter.

**Mr DAVID SHOEBRIDGE:** If that is the test, that the only issue for public interest is that there is a public interest in people getting legal representation, then you may as well not have a public interest test at all because, every time, that will come up with a yes. You are not seriously telling me that is the public interest test applied, are you, Attorney?

**Mr MARK SPEAKMAN:** The test in section 52 is very broad. It is any matter relating to the public interest. As I say, I do not think it is appropriate that I as a Minister and a politician in any way immerse myself in the arms-length decisions of the secretary or the Solicitor General about legal assistance to witnesses at ICAC.

**Mr DAVID SHOEBRIDGE:** Attorney, does that mean you are recanting from your earlier evidence that the public interest is simply in ensuring that someone gets legal representation? Do you accept that, if that is the test and that is what your delegates have been applying, then they are failing to actually review the whole public interest?

**Mr MARK SPEAKMAN:** I have not been telling them how they should apply a public interest test. I have left it to the Solicitor General—the second law officer—or, in the case of Mr Maguire, the secretary to apply the language of section 52 of the ICAC Act. There is a public interest in witnesses having legal advice. There is, obviously, not a public interest in people defrauding the State or misconducting themselves in public office, but there is a public interest in witnesses having legal assistance when they give evidence before ICAC, as

a general proposition, and it is a matter for the secretary in this case to have decided whether that public interest justified giving Mr Maguire legal assistance.

**Mr DAVID SHOEBRIDGE:** The reason I am pressing you on this is because you say it is not your decision but I could not help but note that the advice you got from Mr McKnight, when I was asking you about it earlier, was that the public interest was limited to ensuring somebody had legal representation. Let me finish. If that is the basis upon which your delegates are reviewing the public interest, the answer will be people like Mr Maguire get it every single time, and that appears to me to be a gross misreading of section 52 of the ICAC Act.

**Mr MARK SPEAKMAN:** I would agree that section 52, the concept there of public interest, is broad but a principal public interest is in witnesses who are giving significant evidence having legal assistance. Mr McKnight, to my left, I do not think had any involvement in—

**Mr McKNIGHT:** No.

**Mr MARK SPEAKMAN:** No, he was not involved in the decision to give legal assistance to Mr Maguire. That was Mr Coutts-Trotter.

**Mr DAVID SHOEBRIDGE:** To be clear, notwithstanding how much additional information we now know about Mr Maguire's behaviour, you will not be seeking a review of his legal assistance?

**Mr MARK SPEAKMAN:** You and any member of the public are free to make a submission that his legal assistance should be discontinued, but I do not think it is appropriate for me, as a Minister/politician, to be immersing myself in decisions that are made by the secretary or the Solicitor General at arm's length about these contentious matters.

**Mr DAVID SHOEBRIDGE:** Mr McKnight, is there any administrative process that would bring up a review of a decision to provide someone like Mr Maguire with their legal costs being paid for by the people of New South Wales when there has been a material change or material additional evidence? Is there any administrative process or is it once the ship sets sail the people of New South Wales just keep paying? moderate them carefully to ensure

**Mr McKNIGHT:** I am not aware of any review happening in the past, which is not to say that is not possible. I would have to take that on notice. A couple of things that happen once legal assistance is granted that are important I think to note: one is the claw-back provision that the Attorney General alluded to. When legal assistance is granted to any witness in ICAC, they must sign an agreement that if they are later convicted of an indictable offence they pay back those legal costs. The other issue is, I guess, that we are careful about is when the bills come in, we moderate them carefully to ensure that the costs incurred are reasonably attributable to the ICAC inquiries and that they are within the rates agreed.

**Mr DAVID SHOEBRIDGE:** But if there is a finding of corrupt conduct, that has no impact. Mr Maguire will keep the assistance even with a finding of corrupt conduct against him, unless it eventuates at some point in an indictable offence.

**Mr McKNIGHT:** That is right. The claw-back provisions relate to later conviction of an indictable offence.

**Mr DAVID SHOEBRIDGE:** Alright, thank you. Attorney, when will New South Wales move on raising the age of criminal responsibility? When are we likely to get a decision from you?

**Mr MARK SPEAKMAN:** That has been the subject of discussion at the former Council of Attorneys-General [CAG], now the Meeting of Attorneys-General [MAG]. The Australian Capital Territory has announced it is going to go to 14. The Northern Territory, prior to CAG/MAG's discussions, had indicated an intention to go to 12 as a result of a royal commission recommendation. Queensland indicated before the last election it did not intend to move. New South Wales is still considering its position—whether to move and, if so, to what age and in what circumstances. I am hopeful that things will come to a head with the inter-jurisdictional discussions sooner rather than later, and either reach an agreement or, if an agreement cannot be reached, agree that that process comes to an end and each jurisdiction makes its own indecision.

**Mr DAVID SHOEBRIDGE:** I hand back to the Opposition.

**The Hon. ADAM SEARLE:** Mr Attorney, in relation to the 2019 Law Enforcement Conduct Commission [LECC] report on the NSW Child Protection Register maintained under the Child Protection (Offenders Registration) Act 2000, the commission found in Operation Tusk that since 2001 the police force have made over 700 errors in the application of the legislation. Some of the consequences were: 96 people not being on the register when they should have been; 43 cases where people were registered when they should not have been; more than 600 cases where offenders' reporting periods were too long or too short; 13 wrongful

convictions; and I think I am right in saying the police have written to 277 people subject to "unlawful or unjust actions" because of errors with the register. Recommendation three from Operation Tuskett was that:

The Attorney-General urgently refer ... [the legislation] to the NSW Law Reform Commission for comprehensive review, to be completed within six months.

That was in 2019. Nineteen months later the LECC did a supplementary Operation Tuskett report confirming that recommendation three had not been actioned and stated:

... unless the problems with the statutory framework set out in the Operation Tuskett Final Report are adequately addressed through the law reform process, it is inevitable that errors will continue to [be] made in the administration of the Register.

Attorney, yesterday was the second anniversary since the first Operation Tuskett report was handed down. Have you referred this issue to the law reform commission or otherwise actioned that recommendation?

**Mr MARK SPEAKMAN:** No, I have not referred it and I do not currently intend to refer it to the law reform commission. Since that report and the supplementary report, there has been a great deal of work by police, and speaking with heads of jurisdiction, or a head of jurisdiction, as well on possible law reform, and that work is still underway.

**The Hon. ADAM SEARLE:** We did ask the police Minister about this on Friday, and he was completely unforthcoming in terms of any transparency about time frames. I have reviewed some of the media reports. It seems that the police agree that there are significant problems with the legislation, but it also seems that the police were instrumental in blocking you referring it to the law reform commission. Is that correct?

**Mr MARK SPEAKMAN:** I do not think that is correct.

**The Hon. ADAM SEARLE:** You would know, Mr Attorney, would you not?

**Mr MARK SPEAKMAN:** No, I am just trying to think of how you would characterise what happened. The police were keen to develop their own proposal. I do not regard that as blocking me referring it to the law reform commission, but rather me giving them the opportunity to develop a proposal. The law reform has been busy with a number of other matters—consent law reform, digital assets, open justice—and it did not seem to me to be the best use of their resources to refer this matter to the law reform commission when the police appear to be confident that they could come up with their own proposal.

**The Hon. ADAM SEARLE:** It is two years on. Everyone seems to agree there are problems with the legislation. I think the legislation has already been patched up some 41 times. What is the reasonable time frame within which the community might expect the Government to take action?

**Mr MARK SPEAKMAN:** Sooner rather than later, but I cannot put a precise date on it at the moment.

**The Hon. ADAM SEARLE:** Should we expect legislation this year?

**Mr MARK SPEAKMAN:** I would not expect legislation this year, no.

**The Hon. ADAM SEARLE:** Should we expect legislation sometime in the balance of this Parliament?

**Mr MARK SPEAKMAN:** I would be disappointed if there were not such legislation.

**The Hon. ADAM SEARLE:** So we might expect something next year perhaps?

**Mr MARK SPEAKMAN:** I cannot give you an assurance, but it is certainly my hope that there will be legislation next year.

**The Hon. ADAM SEARLE:** Given just what we know of the impact of these errors—miscarriages of justice, people being wrongfully added to the register when they should not have been and, equally concerning for the community, people who should be on the register and are not—is there no sense of urgency gripping the Government about this matter?

**Mr MARK SPEAKMAN:** There is certainly a sense of the need to do this promptly and for the reasons you have identified, but we have got to land in the right place.

**The Hon. ADAM SEARLE:** I understand that. I will ask this question: The police are working away on this. Is your agency or department involved in this at all, given its expertise in law reform more generally?

**Mr MARK SPEAKMAN:** Yes.

**The Hon. ADAM SEARLE:** Are you confident that a sensible landing will be reached?

**Mr MARK SPEAKMAN:** I am hopeful that one will be, yes.

**The Hon. ADAM SEARLE:** Okay. But, again, you just cannot give us any sense of when that might be.

**Mr MARK SPEAKMAN:** I cannot give you a precise date. I am not trying to be unhelpful.

**The Hon. ADAM SEARLE:** No, I am just trying to find out when we might see some action.

**Mr MARK SPEAKMAN:** I cannot see it happening this side of Christmas, but I would be disappointed if we did not do something next year.

**The Hon. ADAM SEARLE:** Okay. Hopefully before the third anniversary rolls around we might see some action, would you say?

**Mr MARK SPEAKMAN:** I would expect so.

**The Hon. ADAM SEARLE:** That is good. Attorney, one of the Premier's Priorities is to reduce the number of domestic violence reoffenders by 25 per cent by 2023. How are we tracking towards that Premier's priority. Where are we up to?

**Mr MARK SPEAKMAN:** That is a very challenging priority. Numbers are not tracking down. Part of the problem is, like sexual assault, domestic and family violence is a notoriously underreported crime. So if there is more police activity of the kind I adverted to a bit earlier this morning, with prosecuting ADVO breaches, increasing stalking and intimidation offences and more aggressive policing, that is going to drive up the number of domestic violence offences and reoffences without necessarily indicating an increase in the overall rate of reoffending. So part of the problem with that metric is, if you have a higher volume of reported reoffenders, it is likely to reflect increased policing and increased detection rather than increased offending.

It is difficult to separate to what extent any numbers or any trends reflect underlying offending and changes in reporting and policing. A couple of proxies might be the rate of domestic violence homicide, which has been stable over two years and five years, because that cannot be hidden. That is going to be reported. The rate of domestic violence causing grievous bodily harm, because it is fairly hard not to report that if victim-survivors go to hospital, for example—that has been stable over two or five years. But the reported numbers of domestic violence reoffenders have not gone down in the way we hoped. But that probably reflects police doing their job in picking up ADVO breaches, in aggressive policing and surveillance of known high-risk offenders.

**The Hon. ADAM SEARLE:** Yes, you mentioned the reoffending rates have increased. I think they have gone up 3.9 per cent from the baseline year. I think it is 2015.

**Mr MARK SPEAKMAN:** Are you referring to reoffending or offending?

**The Hon. ADAM SEARLE:** Sorry, reoffending. Have you had any discussions with the new Premier about changing the reduction target in the light of this?

**Mr MARK SPEAKMAN:** No, I have not. An alternative target would be victimisation, and I know the agency has had discussions with the Australian Bureau of Statistics about this. As I understand it, it does a personal safety survey every few years. As I understand it, though, it may be that the numbers or the data it collects are not sufficiently large to be able to robustly analyse that. That is something that the Department of Communities and Justice are having discussions about with the Australian Bureau of Statistics to try to have a larger database or a more granular database that would allow us to look at that.

**The Hon. ADAM SEARLE:** Mr Attorney, until 2019 I think the target date for a reduction of 25 per cent of the numbers in reoffending was 2021.

**Mr MARK SPEAKMAN:** Yes.

**The Hon. ADAM SEARLE:** In 2019 that was pushed back a couple of years, presumably because of the difficulties that you have adverted to.

**Mr MARK SPEAKMAN:** No, that is not the reason. My understanding is it was pushed back so that programs in custodial settings and non-custodial settings that have been started—by 2023 you are looking at whether cohorts that underwent those programs have had a reduction in recorded reoffending, whereas for 2021 you were comparing that with a baseline that had cohorts that had not undergone those men's behaviour change programs—the sorts of programs we are running in prisons. We have started programs for those who are on remand for a short period; high-intensity units; Explore, Question, Understand, Investigate, Practise, Succeed [EQUIPS] and so on. That was so that we were measuring the success of programs that had not started with the baseline that would be used for a 2019 cut-off.

**The Hon. ADAM SEARLE:** Okay. Now that we have had a bit more experience with these programs, how are they tracking?

**Mr MARK SPEAKMAN:** Each of the programs has been or will be evaluated by the Bureau of Crime Statistics and Research [BOCSAR] to see whether they reduce reoffending but, as I have said, the problem at the macro level is that increased police activity in going after domestic violence offenders has meant an increased recording of reoffending even though, if you take domestic violence homicide and domestic violence causing grievous bodily harm as the best proxy we have got for underlying rates, those rates have been stable.

**The Hon. ADAM SEARLE:** You mentioned a number of the programs. They include men's behaviour change programs such as ENGAGE, What's Your Plan, ReINVEST and EQUIPS. Are they all still underway?

**Mr MARK SPEAKMAN:** They are all still underway. What's Your Plan has been recently evaluated by BOCSAR and unfortunately that did not show any difference in reoffending. So that is one program for which we had high hopes but they have not come to fruition, so we have got to review that program to decide whether to continue it or whether it can be modified in some way that may have better prospects of success. ReINVEST is still underway. We should have the results of that by June 2022. EQUIPS is also underway as well.

**The Hon. ADAM SEARLE:** How many domestic violence perpetrators are participating in the ENGAGE program?

**Mr MARK SPEAKMAN:** I cannot give you that number off hand. I can take that on notice, if I may.

**The Hon. ADAM SEARLE:** That is fine. You may have already covered this but did the evaluation of ENGAGE actually start in February 2020 as it was intended to?

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

**The Hon. ADAM SEARLE:** Can Ms D'Elia assist us?

**Ms D'ELIA:** I do not have the information but Ms Campbell might?

**The Hon. ADAM SEARLE:** Ms Campbell?

**Ms CAMPBELL:** I do not have the detail. But we, again, can take it on notice.

**The Hon. ADAM SEARLE:** Okay. Do you know how many men are participating in men's behaviour change programs overall?

**Mr MARK SPEAKMAN:** Is that to me or Ms Campbell, or either of us?

**The Hon. ADAM SEARLE:** I think the default is that we start with the Minister and if the Minister cannot take it then he or she may pass it on.

**Mr MARK SPEAKMAN:** I do not know the number offhand. Ms Campbell?

**Ms CAMPBELL:** I am just checking my notes. No, I will need to take that on notice.

**The Hon. ADAM SEARLE:** Okay. Has a review of the men's behaviour change programs been undertaken?

**Mr MARK SPEAKMAN:** My understanding is BOCSAR is undertaking a review of that. Ms Campbell might be able to elaborate further.

**Ms CAMPBELL:** I would need to take that one on notice.

**The Hon. ADAM SEARLE:** Okay. I am going to ask a series of questions and they may all be taken on notice. How many perpetrators are participating in EQUIPS?

**Mr MARK SPEAKMAN:** In 2020-21 there were 2,544 domestic violence offenders who participated in EQUIPS while in custody. There were 1,129 DV offenders who participated in EQUIPS in the community. Sixty-two programs were conducted in correctional centres and 63 programs were conducted in the community.

**The Hon. ADAM SEARLE:** Has a review of the EQUIPS Domestic Abuse Program been undertaken?

**Mr MARK SPEAKMAN:** I will have to take that on notice. But if it has not been completed it is certainly—my understanding is, every one of these programs has been or is being reviewed—

**The Hon. ADAM SEARLE:** Okay. Well, perhaps—

**Mr MARK SPEAKMAN:** —among other things, from the question of "Do they reduce reoffending?"



**The Hon. ADAM SEARLE:** Perhaps you could provide on notice a list of all the programs, whether they are being reviewed, where the reviews are up to and, if they have been reviewed, what the review found?

**Mr MARK SPEAKMAN:** Certainly.

**The Hon. ADAM SEARLE:** That would be good. In mid-August, I think it was, Domestic Violence NSW released its report *The impact of the 2021 Greater Sydney COVID-19 lockdown on specialist domestic and family violence services, and their clients*, after surveying the people they work for. Seventy-three per cent of services said they faced increased demand, 84 per cent of services said there was an increase in the complexity of the situations for clients who had been referred, and of the 33 services operating there had been an increase in the length of the waitlist in almost half of the services, which is just under 50 per cent. These are pretty alarming statistics. What is the Government doing to tackle this sort of surge in demand?

**Mr MARK SPEAKMAN:** Sure. Apart from spending that is earmarked as domestic violence spending, there are hundreds of millions of dollars that are spent on domestic violence in the ordinary operations of the Police Force, in education and in emergency departments in hospitals. Our budget this year for domestic violence earmarked spending is up 27 per cent on last year. That is apart from the announcement last week or the week before about \$484 million primarily for specialist housing. Last year there were three tranches of New South Wales and Commonwealth money to top up frontline services. Although, as I say, the underlying rates of reported domestic violence in police statistics and BOCSAR statistics suggest stability, most frontline services reported increased demand, both in volume and in complexity of needs.

In the first lockdown, around about May last year, there was \$21 million of a first tranche that topped up existing service providers. There was another tranche of about \$12 million in Commonwealth money that the State Government distributed with a grant application process for service providers, and then a third tranche, half of which went to safe rooms and audiovisual link upgrades in courts and roughly the other half for infrastructure for frontline services. In our 2021-22 budget, we announced another \$60 million over two years for frontline services. That is \$30 million this financial year and \$30 million the following financial year. That is complemented by \$80 million in Commonwealth money, \$40 million per year. On top of that, we have announced around \$27 million to expand Staying Home Leaving Violence right across the State.

At the moment, Staying Home Leaving Violence is only available in 33 locations in New South Wales, so there is a bit of postcode lottery when it comes to being able to avail oneself of that service. That is a service which, rather than finding crisis accommodation for women and their children fleeing domestic violence, keeps women in their homes in secure circumstances. That money will go to having that service available right across New South Wales. It is not only a, kind of, quasi-accommodation service keeping women and children in their home, but also wraparound services as well—casework and counselling. The money I spoke about, the \$140 million—\$80 million from the Commonwealth and \$60 million from the State—has not yet been allocated. We have been consulting stakeholders and the sector, including Domestic Violence NSW, as to how that money might be best spent. I would hope to be able to announce a tranche of that funding in the very near future.

**The Hon. ADAM SEARLE:** How "very near"—Christmas, beforehand?

**Mr MARK SPEAKMAN:** Certainly before Christmas, yes. I would be hoping this month.

**The Hon. ADAM SEARLE:** When you go through the figures it seems, as you say, that domestic violence is increasing in many areas. For example, I think in the Sutherland shire it is increasing by 9.3 per cent annually over a five-year period. If you look at other parts of the State, you can see many places with very similar experiences, either on a two-year or a five-year basis, increasing very considerably. What sort of holistic responses—I mean, apart from rolling out more of these existing programs—what sort of root-and-branch policies are you considering?

**Mr MARK SPEAKMAN:** Can I just say something about those statistics? You will get significant regional variations. There will be some regions showing a significant increase in reported domestic violence offences of the kind you have described, but the State average is fairly stable. It is inherently unlikely that in a broad police district domestic violence has suddenly gone up rapidly where it has not in other areas. That tends to suggest it reflects differences in the type and level of police activity. So where you have got a very large increase in one area but not in other areas it suggests that there has been greater policing of apprehended domestic violence orders, stalk and intimidation and so on. That is a response to the use of those statistics.

On the question of a holistic response, there is a national plan that all Australian jurisdictions are participating in that is due for release in 2022. We will be having a five-year State strategy for domestic and family violence, and one for sexual violence as well, that we want to make sure complements and integrates into that national plan. The National Summit on Women's Safety was held two months ago, virtually. We have a lot of

important feedback from that. But it is clear, in terms of what are we doing holistically, you have to combat domestic violence on many fronts.

You have to have primary prevention programs in schools and out of schools that change entrenched attitudes to women. You have to have, as part of that primary prevention, the economic emancipation of women so that they are free to leave violent environments if that is what they need to do—they are not economically trapped. You need early intervention programs. You also need accommodation, you need wraparound services, you need somewhere for women and children and men fleeing domestic violence to go to. Casework, counselling—you need all of that. You need to deal with men's behaviour with men's behaviour change programs and by holding perpetrators to account. It is a complex problem. It is a problem that crosses many portfolios in Government and you certainly need that holistic approach to tackle it.

**The Hon. ADAM SEARLE:** I will come back to that.

**The ACTING CHAIR:** I will now hand over to my colleague Ms Abigail Boyd.

**Ms ABIGAIL BOYD:** Good morning. Lovely to see you. Just picking up on the reoffending rates increasing and the complexity when it comes to how you capture that and the different impacts. Presumably, good policing might result in more reoffending being caught. So I have often thought that that was a bit of a weird target to have. Has there been any thought given to a target for this Government of something like zero deaths, like we have for roads, where we are actually looking at the number of victim-survivors and judging how well we are doing by how many women are dying?

**Mr MARK SPEAKMAN:** No. That is an interesting thought. I think, though, you would want to do more than that. It is not just the number of women dying—who are a tiny but, sadly, incredibly tragic proportion of overall domestic violence victim survivors. I think you would want, probably, a broader metric than that.

**Ms ABIGAIL BOYD:** If we flip the current target on its head and talk about a target rate for women not facing a second incident—being reoffended against, if you like—would that perhaps capture the complex nature of domestic violence more than the current target does?

**Mr MARK SPEAKMAN:** That might, I am told. I will invite Ms Campbell or Mr McKnight to correct me or add to what I say, but my understanding is that to get the data to do that would be an exercise that would cost several million dollars a year in data collection. Some may well argue that is a worthwhile exercise, but that is the challenge.

**Ms ABIGAIL BOYD:** I asked during the Premier's estimates, the one where we were just with the officials, in September, about the reoffending rate and asked for more data on that. I was specifically interested in how many of those reoffending were reoffending against the same victims. They were able to provide me with that. It is well over the majority, from my recollection, of reoffenders are reoffending against the same person.

**Mr MARK SPEAKMAN:** We might be at cross-purposes. I do not know. Your data might be offence data, police data, recorded data, which of course might only be 20 per cent of underlying domestic violence. My understanding is that 80 per cent or thereabouts of domestic violence victim-survivors do not go to the police—this is women; it is even higher for men—and, of that 20 per cent who go to police, maybe only half of that 20 per cent, i.e. 10 per cent of the victim-survivor universe, see charges being laid. Probably, more reliable than police data—maybe that is what you are being referred to—would be the Personal Safety Survey, because the data you are referring to still has the same issue with to what extent it depends on the intensity and type of police activity, rather than underlying rate. What I was referring to was an embellishment of the Australian Bureau of Statistics Personal Safety Survey to be able to capture data that would indicate re-victimisation. But I think I have been told that would cost about \$3 million a year.

**Ms ABIGAIL BOYD:** I can imagine that would be the case. But you can see where I am going here, with having more of a victim-centred target, even if it is numbers of people turning up to refuges or it is a dashboard indicator of the actual impact on victim-survivors, as opposed to what is quite a narrow and not very useful metric of reoffending as giving us some indication of the extent of the problem and how well we are doing to tackle it.

**Mr MARK SPEAKMAN:** I think, if we had the money, a broad and personal safety survey would be the way to go because it is not depending on the level of policing. It is fairly reliable because there is no incentive to tell fibs in an anonymous survey. It does not depend on the level of police activity. I think your suggestion about using victim data from BOCSAR or the police still suffers the same problem as reoffending. Alternatively, numbers going to refuges—to some extent, if there is an increase, that may reflect an increase in the underlying rate of domestic violence, or it may reflect an increased confidence and willingness in victim-survivors to find crisis accommodation, or it may reflect the greater availability of accommodation to go to. So probably an

anonymous survey is the best way to go. But, as I have said, there is the challenge that all of us have, in government, to face.

**Ms ABIGAIL BOYD:** Yes, it does sound like it. I think you have convinced me that that is what we should be doing. I do appreciate there would be an additional cost in that, but perhaps that would give us a better idea.

**Mr MARK SPEAKMAN:** I might sub you in for the Treasurer—

**Mr DAVID SHOEBRIDGE:** Sorry. "If we had the money." Have you been following what has been happening in ICAC, about how \$120 million gets thrown here, \$170 million gets thrown here, \$5.5 million gets thrown here? We are talking about \$3 million or so, about domestic violence. Reflecting on what we are hearing in ICAC, is it really your answer, "If we had the money"? Is that really the answer from your Government?

**Mr MARK SPEAKMAN:** I think that is a colourful and long bow to draw, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** We are all hearing it.

**Mr MARK SPEAKMAN:** I am not going to comment on the matters before ICAC. Others have commented on that. But, as a government, we are putting more into fighting domestic violence than any government ever has before. Leaving aside our \$484 million announcement in relation to accommodation, our spending in this area is up 27 per cent. But there are always limits any government faces, fiscal challenges. That is \$3 million—if I have a domestic violence budget, \$3 million I spend on data collection is \$3 million I do not have for something else.

**Mr DAVID SHOEBRIDGE:** Like a conference centre at a gun club.

**Mr MARK SPEAKMAN:** To take Mr Shoebridge's implicit point, "Find the money from somewhere else"—we have increased spending in this area by 27 per cent this year. If you had \$484 million over four years, that is something like an 80 per cent increase in our investment in fighting domestic violence.

**Ms ABIGAIL BOYD:** I do totally understand that. I think it is also important to invest in measures to work out if we are getting things right or wrong. So I will leave that idea with you.

**Mr MARK SPEAKMAN:** Thank you.

**Ms ABIGAIL BOYD:** Could I turn to the ReINVEST trial funding, talking about throwing money around. I asked you about this previously. I do know that ReINVEST did want an extra \$5.5 million for the next two years. They have only received an additional \$1.2 million, which is promising. Given that the head of BOCSAR was viewing giving more money to the ReINVEST trial as throwing good money after bad, what convinced you to give them more money?

**Mr MARK SPEAKMAN:** The premise in your question is not correct, throwing good money after bad. This is an important research project. Just like we are trialling men's behaviour change programs and programs in prisons, this is a trial. We will not know until we get the results of this double-blinded randomised trial whether the use of this antidepressant has any effect or not. But earlier indications, where there was suggestions that it might cut—it is not just domestic violence. It is about violent offenders generally. It may cut reoffending. So it is a trial worth completing. We are so close to having results. You may as well stay the course and get it done.

**Ms ABIGAIL BOYD:** I guess that is the response that I was thinking you would give, because we have had the discussion about whether or not it is a wrongheaded trial. I do not want to re-litigate that. But it was the head of BOCSAR that talked about throwing good money after bad. In the DCJ documents that I obtained on an order for papers, it revealed that it would cost, probably, around \$13.5 million to actually get proper results. What has happened which has led you to believe that the \$1.2 million will actually get them to the point of being able to have proper results to be assessed?

**Mr MARK SPEAKMAN:** There will be a smaller number of participants, I think, 200 instead of 400 or more that was suggested previously. But the Kirby Institute assures us that that is a large enough participation rate to have robust empirical results.

**Ms ABIGAIL BOYD:** Does that take into account the high numbers that were pulling out? Has there been any commitment from the Government to help recruit to the trial?

**Mr MARK SPEAKMAN:** I think certainly Community Corrections have been asked to keep us aware of appropriate cohorts of participants in the areas where this trial is going on. It is Hunter, Central Coast, western Sydney and central Sydney, I think.

**Ms ABIGAIL BOYD:** Are you aware of magistrates in some cases directing participation in ReINVEST?

**Mr MARK SPEAKMAN:** I am not aware, but I cannot say that it is not happening. I am not aware one way or the other.

**Ms ABIGAIL BOYD:** Given that it involves a prescription, we would expect that any direction to participate in the trial would come from a psychologist or a psychiatrist or even a GP rather than a magistrate. If that was going on, would you be concerned?

**Mr MARK SPEAKMAN:** I do not want to jump into hypotheticals. But, prima facie, if it does involve a prescription, you would ordinarily expect it to be on the advice of a medical practitioner or a paramedical practitioner, like a psychologist.

**Ms ABIGAIL BOYD:** Have measures now been put in place to ensure that the victim-survivors related to the particular perpetrators are being consulted and that their consent is sought before the perpetrator is put on this program?

**Mr MARK SPEAKMAN:** I do not know about consent. But certainly in evaluation—I am told that University of New South Wales [UNSW] has established an advisory group to determine the most appropriate methodology and approach to measure the impact on partners of ReINVEST participants. This includes ensuring safety and confidentiality are maintained in the collection of information from victim-survivors. Membership includes representatives from Women's Domestic Violence Court Advocacy Service, the Chief Magistrate's office, UNSW clinical representatives, victim-survivor partners and ex-partners. I am told that the advisory group is also responsible for overseeing and advising on the trial's adherence to providing partners' support and monitoring partners' safety and wellbeing.

**Ms ABIGAIL BOYD:** Thank you. That sounds like an improvement from when we last discussed this. So I will wait and see. Can I ask you about the new shelters. As you say, that was a promising announcement made last month. The plan is for the number of women's refuges to increase from 86 to 161. What will be the increase in actual capacity in refuges? If these new core-and-cluster have only six units, what is the percentage increase in available accommodation?

**Mr MARK SPEAKMAN:** I will make some remarks if I may, and then I will invite Ms Campbell to supplement. That represents roughly a doubling in capacity. The number of 75 is approximate. There will also be eight refurbishments of existing refuges to convert them to a core-and-cluster model. Typically, there would be maybe four—up to six but maybe four—units at each one of these core-and-cluster, so you can do the maths from that, how many extra units it provides. I do not know whether Ms Campbell wants to comment on what proportion increase in capacity it represents.

**Ms CAMPBELL:** Thank you, Attorney. In terms of numbers, it would be an additional 2,900 women and children each year over the four years.

**Ms ABIGAIL BOYD:** What is the current capacity?

**Ms CAMPBELL:** The current capacity is very similar, so it would be just a little bit more currently, probably closer to 3,500, but I am happy to take that on notice and give you the exact detail.

**Ms ABIGAIL BOYD:** Thank you. That would be useful. How many of those will be pet friendly?

**Mr MARK SPEAKMAN:** That is a good question. I cannot give you a precise answer, but Ms Campbell and I have already had a discussion about this and the need to have as many as possible that are pet friendly, so that and accessibility for people with disability will be important parts of the design.

**Ms ABIGAIL BOYD:** Was consideration given to expanding existing refuges? I hear that there are some refurbishments, but there are a lot of refuges asking for additional funding to expand. Has that been—

**Mr MARK SPEAKMAN:** No, but I anticipate that in the \$140 million of New South Wales and Commonwealth extra money over the next two financial years, some of that will be available for infrastructure programs.

**Ms ABIGAIL BOYD:** The existing Orchard facility in Orange that is run, I believe, by Housing Plus, what percentage of that was funded by the New South Wales Government and what percentage was through charitable donations?

**Mr MARK SPEAKMAN:** I would have to take that on notice. I don't know whether you know, Ms Campbell?

**Ms CAMPBELL:** My understanding is that was funded through the NSW Homelessness Strategy. I am not exactly sure whether there was any co-contribution so, again, I am happy to take that on notice.

**Ms ABIGAIL BOYD:** Is the plan for these additional shelters to follow a similar part-funding model or will they be fully funded?

**Mr MARK SPEAKMAN:** I am not sure about that but, whatever it is, the money that we have announced, \$400 million, is there both for construction and also operation over the forward estimates.

**Ms ABIGAIL BOYD:** What criteria will be used to select the providers?

**Mr MARK SPEAKMAN:** Those criteria are being developed. I think in the near future Ms Campbell and others will be doing a mapping exercise to identify areas of greatest need.

**Ms ABIGAIL BOYD:** Many refuges have limited capacity at the moment due to COVID restrictions, with the spacing out of rooms and so on. Has that been considered in this core-and-cluster model for the future?

**Mr MARK SPEAKMAN:** Would you mind just elaborating on the question?

**Ms ABIGAIL BOYD:** Yes. For example, in some of the refuges that have shared kitchens or any kind of shared area, that has resulted in a lot of the refuges being unable to take as many women and children because they have had to keep them separate during COVID restrictions. Obviously, if we get something like that happening again, it would be good to future-proof the design. Has that been taken into consideration with this core-and-cluster model?

**Mr MARK SPEAKMAN:** With them, I do not know what—Ms Campbell?

**Ms CAMPBELL:** Thank you, Attorney. Yes, certainly that will be taken into account. We have, obviously, learnt a lot during COVID, and whilst a number of the refuges have had reduced capacity, given the design, we have also provided additional COVID funding to enable people to be supported in other arrangements. But in terms of the design of the core and cluster, we will be doing that in conjunction with DV NSW and key stakeholders, to look at a co-design, and obviously looking very different in different locations across New South Wales. In terms of having separate units and perhaps looking at arrangements where there are facilities for cooking within the units, that will be explored over the next little while.

**Ms ABIGAIL BOYD:** Just a final question. In relation to sexual assault claims, for the past couple of years I have been raising with Minister Elliott and Commissioner Fuller the reasons why New South Wales does not have the ability to capture the data: the percentage of how many sexual assault claims are withdrawn by the victim and how many are discontinued, for example, because the prosecution thinks it is unlikely to get a conviction. Although we collect that data, we are the only jurisdiction in Australia not to be able to produce—so we record it but we cannot then extract it. I have been raising it for a very long time. I have been told that now we have got a new system coming in to replace the existing core operational policing system, called integrated policing operating system, I think, and that it will have the capacity but not for an additional four years. When I asked the Minister about this on Friday—I asked Commissioner Fuller—they did not think it was very useful to have that data and did not think that it was a big priority. Do you think it would be useful to have that data?

**Mr MARK SPEAKMAN:** Thanks for warning me about what they said. You can never get enough data. I will look at that issue but, as you might recall, part of our response to the law reform commission's recommendations on consent law was a research exercise on the experience of victim-survivors and the criminal justice process from go to woe. Certainly, dropout rates, if I can call it that, or turnout rates would certainly be an important part of the analysis that the department and BOCSAR will be doing.

**Ms ABIGAIL BOYD:** Alright, I will leave that with you.

**Mr DAVID SHOEBRIDGE:** Attorney, you are aware that the New South Wales Government spent \$10.85 million on the ice inquiry. Are you aware of that?

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

**Mr DAVID SHOEBRIDGE:** A report was delivered more than 18 months ago and we still have not seen a single one of the 109 recommendations implemented.

**Mr MARK SPEAKMAN:** Not quite right.

**Mr DAVID SHOEBRIDGE:** We have not seen the 109 recommendations implemented even in a pretend way. What do you say to the people of New South Wales? Was this a \$10.85 million stunt to avoid action?

**Mr MARK SPEAKMAN:** A couple of things. Firstly, there is the significant what I call down payment with the announcement of a Dubbo drug court, which is an investment of around \$28 million, and that will be up

and running from around about the middle of next year, plus a residential rehab facility in Dubbo. So there is a start, albeit not the overwhelming body of recommendations to be implemented. No, not a stunt at all. If the Government were not serious about tackling the problem of drug addiction, particularly in regional New South Wales, we would not have set up an extensive inquiry, hearing evidence from scores of experts, going around New South Wales with a leading practitioner as the counsel assisting, a leading practitioner as the commissioner. Obviously, you set up an expert inquiry to get recommendations for the Government to consider implementing.

**Mr DAVID SHOEBRIDGE:** Attorney, 109 recommendations. At best, you can point to the partial implementation of two. The Royal Australasian College of Physicians, the Royal Australian College of General Practitioners, the Australian Medical Association, the Royal Australian and New Zealand College of Psychiatrists have all come out in just the past few weeks and said that long-term drug policy failures and delays by your Government are responsible for costing lives and damaging communities. What do you say to that august group of bodies about the 18-month delay?

**Mr MARK SPEAKMAN:** I am keen to get this resolved as quickly as possible. It is a complex issue. There are, as you say, 109 recommendations. The Department of Communities and Justice, the Ministry of Health, the Police Force and the Department of Premier and Cabinet have been working very hard to get a great landing place on a response to these recommendations, and I am hopeful and confident that we will have something to say before Christmas.

**Mr DAVID SHOEBRIDGE:** You say, "hopeful and confident before Christmas". Does that mean there will not be any legislation this year?

**Mr MARK SPEAKMAN:** No, but depending upon what the recommendations are, there may not be a need for legislation. Take court diversion, for example. Were the Government minded to expand the Drug Court or the Magistrates Early Referral Into Treatment [MERIT] scheme or circle sentencing or a Youth Koori Court, you would not need legislation to do that. A Walama Court—depending on how you configured it, you may or may not need legislation. Pre-court diversion—if anything were done in that area, you may or may not need legislation. We already have—

**Mr DAVID SHOEBRIDGE:** Possession offences, which is one of the core recommendations—stop putting people in jail because they have got an addiction.

**The Hon. TREVOR KHAN:** David, let him answer and he was answering.

**Mr MARK SPEAKMAN:** If you were to decriminalise possession, you would need legislation and we have said we are not decriminalising possession. Were we to do any part of recommendation 12 about any sort of pre-court diversion, you may or may not need legislation to do that. There is a scheme that operates at music festivals for people caught with drugs at music festivals where they receive a criminal infringement notice and pay a \$400 fine. In terms, that regulation could apply right across New South Wales. It is capable legally at the moment of applying right across New South Wales but operationally it is only implemented at music festivals and, of course, there have been no music festivals basically for the last 18 months. So, without saying where the Government may land—there may be no pre-court diversion, there may be other pre-court diversion—you do not necessarily need legislation to widen the operation of an existing pre-court diversion scheme.

**Mr DAVID SHOEBRIDGE:** Attorney, do you agree with the thrust of recommendation 12 that people should not be being put in jail and criminalised because they have an addiction problem and that that is a fundamental failure of the criminal justice system? Do you accept the thrust of recommendation 12?

**Mr MARK SPEAKMAN:** As a member of Cabinet, fortunately or unfortunately, I do not have the liberty of being able to express a personal view before Cabinet has decided something on what something might look like, but I am happy to express a general view that a health outcome is generally what should be driving our approach to drug policy in New South Wales. There is plenty of evidence that throwing people in jail is not going to solve their addiction problem. They need treatment and intervention and that is why we have a MERIT Program in New South Wales, that is why we have a Drug Court in New South Wales and that is why the Government is considering the recommendations of the ice inquiry that may expand pre-court diversion. So my general philosophy is pretty clear but it is not appropriate to agitate, before the matter is resolved by Cabinet, what permutation or combination of diversion we should adopt in New South Wales.

**Mr DAVID SHOEBRIDGE:** Do you accept, Attorney, the position put by those four peak medical bodies is that this matter has become more, not less, urgent because of lockdown and addiction problems associated with lockdown? Do you accept that that has made the matter more urgent?

**Mr MARK SPEAKMAN:** I accept there is a need to resolve this in a timely manner and that is certainly something I am aiming for.

**Mr DAVID SHOEBRIDGE:** I think that might be an appropriate time for the break.

**The CHAIR:** Are you finished?

**Mr DAVID SHOEBRIDGE:** I just think that might be an appropriate time to go to the break.

**The CHAIR:** We will take a break now and come back at 11.20 a.m.

**(Short adjournment)**

**The CHAIR:** The Opposition will proceed.

**The Hon. SHAOQUETT MOSELMANE:** Good morning, Attorney. You have indicated earlier that there is a significant rise in regional domestic violence.

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

**The Hon. SHAOQUETT MOSELMANE:** It was indicated by my colleague that there was an increase in various areas of domestic violence.

**Mr MARK SPEAKMAN:** I may have conceded that there is an increase in reporting rates to police and convictions for domestic violence in some geographic areas.

**The Hon. SHAOQUETT MOSELMANE:** That concession is an indication that there is an increase, isn't it?

**Mr MARK SPEAKMAN:** No, as I have discussed, the number of recorded offences is a function of the underlying rate of offending and the intensity of police activity in prosecuting and getting convictions.

**The Hon. SHAOQUETT MOSELMANE:** Minister, can I ask you then, does the Government have a regional strategy for the prevention of domestic violence? In recent times has it introduced any regional strategy?

**Mr MARK SPEAKMAN:** Not something called a regional strategy but, as part of our overall strategy in combating domestic violence, obviously a key part of that is addressing domestic violence in regional New South Wales because, other things being equal, there tends to be higher rates of domestic and family violence in regional New South Wales compared with metro Sydney.

**The Hon. SHAOQUETT MOSELMANE:** Statistics do indicate, Attorney, that there has been an increase in domestic violence. I will give you an example. For example, in the local government area of Bathurst there was an increase in 2016-17 from 184 to, in 2020-21, 324 domestic violence cases. So there is a significant increase there. At least, that is in regional Bathurst. In Lithgow there is a similar increase—37 per cent increase in Bathurst and 27 per cent increase in Lithgow. Isn't that significant in your mind, Attorney?

**Mr MARK SPEAKMAN:** As I think I indicated before, where you get big increases in particular police districts, it is likely to reflect increased police activity in those districts. It is inherently implausible, for example, that underlying domestic violence might have gone up 30 per cent or 40 per cent in Bathurst but be stable in other police districts in New South Wales. So the most likely explanation for a regional or a geographically isolated increase, or a collection of those, is an increase in policing rather than some underlying increase in the actual rate of domestic and family violence.

I will just be very clear. I am not suggesting that the level of domestic and family violence is acceptable. It is clearly a grossly under-reported crime—the statistics I have suggested earlier that 80 per cent of victims will not go to police and, of the 20 per cent who do, maybe only 10 per cent see their perpetrator charged. So I am not suggesting for one moment that there is not a serious domestic violence problem across the State. But what I am suggesting is when you cherry-pick increases in particular geographic areas in reported offending, it is most likely reflecting police activity in that geographic area.

**The Hon. SHAOQUETT MOSELMANE:** Attorney, what are you doing to reduce the offending rates in regional New South Wales? Apart from the police—you have indicated what the police are doing. What are you doing as the Attorney?

**Mr MARK SPEAKMAN:** Everything I have described. In terms of law reform as Attorney General—wearing my Attorney General hat and not my Minister for Prevention of Domestic and Sexual Violence hat—we have introduced an offence of strangulation, making it much easier to prove strangulation and that has had hundreds of charges, because we know that strangulation is not only obscene in its own right but also a red flag for domestic violence homicide. Maybe a third of domestic violence homicide has been preceded by non-fatal strangulation.

We have reformed the law of apprehended domestic violence orders so there is now a default period of two years rather than one year. You can have indefinite ADVOs. Police can vary ADVOs even when there is a court ADVO in place. ADVOs can apply to offenders when they come out of jail. We have reformed ADVOs so that it is clear that they capture animal abuse. We have reformed the definitions of "stalking" and "intimidation" so that it is clear they capture cyber abuse. Intimate image abuse is often a form of coercion and we have criminalised that.

In relation to domestic violence criminal matters and associated proceedings, we have court-appointed questioners rather than having a self-represented defendant ask the questions of the complainant, a presumption in favour of closed courts and so on. All that is making it, hopefully, easier for victim-survivors to come forward and make complaints, and to hold perpetrators accountable for their actions. What else are we doing? Well, there are the men's behaviour change programs—

**The Hon. SHAOQUETT MOSELMANE:** Can I put to you then a series of scenarios in regional New South Wales?

**Mr MARK SPEAKMAN:** Sure. My answer is incomplete. But if you want to go on, that is fine.

**The Hon. SHAOQUETT MOSELMANE:** Thank you, Attorney General. If a domestic violence offender lived in Walgett, where would they participate in a men's behaviour change program?

**Mr MARK SPEAKMAN:** Ms Campbell might be able to answer that.

**Ms CAMPBELL:** There is one in that area. I am just looking through my notes—let me have a look. I would need to take that one on notice.

**The Hon. SHAOQUETT MOSELMANE:** Alright. If a domestic violence offender lived in Coonamble, where would they participate in a men's behaviour change program? These areas have a high rate of domestic violence, in those two regions.

**Ms CAMPBELL:** Yes, I can answer that one. That would be Mission Australia. This program was expanded throughout western New South Wales, which includes Dubbo, Coonamble, Broken Hill and Walgett.

**The Hon. SHAOQUETT MOSELMANE:** What about if a domestic violence offender lived in Moree Plains?

**Ms CAMPBELL:** I would need to take that one on notice.

**The Hon. SHAOQUETT MOSELMANE:** Thank you. Minister, why are domestic violence rates increasing in the Bathurst and Lithgow areas? I know you indicated it is increased policing, but there is a situation where there is a significant increase in those areas. Why are they increasing?

**Mr MARK SPEAKMAN:** I am not familiar with the specifics of Bathurst and Lithgow. But, as a general proposition, where there is a significant increase in recorded domestic violence offences in a particular locality but not a general trend of increased recorded domestic violence offences across the State, the more likely explanation for Bathurst and Lithgow is some increased or different police activity. If you would like me to take the question on notice, so that I—

**The Hon. SHAOQUETT MOSELMANE:** Yes.

**Mr MARK SPEAKMAN:** If there is anything specific about Bathurst or Lithgow that I can impart, I will. But my starting position is that, prima facie, where a statistic like that emerges it is likely to be explained by police activity.

**The Hon. SHAOQUETT MOSELMANE:** Thank you, Attorney General. Can I ask you questions in relation to the domestic violence notification scheme? Could you provide an update on the status of the domestic violence notification scheme? Where is it at?

**Mr MARK SPEAKMAN:** That scheme was trialled, I think, in four police districts and has been discontinued. It did not appear to be a cost-effective exercise in the way that it was configured. Just let me supplement the figure if it is wrong, but my recollection is it might have cost some many thousands of dollars—even tens of thousands of dollars—per notification. It was not a scheme that had the support of the domestic violence sector, so it was discontinued—which is not to say that we will not, in future, look at reintroducing a different scheme. But the challenge is making it cost-effective, on the one hand, but protecting people's privacy on the other hand so that it is not the case that whenever somebody has a new boyfriend—because it is typically a male who is alleged to be the perpetrator—that gives someone a right to go through that person's criminal record. If there is to be some sort of filtering exercise—so there is good cause to disclose the offending history of



someone—that is a labour-intensive exercise. It just did not seem to be cost-effective in terms of lives saved—millions of dollars for each service. So that has been discontinued in its current model. But if there is some—

**The Hon. SHAOQUETT MOSELMANE:** When was that discontinued?

**Mr MARK SPEAKMAN:** 30 June 2019.

**The Hon. SHAOQUETT MOSELMANE:** Was an alternative approach looked at?

**Mr MARK SPEAKMAN:** As I said, we will keep considering whether there is a more cost-effective way to go.

**The Hon. SHAOQUETT MOSELMANE:** Is there a time line?

**Mr MARK SPEAKMAN:** No, there is no time line on that. But, can I say, I do not get the sense that the domestic violence sector—the frontline workers—are calling for such a scheme. I know that it was modelled on a scheme in the United Kingdom and I think South Australia has recently introduced a scheme like it. At the moment, we do not have any plans to reintroduce such a scheme but I am not ruling it out forever.

**The Hon. SHAOQUETT MOSELMANE:** Do have a preferred option?

**Mr MARK SPEAKMAN:** No, because we have not really been able to land somewhere which is user friendly, cost effective but at the same time has appropriate protections of people's privacy.

**The Hon. SHAOQUETT MOSELMANE:** I will move on to other matters. Obviously, the pandemic had a significant impact on the entire State. Certainly, it impacted the New South Wales Supreme Court and the New South Wales District Court. What is the current status of the backlog in criminal trials in the District Court and the Supreme Court?

**Mr MARK SPEAKMAN:** In the District Court, it peaked at about 2,100 in 2017. I think, pre-COVID it was brought down to around 1,400 and at the moment it is in the high 1,500s.

**The Hon. SHAOQUETT MOSELMANE:** How many trials have been delayed?

**Mr MARK SPEAKMAN:** Have been aborted?

**The Hon. SHAOQUETT MOSELMANE:** Delayed?

**Mr MARK SPEAKMAN:** Do you have that number at hand, Ms D'Elia?

**Ms D'ELIA:** In the Supreme Court, 16 criminal trials were vacated, so that—

**The Hon. SHAOQUETT MOSELMANE:** How many? I am sorry.

**Ms D'ELIA:** Sixteen. That increased the pending caseload to 145 as at August. The Supreme Court though is resuming criminal trials as of 8 November. In the District Court, the caseload increased to 1,591 in September 2021. That is compared to 1,400 in March 2020. They have resumed trials as of 25 October.

**The Hon. SHAOQUETT MOSELMANE:** When do you expect the backlog of trials to be cleared, Attorney General?

**Mr MARK SPEAKMAN:** Well, it depends what you mean by "cleared". If you mean down to zero—

**The Hon. TREVOR KHAN:** Never.

**Mr MARK SPEAKMAN:** Never. If you mean back to where it was pre-COVID—

**The Hon. SHAOQUETT MOSELMANE:** Well, effectively, when those increases that have been delayed are addressed?

**Mr MARK SPEAKMAN:** When will it be back to 1,400, which it was pre-COVID?

**The Hon. SHAOQUETT MOSELMANE:** Yes.

**Mr MARK SPEAKMAN:** My guess is it might take a year to do that. What do you say, Ms D'Elia?

**Ms D'ELIA:** At this point, we have not forecast the exact amount of time it would take. But the Chief Judge in the District Court has started a program of work in order to shorten vacation, for example, so that they can resume the trials and get back on top of the trials—as quickly as possible.

**The Hon. SHAOQUETT MOSELMANE:** The New South Wales District Court and the Chief Justice have made a request to the Government for additional jury rooms. Are you aware of that, Attorney General?

**Mr MARK SPEAKMAN:** Yes.

**The Hon. SHAOQUETT MOSELMANE:** What have you done about it?

**Ms D'ELIA:** In order to resume jury trials we have done a series of things, one of which was to take a look at possibly renting spaces offsite, where we have to maintain the four square metre rule. Once we get down below the two square metre rule, we will be able to actually resume pretty much 100 per cent of the jury trials that we could do pre-COVID. So it is just when we are at the four square metre rule that we have a problem.

**The Hon. ADAM SEARLE:** Just on the issue of courts, earlier this year I was approached by a group of practitioners in Newcastle who were concerned that in order for their clients to have reasonable time frames for trials in both, I think, the Supreme Court and the District Court they had to file in the Sydney registry rather than being able to file locally, due to the lack of sitting days anywhere near Newcastle. Is that something that has come to your attention?

**Mr MARK SPEAKMAN:** No, it has not.

**The Hon. ADAM SEARLE:** Is it something you would be interested in looking at: whether or not the burden of trials could be lifted from Sydney metro and maybe Newcastle could become—at least for clientele in Newcastle, they would be able to have cases heard closer to where they live?

**Mr MARK SPEAKMAN:** I am happy to have a look at it. The total resourcing the District Court gets is in the hands of the executive, including me. How the court allocates those resources, including where it chooses to list matters, is a matter for the Chief Judge.

**The Hon. ADAM SEARLE:** So this is a matter perhaps local law societies and bar associations should speak with the heads of jurisdiction about.

**Mr MARK SPEAKMAN:** I think it would, yes. Is it an issue about the Local Court and the District Court or just the District Court?

**The Hon. ADAM SEARLE:** I think it is mainly the District Court and, of course, the lack of Supreme Court sittings.

**Mr MARK SPEAKMAN:** I think the Chief Judge would have a user group. Your practitioner colleagues are best to speak to that group and the Chief Judge, I think.

**The Hon. ADAM SEARLE:** My friend was asking you some questions about spikes in DV rates in particular localities. You were saying, I think, the most likely explanation is an increase in policing. You have taken, I think, the examples he has given you on notice to see whether or not it is related to policing or whether it is some other feature. For example, Eurobodalla has gone up by nearly 11 per cent a year over five years but, more recently, the two-year average is a 39 per cent increase. What is another example? Parramatta is nearly up by 7 per cent; Penrith, 4 per cent; Tenterfield, 12 per cent per year over five years but nearly 77 per cent over the last two years. These are, as you say, quite dramatic increases. If I put these on as supplementary questions, will you come back with a full explanation about whether it is related to policing or whether there is some other things?

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

**The Hon. SHAOQUETT MOSELMANE:** Can I just ask you questions in relation to the Luna Park inquiry?

**Mr MARK SPEAKMAN:** Yes.

**The Hon. SHAOQUETT MOSELMANE:** Do you support such an inquiry?

**Mr MARK SPEAKMAN:** Again, as a member of Cabinet, I do not have the luxury of expressing personal opinions. At the moment there is no government proposal for an inquiry. I think the Coroner has asked—I have responsibility for the Coroners Act. I otherwise do not have portfolio responsibility for a police investigation. A special commission of inquiry or a royal commission are matters for the Premier, rather than me. My understanding is the Coroner has asked the police to provide a report to her. I have not received a recent update on that.

**Mr DAVID SHOEBRIDGE:** The Treasurer had no difficulty expressing his views. His strong view is that there should be an independent inquiry.

**The Hon. TREVOR KHAN:** That does not make it right.

**Mr DAVID SHOEBRIDGE:** Are you in a separate category to the Treasurer, Attorney?

**Mr MARK SPEAKMAN:** I am not going to comment on what the Treasurer does, but I am a traditionalist. There are plenty of things I would like to say. There are plenty of things that I might put in my memoirs one day. But, for the moment, I will desist.

**The Hon. SHAOQUETT MOSELMANE:** Can I just go back to a couple of questions that I have got, Attorney?

**Mr MARK SPEAKMAN:** Sure.

**The Hon. SHAOQUETT MOSELMANE:** In March you said that you had asked the Department of Communities and Justice for advice on any appropriate action. What advice have you received?

**Mr MARK SPEAKMAN:** That, among other things, a special commission of inquiry and a royal commission are matters for the Premier, the Coroner can reopen the matter. At the moment, the Coroner has asked the police to provide her with a report.

**The Hon. SHAOQUETT MOSELMANE:** Having received the advice, have you acted on any aspect of the advice?

**Mr MARK SPEAKMAN:** No, because I am not the Coroner. It is a matter for the Coroner to request a report from the police. It is a matter for the police to decide what they want to independently investigate or to respond to the Coroner's request. And it is a matter for the Premier to decide whether to hold a royal commission or a special commission of inquiry.

**The Hon. SHAOQUETT MOSELMANE:** The former Premier was considering an inquiry. Is the current Premier also supportive of an inquiry?

**Mr MARK SPEAKMAN:** You would have to ask him that.

**The Hon. SHAOQUETT MOSELMANE:** Has there been any discussions?

**Mr MARK SPEAKMAN:** I have not had a discussion with him, no.

**The Hon. ADAM SEARLE:** Mohammed Skaf. He has been released now on parole? Is that correct?

**Mr MARK SPEAKMAN:** That is correct.

**The Hon. ADAM SEARLE:** Previously the indications were that he still posed a medium-to-high level of risk to the community. Yet, despite that, I think, the submissions of the Crown to the parole authority was that he should be released on conditions. Is that because of the lack of extended programs to reintegrate him? Is that because they had been cancelled due to COVID?

**Mr MARK SPEAKMAN:** Firstly, it is not my portfolio. It is the Corrections—

**The Hon. ADAM SEARLE:** You are the Minister responsible for the parole authority, though, are you not?

**Mr MARK SPEAKMAN:** No, I am not.

**The Hon. ADAM SEARLE:** You are not?

**Mr MARK SPEAKMAN:** I am responsible for appointments of what I will call judicial members to the parole authority. The appointment of committee members is the responsibility of the corrections Minister. The day-to-day operations of the State Parole Authority are his responsibility. I do not play any role in submissions that are made to the State Parole Authority about parole or otherwise for offenders who are in custody.

**The Hon. ADAM SEARLE:** We might come back to that.

**Mr DAVID SHOEBRIDGE:** Attorney, you were asked some questions by Mr Searle earlier today, about the monitoring devices that were used in one notorious bail case recently. Are those monitoring devices provided by a private corporation? If so, who?

**Mr MARK SPEAKMAN:** My understanding was, in the case to which you refer, it was a private company providing the device. I do not know the identity of that company.

**Mr DAVID SHOEBRIDGE:** Can Ms D'Elia help us?

**Ms D'ELIA:** I would have to take it on notice.

**Mr DAVID SHOEBRIDGE:** Are you seeking a review of the contract with that private company if, as appears in this case, at least according to your comments, the accused was able to cut it off and then abscond?

**Mr MARK SPEAKMAN:** I do not understand there is a contract between the State and the private company. I would have to check what the bail conditions are. I do not understand we have contracted with that company. Is that correct?

**Mr McKNIGHT:** That is my understanding.

**Mr MARK SPEAKMAN:** We—I say "we", not me. It was the Commonwealth DPP in that case—is not proffering electronic monitoring as a solution to bail risk. That is something that the accused proffered.

**Mr DAVID SHOEBRIDGE:** Who arranged for the private monitoring of the accused?

**Mr MARK SPEAKMAN:** I will have to take that on notice. Do you know?

**Ms D'ELIA:** No.

**Mr DAVID SHOEBRIDGE:** It cannot have just been a private contract between the accused and some third party.

**Mr MARK SPEAKMAN:** I was not involved in running that case. I will have to take that question on notice.

**Mr DAVID SHOEBRIDGE:** Mr McKnight, do you know the circumstances in which private corporations are having the role of monitoring people on bail in New South Wales? You must have some oversight of it. It cannot just be happening entirely free from any oversight from you.

**Mr McKNIGHT:** The situation, as I understand it, is as the Attorney General has explained it. The department has contracts with electronic monitoring arrangements when the person is in the care of Corrections. In the situation of Extended Supervision Orders or Intensive Correction Orders that involve electronic monitoring, Corrections have contracts with monitoring agencies. The bail situation is relatively unusual, as I understand it. The situation is as the AG has explained it.

**Mr DAVID SHOEBRIDGE:** There is no contract, no outstanding arrangement, they are just freelancing, are they, with whoever they choose to have private monitoring? It is a freelancing situation.

**Mr McKNIGHT:** I think we need to take the detail of what happened in this case on notice.

**Mr DAVID SHOEBRIDGE:** Ms D'Elia, can you shed any light on this?

**Ms D'ELIA:** I cannot, no. Sorry.

**Mr DAVID SHOEBRIDGE:** Right now your understanding, Attorney, is that there are private arrangements entered into with private corporations, unrelated to a contract with the people of New South Wales, under which, if you are wealthy enough, you can have your bail monitored, and in circumstances when you can just then cut off the monitor and go for a run.

**Mr MARK SPEAKMAN:** A number of responses to that. Firstly, as a general proposition, prosecutors on behalf of the State do not support electronic monitoring as a risk mitigation condition for bail. They would generally oppose bail being granted. So this is not something that the State proffers. Secondly, this was a case involving the Commonwealth Director of Public Prosecutions, not the State. Thirdly, because I was not involved in the case, I do not know what the mechanism was to make the undertaking to be monitored enforceable—how it was enforced as against the private company. But that is not to say there was not some enforcement mechanism. I just do not know what it was because it was a matter between the Commonwealth DPP and this private company.

**Mr DAVID SHOEBRIDGE:** How do you know it was a matter between the Commonwealth DPP and the private accused? The model—

**Mr MARK SPEAKMAN:** Because—

**Mr DAVID SHOEBRIDGE:** No, let me finish.

**Mr MARK SPEAKMAN:** I am sorry.

**Mr DAVID SHOEBRIDGE:** How do you know it was a matter between the Commonwealth DPP and the accused if you do not know even the identity of the corporation that was doing the monitoring and, I assume, you have not got a copy of the order in front of you? So how do you know it was an arrangement between the Commonwealth DPP and the accused?

**Mr MARK SPEAKMAN:** I do not know if it is an arrangement. What I am saying is it is not a bail application that the State was running and opposing. It was being opposed by the Commonwealth DPP because they were Federal charges, so what contract or undertaking was entered into by a private company to the

Commonwealth DPP or to the Commonwealth, I do not know because I was not involved and I have not, in the time available, been able to descend to that level of detail.

**Mr DAVID SHOEBRIDGE:** It is not the Commonwealth DPP that is going to be monitoring whether or not bail is complied with. It is the NSW Police Force, I assume, that is going to be monitoring whether bail is complied with, or have I got something wrong? Does the Commonwealth DPP have a role that I do not understand?

**Mr MARK SPEAKMAN:** Just to be clear, I am not saying there is some kind of total vacuum, that a private company just says it will do something and there is no enforcement mechanism. I am just saying I do not know what that mechanism is and will take that question on notice.

**Mr DAVID SHOEBRIDGE:** What we do know at the moment is there is some private company, that you do not know the details of, that is monitoring an accused under serious drug offences; the accused cut off the private monitoring device and you do not know whose job it was to monitor it, what the arrangements were under which the device was put in place and what, if any, role the New South Wales police had in it. That is the state of play at the moment, is it, Attorney?

**Mr MARK SPEAKMAN:** My job, as Attorney, is not to run every one of the tens of thousands of bail applications that are made in New South Wales, so I do not think it is reasonable to expect that I would know all that detail if in fact that is what you are suggesting. But the case illustrates a problem with electronic monitoring on a bail application where there is a significant flight risk of an accused. It really would not matter, on one view, whether it was Community Corrections or Corrective Services monitoring the device, or a private company. As I understand it, once the accused cut the device an alarm was sounded and police were trying to swoop on his residence straightaway but they were not there quick enough. So I do not think anything turned on whether it was private or Community Corrections or Corrective Services, but in any event that is quite different from the arrangements that are in place with parole, where Corrective Services operate and monitor those devices.

**Mr DAVID SHOEBRIDGE:** Do you not accept that, on the face of it, we have a significant problem here with privatising and contracting out a key part of the criminal justice system—in this case, a private corporation having the bail monitoring?

**Mr MARK SPEAKMAN:** No.

**Mr DAVID SHOEBRIDGE:** You are not troubled by that?

**Mr MARK SPEAKMAN:** No, the issue that has emerged is that electronic monitoring in this case was not an effective risk mitigator because, notwithstanding the electronic monitoring, the offender—or the accused, I should say—absconded, but that would be the same—

**Mr DAVID SHOEBRIDGE:** I think once you—

**The Hon. TREVOR KHAN:** David, please.

**Mr DAVID SHOEBRIDGE:** Sorry. I think once you abscond, you become an offender, but anyhow.

**Mr MARK SPEAKMAN:** The accused—the offender—that will be an issue, whether the monitoring was private or public. The issue is that the offender, the accused, was able to cut his device and abscond, which would be the same issue, whether it was private or public monitoring. The issue is there that the police moved as swiftly as possible, as swiftly as they would if it were publicly monitored instead of privately monitored, so the private versus public issue made no difference in this case. The problem was with using electronic monitoring as a device to minimise risk. I am not, in saying that, advocating private monitoring for anything because the State, as I understand it, has never advocated private electronic monitoring in a bail application.

Rather, the State typically, or the prosecution typically, opposes bail, notwithstanding that the accused offers to have electronic monitoring. The reason it is private is because the State is saying, "We're not going to do it, we don't want it," and the accused offers it and persuades a judicial officer that that is an appropriate term of bail to justify the granting of bail.

**Mr DAVID SHOEBRIDGE:** Mr Attorney, you seem to know quite a bit about it. You know about the delays and you say that there is no difference between the delay in response to this private arrangement and in response to a public arrangement. How do you know that?

**Mr MARK SPEAKMAN:** Only from what I have read. I do not know that firsthand.

**Mr DAVID SHOEBRIDGE:** Can we rely upon your evidence that there is no difference between the delay—

**Mr MARK SPEAKMAN:** Don't rely—

**Mr DAVID SHOEBRIDGE:** Let me finish.

**Mr MARK SPEAKMAN:** Go on.

**Mr DAVID SHOEBRIDGE:** No difference in the delay between reports of this private device being cut and any tampering with a public device? Can we rely upon your evidence that there is no difference in a delay?

**Mr MARK SPEAKMAN:** That is second-hand evidence. That is my understanding.

**Mr DAVID SHOEBRIDGE:** Who from?

**Mr MARK SPEAKMAN:** I think the point you are trying to make is that this is an argument against privatising electronic monitoring. The State is not trying to privatise electronic monitoring. Electronic monitoring of parolees and domestic violence offenders under a pilot is, as I understand it, done by Corrective Services. Electronic monitoring of those who want bail is not a scheme thought up by the State or promoted by the State. It occurs over the opposition of prosecutors but at the submission of individual accused who are able to persuade a judicial officer that bail is appropriate because the risk is mitigated by electronic monitoring, and they are prepared to pay for it themselves.

**Mr DAVID SHOEBRIDGE:** So if you are wealthy enough at the moment—this bloke obviously had a lot of money—you can pay for the private monitoring of your bail, and there is no prohibition on that under the New South Wales Criminal Procedure Act or the like. If you are wealthy enough, you can just pay for your own private monitoring.

**The Hon. TREVOR KHAN:** It would be under the bail.

**Mr DAVID SHOEBRIDGE:** Is that the situation?

**Mr MARK SPEAKMAN:** If you are wealthy enough, but that does not mean you get bail. I would imagine, given the circumstances of what happened last week—

**The Hon. TREVOR KHAN:** It is never going to happen again.

**Mr MARK SPEAKMAN:** —every prosecutor is going to say, "Look what happened last time. You," the judicial officer, "would be unwise to grant bail."

**Mr DAVID SHOEBRIDGE:** Under a privately monitored, contracted-out arrangement paid for by the defendant.

**Mr MARK SPEAKMAN:** That is right. The State is not going to propose electronic monitoring. It is going to be an accused who says, "There's no risk. Let me be electronically monitored and, even better, it won't cost the State a cent. I'll pay for it."

**Mr DAVID SHOEBRIDGE:** How many times has it happened in the last financial year and the financial year before that?

**Mr MARK SPEAKMAN:** "It" being someone on bail?

**Mr DAVID SHOEBRIDGE:** Being privately monitored.

**Mr MARK SPEAKMAN:** I would have to take that on notice. I am not aware of any—

**Mr DAVID SHOEBRIDGE:** Do you accept this now—

**The Hon. TREVOR KHAN:** Sorry, he is continuing to give his evidence.

**Mr DAVID SHOEBRIDGE:** No, there was a pause and I stepped over him. Sorry, Attorney. You are not aware?

**Mr MARK SPEAKMAN:** I am not aware of others, but that is not to say there are not others.

**Mr DAVID SHOEBRIDGE:** Despite the briefing you got, you were not told which company it was that provided the monitoring?

**Mr MARK SPEAKMAN:** I may have been. I have just forgotten. Unfortunately, at my ripe old age, I cannot remember everything.

**Mr DAVID SHOEBRIDGE:** If you could find that information before 1.00 p.m., it would be useful, Attorney.

**Mr MARK SPEAKMAN:** Sure.

**Mr DAVID SHOEBRIDGE:** There is a bevy of support over there I would point to.

**The Hon. TREVOR KHAN:** But he has got 21 days in which to respond to questions taken on notice.

**The CHAIR:** Order! Interjections are disorderly at all times.

**Mr DAVID SHOEBRIDGE:** No, but something as simple as the name of the corporate entity should be able to be provided within an hour with goodwill on your part, Attorney, so I would invite you to endeavour.

**Mr MARK SPEAKMAN:** Thank you.

**Mr DAVID SHOEBRIDGE:** Attorney, I was asking you questions earlier about what is happening with raising the age of criminal responsibility, and you said that there is a Federal process through CAG or MAG that is working its way through. Do you remember that?

**Mr MARK SPEAKMAN:** Yes.

**Mr DAVID SHOEBRIDGE:** That is grinding to indecision, would be a fair summary of that, isn't it? It is grinding to a slow lack of consensus.

**Mr MARK SPEAKMAN:** No, I think it is reaching a crescendo that will either result in some sort of consensus or an acceptance that consensus is not going to be achieved and each jurisdiction should make its own decision.

**Mr DAVID SHOEBRIDGE:** If I remember your summary of matters correctly, Queensland said no, the ACT is moving on 14 years and the Northern Territory has said maybe 12 years but that is under review. Was that a summary of it: no for Queensland, 14 for ACT and maybe 12 for the Northern Territory?

**Mr MARK SPEAKMAN:** I think the Northern Territory, before this process started, had indicated an in-principle decision to go to 12.

**Mr DAVID SHOEBRIDGE:** So 10 in Queensland, 14 in the ACT and 12 in the Northern Territory. That is the current state of play?

**Mr MARK SPEAKMAN:** That is the current state of play.

**Mr DAVID SHOEBRIDGE:** And deafening silence in regard to a position from WA, South Australia, New South Wales, Victoria and Tasmania? Is that the state of play?

**Mr MARK SPEAKMAN:** Those other jurisdictions have not declared a position.

**Mr DAVID SHOEBRIDGE:** That is rapidly moving towards non-consensus. Even if we just look at Queensland, the Northern Territory and the ACT, they are not agreeing. Are we really going to wait for this thing to totally unravel or, as you say, hit a crescendo of non-consensus before we start acting. Is that your position?

**Mr MARK SPEAKMAN:** I do not think the Ministers from the different jurisdictions have reached the point yet where we have agreed to disagree or cannot progress the matter. I think the possibility of a consensus is still a real possibility, but it will get to the point sooner rather than later where we just say that we are never going to agree and each jurisdiction should make its own decision.

**Mr DAVID SHOEBRIDGE:** Do you think it is right that 10-year-old children, who still have their milk teeth, are being brought before New South Wales courts and trialled for crimes? Do you think that is right—10-year-old kids still with their milk teeth being brought before New South Wales courts and tried for crime?

**Mr MARK SPEAKMAN:** I cannot comment on what might be before Cabinet and I cannot breach the confidence of exchanges that I have had with my fellow attorneys-general around the country but, as a general proposition, a 10-year-old—at least generally speaking and the question will be whether it should never be the case but at least generally speaking—would not have the capacity to have criminal responsibility for just about anything. That I think is well recognised. Whether that should be an absolute bar on prosecuting a 10-year-old is a matter that obviously I am discussing with my colleagues and eventually will come to the New South Wales Cabinet.

**Mr DAVID SHOEBRIDGE:** Attorney, are you aware of at least one study—and I am sorry I have not got it in front of me—that has shown that there has been a significant decline in incarceration of young people during COVID and absolutely no associated rise in crime or associated antisocial problems during that period where we have had a significant decline in the number of young people in incarceration?

**Mr MARK SPEAKMAN:** Not specifically, but I am aware that, notwithstanding the decline in incarceration for adult offenders, there has been no increase in underlying crime rates as a general proposition. So I imagine the same would be true for young offenders.

**Mr DAVID SHOEBRIDGE:** Indeed it is, is my understanding. Given that, will your government be feeding that kind of very real empirical information—that jailing kids is not the answer to juvenile crime—into the Cabinet decision about raising the age?

**Mr MARK SPEAKMAN:** That is certainly a relevant consideration, as is the correlation between the first age at which somebody has contact with the criminal justice system and their likelihood of offending throughout their life. They are certainly matters that are relevant to any decision we make.

**Mr DAVID SHOEBRIDGE:** When you say the correlation, the unambiguous evidence that the earlier you are dragged into the criminal justice system the far more likely it is you are going to have a lifetime involvement in the criminal justice system.

**Mr MARK SPEAKMAN:** Other things being equal there is a significant correlation between the age at which somebody first encounters the criminal justice system on the one hand and the likelihood of offending throughout their lifetime.

**Mr DAVID SHOEBRIDGE:** Attorney, do you acknowledge another factor in this, that right now, as we speak, 43 per cent of the young people in juvenile detention are First Nations kids—43 per cent.

**Mr MARK SPEAKMAN:** That is correct.

**Mr DAVID SHOEBRIDGE:** Do you acknowledge that failing to act on raising the age is going to mean it is next to impossible to meet the targets on Closing the Gap?

**Mr MARK SPEAKMAN:** Those Closing the Gap targets are very challenging and that is why as a government we have to push the envelope as much as we can and look at matters like the age of criminal responsibility. Where Cabinet lands on that is a matter I have to discuss with my Cabinet colleagues. Where we land potentially inter-jurisdictionally, again, are matters that are on the table with my ministerial colleagues in other jurisdictions at the moment.

**Mr DAVID SHOEBRIDGE:** But do you accept these two things are linked—raising the age and Closing the Gap? They are inextricably linked. Do you accept that?

**Mr MARK SPEAKMAN:** I accept that there is significant evidence of a strong correlation between the first age at which somebody enters or encounters the criminal justice system on the one hand and the likelihood of offending and having other problems throughout their life on the other hand. That is equally true of Indigenous young offenders.

**Mr DAVID SHOEBRIDGE:** But what is not equally true of Indigenous and non-Indigenous offenders is the fact that, if you are a young teenage First Nations person in this State, you are something of the order of 15 times more likely to be in jail tonight and 15 times more likely to be caught up in the criminal justice system, if you are aged 10, 11, 12 or 13. Is that something you are going to take on board in your decision-making?

**Mr MARK SPEAKMAN:** That over-representation is very clear. If the correlation I described is true for the general young offending population, then it is equally true for the Indigenous offending population and that is something that obviously you have got to take into account.

**The Hon. ADAM SEARLE:** Mr Attorney, I just wanted to take you back to some answers you gave in response to questions from my colleague the Hon. Shaoquett Moselmane about the domestic violence notification scheme. Did you say that that scheme had been discontinued this year?

**Mr MARK SPEAKMAN:** It was discontinued on 30 June 2019.

**The Hon. ADAM SEARLE:** Can you tell us why it was discontinued?

**Mr MARK SPEAKMAN:** I hope I articulated that earlier but I will have another go. It did not appear to be a cost-effective exercise. The cost per notification was in the many thousands. If you would like, I can give you a more—

**The Hon. ADAM SEARLE:** That would be good if you could do that on notice.

**Mr MARK SPEAKMAN:** Yes, what the figure was. There were not a lot of notifications. It was trialled in four local area commands. So it was discontinued for that reason.

**The Hon. SHAOQUETT MOSELMANE:** In 2019.

**Mr MARK SPEAKMAN:** In 2019, and my impression is that it did not have much sector support. They thought there were better ways to spend money on tackling domestic violence than on this notification scheme.



**The Hon. ADAM SEARLE:** The Domestic Violence Death Review Team report recommendation 30 was that there should be a review of the notification scheme. Was there a working group established to do that review and is there a document that embodies that work?

**Mr MARK SPEAKMAN:** I cannot recall the answer to each of those questions.

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

**Mr MARK SPEAKMAN:** Okay.

**The Hon. ADAM SEARLE:** So was there a review of the scheme, who participated in that review, who was consulted and is there a report that we can have a read of?

**Mr MARK SPEAKMAN:** Mr McKnight reminds me, there is a publicly available evaluation. It is on the Women NSW website. I could read out the link if you like or send it to you.

**The Hon. ADAM SEARLE:** No, I will look it up. I will change my questions to the report of the Legislative Council on the high level of First Nations deaths in custody, which I know you must have had some involvement in the Government response. My friend Mr Shoebridge was asking you some questions about the age of criminal responsibility, which was recommendation 11. Mr Attorney, a number of members of this Committee—Mr Khan, Mr Shoebridge and I—were on that. We were also on the select committee inquiry into the coronial jurisdiction. Do you have a time frame by which the New South Wales Government will reach a view about whether there is likely to be consensus amongst the attorneys of Australia or whether the State will do its own thing?

**Mr MARK SPEAKMAN:** I cannot give you a precise time frame but I would be disappointed if New South Wales has not decided its position in this term of Parliament and more specifically within the next several months.

**The Hon. ADAM SEARLE:** Okay. I raise the issue because it is not a stranger to those deliberations. I think in the mid- to late nineties when I was a staffer to a previous Attorney, this was a standing item on the agenda of what was then called the Standing Committee of Attorneys-General, or SCAG, so it is not a new issue. But you think it may come to some finalisation within the next 12 months, from the New South Wales Government's perspective?

**Mr MARK SPEAKMAN:** I think so. I cannot say what that finalisation will be, but I think we will get to the point sooner rather than later where either there is a consensus—and, given the points that Mr Shoebridge raised, there may not be unanimity. There might be a significant majority consensus at an interjurisdictional level or we may give up on that and each jurisdiction goes its own way.

**The Hon. ADAM SEARLE:** For example, I think the Australian Capital Territory has already indicated they are going to go their own way.

**Mr DAVID SHOEBRIDGE:** They did and, in fact, they are very far down the path with discussion papers and planning to get to 14.

**The Hon. ADAM SEARLE:** Attorney General, a number of recommendations made by that inquiry—recommendations 8 to 13—dealt with changes or proposed changes to the criminal justice system. The Government response recently provided indicates that these recommendations remain "under consideration". Again, I understand these are complex issues but do you have a time frame by which the Parliament might receive a substantive response by the Government to those particular items, which cover the Bail Act, the Summary Offences Act, the age of criminal responsibility, the Young Offenders Act and the Law Enforcement (Powers and Responsibilities) Act, for example?

**Mr MARK SPEAKMAN:** The minimum age of criminal responsibility we have discussed.

**The Hon. ADAM SEARLE:** We have.

**Mr MARK SPEAKMAN:** The Bail Act review, I would hope within the next six months. The Young Offenders Act is very well advanced, the review of that—I would hope within the next few months. What else was on your list?

**The Hon. ADAM SEARLE:** There are a number of additional recommendations that—

**Mr MARK SPEAKMAN:** The Summary Offences Act, I do not see any movement there for the foreseeable future.

**The Hon. ADAM SEARLE:** There are a number of recommendations made that touch on the operation of the Coroners Court and I think the Government response indicates that a number of those remain under

consideration in the context of the statutory review of the Coroners Act 2009. That review has been ongoing since 2014.

**Mr MARK SPEAKMAN:** It has.

**The Hon. ADAM SEARLE:** Do you have a time horizon by which we may expect the completion of that review?

**Mr MARK SPEAKMAN:** No, I cannot give you any particular date.

**The Hon. ADAM SEARLE:** Not this year then?

**Mr MARK SPEAKMAN:** I would not expect this year, no.

**The Hon. ADAM SEARLE:** Next year?

**Mr MARK SPEAKMAN:** Quite possibly, even probably, yes.

**The Hon. ADAM SEARLE:** One of the things that came up in the First Nations inquiry was the significant delays in the coronial jurisdiction. Again, none of this is a reflection on the professionalism of the coroners, but there did seem to be clear evidence about a lack of resourcing for that jurisdiction. I know we might have had a debate about this but the evidence from, for example, Victoria and Queensland is that they seem to substantially resource their coroners jurisdiction more—I think there are 20 coroners in Queensland. Now I know you have got a number of full-time permanent coroners in New South Wales and then you have got country magistrates doing coronial work. But the evidence the select committee has received so far is that 80 per cent of the coronial work is still done by the permanent coroners and the country coroners really do—20 per cent is not an insignificant amount, but it is still the minority of that work. Do you have plans to improve the resources of the coronial jurisdiction over the next 12 to 18 months?

**Mr MARK SPEAKMAN:** In replying to your question, do not take me as accepting the premise of your question that—

**The Hon. ADAM SEARLE:** No, you did not previously, so I would expect nothing else.

**Mr MARK SPEAKMAN:** —Victoria and Queensland are comparable, because they have a standalone Coroners Court whereas here in New South Wales it is a jurisdiction of the Local Court.

**The Hon. ADAM SEARLE:** But even allowing for that, Mr Attorney, they seem to have more judicial officers doing the work?

**Mr MARK SPEAKMAN:** Well, there is also the issue of what country magistrates do, which you have alluded to. We announced in the last budget there would be an extra full-time magistrate to act as a full-time coroner, which will improve resourcing.

**The Hon. ADAM SEARLE:** That is, what, six now in New South Wales?

**Mr MARK SPEAKMAN:** Seven, I think, or thereabouts. Coronial processes generally, there has been greater centralisation at Lidcombe compared with previously. We have amended the requirement that if someone had not seen a doctor within six months then it is reportable. That has gone. So I think there are significant procedures that the task force is looking at. There is a task force that Mr Follett of the Department of Communities and Justice and Dr Kerry Chant, the Chief Health Officer, are co-chairing, looking at ways to improve coronial processes. That task force will probably finish its business in this financial year. The statutory review report, we will probably await the outcomes of that task force's report. But that is a sample of what we are doing.

**The Hon. ADAM SEARLE:** Okay.

**Mr MARK SPEAKMAN:** Sorry. I think Ms D'Elia wanted to add something.

**Ms D'ELIA:** Just with respect to the performance of the New South Wales court in comparison to Victoria, when we take a look at the Report on Government Services, New South Wales actually is performing better than Victoria at this point in time.

**Mr DAVID SHOEBRIDGE:** That is only on completion rates, is it not? If you do not do an investigation, or you do a paper investigation, it helps your completion rates.

**Ms D'ELIA:** The finalisations?

**Mr DAVID SHOEBRIDGE:** Yes. That is not a good measure, is it, Ms D'Elia?

**The Hon. ADAM SEARLE:** It is an incomplete measure, I think is what Mr Shoebridge might be driving at.

**Ms D'ELIA:** It is finalisation within a time period.

**The Hon. ADAM SEARLE:** All right, Mr Attorney, we might return to the issue. In relation to the statutory review, there is a draft review document that has been completed, is there not?

**Mr MARK SPEAKMAN:** I imagine there is a draft, yes. Sorry, there would be a draft, yes.

**The Hon. ADAM SEARLE:** I think I have written to you about this matter. I will await your response before taking the matter up further.

**Mr MARK SPEAKMAN:** Okay.

**The Hon. ADAM SEARLE:** One of the other recommendations by the First Nations deaths in custody select committee was around the Walama Court as part of the District Court. Has the Government made any decision about proceeding with the Walama Court proposal?

**Mr MARK SPEAKMAN:** No. That is a recommendation of your inquiry, so—

**The Hon. ADAM SEARLE:** Yes. It was also a recommendation, I think, of the ice inquiry. It has been supported by the New South Wales Bar Association, the Law Society of New South Wales and other civil society groups. I may be misremembering this—although you might have had some reservations, I think you might have made positive comments in the past?

**Mr MARK SPEAKMAN:** No, I think I was speculating about other people's reservations and used a colourful expression which then—

**The Hon. ADAM SEARLE:** The apartheid system of justice?

**Mr MARK SPEAKMAN:** Yes.

**The Hon. ADAM SEARLE:** That is not your view?

**Mr MARK SPEAKMAN:** That is not my view, no.

**The Hon. ADAM SEARLE:** So you have got a positive view of the Walama Court idea?

**Mr MARK SPEAKMAN:** A Walama proposal is certainly something I am very interested in. I do not think at the moment it has the empirical underpinning that some of its proponents say. But, notwithstanding that, given the kind of point that Mr Shoebridge was making—you know, how are we going to close the gap and how are we going to get these targets achieved—these sorts of proposals are certainly worth investigating, and unless you give them a go you will never know whether they will reduce reoffending. The other thing is it is not just about reducing reoffending, it is also about First Nations people having confidence in the judicial process, which is another potentially attractive feature of a Walama proposal, just like a Koori Court or justice reinvestment in Bourke. Proposals like that, if they reduce reoffending that is terrific, but they also have merit if they improve community cohesion and confidence in the justice system.

**The Hon. ADAM SEARLE:** Yes. We know that the current approach to criminal justice in First Nations people is having severe negative effects. Notwithstanding the criminality issue, a problem is the community's lack of trust in the criminal justice system. You mentioned the lack of an evidence base in support of the Walama proposal, but there was no equivalent evidence base behind the Youth Koori Court. Nevertheless, that is now up and running in Surry Hills and in Parramatta and has brought civil society acceptance and support. The same consideration should be extended to the Walama proposal, should it not? We know what is there now is not working and there are problems, so maybe we should try something innovative and different?

**Mr MARK SPEAKMAN:** I will have more to say in the next few weeks.

**The Hon. ADAM SEARLE:** About the Walama proposal—

**Mr MARK SPEAKMAN:** Well—

**The Hon. ADAM SEARLE:** —or about the Youth Koori Court?

**Mr MARK SPEAKMAN:** Potentially. The point you make is a good point and when I say there is no empirical base at the moment I was not saying that therefore the Government has decided, for that reason, not to embark on it. What proponents do is say that because this is a—well, they point to the success of circle sentencing, they point to the success of the Drug Court and extrapolate from those successes the likelihood of success for a Walama Court. So when I say there is no empirical underpinning, there is that by extrapolation. But there is no empirical underpinning for an approach to an Indigenous court at an intermediate court level. But that said, as you have said, you will never know unless you try. We will develop that point in the future.

**The Hon. ADAM SEARLE:** Just on that, it is the case, is it not, in December 2018, ahead of the most recent State election, your department prepared a business case showing potential savings, over six to eight years, of more than \$16 million on prison beds and nearly \$6 million from a reduction in recidivism rates, arising from something like a Walama proposal? Was that not the case? It is not an evidence base, but it is some costings.

**Mr MARK SPEAKMAN:** That is assuming a reduction in reoffending—

**The Hon. ADAM SEARLE:** Yes. I think that was built in.

**Mr MARK SPEAKMAN:** —for which there is not an empirical base. But I want to be very clear. I am not saying that, for that reason, you do not try something, just like we have tried "What's Your Plan?" which has not been successful, just like we are trying ReINVEST in the domestic violence space. Unless you try these things, you will never know whether they work. When you have such desperate over-representation of Indigenous people in the criminal justice system and targets for 2031 that are very challenging to meet, then you have to seriously look at alternatives and see whether they will work.

**The Hon. ADAM SEARLE:** It is hard to develop an evidence base for something that is not in operation, either here or, indeed, somewhere else, like when you are trying something totally new.

**Mr MARK SPEAKMAN:** That is self-evidently correct.

**The Hon. ADAM SEARLE:** If I have understood what you have said, we should expect to hear something in this space soon.

**Mr MARK SPEAKMAN:** A decision will be made imminently. I hope to have something to say before Christmas.

**Mr DAVID SHOEBRIDGE:** It is going to be a busy few months before Christmas for you, Attorney.

**Mr MARK SPEAKMAN:** Always is.

**The Hon. SHAOQUETT MOSELMANE:** Attorney, I will just use the couple of minutes left for us to ask a few questions on your announcement on 19 October to provide an additional 75 women's shelters. The funding announced for an average of \$5.7 million per shelter over four years. How much of that funding will be operational costs?

**Mr MARK SPEAKMAN:** I would have to check your maths, if it is 5.7. But whatever the average is, about half is construction and half operation, very roughly.

**The Hon. SHAOQUETT MOSELMANE:** Will the refuges go to tender?

**Mr MARK SPEAKMAN:** There will be some tendering process, yes.

**The Hon. SHAOQUETT MOSELMANE:** When will that start?

**Mr MARK SPEAKMAN:** I suspect that will be a staged process. Not all 75 will come online at once. We want to have a staggered process.

**The Hon. SHAOQUETT MOSELMANE:** That is my next follow-up question. What numbers will be delivered in, say, 2022?

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

**The Hon. SHAOQUETT MOSELMANE:** And 2023 and 2024?

**Mr MARK SPEAKMAN:** I will have to take it on notice, but all this will be preceded by a mapping exercise to work out in broad terms where the best locations are for 75 or so women's shelters.

**The Hon. SHAOQUETT MOSELMANE:** Has it been mapped out yet as to where—

**Mr MARK SPEAKMAN:** That mapping exercise has not been completed. This is not to limit it in any way, but Dubbo and Newcastle, for example, have been identified as particular areas of high need. There will be many, many others. But we will complete that exercise.

**The Hon. SHAOQUETT MOSELMANE:** Is there particular criteria you are using for allocations?

**Mr MARK SPEAKMAN:** Among other things, it would be the number of women who are turned away and cannot be accommodated—unmet need.

**The Hon. SHAOQUETT MOSELMANE:** Will they have to reapply every four years for the funding?

**Mr MARK SPEAKMAN:** We have not worked out what the funding cycle will be. Specialist Homelessness Services, I think, was recommissioned in July to 2024. Ms Campbell is nodding her head. I think it is fairly clear that non-government organisations that contract with us want some funding certainty. So we want to move away, as much as possible, from the annual cycle of funding and, come April or May, services wondering whether they are going to get funded for another 12 months. Not only does it create angst and uncertainty; it also affects their ability to keep staff if they cannot have forward contracts. So I would envisage that we would have a cycle of at least three years. It might be up to five years. It would be in that ballpark.

**The Hon. SHAOQUETT MOSELMANE:** How many women would be in each refuge you are looking at?

**Mr MARK SPEAKMAN:** I think Ms Campbell said "2,900 a year".

**The Hon. SHAOQUETT MOSELMANE:** In the 75.

**Mr MARK SPEAKMAN:** Yes.

**The Hon. SHAOQUETT MOSELMANE:** Would they also accommodate women and children?

**Mr MARK SPEAKMAN:** That is right, women and children.

**The Hon. ADAM SEARLE:** I might have a question for the Crown Solicitor. In relation to the Monaro Farming Systems return to order, where the upper House asked for certain documents, there was one document that was at issue, which was a memo by a public servant who was concerned that a so-called contract with Monaro Farming Systems might be a grant. There was some legal advice sought from you as Crown Solicitor. I know your general position about not wanting to talk about advice to clients. But this advice, including your written advice, was the subject of a privilege claim, it went through the arbitral process in the upper House and the Government did not succeed in maintaining restricted access to those documents, including your advice. So access to that is now unrestricted. I was interested in the advice that you provided about whether or not there was privilege over that particular memo. In your advice, you did not talk about the potential fraud exception. Why was that?

**Ms SMITH:** Are you able to share with me a copy of that advice?

**The Hon. ADAM SEARLE:** I do not have a copy of your advice to hand. It has got your signature on it. It has been through a disputation process in the upper House. I cannot believe you would not—

**Mr DAVID SHOEBRIDGE:** We can have it sent to the Crown over the next 20 minutes.

**The Hon. ADAM SEARLE:** Yes, we could have it sent to the Crown. But, of course, we are about to run out of time. Do you recall giving advice on this issue?

**Ms SMITH:** I think I do, but I do not have the specifics.

**The Hon. ADAM SEARLE:** Perhaps you could answer this question on notice: Why, in giving what was otherwise comprehensive advice and, given the subject matter of the memo—I will provide the secretariat a copy of the memo to refresh your memory—and the nature of the issues raised by that public servant, the concerns they expressed, you did not discuss the exceptions as to whether or not legal professional privilege could be maintained over that document. I cannot take it any further today. I will come back to that.

**Ms SMITH:** Sorry. Just so I can clarify, is your question about the advice or the privilege claim made [disorder]—

**The Hon. ADAM SEARLE:** No, it is about your advice. In providing advice to your client—your advice is now a public document, and we can provide it to you—why did you not discuss the exceptions to privilege, particularly the potential fraud exception, given the nature of the issues of concern raised by the public servant? Thank you.

**Mr DAVID SHOEBRIDGE:** I think, Ms Smith, that you take that on notice is the appropriate answer at this point.

**Ms SMITH:** Yes. I am not sure what I can add to the advice [disorder]—

**The Hon. ADAM SEARLE:** Well, to put it directly, you can tell us why you did not give advice on the potential presence of the exceptions. You have given comprehensive advice. You have made a certain recommendation. But I will not take it any further, because it is Mr Shoebridge's time.

**Mr DAVID SHOEBRIDGE:** Just to be clear, Ms Smith, did you take that on notice?

**Ms SMITH:** I can take it on notice. I am just saying I am not sure what else I can add [disorder]—

**The Hon. ADAM SEARLE:** You can answer the question.

**Ms SMITH:** The advice will speak for itself. [Disorder]—

**The Hon. ADAM SEARLE:** Not the absences from the advice.

**Mr DAVID SHOEBRIDGE:** Ms Smith, I think the question was about what was not in the advice, which is, I assume, what you have taken on notice—answering about why there was an absence of any consideration of the fraud exception. Is that what you have taken on notice?

**Ms SMITH:** Yes. But I do not know if I can add much to that. If it is not there, it is not there.

**The Hon. ADAM SEARLE:** The question is "Why is it not there?"

**Mr DAVID SHOEBRIDGE:** Anyhow, we will find out in due course. Attorney, do you have the name of the private corporation who had the easy-to-remove bracelet?

**Mr MARK SPEAKMAN:** I do. Attenti Group, previously known as 3M.

**Mr DAVID SHOEBRIDGE:** Previously known as 3M?

**Mr MARK SPEAKMAN:** Yes.

**Mr DAVID SHOEBRIDGE:** So it was like a post-it note, was it? I will take that as a no.

**Mr MARK SPEAKMAN:** No.

**Mr DAVID SHOEBRIDGE:** Attorney, in May 2019, according to findings of the Law Enforcement Conduct Commission, two members of the NSW Police Force Strike Force Raptor, over two days, engaged in the deliberate, deceitful and malicious harassment of a solicitor trying to go about his business and represent a client before the Local Court. What have you done to protect the administration of justice in relation to that matter?

**Mr MARK SPEAKMAN:** The LECC recommended that the police commissioner take reviewable action under—I think it is section 173 of the Police Act. LECC did not recommend—I do not think it recommended one way or the other—whether the DPP should look at prosecuting the police officers in question. I wrote to the police commissioner, this year I think, asking him what he was going to do. He has replied to me that he is not taking reviewable action. He took unreviewable action, I think it is, which is issued a warning to the police officers in question. A group called Defence Lawyers, with a Mr Kerkyasharian, has corresponded to me about potential amendments to the Crimes Act, and I am looking at that at the moment. The suggestion is that interfering with a public official should extend to private lawyers. There are already offences in criminal legislation that could apply to interfering with or intimidating a private lawyer. That might include stalking or intimidation. That might include perverting the course of justice—

**Mr DAVID SHOEBRIDGE:** Indeed.

**Mr MARK SPEAKMAN:** —but there is a proposal to expand the definition of public official to private lawyers. That is something that I am looking at getting advice on at the moment.

**The Hon. ADAM SEARLE:** Or at least officers of the court.

**Mr MARK SPEAKMAN:** They are officers of the court. They are not in the same position as judicial officers, for example, but they are officers of the court who are fulfilling, in one sense, a public duty—representing their client. As the LECC commissioner observed, however much you may have a distaste for clients, it is no justification for interfering with legal representation.

**The Hon. ADAM SEARLE:** Correct.

**Mr MARK SPEAKMAN:** Everyone is entitled to legal representation. What occurred to that solicitor was quite reprehensible, and I am looking at the matter further.

**Mr DAVID SHOEBRIDGE:** Attorney, indeed, as the magistrate said on the record to the police, I think the quote was, "Are you going to attack a magistrate next?" to the members of Strike Force Raptor. Is that what it is going to take before you act, police attacking a magistrate?

**Mr MARK SPEAKMAN:** No, as I have said—

**The Hon. TREVOR KHAN:** He has already said he is looking at it.

**Mr MARK SPEAKMAN:** I have said what I am considering, and that is under consideration.

**Mr DAVID SHOEBRIDGE:** You have said you are considering potentially changing the criminal law. That is going to do nothing at all to hold to account two members of the NSW Police Force who, in the findings

of the LECC, over two separate days engaged in deliberate, deceitful and malicious harassment of a solicitor just trying to represent his client.

**Mr MARK SPEAKMAN:** I am not sure what you are suggesting I can or should do. In terms of prosecution for any potential criminal offence, that was not a recommendation of the LECC.

**Mr DAVID SHOEBRIDGE:** They were silent on it.

**Mr MARK SPEAKMAN:** But, in any event, that is a matter for the DPP. In terms of disciplinary sanctions against the police, that is a matter for the police commissioner.

**The Hon. TREVOR KHAN:** And you did not ask him any questions on it.

**Mr MARK SPEAKMAN:** In terms of potential criminal law reform, that is something that I am looking at.

**Mr DAVID SHOEBRIDGE:** Attorney, one of the police officers retired with what is often described as a "golden handshake" and the other one got promoted. Are those the consequences they are going to face for the deliberate, deceitful and malicious harassment of a solicitor trying to represent his client?

**Mr MARK SPEAKMAN:** In terms of their employment by the NSW Police Force, that is a matter you should ask the police commissioner about. Those disciplinary matters are matters that I cannot be involved in or interfere with or oversee, but I have said what we are looking at in terms of criminal law reform potentially.

**Mr DAVID SHOEBRIDGE:** You said that whether or not charges are preferred against these two—one former, one current police officer—is a matter for the DPP. Is that your position?

**Mr MARK SPEAKMAN:** That is right.

**Mr DAVID SHOEBRIDGE:** Have you requested or have you done anything to get a brief of evidence before the DPP so they can do their job?

**Mr MARK SPEAKMAN:** That is not my role. The prosecution role in New South Wales is carried out by the DPP. You can or Mr Kerkyasharian can or the solicitor in question can refer the matter to the DPP and ask them to consider charges.

**Mr DAVID SHOEBRIDGE:** Unless it comes from your office, the DPP says they will not respond to those kinds of representations from private individuals so, Attorney, you are just—

**Mr MARK SPEAKMAN:** I do not think it should come from—sorry, go on.

**Mr DAVID SHOEBRIDGE:** That is the situation with the DPP. They will not respond to those private representations from individuals.

**Mr MARK SPEAKMAN:** I am not sure that is correct but, in any event, I do not think I have a role in the prosecution of these police officers.

**Mr DAVID SHOEBRIDGE:** The police are not going to do anything. They have done non-reviewable action. You are not doing anything. So that means that the penalty for this deliberate, deceitful and malicious harassment of a solicitor is nothing, is just nothing. Are you really satisfied with that?

**Mr MARK SPEAKMAN:** I cannot, in my office, either as a matter of my role or a matter of my resources, provide any sort of brief of evidence to the DPP. In New South Wales we have an independent prosecution service that makes these decisions about prosecutions, and it is really not appropriate for me, as the Attorney General, to get involved in that. But what I can do is look at the potential for criminal law reform, not just in this case but as a general proposition: What protections should lawyers be offered by the criminal law? That is something that we are giving consideration to.

**Mr DAVID SHOEBRIDGE:** Attorney, on the material in the LECC report, there seems to be a powerful potential prosecution for either contempt of court or perverting the course of justice. On your evidence today, you are satisfied with just nothing being done about it, other than maybe potential future law reform.

**Mr MARK SPEAKMAN:** I have not indicated whether I am satisfied or dissatisfied. What I have addressed is my role and my resources in the matter. With an independent prosecution service in New South Wales, it is a matter for the DPP to make those decisions. The magistrate that you advert to—I was unaware of those comments by the magistrate—can refer the matter to the DPP if he or she thinks appropriate. But I do not think it is appropriate for me to be involved in a day-to-day prosecution or asking the DPP to do it. That is a matter for the independent DPP.

**Mr DAVID SHOEBRIDGE:** But the DPP does not undertake the investigation and get the brief. Someone has to get the evidence to the DPP in the first place, Attorney.

**The Hon. TREVOR KHAN:** Point of order—

**Mr DAVID SHOEBRIDGE:** Someone has to get the evidence to the DPP in the first place.

**The Hon. TREVOR KHAN:** This question has now been asked at least three times and the Attorney has responded to it. You cannot suck the lemon dry multiple times, David.

**Mr DAVID SHOEBRIDGE:** That is not a point of order.

**The CHAIR:** That is not a point of order.

**The Hon. TREVOR KHAN:** The point of order is that this witness has been asked and has answered the question.

**The CHAIR:** The member can ask the question as many times as he likes and the Minister can not answer it as many times as he likes.

**The Hon. TREVOR KHAN:** He has answered it. It is entirely unfair, Chair.

**Mr DAVID SHOEBRIDGE:** You have had a ruling, Trevor.

**The Hon. TREVOR KHAN:** He has answered it.

**The CHAIR:** That is not a point of order.

**Mr DAVID SHOEBRIDGE:** Attorney, the DPP cannot rule on a brief of evidence if they never get one, and it is not their job to gather the evidence. Why will you not direct any part of your agency to at least pull together the evidence and present it to the DPP so they can do their job? Why will you not even do that?

**Mr MARK SPEAKMAN:** Because that is not the role of either myself or my agency. We are not a shadow prosecution service that shadows or runs parallel brief of evidence gathering or collation for the DPP. That is just something we are not resourced to do and something we do not have a role to do in an independent prosecution service system.

**Mr DAVID SHOEBRIDGE:** So the police get off scot-free. That is the outcome here.

**Mr MARK SPEAKMAN:** That is a matter—

**Mr DAVID SHOEBRIDGE:** The police get off scot-free for the deliberate, deceitful and malicious harassment of a solicitor just trying to go about and do his business of representing a client.

**Mr MARK SPEAKMAN:** That is a matter for the DPP. That is a matter for the magistrate. That is a matter of whether someone wants to bring charges privately, but it is not my role to run a shadow prosecution service.

**Mr DAVID SHOEBRIDGE:** Attorney, are you aware of the prosecution that was brought for the beating to death of an elderly, by all reports, kind, generous Indigenous man in Summer Hill in 2019; the prosecution that was brought for the murder of Paul Tavelardis?

**Mr MARK SPEAKMAN:** I do not think I am.

**Mr DAVID SHOEBRIDGE:** Attorney, two Irish nationals who have now left the country, Nathan Kelly and Christopher McLaughlin, were prosecuted for the alleged murder of Mr Tavelardis and were both acquitted.

**Mr MARK SPEAKMAN:** Was this at Bondi or Summer Hill?

**Mr DAVID SHOEBRIDGE:** It was at Summer Hill.

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

**Mr DAVID SHOEBRIDGE:** Attorney, are you aware that indeed the New South Wales police officers who were in charge of the investigation sent a formal complaint to both the DPP and, as I understand it, your office about the conduct of the DPP in the prosecution of that case?

**Mr MARK SPEAKMAN:** I have no recollection of that.

**Mr DAVID SHOEBRIDGE:** Attorney, will you review your records and will you seek a response from the DPP about what, if any, action was undertaken as a result of the complaint that was lodged by the officers in charge of the Tavelardis case?



**Mr MARK SPEAKMAN:** I do not have any recollection of that matter so I cannot say what I will or will not do, but now that you have raised it I will review the matter and then decide what appropriate action there is.

**Mr DAVID SHOEBRIDGE:** Will you ask the DPP what, if any, review action they took?

**Mr MARK SPEAKMAN:** I will have to see what the matter is about first before I decide to do that.

**Mr DAVID SHOEBRIDGE:** Attorney, I assure you before the end of the day I will provide your office with a copy of the New South Wales police complaint to assist you in doing that.

**Mr MARK SPEAKMAN:** Thank you.

**Mr DAVID SHOEBRIDGE:** Can I just say for the record, I cannot believe that such an injustice has happened to Mr Tavelardis and the behaviour, if the police complaint is even within the ballpark of truth, of the prosecutor in that case is utterly, utterly inexplicable. Mr Tavelardis family are owed a deep apology from the people of New South Wales. I will provide you with a copy of the police complaint this afternoon.

**Mr MARK SPEAKMAN:** Thank you.

**Mr DAVID SHOEBRIDGE:** Mr Thomas, the Legal Aid budget was reduced from \$408 million last financial year to a budget this year of \$405.7 million. Is that right?

**Mr THOMAS:** I think you might be looking at our expenses last year and comparing it to the budget that is set for this year.

**Mr DAVID SHOEBRIDGE:** Indeed.

**Mr THOMAS:** The budget for this year is \$404 million as set through the budget process. It has actually increased since then. We got some additional State and Commonwealth money and it sits at about \$414 million for the remainder of the year.

**Mr DAVID SHOEBRIDGE:** Do you know how much of that budget has been expended on deaths in custody matters?

**Mr THOMAS:** I can provide that on notice. We do have a coronial team that does work around deaths in custody and I can provide you with that on notice.

**Mr DAVID SHOEBRIDGE:** Would it be possible, Mr Thomas, to get the last three years so as we can get some kind of longitudinal review of it?

**Mr THOMAS:** Yes, I can provide you grants of Legal Aid. So any funding that we have provided to private solicitors as well as the cost of that coronial team and, if you like, the volume of the work they have undertaken.

**Mr DAVID SHOEBRIDGE:** Yes, thank you, Mr Thomas. In terms of the income that has come from the interest earned on solicitors' trust accounts, what is the state of play in that and what are the predictions going forward?

**Mr THOMAS:** The income that we received from the Public Purpose Fund [PPF]—the figures we mentioned in the estimates last year—had dropped significantly. Subsequent to that there has been a lot of work done by Legal Aid, and particularly by the Department of Communities and Justice and the NSW Treasury, to find some funding solutions to the hole that has created. Treasury has provided funding for the first half of this financial year to cover that gap and subsequently—I might ask Mr McKnight to explain the Government's arrangements—the funds are to be invested and to be managed by NSW Treasury under TCorp, and TCorp are guaranteeing to provide us with the same flow of funding under those arrangements that we would have otherwise received by the PPF. So despite what happened last year in terms of the reduction of interest from the PPF, we have not received a funding reduction because of that.

**Mr DAVID SHOEBRIDGE:** Is that commitment from TCorp an ongoing commitment over the next three- to five-year budget cycle?

**Mr THOMAS:** Yes, that is my understanding.

**Mr DAVID SHOEBRIDGE:** Attorney, requests for redundancies in the Strategy, Policy and Commissioning Division of the Department of Communities and Justice were—a request for expressions of interest for redundancies was made in February of this year and I am told that there are some 158 expressions of interest received. First of all, is that right? And then, secondly, how many redundancies have occurred in the Strategy, Policy and Commissioning Division of the department?

**Mr MARK SPEAKMAN:** Unless Ms D'Elia can answer that question, I will have to take it on notice.

**Ms D'ELIA:** I will check my notes.

**Ms CAMPBELL:** I can answer that, Attorney.

**Mr DAVID SHOEBRIDGE:** Thanks very much, Ms Campbell.

**Ms CAMPBELL:** Okay, 112 employees accepted voluntary redundancies and left DCJ as part of the upfront voluntary redundancy program. As a result of the upfront voluntary redundancy program, we were then able to assign 95 per cent of eligible employees to roles in the new structure. Of the remaining unassigned employees, about a third have secured temporary or ongoing employment.

**Mr DAVID SHOEBRIDGE:** Sorry, so 112 employees left. Is that right?

**Ms CAMPBELL:** That is right, as part of the voluntary redundancy package.

**Mr DAVID SHOEBRIDGE:** Was that a headcount reduction of 112—a net headcount reduction or full-time equivalent, however you want to call it?

**Ms CAMPBELL:** Yes, full-time equivalent.

**Mr DAVID SHOEBRIDGE:** Attorney, how can a unit as critical as the Strategy, Policy and Commissioning Division function with 112 less staff? Does that explain the delay after delay after delay that we have been discussing today?

**Mr MARK SPEAKMAN:** I am not sure what delay you are referring to.

**Mr DAVID SHOEBRIDGE:** More than two years to the ice inquiry—

**Mr MARK SPEAKMAN:** No—

**Mr DAVID SHOEBRIDGE:** —failing to respond to the raise the age, not responding to critical review after review. We can revisit the delays if you want.

**Mr MARK SPEAKMAN:** In terms of criminal justice and legal reform, that is Mr McKnight's area of DCJ. Ms Campbell does not have responsibility of that area of DCJ so they are quite separate issues.

**Mr DAVID SHOEBRIDGE:** Ms Campbell, what has been the impact of 112 less employees in the Strategy, Policy and Commissioning Division?

**Ms CAMPBELL:** I think there have been opportunities to consolidate a number of the functions across Strategy, Policy and Commissioning. For example, we have consolidated positions so that we have got a dedicated Domestic and Family Violence branch. Certainly, we are focused on the Premier's Priorities. This division has lead responsibility for coordinating that across the department and we have been able to look at synergies and bring together different programs. So there have been some opportunities. Obviously, the reduction has an impact and we have had to reprioritise some of the work but all the critical priorities that we are working on at the moment are continuing.

**Mr DAVID SHOEBRIDGE:** Attorney, the Government says that it is a Premier's priority to deal with family violence and domestic violence and your departmental response is to remove 112 positions from the division responsible for that very thing. How do those two facts sit? How on earth can you justify that?

**Mr MARK SPEAKMAN:** Operational decisions about employment numbers are not made by me. They are typically made by the department secretary but you are presupposing that we cannot do things better with a finite number of resources. You are presupposing that we cannot utilise whatever workforce we have in a more efficient manner. I think Ms Campbell has articulated how it is that consolidation and streamlining can occur so you can get superior results from a better organised workforce.

**Mr DAVID SHOEBRIDGE:** You must have heard a different answer than I heard because I heard the phrase "reprioritising", which means, if you look under the bureaucratic language, deprioritising for a whole lot of matters that you no longer have the staff for. And that is what has happened under your leadership—112 positions lost in this critical unit dealing with family violence and deprioritising of a bunch of their work.

**Mr MARK SPEAKMAN:** There certainly has been no deprioritising of tackling domestic and family violence or of the Premier's Priorities, including a reduction in reoffending. The challenges in that have not been how many public servants we have working on the matter but rather the increase in stats that we have from greater police activity.

**Mr DAVID SHOEBRIDGE:** Ms Campbell, what matters got reprioritised as a result of the 112 less staff that you have—and, when I say reprioritised, given a priority that was lower than what it was before the staff reduction.

**Ms CAMPBELL:** No, that is not true.

**Mr DAVID SHOEBRIDGE:** That answer is kind of like fish but we will leave it there.

**The CHAIR:** Is that your answer, Ms Campbell?

**Ms CAMPBELL:** I said that that is not the case. It has not been deprioritised.

**Mr DAVID SHOEBRIDGE:** So when you said earlier that matters had been reprioritised, is it your evidence now that you meant nothing had a lower priority as a result of 112 staff being cut from the division? Is that what your evidence is now? You did not mean anything got a lower priority.

**Ms CAMPBELL:** I am sorry, I must have misheard your question. Yes, some things have been looked at. For example, a number of the positions were temporary positions as well. They were program funded and those programs have finished. So it is a lot more complex and I am certainly happy to take that on notice and come back with a clearer answer for you.

**Mr DAVID SHOEBRIDGE:** Thanks, Ms Campbell.

**The CHAIR:** Questioning has come to an end from the Opposition and the crossbench. Now for Government questions.

**The Hon. TREVOR KHAN:** I am very satisfied.

**The CHAIR:** Thank you very much Minister and your staff. We will call that a day.

**(The witnesses withdrew.)**

**The Committee proceeded to deliberate.**