

PORTFOLIO COMMITTEE NO. 5 - JUSTICE AND COMMUNITIES

Friday 28 February 2025

Examination of proposed expenditure for the portfolio area

ATTORNEY GENERAL

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The Committee met at 9:15.

MEMBERS

The Hon. Robert Borsak (Chair)

Ms Abigail Boyd
The Hon. Susan Carter
Dr Amanda Cohn
The Hon. Greg Donnelly
Ms Sue Higginson (Deputy Chair)
The Hon. Natasha Maclaren-Jones
The Hon. Tania Mihailuk
The Hon. Bob Nanva
The Hon. Emily Suvaal

PRESENT

The Hon. Michael Daley, *Attorney General*

CORRECTIONS TO TRANSCRIPT OF COMMITTEE PROCEEDINGS

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

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

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The CHAIR: Welcome to the second hearing of Portfolio Committee No. 5 - Justice and Communities for the additional round of inquiry into budget estimates 2024-2025. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. My name is Robert Borsak, and I am the Chair of the Committee.

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

Thank you all for coming and giving us your time today to give evidence. Attorney General, I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of Parliament. I also remind all other witnesses that you have also already been sworn before the Committee during this inquiry and, therefore, do not need to be sworn again. Today's hearing will be conducted from 9.15 a.m. to 5.30 p.m. We are joined by the Attorney General for the morning session from 9.15 a.m. to 1.00 p.m. with a 15-minute break at 11.00 a.m. In the afternoon, we will hear from the departmental witnesses from 2.00 p.m. to 5.30 p.m. with a 15-minute break at 3.30 p.m. During these sessions, there will be questions from the Opposition and crossbench members, and then 15 minutes allocated for Government questions at 10.45 a.m., 12.45 p.m. and 5.15 p.m.

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Mr MICHAEL TIDBALL, Secretary, Department of Communities and Justice, on former oath

Mr PAUL McKNIGHT, Deputy Secretary, Law Reform and Legal Services, Department of Communities and Justice, on former affirmation

Ms ANNE CAMPBELL, Deputy Secretary, Strategy, Policy and Commissioning, Department of Communities and Justice, on former oath

Mr CHRIS D'AETH, Deputy Secretary, Courts, Tribunals and Service Delivery, Department of Communities and Justice, on former affirmation

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

Ms SALLY DOWLING, SC, Director of Public Prosecutions, Office of the Director of Public Prosecutions, on former affirmation

Dr JAMES COCKAYNE, NSW Anti-slavery Commissioner, Office of the NSW Anti-slavery Commissioner, on former affirmation

The CHAIR: We begin now with questions from the Opposition.

The Hon. SUSAN CARTER: Good morning, Mr Attorney General. You would recall that just over a week ago, you, as part of your Government's response to youth crime, extended the bail laws for another 12 months. They address car theft and serious break and enter, and are designed to act as a deterrent. Sadly, this morning we hear about four teenagers who stole a car outside of Narromine and have been chased. A 17-year-old boy is now dead and three other teenagers are injured. Are your bail laws actually acting as a deterrent for youth crime?

Mr MICHAEL DALEY: I don't know the circumstances of any of the people involved in that horrendous event this morning. I just want to extend my sympathies to both the young person who passed away and his friends and family. But I think that the way you framed that question requires me to be able to say whether, in the context of section 22C, reoffending and bail, any of those young people had committed serious motor vehicle theft or serious break and enter offences that section 22C applies to. I can't answer that question in the way that you've put it to me, .

The Hon. SUSAN CARTER: Mr Daley, we have a teenager who has died this morning. Youth crime is now having fatal consequences. What are you doing to protect these teenagers from themselves, and what are you doing to protect the community from the outbreak of this youth crime?

Mr MICHAEL DALEY: That's a different question now to the one you asked me originally.

The Hon. SUSAN CARTER: I think, with respect, it's the same because your Government's response was to say, "We will deter youth crime by increasing the bail laws." You've done that; you've extended it. Is it working?

Mr MICHAEL DALEY: That was one of the motivations for section 22C: to deter people. The other motivation was to see that recidivist young offenders were not simply put back on the street and that, if they had committed one of those offences while they were on bail, they wouldn't be out to do it again. Mrs Carter, the issue of youth crime is hugely complex. There are no quick fixes to it. Simply making bail laws tougher won't fix it. Simply making penalties tougher won't fix it. It's very complex. There are many causes for young people who are misbehaving. I just want to take you to a really helpful article in *The Sydney Morning Herald* in 2014 by—

The Hon. SUSAN CARTER: Thank you, Mr Daley. We can read the newspaper in our own time.

Mr MICHAEL DALEY: It's actually quite helpful in terms of the commentary from people at Moree.

The Hon. SUSAN CARTER: No, thank you. The help that we are looking for is what you are doing to address the problem of youth crime. What are you doing to stop teenagers dying in the early hours of this morning in stolen cars?

Mr MICHAEL DALEY: One of the things we're doing is rebuilding the Police Force that your previous Government left hugely understrength. Firstly—

The Hon. SUSAN CARTER: What do you say to the police who have had to attend an accident scene this morning with dead teenagers?

Mr MICHAEL DALEY: You've asked me a question, and I'll answer it.

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The Hon. BOB NANVA: Point of order—

Mr MICHAEL DALEY: Please don't put to me a hypothetical "what do you say to". If I want to say something to someone in the community, I'll say it in my own words, in my own venue and on my own time, and not prompted by you in an estimates hearing. Let's just set that—

The Hon. SUSAN CARTER: This is not a hypothetical; this is a dead 17-year-old.

The Hon. BOB NANVA: Point of order—

Mr MICHAEL DALEY: "What do you say to people?". That is hugely hypothetical.

The CHAIR: Order! There has been a point of order called.

Mr MICHAEL DALEY: The first thing we've done in relation to all crime and youth crime—

The CHAIR: Attorney General, there has been a point of order called.

The Hon. BOB NANVA: I understand that passions are running high on this issue and that's fair enough, but that is not a reason to override the procedural fairness requirements around courtesy. I ask that you uphold those requirements.

The CHAIR: I uphold the point of order. Please, Mrs Carter, allow the Attorney General to speak and give his answer before you interject.

Mr MICHAEL DALEY: The first thing we've done is to commence rebuilding the Police Force. I've said before, in this venue and in other venues, the surest way to see an increase in the crime rate in New South Wales is to let police numbers run down. That's what happened on your watch. We're rebuilding the Police Force now. The Police Force are in regional New South Wales where there has been a shift in the nature of offending en masse. Operation Regional Mongoose is a huge undertaking. I know that, crime statistics aside, if people feel unsafe in their community, that's something you have to address, whatever the statistics say. So we have strengthened bail laws. I can tell you that since the bail laws came into effect in December 2024, between April and December in 2024 there are 195 first bail appearances under section 22C that resulted in a bail refusal rate that's up near 80 per cent.

Ms SUE HIGGINSON: Could you repeat that?

Mr MICHAEL DALEY: Between April, when the new law came into effect, and December 2024, there were 195 first bail appearances, when section 22C applied. Of those, 145 resulted in bail being refused, which is a bail refusal rate of 74 per cent, which means that those young people who were on bail for serious motor vehicle offences and who had committed another one were remanded. They're not on the street committing those crimes. That's the first thing. The second thing is we have embarked upon a range of spending initiatives that you saw in Moree, including a bail accommodation service that will come online soon. There have been more programs like the safe action youth program that have been wound out across regional New South Wales. There is a raft of measures that we have implemented in relation to youth crime, but I have to tell you that any talk that one single legislative measure can fix this deep-seated and complex problem is unfortunately not going to be to case.

The Hon. SUSAN CARTER: Thank you for those statistics, and we will come back to explore those later. It is just very unfortunate that those statistics do not address the death of a 17-year-old boy, and this is an issue that I'm sure the whole community wants your Government to take very seriously.

Mr MICHAEL DALEY: We do take it very seriously.

The Hon. SUSAN CARTER: If we could turn to another issue, Minister, are you familiar with the decision in *R v Hallak*?

Mr MICHAEL DALEY: Sorry?

The Hon. SUSAN CARTER: *R v Hallak*.

Mr MICHAEL DALEY: No, just refresh me on that.

The Hon. SUSAN CARTER: I've got copies of it here if that would be of assistance. It was a District Court matter last year before Justice Colefax.

The Hon. SUSAN CARTER: It was a matter in relation to a costs certificate. At paragraph 25 of that judgement, the following exchange is provided. I'm abbreviating without changing the sense of it. The Crown prosecutor is recorded as saying, "The Crown's case is that the Crown can't prove beyond a reasonable doubt." Later in the same paragraph is the following exchange where his Honour says, "Then how do you win? Why are

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we here?", and the Crown prosecutor says, "That is a very good question, your Honour." On behalf of the taxpayers of New South Wales, are we running cases which the barristers admit to the judge have no prospect of success and, if so, why?

Mr MICHAEL DALEY: Are we running cases?

The Hon. SUSAN CARTER: *R v Hallak* would appear to be a case where the Crown prosecutor says to the judge, "We have no prospects of success in this case."

Mr MICHAEL DALEY: I am not going to get into commentary on what occurred in that case. It's there for everyone to see in black and white. You're asking me a question about the prosecution of criminal matters. You can put that question to the DPP now or later if you like, but I'm not going to get into a running commentary.

The Hon. SUSAN CARTER: I might do that this afternoon.

Mr MICHAEL DALEY: I do note the DPP did embark on a comprehensive review of sexual assault cases, for example. I was pleased to see media reports that showed a positive impact, a positive result, of that examination.

The Hon. SUSAN CARTER: This was not a sexual assault case. Does this matter suggest that we actually need a broader review of all cases where costs certificates have been ordered?

Mr MICHAEL DALEY: Have you got more than one case? If there was a litany of them, I might agree with you.

The Hon. SUSAN CARTER: With respect, it's not my role to do the audit of these cases, Attorney General. I would have thought you would have had a watching brief on these things.

Mr MICHAEL DALEY: Okay, then let me say to you—

The Hon. SUSAN CARTER: It's your courts.

Mr MICHAEL DALEY: Okay, fine. Now let me answer directly. There's nothing that's been brought to my attention that would suggest we need that at all.

The Hon. SUSAN CARTER: Isn't it important for the administration of justice that we are looking at cases in which costs certificates are awarded, and isn't it important for the administration of justice that we maintain public confidence in the administration of justice?

Mr MICHAEL DALEY: Of course it is.

The Hon. SUSAN CARTER: Well, this case—and if there are others like it—goes to issues of public confidence. If we are wasting taxpayers' money by bringing the wrong cases with no prospect of success, then the public loses confidence in the system. That's very dangerous for the rule of law, you'd agree.

Mr MICHAEL DALEY: If that was the case, yes.

The Hon. SUSAN CARTER: Have you made any inquiries to determine if this is a one-off or, in fact, if there are other matters like this? Should we have an audit of all of these cases?

Mr MICHAEL DALEY: No, I have just answered that question. There's been nothing that's been brought to my attention to suggest that's the case.

The Hon. SUSAN CARTER: Have you looked, though, Attorney General?

Mr MICHAEL DALEY: Yes, I have regular meetings with the DPP and—

The Hon. SUSAN CARTER: You're aware of all matters in which costs certificates have been ordered?

Mr MICHAEL DALEY: That's a ridiculous question.

The Hon. SUSAN CARTER: With respect, Minister, it is not a ridiculous question.

Mr MICHAEL DALEY: It is a preposterously ridiculous question.

The Hon. SUSAN CARTER: It goes to whether we need an audit or not, doesn't it?

Mr MICHAEL DALEY: No, it doesn't. Sometimes prosecutions are successful, and sometimes prosecutions aren't. Sometimes when they're not successful, the court will order costs.

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The Hon. SUSAN CARTER: This is not a question of whether the matter was won or lost. It was a matter of whether there was a reasonable prospect of success, which I understand is one of the key determinants in the prosecution guidelines.

Mr MICHAEL DALEY: So what's the question?

The Hon. SUSAN CARTER: The question is, if that was one of the reasons that there was an audit of sex assault cases, shouldn't that now also be an indication that we need an audit of costs certificate cases?

Mr MICHAEL DALEY: I don't believe so, but you can put that question to the Director of Public Prosecutions either now or later. If you're asking me whether I have confidence in the Director of Public Prosecutions, the answer is yes, absolutely.

The Hon. SUSAN CARTER: Does this case disclose an issue that indicates that there's a structural problem with the way that the whole ODP is structured, because there appears to be—if you look at the case, the judge essentially says to the Crown prosecutor, "You need to get ethical advice." That's exactly what happened. There appears to be a conflict between the duties of a barrister to only run a case where they believe there is a reasonable prospect of success and the situation where we have employed barristers who need to accept the instructions of their employer. Is this a structural issue that we need to address?

Mr MICHAEL DALEY: You just slipped that decision under my nose now. I haven't had time to look at it. Again, if you want a sensible and informed answer to that question, you can ask the Director of Public Prosecutions, or give me time to have a look at that. Talk to the Director of Public Prosecutions, and write to me, or we can meet and you can ask me that question at a time where I'm able to be more informed.

The Hon. SUSAN CARTER: I'd be very happy to follow up on that but, with respect, that matter was October last year. I am a bit surprised that it's fresh to you at the end of February 2025, but we can move on.

Mr MICHAEL DALEY: Are you really suggesting that any Attorney General gets informed about the outcomes of every case before the District, Local and Supreme courts? That's ridiculous.

The Hon. SUSAN CARTER: No, but I am expecting that an Attorney General is briefed regularly on matters of concern, and this case indicates a matter of concern.

Mr MICHAEL DALEY: It might; it might not. The level of concern might vary.

The Hon. SUSAN CARTER: Thank you, Attorney. Perhaps we can turn to the DV reforms.

Mr MICHAEL DALEY: Can you just inform me about when that was published, that case.

The Hon. SUSAN CARTER: The date of the decision is 11 October 2024.

Mr MICHAEL DALEY: It doesn't mean it was published then.

The Hon. SUSAN CARTER: I don't know when it was published. You would be in a better position than me to find out.

Mr MICHAEL DALEY: No, I wouldn't.

The Hon. SUSAN CARTER: I can't imagine there would be significant delay.

Mr MICHAEL DALEY: Yes, there can be significant delay. It might well be that it was only published this week.

The Hon. SUSAN CARTER: Perhaps during the break we can both make efforts to determine that.

Mr MICHAEL DALEY: No, I don't think we need to do that. I think you can ask the Director of Public Prosecutions all about this.

The Hon. SUSAN CARTER: I'm unclear why you're raising it as an issue, but let's move on to something else. The package of domestic violence reforms that you introduced included a commitment that bail decisions would be made by magistrates rather than registrars. Is that in place now?

Mr MICHAEL DALEY: Yes.

The Hon. SUSAN CARTER: How many magistrates have been employed for this purpose?

Mr MICHAEL DALEY: On the weekend there are—Mr D'Aeth can help me out with this—there are six acting magistrates in Parramatta on the weekend to hear weekend bail cases, and Mr D'Aeth can fill me in on the rare weekday occasions where—

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CHRIS D'AETH: The magistrates are now making substantive bail decisions. Authorised justices are still making—

The Hon. SUSAN CARTER: Sorry, it's a bit hard to hear you, Mr D'Aeth. Perhaps you can pull the microphone closer.

CHRIS D'AETH: Apologies. The weekend bail decisions were being made by magistrates prior to the changes, but in regional areas authorised justices were making bail decisions. As the Attorney just indicated, the authorised justices will be making no bail decisions going forward as of Monday. Between November and today's date, they've been making very minor items—bail not applied for, refused, where status unchanged, orders where there is no objection, bail continued or varied in a callover environment, and section 52 variations where there is no objection. Magistrates are making all substantive bail decisions, and have been doing so since the end of the year.

The Hon. SUSAN CARTER: Have any additional magistrates been employed for that purpose?

CHRIS D'AETH: The Government, I believe—there was 10 additional magistrates and I think six of those were relating to the domestic violence package from last year as well.

The Hon. SUSAN CARTER: The Attorney General said that there were six acting magistrates on a weekend doing bail decisions operating out of Parramatta. Is that right?

CHRIS D'AETH: That's correct.

The Hon. SUSAN CARTER: Are they part of the total of 10 who were employed?

CHRIS D'AETH: No, the new magistrates that were employed are in addition to the number of magistrates in total in the local courts.

The Hon. SUSAN CARTER: We have 10 additional magistrates employed, plus a further six acting magistrates who only work on weekends. Is that right?

CHRIS D'AETH: There were already some acting magistrates operating on the weekend bail courts, and they are continuing.

The Hon. SUSAN CARTER: I think, Attorney General, you said that these acting magistrates are operating out of Parramatta. Is that right?

Mr MICHAEL DALEY: Yes.

The Hon. SUSAN CARTER: Are all bail decisions now being heard through Parramatta?

Mr MICHAEL DALEY: All weekend bail decisions are being heard through Parramatta.

CHRIS D'AETH: Correct.

The Hon. SUSAN CARTER: All weekend decisions through Parramatta, and other decisions being during the week through magistrates. The acting magistrates who are employed for the weekend, are they new magistrates or are they people who were formerly magistrates who've come back in an acting capacity?

Mr MICHAEL DALEY: I'd have to take that on notice. The placement of those magistrates is a matter for the Chief Magistrate, not for me.

The Hon. SUSAN CARTER: If they're new magistrates, what training have they received before they start making bail decisions?

Mr MICHAEL DALEY: Again, that's a matter for the Judicial Commission and for the Chief Magistrate, but I'll take that on notice.

The Hon. SUSAN CARTER: Thank you, I would appreciate that. The Parramatta bail court that's being established, is that funded out of the \$230 million domestic violence package?

Mr MICHAEL DALEY: I believe so.

CHRIS D'AETH: I think it was the \$45 million.

Mr MICHAEL DALEY: It was the \$45 million, as part of the Moree-based response from April last year.

The Hon. SUSAN CARTER: The bail court is the Moree response, not the DV response. Is that right, that funding?

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Mr MICHAEL DALEY: It's part of the DV, yes.

The Hon. SUSAN CARTER: Sorry, which one? Is it the \$230 million domestic violence package?

Mr MICHAEL DALEY: The \$45 million for justice response is out of the DV package.

The Hon. SUSAN CARTER: The centralised bail court, we're assuming, is going to cost \$45 million.

Mr MICHAEL DALEY: So 245 total, and a portion of that was for the bail court.

The Hon. SUSAN CARTER: What's the estimated cost of the bail court?

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

The Hon. SUSAN CARTER: That would be great, thank you very much. Do we now have AVL links to support remote bail hearings throughout New South Wales?

MICHAEL TIDBALL: Mrs Carter, we, working with the police and the courts, worked right across the State. That work was completed by the end of December, and I can advise the Committee that, yes, that is the case.

The Hon. SUSAN CARTER: What feedback have you had about the success of the program?

Mr MICHAEL DALEY: I haven't heard that there have been any problems with it.

MICHAEL TIDBALL: The answer to that would be we will monitor. I meet regularly, as does the Attorney, with heads of jurisdictions. I also speak with the police commissioner and we have an ongoing dialogue. I've heard nothing to the effect that it's not working at this point.

Mr MICHAEL DALEY: I met with the Chief Magistrate earlier this week, and he said it was working well. He's the one that's responsible—along with Mr D'Aeth, of course, from court services—for making sure that it's working properly.

The Hon. SUSAN CARTER: You may be familiar with the reporting in *The Sunday Telegraph* on 22 February that there are serious backlogs in bail that are causing for police, having to retain offenders in custody for periods as long as 60 hours, in one case, when that person subsequently actually received bail, and an allegation that bail courts are only allowing a three-hour window because of a lack of magistrates. What do you say to those allegations?

MICHAEL TIDBALL: I think I can help in so much as the police commissioner has talked to me about that issue of queuing. It's a matter which the police commissioner and the acting Corrective Services commissioner have met to discuss, and there'll be further discussions with the commencement of the new Corrective Services commissioner this week. It's actually about coordination, and we are working together to resolve it.

The Hon. SUSAN CARTER: As I understand it, though, there are two issues. One goes to the ability of the remand centre to intake, and the other goes to the wait times to get in front of a bail magistrate. What's happening about that?

MICHAEL TIDBALL: I am aware of the first issue only.

Mr MICHAEL DALEY: And the third issue that we're looking into as well, Mrs Carter—and the Chief Magistrate will be talking to the police commissioner—is the rate of police bail refusal. We want to see if there has been a change in bail refusal practices. If there is, for example, a spike in the bail refusal rate by police, it might be putting additional pressure on that system. We want to work out, one, if there has been and, two, if there has been then why.

The Hon. TANIA MIHAILUK: Mr Attorney General, the ODPP *Sexual Assault Review Report* was released a couple of days ago. Have you read that?

Mr MICHAEL DALEY: No, I haven't read it. I haven't had a chance.

The Hon. TANIA MIHAILUK: You haven't read it?

Mr MICHAEL DALEY: No, not yet.

The Hon. TANIA MIHAILUK: Mr Attorney General, were you briefed on this report prior to its release?

Mr MICHAEL DALEY: I have had monthly meetings, or close to monthly meetings, with the Director of Public Prosecutions. She didn't brief me on what was in the report before she released it. She released it publicly. It was not a report for Government; it was a report—

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The Hon. TANIA MIHAILUK: I know, but I would have thought, as the first law officer of the State, you would have got a specific briefing prior to the release.

Mr MICHAEL DALEY: No, I didn't request one and I didn't need one.

The Hon. TANIA MIHAILUK: You didn't request one?

Mr MICHAEL DALEY: No.

The Hon. TANIA MIHAILUK: You didn't request a briefing on the *Sexual Assault Review Report* that we've been waiting for for 12 months?

Mr MICHAEL DALEY: No, it was for public consumption, and I have every confidence that the Director of Public Prosecutions knows what she's doing.

The Hon. TANIA MIHAILUK: When do you plan to read it?

Mr MICHAEL DALEY: When I get a minute.

The Hon. TANIA MIHAILUK: When you do plan to read the report? It's 40 pages.

Mr MICHAEL DALEY: When I get a minute.

The Hon. TANIA MIHAILUK: The substance of it is probably about 20. When do you plan to read it?

Mr MICHAEL DALEY: When I get around to it, in—

The Hon. TANIA MIHAILUK: You've come to budget estimates and I would have thought you might have read the report so we could ask you some questions about it.

Mr MICHAEL DALEY: Sorry to disappoint you.

The Hon. TANIA MIHAILUK: You're disappointing the whole State, actually, Mr Attorney General.

Mr MICHAEL DALEY: No, I'm not.

The Hon. TANIA MIHAILUK: We've discussed this issue twice now in the course of last 12 months at budget estimates. Everybody was waiting for this report to come out. It has been reported in the Herald and in *The Australian*, so you've got journalists reading it. I'm sure other Committee members have read it, including the Coalition colleagues, but I'm surprised you haven't.

Mr MICHAEL DALEY: It's days old and it was released publicly, and guess what?

The Hon. TANIA MIHAILUK: Will you ask Ms Dowling for a briefing on it, so you can get your head around it?

Mr MICHAEL DALEY: Guess what? The Director of Public Prosecutions, who owns the report, is here and you can ask her all the questions you want to.

The Hon. TANIA MIHAILUK: I will absolutely be doing that at two o'clock.

Mr MICHAEL DALEY: Good.

The Hon. TANIA MIHAILUK: At this point you're here, so I'm asking you the questions. Let's ask something you might know about. I'll ask you a little bit about the inciting hatred legislation that passed Parliament the other day. Did you organise a briefing for the faith council, Mr Attorney General?

Mr MICHAEL DALEY: I'd have to take that on notice. There was a raft of—

The Hon. TANIA MIHAILUK: Did anyone from your office organise a briefing for the faith council?

Mr MICHAEL DALEY: Just let me answer the question. Three bills, with various groups being consulted over the weeks that preceded those going into the House, and I'll take that on notice about who was consulted.

The Hon. TANIA MIHAILUK: Can you come back in the afternoon with that information?

Mr MICHAEL DALEY: In relation to the hate speech legislation, I think I wrote to the faith council, but I don't think that we did face-to-face consultation on that. But if that's wrong, I'll correct it later on in the day.

The Hon. TANIA MIHAILUK: The question was put to Mr Joseph La Posta of Multicultural NSW the other day, and he advised the budget estimates hearing with Minister Kamper that, in fact, there were staff

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from the AGO and the Department of Communities and Justice, and that there was a request from your department and your office to meet with the faith council. So there was one. I don't know whether members of your staff attended, from your direct ministerial office, but there were apparently experts from the Department of Communities and Justice. You're not aware of that? I was going to ask you who attended.

Mr MICHAEL DALEY: I just said I'll take that on notice, but it might well be that—as I said, there were three bills being worked on at the same time and various matters were discussed.

The Hon. TANIA MIHAILUK: I understand they had one briefing, and I wanted to know what type of briefing that was and whether there were lawyers present, giving them a good understanding of what the inciting hatred legislation would mean.

Mr MICHAEL DALEY: For the sake of accuracy, I will take that on notice and let you know who was there.

The Hon. TANIA MIHAILUK: With the three pieces of legislation, did Premier Minns rely on you specifically for legal advice on any of this legislation? Did he ask you to seek—

Mr MICHAEL DALEY: You'd have to ask him who he relied on.

The Hon. TANIA MIHAILUK: Did you meet with the Premier directly over this legislation?

Mr MICHAEL DALEY: There were meetings with all sorts of stakeholders and, if I did with meet with the Premier, the contents of that meeting would be, necessarily, confidential. But we did have many discussions about these bills, yes.

The Hon. TANIA MIHAILUK: I want to put to you, Mr Attorney General, that the Law Reform Commission recommended no change to section 93Z. Why did the Government proceed?

Mr MICHAEL DALEY: We've been over this issue in many press conferences. It was discussed in Parliament.

The Hon. TANIA MIHAILUK: I'm not at those press conferences and this is estimates, so I'll ask you.

Mr MICHAEL DALEY: I'm not going to go over this ground in any great detail again. It was in my second reading speech why we did it. It was a grave matter of urgency; that's why we did it. We couldn't wait for months of consultation before we amended these laws. Antisemitism and the violence that we were seeing, particularly in Sydney, is something that we had to act quickly on. The Premier has made that very clear, in and out of the House, and we had to act on it urgently.

The Hon. TANIA MIHAILUK: Mr Attorney General, the Law Reform Commission's report noted that there would be difficulty in defining hatred, and stated:

... there are differences of opinion in the community about what hatred means. As several submissions observed, this ambiguity makes hatred an inappropriate standard for the criminal law.

How would you define hatred in a way that is appropriate for criminal law?

Mr MICHAEL DALEY: The short answer is according to the ordinary English meaning of the word, which is why we didn't define it in the legislation. But in relation to the Law Reform Commission report into section 93Z and the legislation that came before the House, I thank Tom Bathurst for the work that he did. He's a great man and he's an eminent jurist, and we're lucky to have him and we value the work that he does.

The Hon. TANIA MIHAILUK: But you disregarded it all.

Mr MICHAEL DALEY: But his work and the consultation on that work was done before we saw these outbreaks of antisemitism, and it's always open to the Legislature—and Mr Bathurst understands that—to legislate as it sees fit.

The Hon. TANIA MIHAILUK: Well, we'll wait to see, when the Law Reform Commission completes its review into the AD Act, whether there's a similar attitude for the Government to perhaps disregard some of that as well. Attorney General, you're responsible for 18 Acts that relate to church trusts and church property. Would you agree that quoting, referencing and discussing religious texts occurs on church property?

Mr MICHAEL DALEY: Would I agree that it occurs on church property?

The Hon. TANIA MIHAILUK: Yes.

Mr MICHAEL DALEY: Broadly speaking, I suppose so, yes.

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The Hon. TANIA MIHAILUK: Regarding the inciting hatred bill, considering many discussions of religious texts take place on church property, did you discuss the ramifications the bill would have on religious freedom with any of the leaders of these churches whose properties you are responsible for prior to making that amendment?

Mr MICHAEL DALEY: Yes. I'll stand corrected—I'll correct it if I'm wrong—but I do believe in the consultations that were had prior to the formulation of the bill that of course those issues were discussed.

The Hon. TANIA MIHAILUK: You preside and you have carriage over 18 church property trusts Acts in New South Wales. Are you saying that you had discussions, or your office had discussions with leaders of all of these dioceses?

Mr MICHAEL DALEY: No, I didn't say that.

The Hon. TANIA MIHAILUK: Or some?

Mr MICHAEL DALEY: And I don't understand how the Acts that relate to trust property have any relation—

The Hon. TANIA MIHAILUK: Because you worded up an exemption in inciting hatred in relation to religious texts—or someone worded it. I don't know—

Mr MICHAEL DALEY: Hang on, you're referencing the answer to the fact that I'm responsible for trust property.

The Hon. TANIA MIHAILUK: Yes.

Mr MICHAEL DALEY: I don't understand. How has the operation of trusts got to do with hate speech in legislation?

The Hon. TANIA MIHAILUK: Well, it's about church property. I'm asking you a question about people who are discussing religious texts, religious teaching, and they do so on church property.

Mr MICHAEL DALEY: So those Acts are irrelevant in relation to the discussions within a place of worship.

The Hon. TANIA MIHAILUK: They're not irrelevant because they are stakeholders that fall within the realm of your responsibilities.

Mr MICHAEL DALEY: Yes.

The Hon. TANIA MIHAILUK: I need to know, and I think the public needs to know, whether you had discussions with any of these people prior to the inciting hatred bill being put forward at the Cabinet table.

Mr MICHAEL DALEY: There was consultation about all three bills. They had nothing to do with trusts or church property. I've already said to you I'll take on notice the—

The Hon. TANIA MIHAILUK: Who came up with the exemption—the wording?

Mr MICHAEL DALEY: The Government came up with the exemption.

The Hon. TANIA MIHAILUK: We're not clear on who, specifically?

Mr MICHAEL DALEY: The Government's responsible for bills that are brought before the House, based on advice.

The Hon. TANIA MIHAILUK: Can I ask you to take on notice—that meeting that you had with the faith council. Apparently, as mentioned in the estimates the other day, divergent views were coming from the faith council about this legislation. Was that meeting minuted? Could you find out if it was?

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

The Hon. TANIA MIHAILUK: If it was minuted, can that be made publicly available?

Mr MICHAEL DALEY: Probably not, because those discussions with the faith council and other stakeholders behind closed doors are confidential unless the stakeholders agree they're not. Many stakeholders will consult with Government but don't necessarily want their views being aired publicly, so the starting point for me is that they're confidential until they're not.

The Hon. TANIA MIHAILUK: Well, one of them went to the newspaper, so they were happy to air it publicly.

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Mr MICHAEL DALEY: That's a matter for them, not me.

Ms SUE HIGGINSON: Good morning, Attorney.

Mr MICHAEL DALEY: Good morning, Ms Higginson.

Ms SUE HIGGINSON: I'm just curious: Have you ever seen any evidence that shows that increasing a prison population or an incarceration rate reduces crime?

Mr MICHAEL DALEY: Yes.

Ms SUE HIGGINSON: You have? Could you share that?

Mr MICHAEL DALEY: No, I can't. It was when I was the Minister for Police, which is a few years ago now, and I was looking at graphs of the correlation between the rising prison population and the decrease in crime.

Ms SUE HIGGINSON: I'd be very interested to see that. Is that something that is available?

Mr MICHAEL DALEY: I don't remember the exact advice. It would have been given to me by one of the commissioners or deputy commissioners when I was Minister for Police, but that's going back so I don't know what study that would have been. But I'm sure there are many studies about those—

Ms SUE HIGGINSON: Do you recall what crime it was in relation to?

Mr MICHAEL DALEY: No, it was crime in general.

Ms SUE HIGGINSON: I would be really interested. If there is any way you can inform this Committee as to—

Mr MICHAEL DALEY: No. You asked me if I'd ever seen, and the answer is yes, but it was a while ago.

Ms SUE HIGGINSON: Do you think it was well researched? I genuinely really want to know.

Mr MICHAEL DALEY: Don't know. I'm honestly answering your question. You asked me if I'd ever seen it, and the answer is yes, I have. I don't know—

Ms SUE HIGGINSON: Do you know of any other published material, any reliable sources that we can refer to or find because I've looked and I've looked, and so have many other people, and we're just not really seeing it available anywhere. The fact that you have seen some is very enlightening and I would love for this Committee to have the benefit of seeing that material as well.

Mr MICHAEL DALEY: Sure.

Ms SUE HIGGINSON: You think you would be able to provide that to the Committee?

Mr MICHAEL DALEY: Provide what?

Ms SUE HIGGINSON: Whatever it was that you saw.

Mr MICHAEL DALEY: No. I told you it was back in 2009 or 2010, or around about that time. There's no way I could reference that now.

Ms SUE HIGGINSON: It wasn't something that anybody else was looking at at the time, or that any other part of the—

Mr MICHAEL DALEY: It was a briefing I was given as Minister for Police.

Ms SUE HIGGINSON: That material that you saw, did that at all inform your views in relation to the introduction of the youth bail laws that you have introduced in New South Wales?

Mr MICHAEL DALEY: No.

Ms SUE HIGGINSON: Perhaps, then, could I ask you if there was any reliable material that you had before you to justify the youth bail laws that were introduced 12 months ago in terms of their effect of reducing crime?

Mr MICHAEL DALEY: My main concern was driven by reports, discussions, consultation with police and other stakeholders, community stakeholders that I had met, that the Premier had met, that the Minister for Youth Justice had met. As a collective, we were concerned that there were too many young people who were committing certain types of offences over and over again, and those offences were serious motor vehicle theft

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offences, serious break and enter offences and also an emergence of a new crime, which was posting and boasting. What we were concerned about was that there were young people who were committing those crimes, being granted bail and then doing them quickly again, within days or weeks of having been granted bail.

Ms SUE HIGGINSON: To this point, have you noticed a decrease in those offences based on the increased refusals of bail?

Mr MICHAEL DALEY: I'd have to have a look at the latest BOCSAR stats, if they are available, because I said when I introduced—

Ms SUE HIGGINSON: It doesn't appear that correlation's happening now. It really doesn't.

Mr MICHAEL DALEY: No, as I said when I introduced this legislation, doing studies over very short periods of time isn't necessarily very informative. BOCSAR often offers the opinion that it takes a while to get empirical studies done.

Ms SUE HIGGINSON: But Attorney, doesn't the same view and the same logic factor in the rushed nature of introducing such laws? I'm not cavilling with your perhaps good intentions of what you're seeking to achieve. But what I think many in the justice system cavil with is the hastiness in the face of all the evidence that incarceration is criminogenic, even in the shortest stint for a young person. The likelihood—and the very strong evidence—is that now, because of what you have done, over time you will have increased crime rates in New South Wales because you have directly impacted that criminogenic factor on all of those young people that would otherwise not be in prisons right now, particularly the First Nations kids. Do you accept that?

Mr MICHAEL DALEY: We've been over this ground, Ms Higginson, both in estimates and in other discussions. We have a choice between allowing those kids to continue to run around in their community with the terrible lives that they have—and to keep committing those crimes and to keep allowing community members to suffer at the hands of those young people who are doing these increasingly violent things—or to incarcerate them and remand them and give them treatment and take them off the streets so that, at least while they're on remand and until we can deal with them properly, they're not reoffending. It's a stark choice.

Ms SUE HIGGINSON: I accept your answer.

Mr MICHAEL DALEY: There's no easy fix here.

Ms SUE HIGGINSON: All experts, Attorney, as you know, who are on the front line would say to you that false dichotomy is just untrue. It's dangerous, it's criminogenic and there are many things that can be happening. We don't need to lock kids up to feed them. We don't need to lock them up to educate them. We don't need to lock them up to provide them other opportunities.

Mr MICHAEL DALEY: No.

Ms SUE HIGGINSON: I strongly think you would agree with that.

Mr MICHAEL DALEY: But when you know, or when you have a serious apprehension, that if you don't lock them up they're going to break into someone's house, possibly violently—

Ms SUE HIGGINSON: Not with proper diversionary and intervention, and I think you know that.

Mr MICHAEL DALEY: Those programs aren't in place. That's the problem. We've spoken about that in this room on two or three occasions. In the context of raising the age, that's the challenge for all governments: to get diversionary programs in place.

Ms SUE HIGGINSON: Do you accept, then, that because you don't have those programs, or because you're not investing enough in those programs—that said, that those programs do exist? They need accelerating and amping up. We all know that. The efforts now, locking these kids up, is going to undermine every dollar you invest in those programs. But do you accept, at this point, that there are some serious voices who are having to deal with these laws who are making some really serious statements about them? You would know I'm referring to Justice Lonergan, Justice Rothman and judges of the District Court. Their comments about these youth bail laws were that they are a "ham-fisted attempt to deal with a political difficulty" and they warned that they create significant problems for the administration of justice. Does that concern you?

Mr MICHAEL DALEY: What concerns me is that these children are committing increasingly violent offences and that the people of the communities in which they live deserve protection.

Ms SUE HIGGINSON: Attorney, I accept that.

Mr MICHAEL DALEY: That's the number one. Community safety is our paramount concern.

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Ms SUE HIGGINSON: How do you justify, then, extending them now—

Mr MICHAEL DALEY: Can you just let me answer the question? I'm not going to fluff and waste your time. You know that. Community safety has to be our number one concern. That's the driver of these law changes.

Ms SUE HIGGINSON: How are you achieving that, is the question I've been asking?

Mr MICHAEL DALEY: Firstly, by making sure that they're not on the street to reoffend. By the initiatives that we announced last year, the \$12.9 million of, for example, the expansion of the Youth Action Meetings across the State, the expansion of the Safe Aboriginal Youth patrols that I've already referred to, the rolling out of justice reinvestment grants—

Ms SUE HIGGINSON: Do you accept that it undermines all of these programs when you lock the kids up?

Mr MICHAEL DALEY: We're presented with no other choice at this time.

Ms SUE HIGGINSON: That's not what the experts on the front line are saying.

Mr MICHAEL DALEY: Well, I'd love for one of the experts to walk in my door and show me a diversionary program that was left to us in Moree, or anywhere else in regional New South Wales, by the previous Government, that can deal with these kids. Because if you find me one, I'll put them there instead of remanding them in custody. That might be a task for you and all of these so-called experts.

Ms SUE HIGGINSON: Can I ask which juvenile justice centre you last visited?

Mr MICHAEL DALEY: Juvenile justice centres are the preserve of Minister Dib.

Ms SUE HIGGINSON: Can I ask which one you've visited?

Mr MICHAEL DALEY: I haven't visited one.

Ms SUE HIGGINSON: You haven't visited one.

Mr MICHAEL DALEY: I haven't visited a youth justice—

Ms SUE HIGGINSON: You and the Premier haven't visited one together with Minister Dib?

Mr MICHAEL DALEY: No, I haven't.

Ms SUE HIGGINSON: Have you ever been into a juvenile justice centre?

Mr MICHAEL DALEY: I have, when I was Minister for Police, yes.

Ms SUE HIGGINSON: All those years ago?

Mr MICHAEL DALEY: Yes.

Ms SUE HIGGINSON: And you haven't been to one since you've introduced these laws and you're sitting here talking about all those increased kids—

Mr MICHAEL DALEY: I don't need to have done that to know what's happening on the streets in Moree and to know that the community deserves protection.

Ms SUE HIGGINSON: And it doesn't concern you where you are sending all these young people right now, making them more criminal?

The CHAIR: Order! Ms Higginson's questioning time has elapsed.

Mr MICHAEL DALEY: I trust that Minister Dib and the department run those facilities in the best way they can.

The Hon. SUSAN CARTER: Mr Daley, I understand that you haven't had a chance to read the audit of the sexual assault cases that's been released by the ODPP.

Mr MICHAEL DALEY: I'll be reading it over the weekend.

The Hon. SUSAN CARTER: Yes, I understand, you've told us that. But I understand that you would have had discussions with various people about matters in relation to that. Do you have any—

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Mr MICHAEL DALEY: I was getting reports from the Director of Public Prosecutions along the way about how the report was panning out. I'm not completely in the dark about what it was doing; I just haven't had a chance to read it yet. I will, in the coming days.

The Hon. SUSAN CARTER: Understood. Do you have any concerns arising out of anything that you've heard of in relation to the audit?

Mr MICHAEL DALEY: No.

The Hon. SUSAN CARTER: Do you have any concerns arising out of issues maybe to do with victims whose cases were discontinued as a result of the audit?

Mr MICHAEL DALEY: "Do you have any concerns" is a pretty loose sort of question. What I've said before is that it's always a concern when victims, witnesses and families who are dragged into the criminal justice system by events beyond their control are disappointed by the outcomes. That's always a concern. But that's a different concern to what I think you're getting at, which is do I have any concerns that there are problems within the Office of the DPP—

The Hon. SUSAN CARTER: No, that wasn't my question, Minister.

Mr MICHAEL DALEY: That there's a structural issue that needs addressing.

The Hon. SUSAN CARTER: That was not my question. Did it surprise you that there was at least one case discontinued that had been in preparation for years, was charge certified and was only weeks away from the hearing date at the time it was discontinued?

Mr MICHAEL DALEY: It would depend on what the circumstances of the discontinuance were.

The Hon. SUSAN CARTER: What do you think the effect on the victim of that discontinuance was?

Mr MICHAEL DALEY: That's a different question.

The Hon. SUSAN CARTER: That's the question I'm now asking you.

Mr MICHAEL DALEY: I don't know what the effects on that victim were because I don't know what case you're referring to but, generally speaking, if you're a victim, and you fervently believe in your cause, if I can put it that way, and you want justice for what has happened to you, or believe has happened to you, and then a matter is discontinued, no doubt you'd be greatly disappointed and distressed. I speak to those people.

The Hon. SUSAN CARTER: I know you do, Minister. I understand that you do. So you would accept that some of those victims—

Mr MICHAEL DALEY: And I speak to the DPP about them as well.

The Hon. SUSAN CARTER: That's very good to know. You would understand that they feel traumatised by this process.

Mr MICHAEL DALEY: They can. Some of them that I've spoken to—in fact, many of them that I've spoken to, some are traumatised, some are greatly upset, some are merely disappointed. There's a range of human emotions, but they are often unhappy about what's happened. I even said on the floor of the Parliament in question time, in relation to the Greta bus crash, that it's a disappointment to me when people go through the criminal justice system and they don't get the outcome they want. No-one wants to see that, but we do our best to make sure that they are served.

The Hon. SUSAN CARTER: Are you looking at any changes to the treatment of victims and the information and support that is given to them as a result of conversations you've had around this process?

Mr MICHAEL DALEY: Yes. I'm talking to the DPP and the department regularly about what supports we can give the DPP in that regard. I have to say that in my experience the DPP and her staff are greatly sensitive to the needs of victims. Sometimes, for example, there are quite a number of victims out of the one incident and not all of their interests align. It's a difficult juggling act from time to time, but we're mindful to try and make it as good as we can for the victims.

The Hon. SUSAN CARTER: I share your concern. Are you satisfied that every one of the victims whose matters were discontinued has received a statement of facts from the ODPP explaining why the matter was discontinued?

Mr MICHAEL DALEY: I don't know if that's the case, but I can take that on notice.

The Hon. SUSAN CARTER: Thank you very much.

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Mr MICHAEL DALEY: That's not something that I would supervise on a day-to-day basis. You understand.

The Hon. SUSAN CARTER: I just thought there may have been some people who had drawn that matter to your attention, and I was going to ask a follow-up question on their behalf.

Mr MICHAEL DALEY: There have been. I think I know who you're referring to, and I have undertaken to that person to find that out. You have to understand as well, the DPP is an independent statutory office holder and I don't have any supervision over that office.

The Hon. SUSAN CARTER: Yes.

The Hon. NATASHA MACLAREN-JONES: Thank you, Attorney, and everyone else, for being here. I want to turn back to bail laws and young offenders. The bail laws introduced last year, you recently extended those, I think it was last week.

Mr MICHAEL DALEY: Yes.

The Hon. NATASHA MACLAREN-JONES: Is there a time limit on that extension?

Mr MICHAEL DALEY: Three years.

The Hon. NATASHA MACLAREN-JONES: In making that decision, did you look at any data around whether those laws were working successfully?

Mr MICHAEL DALEY: I think I've already answered that. I think I said I'd take those statistics on notice. If I haven't, I will. We're informed by a range of things and a range of discussions—principally by discussions with the police, as well, who have reported to us that it's still a battle for them in regional New South Wales in relation to these kids. We haven't seen any reason, at the moment, to let them sunset. In fact, there were good reasons, as I have just explained, to keep them going.

The Hon. NATASHA MACLAREN-JONES: In that you said, I think, that 74 per cent have been refused bail.

Mr MICHAEL DALEY: Bail refused, yes.

The Hon. NATASHA MACLAREN-JONES: And that's only for the serious crimes.

Mr MICHAEL DALEY: Yes. The average bail refusal rate—correct me if I'm wrong here—is about 45 per cent for young people, and the bail refusal rate was whatever figure I gave you before.

The Hon. NATASHA MACLAREN-JONES: It was 74 percent.

Mr MICHAEL DALEY: About 74 per cent.

The Hon. NATASHA MACLAREN-JONES: I have concerns that we have a case this morning of a 14-year-old who driving. Apparently, there's a 13-year-old child in a critical condition in hospital. There are reports last month of, allegedly, another 14-year-old driving a stolen vehicle—who apparently had breached bail on a number of occasions—and killed a man in Moree. Are these bail laws actually working?

Mr MICHAEL DALEY: I think that's a question that I was directly asked by Mrs Carter, and I said I'd get you some statistics and show—

The Hon. NATASHA MACLAREN-JONES: I am not asking for statistics; I am asking what more can you do?

Mr MICHAEL DALEY: That's a different question to, "Are they working?" Which one do you want me to answer?

The Hon. NATASHA MACLAREN-JONES: Clearly, it's not working, so I'm asking what more you can do.

Mr MICHAEL DALEY: How do you know it's not working?

The Hon. NATASHA MACLAREN-JONES: Because you have serious crime still being committed. You have young people who are allegedly on bail committing crimes, whether it's break and enter or stolen vehicles. Clearly it's not working.

Mr MICHAEL DALEY: Let's say, hypothetically, that the 80 or 90 kids who have been refused bail now haven't had the opportunity to go out and do those very things. In respect of those kids who have been refused

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bail, who are on remand and not on the street, and can't avail themselves of keys, cars and machetes to break into houses, they haven't been able to do it. In respect of those kids, it is working, isn't it?

The Hon. NATASHA MACLAREN-JONES: But only 44 per cent are being held or not given bail, so the remainder that are—

Mr MICHAEL DALEY: There are 80 or 90 children who were refused bail, who are on remand now and not on the street. In respect of every single one of those children, the bail laws are working. If you're trying to put to me the proposition that 22C is going to lead to the evaporation of those crimes that are the subject of it, I think you know the answer to that. I think the causation of criminal behaviour is very deep-seated and complex, and no one, single legislative or other program is going to reduce that to nil, if that's what you're trying to suggest.

The Hon. NATASHA MACLAREN-JONES: I know that there are quite often very complex issues, which is why I'm asking what more you can do to protect the community and support those young people who are getting bail.

Mr MICHAEL DALEY: I have just read some of the measures that we've put in place.

The Hon. NATASHA MACLAREN-JONES: You've put them in place, but they're clearly not working.

Mr MICHAEL DALEY: What's your measure of not working?

The Hon. NATASHA MACLAREN-JONES: Crime is going up and people are dying.

Mr MICHAEL DALEY: Is it zero? Zero crime?

The Hon. NATASHA MACLAREN-JONES: That would be great.

Mr MICHAEL DALEY: Don't try and suggest that this is a simple fix.

The Hon. NATASHA MACLAREN-JONES: I'm just saying, you've got people who—

Mr MICHAEL DALEY: No, I really do object to the way that question has been phrased. "It's not working" suggests that a single measure can be put in place to stop crime from occurring. That has never happened in the history of mankind, and it's not going to happen here.

The Hon. NATASHA MACLAREN-JONES: I'm not saying a single measure. I'm saying quite often you do need a suite of measures.

Mr MICHAEL DALEY: No, you're trying to simplify it too much, with respect.

The Hon. NATASHA MACLAREN-JONES: That's why I'm asking, what more can you do?

Mr MICHAEL DALEY: You're trying to simplify it too much, with respect. This will take a long time to address. One of the things that can be done is to get diversionary programs in place for those young people—drug and alcohol measures and things like that. I went out in the first weeks of my tenure as Attorney General and opened the Youth Koori Court in Dubbo. When I was there I asked people to show me and take me to visit the drug and alcohol programs that were in place for young people that might work in concert with the Youth Koori Court. Do you know what the answer was—and I'd been Attorney General for a matter of weeks? None. There were none.

The Hon. SUSAN CARTER: And how many are there now, Minister?

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

The Hon. SUSAN CARTER: If this is an issue that you're addressing, where are the drug and alcohol programs that you said need to happen?

Mr MICHAEL DALEY: That's what we are working on, Mrs Carter.

The Hon. SUSAN CARTER: Where are they? You've been in office for two years. Where are those programs?

Mr MICHAEL DALEY: Yes, and you were in power for 12 years and there weren't any—

The Hon. SUSAN CARTER: Where are your programs?

Mr MICHAEL DALEY: —so don't come at me with that.

The CHAIR: Order!

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The Hon. SUSAN CARTER: You indicated that this was a long-term problem. Why then were your bail laws only introduced for a 12-month period?

Mr MICHAEL DALEY: We wanted to see what the effect of that temporary bail measure might have been.

The Hon. SUSAN CARTER: And what effect did you assess them as having?

Mr MICHAEL DALEY: I just answered the question before, if you were listening. I said we came to the conclusion, upon the approach of the 12-month anniversary, that we needed to continue them because there were still too many young people committing repeat offences of the kind that are subject to 22C.

The Hon. NATASHA MACLAREN-JONES: Attorney General, you'd be aware of the increase in sexual assaults in Moree—112 per cent over the past two years. Why is it that sexual assault is seen as a lesser crime than motor vehicle theft?

Mr MICHAEL DALEY: By whom?

The Hon. NATASHA MACLAREN-JONES: They're not subject to your bail laws.

Mr MICHAEL DALEY: Sorry, I don't understand the nature of your question.

The Hon. NATASHA MACLAREN-JONES: The question is, sexual assaults are not included as a serious offence when it comes to the youth bail laws.

Mr MICHAEL DALEY: That's correct, yes. I don't understand—

The Hon. NATASHA MACLAREN-JONES: My question is, we have seen, over the last two years, an increase in sexual assaults in Moree alone of 112 per cent. Why is that not being considered in the new—

Mr MICHAEL DALEY: Because it was the nature of the repeat offending of the young people who were committing serious motor vehicle theft offences and serious break and enter offences that had changed and had spiked rapidly, and that was causing particular consternation in the community. That was an issue that needed quick addressing.

The Hon. NATASHA MACLAREN-JONES: Will you consider expanding it to include sexual assault?

Mr MICHAEL DALEY: I have said from day one that all of the many Acts that I'm responsible for can consider themselves—if I can personify them—to be in a constant state of review. If there's evidence before me that a simple legislative measure like 22C will assist in that regard, sure, we'll look at it.

The Hon. NATASHA MACLAREN-JONES: But a 112 per cent increase is pretty significant.

Mr MICHAEL DALEY: Most sexual assaults are not committed by young people. That's why it wasn't considered in 22C.

The Hon. NATASHA MACLAREN-JONES: Have you looked at the detail of what the increase is for young people?

Mr MICHAEL DALEY: No, I haven't. It's part of the BOCSAR statistics. I have read those reports, and some recent ones have come out this week.

The Hon. NATASHA MACLAREN-JONES: You'd see that, across the State, there's been close to a 16 per cent increase in domestic violence assaults on young people.

Mr MICHAEL DALEY: Assaults on young people—

The Hon. NATASHA MACLAREN-JONES: Yes.

Mr MICHAEL DALEY: —or by young people?

The Hon. NATASHA MACLAREN-JONES: By young people.

Mr MICHAEL DALEY: Where's the question?

The Hon. NATASHA MACLAREN-JONES: My question is, we're seeing an increase in assaults by young people on young people; what is being done, and will you consider looking at further reforms?

Mr MICHAEL DALEY: We're always looking at further reforms where there's a need to, so yes.

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The Hon. NATASHA MACLAREN-JONES: Moving to the new bail accommodation, I understand you have now got a tender, or someone has actually—

Mr MICHAEL DALEY: That's a question for Minister Dib, not for me. I'm not responsible for that facility.

The Hon. NATASHA MACLAREN-JONES: Do you know where young people are currently staying whilst the accommodation is being built, or is that not your area?

Mr MICHAEL DALEY: That's not my area.

The Hon. NATASHA MACLAREN-JONES: In relation to the posting and boasting offences, which you touched on before, I'm interested to see whether you intend to extend that to cover violent assaults, or is it only going to be limited to cars and—

Mr MICHAEL DALEY: At the moment, the specific measure—54K, I think it is—is limited to where it is presently.

The Hon. NATASHA MACLAREN-JONES: So there's no interest in making any changes?

Mr MICHAEL DALEY: Not at this time but, as I said before, if evidence comes before us that we would need to extend it to other crimes, I'd be open to that. But, at the moment, it's not the case.

The Hon. SUSAN CARTER: If we can turn, Minister, to the statutory review of section 93Z of the Crimes Act, which was due on 1 January this year, when can we expect to receive that?

Mr MICHAEL DALEY: The Government's response?

The Hon. SUSAN CARTER: No, the review.

Mr MICHAEL DALEY: When the Government has finished considering it.

The Hon. SUSAN CARTER: It was due on 1 January. It was in legislation that it be provided on 1 January. What's the reason for the delay?

Mr MICHAEL DALEY: It will be done when the Government has finished considering it.

The Hon. SUSAN CARTER: This was a legislative requirement. Are you saying that the Government doesn't treat legislative requirements seriously?

Mr MICHAEL DALEY: A bit like your statutory review of the Anti-Discrimination Act, which was 12 years late.

The Hon. SUSAN CARTER: Minister, if I said to a policeman who pulled me over because I was going 80 in a 60 zone, "I will drive 60 when I feel like it," he'd say, "You're breaking the law". Why aren't you in breach of the law because this review is two months late?

Mr MICHAEL DALEY: It'll be done when the Government has finished considering it, and it won't be too far down the track.

The Hon. SUSAN CARTER: But you were able to introduce amendments to 93Z without actually having completed the statutory review first?

Mr MICHAEL DALEY: I've already answered why we did that.

The Hon. SUSAN CARTER: At budget estimates last year, Deputy Commissioner Malcolm Lanyon gave evidence that the reason no arrests were made at the Opera House protests over a year ago was because there was no specific individual to whom possible offences could be attributed. You would agree with Deputy Commissioner Lanyon that it's critical for police to make arrests and to deter antisemitic speech that they can identify if people in a public assembly are inciting violence on the grounds of race or inciting racial hatred?

Mr MICHAEL DALEY: I don't understand the nature of your question.

The Hon. SUSAN CARTER: Police have to be able to identify offenders before they can be arrested. You would agree?

Mr MICHAEL DALEY: That's a bit axiomatic. Yes.

The Hon. SUSAN CARTER: Would any of the changes that you have made to 93Z address the issue of the fact that police could not identify the offenders at the Opera House?

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Mr MICHAEL DALEY: I think if you have a look at the legislation you will know the answer to that question.

The Hon. SUSAN CARTER: I'd like to hear it from you, Attorney.

Mr MICHAEL DALEY: That question goes to the physical circumstances around events that might be subject to any laws.

The Hon. SUSAN CARTER: The question goes to enforcement, and the question is—

Mr MICHAEL DALEY: No, it doesn't go to enforcement. It goes to—

The Hon. SUSAN CARTER: —why are you passing laws that you know cannot be enforced?

Mr MICHAEL DALEY: It doesn't go to enforcement. It goes to the evidence that's available to the police to be able to charge someone.

The Hon. SUSAN CARTER: So you don't want to review 93Z, and you don't want to pass laws that will allow your new laws to actually be enforced. Is that what we are hearing?

Mr MICHAEL DALEY: I don't know what you're talking about. I really don't understand the nature of that question.

The Hon. SUSAN CARTER: I will restate, Minister.

Mr MICHAEL DALEY: Great.

The Hon. SUSAN CARTER: The police have said the reason they could not arrest anybody for antisemitic hate speech at the Opera House protest back in October 2023 was they couldn't identify anybody. Will your new laws allow police to identify offenders so that they can be enforced?

Mr MICHAEL DALEY: How would the police, on the steps of the Opera House, ordinarily identify offenders, Mrs Carter?

The Hon. SUSAN CARTER: If they didn't have masks on their face. Why would you not support legislation that would facilitate the enforcement of these laws?

Mr MICHAEL DALEY: It might well be that no offences were committed, so they couldn't be identified as having been committed in the first place.

The Hon. SUSAN CARTER: Is that your understanding of the police reports from the Opera House?

Mr MICHAEL DALEY: No, but I believe there has been plenty of public commentary and other commentary in estimates by the police about what happened on the steps of the Opera House, and I'm not the police Minister.

The Hon. SUSAN CARTER: I will take you back to the evidence given by Deputy Commissioner Lanyon that the reason that no arrests were made at the Opera House protests over a year ago was because there was no specific individual to whom the possible offences could be attributed. What have you done to address that problem?

Mr MICHAEL DALEY: For example, because there was a crowd of people shouting and the police didn't actually hear or weren't able to hear, or that they couldn't see with CCTV cameras close enough to see whether people were committing offences, right.

The Hon. SUSAN CARTER: They couldn't see because faces were masked. People were wearing scarfs of various kinds to cover their features.

Mr MICHAEL DALEY: I'm not sure that's what Deputy Commissioner Lanyon was getting at, but you should perhaps take that up with him.

The Hon. SUSAN CARTER: What discussions have you had to make sure these laws will actually work and we can adequately address outbreaks of antisemitic hate speech in our community?

Mr MICHAEL DALEY: We put three bills through the House while you were running around the UK listening to right-wing contacts.

The Hon. NATASHA MACLAREN-JONES: Point of order—

The CHAIR: Point of order?

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Mr MICHAEL DALEY: You weren't there. If you were in the House, you would have heard the many, many hours of discussion about it. I will refer you to those discussions.

The Hon. SUSAN CARTER: I repeat my question. What have you done to ensure that protesters who are yelling out vile antisemitic phrases can be identified and can then feel the force of your laws, because otherwise—

The Hon. BOB NANVA: Point of order—

Mr MICHAEL DALEY: My job is—

The Hon. BOB NANVA: The Attorney General is being asked a question at such a level of generality that no reasonable person can actually answer that question. I suggest it's not reasonable or courteous under the procedural fairness resolution.

The Hon. SUSAN CARTER: To the point of order: "What have you done?" is hardly a question at a high level of generality.

The Hon. BOB NANVA: It's such a hypothetical question.

The CHAIR: Order! The Minister can answer the question any way he likes, or not.

The Hon. SUSAN CARTER: The time has expired.

Mr MICHAEL DALEY: The question doesn't make sense. My responsibility is to—

The Hon. TANIA MIHAILUK: Mr Attorney General, don't worry about it, please.

Mr MICHAEL DALEY: Thanks for rescuing me, Tania.

The Hon. TANIA MIHAILUK: I have rescued you many times. I go back to this sexual assault review report that you haven't read and that you haven't had a briefing on. There was an article yesterday—

Mr MICHAEL DALEY: I will be getting a briefing on it—

The Hon. TANIA MIHAILUK: You will?

Mr MICHAEL DALEY: —when I next meet the Director of Public Prosecutions.

The Hon. TANIA MIHAILUK: Do you know when that will be?

Mr MICHAEL DALEY: Who knows?

The Hon. TANIA MIHAILUK: You don't know yet?

Mr MICHAEL DALEY: I have a regular meeting.

The Hon. TANIA MIHAILUK: It's not up to you, is it? Is it up to Ms Dowling?

Mr MICHAEL DALEY: But when I read the report and if I have any questions on it, I will pick up the phone to the DPP, as I do now.

The Hon. TANIA MIHAILUK: You'll pick up the phone?

Mr MICHAEL DALEY: If I need to have a briefing on it, I can call the DPP and have a discussion.

The Hon. TANIA MIHAILUK: I would have thought you'd have already asked for a briefing on this. Mr Attorney-General, I'll leave it, but I'm stunned.

Mr MICHAEL DALEY: I've already had many briefings along the way.

The Hon. TANIA MIHAILUK: Were you briefed on the fact that Ms Dowling sought the services of Sir Max Hill and Professor Julia Quilter to independently review this report?

Mr MICHAEL DALEY: You can ask the DPP those—

The Hon. TANIA MIHAILUK: Were you briefed? I'm asking whether you were briefed.

Mr MICHAEL DALEY: You can ask the DPP about those questions.

The Hon. TANIA MIHAILUK: Were you told that they were going to independently review the draft report?

Mr MICHAEL DALEY: The DPP had the freedom to do a report into her own organisation as she saw fit and to brief who she saw fit. She doesn't need permission from me.

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The Hon. TANIA MIHAILUK: I didn't say that she had to acquire permission from you. I'm asking whether you were told that Ms Dowling would seek the services—

Mr MICHAEL DALEY: I'd have to go back and have a look at minutes of our most—

The Hon. TANIA MIHAILUK: —of the former DPP of England and Wales, Sir Max Hill, who now works for a private law firm?

Mr MICHAEL DALEY: I will take that on notice. It might well be that that will appear in the minutes of our meeting. I do not want to be giving you an inaccurate answer.

The Hon. TANIA MIHAILUK: You will take on notice whether you perhaps were notified of that?

Mr MICHAEL DALEY: Yes.

The Hon. TANIA MIHAILUK: Do you know whether he was paid a stipend or a fee for his services?

Mr MICHAEL DALEY: You can ask the DPP. That's not my report.

The Hon. TANIA MIHAILUK: She's right there. Can she answer it?

Mr MICHAEL DALEY: Sure.

SALLY DOWLING: Yes, he was paid for his time.

The Hon. TANIA MIHAILUK: What was he paid, Ms Dowling?

SALLY DOWLING: I'd have to check that.

The Hon. TANIA MIHAILUK: Can you provide that by this afternoon?

SALLY DOWLING: Probably.

The Hon. TANIA MIHAILUK: Was he flown out to Australia, given he resides in London?

SALLY DOWLING: No.

The Hon. TANIA MIHAILUK: So he undertook the review in London by whatever documentation you provided him?

SALLY DOWLING: Correct.

The Hon. TANIA MIHAILUK: Did he meet with anyone over Zoom meetings?

SALLY DOWLING: No.

The Hon. TANIA MIHAILUK: There was no face-to-face—

SALLY DOWLING: It was by way of email, I believe.

The Hon. TANIA MIHAILUK: It was just by way of email. He conducted the review of this draft report by way of email?

SALLY DOWLING: Correct.

The Hon. TANIA MIHAILUK: And conducted no meetings?

SALLY DOWLING: Correct.

The Hon. TANIA MIHAILUK: I might quickly just ask you about Professor Julia Quilter. Did she meet with anybody over the draft report?

SALLY DOWLING: She met with me and the senior solicitor who was administering the review.

The Hon. TANIA MIHAILUK: And she was also paid a stipend?

SALLY DOWLING: Correct.

The Hon. TANIA MIHAILUK: If you could also provide what that fee was?

SALLY DOWLING: Yes.

The Hon. TANIA MIHAILUK: If you can provide that in the afternoon, that's great. Back to you, Mr Attorney-General. I want to come back to our beloved review of the Anti-Discrimination Act. Again, I've asked you so many questions—and you know that—on notice. I'm wondering where this consultation paper is up

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to. Have you been told by Mr Bathurst—been indicated any kind of date when the consultation paper for the ADA review will be publicly available?

Mr MICHAEL DALEY: No. It's not the nature of the Law Reform Commission to give final dates. It's an independent organisation. I don't want to hurry him. I want him to do the job properly—which, of course, he will.

The Hon. TANIA MIHAILUK: You've given the announcement that it's early 2025. You've got a note now, so you can refer to that.

Mr MICHAEL DALEY: I don't need to refer to a note.

The Hon. TANIA MIHAILUK: You've told me early 2025.

Mr MICHAEL DALEY: It's up to Mr Bathurst.

The Hon. TANIA MIHAILUK: It's not. You've commissioned the review. It's actually up to you to give the time frame. You've asked for the review; he didn't ask to do this.

Mr MICHAEL DALEY: No, I haven't asked for a time frame, and you wouldn't do that to the Law Reform Commission, anyway.

The Hon. TANIA MIHAILUK: Well you would give some indication. You have given me the date of early 2025. I'm asking is there anything more specific than that? I've already got that.

Mr MICHAEL DALEY: No, there's not.

The Hon. TANIA MIHAILUK: There's nothing more specific than that?

Mr MICHAEL DALEY: No.

The Hon. TANIA MIHAILUK: Will you ask to be briefed before it is made publicly available? Do you seek a meeting with Mr Bathurst as the first legal officer of our State?

Mr MICHAEL DALEY: If he thinks that I would require a briefing, it might be up to him to come and pre-brief me. Otherwise, I'm happy just to wait for the report to arrive. That's the nature of what the—

The Hon. TANIA MIHAILUK: But don't you want to be briefed, Mr Attorney General? Don't you want to be reading the report before the journalists do and everybody else?

Mr MICHAEL DALEY: To have pre-knowledge of it?

The Hon. TANIA MIHAILUK: Yes.

Mr MICHAEL DALEY: Not necessarily. It's the nature of the work—

The Hon. TANIA MIHAILUK: Why would you not take an interest?

Mr MICHAEL DALEY: Because it's the nature of the work. Don't put words into my mouth, please.

The Hon. TANIA MIHAILUK: But you've just said to me that you don't want to have a report, not necessarily.

The Hon. BOB NANVA: Point of order—

The CHAIR: Point of order?

Mr MICHAEL DALEY: Sometimes I might; sometimes I might not. The report is an expert—

The Hon. TANIA MIHAILUK: When's the last time—

Mr MICHAEL DALEY: Just let me answer a question, okay?

The Hon. TANIA MIHAILUK: You just mock the Liberals.

Mr MICHAEL DALEY: The report is an expert report.

The Hon. TANIA MIHAILUK: That your Government asked for.

Mr MICHAEL DALEY: It's not necessary that I have prior knowledge of what's in it.

The Hon. BOB NANVA: Point of order—

Mr MICHAEL DALEY: It's the contents of the report that I'm waiting for, and its recommendations and its findings and its learnings. That's the important thing—

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The CHAIR: Order! I'll hear the point of order when the Attorney General stops talking.

Mr MICHAEL DALEY: —not whether I know about it before any other member of the public knows about it. That's not necessary.

The Hon. BOB NANVA: My point of order goes only to courtesy. It's not courteous to the AG, or to Hansard, frankly, to have people talking over the top of each other.

The CHAIR: I uphold the point of order.

The Hon. TANIA MIHAILUK: Mr Attorney General, you said that there hasn't been a review of the AD Act for 12 years, right?

Mr MICHAEL DALEY: I think the statutory review was something like 11 or 12 years late.

The Hon. TANIA MIHAILUK: So this is essentially the review—

Mr MICHAEL DALEY: Is that right? I'm not misleading the Committee?

The Hon. TANIA MIHAILUK: You can take that on notice and provide proper information on that. There hasn't been a review of the AD Act, obviously, for many years. Your Government has decided to take it on. I'd like to know that you will take an interest in it and be briefed on it prior to it being publicly released. The consultation paper, I think, is definitely a document that many religious groups, for example, are waiting for a copy of. There are people that have put in submissions. Have you read some of the submissions that are now publicly available?

Mr MICHAEL DALEY: Yes, I have.

The Hon. TANIA MIHAILUK: That's good, because there are people and groups that are very interested to see where the Government is going to proceed in this. You proceeded already with some changes from the equality bill, as you know. You decided not to proceed. You took sections and chunks out of the equality bill because you said that you were waiting for a review. I think people are very, very concerned. I'm just asking for a public commitment that you'll get on top of it. That's what I want. I just want you to be on top of it.

Mr MICHAEL DALEY: I wouldn't have referred it if I didn't intend to get on top of it, but the way these things work—

The Hon. TANIA MIHAILUK: You just told me a couple of minutes ago you may or may not get a briefing on it.

Mr MICHAEL DALEY: I don't think I need to have a briefing on it before it's delivered. The way these things work is the reports are delivered, they're then tabled in Parliament, and the Government issues a response. There's plenty of time for proper consideration. I don't need to know, prior to the report being published, what's in it. There's plenty of time for proper consideration.

The Hon. TANIA MIHAILUK: There's not much that you can say out of that, Mr Attorney General. I would have thought you'd take a big interest in this.

Mr MICHAEL DALEY: When you become the Attorney General, you can do whatever you want. I'm being open and transparent with the people of New South Wales.

The Hon. TANIA MIHAILUK: Let me know when you become the Attorney General, all right? At this point, you're still the member for Maroubra and behaving in the same way.

Mr MICHAEL DALEY: You were a member for One Nation, and now you're not. I'd stack my credentials up against yours any day.

The CHAIR: Order! Insults are disorderly at all times, even from the Attorney General.

The Hon. TANIA MIHAILUK: Okay, then I'll ask him a couple of other questions.

Mr MICHAEL DALEY: Ms Mihailuk thrives on them, Chair. She's got skin that's ten times tougher than mine.

The CHAIR: Order!

The Hon. TANIA MIHAILUK: Minister, you saw your former colleague Minister Haylen admit to using the driver's car inappropriately. Obviously, she took a trip to the wineries. Have you used your driver for any holidays or trips around New South Wales?

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Mr MICHAEL DALEY: I have complied with all of the rules and codes. I've complied with all of the rules as they were when they were in place. I'm not going down that rabbit hole today.

The Hon. TANIA MIHAILUK: You're not going down that road?

Mr MICHAEL DALEY: No.

The Hon. TANIA MIHAILUK: I can ask you any kind of question I want here.

The Hon. BOB NANVA: Point of order—

Mr MICHAEL DALEY: You can. I can take them on notice.

The Hon. BOB NANVA: I'm sure the AG can answer it. But just a procedural matter—this is a matter for the Premier and Cabinet budget estimates inquiry, not for the Attorney General. The opportunity was there to ask the Premier a couple of days ago, and it wasn't taken.

The Hon. SUSAN CARTER: To the point of order: This is a question in relation to how the Minister discharged his ministerial duties. The Premier surely isn't responsible for how each Minister discharges their ministerial duties. This is an entirely appropriate question for the AG's estimates.

The Hon. BOB NANVA: Further to the point of order: This goes to the estimates of expenditure from the Consolidated Fund in the Minister's portfolio responsibilities, and that is not it.

The CHAIR: That added a net sum of nothing to world knowledge.

Mr MICHAEL DALEY: In short answer to your question, have I used the driver to go on holidays and things like that, the answer is no.

The Hon. TANIA MIHAILUK: That's good. He only goes to Maroubra hotel anyway.

The CHAIR: I'm sorry?

The Hon. TANIA MIHAILUK: I'll leave it.

The CHAIR: Have you got another question, or are you finished?

The Hon. TANIA MIHAILUK: I'll come back later.

Ms SUE HIGGINSON: Can I take you to the Community Justice Centres and the decision to close those down. I sent some questions to you on notice, and I have to admit I was very disappointed in the answers. I'm not sure if you're aware of them. I asked you about the reasons and what the plan was for them. It was on 8 November. I put 10 questions about the discontinuation of them: What stakeholders were consulted prior to the decision being made; what alternative arrangements are being prepared to fulfil the role; and how the closure will impact the workload of the courts, the tribunals, the Police Force and local councils. I received a really vague kind of response. It was very disappointing. Firstly, were you aware of my question? Did you sign that off?

Mr MICHAEL DALEY: I've signed them all off.

Ms SUE HIGGINSON: You would have been aware of it. Why didn't you give me a proper answer? I thought it was such a straightforward set of questions, and I didn't get an answer to any of it.

Mr MICHAEL DALEY: The practice of those answers is that I sign the answers that the department has prepared for me.

Ms SUE HIGGINSON: Literally the answer is "The Government remains committed to ensuring the New South Wales community has access" and "The DCJ will establish an in-house mediation service." This is great, but it basically said it's "for legislatively mandated referrals". I don't know. I'm still none the wiser about what's actually going to happen: What will happen to all of those people who will no longer be serviced, and what will actually happen in the community for—

Mr MICHAEL DALEY: Under the Crimes (Domestic and Personal Violence) Act 2007, there are some—correct me if I'm wrong, Mr Tidball—court-ordered mediations, and they'll continue to be done by DCJ.

Ms SUE HIGGINSON: Yes. What about all the others? I've sat in local courts a lot going, "There is a CJC we can help you with", more so than people know. There's thousands and thousands of people that deal with the CJC.

Mr MICHAEL DALEY: I think Mr Tidball just wants to elucidate.

MICHAEL TIDBALL: On notice, I could give you the number of matters settled. Over the past 20 years, the demand and the usage has come right off. There is a question, I think, about the fitness of the model for

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purpose. The figure had fallen, in full year 2024, down to 730 mediations. In terms of the number of matters settled and the outcomes, the model was looking, quite frankly, tired. There is a need for matters to be settled, but they simply were not being used nearly as much as they had been historically.

Ms SUE HIGGINSON: Is the plan, for anyone sitting in a local court who is about to go into a small claims dispute, that DCJ will have the same commensurate access to a mediation service? Because I just don't think that's going to happen, is it?

Mr MICHAEL DALEY: Not for a small claims dispute, no. Only for ones under the Crimes (Domestic and Personal Violence) Act.

Ms SUE HIGGINSON: That's right. What will happen to all of those? We are talking, literally, about a really important social cohesion mechanism that we have throughout all of New South Wales that sits on the doorstep of where adversarial proceedings become painful, bad and expensive. What is the—

MICHAEL TIDBALL: We would absolutely accept for those matters, particularly for people who are seeking access to justice and who are economically disadvantaged, that proceedings can be expensive and they can be stressful. What has happened over the 20 years to which I just referred is that LawAccess plays in that space and the rest of the infrastructure around disputes with NCAT and a range of other private mediation services. We will have ongoing discussion with the legal professional bodies—with the profession—about how those services may evolve, but I think there is a need for something. The need is acknowledged. What we need is something that is accessible and contemporary.

Ms SUE HIGGINSON: Is there some kind of assurance from you, Attorney General, that you—it's quite harsh to hear the cost-benefit analysis means therefore it is no longer particularly important.

Mr MICHAEL DALEY: No-one said it wasn't important. It's all about spending taxpayers' money in the best and most effective way. When you've got a structure of mediators in place with a certain cost and the demand for their services is shrinking, it becomes mathematically the fact that the cost per mediation increases, and they're no longer value for money.

Ms SUE HIGGINSON: I'm sorry, Attorney General. Access to justice looked at through "no longer value for money" is a dreadful analysis to be making. We're talking about access to justice, and we're talking about disputes that can—

Mr MICHAEL DALEY: It's not about access to justice; it's about mediation of disputes.

Ms SUE HIGGINSON: So the Community Justice Centres are not about access to justice?

Mr MICHAEL DALEY: Not always. Arguments between neighbours over trees are not about access to justice; they are about trying to find mutual outcomes. That's not access to justice.

Ms SUE HIGGINSON: Normally, when we are talking about a dispute and we haven't resolved it, we are beyond the issue. We are at actual adversarial disputes within the community.

Mr MICHAEL DALEY: Sometimes; sometimes they're not.

Ms SUE HIGGINSON: This is the role of the Community Justice Centres. This is why you cannot measure its value through a dollar matrix or lens. The Community Justice Centres have been around since the '80s, doing some of the most incredible work to divert problems in communities, more so than a number on paper can describe to you. Unless you've sat in the courts as a lawyer or a Legal Aid duty lawyer day in, day out and known that the CJC is there for you, I don't think you completely comprehend the meaning of access to justice. Those centres are incredibly valuable. I really appreciate the secretary's comments that there will be a DCJ service for some of those legislative-required processes for disputes, but what about the others? Are you suggesting that now they will just have to go and pay for something that they clearly can't afford?

Mr MICHAEL DALEY: Less than 9 per cent of matters proceeded to mediation, and the information I've got is that they were costing the Government about \$4,000 per mediation. That is not value for money.

Ms SUE HIGGINSON: How do you propose—

Mr MICHAEL DALEY: Communities will evolve and find other avenues.

Ms SUE HIGGINSON: Communities will evolve to find other avenues?

Mr MICHAEL DALEY: For example, local councils play a valuable role in disputes between neighbours over trees.

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Ms SUE HIGGINSON: I've got my neighbour who is threatening to kill me over the tree I haven't removed and nor should I—

Mr MICHAEL DALEY: That's not a CJC issue; that's a police issue.

Ms SUE HIGGINSON: They are making serious threats to me. I go to the police—is that your answer?

Mr MICHAEL DALEY: Yes. If someone threatens you, you go to the police. That's what you do.

Ms SUE HIGGINSON: Have you ever lived anywhere where you have these kinds of neighbourhood disputes?

Mr MICHAEL DALEY: We're all peaceful in Maroubra, so, no, I can't say that.

Ms SUE HIGGINSON: Seriously, Attorney General, it's a bit shocking. Can we just get further to it? Are we suggesting that it will be a police matter, or those people are going to have to find thousands of dollars to get a private mediator, or ring their council? I'm going to ring the council and say, "I've got a problem with my neighbour."

Mr MICHAEL DALEY: It just depends—

Ms SUE HIGGINSON: Have you ever tried that one?

Mr MICHAEL DALEY: Yes, I've been a councillor and I've sat and I've personally—

Ms SUE HIGGINSON: They should ring you.

The Hon. GREG DONNELLY: Point of order: This is developing into a multi-question contribution. It's quite unusual and I'm enjoying it, but I think it is best that it be done in a way of one question and one answer, just to help everyone.

Ms SUE HIGGINSON: Can I confirm? Attorney General, right now, it is the New South Wales Government's agenda to impose more cost shifting to the public and to local government because you're devaluing the public services and demand that the community centres of New South Wales pick up, and you're saying you just can't afford them anymore? Is that right?

Mr MICHAEL DALEY: No, that's your words.

Ms SUE HIGGINSON: Okay, correct the bits. Which bits did I misunderstand?

Mr MICHAEL DALEY: That's your words. I don't need to use your words. You use your words; I've got plenty of my own.

Ms SUE HIGGINSON: Going back to the question I put on notice months ago that you didn't answer, who did you consult with about this?

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

Ms SUE HIGGINSON: It was purely cost benefit. Will you be—and when will you be, if the answer is yes—following recommendation 2 to repeal the inoperative provisions of section 214A of the Crimes Act?

Mr MICHAEL DALEY: That will probably be done by a misc bill or something like that.

Ms SUE HIGGINSON: A misc bill? Can I expect a misc bill soon?

Mr MICHAEL DALEY: They're regular beasts, I think.

Ms SUE HIGGINSON: They're very regular, Attorney General, and all your people behind you are laughing right now—in a very nice way.

Mr MICHAEL DALEY: They are regular.

Ms SUE HIGGINSON: Was the answer "soon"?

Mr MICHAEL DALEY: When I get the advice from DCJ that we need to act, we will.

The Hon. NATASHA MACLAREN-JONES: I want to carry on from the CJC questions my colleague asked. Firstly, what is the current cost of the CJs?

Mr MICHAEL DALEY: I don't have it formally.

The Hon. NATASHA MACLAREN-JONES: Could you take that on notice?

Mr MICHAEL DALEY: I can get it for you.

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The Hon. NATASHA MACLAREN-JONES: With the decision that you've made—and they close on 30 June this year—what is the problem that you want to solve? What was the reason for closing them?

Mr MICHAEL DALEY: Cost.

The Hon. NATASHA MACLAREN-JONES: But you don't know the cost.

Mr MICHAEL DALEY: No. It happened in the first of our budgets, two years ago, when we were having a comprehensive expenditure review, and savings needed to be identified. That's where it came about.

The Hon. NATASHA MACLAREN-JONES: Two years ago you knew these were closing?

Mr MICHAEL DALEY: No, two years ago we started having a discussion about expenditure review.

The Hon. NATASHA MACLAREN-JONES: When did you make the decision to close them?

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

The Hon. NATASHA MACLAREN-JONES: Can I ask why you haven't told anyone? You didn't put out a press release, you didn't notify organisations and you haven't notified councils.

Mr MICHAEL DALEY: We're going back in time now, so I need to have a look. I'll take on notice what the communications were that we made.

The Hon. NATASHA MACLAREN-JONES: And whether or not you actually notified any organisations?

Mr MICHAEL DALEY: I think we notified—

CHRIS D'AETH: The communication went out on 17 October 2024 to all those organisations.

Ms SUE HIGGINSON: Saying they'd be closed down in July.

The Hon. NATASHA MACLAREN-JONES: My question is about organisations, particularly volunteer organisations. You've got your men's sheds, community groups and various others that rely on that service for internal dispute resolution.

Mr MICHAEL DALEY: They can still do those things. No-one is stopping volunteer organisations from doing that. It's just that Community Justice Centres and the mediators that are paid by the Government—

The Hon. NATASHA MACLAREN-JONES: Let's say a men's shed has an internal dispute. Who would they go to? Is it an internal—

MICHAEL TIDBALL: A dispute involving an association would be part of the new service which will be established within DCJ, effective 1 July this year.

The Hon. NATASHA MACLAREN-JONES: Thank you. Attorney, you can see my concern and that of, in particular, volunteer organisations. Across the country, we struggle to get volunteers. There has been no communication with these associations. It is clear that you don't know the cost. You don't know the detail.

Mr MICHAEL DALEY: I do know the cost. I just don't have it in front of me.

The Hon. NATASHA MACLAREN-JONES: You haven't communicated with these associations that are going to be impacted, and they've got concerns.

Mr MICHAEL DALEY: I don't accept that. You just heard from Mr D'Aeth that that's not the case.

The Hon. NATASHA MACLAREN-JONES: When did you write to them?

Mr MICHAEL DALEY: Mr D'Aeth just told you that they were notified in October.

The Hon. NATASHA MACLAREN-JONES: Was that correspondence to all the associations that would be impacted?

CHRIS D'AETH: The associations will not be impacted because they'll continue to be serviced under the new service from 1 July.

The Hon. NATASHA MACLAREN-JONES: I understand that. Was that communicated to organisations? When you notified them that CJsCs will close on 30 June—this is what will occur, the detail. Has that actually been communicated? The detail of the next steps?

CHRIS D'AETH: Just to be clear: I wasn't saying the communication went to all those associations. The communication went to the stakeholders that would be impacted by the decision of the Government.

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The Hon. NATASHA MACLAREN-JONES: You're saying, Attorney, that volunteer organisations, these associations that do rely on CJs, will not be impacted?

Mr MICHAEL DALEY: Sorry, I misunderstood the nature of your question.

The Hon. NATASHA MACLAREN-JONES: My question, Attorney is, first of all, do you actually know what you've shut down, and the impact it will have on volunteer associations?

Mr MICHAEL DALEY: Give me an example.

The Hon. NATASHA MACLAREN-JONES: I just gave you an example. You have organisations that rely on CJs for internal mediation.

Mr MICHAEL DALEY: Yes.

The Hon. NATASHA MACLAREN-JONES: You're now saying that they will need to go through DCJ to resolve those issues. We've just established these organisations have not been specifically told of these steps before that announcement was made.

Mr MICHAEL DALEY: I'm not sure what the communication was that went out.

MICHAEL TIDBALL: If I can just supplement my earlier evidence. There will be a communications plan well ahead of 1 July to explain to those associations particularly where matters can be referred after the new service to be accommodated within the department. That will certainly be communicated. There has been conversation and discussion with the Law Society, and there will be ongoing discussion with the legal profession up to 1 July.

The Hon. NATASHA MACLAREN-JONES: Will any of the associations need to look at changing their constitutions if they rely on—

The Hon. SUSAN CARTER: The Model constitution under Fair Trading—

The Hon. NATASHA MACLAREN-JONES:—under Fair Trading?

MICHAEL TIDBALL: I do not know the answer to that. I would need to take that on notice.

The Hon. NATASHA MACLAREN-JONES: Finally, Attorney General, my concern is, you are the Attorney General, you signed off on these changes, but had no plan of how you would communicate this.

The Hon. EMILY SUVAAL: Point of order—

Mr MICHAEL DALEY: I reject that. I reject that.

The Hon. EMILY SUVAAL: This is now Government time.

The CHAIR: Yes, I realise that. I'll give 15 minutes to the Government. We're now on Government time.

The Hon. GREG DONNELLY: Not at this stage. I'm banking my questions. Thank you, Chair.

The Hon. BOB NANVA: No questions from me.

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

(Short adjournment)

The CHAIR: We'll resume Opposition questioning.

The Hon. SUSAN CARTER: Minister, can I take you back to the issue we were discussing in the first session of what has been called cell-ramping, with inmates spending extended times in police custody, awaiting either transfer to remand or an appearance before a bail magistrate? You indicated that you saw that there was a third cause of that, which was what might be perceived as a change in the rates that police were giving bail at, and that you had an intention to talk with the commissioner about that. Could you explain exactly—

Mr MICHAEL DALEY: No, I didn't say either of those things.

The Hon. SUSAN CARTER: Then could you please tell us exactly what you did say?

Mr MICHAEL DALEY: I said a third reason could be that there has been an increase in—like, as a matter of physics, there has been a change or an increase in police bail refusal. I don't know if there is or if there isn't. I didn't say there was; there could be.

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The Hon. SUSAN CARTER: My memory is that you indicated an intention to explore that issue with the commissioner.

Mr MICHAEL DALEY: No, I think I said that the Chief Magistrate was going to talk to the police commissioner about the possibility that that's occurred and explore, as part of the solutions to this cell-ramping, whether there has been.

The Hon. SUSAN CARTER: So you've had discussions with the Chief Magistrate about this problem?

Mr MICHAEL DALEY: Yes.

The Hon. SUSAN CARTER: Is the Chief Magistrate concerned about delays with magistrates?

Mr MICHAEL DALEY: If you want to know if he's concerned, you can ask him.

The Hon. SUSAN CARTER: Actually, I don't know that there's a facility for me to ask him.

Mr MICHAEL DALEY: Well, don't ask me what's in the mind of the Chief Magistrate.

The Hon. SUSAN CARTER: I'm asking you about the discussions you've had which led you to make that statement in estimates that there were going to be discussions with the police commissioner about the way in which police were exercising their obligations with respect to bail.

Mr MICHAEL DALEY: This is a relationship between the court system, the police and Corrections. The heads of all three of those, or senior people in all three of those bodies, are going to talk to each other and see if they can find out what the solution is.

The Hon. SUSAN CARTER: And you're coordinating or facilitating that to ensure that this problem is addressed?

Mr MICHAEL DALEY: I'm not coordinating or facilitating; it is happening on its own anyway. Mr Tidball might be able to help me out with some discussions about—

The Hon. SUSAN CARTER: I'm happy to ask Mr Tidball detailed question later.

Mr MICHAEL DALEY: Fine. They don't need the Attorney General to facilitate those discussions. They're happening.

The Hon. SUSAN CARTER: No, but you were the one who drew it to our attention. What is the purpose of having discussions with the Commissioner of Police about police awarding bail?

Mr MICHAEL DALEY: As I said, one of the possibilities could be that there has been a change in police practices for some reason, or not. If there has been a change and they are refusing bail at first instance at a higher rate than they might have been, that would cause more people to be held on remand and would, as a matter of mathematics, be one of the reasons, possibly, for the increased number of people and the ramping.

The Hon. SUSAN CARTER: I entirely accept that analysis.

Mr MICHAEL DALEY: I don't know if there is or if there isn't, but the bodies have got to work together to see what the cause of this is.

The Hon. SUSAN CARTER: The question remains: What would be the point of discussing police grants of bail with the Commissioner of Police?

Mr MICHAEL DALEY: To seek to see if there has been a change in police bail.

The Hon. SUSAN CARTER: If there was, what would the purpose of that communication be?

Mr MICHAEL DALEY: To work out, perhaps, what the reason for the change was and whether it was justified.

The Hon. SUSAN CARTER: Justified in what way, Minister?

Mr MICHAEL DALEY: I'm getting into hypotheticals here.

The Hon. SUSAN CARTER: I'm just following up on information you've provided us.

Mr MICHAEL DALEY: Yes, sure, and I've been totally honest with you that those discussions were going to go ahead, as you would expect that they should.

The Hon. SUSAN CARTER: You understand that the Bail Act sets out a set of objective criteria which need to be satisfied.

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Mr MICHAEL DALEY: Yes.

The Hon. SUSAN CARTER: Would it be appropriate for anybody to seek to influence the police in the exercise of their duties, whether or not the accused meet those objective criteria?

Mr MICHAEL DALEY: No, it wouldn't.

The Hon. SUSAN CARTER: So what is the point of discussing this with the police commissioner? If you find that there is an elevated rate of police bail refusal, what would you expect the commissioner to be able to do about it?

Mr MICHAEL DALEY: To see whether there was some misunderstanding on behalf of the police, or some misapplication of the Bail Act, or some other factor that was a change.

The Hon. SUSAN CARTER: So you're suggesting that police aren't appropriately educated?

Mr MICHAEL DALEY: I'm not suggesting anything; I'm telling you that there could be a third possible cause for the numbers being ramped.

The Hon. SUSAN CARTER: The concern I'm raising with you is that it would be improper for anybody to seek to influence the police in the exercise of their duty under the Act to determine whether or not objective criteria had been met.

Mr MICHAEL DALEY: Where was the suggestion that someone was going to improperly influence the police?

The Hon. SUSAN CARTER: This is why I'm asking: What is the purpose of the conversations with the commissioner, if it is not to seek to change what might be an elevated rate of bail refusal?

Mr MICHAEL DALEY: It might be to seek an understanding of whether there had been a change or not in the first place. Mr Tidball just wants to add to that answer.

The Hon. SUSAN CARTER: Perhaps this afternoon, Mr Tidball.

The Hon. NATASHA MACLAREN-JONES: Attorney, when did you first become aware of the concerns regarding the purchase of electric buses from China around modern slavery in the supply chain?

Mr MICHAEL DALEY: I don't know when or from whom. I can't answer that question accurately; I don't know where I got the information from.

The Hon. NATASHA MACLAREN-JONES: Minister, are you aware that there was a report in 2023 from a Swedish research organisation, Globalworks, which said that there's a very high risk of the use of forced labour in China for the production of batteries? These batteries are used by the two companies that will be supplying electric buses here in New South Wales. Are you concerned that there has been a failure to adequately screen for risks of modern slavery?

Mr MICHAEL DALEY: That question is probably best directed to the modern slavery commissioner.

The Hon. NATASHA MACLAREN-JONES: Minister, you said that you were aware of the concerns, and you're not sure when you were advised about those concerns. Have you referred those concerns to the modern slavery—

Mr MICHAEL DALEY: No, my understanding from discussions with the modern slavery commissioner is that he's already looking into it and that so are other Ministers, such as Minister Houssos, because the Modern Slavery Act imposes procurement obligations upon government departments.

The Hon. NATASHA MACLAREN-JONES: Have you asked for a report to be given to you following that review as to if there—

Mr MICHAEL DALEY: No, I haven't because, as I said, the Act places obligations on departments and therefore their respective Ministers in relation to procurement, and I don't have anything to do with government procurement. But the modern slavery commissioner is looking at it and doesn't need the Government to refer any of these matters to him. Unless I'm mistaken, he has, under the Act, powers to act on his own accord.

The Hon. NATASHA MACLAREN-JONES: Have you received a briefing or held any meetings in regard to this matter?

Mr MICHAEL DALEY: No, because, as I said, government procurement is not within my purview.

The Hon. SUSAN CARTER: Minister, in the second reading debate on the Equality Legislation Amendment (LGBTIQ+) Bill, you said:

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The amendments will also create a pathway for parentage orders to be made for children born of international commercial surrogacy arrangements when in the best interests of the child, with appropriate safeguards.

Where is the legislation introducing appropriate safeguards from slavery for overseas commercial surrogates?

Mr MICHAEL DALEY: I'm not sure when that actually commences. I think it commences on 1 July 2025. I could be wrong.

The Hon. SUSAN CARTER: No, I wasn't asking about the commencement of the legislation. Where are the safeguards against slavery for overseas commercial surrogates who will be used by Australian families?

Mr MICHAEL DALEY: Sorry, I don't understand the nature of the question.

The Hon. SUSAN CARTER: Minister, you would be aware, because I know the Anti-slavery Commissioner brought it to your attention and to the attention of everybody else in Parliament, that commercial surrogacy clinics overseas carry a major risk of slavery. He informed us of one clinic alone used by New South Wales families where 97 women were found to have been trafficked into surrogacy slavery. When you introduced this legislation, you indicated it would have appropriate safeguards. Where are the safeguards to make sure that overseas women are not being used as slaves for New South Wales families?

Mr MICHAEL DALEY: The safeguards are inherent in the Surrogacy Act.

The Hon. SUSAN CARTER: Minister, with respect, the Surrogacy Act was drawn up with respect to altruistic surrogacy. What changes are being made to that Act to safeguard overseas commercial surrogates, who are a known slavery risk?

Mr MICHAEL DALEY: Commercial surrogacy is prohibited under the Act.

The Hon. SUSAN CARTER: Yet it is no longer a mandatory condition for the grant of a parentage order for the surrogacy to be altruistic, so it facilitates commercial surrogacy. Where are the protections for women to make sure that they are not being used as slaves to produce children for New South Wales families?

Mr MICHAEL DALEY: Just have regard to the provisions of the Act. That's where they are.

The Hon. SUSAN CARTER: Can you draw me to which provision in the Act prohibits a grant of a parentage order if a woman is a slave?

Mr MICHAEL DALEY: I don't have the Act in front of me, so I can't go into that discourse.

The Hon. SUSAN CARTER: Can you take that on notice, Minister?

Mr MICHAEL DALEY: Sure, happy to.

The Hon. SUSAN CARTER: With respect to that, have you met with the Anti-slavery Commissioner to discuss appropriate safeguards?

Mr MICHAEL DALEY: I have meetings with the Anti-slavery Commissioner, and what we've discussed I'd have to go back and have a look at.

The Hon. SUSAN CARTER: If you could take that on notice, I'd be very grateful. Given that New South Wales is now out of step with every other State and the Commonwealth regulations on this issue, have you raised this at meeting of SCAG?

Mr MICHAEL DALEY: No, I haven't. I'm satisfied with the position we came to under the equality Act.

The Hon. SUSAN CARTER: With respect to the appropriate safeguards, will these include appropriate safeguards for the child who is to be born as a result of the commercial surrogacy arrangement?

Mr MICHAEL DALEY: I'll take that on notice. It's all in the Act.

The Hon. SUSAN CARTER: Sorry? What's in the Act, Minister?

Mr MICHAEL DALEY: I'll take that on notice. That's my answer.

The Hon. SUSAN CARTER: When you're taking that on notice, can you also perhaps draw our attention to safeguards, if they exist, to ensure that New South Wales commissioning parents are not convicted sex offenders?

Mr MICHAEL DALEY: Sure.

The Hon. SUSAN CARTER: You know? You understand the history of that risk?

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

The Hon. SUSAN CARTER: What safeguards are there for spare embryos of New South Wales couples that they will not be sold to the highest bidder?

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

The Hon. SUSAN CARTER: How will these laws be enforced in overseas jurisdictions?

Mr MICHAEL DALEY: I'll take that on notice and the Act is currently under review as well, so all these issues will be raised by the department and looked at.

The Hon. SUSAN CARTER: These protections are in place, or these protections will be put into place?

Mr MICHAEL DALEY: I said I'll take it on notice, but reminded you that the Act is under review as well.

The Hon. SUSAN CARTER: Thank you. Section 17 of the Surrogacy Act requires "an application for a parentage order must be supported by a report prepared by an independent counsellor." The report must address matters including whether any consent given by the birth parent "is informed consent, freely and voluntarily given". When an overseas commercial surrogate is the birth parent, how is an Australian counsellor to assess the consent of the birth mother?

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

The Hon. SUSAN CARTER: If an overseas counsellor is to be used, what's the mechanism in place to ensure that the counsellor is independent as required by the Surrogacy Act?

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

The Hon. SUSAN CARTER: Thank you. Clause 7 of the Surrogacy Regulation sets out the requirements for a qualified counsellor under the Act: Only those registered in Australia or New Zealand are recognised. Are you proposing to change that regulation?

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

The Hon. SUSAN CARTER: Have you been in discussions with AHPRA, RANZCP, or the Australian Association of Social Workers about potential changes to that regulation?

Mr MICHAEL DALEY: I haven't. My department may have, so I'll take that on notice.

The Hon. SUSAN CARTER: If you could provide details of that? If the birth mother has not given consent freely and voluntarily—for example, because she's been trafficked into surrogacy slavery—what happens to the child who is born as a result of that commercial and exploitative relationship?

Mr MICHAEL DALEY: Again, I'll take it on notice.

The Hon. SUSAN CARTER: The equality legislation, passed last October, considered the law governing prostitution as contained in the Summary Offences Act and one change was made to this law. Has your department now established an inquiry to consider further changes to this law, which we considered only four months ago?

Mr MICHAEL DALEY: Yes. There's a review of those provisions underway now.

The Hon. SUSAN CARTER: Why did you decide that this was a priority policy area?

Mr MICHAEL DALEY: Who said it was a priority?

The Hon. SUSAN CARTER: You've established a review. There are all sorts of things we could review. Why is this a priority for review?

Mr MICHAEL DALEY: Because during discussions on the equality bill, we discussed with Alex Greenwich, who is the sponsor of that bill, if I can put it that way, about the best ways to achieve the objectives that he was seeking. Rather than us agreeing to or disagreeing with the provisions that he put forward, we thought it might be better to sit down with stakeholders and him and have a considered review of those provisions, and that's what we're doing now.

The Hon. SUSAN CARTER: What are the terms of reference of the inquiry? Where can the public find them?

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

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The Hon. SUSAN CARTER: When was the inquiry established?

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

The Hon. SUSAN CARTER: Is the consultation open to the public, or is it by invitation to selected stakeholders?

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

The Hon. SUSAN CARTER: Is this an area of law reform in which you are interested in hearing from the public?

Mr MICHAEL DALEY: Of course.

The Hon. SUSAN CARTER: So this will be open to the public to make submissions?

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

The Hon. SUSAN CARTER: Can I ask you about when the new funding arrangements for CLCs will be announced?

Mr MICHAEL DALEY: Pretty soon. I've written to all CLCs a matter of—correct me if I'm wrong here—weeks ago to seek their views on how some of the uplift funds offered by the Commonwealth in relation to the new NAJP agreement should be spent—I don't want to make a decision about their welfare without seeking their views of us—and to come back to me by 10 March, I think, or thereabouts, with their views on how that uplift should be spent. When I get their views, we'll make a decision, in concert with them, and pretty soon thereafter—certainly, I think, by the end of March—that funding will be made certain to them.

The CHAIR: Attorney General, I'd like to now refer you to the situation around Kathleen Folbigg. I'm sure you're familiar with the situation, but for anyone in the room, Ms Folbigg was wrongly convicted of murdering her children and spent 20 years in prison. The Premier recommended a full pardon after evidence proved her innocence. The last time we spoke about this was Wednesday 28 August last year at budget estimates, and it was with the Premier then. Yet Ms Folbigg is still yet to receive any compensation. Attorney General, can you please explain why it's seven months on from our last discussion and yet Ms Folbigg has not been compensated?

Mr MICHAEL DALEY: Yes. It's not with the Premier, with respect, Chair; it's with me. The application for an ex gratia payment is initially my decision. This is a complex and in some ways unprecedented matter for me to consider—very important considerations both for Ms Folbigg, for the expenditure of public money and for precedent value that the Government's decision at the end of the day in relation to quantum will create. The material that Ms Folbigg tendered in support of her application was absolutely voluminous. There have also been—correct me if I'm wrong, Mr Tidball—occasions when the department has asked Ms Folbigg's team for more information. They've asked for it and sought it.

In addition to that, I have sought and have obtained, and am in the process of considering, serious advice on the matters that an Attorney General, recommending to the Government to pay or not pay an ex gratia payment in these circumstances, ought reasonably to consider. I'm pretty close to getting through that advice, but I take this matter hugely seriously for all the reasons that I have just enumerated. I should correct myself: it's not compensation; it's an ex gratia payment, sorry. I need to make sure I get this right, but it won't be too much longer.

The CHAIR: Can we have some transparency in the process?

Mr MICHAEL DALEY: There's not usually transparency when it comes to the applications for ex gratia payments, no.

The CHAIR: Can you give us a firm date on when you're likely to make a decision?

Mr MICHAEL DALEY: No, I can't. I can't. But it will be weeks rather than months, I would hope. That would be my expectation.

The CHAIR: It's been indicated to me that the family and Ms Folbigg have been told that it will probably be by the end of March.

Mr MICHAEL DALEY: I don't know who would have told them that.

The CHAIR: Well, that's what they told me had been indicated to them.

Mr MICHAEL DALEY: Okay. I haven't given any expectations to anybody other than the words I've just expressed to you about the time frame, so I don't know. I apologise if they've been led to believe something that's not the case. It's not my intention to do that.

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The CHAIR: Anything you can do to expedite the process would, I'm sure, be much appreciated by Ms Folbigg.

Mr MICHAEL DALEY: I understand that, but it's a serious matter and I'm giving it due weight.

The CHAIR: Yes, I understand the serious nature of it. Just on another matter, are you aware of the practice of the New South Wales Civil and Administrative Tribunal of publishing the intimate details of persons' mental health history when disseminating copies of decisions on case law in New South Wales?

Mr MICHAEL DALEY: Not specifically, no. Do you mean publishing as part of their judgements, or publishing to parties in the proceedings?

The CHAIR: It's out of step with the rest of Australia, actually.

Mr MICHAEL DALEY: Do you want to come and see me about that?

The CHAIR: Yes. I'm happy to.

Mr MICHAEL DALEY: Okay.

The CHAIR: I'll just run through the rest of the questions just to give it a bit more background and there's case law to support it as well. I can give you that as well.

Mr MICHAEL DALEY: Sure. I appreciate that.

The CHAIR: Do you consider that it's appropriate, given that the proceedings are only an administrative review and not before a court? That's the second part of the question and I guess you've answered that already.

Mr MICHAEL DALEY: I wouldn't like to comment on that without having regard to the specifics of each situation.

The CHAIR: I will come and see you about it, but just to give you a bit more background, and I've got it broken down here: Queensland, South Australia, Victoria, Western Australia and ACT do not publish any of that sort of information in relation to mental health issues on NCAT-type decisions.

Mr MICHAEL DALEY: On its face, given what you've told me, that's a concern. Yes, I'd appreciate you coming to see me and we'll sort that out.

The CHAIR: I will.

The Hon. TANIA MIHAILUK: Mr Attorney General, I just wanted to very quickly ask you also about reportable donations to the Labor Party, specifically ones that relate to law firms. Is there a policy directive that you have in relation to ensuring that if law firms have been giving money to Sussex Street—does the AG ensure that they are aware of those donations and making sure that no work specifically is being redirected to those law firms or, if they are, that they're declared? Do you have a policy to that extent?

Mr MICHAEL DALEY: You've wrapped three questions into one there.

The Hon. TANIA MIHAILUK: It's not complicated. Do you make sure—

Mr MICHAEL DALEY: No, but it's hypothetical.

The Hon. TANIA MIHAILUK: —that as Attorney General you're aware of the reportable donations? If there are donations that are made from law firms to the Labor Party, and there were in the 2022-23 financial period, during the election—is there some type of document before your office ensuring that you're made aware, that the department is made aware, particularly given there may be some grants or work being redirected to particular law firms, or law firms are used for the purposes of delivering some of the work that's required in your office, or across the department—is there a governance structure around that?

The Hon. EMILY SUVAAL: Point of order: It's been a widely established practice of the Legislative Council to not have questions that pertain to matters of internal political party affairs.

The Hon. TANIA MIHAILUK: It's not an internal—

The Hon. EMILY SUVAAL: I would ask you to request that the honourable member rephrases her question or changes it in some way. Perhaps she can direct it to the Electoral Commissioner, who matters regarding political donations would be more appropriately directed towards—

The Hon. TANIA MIHAILUK: I'm asking him whether he has a policy document before him, as the Attorney General, in relation to how they manage the matters where law firms provide money to the Labor Party

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but may in effect also be getting some work indirectly through the Attorney General's department. It's a policy question.

The Hon. EMILY SUVAAL: That's not what you asked.

The CHAIR: How does this relate to an examination of the Attorney General's budget?

The Hon. EMILY SUVAAL: It doesn't.

The Hon. TANIA MIHAILUK: It relates to the fact that I'm asking whether he has a policy document before him about how he manages that. That's what I'm asking. Is there a governance structure? Is there something before him on how he manages that? It's not specifically—

The CHAIR: I think that question is out of order.

The Hon. TANIA MIHAILUK: I don't see how it can be, because I'm asking him about what policies—how his office manages it, how the department manages it. There must be something. I asked a very similar question the other day of Kamper, and I got an answer. So that's absurd.

The Hon. EMILY SUVAAL: Are you dissenting from the ruling?

The Hon. BOB NANVA: Perhaps if the member could just ask if there's a conflict of interest protocol, full stop. I think that's a fair question.

The Hon. TANIA MIHAILUK: It's a cover-up, but yes. Is there a conflict of interest protocol? How about that? It's an easier question for you, Attorney General.

Mr MICHAEL DALEY: It's a bit vague, so I'll take it on notice.

The Hon. TANIA MIHAILUK: Are you aware, Mr Attorney General, of the donations that have been made from law firms specifically?

Mr MICHAEL DALEY: Directly to the Labor Party?

The Hon. TANIA MIHAILUK: Yes. Are you aware of it or not?

Mr MICHAEL DALEY: No. They're published on the website.

The Hon. EMILY SUVAAL: Point of order: Chair, you've ruled on this.

The Hon. TANIA MIHAILUK: It's a different question.

The Hon. EMILY SUVAAL: It's relating to matters of political party affairs. It's completely out of order in terms of how—

The Hon. TANIA MIHAILUK: Thousands of dollars have come from law firms to the Labor Party. I think the Attorney General should know.

The Hon. EMILY SUVAAL: Wide latitude is given in terms of budget estimates questions, yes, but the rules of the House do still apply to an extent.

The Hon. TANIA MIHAILUK: Very sensitive there. Next to the former general secretary of the ALP there. Very sensitive.

The Hon. BOB NANVA: I'm happy to take this one up. They do. They're not strictly applied, but they're relevant.

The Hon. EMILY SUVAAL: They are. It's established in Legislative Council precedent.

The Hon. TANIA MIHAILUK: They're not prohibited at all, but I'm just asking—

The CHAIR: I think you should try and make your questioning more relevant to the examination of the budget of the Attorney General.

The Hon. TANIA MIHAILUK: I did try and ask some questions previously of the Attorney General and everything was taken on notice or he hadn't read the reports and so forth, so I thought he might be aware of the fact that you've had dozens of law firms provide thousands and thousands of dollars to the Labor Party. There's some huge amounts of money here. Lee Legal, \$4,000. Maurice Blackburn, \$7,000.

The Hon. BOB NANVA: Point of order—

The Hon. TANIA MIHAILUK: Goodwin and Co Lawyers, \$4,700. There was \$3,300 to Jason Li. I mean, it's a bonanza of money.

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The CHAIR: Would you like to table that document?

The Hon. TANIA MIHAILUK: Yes, actually, I will.

The Hon. EMILY SUVAAL: What about the donations to One Nation?

The Hon. TANIA MIHAILUK: Zero.

Mr MICHAEL DALEY: You don't need to. It's on the Electoral Commission website, I would imagine.

The CHAIR: Order!

The Hon. TANIA MIHAILUK: I will table it. I think everyone should have a read of how much law firms have suddenly given to the Labor Party.

The CHAIR: I'd like my party to get some of that. Considering the number of times Shooters get into trouble!

Ms ABIGAIL BOYD: Just a couple of quick ones from me. The first one, the independent Victims Services Commissioner I've been asking about for a little while in estimates. I understand a discussion paper has gone out, but it's not public. Can you give us an update on where this is up to?

Mr MICHAEL DALEY: Mr McKnight might be able to give us an update on that, or Mr Tidball.

PAUL McKNIGHT: We are currently undertaking consultation. Let me see if I can get you dates.

Mr MICHAEL DALEY: On the model of what the new independent Victims Services Commissioner might look like, we've asked groups to give us their views on what the model of the new commissioner should look like.

PAUL McKNIGHT: A discussion paper was distributed to stakeholders in January this year.

Mr MICHAEL DALEY: On 13 January.

PAUL McKNIGHT: It seeks submissions by 21 February, so last week. It goes to the model of the commissioner's structure.

Ms ABIGAIL BOYD: Glad to see this commitment progressing. When will that discussion paper be made public? Or when will there be some public consultation, as opposed to just select stakeholders?

PAUL McKNIGHT: I'll need to take on notice the detail of the process.

Ms ABIGAIL BOYD: That would be really helpful. I think there's a great number of people very interested in having a say. I'd hate to get to the position where we have a bill in front of us and it's not widely accepted at that point. Let's consult beforehand.

Mr MICHAEL DALEY: Can I just say, you might be interested to know our intention is to introduce legislation to cement that position, create that position, in this session of Parliament. Before 30 June.

Ms ABIGAIL BOYD: Excellent. As I say, I'm very happy to see it progressing. It would just be nice to get a little bit of a briefing beforehand or some sort of public understanding of it.

Mr MICHAEL DALEY: Come and sit in my office and we'll give you whatever you need to know.

Ms ABIGAIL BOYD: The other one was in relation to industrial manslaughter. During debate on the bill that brought in the industrial manslaughter offence, assurances were provided that the Office of the Director of Public Prosecutions would establish a separate identifiable team with specialist expertise in that area. What is the progress of establishing that specialised unit?

Mr MICHAEL DALEY: You might want to ask the director herself, if you like. As I understand, that's being given consideration.

SALLY DOWLING: We are still sorting out the funding for that and we are working out the terms of the memorandum of understanding with SafeWork in terms of what the brief will look like when it comes to our office.

Ms ABIGAIL BOYD: Is there a time frame for when that will be in place? I'm worried we're going to get a prosecution and not have the specialist expertise in place by then.

SALLY DOWLING: It's well underway. I'll have to revert to you on the time.

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Ms ABIGAIL BOYD: On notice. Yes, that would be great. Any details you can give me on notice would be great.

Mr MICHAEL DALEY: Sure.

Ms SUE HIGGINSON: Attorney General, I just want to go back to the questions the Chair asked briefly about Kathleen Folbigg and the submission there. When you say it's very voluminous, how much are you talking? How big are you talking for the submission?

Mr MICHAEL DALEY: I didn't count the pages, but there's a lot of material there.

Ms SUE HIGGINSON: And you're personally reading that? Because my understanding is that it's not that big. I've been informed that it's probably only really about 300 or so pages long, with some appendices.

Mr MICHAEL DALEY: I didn't count the numbers.

Ms SUE HIGGINSON: You absolutely commit and guarantee that's in your hands, you're reading that personally?

Mr MICHAEL DALEY: Yes.

Ms SUE HIGGINSON: Do you have concern that you may be setting some kind of precedent over what you're doing in relation to that?

Mr MICHAEL DALEY: Not in terms of a legal precedent or laying down a guide or a rule book that people might follow or that judges might, in terms of the common law, set down the rule for Attorneys-General in future to follow. But it's a unique situation.

Ms SUE HIGGINSON: That's the point: It is very unique.

Mr MICHAEL DALEY: I can tell you, I've had regard to other circumstances, and there are none that are directly analogous to this. Yes, there will be some precedent value—if I can put it that way—for the future, whichever way I decide.

Ms SUE HIGGINSON: And your guarantee is that it will be very soon. I'm watching on ABC TV at the moment, during the news breaks, that people have released books about the scenario and the situation. People are writing about this as if it's some historic thing, and it's not. She's obviously living every single day without that level of justice being afforded to her.

Mr MICHAEL DALEY: I understand that. There is considerable public interest in this, and I have absolutely not tried to delay this at all.

Ms SUE HIGGINSON: I want to go back to the CJs very quickly. Is the cost-benefit analysis that you've undertaken something you would provide to the public? Is that something that can be made available?

Mr MICHAEL DALEY: I'll take that on notice and see what the status of that is.

Ms SUE HIGGINSON: What I'm concerned about or what I'd be interested in is: How has that cost-benefit analysis really factored in the actual non-cost benefits that you could tangibly put on a balance sheet that the CJC services provide? Because, as I explained, I know firsthand that the real cost is the empowerment that these services provide every single time they operate or have a touchpoint and the expedient benefits that provides through building skills in the people they interact with and the way that they are undertaking preliminary interactions, not just the actual mediations that take place. I'm just going to put it to you: Would you consider a different course of action? Because it does seem, when you look at this through a proper lens and not just a rough cost-benefit analysis lens—the one that I suspect is in front of you. Would you take a different course of action? Can you be convinced?

Mr MICHAEL DALEY: No. I don't want to mislead you in any way. I certainly don't want to downgrade the work that the mediators do. There will be no change. This is a government decision. There will be no change to this.

Ms SUE HIGGINSON: When you say it's a government decision, how has that happened?

Mr MICHAEL DALEY: It's part of the budget.

Ms SUE HIGGINSON: But you are the Attorney General. You can submit to Cabinet and others that we may have made a wrong decision and that this service is actually fundamental and we would like to continue it after proper review and consultation around it, because it appears that there has been none.

Mr MICHAEL DALEY: I don't want to mislead you; that's not going to happen.

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Ms SUE HIGGINSON: Because you won't do that.

Mr MICHAEL DALEY: Yes.

Ms SUE HIGGINSON: Why won't you do that, if a case is made to you that you're making a bad decision?

Mr MICHAEL DALEY: Because the Government has already made the decision, and it won't be revisited.

Ms SUE HIGGINSON: So governments are just happy to cop bad decisions.

Mr MICHAEL DALEY: That's your view.

Ms SUE HIGGINSON: If the evidence suggests—

Mr MICHAEL DALEY: We have to make sure we spend taxpayers' dollars in the best way we can.

Ms SUE HIGGINSON: But if the evidence could be presented to you, if this had been done with more consultation and the case could have been made more clear to you about what we are actually going to lose and the higher costs that we'll experience because of the loss of that—

Mr MICHAEL DALEY: I'd never say no to someone who wants to try to talk me out of something. If you or others want to try to do that, I would never say no. But I'm being honest with you: The likelihood of this decision being reversed is pretty close to nil.

Ms SUE HIGGINSON: But you're open.

Mr MICHAEL DALEY: I'm always open. Mr Tidball might have some figures that you might be interested in too. He can sort that during the break, if you would like him to.

Ms SUE HIGGINSON: Sure.

MICHAEL TIDBALL: Ms Higginson, very briefly, I spoke about not so much the cost but the number of matters. In 2005, which, on the advice I have, was the peak of utilisation, the number of mediations arranged was 3,259. In 2024 that number had fallen to 796. In 2005 the number of mediations settled was 2,812, and last year was 728.

Ms SUE HIGGINSON: In terms of those numbers and that matrix though, are they mediations completed? Are they intakes? I understand what picture can be painted with those numbers, but I'm curious as to the inputs to those numbers.

MICHAEL TIDBALL: I think what I can provide to you is the number of—from mediations held—sorry, inquiry to mediation held. I do actually have percentages of resolution, which I can provide on notice.

Mr MICHAEL DALEY: Do you want to get that on notice and we'll give you some detailed breakdown?

Ms SUE HIGGINSON: I think that would be helpful. I am going to put this to all of you: I think that this is just something that has happened, and we understand how these things happen through all sorts of good intentions to streamline, to get efficiencies and to cut costs. But I think that what is quite clear is that there's a case to be made that this is not a good decision and that the Government should seriously consider reconsidering this decision or even deferring this decision for a period of time.

Mr MICHAEL DALEY: I'm happy to receive any representations from you or other people in that regard, but I don't want to mislead you.

The Hon. SUSAN CARTER: Mr Daley, I want to follow up in relation to what's happening about the electronic monitoring of alleged DV offenders. Is that operating now?

MICHAEL TIDBALL: Yes, it is.

The Hon. SUSAN CARTER: With respect to the funding for that program, is there a capped number of offenders who can be monitored electronically?

Mr MICHAEL DALEY: No.

The Hon. SUSAN CARTER: So it's completely open-ended funding?

Mr MICHAEL DALEY: Yes.

The Hon. SUSAN CARTER: Is demand tracking as you had expected? Is it exceeding? Not meeting?

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Mr MICHAEL DALEY: I don't think we had any expectations about it.

The Hon. SUSAN CARTER: You didn't factor something in for funding?

MICHAEL TIDBALL: There was a BOCSAR projection that was undertaken and, as I understand it, we're tracking within that projection.

The Hon. SUSAN CARTER: So what number of serious DV offenders given bail are currently being monitored electronically?

MICHAEL TIDBALL: It's 88.

The Hon. SUSAN CARTER: Is the electronic monitoring equipment available in regional centres and in the city?

MICHAEL TIDBALL: I believe so, yes.

The Hon. SUSAN CARTER: Are there no black holes where it's not possible to be monitored? I'm happy for you to take that on notice.

MICHAEL TIDBALL: No. The answer to that question is that it is intended to be statewide, but I'm always very reluctant, with questions about technology, to underwrite the reception.

The Hon. SUSAN CARTER: I understand the intention. This was not a gotcha; I just want to understand what's happening. I'm happy for you to take that on notice because I think it is an important question to understand exactly what the coverage is. How many alleged serious DV offenders have been retained in custody on remand, and is that an increase on previous figures, a decrease, or stable?

MICHAEL TIDBALL: I may have that. Can you just give me a second?

The Hon. SUSAN CARTER: Yes, certainly.

MICHAEL TIDBALL: The rate of court bail refused for adults charged with DV offences rose markedly from 4.2 percentage points to 21.7 per cent in the second quarter of 2024—so between April and June—compared with 17.5 per cent in Q1.

The Hon. SUSAN CARTER: And that's all attributable to DV?

MICHAEL TIDBALL: Yes.

The Hon. SUSAN CARTER: The implementation taskforce, I understand, is not still meeting. Who's responsible for monitoring the ongoing operation and success or failure problems, or who troubleshoots now?

Mr MICHAEL DALEY: It's in the hands of Corrections.

MICHAEL TIDBALL: It's in the hands of Corrections. However, I am working closely with Corrections. Given the role I have bridging across the certain oversight functions of Corrections and the relationship with DCJ, I am also briefed regularly.

The Hon. SUSAN CARTER: If I can take you to another topic, Minister, I understand that you have recognised the increasing volume of work and the increasing complexity of the work that's undertaken in the Local Court, so the intention is to amend the Local Court Act to introduce the title of "Judge of the Local Court". What other changes are you making to support the work of judicial officers in the Local Court?

Mr MICHAEL DALEY: In what respect?

The Hon. SUSAN CARTER: Will each judge receive a dedicated tipstaff like some of their District Court and Supreme Court colleagues?

Mr MICHAEL DALEY: No, they won't.

The Hon. SUSAN CARTER: Even though you've acknowledged the volume and the complexity of work has increased markedly?

Mr MICHAEL DALEY: Yes.

The Hon. SUSAN CARTER: Will each judge receive a dedicated research officer or associate?

Mr MICHAEL DALEY: I can cut this line of questioning really short. The only change in entitlements will be the change of name. There will be no other change to any other entitlements—if I can put them that way—or remuneration or support, at this stage, for magistrates in the Local Court. That was intended to be a standalone change, which they'd been pushing strongly for for quite a number of years. I explained to the association and

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others that that did not mean that we were necessarily, as part of that decision, going to automatically start to look at other entitlements or remuneration or package, if I can loosely call it that.

The Hon. SUSAN CARTER: With respect, how is simply changing a name actually recognising, to quote you, "the seriousness, volume and complexity of work in this jurisdiction" if it's not accompanied by other necessary workplace support?

Mr MICHAEL DALEY: Because the magistrates asked for it—that's why. They really wanted the change. They asked previous Attorneys General for it and were refused. It's important to them.

The Hon. SUSAN CARTER: So if they asked for tipstaves and for associates, they would also be given?

Mr MICHAEL DALEY: No.

The Hon. SUSAN CARTER: Sorry, with respect, your reasoning was "they asked for it; they got it".

Mr MICHAEL DALEY: No, I was in the process—

The Hon. SUSAN CARTER: If they asked for other workplace supports, would they receive those?

Mr MICHAEL DALEY: If you hadn't interrupted me, I was in the process of saying that I view the title of magistrate to be anachronistic. It's also a problem—not a problem, but we had feedback from people with non-English speaking backgrounds—

The Hon. SUSAN CARTER: I don't think we have any dispute about this; I'm simply looking at whether they are being adequately recognised in other ways. Perhaps we can move on to *BA v The King*. I know you'll be familiar with this. I think this is maybe the fourth estimates at which we've asked you questions about this.

Mr MICHAEL DALEY: It's the third, I think.

The Hon. SUSAN CARTER: Last time you told us that you would be introducing a draft bill into this Parliament in early 2025. It's now early 2025. Where are we at?

Mr MICHAEL DALEY: Yes. This is a complex area of the law—

The Hon. SUSAN CARTER: As you indicated last time.

Mr MICHAEL DALEY: —and it needs careful analysis.

The Hon. SUSAN CARTER: As you indicated last time.

Mr MICHAEL DALEY: Well, nothing has changed in that regard, has it?

The Hon. SUSAN CARTER: That's distressing, though, isn't it? Because it should change. This is a May 2023 decision, Minister.

Mr MICHAEL DALEY: If you stop interrupting me, I might take you through it. What I did was ask the department not only to look at the specific provision that was the subject of *BA v The King*, but to look at the whole division of the Act that it lived in because it was quite old and had not, for the present purposes, been reviewed for a very long time.

The Hon. SUSAN CARTER: As the High Court indicated.

Mr MICHAEL DALEY: What happened during the course of the consultation was that domestic violence groups were particularly concerned that changes such as those embodied in the shadow Attorney's bill and in some of the possible remedies, if I can put it that way, to the problem outlined in *BA* might lead to inadvertent victimisation of women who were the victims of domestic violence who were trying to return to their own homes. They impressed upon us that they were very, very concerned about that, and cautioned us to keep talking to them about that. That's one of the reasons it has taken so long.

The Hon. SUSAN CARTER: Where are we at?

Mr MICHAEL DALEY: We're still considering it.

The Hon. SUSAN CARTER: Still considering? You would be aware, because I'm sure you've had an opportunity to read that judgement by now, that, as the High Court indicated, the ACT, Tasmania, Victoria, South Australia, the Northern Territory and Western Australia have all managed to amend their criminal law and bring it into the twenty-first century. Why is this such a difficult problem for New South Wales?

Mr MICHAEL DALEY: I don't think I can add anything useful to my earlier answer, Mrs Carter.

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The Hon. NATASHA MACLAREN-JONES: Just following on from that, do you have a time frame?

Mr MICHAEL DALEY: No.

The Hon. NATASHA MACLAREN-JONES: But will it be this year or before the next election?

Mr MICHAEL DALEY: "I don't have a time frame" means I don't have a time frame. Sorry.

The Hon. NATASHA MACLAREN-JONES: I move to the use and carrying of knives in public spaces and schools, and in particular sections 93IB and 93IC. What impact have these changes made?

Mr MICHAEL DALEY: I'd have to take that on notice. I take it that you are referring to the crime stats?

The Hon. NATASHA MACLAREN-JONES: Yes.

Mr MICHAEL DALEY: I'll take that on notice. But these are all set out in BOCSAR reports that are publicly available.

The Hon. NATASHA MACLAREN-JONES: I have to say it's a concern that you've got an Attorney General, those latest figures came out over a week ago, and you haven't even cast your eye over them.

Mr MICHAEL DALEY: Who said I haven't cast my eye over them?

The Hon. NATASHA MACLAREN-JONES: Because every time I ask a question in relation to any figures around BOCSAR, you basically have no answer.

Mr MICHAEL DALEY: Okay, then do you want to sit here and wait while I turn around and get a note?

The Hon. NATASHA MACLAREN-JONES: No.

Mr MICHAEL DALEY: It will take me five minutes.

The Hon. NATASHA MACLAREN-JONES: I'm happy to tell you because I've got a copy here.

Mr MICHAEL DALEY: No, we'll do that. Let's go. How are we going with that note?

The Hon. NATASHA MACLAREN-JONES: They haven't changed. Attorney General, I can let you know it hasn't changed.

Mr MICHAEL DALEY: It's not a memory test. I will take it on notice.

The Hon. NATASHA MACLAREN-JONES: I know it's not a memory test. I will just let you know, they haven't changed. My question is—

Mr MICHAEL DALEY: Nor do I want to walk in here with 10 feet of reports to the sky and have to sit there and wade through them every time you ask me a question. They're publicly available.

The Hon. NATASHA MACLAREN-JONES: I'm not asking for specifics; it's just basics around the legislation that you've introduced—whether or not you're seeing things work. That's the simple question in relation to 93IB and 93IC. Attorney General, are you monitoring whether or not the changes you've brought in have been effective in any way?

Mr MICHAEL DALEY: BOCSAR publishes those statistics and we look at those statistics. We also talk to the police about what their anecdotal experience is on the street. But, I've just got to say to you, the statistics only tell a part of the story, particularly in relation to things like knife crime, drug possession and sexual assault, because there are other factors that can affect and skew the results. For example, if the police, as they often do, run big operations that target hotspots in Sydney and go looking for people with knives, that will skew the result. So it's very hard, in a short snapshot of time, to get a picture of how the change in legislation might be working, if you want to put it that way. In the same way as increased drug operations lead to BOCSAR statistics getting skewed, in terms of public awareness campaigns for the unfortunate victims of sexual assault and encouraging them to report, it leads to a higher incidence of those being reported. Statistics tell a part of the story, but not the full part.

The Hon. NATASHA MACLAREN-JONES: Attorney General, if you're not confident with the statistics—

Mr MICHAEL DALEY: I didn't say I wasn't confident with them; I say you need a good time frame to have a look at the trends, and to take them into context with other factors as well.

The Hon. NATASHA MACLAREN-JONES: So when will you be doing an evaluation?

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Mr MICHAEL DALEY: But the conviction rate is up.

The Hon. NATASHA MACLAREN-JONES: Okay. Attorney General, is it true that by doubling the penalties from two years imprisonment to four years, you are exceeding the jurisdictional limit of the Local Court, and that these matters would need to proceed by way of indictment to the District Court before any penalty could be imposed?

Mr MICHAEL DALEY: Often they're charged with other offences, which means that you can take them to the District Court. But I think they're table offences, too, aren't they, Sally?

SALLY DOWLING: Yes.

Mr MICHAEL DALEY: They're table offences, for knives, so there can be an election to take it to the District Court by the prosecution.

The Hon. NATASHA MACLAREN-JONES: As of September last year, the Office of the DPP has declined to elect to prosecute 96 of 141 election referrals from police, which is about two-thirds of referrals. Is this an indication that your laws are not working?

Mr MICHAEL DALEY: No. You'd have to probably look at the circumstances of each and every one of those cases, and the reasons for election or non-election, to be able to make proper sense of that question.

The Hon. NATASHA MACLAREN-JONES: And have you done that?

Mr MICHAEL DALEY: No.

The Hon. NATASHA MACLAREN-JONES: Why not?

Mr MICHAEL DALEY: Because unless the DPP was to indicate to me, as she does from time to time, that there's a shortcoming with the legislation—then I will act, if I get that advice. And, if not, we keep going and review these issues from time to time.

The Hon. NATASHA MACLAREN-JONES: But if the Office of the DPP chooses not to notify you of the fact that two-thirds are not being referred, have you got another mechanism to monitor that yourself, to be able to raise it directly?

Mr MICHAEL DALEY: No.

The Hon. NATASHA MACLAREN-JONES: Is your office looking at any of those issues?

Mr MICHAEL DALEY: We look at BOCSAR statistics and things like that periodically. Your question goes specifically to whether or not the prosecutor decided to make the election, and that would depend on a case-by-case basis.

The Hon. NATASHA MACLAREN-JONES: And you're not looking at any of that?

Mr MICHAEL DALEY: No, I'm not. Unless the DPP comes to me and says there's a problem with the legislation, I won't look at that.

The Hon. NATASHA MACLAREN-JONES: Attorney General, how many people have received a jail term in excess of two years for custody of a knife either under section 93IB or 93IC of the Crimes Act?

Mr MICHAEL DALEY: Unless someone's got that at their fingertips, I'll take that on notice. In fact, I'll just take that on notice.

The Hon. NATASHA MACLAREN-JONES: Have you seen the Sentencing Council report, *Firearms, knives and other weapons offences*?

Mr MICHAEL DALEY: Yes.

The Hon. NATASHA MACLAREN-JONES: You would recall that in your second reading speech you said:

These reforms will be complemented by any recommendations or findings arising out of the Sentencing Council's review.

When will you be responding to that report?

Mr MICHAEL DALEY: In due course.

The Hon. NATASHA MACLAREN-JONES: Do you have a time frame?

Mr MICHAEL DALEY: I don't have a time frame on that, no.

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The Hon. NATASHA MACLAREN-JONES: That seems to be a pattern. Either you don't look at reports, or you've got reports but you won't give us time frames.

Mr MICHAEL DALEY: Who said I don't look at reports? Which report did I say I didn't look at?

The Hon. SUSAN CARTER: If I can just jump back to CLC funding, you would be aware from correspondence that the CLCs are anticipating a major increase in demand and work with the closure of the CJs. Are you going to provide additional funding for them to cope with the additional work they'll be receiving when the CJs close?

Mr MICHAEL DALEY: I indicated to you that I have written to the CLCs and asked them for their indication as to how the Commonwealth uplift funds—if I can call them that—might best be distributed across their number of offices. I expect that, if that's an issue, they'll be bringing that to my attention.

The Hon. SUSAN CARTER: Local councils have also indicated that they expect a significant increase in their volume of work. Will they be being compensated for the closure of the CJs?

Mr MICHAEL DALEY: No.

The Hon. SUSAN CARTER: The local courts will have a significant increase in the volume of work. Will they be compensated for the closure?

Mr MICHAEL DALEY: What were the numbers? There were 728 last year—mediations?

MICHAEL TIDBALL: Yes.

Mr MICHAEL DALEY: That's the number we're dealing with.

The Hon. SUSAN CARTER: So, 728 is significant if it lands into an already significant workload of another body. I don't actually understand the point you're making, Attorney. Are you saying that's insignificant?

Mr MICHAEL DALEY: A portion of them will be dealt with by DCJ.

The Hon. SUSAN CARTER: And that will be at no cost to the applicant?

MICHAEL TIDBALL: That's correct.

The Hon. NATASHA MACLAREN-JONES: Is it appropriate for members of the legal profession to engage in political protest while in the courtroom?

Mr MICHAEL DALEY: Give me some context.

The Hon. NATASHA MACLAREN-JONES: I'm happy to. Are you aware of a story from the middle of last year where a solicitor, Seth Harlen, represented the Law Society and he wore the Palestinian scarf in his admissions ceremony as an act of political protest.

Mr MICHAEL DALEY: What happens in a courtroom is a matter for the judicial officer in the courtroom. Also, generally speaking, the Chief Justice will take a view on that as well, and I believe he has.

The Hon. NATASHA MACLAREN-JONES: You have no opinion or view?

Mr MICHAEL DALEY: Courtrooms are no place for protests. That's a simple proposition.

The Hon. SUSAN CARTER: In that particular case, the Chief Justice did take a view, as did the President of the Law Society.

Mr MICHAEL DALEY: That's right.

The Hon. SUSAN CARTER: Mr Harlen chose to disregard the views that had been strongly expressed to him and posted on social media footage of his protest. Given the current climate of antisemitism, do you have any comment about the appropriateness of Mr Harlen's actions?

Mr MICHAEL DALEY: I've just told you that courtrooms are no place for protests.

The Hon. SUSAN CARTER: What about social media?

Mr MICHAEL DALEY: It depends on the context of it.

The Hon. SUSAN CARTER: If we can just go back to the appointment of magistrates as judges, I just want to confirm that that was done in response to requests from the magistrates themselves?

Mr MICHAEL DALEY: Partly, yes, and from the Australian Judicial Officers Association. They made representations to me.

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The Hon. SUSAN CARTER: The Australian Judicial Officers Association, is that separate from—

Mr MICHAEL DALEY: AJOA.

The Hon. SUSAN CARTER: Yes, but is that separate from the magistrates or is that composed of the magistrates?

Mr MICHAEL DALEY: It's an association that represents all judicial officers in Australia.

The Hon. SUSAN CARTER: Have they also made representations to you about increased workplace support?

Mr MICHAEL DALEY: I'd have to go back and have a look at the minutes of my meetings with them.

The Hon. SUSAN CARTER: How often do you meet with them, Minister?

Mr MICHAEL DALEY: Fairly regularly when I was new to the role, but irregularly now. I probably meet with AJOA and the Magistrates' Association once every two months, I think, unless they request a meeting. My door is always open if they do or if there is a problem.

The Hon. SUSAN CARTER: Have you had any issues brought to your attention about—

Mr MICHAEL DALEY: Sorry, Mrs Carter, I should say that I'm down at the Local Court often. I swear in, unlike my predecessors, almost every judicial officer that I appoint. I am always in discussions with individual magistrates and often with the Chief Magistrate. It's a really good and productive discourse.

The Hon. NATASHA MACLAREN-JONES: Following on from the CJC discussion earlier this morning, you indicated that discussions commenced approximately two years ago—I assume through ERC—in relation to potential cuts.

Mr MICHAEL DALEY: Savings.

The Hon. NATASHA MACLAREN-JONES: Savings or cuts, whichever way you'd like to look at it. Are there any other savings/cuts anticipated in this budget, in your portfolio, that you've put forward?

Mr MICHAEL DALEY: You know you're going to get the most boring historical answer of all time immutably delivered by every Minister always.

The Hon. NATASHA MACLAREN-JONES: You won't rule it out?

Mr MICHAEL DALEY: You'll have to wait for the budget.

The Hon. NATASHA MACLAREN-JONES: That's alright. You won't rule it out.

The Hon. GREG DONNELLY: That's not what he said.

Mr MICHAEL DALEY: I'm just channelling my inner Daniel Mookhey, sorry.

The Hon. NATASHA MACLAREN-JONES: Always blame the Treasurer.

Mr MICHAEL DALEY: Always, because they're always to blame! Can we strike that from the record?

The Hon. NATASHA MACLAREN-JONES: No.

Ms SUE HIGGINSON: No, it's going to be in big, bold letters: Blame the Treasurer.

The Hon. NATASHA MACLAREN-JONES: At least you're not blaming the Premier.

The Hon. GREG DONNELLY: It'll be highlighted and sent to the Treasurer.

Mr MICHAEL DALEY: I got one sledge in.

The CHAIR: Sledge him in his absence.

Dr AMANDA COHN: I'd like to ask about the need for specialist LGBTQIA+ legal services in New South Wales. As you would know, the National Access to Justice Partnership commencing on 1 July will include the LGBTQIA+ community as a priority population for the first time. I understand that's something you supported, and I thank you for that. Will you follow that up with funding for specialist services in New South Wales?

Mr MICHAEL DALEY: I don't know if you heard my earlier answer. We wrote to all the CJs. One of the options that I have given them in relation to—I call them surplus accounts—the rollover accounts was options that are limited to tenders to achieve specific outcomes or priorities which could include—and I took the

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time to spell it out—statewide specialist LGBTQIA+ legal services. I have drawn their attention to that as a possibility that might be funded under the uplift funding.

Dr AMANDA COHN: I assume you're aware of the service that exists in Victoria, the Q+ legal service?

Mr MICHAEL DALEY: Generally speaking, yes.

Dr AMANDA COHN: Could you outline the process that you've advised CJs on if they want to go forward and apply for this? Is it something that you put out a tender for?

Mr MICHAEL DALEY: That would be one of the options if we decided to go down that way, yes.

Dr AMANDA COHN: Are you anticipating—

Mr MICHAEL DALEY: Unless someone can convince me there's a better way of allocating the funds than a tender. I might be hamstrung on that.

Dr AMANDA COHN: To be clear, I'm not raising an objection to a tender process. What I'm interested in is understanding if those funds are actually earmarked for a specialist service. My understanding is there is a real need for that.

Mr MICHAEL DALEY: Not at the moment. There's a body of funding which is an uplift from last year's funding. It's up to me to determine how best that should be spent. I could give it all to Legal Aid.

PAUL McKNIGHT: You can't.

Mr MICHAEL DALEY: I can't?

PAUL McKNIGHT: No.

Mr MICHAEL DALEY: I can't do that. There are various things I can do. That's for CJs, sorry. There are various ways I can distribute that to the CLC family. I've asked them to give me some guidance on how they think it might best help them in what they do.

Dr AMANDA COHN: And you're open to that funding being allocated to a specialist LGBTQIA+ service?

Mr MICHAEL DALEY: Yes, of course. I wouldn't have put it in the letter specifically if I wasn't.

Dr AMANDA COHN: Have you done any work to look at the implications of the interest or increased need for services arising from law changes that have been made in the last year, noting again that The Greens supported those? Particularly in things like births, deaths and marriages, where there's going to be an increased number of people seeking legal support.

Mr MICHAEL DALEY: That will form part of the feedback we get in relation to that extra funding. They've also had an uplift under the NAJP agreement for employee-related expenses and things like that.

PAUL McKNIGHT: The NAJP funding is the baseline funding that represents what the CLCs were allocated under the last agreement. There's an escalation in that and then there's the money allocated to CLCs for pay parity to enable them to increase wages to their staff. On top of that, there is an uplift amount that is approximately \$3 million to \$3.5 million per annum. It's that \$3 million to \$3.5 million per annum that we are currently consulting the CJs on, as to how they see the priority should be for that amount of money. There's a two-stage process, if you like. There's a consultation with the CLC sector about what they think about how that money should be allocated. Following that, once decisions have been made, there would be an allocation process that might include a tender process.

Ms SUE HIGGINSON: Attorney, I want to briefly touch on the coronial system. I've seen some materials that suggest that the coronial system in New South Wales—whilst every person in there is doing incredible work—is a system under radical strain and that there have been recommendations that there be changes to that system, including the establishment of a specialist singular court. Obviously this is a budgetary issue as well. But, again, looking at how we can look through cost-benefit analyses, I'm curious, is there work happening within the AG's department about what we can do about the state of the New South Wales coronial system? I'm referring to it in terms of not just the outcomes that we could achieve but also the fact that we know how sensitive the coronial work is, and also through a First Nations justice lens, when we're dealing with deaths in custody, historic deaths and coronials and so on. I'm curious about what your concerns are, if you have any, and what work you're doing.

Mr MICHAEL DALEY: We meet with the heads of jurisdictions regularly and, as part of budget bids, DCJ, which is responsible for all of those courts and tribunals, sits down with the relevant staff and secures budget

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bids—if I can call them that—from them. They form part of the normal budget bids that all courts, tribunals, bodies and departments put in for funding each year. They're all subject to funding. We'd love to do all of these at once but we can't. But from time to time, when issues arise, we do assist each of these bodies. For example, in November 2024, funding was made available for two non-magistrate coroners to assist in the case load. They will be specialist solicitors who do a lot of the behind-the-scenes, time-consuming work to make things easier for the coroners. The Chief Coroner specifically asked for a couple of those extra positions, and we're funding those.

Ms SUE HIGGINSON: At the moment, I understand there's a backlog of between 131 and 140 inquests. At the moment, with an estimated total of only 100 inquests being able to be carried out per annum, I'm not hearing that those extra measures are going to be able to catch up in earnest in any real time.

Mr MICHAEL DALEY: They'll go some way.

Ms SUE HIGGINSON: I agree, and I'm not criticising that move.

Mr MICHAEL DALEY: That was an ask of the Chief Coroner. But the Chief Magistrate, who effectively presides over the Coroner's Court, is also having regular meetings and conversations, and also casts a supervisory eye over the operations of the Coroner's division. We'll continue to keep talking about that. I should also say that the shortage of forensic pathologists is a real issue as well in the Coroner's Court. That does hold up a number of matters. Some of those can take a year, because there's a nationwide shortage of forensic pathologists.

Ms SUE HIGGINSON: Is that something you're communicating with your health Minister about?

Mr MICHAEL DALEY: They know that well. There just aren't enough people graduating and making themselves available in that field of endeavour.

Ms SUE HIGGINSON: I think it's also really important, from a justice perspective, that the work of the coronial system—and we sometimes forget this—is not just inquiring about what did happen; it's actually about preventing future wrongful death.

Mr MICHAEL DALEY: It is, but it's also largely about giving families comfort in the most difficult times that they'll ever face. I know; I've been through that myself.

Ms SUE HIGGINSON: In terms of what measures you're looking at, clearly, that's a good initiative to be able to respond to that request to have some more capacity of those officers who can oversee the coronial system. Are there any other measures that you have considered or that you would be open to receiving, or is there a process to work out how we do better?

Mr MICHAEL DALEY: It's really about head count, more than anything else. As I said, there's pressure from all aspects of government for additional employees. As important as it is, it still has to take its role in the normal budgetary processes.

Ms SUE HIGGINSON: Is a structural change to the way the coronial system works something that the Government would respond to in time, like a standalone specialist—

Mr MICHAEL DALEY: I've been completely honest with all stakeholders from day one about that. That is completely subject to funding. That's a very expensive measure.

Ms SUE HIGGINSON: What needs to happen is more reports, more recommendations, or are you convinced that the case is there to have systemic structural reform, but we just can't afford it? Is that what you're saying?

Mr MICHAEL DALEY: I'm saying that one of the fundamental recommendations of the select committee and all the reviews that have been undertaken is for a standalone Coroner's Court. I'm being honest. It's all stakeholders. It's just subject to funding. I can't expand on that answer, Ms Higginson.

Ms SUE HIGGINSON: Attorney, when we were talking about youth crime and what I refer to as the over-incarceration of young people, you were pointing my colleagues to an article from the SMH from 2014. Could you tell me what that is?

Mr MICHAEL DALEY: Yes.

Ms SUE HIGGINSON: They didn't let you, but I'm really interested.

Mr MICHAEL DALEY: I'm happy to give you a copy of it when I leave here, if you like. It's called "NSW's new crime capital: Moree" by Rachel Olding on 4 September 2014. I'm not bringing this up to show that this was on the Coalition's watch. What I found useful about it were the really objective considerations by elected representatives in Moree about the problem. It goes on to say, "Country towns in northern NSW are in the midst of a 'tsunami' of crime". It says that quarterly statistics released on Thursday show all 17 major offences are either

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stable or falling across New South Wales for the first time in 25 years. However, Don Weatherburn, who was head of BOCSAR, said there was an "absolute failure" in rural areas to capitalise on the trend. Then Rachel Olding has gone on to interview some of the leaders in Moree. She says:

Community leaders in Moree have spoken out about their despair that a severe underclass is becoming entrenched in the broad-acre farming region's town of 10,000.

The mayor, John Tramby, said at the time:

We're not experiencing a crime surge, more like a tsunami ...

This is a valuable part of the article:

It's not a consequence of any single thing; it's a cumulation. There's less and less employment since the wheat industry and the wool industry became very mechanised, and the drugs that used to only be a problem in the big cities have now made their way out here.

The article stated even then, Coonamble, Bourke and Brewarrina had persistently high crime rates. It also stated:

Kamilaroi elder Noeline Briggs-Smith said the collapse of the cotton industry in Moree has fuelled a cycle of welfare dependency that has filtered through generations, particularly as alcohol, drugs and drought have taken hold.

She said boredom among young people fuelled the mostly opportunistic crime such as setting vacant homes alight, stealing cars and breaking into homes for alcohol.

She recently caught three seven-year-old children smashing their way into her garage looking for spray paint.

Ms SUE HIGGINSON: Attorney, can I just interrupt you there? What was your point? What was the point?

Mr MICHAEL DALEY: The point is that these people were objectively pointing to the multifaceted causes of the crime out there, and that it's going to take more than a legislative change or tougher penalties to address these long-term and deep-seated problems.

Ms SUE HIGGINSON: Can I ask you whether you're familiar with an article that was published on the 28 January 2025 in *The New York Times Magazine*. Now I'm not expecting you to have read *The New York Times*.

Mr MICHAEL DALEY: No, I am not.

Ms SUE HIGGINSON: No, okay. The title of it is "What Happened When America Emptied Its Youth Prisons". It talks about lessons from a radical 20-year experiment and a quiet triumph of public policy. Are you happy if I send you a copy of this?

Mr MICHAEL DALEY: Sure.

Ms SUE HIGGINSON: Will you commit to reading it?

Mr MICHAEL DALEY: A hundred per cent.

Ms SUE HIGGINSON: Promise?

Mr MICHAEL DALEY: I can tell you hand on heart that this issue consumes more of my concern and attention—

Ms SUE HIGGINSON: It keeps all of us awake.

Mr MICHAEL DALEY: —than any other issue in my portfolio.

Ms SUE HIGGINSON: It keeps all of us awake.

Mr MICHAEL DALEY: A hundred per cent.

Ms SUE HIGGINSON: It's a horror show.

Mr MICHAEL DALEY: Yes.

Ms SUE HIGGINSON: This article in no uncertain terms is an incredible case as to why every time we lock a kid up, even for a short period of time, we're doing the wrong thing both for rates of crimes, for community safety. This is not just one case it speaks to. It's actually a dive into public policy.

Mr MICHAEL DALEY: So we agree. We agree we need more diversion services.

Ms SUE HIGGINSON: Attorney—

Mr MICHAEL DALEY: In the absence of them—

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Ms SUE HIGGINSON: No, the absence of them is just—what overwhelmingly we know is every moment of incarceration is criminogenic, and we are—

Mr MICHAEL DALEY: We have to address that issue as well. But in the absence of those programs, leaving a child on the street who's very young, liable to be led astray by a ringleader, if I can put it that way—leaving them on the street with predispositions that you know they have, and you know in your heart they are, in a matter of days or weeks, going to perform some violent act upon themselves or others. Leaving them on the street is absolutely unacceptable for a government as well.

Ms SUE HIGGINSON: A government that has all the capacity to assist that young person. To feed them, to help their families, to do all things, but you choose to lock them up.

Mr MICHAEL DALEY: They're much easier said than done, those things, Ms Higginson.

Ms SUE HIGGINSON: In terms of the extension of three years that you're now seeking through the Parliament, why three years? You say you need three years. Why do you need three more years to keep kids in prison?

Mr MICHAEL DALEY: Because that was the figure that we arrived at after discussing with our advisers. One more year wouldn't be enough.

Ms SUE HIGGINSON: Which advisers? Who said to you, "Three years is it, Attorney. Let's do that"?

Mr MICHAEL DALEY: We tossed that around. The policy review group within DCJ has opinions. We toss those around and we come to a figure.

Ms SUE HIGGINSON: What were you told the three years will achieve? Those extra—

Mr MICHAEL DALEY: We don't want to have to come back.

Ms SUE HIGGINSON: Those extra 145 kids that are now in prison—most of those who are First Nations kids—what will happen in three years with those 145 kids, plus, if we're going to go on the same trajectory, the next 145 kids in the next short period of time? Then, if we're going over a three-year period, then what? We're going to end up with 645 kids refused bail, in remand, behind bars, in three years time, say.

Mr MICHAEL DALEY: Not necessarily, but could I put the question the other way: What would have happened to those kids if we hadn't—

Ms SUE HIGGINSON: Attorney, with the greatest respect, I'm the one that's asking the questions.

Mr MICHAEL DALEY: I know.

Ms SUE HIGGINSON: Really, with the greatest respect.

Mr MICHAEL DALEY: Okay.

Ms SUE HIGGINSON: What were you advised—

The Hon. GREG DONNELLY: Point of order.

Ms SUE HIGGINSON: —will happen in those three years?

The CHAIR: Point of order?

The Hon. GREG DONNELLY: The Attorney was answering the question.

Ms SUE HIGGINSON: With a question.

The CHAIR: Order!

The Hon. GREG DONNELLY: He's being cut down. He's entitled to complete his answer.

Ms SUE HIGGINSON: I think the Attorney's doing fine, Chair. I really do.

The CHAIR: I think he's handling you quite well, yes—verbally, that is.

Mr MICHAEL DALEY: It'll give us the time to evaluate the effects of the operation of section 22C in a proper way. It also will give us the time to do all of those other things that we are working on that I spelt out before: for example, \$66.9 million in the budget over the four years for youth diversionary responses such as Youth on Track, the Bail and Accommodation Support Service, the Broadmeadow Children's Court project.

Ms SUE HIGGINSON: Could I just ask you about the Moree facility that you're planning. I was speaking with the Premier about it. He said you would know more about it. There's a commitment that it will

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come online, but what is the plan at the moment? It's no longer to build a new premise, is that right? It will be an already built premise?

Mr MICHAEL DALEY: Mr Tidball can tell you all about that.

MICHAEL TIDBALL: Thanks, Ms Higginson. It's not the intention to build. There was one—we are working in lockstep with community. We are being Aboriginal-led in the way we are seeking to go about this because, to make this work, we actually need buy-in and we need to have something which is appropriate as an environment. A group has been commissioned to run the facility. The search for appropriate premises that we can lease is the focus at the moment.

Ms SUE HIGGINSON: Can we talk about this a little bit more after lunch? Is it that okay?

MICHAEL TIDBALL: Of course.

Ms SUE HIGGINSON: Attorney, are the 145 bail-refused that you referred to under section 22C, are they all in Moree?

Mr MICHAEL DALEY: No.

Ms SUE HIGGINSON: No. Of course they're not.

Mr MICHAEL DALEY: Some of them are in Western Sydney. Some are in southern New South Wales.

Ms SUE HIGGINSON: That's right. How do all the kids in the other—where is the intersection with all these other measures? Because, as far as the lay eye can see, we're just putting more kids behind bars, Attorney. That's what we're doing.

Mr MICHAEL DALEY: There are efforts, particularly in the area of justice reinvestment and things like that, to partner with organisations to provide diversionary services for those kids. The Federal Government is also spending quite a deal of money on justice reinvestment as well.

The Hon. NATASHA MACLAREN-JONES: Thank you very much. Attorney General, at the last estimates, I raised concerns regarding that victims and perpetrators were having to share bathrooms. This was in the afternoon session, so I'm mindful that you weren't—it was taken on notice, and the response was, "A process is in place to provide segregation from different stakeholders where possible." Now, we've also heard reports that there is limited space in the foyer. I'm interested to know what your response is in relation to that.

Mr MICHAEL DALEY: I will refer that question to Mr D'Aeth. You asked him that question previously in estimates.

The Hon. NATASHA MACLAREN-JONES: I'm interested in your view in relation to particularly where possible stakeholders are separated. Now, we're talking about victims and perpetrators attempting to use bathrooms and being in the foyer.

Mr MICHAEL DALEY: My view is that, as quickly as we can, we make sure that those spaces are appropriate.

The Hon. NATASHA MACLAREN-JONES: Do you think are currently appropriate?

Mr MICHAEL DALEY: Mr D'Aeth can tell you about the progress in that regard.

The Hon. NATASHA MACLAREN-JONES: Have you been to Campbelltown Court House?

Mr MICHAEL DALEY: Campbelltown? Not for a while, no.

The Hon. NATASHA MACLAREN-JONES: In your opinion, and from when you last went, do you think it's currently adequate and providing a safe environment for perpetrators to be with victims?

Mr MICHAEL DALEY: I can't answer that. I don't know what's there. That's why I was referring the question to Mr D'Aeth, who is in charge of the court services.

The Hon. NATASHA MACLAREN-JONES: I'm happy to discuss the details of the court this afternoon, but what I'm interested in, Attorney General, is whether or not you intend to upgrade the courts.

Mr MICHAEL DALEY: Well, we'd love to upgrade all of the courts as much as we can but, like all other considerations, they are all subject to funding.

The Hon. NATASHA MACLAREN-JONES: Have you put in a funding bid for that? Or is it even in consideration?

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Mr MICHAEL DALEY: I'd have to go and have a look at the funding bids that are in, but that would be Cabinet in confidence, because they're budget considerations.

The Hon. NATASHA MACLAREN-JONES: The Macarthur region has had a population increase of 21 per cent in the past five years. It is now over 300,000. That covers the three LGAs of Camden, Campbelltown and Wollondilly. It's expected to double in the next 15 years. The latest BOCSAR results show that the region has had one of the highest increases in assaults, particularly over the past two years: a 25 per cent increase in assaults in Campbelltown and 13 per cent in Wollondilly, and a 50 per cent increase in domestic violence cases in Camden. Will you commit to funding a community and justice precinct for the Macarthur area?

Mr MICHAEL DALEY: I can't make any commitments about that, but what I can say is that I've had many good and productive meetings about that, particularly with Campbelltown council. Greg Warren, the member for Campbelltown, has brought the mayors of the day to come and see me. We are looking at that, but I don't have any announcements to make at this time. But it is something we're looking at, and I do recognise the need for it.

The Hon. NATASHA MACLAREN-JONES: The other question is just following up from last year. I asked about the \$13 billion in savings, I think it was, in regard to the Crime Prevention Fund and the Graffiti Initiatives Fund. We've seen an increase in graffiti across the State, particularly antisemitic attacks but also more broadly. A number of shires have seen an increase in graffiti. Will you now reverse your decision to cut the graffiti fund?

Mr MICHAEL DALEY: I'll take that on notice, but it's probably unlikely.

The Hon. SUSAN CARTER: I have a general question, if you don't mind, Attorney. I'm curious to find out what your top priorities are for your portfolio. Understandably, you haven't had time to read the ODPP audit report. You were working late, so you weren't able to be across the details of the fracas on the steps of the Opera House the morning after that occurred.

Mr MICHAEL DALEY: No, that's not true. You've mischaracterised that.

The Hon. SUSAN CARTER: I believe that's what you told a morning breakfast reporter, Minister.

Mr MICHAEL DALEY: We've been over that.

The Hon. SUSAN CARTER: And you haven't had a chance to finalise the section 93Z statutory review yet. I'm curious to know what is taking the focus of your energies. What are the top three priorities that you're working on?

Mr MICHAEL DALEY: I'm not going to sit here and enumerate my priorities for you, particularly in order of importance. You can have a look at the work that we've done in the past two years, and you'll see that all of the legislation that we've brought to Parliament represents some of the important issues that we have addressed and continue to address. But, as I just indicated to Ms Higginson, one of the top priorities for me is youth crime, not just in the regions but across New South Wales as a whole. You can have regard to the work that we've done, and we'll continue to do that work in the next few years.

The Hon. SUSAN CARTER: I agree with your characterisation that youth crime is a difficult and challenging area, and I am reflecting very much on the very sad events of this morning. It is difficult to say that the current initiatives have been successful by any metric in reducing youth crime. What are the urgent priorities in your portfolio that are taking up your time?

Mr MICHAEL DALEY: How about you ask me a question about something that might be related to estimates, and not a hypothetical about what might be forthcoming in the future.

The Hon. SUSAN CARTER: Frankly, Minister, I am perplexed that you cannot identify your priorities in your portfolio.

Mr MICHAEL DALEY: No, you've run out of questions. That's the problem. You've run out of questions, so now you're just hypothesising.

The Hon. SUSAN CARTER: And you've run out of answers, frankly, that you can't answer a very simple, straightforward question like that.

Mr MICHAEL DALEY: If you can't ask me a better question than that, with 20 minutes to go, you've run out of questions.

The Hon. SUSAN CARTER: Minister, I don't intend to be schooled by you—rudely, frankly—on questions. Thank you very much for your time.

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Mr MICHAEL DALEY: You're welcome.

Ms SUE HIGGINSON: I want to go back to youth incarceration and what we're doing. In terms of the overall numbers and this time period, I am really concerned that we're going to have a bill before us in the next session of Parliament extending these laws for another three years, and the advice that you've received about that three years. Why did we introduce them for 12 months, if now you're saying 12 months is not long enough? What was the thinking from then to now? What is that logic, given we know that what we'll achieve in this period of time is more kids—

Mr MICHAEL DALEY: I think I've just gone over that with you, Ms Higginson, really. I've answered the question. You might not like the answer, with respect, but I've answered that question.

Ms SUE HIGGINSON: How did you decide that 12 months was appropriate when we were dragged into introducing those laws this time last year? Why not another 12 months? This is honestly the question. I don't know what the metric is.

Mr MICHAEL DALEY: I don't want to come back and keep extending them every 12 months, and the likelihood is that we're still going to be facing the sorts of problems that we are now in 12 months time. If the problem disappears and we need to revisit it earlier, that's always open to us.

Ms SUE HIGGINSON: So you're saying these measures won't work. I'm trying to grapple with the logic of the actions you're taking. You're saying that in 12 months we won't have seen an improvement. Are you saying in three years we will have seen—

Mr MICHAEL DALEY: You're asking me completely hypothetical questions.

Ms SUE HIGGINSON: No, I'm asking you for a justification for the laws you're asking me and my party to vote on in the next session of Parliament. That's what I'm asking for—that evidence-based justification. I promise I'm not asking for anything more abstract.

Mr MICHAEL DALEY: You'll get all that information, but I don't know that I can answer that question in a different way for you than I already have. I don't want to come back every 12 months and keep doing this.

Ms SUE HIGGINSON: So what is your matrix of success? All I've heard so far—from the Premier, not you—is that more kids behind bars is a measure that we are achieving something. I'm failing to grapple with that logic.

Mr MICHAEL DALEY: We have been over this time and time again. If you have specific regard to the provisions of section 22C, it deals with the problem of recidivist behaviour with serious and emerging crimes, in relation to serious motor vehicle theft offences and serious break and enter offences. We know that if those children who repeatedly commit those offences are left on the street, they'll keep committing them again and again. That is the immediate issue we are trying to address with these provisions, and I don't know how many ways I can explain that to you. That is the problem before us, and that is what this measure is intended to address. If you leave them alone and to their own devices, they'll keep committing these offences.

Ms SUE HIGGINSON: I don't think anybody suggests that you leave young people who have offended the law alone. The idea of releasing young people on bail and requiring that they are properly managed in the community is the alternative.

Mr MICHAEL DALEY: That's right, and at the moment there are not the facilities to properly manage them in the community. So the only alternative is to not allow them to be in the community, being misled in the way they are and misbehaving in the violent way that they sometimes do. This is a measure designed to protect people in the community who are scared. The Premier and I have been to Moree, and we've spoken to people who've had homes broken into.

Ms SUE HIGGINSON: But the children you're locking up are not in Moree. You've just said that.

Mr MICHAEL DALEY: They're all over the place, some of them, but there's a very high incidence in Moree and in other places in New South Wales.

Ms SUE HIGGINSON: Okay, so let's just focus on Moree. What has your police surge response been? What is the police surge?

Mr MICHAEL DALEY: You'll have to ask the police Minister that next week.

Ms SUE HIGGINSON: So you don't know?

Mr MICHAEL DALEY: I want to be accurate in my responses to you, and I'm not responsible for the police.

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Ms SUE HIGGINSON: I'll reframe the question. Is it your understanding that we have, as one of your measures, responded through a police surge to address the crimes and try to prevent them from happening in the first place—an actual reduction-of-crime strategy?

Mr MICHAEL DALEY: If you're asking me about police surges and things like that, that's a matter for the police Minister.

Ms SUE HIGGINSON: My question was are you aware of or are you satisfied with the police surge—or with any crime prevention methods, mechanisms or strategies—as the Attorney General. I am sincerely just trying to find the justification that I am meant to have to be able to understand the next tranche of extending these laws.

Mr MICHAEL DALEY: I went through all of that in my second reading speech, Ms Higginson.

Ms SUE HIGGINSON: I heard nothing about whether you're satisfied.

Mr MICHAEL DALEY: You were talking about the rationale for extending it. That's embodied in my second reading speech.

The CHAIR: We're now into the extensive questioning from the Government.

The Hon. GREG DONNELLY: I'm still banking my questions.

The CHAIR: There being no questions from the Government, thank you very much for coming today, Mr Attorney General. I note you took a number of questions on notice, and the secretariat will be in contact with you or your office for your responses in due course.

Mr MICHAEL DALEY: Could I just leave with a comment in the same vein as I did on the last occasion, and that is that this afternoon you will have sitting around this table the various people that you do now. They are excellent servants of the government of the day. They deserve to be treated with respect. In my time as Attorney General, there have been occasions, particularly with one statutory office holder, where they were treated with complete disrespect. Could I ask most respectfully, Mr Chair, that you and the Committee members ensure that these good people are treated with the respect that they deserve?

The CHAIR: Your comment is noted. Thank you very much.

(The Minister withdrew.)

(Luncheon adjournment)

The CHAIR: We will recommence with questions from the Opposition.

The Hon. SUSAN CARTER: Mr D'Aeth, perhaps we could start with you, if that's okay. I hope these are allocated correctly, but I'm sure you'll direct them to whoever can answer if they're not. I'm curious about forensic mental health services and the impact on the court system of resignation by psychiatrists. I am wondering if you're monitoring the impact on 19B orders.

MICHAEL TIDBALL: I can at high level, Mrs Carter. Can I respond and say we, until very recently, allocated a staff member full time to be the entire DCJ system, including courts, interfaced with Health. We have been daily receiving reports, and I've had a particular focus on Corrections, Youth Justice and other interfaces. In terms of the specific 19B question, I would need to take that on notice. I will say what I've been particularly seeking to do—I had discussions with heads of jurisdiction when the dispute emerged on the basis that if there were any blockages in the system, I would be alerted. I've not heard any disjunction arising, but I could give you a more considered and thorough response if we took it on notice.

The Hon. SUSAN CARTER: If you wouldn't mind. Perhaps, as part of that—unless you feel comfortable answering it now—I'm also curious, because one hears things and one likes to test them, about the availability of beds for any accused that is the subject of a 19A order and whether there are any difficulties there.

MICHAEL TIDBALL: I should take that on notice.

The Hon. SUSAN CARTER: I'd be grateful. Thank you very much. I think this is for you, Mr D'Aeth, but we'll find out because you're responsible for all of the courts, including Children's Court, matters pursuant to the Children (Criminal Proceedings) Act. That's all you?

CHRIS D'AETH: Certainly responsible for the court, yes—the administration of the court.

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The Hon. SUSAN CARTER: Section 10 of the Children (Criminal Proceedings) Act—the general public is excluded from the hearing of Children's Court matters. Correct?

CHRIS D'AETH: Correct.

The Hon. SUSAN CARTER: What's the purpose of excluding the public from those hearings?

CHRIS D'AETH: From Children's Court matters?

The Hon. SUSAN CARTER: Yes.

CHRIS D'AETH: Without going into treatise about open justice at this stage, obviously the initial tenet is open justice.

The Hon. SUSAN CARTER: The Friday afternoon purpose!

CHRIS D'AETH: Open justice is an important tenet of justice, but in the particular case of Children's Court matters, it's for the protection of the young people.

The Hon. SUSAN CARTER: Yes. You would be aware that details of a matter heard under the Children (Criminal Proceedings) Act were provided to and discussed on air on the 2GB Breakfast Show on 25 October last year?

CHRIS D'AETH: I'm not sure I am familiar with that particular matter.

The Hon. SUSAN CARTER: Okay. Well, the presenter, Ben Fordham, discussed in some detail, with clearly considerable knowledge of what had happened in a particular matter dealing with a young Indigenous boy, on air on 25 October. You weren't aware of that? That hadn't been brought to your attention at all?

CHRIS D'AETH: I'd have to go back and check my notes, but I'm looking to my colleagues if they're—

The Hon. SUSAN CARTER: I was wondering what investigations were ongoing in relation to that clearly authoritative covering of sensitive Children's Court matters.

CHRIS D'AETH: I'm happy to take that on notice.

The Hon. SUSAN CARTER: If you could. There are limited sources of that information. If it had come from, for example, DCJ, I assume that would be a breach of employment conditions.

CHRIS D'AETH: I assume so, too. But, again, in the absence of full information, I don't wish to speculate.

The Hon. SUSAN CARTER: Absolutely. I suppose you did not cause this matter to be reported to the police.

CHRIS D'AETH: I'll take that on notice. I haven't made any referral to the police.

The Hon. SUSAN CARTER: Perhaps you could also take on notice, once you're aware of it, what the appropriate steps are to ensure that this breach does not happen again.

CHRIS D'AETH: I'm happy to take that on notice.

The Hon. NATASHA MACLAREN-JONES: I might cover off a couple of questions around CJs. First of all, could I get an idea or find out who are the stakeholders that were consulted about the closure? I understand it was October last year, but I'm interested to know who was formally advised.

CHRIS D'AETH: Stakeholders were advised. Stakeholders were not consulted. The decision had already been taken and we were advising stakeholders of the decision of the Government.

The Hon. NATASHA MACLAREN-JONES: Are you able to speak into the microphone a bit more?

CHRIS D'AETH: Apologies for that. I'll repeat what I just said. The notice on 17 October was notice of the Government decision. It wasn't consultation prior to the Government's decision.

The Hon. NATASHA MACLAREN-JONES: Who was advised of the decision?

CHRIS D'AETH: I can give you the full list of the people, but obviously the staff and the mediators and the Office of Local Government, the New South Wales Bar Association and the Law Society. But I'm happy to take that on notice and give you the full list.

The Hon. NATASHA MACLAREN-JONES: Was anyone consulted on the decision?

CHRIS D'AETH: I'll take that on notice.

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The Hon. NATASHA MACLAREN-JONES: Is it usual practice to make a decision like that, or provide advice to the Attorney General or a Minister without consulting more broadly about the impact it could have?

MICHAEL TIDBALL: I can answer it this way: You would advise on impact. If it were a budget decision, given the nature of the budget process, you may not consult.

The Hon. NATASHA MACLAREN-JONES: Do you know how much it currently costs for the CJs?

CHRIS D'AETH: The cost of the CJs in the financial year 2024 was \$3.029 million.

The Hon. NATASHA MACLAREN-JONES: Do you have a breakdown? Some of that would be administrative costs like the physical buildings and staff. Do you have that breakdown?

CHRIS D'AETH: I don't have those figures instantly.

The Hon. NATASHA MACLAREN-JONES: Are you able to take that on notice?

CHRIS D'AETH: I'll take that on notice.

The Hon. NATASHA MACLAREN-JONES: How many staff will be impacted by the decision?

CHRIS D'AETH: I believe 15 staff members are within Community Justice Centres, CJs, but not including the mediators who are contractors.

The Hon. NATASHA MACLAREN-JONES: So 15 full time and there are contractors as well.

CHRIS D'AETH: The mediators are contractors and there are 15 staff members, not all of whom are full time, I think, but 15 staff members.

The Hon. NATASHA MACLAREN-JONES: Will the 15 staff be taken into DCJ?

CHRIS D'AETH: There are actions underway at the moment to try and assist each of those impacted individuals—correct, yes.

The Hon. NATASHA MACLAREN-JONES: Are there any volunteers involved that assist with CJs?

CHRIS D'AETH: I might take that on notice. I'm not sure.

The Hon. NATASHA MACLAREN-JONES: If so, if you could also find out the number of volunteers that assist.

CHRIS D'AETH: I'm happy to do so.

The Hon. SUSAN CARTER: I understand there has been an investment in the order of millions of dollars into a new CRM for the community justice centre. What happens to that investment?

CHRIS D'AETH: I think you're referring to Resolv, the new system taking over from the old Lotus Notes system?

The Hon. SUSAN CARTER: Yes.

CHRIS D'AETH: The intention is to continue to use that with the new service that we'll be running from 1 July.

The Hon. SUSAN CARTER: So that can be repurposed?

CHRIS D'AETH: I understand that's the case, yes.

The Hon. NATASHA MACLAREN-JONES: Can I get a better understanding of who will be able to use the new in-house system? Basically, you've got a DCJ for support and then those that will need to look at private mediation.

CHRIS D'AETH: Of course. The new in-house service will deal with disputes currently required under legislation to be referred to CJs for mediation. This will primarily be those under the Crimes (Domestic and Personal Violence) Act 2007 and disputes involving associations, as we referred to this morning. The new service will be operational from 1 July.

The Hon. NATASHA MACLAREN-JONES: What's the communication plan for that? I'm not sure if it's you or someone else, but how do you intend to notify all stakeholders that are impacted that they won't be able to use the new system, or not at all?

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CHRIS D'AETH: I understand that conversations—as I said, on 17 October there were communications with impacted stakeholders. I understand that there was some further communication with NSW Fair Trading in November of last year, which is responsible for associations.

The Hon. NATASHA MACLAREN-JONES: Do you know if Fair Trading has made any reach out to organisations or associations? The reason for my concern is that you are dealing with, quite often, voluntary organisations and those that are stretched as it is, as all volunteers are. If they're not being told, they suddenly find out 29 June and then there's panic. I'm just finding, ultimately, who's following it up and ensuring that it's common knowledge? Because it seems as though this decision was made but it's been quietly disseminated.

CHRIS D'AETH: We'll certainly be making sure that people are aware of it through the use of the CJC websites and the other forums as well. I think Mr Tidball in the morning spoke about the ongoing communication plan that will be occurring in this space.

MICHAEL TIDBALL: I imagine that if you take the referrals that come now, that the referrals would flow through to—we need to clearly communicate and provide public information on how it would be that the referrals would flow through. At that point, the nature of the service would be explained.

The Hon. NATASHA MACLAREN-JONES: In relation to the cost, \$3.29 million over that last financial year, what are the cost savings you're expecting by making this change?

CHRIS D'AETH: I'll take that on notice.

The Hon. SUSAN CARTER: Perhaps I could ask some questions of you, Dr Cockayne. In relation to the matter that was discussed this morning of the supply chains of the companies contracted to supply electric busses to the New South Wales Government, I understand that of your own volition you've commenced an investigation into that.

JAMES COCKAYNE: That's not quite correct. The legislation specifically prevents me from investigating specific cases, section 10 (1) of the Modern Slavery Act. My functions are laid out in section 9 of the Act. They do include monitoring of government actions in relation to supply chains and more broadly. I received a letter from the shadow Treasurer, Mr Tudehope, on Monday. On Tuesday and Wednesday, I was actually on scheduled medical leave. I examined the letter very closely yesterday and am in the process of formulating a response. We will be looking at the facts as alleged, and the implications, and hope to respond in the next couple of business days.

The Hon. SUSAN CARTER: If I have this correctly, you're engaged in a monitoring function under section 9 but not an investigation function under section 10 (1)?

JAMES COCKAYNE: Section 10 (1) says that in exercising my functions under section 9, I'm specifically prohibited from carrying out the investigation of individual cases of modern slavery. However, I am entitled to take them into account in considering a general issue.

The Hon. SUSAN CARTER: If you were directed by the Premier or the Attorney General, are you able to investigate specific cases then, or you're prohibited altogether?

JAMES COCKAYNE: My understanding is section 10 applies to the exercise of my functions in all cases.

The Hon. SUSAN CARTER: If there was a particular issue that is identified in your monitoring function, how then is that meant to be progressed?

JAMES COCKAYNE: I have powers under the Act to gather information, including under section 14, with the duty of cooperation of various government agencies. I have the ability to report, through the Attorney General, to Parliament.

The Hon. SUSAN CARTER: And then it's up to Parliament to direct further or take further action?

JAMES COCKAYNE: Yes, there are other vectors, if we can put it that way. For example, under section 31 of the Modern Slavery Act, government sector finance agencies, of which Transport for NSW would be one, have an obligation to include in their annual reporting information an indication on a couple of things: the steps they have taken to essentially tackle modern slavery risks in their supply chains, and anything they've done in response to me raising a "significant issue" relating to their operations. That would then appear in their annual report after the fiscal year's end.

The Hon. SUSAN CARTER: If you raise a report, let's say by the end of March, when's the next annual reporting period? Are you aware?

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JAMES COCKAYNE: It would depend on the agency. I would hazard a guess that Transport for NSW may be on the normal reporting cycle, which would probably require them to report by roughly October. That would be a guess and that would be a question probably for that department.

The Hon. SUSAN CARTER: I understand that. It's quite a long lead time, isn't it? If you do raise an issue that there is slavery in the supply chain, it's looking like quite a long response time. Do you have sufficient resources in your office to monitor these issues and undertake responses to the monitoring adequately?

JAMES COCKAYNE: We have been developing our monitoring and reporting function. The legislation covers some 420 or more agencies and requires all of them to report annually, in different ways, and also expects my office to help them develop their capabilities. We have been in conversation with government for some time now about what level of reporting and monitoring bench strength is necessary. This is a brand-new office, a brand-new government function, so it's probably going to take some time to identify exactly what level of resourcing is suitable.

The Hon. SUSAN CARTER: But you have the resources to respond to the letter from the Hon. Damien Tudehope in relation to this concern in relation to the electric busses?

JAMES COCKAYNE: We'll certainly be doing our best with the resources available.

The Hon. SUSAN CARTER: Obviously there are questions of importation, but how do we go about detecting slavery in overseas supply chains? What's available to us, so that we can test these allegations?

JAMES COCKAYNE: I think one of the central questions here is, "What is a reasonable step?" The obligation on government agencies in these kinds of circumstances is to take reasonable steps to ensure that they do not procure goods and services made with modern slavery. At the moment, the guidance they have on what reasonable steps are in different circumstances comes from my office. We issued a 200-page document, *Guidance on Reasonable Steps*, at the end of 2023. It goes partly, amongst other things, to the question that you've just put, Mrs Carter: the question of how can a government buyer understand where risk arises throughout its supply chain.

We have made their life a little bit easier by providing them an inherent risk identification tool that for every New South Wales Government procurement category sets out a level of risk. Heavy electric vehicles, procurement of heavy vehicles, is high risk under that inherent risk identification tool. In fact, procurement of all vehicles is high risk. Something like 27 out of the 374 procurement categories in the government taxonomy are high risk. That covers everything from vehicle purchasing, to inmate wages, to uniforms, cleaning supplies, and flooring and carpeting.

This tool that I've mentioned sets out the methodology by which we make that assessment. All our sources, they're all public. That's all in the public domain; it's available on our website. What this allows the government buyer to do is to understand if I'm purchasing in this particular procurement category, I'm purchasing this type of good, how risky is it from an inherent perspective. Then supply due diligence is necessary. Additionally, we provide them with tools to engage suppliers to manage risks further down the supply chain, which is often, as you've pointed out, offshore.

What we discourage is what is sometimes called contractual cascading, and relying on that as the sole solution. That is not best practice. To rely only on your tier 1 supplier to undertake all of the work and monitor risks elsewhere, on their own, with no active engagement from you as a buyer, is not accepted best practice and not what we propose under the *Guidance on Reasonable Steps*. So I suspect that will be a matter we may be looking at in this particular issue.

The Hon. SUSAN CARTER: I'm aware that the American Government has essentially blacklisted certain areas, especially because of the very high risk of goods being produced by Uyghur slaves, for example. In the same way that we pretty much follow the TGA, do we follow that same approach in New South Wales, or do we always make independent inquiries?

JAMES COCKAYNE: We take their assessments into consideration when we identify the risk level of specific procurement categories that are reflected in the inherent risk identification tool.

The Hon. TANIA MIHAILUK: My questions are to Ms Dowling. Can we have a response to the questions that I asked earlier today in relation to the stipends?

SALLY DOWLING: Just to clarify, there is no stipend. There is no regular ongoing payment.

The Hon. TANIA MIHAILUK: So it is a one-off fee.

SALLY DOWLING: It's a fee, yes. And I don't have the final details of the amounts that were charged. They haven't yet been paid, but I will take that on notice and provide it to the Committee in due course.

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The Hon. TANIA MIHAILUK: What was the arrangement that you made with Sir Max Hill in that case?

SALLY DOWLING: I would need to look at the documentation to answer that question accurately.

The Hon. TANIA MIHAILUK: You will take that on notice?

SALLY DOWLING: I will.

The Hon. TANIA MIHAILUK: So the financial arrangement made and the amount of money that either has or will be paid to Mr Hill.

SALLY DOWLING: Yes.

The Hon. TANIA MIHAILUK: Is that the same for Professor Julia Quilter? You don't have the financial arrangements?

SALLY DOWLING: That's right.

The Hon. TANIA MIHAILUK: Could you take on notice what the arrangement was or is still with Professor Quilter and the amount of money that either has been or will be paid for her services? I assume their services are not ongoing in that case.

SALLY DOWLING: That's correct.

The Hon. TANIA MIHAILUK: How did it come about to actually take the services of Sir Max Hill?

SALLY DOWLING: I know Sir Max Hill through my involvement in the heads of prosecuting agencies of the Commonwealth and also the International Association of Prosecutors. He, as you probably know, led the Crown Prosecution Service of England and Wales, which is a service that is very similar to the ODPP but much, much bigger. He was also involved in a very detailed review of sexual assault prosecutions conducted in England and Wales during his tenure. He recently finished his tenure as the DPP of England and Wales and is now in private practice. He seemed to me to be an extremely appropriate choice of a person with a detailed understanding of the issues and was an appropriate choice to review this important document.

The Hon. TANIA MIHAILUK: As an aside, does he still have to notify ACOBA, the Advisory Committee on Business Appointments, in England, if he undertakes other work?

SALLY DOWLING: I don't know.

The Hon. TANIA MIHAILUK: You are not aware of that?

SALLY DOWLING: I'm not aware of that.

The Hon. TANIA MIHAILUK: There is an article titled "Former top prosecutor Max Hill admonished for 'unambiguous' breach of revolving-door rules", and the chair of ACOBA stated that Mr Hill "chose to blatantly disregard the processes detailed to him" in regard to taking on work post-his time as a DPP in the UK. Can I also ask you about a couple of issues in relation to the opportunities that you found in progressing this report? One, do you think that there are sufficient funds to be able to actually progress with your findings? Do you have the funds? One of the points, you do talk about subject to funding—number six. Are there sufficient funds already within your office?

SALLY DOWLING: Currently, no. We would need more funding for that. Currently there is not sufficient funding.

The Hon. TANIA MIHAILUK: Will you be making an application to the AG or Parliament, or however you seek further funding? Is that where you would tend to progress putting in a detailed report as to how much money you may need? I am not sure whether there have been some costings to your report, in terms of what you would like to progress with?

SALLY DOWLING: We have a lot of competing funding pressures, as you would imagine. In particular, we are struggling to meet the needs of the Child Sexual Offence Evidence Program, which has been rolled out across the State. Allocation of resources within my office needs to be done on a priority basis. As you will have seen from reading that report, the preparation and screening of briefs is very detailed, and a lot of lawyers look at each brief. It may be that, rather than have a fourth-tier of review at that point of arraignment, we can better bolster the decision-making at the earlier stages of review.

The Hon. TANIA MIHAILUK: Yes. So you are saying that you are considering the fourth tier.

SALLY DOWLING: That's right.

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The Hon. TANIA MIHAILUK: You are not definitely committing to it because of this funding issue.

SALLY DOWLING: Correct. More detailed analysis needs to go into the decision of whether that is the best allocation of resources at this point in time.

The Hon. TANIA MIHAILUK: Have there been any costings, even to establishing working groups? I think you recommended this in numbers four and five of the opportunities for improvement.

SALLY DOWLING: Yes.

The Hon. TANIA MIHAILUK: Would that also be subject to funding?

SALLY DOWLING: No, they have already been established.

The Hon. TANIA MIHAILUK: They have already been established, right. Sorry, it still says "establishing". So they have now been established, prior to the completion of that report. Is that right?

SALLY DOWLING: Yes.

The Hon. TANIA MIHAILUK: Apart from internal stakeholders—for example, in number five, "Establishing a Trauma and Memory Working Group"—you seek assistance from academic experts?

SALLY DOWLING: My understanding is the external stakeholders have not yet been appointed to either of those working groups, but internal stakeholders have been identified and approached.

The Hon. TANIA MIHAILUK: Will they also be given some sort of fee to assist with the working group—the external—or has that not been considered yet?

SALLY DOWLING: I can't answer that question at this stage.

The Hon. TANIA MIHAILUK: You can take that on notice, if you intend to do that. Is there a ballpark figure for any of the costings? For any of these recommendations being proposed coming out of the report, is there some sort of figure that you have already considered that it will cost?

SALLY DOWLING: No. Most of the further opportunities for improvement can be funded internally. We already do a great deal of training within our office, so improving the training is something that we would absorb within our internal budget. As I've said before, external stakeholders, whether or not they are paid, they haven't been identified and that issue hasn't been considered yet. I have already answered the question in relation to the possible arraignment prosecutor.

The Hon. TANIA MIHAILUK: What about number nine—changing a memorandum of understanding with New South Wales police? Have you already undertaken the briefing of the police in relation to that?

SALLY DOWLING: Those discussions are underway.

The Hon. TANIA MIHAILUK: Was there any need to manage, perhaps, some staff fallout over some of the issues that we have from time to time read about? Was there anything in the context of providing an opportunity for more junior staff to be able to voice some of their concerns within the process, or is that something that is already—

SALLY DOWLING: I'm not sure what you mean by that question?

The Hon. TANIA MIHAILUK: You have got a three-stage process. Perhaps, at some stage, somebody may not agree with a decision made at an earlier stage. What is the process for dealing with that?

SALLY DOWLING: That regularly happens. That's the whole point of the multiple reviews.

The Hon. TANIA MIHAILUK: Does it then finally come before you, Ms Dowling?

SALLY DOWLING: Not necessarily. It depends on the delegation—what decision and what stage. I can assure you there are regular disagreements between lawyers as to particular matters and charges, and the system is designed to tease out that disagreement.

The Hon. TANIA MIHAILUK: And then there is a process of review afterwards, yes?

SALLY DOWLING: Yes.

The Hon. TANIA MIHAILUK: Or debrief, whatever you may call it, post a case.

SALLY DOWLING: It's a review.

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Ms SUE HIGGINSON: I would love to just start again with the Community Justice Centres, following on from what we talked about earlier. I think the Attorney General may have taken it on notice; I don't know. Will the cost-benefit analysis be a document or something that can be made public or is that something that you'll consider?

MICHAEL TIDBALL: I have heard the Attorney General's response today, and I've heard your questions. If I can take that on notice and try to provide something to the Committee, that may be of assistance.

Ms SUE HIGGINSON: I say it in all openness, I think there is an appetite to try to persuade the Government to not make the decision it is making. I think that is a fair thing. If people want to make that case, then they should be able to make that case. Mr Tidball, if it's okay, we will carry on with where things are at with Moree and the building or the location of the long-promised facility. What do we call it? What is it, if it's not a—

MICHAEL TIDBALL: I don't know what its formal title is, but I think we refer to it as the Moree bail accommodation service.

Ms SUE HIGGINSON: Accommodation, right.

MICHAEL TIDBALL: Can I just say, it's always a difficult balance. The court system and legislation and the legal policy of the Attorney clearly fits within the remit of these estimates. I'm also mindful that Minister Dib is up next week on Youth Justice, equally. I am not using that to block responding to questions. I am mindful, though, that a lot of this does fall within Minister Dib's responsibilities next week. I am fine for the questions to come to me either way. To a certain level, I am certainly happy to speak further to the evidence which I gave this morning. But in terms of other detail, I am mindful that the Minister will be here next week, and Paul O'Reilly will be as well. Mr O'Reilly's work with Youth Justice, in terms of a lot of the detail, he will be able to speak in a much more effective way about the implementation than have I. But at a high level, I'm happy to keep going now.

Ms SUE HIGGINSON: I really appreciate that. I would love to know where we are at with the bail accommodation centre.

MICHAEL TIDBALL: The intent was always that it was going to be a leased service, as I understand it. As an auspice service, the first task was to commission an ACCO to run that service. The ACCO that has been commissioned happens to be the same ACCO that runs the service whereby young people who are in need of a service that runs in the evenings—it is the same for youth in Moree. It's actually the same service. The thought was that if you had an ACCO doing both of those, there would be more of a connection between the two. But just in relation to the service itself, the tender was finalised in early February. The consortium of Miyay Birray Youth Services and the Aboriginal medical service and SHAE Academy have been selected to run the new Moree bail accommodation program, and it fits within that \$26.2 million package in the last budget. The plan is certainly for the service to be running mid-2025. Can I stress, though, that we are being very careful to have the ACCO lead that process.

Ms SUE HIGGINSON: Which is great, and good for Moree. Ms Dowling might have some input, but this question is to you too, Mr Tidball. I read the decisions of Lonergan and Rothman in their Supreme Court cases with a great degree of concern, possibly fear. It's all right, Ms Dowling, I will tell you about them. It's okay, I really am not trying to catch you in any way. It is just about the application of section 22C and the incoherence with section 4 and section 6 of the Children (Criminal Proceedings) Act. These are matters that have now been before those Supreme Court justices. Lonergan actually said:

... a lack of coherence between the bail court's obligations to comply with ss 4 and 6 of the Children (Criminal Proceedings) Act and the requirements of s 22C, which treats a relevantly charged child's freedom in a less favourable way than an adult's freedom in exactly the same circumstances.

I am curious whether that is something that is being received with the concern that I strongly suspect those judges are speaking it? Inside the machinery of the Attorney General's department and public prosecutions, is this something of concern internally?

MICHAEL TIDBALL: I am reluctant to—and I don't think it's my place—comment on policy or critique policy. What I would say is that in the advice that the department provides to government, we are always very careful using the facility of BOCSAR and, in other matters, FACSIAR, to ensure that we have a high-quality evidence base in all the work that we do, and we provide advice to the Government. Beyond that, the duty as Secretary that I consider I have is clearly to ensure that we uphold and comply with the totality of all legislation. In the case of the particular sorrow that we observe out of events like this morning, and knowing something of the causation of those things, ensuring that the entire list of programs and supports that we have—so the statewide bail accommodation service, Youth on Track, some of the work around short-term remand—are tightly coordinated. All of the liaison between the police and the Youth Justice people and the other service delivery arms

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of DCJ, ensuring that they are tightly coordinated. But in terms of the policy itself, there's not much I can add to that.

Ms SUE HIGGINSON: Are we still spending \$2,814 per day to incarcerate a young person, or is it more if they are on remand?

MICHAEL TIDBALL: I will need to check the number. That sounds about right.

Ms SUE HIGGINSON: I think it's about right. In terms of making sure that the policy that is being implemented is credible and that the Government is not falling into a state of a complete breach of the rights of children or young people, is there anybody inside of Government considering whether there would be a case to literally just provide \$2,814 per day directly to children or young people? Has that ever been considered, to change their lives—actually? I'm actually honestly considering it. Is that anywhere in a matrix? If the Government was to provide \$2,814 per day to each of these young people who are, potentially, the ones who are making the bail applications; is that an option?

MICHAEL TIDBALL: Specifically to that proposition, I have not been aware of a piece of work being done specifically on that.

Ms SUE HIGGINSON: If somebody was to suggest that that could be a piece of work that should be looked at, who would they talk to? How would they say, "How about we go to wherever it is in Western Sydney and the bail court, and we stand there, and we say to the kid, 'Hey, how would you feel if you got \$2,814 every day for this week? Do you think you would go out and commit more crime?'" I'm serious. Instead, we're going to say, "No, we'll spend this money and we'll lock you up. You'll get three meals a day." That's what the Premier told me he is happy about two days ago. He feels good that he can feed them for three meals a day. I'm just wondering if we gave them an allowance of \$2,814 whether we would see those people not have a criminal tendency the next day. Is it a bona fide exercise to look at whether that is something the State could be doing right now?

MICHAEL TIDBALL: The department would respond to whatever we were directed to inquire into with policy work, legislative work and consulting with stakeholders. I don't know that there's a lot I can add to that.

Ms SUE HIGGINSON: Thank you. I'm really enlightened to know that work hasn't been done or that you're not aware of that work.

The Hon. SUSAN CARTER: Dr Cockayne, if I could just come back to you, I understand that you expressed concerns about slavery risks inherent in overseas commercial surrogacy arrangements. I'm wondering if you've had any opportunity to discuss this with the Attorney General and develop any mechanisms, policies or legislative changes which would mitigate, as much as is possible, the risk of anybody in New South Wales using an overseas surrogate who has in fact been coerced into surrogacy.

JAMES COCKAYNE: To my knowledge, that has not been discussed between myself or my office and the Attorney General or his office.

The Hon. SUSAN CARTER: Were you asked to contribute to the current review of the New South Wales Surrogacy Act?

JAMES COCKAYNE: I would have to take that on notice.

The Hon. SUSAN CARTER: If you would, I would appreciate that. Have you given any thought to what measures we could take to protect the use of overseas commercial surrogates who are, in fact, involved in modern slavery? Is this something we could do as New South Wales alone, or would we have to be part of a coordinated Commonwealth action? Have you had any thoughts about that?

JAMES COCKAYNE: My thoughts are probably best summarised in the letter that I think you referenced earlier in the day in your conversation with the Attorney General. The central challenge here is that the essential risk for a woman carrying a child to term, from a modern slavery perspective, is one of informed consent. It's very difficult for the New South Wales Government, as a matter of policy and policy design, to effectively regulate the consent of someone overseas in a commercial setting. Often there are risks of manipulation, coercion or even fraud that might taint that consent. There are challenges from any regulatory design perspective for a State government in Australia to effectively regulate such a transaction.

There are also challenges in relation to how this interfaces with foreign affairs powers and functions and, indeed, other aspects of governmental power that are under the Commonwealth Constitution, that are vested to the Commonwealth. While there are certain safeguards that could be imagined—for example, the creation of a whitelist of jurisdictions which a government felt adequately regulated surrogacy arrangements to the extent that

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it was safe for New South Wales clients to essentially be purchasing surrogacy services in those jurisdictions—something like that would be difficult, is my view, for an individual State to organise and implement effectively and would have complex legal and political implications in which Canberra would need to be consulted.

The Hon. SUSAN CARTER: With respect to the development of a whitelist, what sort of resources would that take in order to maintain the accuracy of any whitelist?

JAMES COCKAYNE: I think I would be entirely speculating if I offered an answer on that. That would be a matter for government in developing a policy proposal.

The Hon. SUSAN CARTER: Would your office, for example, have the resources to annually monitor compliance of any surrogacy services that were on such a whitelist, should it be formed?

JAMES COCKAYNE: If we were tasked to do that, we would, given our very limited resources, certainly be reorienting resources from one of the other functions that exist under the Act.

The Hon. SUSAN CARTER: I don't know whether you've had occasion to look at the Surrogacy Act, but a requirement for a parentage order is a certificate from a counsellor who is required to be independent. One of the things that that counsellor is meant to do is provide a decision as to the free and informed consent of the surrogate. That was, of course, drafted in the context of altruistic surrogacy occurring in New South Wales. What issues do you see with being able to assess the free consent of women who are located overseas within surrogacy clinics?

JAMES COCKAYNE: I think fairly self-evidently there are logistical—access to information, language, privacy, health data access—barriers, and resourcing issues also for any counsellor in Australia or New South Wales expected to undertake that inquiry.

The Hon. SUSAN CARTER: You may be aware of the report of the UN Special Rapporteur who warned about multiple pregnancies in a surrogacy situation and the apparently high likelihood of surplus children effectively being sold. Is that another slavery risk in commercial surrogacy?

JAMES COCKAYNE: In theory, yes, it could be. In most of the cases of which I am aware, in fact, as opposed to theory, modern slavery risks tend to arise primarily in relation to the consent of the mother carrying the fetus. Difficult questions arise around parentage in some of these contexts, but they fall outside my mandate.

The Hon. NATASHA MACLAREN-JONES: I actually have a couple of questions for Ms Hitter in relation to panel lawyer work and Community Legal Centres. I understand that Community Legal Centres wrote to the Attorney General in May 2023, and a response was provided 7 December 2023. In that response he said that "a thorough review of the relevant policies and business arrangements regarding panel lawyers" would be undertaken. I just wanted to know if that has occurred.

MONIQUE HITTER: It's still in progress. That arrangement is still under review.

The Hon. NATASHA MACLAREN-JONES: What's the time frame?

MONIQUE HITTER: I'm hoping before the middle of the year. Around June or July we should have a result and communicate that to Community Legal Centres. That's my hope.

The Hon. NATASHA MACLAREN-JONES: And that will be made public?

MONIQUE HITTER: Yes.

The Hon. NATASHA MACLAREN-JONES: I understand that these restrictions don't exist in Victoria. Is there any reason why we haven't pursued it earlier?

MONIQUE HITTER: It's a different arrangement in New South Wales. I might just say that our policies, historically, have been that all community legal centres can apply for a grant of Legal Aid and get disbursements for their matters if the matters are within our policies. Only a select few—and it's been a historical list of up to, I think, six legal centres, but I'm not quite sure of the number—can get solicitor costs as well as disbursements. That, of course, is on top of the funding they receive in order to do these matters. Historically, that's been the arrangement where Legal Aid has not been able to provide a service. To fill that gap, we've paid legal centres to do the work. Because this is a historical arrangement and things have moved on quite a lot, that arrangement needs to be reviewed very carefully so that we're not duplicating a resource that is obviously a scarce resource. That is one issue.

The second issue is that most of the panel work that is done is duty lawyering, either in the criminal courts or in the Federal Circuit and Family Court. Historically—and I think it's the case now—most legal centres do not do that work. They do not do Local Court work. They don't do duty work in the Family and Federal courts

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either. Those panel arrangements are very much about that kind of work. There is a question, even if they were on the panel, about whether or not they would be able to do that work in any event, because that's not their core work. All of these issues need to be really carefully considered, and we need to consult with the sector as well on it. That's what we're doing right now. It is coinciding with us developing a new Legal Aid application system, which we're only midway through. We hope to go live with that new system towards the end of the year.

The Hon. NATASHA MACLAREN-JONES: Do you have a breakdown of the costs that have been paid to Legal Aid NSW for the additional private practitioners?

MONIQUE HITTER: The Legal Aid application system? Yes, I do. I don't have it with me, so can I provide that on notice please?

The Hon. NATASHA MACLAREN-JONES: Yes, that's fine. Just for the last 12 months is fine. I'm also interested to know about the work that has been undertaken to develop a needs-based funding methodology for the community legal centres.

MONIQUE HITTER: I might refer that one to Mr McKnight.

PAUL McKNIGHT: I'm not sure of the context of your question. Perhaps you could give me a little more context.

The Hon. NATASHA MACLAREN-JONES: Do you have an elaboration?

The Hon. SUSAN CARTER: The context is: Has work been undertaken to develop a needs-based funding model for the community legal centres? The funding model doesn't seem to have changed in quite some time. Is there also an assessment of which community legal centres are serving bigger populations or smaller populations? Which ones are serving them efficiently and effectively? Which ones, perhaps, are not as efficient and effective? Is the funding going to follow need and success, or is it going to continue along existing paths?

PAUL McKNIGHT: That's a lot of questions.

The Hon. SUSAN CARTER: It's context.

PAUL McKNIGHT: It's very helpful. The beginning point to your question is probably the review of the National Legal Assistance Partnership, which was conducted by Mr Mundy as required by the NLAP. I think it is fair to say that—

The Hon. SUSAN CARTER: Can I just stop you? Is that publicly available?

PAUL McKNIGHT: Yes, that's a review that was commissioned principally by the Commonwealth but by all the parties to the NLAP. It's publicly available on the Commonwealth AGD website.

The Hon. SUSAN CARTER: I understand that Legal Aid is responsible. The funding goes to Legal Aid and then Legal Aid passes it to the CLCs?

PAUL McKNIGHT: That's right. In New South Wales the funding under the NLAP, the State funding and the funding under the PPF that goes to CLCs is all wrapped up into a pot that is distributed and administered by Legal Aid. However, the decisions about which community legal centres get that funding are decisions taken by the Attorney General himself. At various points of the process, it has been a little bit different.

The Hon. SUSAN CARTER: What's the methodology for that decision-making?

PAUL McKNIGHT: At various points the methodology has been different. It is not the approach recommended in the Mundy review at present. I think the recommendations of that review remain to be further considered by Government.

The Hon. SUSAN CARTER: Are we bound by those recommendations or are we free to develop our own methodology?

PAUL McKNIGHT: What happened in that process was that the Commonwealth, after receiving the Mundy review, embarked on negotiations with States and Territories to develop a new National Access to Justice Partnership. That was entered into late last year by the Attorneys-General. I think it's fair to say that the Commonwealth, in those negotiations, took a stance that effectively replicated the funding distribution model in the former NLAP. What the Commonwealth did in that was create pools of funding that were targeted at particular sectors. There is a pool for Legal Aid; a pool for CLCs; a new pool for women's legal services, which are a subset of the CLC sector; a specific funding pool for Aboriginal legal services; and a new funding pool—

The Hon. SUSAN CARTER: Thank you for that context but, with respect to the allocation of the CLC pool, how is that going to be done in New South Wales? What methodology will we see by June?

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PAUL McKNIGHT: The AG, as he mentioned this morning, has now written to the CLCs. In that letter, he proposes that the existing funding pool for CLCs will be rolled over at their existing levels, with an allowance for escalation and pay parity on top of their pool. Essentially, we're maintaining the status quo. On top of that, as I was explaining this morning to Dr Cohn, there is a small uplift from the NAJP funds that is yet to be determined.

The Hon. SUSAN CARTER: There is a significant uplift—I think I'm correct—in the amount of funds in the CLC pool with this new agreement. Isn't this the time that we are able to look at a new methodology that responds to the volume of work done by the CLCs, rather than the historic allocation?

PAUL McKNIGHT: That is always an option.

The Hon. SUSAN CARTER: Is it an option that is under active consideration?

PAUL McKNIGHT: It is not.

The Hon. SUSAN CARTER: Why is that?

PAUL McKNIGHT: The sector has been seeking funding clarity going forward, as you would appreciate for many CLCs.

The Hon. SUSAN CARTER: Does the sector speak with one voice about methodology?

PAUL McKNIGHT: I don't think any sector speaks with one voice about anything, but we have been deeply engaged with the peak on this. It's fair to say the CLCs are really looking to ensure that they have some certainty about how much money they've got going forward, what that looks like for them in terms of their service delivery and how they might proceed. In relation to the process of reallocating funds, a process around that was undertaken in 2018 when a new application process was implemented. I think it's fair to say that, out of that, there was not a huge change in the allocations that occurred.

The Hon. SUSAN CARTER: This time around, is there potential for change to a more needs-based approach?

PAUL McKNIGHT: This time around, as I say, the proposal is to roll over existing funding levels for CLCs to provide them with that certainty of funding going forward so that they can maintain their services.

The Hon. SUSAN CARTER: So it will roll over even if their activities or the populations they serve have changed significantly since the 2018 funding was set?

PAUL McKNIGHT: Yes. I'm not sure there are CLCs that have—

The Hon. SUSAN CARTER: Can I just ask you, Mr McKnight, how much was provided to each CLC for its general legal services in the last financial year?

PAUL McKNIGHT: That sits, I think, as a schedule in the Legal Aid space, so Ms Hitter might have that with us.

The Hon. SUSAN CARTER: Can you provide that on notice and also where it can be publicly accessed?

PAUL McKNIGHT: Absolutely. Perhaps Ms Hitter could take that one.

MONIQUE HITTER: Yes, I can take that one.

The Hon. SUSAN CARTER: How do you measure the productivity of each CLC?

PAUL McKNIGHT: This is a really interesting—

The Hon. SUSAN CARTER: Do you measure the productivity of each CLC? Yes, no—do you?

PAUL McKNIGHT: I'm just taking a step back because this has been the subject of a great deal of inter-jurisdictional debate.

The Hon. SUSAN CARTER: Do we, in New South Wales, measure the productivity of each CLC?

PAUL McKNIGHT: I think the answer to that question is, what we measure and what we report on—

The Hon. SUSAN CARTER: No. Do we, in New South Wales, measure the productivity of each CLC?

The Hon. EMILY SUVAAL: Point of order: Mr Paul McKnight was attempting to answer the question. I pay respect to the Attorney General's sage words as he left the hearing about procedural fairness for the witness, under paragraph 19 of the procedural fairness resolution.

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The Hon. SUSAN CARTER: To the point of order: I believe Mr McKnight was trying to rephrase the question. I really just want a simple answer yes or no.

The Hon. EMILY SUVAAL: He was trying to answer the question, Chair.

PAUL McKNIGHT: Under the NLAP agreement, CLCs are required to provide a high level of information about the services they provide to their community. Those reports are received by New South Wales and they are passed on to the Commonwealth. It's comprehensive reporting. What is missing, and I think it is what everybody recognises is missing—the sector, Commonwealth, us—is an outcomes framework that would tell us whether those services are actually achieving an outcome in the world. There are commitments under the National Access to Justice Partnership to develop that outcomes framework at a national level. It's a commitment I particularly care about, and I think it's something that has been missing from our framework.

The Hon. SUSAN CARTER: And a time frame for those being developed?

PAUL McKNIGHT: My recollection is that is to be developed in the first two years of the NLAP. I could be wrong about that; it might be the first 12 months. Can I take that on notice?

The Hon. SUSAN CARTER: Please. Thank you very much.

The Hon. TANIA MIHAILUK: Ms Dowling, I'm interested in the organisational graph on that report, page 41. You've got the three deputy directors and one's acting. There's a vacancy at the moment, is that what that means?

SALLY DOWLING: No. My predecessor had two permanent deputy directors and one acting deputy director and I have retained that structure. At the moment we've got various senior prosecutors rotating through that position.

The Hon. TANIA MIHAILUK: I just wanted to clarify that. I also want to just ask very briefly, if I may—I note on page 11 of the report you refer to discontinuation of proceedings. You actually then elaborate—I think it's 17 that were discontinued out of the total, 327 and 17.

SALLY DOWLING: That's right.

The Hon. TANIA MIHAILUK: They were for discretionary and evidentiary grounds. You elaborate on one example. You give an example on page 11 about a complainant's mental health deteriorating. Why did you choose to give one example? Why would you not give all of the examples? Why couldn't we list the 17 without, perhaps, providing the detail but actually giving a little bit more clarity as to why those matters are discontinued?

SALLY DOWLING: No particular reason—just space, and because it's an example. It wouldn't be an example if all of them were listed out.

The Hon. TANIA MIHAILUK: You specifically use that. I'm just wondering why not be more clearer as to what the other reasons are.

SALLY DOWLING: There seems to be a lack of understanding across the community as to why matters are discontinued on discretionary grounds. This is a really good example—an almost typical example—of what can happen and why we discontinue matters. Often quite—

The Hon. TANIA MIHAILUK: So out of the 17—

SALLY DOWLING: I'm just trying to answer your question, if you'd let me finish, please.

The Hon. TANIA MIHAILUK: You said that we didn't have an understanding, first, so you can elaborate on that?

SALLY DOWLING: There is a great deal of curiosity in the community as to why matters might be discontinued relatively close to trial. This is a good example of a real-life case that required the discontinuation of a matter, in this case, mid-trial.

The Hon. TANIA MIHAILUK: Okay. In total there were 17; would any of the other 16 be for similar reasons?

SALLY DOWLING: I can't answer that without going back to look at them.

The Hon. TANIA MIHAILUK: Will you commit to actually providing some more detail as to the other 16 cases?

SALLY DOWLING: I'm not planning to at this moment.

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The Hon. TANIA MIHAILUK: If you're prepared to give one example here, I don't understand why not others. I think this is probably, out of the 17, probably the only example that's got the mental health issues in the way that you've elaborated it there.

SALLY DOWLING: What's your basis for saying that?

The Hon. TANIA MIHAILUK: It would have been interesting to—if you're going to give one example, why not give more? I think that's what we were thinking would be in the report, but there is only one such example. Why not give more? I don't understand. What's your reason for not elaborating on the other 16 cases?

SALLY DOWLING: As I just said, this is an example. I gave it for an educational reason, and I haven't given any other examples.

The Hon. TANIA MIHAILUK: You've said this is an educational report. Why not provide that level of information? You can redact anything that's private. Nobody needs to know the specifics, but it would have been of great interest to this Committee and to the public. As you say, there's a lot of misunderstanding. People don't understand the processes. This was a wonderful opportunity perhaps to actually list out the 17 examples and be a bit more clear as to what those discretionary or evidentiary grounds are. I think that's been very specifically put in there, Ms Dowling, to suggest that that perhaps is what is really the crux of the issue, but it may be just a one-off in this particular example, as opposed to all the examples.

On a separate matter, I just want to touch base on the article that appeared in *The Australian* yesterday. That's the "Why are we here?" article, which I understand my colleague asked the Attorney General about earlier. The lawyer in question there filed a no-bill application prior to the trial, calling for the prosecution to drop the case, and that was then rejected. It was rejected by the director's chambers—that's what's quoted in here—so I'm assuming the DPP has rejected it. Is there a process for review for that? How do you deal with an application? Is that just a matter that's determined at that point?

SALLY DOWLING: The process is the same one that's described in the Sexual Assault Review, even though that's not a sexual assault matter. An application is made by an accused person that there be no further proceedings. The solicitor with carriage, the prosecution team, then prepares a report. Obviously, as you well know from reading the review, only the director or a deputy director can discontinue proceedings once they've been committed for trial. So the prosecution team will prepare a report. It will come to director's chambers. A senior legal adviser will then do a second report and it will go to either myself or to a deputy director for consideration.

The Hon. TANIA MIHAILUK: That particular trial that they were referring to yesterday—it's the same process?

SALLY DOWLING: Yes. It's the same process in every matter.

The Hon. TANIA MIHAILUK: All right. Do you think that warrants any review of that process?

SALLY DOWLING: No.

The Hon. TANIA MIHAILUK: In light of what happened in this particular case?

SALLY DOWLING: What I'd like to say about that matter—under the Crown Prosecutors Act, section 5, Crown prosecutors conduct and appear as counsel in proceedings on behalf of the director. Crown prosecutors are obliged to act on the instructions of the director and they have no power to discontinue or not proceed with a prosecution that has been committed for trial to a higher court. That's section 5 (3) of the Crown Prosecutors Act. Subsection (3) explicitly provides that a Crown prosecutor does not have the function of determining that no bill of indictment be found or directing that no further proceedings be taken against a person. Only the director has that function under section 7 (2) (a) and (b) of the DPP Act, and under section 33 of the DPP Act they can only be delegated to a deputy director, hence the process that I have already explained to you. An individual Crown prosecutor who feels or considers that they have an ethical conflict arising from a direction to proceed should raise that conflict with the senior Crown prosecutor or with director's chambers. If it can't be resolved then the matter will be re-briefed to another Crown prosecutor.

The Hon. TANIA MIHAILUK: If they have an issue with it, and it's in conflict with what the deputy director is—

SALLY DOWLING: It will be re-briefed.

The Hon. TANIA MIHAILUK: That's interesting. Do you think there's room for any legislative change in that regard then or not?

SALLY DOWLING: No.

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The Hon. TANIA MIHAILUK: You're reciting parts of the Act and saying that they're constrained by that.

SALLY DOWLING: No lawyer in this State—

The Hon. BOB NANVA: Point of order—

The Hon. TANIA MIHAILUK: I'm just asking, it's nothing—

The Hon. BOB NANVA: Sorry, Chair but I think the Hon. Tania Mihailuk is asking for an opinion there.

The CHAIR: Sorry, I can't hear you.

The Hon. BOB NANVA: I think an opinion is being solicited from the witness, which is not in accordance with the procedural fairness resolution.

The CHAIR: Do you want to rephrase the question?

The Hon. TANIA MIHAILUK: Ms Dowling is fine to answer it. It's just an opinion. I don't think there's anything in there that's very controversial.

The CHAIR: It's not appropriate to ask for opinions. Do you want to rephrase the question, perhaps?

The Hon. TANIA MIHAILUK: I think Ms Dowling was happy to answer that. I'm just interested to know what is the process of review and the process that happened at that point. Ms Dowling has explained it. That's fine. I'm happy to leave that level of questioning at that point—well, I have a couple more questions in relation to that. Ms Dowling, can you tell me why your office opposed the no-bill application but later admitted in opening that the matter had no reasonable prospects?

SALLY DOWLING: The reasons for decision-making are privileged, and I don't propose to waive that privilege.

Ms SUE HIGGINSON: Heading back to the youth bail laws and the Attorney General's legislation, what is the department recommending in terms of any matrix? Is there any matrix to measure the effectiveness from a crime-reduction perspective? I'm looking for any mechanics that might have been—

MICHAEL TIDBALL: The only mechanism akin to a matrix would be the BOCSAR reporting.

Ms SUE HIGGINSON: What would the department normally look for when measuring success, failure or concern? Is it looking for that? Is it the fact that the Government has said this is what it's doing, and then that's it, or does the department of the Attorney General have a follow-up role in relation to what the Attorney General has done in passing the legislation to amend the bail laws?

MICHAEL TIDBALL: We would rely, always, on the evidence forthcoming from BOCSAR. BOCSAR, although a part of the department, has—as you'd be aware from over the years—a degree of empirical independence. The empirical integrity of its work is highly respected.

Ms SUE HIGGINSON: Absolutely, we'd be lost without them.

MICHAEL TIDBALL: We do rely on BOCSAR. If I think across key areas, I think of, for example, DV reform and coercive control. There is a conversation that happens with BOCSAR, not just with a view to instructing BOCSAR to do particular work, but there's constantly a dialogue about the most effective way that they can report and provide evidence to inform policy processes and the impact of legislative reform.

Ms SUE HIGGINSON: On that basis, has BOCSAR provided any advice about what it's doing in terms of measuring? Has it been asked to measure any reduction in crime or the effectiveness of locking up kids on remand? I'm asking this because BOCSAR has clearly reported—I would suggest a 34.4 per cent increase in young people on remand in one year's time is unprecedented. I could be wrong, but I would suggest that's unprecedented. Have we ever had an entire one-third increase in the incarcerated figure—that is, young people being placed on remand? Have we ever before seen such an increase in such a short period of time; are you aware?

MICHAEL TIDBALL: Ms Higginson, I'm very happy to take that on notice. I'm reluctant to speculate, which is what I would be doing.

Ms SUE HIGGINSON: If we haven't considered that question, BOCSAR put this report on the table in December. Perhaps it only surfaced last month or this month, but a remand population increase of 34.4 per cent in 12 months seems astronomical to me. It would seem astronomical, would it not, or are we all sitting around going, "Oh, yeah, that's pretty normal"?

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MICHAEL TIDBALL: If I can just supplement that answer just slightly, the other mechanism there is the Bail Act Monitoring Group, which operates within Mr McKnight's area. It also has a responsibility to monitor the operation of the bail system and the enabling legislation.

Ms SUE HIGGINSON: In that system right now, is anybody ringing alarms or flashing buttons or squealing, or is everyone just going, "Oh, gosh, yes, this is precisely what we expected. And here it is, we've got 34.4 per cent of young people behind bars or refused bail," which means they're on remand? Is the Bail Act Monitoring Group expressing any concerns? Do they have a reporting channel?

PAUL McKNIGHT: Perhaps I can help a little bit. If I can speak generally about policy development and what goes into that process from a departmental perspective, obviously we look at all the points of evidence that are available. In relation to BOCSAR evidence, BOCSAR are monitoring remand rates and general detention rates. They are monitoring court appearances. They are monitoring police activity, in terms of warnings and cautions and the like. All of that is publicly available, as you note.

Ms SUE HIGGINSON: I've got it in front of me—I can see it.

PAUL McKNIGHT: Indeed. They are also looking at crime rates overall and monitoring crime levels. When we look at policy development in the round, we're looking at all of those figures and we're monitoring them. When an issue like youth crime is on the agenda, you might imagine that we're looking at those figures carefully over time. We're also looking at other—

Ms SUE HIGGINSON: Can I ask what that looks like? What do you mean, "We're looking at it"? Do you meet internally? I'm honestly really perplexed, and I think the world would like to know. We are talking about young people and—let's be realistic—we are talking about Aboriginal young people in really high numbers here. I know there are some members of the community saying some things but, overwhelmingly, most of the community are just alarmed this is happening on our watch. So what does it mean when you say, "We're looking at this"? What happens? Does BOCSAR say, "Attorney General's department, Mr McKnight, here's our latest BOCSAR report"? Do you get a briefing from them, or do you just look it, and then what do you do?

PAUL McKNIGHT: One of the principal functions in my area is the provision of policy advice to government. At government's request, or sometimes on our initiative, we provide policy advice. That can include a kind of diagnosis of what the world looks like from a particular perspective. But I'm speaking generally here; I'm not speaking about this particular issue.

Ms SUE HIGGINSON: If it's possible to speak to this issue without doing anything wrong in your role—

PAUL McKNIGHT: It isn't.

Ms SUE HIGGINSON: —and I would never want you to do anything wrong, but I'm interested in this issue and this policy.

PAUL McKNIGHT: I understand, but you'll also understand I can't canvass the kind of advice that we give to government. That is something that we provide to government, and I can't express views about policy in this context. I'm constrained by the Premier's memorandum. We're pretty diligent about the advice that we provide to government to try to give a true picture of what's happening in the world and to provide them with a range of options for what they might do about that in the round. It's obviously a matter for government to determine what its policy positions are, but we're pretty active in these spaces.

Ms SUE HIGGINSON: So when you saw the BOCSAR data and went, "Gosh, a 34.4 per cent increase in young people behind bars in New South Wales", it's fair to assume you would have thought that was something the Attorney General needed to know as a matter of priority and to understand what his policy has done.

PAUL McKNIGHT: I think the Attorney General this morning was pretty clear about how much time and energy he puts into this policy issue.

Ms SUE HIGGINSON: As an adviser on such matters, when do you think we might see what I suspect the Government wants to see—namely, this massive figure on the scales weighing everything down justifies somehow—I suspect it never will—the crime rate. Is that happening? Is that the matrix you're looking for, or the Attorney General's looking for?

PAUL McKNIGHT: I'm not sure I understand the question entirely.

Ms SUE HIGGINSON: The crime rate comes down. Youth crime, offending stops, and it all comes down.

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PAUL McKNIGHT: I think the Government's made it clear that it's looking for reductions in the crime rate.

Ms SUE HIGGINSON: But it hasn't seen any yet. Is that the evidence? I couldn't quite get what the Attorney was saying.

PAUL McKNIGHT: I haven't got the crime figures in front of me, but I think the Attorney took some of that on notice this morning.

Ms SUE HIGGINSON: Just to be certain and clear that the information is coming to the Committee, is that something that you can provide to the Committee—some understanding of what we're all staying up at night over and biting our nails to the quicks over and understanding we're locking more kids up? What are we looking for in terms of the crime rate?

PAUL McKNIGHT: I think I can take that on notice.

The Hon. SUSAN CARTER: Ms Dowling, I will just follow up some answers you were giving to Ms Mihailuk before. You were discussing section 5 and also the ability for a Crown prosecutor who felt that their ethical duty was that they can't bring a matter that they don't believe has reasonable prospects of success and could discuss that with director's chambers or a senior Crown. How often does that occur?

SALLY DOWLING: My answer was "who feel they have an ethical conflict". How often has it occurred?

The Hon. SUSAN CARTER: How often?

SALLY DOWLING: Since I've been the director, it has not occurred.

The Hon. SUSAN CARTER: In this matter the Crown who said to the judge that there was no way that the case could be made—there was no prospect of success—hadn't raised that previously with somebody in the ODPP?

SALLY DOWLING: The Crown prosecutor had not sought to return the brief.

The Hon. SUSAN CARTER: Are you concerned then that there may be some cultural issues—that that meant that the barrister felt that he was unable to have that discussion, even though you acknowledge that it is perfectly appropriate?

SALLY DOWLING: No, I'm not concerned.

The Hon. SUSAN CARTER: What do you think happened in this case that you had somebody who didn't have that discussion with you, but yet is in court saying, "We can't make the case, Your Honour"?

SALLY DOWLING: I don't want to speculate about what was going on in that Crown prosecutor's head.

The Hon. SUSAN CARTER: What steps have you taken since that matter to make sure this situation doesn't recur?

SALLY DOWLING: The obligations upon Crown prosecutors under the Crown Prosecutors Act are well understood, I think, across the organisation, so this is not a common occurrence.

The Hon. SUSAN CARTER: No, but it has occurred, so what steps, what training, what meetings, what have you put in place to make sure that whatever happened here doesn't recur?

SALLY DOWLING: I have asked the Senior Crown Prosecutor to remind the Crown prosecutors of their obligations and the limitations on their functions under the Crown Prosecutors Act.

The Hon. SUSAN CARTER: Have you had any communication following that reminder?

SALLY DOWLING: I'd have to check that.

The Hon. SUSAN CARTER: I understand that in that matter there was an application for a "no bill", and it was decision of the ODPP not to no-bill that matter. You indicated that you couldn't provide reasons because it was privileged. What's the privilege you're relying on?

SALLY DOWLING: Legal professional privilege that vests in me as the client.

The Hon. SUSAN CARTER: I guess what I'm trying to understand is you're asserting solicitor-client, barrister-client professional privilege, but aren't you also the decision-maker in this matter? Who decides whether to no-bill or not?

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SALLY DOWLING: In this case, I believe it was the deputy director, and I think at last budget estimates I explained to you how client legal privilege works by reference to the decision in Kinghorn.

The Hon. SUSAN CARTER: I'm trying to explore this because there are a lot of questions about this. Frankly, I don't see what the privilege is and, now that the matter is closed, why the privilege would continue.

SALLY DOWLING: Privilege doesn't abate because a matter has finalised.

The Hon. SUSAN CARTER: Isn't there significant public interest in use by a statutory office of taxpayer funds in this matter, and isn't there significant public interest in why the decisions were made that led to this? There's not only money to prepare the matter for trial; it's now also the money to pay for the defence costs as well.

SALLY DOWLING: Is that a question?

The Hon. SUSAN CARTER: Yes, it is. Isn't there significant public interest?

SALLY DOWLING: That's a matter for you to assess. I can't answer that question.

The Hon. SUSAN CARTER: So you don't believe that the public is interested in how money is spent in the preparation of cases and why, when a matter gets to court, the Crown, who has a responsibility for running it, says "We can't prove the case, your Honour"? What has happened in the decision-making process along the way so that a matter like that even gets to court in the first place?

SALLY DOWLING: I'm not sure what your question is.

The Hon. SUSAN CARTER: What has happened in the decision-making process in your office along the way so that a matter like that gets to the court in the first place?

SALLY DOWLING: Well, I'm not prepared to give any more information about the decision-making in my office in relation to this particular matter.

The Hon. SUSAN CARTER: Why not?

SALLY DOWLING: Because it is privileged, and it's also in the conventions of this Committee, as I understand them, that particular decisions made internally within my office in particular matters won't be the subject of questions under privilege.

The Hon. SUSAN CARTER: I'm not aware of that convention. So the privilege you're relying on is what—client legal representative? Who's the legal representative?

SALLY DOWLING: The lawyers involved in the prosecution who are giving the advice.

The Hon. SUSAN CARTER: And you're the client.

SALLY DOWLING: Correct.

The Hon. SUSAN CARTER: So the Crown prosecutor, who thought the case couldn't be made, and you are the client. But you're also the decision-maker in this case, aren't you? Does the privilege analysis fit in that situation?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: Why are you asserting that, when you're the client and the decision-maker? In a typical matter, Mrs Smith can't say to the barrister, "Do run this matter; don't run this matter." You're not the typical client, are you?

SALLY DOWLING: I disagree entirely with that proposition. In a typical matter, a client does instruct their lawyer as to whether a matter proceeds or does not proceed, and those instructions are privileged.

The Hon. SUSAN CARTER: I think we will have to agree to disagree, and I think there is also an interest, as a statutory office holder, and the public interest in how money is being allocated and allocation of resources.

The Hon. TANIA MIHAILUK: Ms Dowling, on a similar matter, but back to this report, I think I asked you earlier to take on notice the full costs and fees that will be associated with both Sir Hill and the professor, who are reviewing it. Could you also provide the hourly rate that was agreed to, whether any payment has been made to date, what you expect will be the final payment, and whether there was an agreed cap? I want to get the parameters for both Sir Hill and the professor in question.

SALLY DOWLING: Certainly.

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The Hon. SUSAN CARTER: Ms Dowling, at the time of the circumstances becoming public that gave rise to the audit of sexual assault matters and the completion of the audit, were there any sexual assault matters, in addition to those 17 that were discontinued, that were no-billed?

SALLY DOWLING: As stated in the report, there were some matters that had already been referred for consideration prior to the report.

The Hon. SUSAN CARTER: And how many of those were there?

SALLY DOWLING: I'd have to check that for you.

The Hon. SUSAN CARTER: Could you, please? Do you have it available to you now?

SALLY DOWLING: I don't. I'll have to ask about it.

The Hon. SUSAN CARTER: Will you provide it before the end of the day?

SALLY DOWLING: I don't know. I'm sure it's in there.

The Hon. SUSAN CARTER: Perhaps you can provide it before the end of the day. Is that possible?

The Hon. BOB NANVA: Point of order: The witness has taken the question on notice, as she's entitled to do under the procedural fairness resolution. I ask that the member moves on.

The Hon. SUSAN CARTER: These matters were no-billed, and they were in addition to the 17 matters that were discontinued?

SALLY DOWLING: I'll come back to you with a correct and detailed answer.

The Hon. SUSAN CARTER: Could the answer include whether they were in addition? Could the answer also include whether they were no-billed at the request of the defendants or whether they were no-billed as a result of the exercise of your discretion and without the request of the defendants?

SALLY DOWLING: I won't be able to answer that last one.

The Hon. SUSAN CARTER: Why not?

SALLY DOWLING: Because I don't have it readily available.

The Hon. SUSAN CARTER: If you're taking it on notice, you can provide it after you've looked at it.

SALLY DOWLING: I'm so sorry, I thought you wanted it today.

The Hon. SUSAN CARTER: I would like it today but, if I can only get that at a later date, I'll happily get it at a later date. As you said, we want accurate information. In terms of the matters that were discontinued as a result of the audit, was there any pattern where there were perhaps certain areas, certain offices or certain courts where there were more matters no-billed than others or more matters discontinued than others?

SALLY DOWLING: No, we didn't find that.

The Hon. SUSAN CARTER: You wouldn't say, for example, that in Campbelltown Court there were more matters discontinued than anywhere else?

SALLY DOWLING: No.

The Hon. SUSAN CARTER: Was that something you were looking for in the audit?

SALLY DOWLING: We were looking for systemic patterns and trends.

The CHAIR: We will now take a break and come back in 15 minutes.

(Short adjournment)

The Hon. SUSAN CARTER: Ms Dowling, we will finish off the questions that I had before. Are there any plans to have an ongoing system of audit and review?

SALLY DOWLING: No.

The Hon. SUSAN CARTER: Because?

SALLY DOWLING: Because there aren't any.

The Hon. SUSAN CARTER: Is any thought being given to that?

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SALLY DOWLING: Our conclusions are that the system is operating effectively. As you will have noticed, the rate of discontinuation of matters hasn't changed over the last five years, and probably for longer. We are constantly striving to improve our processes and to minimise the number of matters that are discontinued after certification. But a review of this kind is extremely resource intensive and is not the best use of the limited resources that we have. We would be better off spending that money attending to the matters that we have to run.

The Hon. SUSAN CARTER: What was the total cost of the review?

SALLY DOWLING: It hasn't been costed, but you can see that there is a list of the resources that were allocated—the number of prosecutors, deputy senior Crown prosecutors and solicitors—and the number of documents that were reviewed, and it was considerable.

The Hon. SUSAN CARTER: You just said then, I believe, that you were working to reduce the number of matters discontinued after they'd been charge certified. On average, how many matters get to charge certification and are then discontinued?

SALLY DOWLING: In sexual assault matters or all matters?

The Hon. SUSAN CARTER: Perhaps sexual assault and then others.

SALLY DOWLING: That's the subject of the review. This looked at matters that had been certified. It's about 18—

The Hon. SUSAN CARTER: You seemed to indicate that you could provide both answers, so I was keen to get both.

SALLY DOWLING: I'll answer it now. Eighteen per cent of matters, on average, over the last five years, are discontinued after certification.

The Hon. SUSAN CARTER: That seems quite a lot, when you think about how far down preparation the matter is for charge certification to occur, or you are comfortable with that?

SALLY DOWLING: The whole of this report is directed to a discussion of the processes of our organisation to ensure that the prosecution guidelines are complied with, and 75 per cent of the matters that are discontinued are discontinued for discretionary reasons rather than evidentiary reasons.

The Hon. SUSAN CARTER: So 75 per cent of the 18 per cent are discontinued for discretionary reasons?

SALLY DOWLING: Correct.

The Hon. SUSAN CARTER: Could you help me understand what is meant by discretionary reasons?

SALLY DOWLING: Yes. It's explained in the report in detail at page 11:

Discretionary reasons may include where a complainant is no longer willing or able (either mentally or physically) to participate or cope with the stressors of the criminal justice system; where the continuation of proceedings would be unfair; where two juries have been unable to agree upon a verdict and there are not exceptional circumstances that warrant proceeding with a third trial, or otherwise proceeding further would be oppressive; where although there are reasonable prospects of conviction, a trial may be unfair, for example because disclosure obligations are unable to be met; or where there is a combination of matters relevant to the question of whether proceeding with the prosecution is in the public interest, including the matters outlined in Chapters 1.4 and 1.6 of the Prosecution Guidelines.

The Hon. SUSAN CARTER: So concern about whether or not consent or lack thereof could be proved, that would be evidentiary?

SALLY DOWLING: That's correct.

The Hon. SUSAN CARTER: Where multiple charges had been laid, subject to the audit, were they all withdrawn or were there cases where matters were discontinued; so some of the charges were discontinued but other charges proceeded?

SALLY DOWLING: It's the latter.

The Hon. SUSAN CARTER: Do you have any figures on how many proceeded with some of the charges being withdrawn?

SALLY DOWLING: I'll have to come back to you on that. It is contained in the report.

The Hon. SUSAN CARTER: That would be very helpful. The response of the victims whose matters were not proceeded with as a result of the audit, have you had any conversations with any of those victims?

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SALLY DOWLING: Again, as outlined in the review, the obligations of the ODPP staff to victims, which is set out in chapter 5 of the prosecution guidelines, were complied with. In particular, the obligation to consult any complainants whose matters we were considering discontinuing was complied with.

The Hon. SUSAN CARTER: Does consultation mean inform, or does consultation mean have a conversation or have correspondence with prior to the decision being made?

SALLY DOWLING: It's set out in detail in chapter 5.6 of the *Prosecution Guidelines*:

The victim must be consulted prior to making any of the following decisions, unless they have expressed a desire not to be consulted...

Included in those decisions are to not proceed with some or all of the charges. And:

Consultation with a victim regarding charge resolution requires an explanation of the full implications of proceeding on fewer or lesser charges ...

In advising a victim of possible discontinuance of all charges, a summary of the reasons why discontinuance is being considered should be provided.

The Hon. SUSAN CARTER: And you are confident that every victim whose matter was not proceeded with has received that summary?

SALLY DOWLING: I am confident, yes.

The Hon. SUSAN CARTER: I have received correspondence from some who believe they have not received that.

SALLY DOWLING: Is that a question?

The Hon. SUSAN CARTER: I suppose I'm asking you to check your recollection and check your understanding.

SALLY DOWLING: I can't respond to that without any further details

The Hon. SUSAN CARTER: I will inquire whether my correspondents are happy to have their details shared, and perhaps you could check on notice that that has been provided to everybody in that category? In terms of the *Victims' Right of Review Policy*, what's the timeframe for a review conducted in accordance with that policy?

SALLY DOWLING: I believe it's 28 days. Just let me check.

The Hon. SUSAN CARTER: I thought it might be 20 working days.

SALLY DOWLING: You may be right. It is 20 working days.

The Hon. SUSAN CARTER: How often is the time frame for that *Victims' Right of Review Policy* not met?

SALLY DOWLING: I'd have to take that on notice.

The Hon. SUSAN CARTER: Just confirming again, subject to you checking, you believe that all victims have received a full statement of facts and reasons for the discontinuation of their matters?

SALLY DOWLING: I'm sorry, could you repeat the question?

The Hon. SUSAN CARTER: I was just really confirming your earlier advice that, subject to you checking your records, you believe that all victims have received a full statement of facts and reasons for the discontinuation of their matters?

SALLY DOWLING: Chapter 5.6 of the *Prosecution Guidelines* provides a summary of reasons as to why a charge will be discontinued—why a discontinuation has been considered will be provided.

The Hon. SUSAN CARTER: And you're confident that they have all received that summary of reasons for discontinuation?

SALLY DOWLING: I am confident, yes. I am.

The Hon. NATASHA MACLAREN-JONES: I might ask a couple of questions regarding the Moree response, the Government's press release from March last year. In it, one of the plans was development of:

An action plan within six months to optimise the service delivery in Moree to ensure that services provide maximum benefit to the Moree community, including much better coordination, accountability and improving the availability of night-time and out of hours services and youth places.

I was wondering if that action plan has been produced? Would you like a copy of the release?

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MICHAEL TIDBALL: That is being coordinated by the Premier's Department.

The Hon. NATASHA MACLAREN-JONES: I will ask them. In relation to one of the other items that was listed, which is the first one, under initiatives is:

Additional judicial resources for Local (and Children's) Courts jurisdictions (including associated Legal Aid, Office of the Director of Public Prosecutions and police costs) for 6 months and additional Aboriginal Legal Service funding.

I am interested to know how much funding has been allocated for judicial resources.

MICHAEL TIDBALL: I'm going to be way more accurate if I provide that on notice, if that's okay?

The Hon. NATASHA MACLAREN-JONES: That's fine. My final question before I hand back to my colleague is actually one for Ms Campbell.

ANNE CAMPBELL: Oh, yay!

The Hon. NATASHA MACLAREN-JONES: Well, you've been here all day! It's actually following up from questions from last year, in relation to the justice reinvestment sites at Kempsey and Nowra, and the Paul Ramsay Foundation. During questions, you mentioned that they had engaged Taylor Fry to undertake an experimental evaluation of both sites. I'm interested to know if that has commenced and the time frame. I presume the department will be advised of that evaluation.

ANNE CAMPBELL: Yes, that's correct. Following the development of the memorandum of understanding, which is called the Monitoring, Evaluation and Learning Framework, they are looking at an economic evaluation to be carried out from this year and reported on in 2027, to look at the impacts.

The Hon. NATASHA MACLAREN-JONES: Do you know when in 2027?

ANNE CAMPBELL: I'd need to take that on notice.

The Hon. NATASHA MACLAREN-JONES: That's fine.

The Hon. SUSAN CARTER: Mr Tidball, I wonder if we could go back to something we were discussing earlier with the Attorney, and that's in relation to this issue that's being described as cell ramping. The Attorney seemed to have three possible reasons for it. One is clearly resourcing at the Metropolitan Remand and Reception Centre. The Attorney seemed to suggest that one may be—the third bit I'm really interested in is the bail.

MICHAEL TIDBALL: I have very clear advice from the police that the numbers of PBR matters from metropolitan city have not spiked since November 2024—since the whole State's centralisation. I repeat what I said in my evidence this morning: I have had this matter raised with me directly by the police commissioner. I followed up on it, as I indicated this morning, with Corrective Services. It was very much perceived to be not about the policing but a challenge with Corrective Services. Corrective Services are actively engaged. I don't have up-to-the-minute knowledge on that, but I took it on the evidence—because I do have some knowledge of it—as very much being something that Corrective Services needed to work with the police on, as opposed to the PBR loading.

The Hon. SUSAN CARTER: Could I ask you to take on notice and perhaps inquire? I understand that because of the centralisation of bail decisions, there are technical difficulties. Absent a system that can digitise, we're talking about faxing paperwork through to courts, and that can take some time. There are sometimes cut-off windows being imposed. If you're not arrested before the cut-off window closes, you're on the next day's list. There are certainly reports of people spending 60 hours in police cells. In some stations, there are no cells, so you're spending all that time in the dock. The information that has been shared with me is that, as the Attorney suggested, there are multiple causes, and bail magistrate delays is definitely one of those causes.

MICHAEL TIDBALL: People being held in police cells unnecessarily is clearly a concern. I'm unaware of it from the briefing that I've had. If there are specifics that would assist my inquiry, I'd be very open to receiving those.

The Hon. SUSAN CARTER: Perhaps we can talk later.

Ms SUE HIGGINSON: I want to turn to the common law principle of doli incapax and whether or not the department is currently preparing any advice on that, has prepared advice on that or has standing advice on that common law principle at the moment.

PAUL McKNIGHT: Doli incapax comes up from time to time and we provide advice to government when we are requested to do that.

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Ms SUE HIGGINSON: Given the climate right now, there are very misguided calls to interfere with that common law principle in New South Wales, consistent with the same thing in other States. In providing advice, is the department inclined to talk or consult or engage with other members of the community who are expert or on the front line of working with that, namely, the Aboriginal Legal Service, the Law Society, the Bar Association and some of the youth advocacy organisations? Is that what you would do?

PAUL McKNIGHT: We talk with those stakeholders and other stakeholders about criminal justice issues all the time. Should we be asked to consult stakeholders in the preparation of advice by government, we certainly would.

Ms SUE HIGGINSON: I think what I'm asking is would there be an inclination or an appetite, given the misguided and heightened nature of the issue at the moment, that the department itself would—sorry, is there a process where the department themselves internally can say, "This is something we should consult on"? Is that the machinery?

PAUL McKNIGHT: We work as public servants in the Westminster system. We serve the government of the day.

Ms SUE HIGGINSON: But don't you have to be frank and fearless?

PAUL McKNIGHT: We are frank and fearless—you can believe that—but I am not going to canvass policy advice that we provide government.

Ms SUE HIGGINSON: No, I accept that. I suppose what I'm asking is are there circumstances where there is such a heightened public interest—and we are talking about life and death with the criminal justice system, particularly locking up young people. Is that a circumstance that might drive, or has it happened in the past, the department themselves, who are dealing with this incredibly important advice, to provide a recommendation that, "Hey, in order for us to really advise the Government, we should speak to these organisations on this particular thing"? Does that happen?

PAUL McKNIGHT: We are often called upon by government to advise on the proper processes to follow and the right way to consult stakeholders, and we provide that advice, yes.

Ms SUE HIGGINSON: I know I'm pushing it, but I am honestly trying to stay in safe territory for everyone. In terms of past advice, is it fair to assume that any advice on *doli incapax* that might have been given from time to time—that that's a principle that is probably best left untouched, given the fact that it still exists and it has never been touched?

PAUL McKNIGHT: You are asking me to canvass policy advice that we give to government, and I can't do that. I would just note, though, that we take very seriously our obligation as policy advisors to provide government with the fullest picture we can of all the policy issues that we look at and to provide frank advice based on the evidence. It's something that this department takes great pride in.

Ms SUE HIGGINSON: Are you aware of any studies at the moment or data or examination of discharging with the common law principle of *doli incapax*?

PAUL McKNIGHT: There is a lot of evidence and views reported out there about *doli incapax*. There is an evidence base, if that is what you are asking.

Ms SUE HIGGINSON: That's right. I vaguely remember reading stuff in law school millions of years ago. Are there any, that you are aware of, compelling research pieces at the moment about discharging or removing or lessening the current common law principle of *doli incapax*? Is there any evidence to support that? Are you aware of anything?

PAUL McKNIGHT: I am not aware of any studies that are published to that effect, no.

Ms SUE HIGGINSON: No, neither am I. It's interesting. None at all.

PAUL McKNIGHT: That doesn't, of course, mean that there aren't any.

Ms SUE HIGGINSON: No, I'm just curious. Have you actively sought those out at this point in time, or not necessarily?

PAUL McKNIGHT: I can take on notice what research we've done in this space.

Ms SUE HIGGINSON: That would be really helpful. Are you aware if any work is happening at the moment to measure the impacts of the Government's measures? I recognise I may end up in a different budget estimates with you, Michael Tidball, asking the same things. But do we have ways of assessing the effectiveness

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of the other diversionary measures that we're investing in around the State with youth justice at the moment, and the specific new ones that the Government announced over the past 12 months?

MICHAEL TIDBALL: There will be, I believe, and particularly with the witnesses that are attending Minister Dib's estimates on Wednesday. There will be a good opportunity for them to talk about evidence.

Ms SUE HIGGINSON: I'll take it up with them. Will any of the outcomes or work that they generate feed back into the advice that ultimately goes into looking at the continuation of the laws that the Attorney General has introduced and passed—the bail changes?

MICHAEL TIDBALL: As a general proposition, in the criminal justice space, both adult and juvenile, the two things which I can say fairly confidently are that we look to BOCSAR to provide, with empirical integrity and rigour, the evidence that we need to inform future decisions. The second thing I would say is that both in Ms Campbell's area and in the youth justice and adult offending realms, when programs are funded and commissioned, we as a general principle look to evaluate them, particularly where they're new.

Ms SUE HIGGINSON: I think I get all of that. Is there a process for monitoring the impact of the youth bail laws through the Bail Act Monitoring Group? Do the magistrates and bail judges who are administering these new laws feed back into that? Is that a live process or not?

PAUL McKNIGHT: As we assess the impact of the—you're talking here about section 22C in particular?

Ms SUE HIGGINSON: Yes.

PAUL McKNIGHT: We've been monitoring youth justice detention rates. We will be looking at crime rates. We are watching the courts and monitoring court decisions, and all of that is being fed into the process.

Ms SUE HIGGINSON: At the moment, I know the Attorney said the extra 145 kids—

PAUL McKNIGHT: Just to be clear, that's 145 bail refusals of children who fit into section 22C. That's not necessarily extra remands that would not have otherwise occurred. The children in that group before the advent of 22C had already been being remanded in custody at a higher rate than others, so it isn't the case that without 22C those 145 children would have got bail. It's because the situation of those children is they have been charged with serious offences and they are on bail for serious offences, so they're back in front of the court. A group of those children were being remanded prior to the 22C changes anyway. I think our assessment would generally be that 22C has increased that number, but it isn't the case that those 145 children would have been on bail, just to be clear.

Ms SUE HIGGINSON: I understand that. Do you have that breakdown? Do you how many, because of 22C, are—

PAUL McKNIGHT: No. There's not a counterfactual that you can measure it against, because 22C passed.

Ms SUE HIGGINSON: How can you say with so much certainty that, but for 22C, they would still be on remand?

PAUL McKNIGHT: Because the remand rate for that group of children prior to 22C was very high. It's a point in time.

Ms SUE HIGGINSON: So the 33.4 per cent is the year-on-year increase. What was it last year?

PAUL McKNIGHT: The 34 per cent year-on-year increase isn't just 22C.

Ms SUE HIGGINSON: No, because 22C wasn't in in December. I get that.

PAUL McKNIGHT: But you'll see from the same fact sheet that the contribution of people on 22C-type offences is quite high. Unlawful entry and burglary accounts for 22 people in that change. In the youth remand area, we are coming off a low base. We had got to very low numbers of people in detention, which was an achievement.

Ms SUE HIGGINSON: Can I ask all of you witnesses to read the article from *The New York Times*? Will you all read it, please? There's a podcast too. You can listen to it. It's one of those mid-length reads.

The Hon. NATASHA MACLAREN-JONES: You could table it.

Ms SUE HIGGINSON: I could table it. If that's okay, I will table the article.

Document tabled.

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Ms SUE HIGGINSON: It's this idea that, for some reason, we did achieve some really good things in terms of getting the youth incarceration rates low—even America did that—and now it's coming back up because we've changed the approach for whatever reasons. When the Attorney said those young people are around the State, do you have a breakdown of the areas that the young people are held—not so much the centres but where those crimes were committed?

PAUL McKNIGHT: It's not in front of me.

MICHAEL TIDBALL: We could come back.

Ms SUE HIGGINSON: I'm happy for it to be this cohort that we're talking about—that 145—to get a snapshot of the past 12 months and where it has happened.

MICHAEL TIDBALL: I believe we can do that. We'll try.

Ms SUE HIGGINSON: That would be so helpful. One of the things that we are hearing is this idea that things have changed in community. I'm just wondering whether internally, in the department, you have some lens on the analyses of the justifications for the increase in crime and whether that's something you could share with the Committee. We read things in the media. That's obviously an incredibly limited lens. We speak with people in communities, and obviously we all speak to different people. I'm curious about the informing principles of the supposed increase of crime that the department is working with.

PAUL McKNIGHT: Are you asking for some analysis of the causation of the crime? I think we can definitely provide a richer picture from BOCSAR data about the nature of crime levels, the contributors to the youth detention population and how that looks. I can take that on notice.

Ms SUE HIGGINSON: That would be really helpful. I suppose what I'm trying to prod as well is—because I can look at those things and I can see those things, but I think what I'm trying to understand is the Attorney came with an article today from 2014 that talked about all of the causes of crime. He made the case that those causes were there then, they've been there, they're still there and they're going to be there into the future. I'm still just looking for this kind of more material, objective—the inputs that have justified the response to changing the laws and justifying putting more kids into remand and incarceration. I'm just curious if the department has information or inputs into that justification base that we don't have, or that I don't have, or that others don't have. If not, that's fine. If you're just working on those things alone and instructions, then I accept that. Is there anything that we're missing?

PAUL McKNIGHT: Look, it's certainly the case that our advice canvasses individual and community influences on offending and reoffending. Generally speaking, our advice would have a much more solution focus to it, so not so much an unpicking of the ideology but what works to solve the problem. That's, I think, a different way of answering the question: What would we do to reduce crime? It's sort of the same question that you're asking but from a different angle. Our advice would canvass the evidence base about how you might address crime, in the round, including the criminal justice system responses and other responses to crime. I'm not in a position to provide you with the advice, obviously.

Ms SUE HIGGINSON: No. I get that.

PAUL McKNIGHT: But I think that that's how we would look at the question you were asking. What would you do to reduce crime rates, and what options do you have in that space? That sort of necessarily goes to ideological questions, because you're looking at things like mental health issues and victimisation—and the criminal justice system itself.

Ms SUE HIGGINSON: Clearly I've got some blockage in my mind, but I'm curious about what time frame we cut when we're talking about criminal offending. The evidence that placing a person in incarceration is criminogenic and therefore will make a person more criminal—what is the assumption that that won't happen? What time frame are we looking at in order to assess the effectiveness of reducing crime? I still just can't ascertain anything tangible that we've put into the matrix to suggest that this will reduce crime. I'm just still not quite hearing one. Is there something? Is it a time frame? So we're saying, "We'll reduce crime tomorrow if we change the bail law, but we'll create more crime, possibly, in three years time."

PAUL McKNIGHT: I'm not sure I can respond to that.

MICHAEL TIDBALL: I hear the messages and I hear the thinking. Clearly we talk to the police. We talk to heads of jurisdiction. In the course of my work, I try to travel across the State. A number of observations there—there's no shortage of perceptions and anecdotes. At the end of the day, though, we respond to the requirements of government when it comes to policy formulation, but we have a discipline and we have governance around that. We have a trove of empirical tools that we use and interrogate. I can assure you that our

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advice, as it should be, is frank and fearless. I'm unusually quiet, I know, but there's not much more that I can proffer at this point.

Ms SUE HIGGINSON: I feel like I've gone as far as I possibly can, and I'm very grateful to all of you. Thank you very much.

The Hon. NATASHA MACLAREN-JONES: I have one question in relation to the place-based response to Moree. Which Minister is responsible for one of the dot points, which is that young Aboriginal people would be linked to Indigenous organisations, Elders, cultural and family supports with staff on site 24/7?

MICHAEL TIDBALL: The bail advocacy service is run in partnership with the Aboriginal Legal Service.

The Hon. NATASHA MACLAREN-JONES: So it is bail.

MICHAEL TIDBALL: The Aboriginal throughcare strategy is similarly with ALS, as is the therapeutic pathways for children partnership.

The Hon. NATASHA MACLAREN-JONES: It all comes under the AG?

MICHAEL TIDBALL: Youth Justice.

The Hon. SUSAN CARTER: A couple of questions for you, Ms Dowling, going back to the matter that I raised with Mr D'Aeth earlier in relation to the matter that was conducted in the Children's Court where details were made available to Ben Fordham on 2GB: The general public is not allowed into the Children's Court, so who would be the people who would have knowledge of the matters happening in the Children's Court?

SALLY DOWLING: Section 10 of the Children (Criminal Proceedings) Act provides that any reporter can be in the court. Family members are allowed to be in the court. The proceedings are not suppressed. The general public is excluded.

The Hon. SUSAN CARTER: Is it your understanding that there was a reporter in the court that day?

SALLY DOWLING: I don't know.

The Hon. SUSAN CARTER: Does the ODPP keep a system similar to that used by the ATO and other places that can track everybody who accesses the records of the ODPP?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: If anybody had accessed the report of that case, you would be able to determine that?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: Is it your understanding that police have commenced an inquiry into the circumstances surrounding that information being given to Mr Fordham?

SALLY DOWLING: Yes.

The Hon. SUSAN CARTER: Have you been asked to cooperate with the police in relation to that matter?

SALLY DOWLING: I don't propose to answer any more questions in any detail, because there is an ongoing police investigation. I don't think that would be appropriate.

The Hon. SUSAN CARTER: I'm sorry, I don't understand. If we are just saying, "Did you cooperate with the police," how is that an inappropriate question to answer?

SALLY DOWLING: I have given you my answer. I don't propose to answer any more detailed questions, because there's a current police investigation underway.

The Hon. SUSAN CARTER: Why aren't you answering questions because there is an investigation? This is not sub judice. It's not a matter before the courts. The police are simply trying to determine whether the leak came from the ODPP or not. Surely you would be interested in making sure that the reputation of the ODPP is upheld?

SALLY DOWLING: Is that a question to me?

The Hon. SUSAN CARTER: Yes, it is.

SALLY DOWLING: I am interested in the reputation of the ODPP.

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The Hon. SUSAN CARTER: Therefore you would be keen to make sure you and all your staff cooperated to clear the name of the ODPP?

SALLY DOWLING: I don't think that requires an answer.

The Hon. SUSAN CARTER: I'm the one asking the questions, Ms Dowling. I think it does require an answer.

SALLY DOWLING: I'm not proposing to answer any questions that may impinge on the investigation by the police. I don't have visibility over that investigation. I don't know where it is at. I don't want to say anything that could impact upon the proper investigation of that by police. I suggest you ask the police commissioner about it.

The Hon. SUSAN CARTER: I wouldn't ask the police commissioner about this, and I'm here asking you. You're a sworn witness at this inquiry. Are you aware whether any of members of your staff have declined to cooperate with the police?

Ms SUE HIGGINSON: I know that no point of order was raised but I am going to use my Chair's privilege here and suggest that perhaps the line of questioning is heading into a slightly inappropriate place because the witness has made it very clear there is an investigation and there are potential proceedings, and we don't want to prejudice, jeopardise or do anything to interfere with that. I would ask the Hon. Susan Carter to be careful.

The Hon. SUSAN CARTER: I accept your warning, Chair. Should any proceedings arise, they would be judge only. There is no question of polluting a jury pool. This is simply to determine whether all the members of the ODPP have cooperated fully with the police. I think there is considerable public interest in that. There has been considerable press reporting of this matter. I'm not asking what was said to the police, just whether everybody has actually cooperated.

Ms SUE HIGGINSON: I think there is a broader piece in terms of not interfering with matters that are under investigation. That would be the point I make at this time. I just remind you that there will be another budget estimates. There will be a period when some time has progressed, and there will be more opportunity for the witness to be able to answer with more certainty and confidence that proceedings or investigations are not being jeopardised. We are all legally trained, and I think that the exercise of caution is something we really should hold dear in these matters. Carry on, with that said.

The Hon. SUSAN CARTER: Has the ODPP conducted a search to see who had computer access to the file in relation to the matter reported by Mr Fordham?

SALLY DOWLING: I believe that has happened.

The Hon. SUSAN CARTER: And that has been shared with the police?

SALLY DOWLING: I believe that's correct.

The Hon. SUSAN CARTER: If anybody had provided that information to Mr Fordham, would that be consistent with their employment duties?

SALLY DOWLING: Any internal disciplinary proceedings arising out of this will be conducted once the police investigation has—

The Hon. SUSAN CARTER: I wasn't asking about disciplinary proceedings.

SALLY DOWLING: I'm trying to answer your question, Mrs Carter. Until the police investigation is completed, I'm not going to speculate about internal disciplinary proceedings.

The Hon. SUSAN CARTER: The question, with respect, was not about disciplinary proceedings but whether it would be a breach of duties of employment.

SALLY DOWLING: Disciplinary proceedings follow any breaches of codes of conduct, so those two questions are entwined, or the answers are.

The Hon. SUSAN CARTER: Do I take it then, because you are talking about the possibility of disciplinary proceedings, that it would in fact be a breach of terms of employment?

SALLY DOWLING: No, I am not prepared to say that. The investigation hasn't happened.

The Hon. SUSAN CARTER: Then could you please answer my question? Would it be a breach of their terms of employment?

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SALLY DOWLING: I don't have visibility over this event. My office has not conducted an internal investigation, and I'm not going to speculate about the outcome of that until it has happened.

The Hon. SUSAN CARTER: I'm struggling to understand why it is difficult to answer the question. If a member of the ODPP staff leaks information about a Children's Court matter to a journalist, is that a breach of the terms of their employment?

SALLY DOWLING: It depends on their role. I take issue with the use of the word "leak". For example, members of our media team are employed to talk to the media about the matters that we are running. I can't answer that question accurately, in the way it's framed. In relation to whether there has been a possible breach of a code of conduct or terms of employment, I can't answer that either because no internal proceeding has taken place, and it won't take place until the police investigation has been completed.

The Hon. SUSAN CARTER: If the police investigation had not commenced, would there have been an internal inquiry to determine the source of the information?

SALLY DOWLING: I can't answer that.

The Hon. SUSAN CARTER: If the situation occurred again, would you be concerned to find out if there had been an internal source of that information provided to the media?

SALLY DOWLING: Mrs Carter, I don't know what happened, so I can't answer that question.

The Hon. SUSAN CARTER: I am asking you, as the director of a very important organisation, with a critically important role in upholding the understanding of the rule of law in New South Wales, what your attitude is and what steps you'd take to ensuring the reputation and the probity of the ODPP is maintained at all times.

SALLY DOWLING: Everything I do is directed towards that issue.

The Hon. SUSAN CARTER: If you had any reason to believe at all that a member of your staff had provided information about a closed matter that had concluded in the Children's Court, would you have sought to ascertain who was the source of that information?

SALLY DOWLING: The Children (Criminal Proceedings) Act prohibits the publication of the name of a child to a member or section of the public.

The Hon. SUSAN CARTER: I believe it is "name or any other details which could identify".

SALLY DOWLING: To the public or a section of the public. If I was of the view that that had happened, then I would conduct an investigation. If there was no police investigation, then I would do that internal process, and I will do that internal process once this investigation has been resolved.

The Hon. SUSAN CARTER: I think the question I was asking you was slightly different. I'm not asking you to undertake a criminal investigation in your office to see whether or not section 15 of the Act was breached. I'm asking, in terms of the importance of maintaining respect for the office and confidence in the office, whether you would have sought to determine if your office was the source of the leak and what the circumstances of that were.

SALLY DOWLING: Again, I take issue with the use of the word "leak", because I don't know that there has been one. This question is hypothetical and asking me to speculate about things that I would or wouldn't do. I can't agree with the assumptions that are implicit in your question, so I can't respond.

The Hon. SUSAN CARTER: With respect to your concern about my use of the word "leak", could you outline circumstances in which you think it would be entirely appropriate—I think you said someone from the media unit may have cause to talk to journalists—where someone from your media unit may want to, within the bounds of appropriate employment conduct, discuss a matter with a member of the press that had been concluded some months before and dealt with a minor Indigenous child?

SALLY DOWLING: I'm sorry, what is your question?

The Hon. SUSAN CARTER: Under what circumstances would you believe that that was appropriate? If we're not talking about a leak, then obviously this is an appropriate disclosure of information. When would that disclosure be appropriate?

SALLY DOWLING: It would depend on what the media question was. We get a lot of media questions and we try to respond to them in a helpful way.

The Hon. SUSAN CARTER: If there was no question, if this was information that was volunteered, would that be appropriate action on the part of your media person?

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SALLY DOWLING: I can't answer that question.

The Hon. SUSAN CARTER: Mr Tidball, the NSW People Matter Employee Survey, what happens to that when it's done?

MICHAEL TIDBALL: I'm not going to look at my note; I may need to go to my note. Off the top of my head, there is a compilation of the report. It is, on an agency basis, promulgated or distributed to each of the agencies. In my case, that's the Department of Communities and Justice. There is reflection and quite some analysis and deep diving that can be done through the trove of data that is the PMES, which is both sector wide and also agency specific, and then within the agency there are a number of ways it can be spliced and diced. There is a time of reflection on that. The executive leadership team of my department has a very focused session where it spends quite some time looking at that data and the messages and learnings and evidence that may give us insights or require a response.

The Hon. SUSAN CARTER: I don't claim to have done the deep dive that it sounds like you have, and I'm encouraged by that. But when you see, for example, the Crown Solicitor's Office—59 per cent of staff believe their senior executive listen to them. That means 41 per cent don't believe they do. Is that within what you would expect? Is that unsatisfactory?

MICHAEL TIDBALL: I would not want to, without benchmarking that figure, comment in these proceedings this afternoon. One of the great things about the PMES is you are well able to benchmark against averages, and that is what we do.

The Hon. SUSAN CARTER: What is the process for driving change if, when you benchmark, these areas are found to be unsatisfactory?

MICHAEL TIDBALL: The PMES is an annual survey. We have briefing made available to us. Knowing that the PMES is back on in another year, we are very keen to look at participation, engagement and other indicators because, aside from the wellbeing of our staff and the performance of the agency, we, right across the public sector, are operating in a very competitive marketplace at the moment, with supply chain issues. Whether we're talking prison officers or child protection workers or lawyers or IT staff, those areas are each competitive. In a highly competitive market, the proposition of work climate and the overall offering of employment, obviously, extends well beyond remuneration. The heart of the PMES speaks to a number of those features that really do help us tackle a range of things, from wellbeing through to workers compensation costs through to recruitment outcomes through to vacancies in areas where we want to reduce our turnover and generally improve the quality of our workplaces.

The Hon. SUSAN CARTER: If we look at the Department of Communities and Justice as a whole—43 per cent of staff believe that senior executives listen to their employees, which can't be encouraging to you, I would think?

MICHAEL TIDBALL: Again, I am strongly guided by our performance from year to year and how we track relative to the rest of the sector.

The Hon. SUSAN CARTER: In terms of employee satisfaction, I note that when we look at the ODPP, 45 per cent of staff feel that they are mentally exhausted by their work on most days. Does that then drive extra workplace supports? How is that responded to?

MICHAEL TIDBALL: I am reluctant to comment. The ODPP is an independent agency. I work closely with Ms Dowling, and when she believes that there may be—as with Ms Hitter, with Legal Aid, we've had a lot of discussions over the last couple of years about wellbeing of staff. I think there is shared wisdom and shared experience. We collaborate and we work together. I never make incursions into the related entities. I also feel comfortable to talk to agency heads, but it's very much done on a basis of cooperation and collaboration. In fact, I'm just thinking about some of the discussions we've had, Ms Hitter, the learnings that we've had in both of our cases, both specific to the agencies themselves but also looking at the unique psychosocial settings around legal practice and what that means to the way we support practitioners, who have their own set of needs.

The Hon. SUSAN CARTER: Absolutely. You are aware of the work that the Law Society is doing in this area and you tie in with all of that?

MICHAEL TIDBALL: I was, in another life—which is on the record and a potential conflict—very close to—

The Hon. SUSAN CARTER: Of course, Mr Tidball. You would be very well aware.

MICHAEL TIDBALL: In fact, I could speak at length, but it's late in the day. I'm intimately and intricately aware of it.

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The Hon. SUSAN CARTER: Yes, I understand. Sometimes with surveys, one is not so sure that they are active tools for development, and it's good to see that that's the approach.

Ms SUE HIGGINSON: I think that concludes this session of budget estimates. Thank you very much to all of the government officers for your attendance today. The Committee secretariat, as always, will be in touch in the near future regarding questions taken on notice and any supplementary questions. Thank you very much for your time and for your patience with all of the questions today.

The Hon. SUSAN CARTER: Government questions—all the questions that Greg has banked.

The Hon. GREG DONNELLY: They still remain in the bank—for next time.

Ms SUE HIGGINSON: No, seriously, Mr Donnelly—

The Hon. GREG DONNELLY: No, I'm not offended. My questions from my bank will be good for next time.

Ms SUE HIGGINSON: I am sincerely sorry. I was racing ahead to the finish line.

The Hon. GREG DONNELLY: No offence taken.

Ms SUE HIGGINSON: Thank you all of you. That concludes the session.

(The witnesses withdrew.)

The Committee proceeded to deliberate.