

Division 28: Office of the Director of Public Prosecutions, \$39 786 000 —

Mr R.S. Love, Chair.

Mr J.R. Quigley, Attorney General.

Miss A.L. Forrester, SC, Director of Public Prosecutions.

Mr P. Rechichi, Director Corporate Services.

Miss L. Markussen, Ministerial Liaison Officer.

[Witnesses introduced.]

The CHAIR: This estimates committee will be reported by Hansard. The daily proof *Hansard* will be available the following day. It is the intention of the Chair to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point. The estimates committee's consideration of the estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. Questions must be clearly related to a page number, item, program or amount in the current division. Members should give these details in preface to their question. If a division or service is the responsibility of more than one minister, the Attorney General shall be examined only in relation to his portfolio responsibilities.

The Attorney General may agree to provide supplementary information to the committee rather than asking that the question be put on notice for the next sitting week. I ask the Attorney General to clearly indicate what supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the Attorney General's cooperation in ensuring that it is delivered to the principal clerk by Friday, 1 June 2018. I caution members that if the Attorney General asks that a matter be put on notice, it is up to the member to lodge the question on notice through the online questions system.

Member for Dawesville.

Mr Z.R.F. KIRKUP: Attorney General, I refer to page 379 of budget paper No 2. The second dot point under "Significant Issues Impacting the Agency" relates to the Macro task force prosecution, which I think has been allocated an additional \$1.8 million, or thereabouts, in the state budget.

Mr J.R. QUIGLEY: Correct.

Mr Z.R.F. KIRKUP: I note in the narrative that this is one of the most complex criminal cases ever undertaken in Western Australia. I am keen to understand the nuances of that complexity, where appropriate, and where the Attorney General can speak to that. I could be wrong but the Premier noted publicly that the question of costs could be open-ended. We might start there, and then I have some further questions.

Mr J.R. QUIGLEY: As to the complexity, I will defer to the director because I do not want to reveal anything about that complexity. As to the costs, this is a very complex case, as the director will provide some detail of, so the government is replenishing the director for this particular prosecution on an annual basis. It is an extraordinarily long case in terms of the documentation being produced by the police for an investigation that ran for nearly 20 years. There is a massive number of documents. We indicated to the director that funds will not be in the forward estimates but she should come back to the government every year and seek replenishment. As to the other part of the member's question, I defer to the director.

Miss A.L. Forrester: The first stage of the matter involves the fact that the prosecution, which includes the police in the first instance and then the DPP, is obliged to disclose all material that is potentially relevant to the case. At this stage of proceedings, the DPP, or the prosecution, does not have any idea what the defence is. It simply has to provide everything that might be potentially relevant to any issue. The member can imagine how enormous a 20-year investigation is; it covers rooms of documents. We cannot just back it up in a truck and give it to the defence lawyers; we have to catalogue it, redact it for any sensitive information, scan it and produce it in a manageable way. That is the process that has been undertaken since December 2016, at the time of arrest.

The remainder of the complexity going forward—we are getting to that stage now because the next appearance is at the end of July, when disclosure is meant to be complete—is the trial phase. In any case, it involves three homicides allegedly committed at different times plus two other historical offences. We envisage that it will be a very long trial, if there is a trial. That is something that we do not know, and I am not saying anything that might prejudice any future proceedings. That is one of the reasons to fund us year on year, because we do not know how long the matter will go for. Things can stretch out into appeals and all sorts of matters and we do not know what issues there will be at trial. It contemplates a huge number of witnesses, including expert witnesses and anything that the prosecution might need in order to prosecute the matter properly, and to provide appropriate disclosure to the defence in an ordered way.

Mr Z.R.F. KIRKUP: I appreciate that response. Obviously because of the complexity, the length of the matter stretching over 20 years, and the expert involvement and the documentation, that is the reason we have to ask for funds year on year. Skill sets are required but certainly documents as well and the preparation that the director has outlined. I assume that is why the costs could not be absorbed within the existing DPP budget. As a result of that, I suppose we are not setting ourselves up for any costs in that case if there was a guilty plea, for example, because we are getting to the point whereby the government is not predicting costs in that case; we are going year on year, which I suspect is the responsible manner in which to do it.

Mr J.R. QUIGLEY: That is correct. At the outset, the accused is presumed to be not guilty so the director has to prepare the case as though it is going to trial and will go the full distance at trial. There may be a development later once the defence lawyers assess the situation. I do not know whether that will come to pass. As far as the state is concerned, we have to be ready for trial as soon as the matter is listed to indicate to the court that it is ready for trial at the first appearance because I think the person has been in custody for 16 months, and then the pressure is on the defence. We have to renew the funding to the director each year while this matter is alive.

Mr Z.R.F. KIRKUP: I imagine that the DPP has learnt quite a lot of lessons from looking at the most recent commonwealth prosecution, which fell over because of the volume of disclosure issues that existed. I imagine this allocation helps the DPP. I realise it was a federal prosecution in that case. The member for Hillarys was keen to understand—the Attorney General may have already answered the question—and ensure that the government does not forecast any issues like that.

Mr J.R. QUIGLEY: That is why the director has a team. I will let the director answer that. There is a team there. A special secure floor has been leased in the building, isolated from the rest of the staff, with a senior counsel leading that team and other staff under her. Every effort is being made to make sure that both timely and complete disclosure is made.

As the director said, not only has it been under investigation for 20 years, but also the member can imagine over that time the police were advertising for information: “Ring Crime Stoppers”. All manner of people rang Crime Stoppers with information. It all has to be assessed and prepared for disclosure. It is a mammoth task. That is why when the director approached us on this matter last year, we committed that each year we would fund whatever she needed to see the trial through.

[7.10 pm]

Mr Z.R.F. KIRKUP: How does one forecast the expenditure that might be required for the forthcoming year? How do we get to the \$1.8 million figure?

Mr J.R. QUIGLEY: I will let the director answer that.

Miss A.L. Forrester: In relation to this particular matter, for a start we are very experienced in large prosecutions and the amount of disclosure that is required. This matter is not new to our office. Even though it is a new prosecution in relative terms, we have been associated with the police over many, many years in relation to it and are quite familiar with the amount of investigation that has gone on. That is why the Deputy Director of Public Prosecutions is practically, although not entirely, working full time on this matter, and she has a team of dedicated staff. One of the reasons the costs cannot be absorbed is that I have had to put experienced DPP staff onto that who cannot be replaced by just filling up the rest of my office. I cannot comment on how the commonwealth did its disclosure but I can tell the member that we do not do disclosure that way. We never have and we never will. We are well experienced, particularly my deputy director is well experienced in massive prosecutions—not one this big because we have not had one this big—but if I had to assign anyone to make sure that everything was disclosed, I could not find a better person. For 16 months she has been very closely working with police to make sure that not only everything that needs to be disclosed is disclosed—some of it is so borderline that I doubt anyone will ever read it again—but also it is at the level we go to to make sure disclosure is complete. Not just complete and backed up, as I say, in a truck, but catalogued so it can be read if necessary.

Mr A. KRSTICEVIC: I refer to “Convictions after trial” on page 380 of budget paper No 2. I notice that the budget target is 50 per cent. Note 2 refers to the conviction rate being 65 per cent and currently sitting at 73 per cent. What does the Attorney General think will change in the capability of obviously a very efficient DPP to drop that high level of achievement to 50 per cent and why is he setting the benchmark so low? Is the office losing skills, is it losing funding or is it just being cautious?

Mr J.R. QUIGLEY: I will let the director expand on my answer. Predicting the outcomes of trials is notoriously difficult. One could say that an accused has a 50 per cent chance of getting off at trial and a 50 per cent chance of getting convicted. The office is to be commended for the successes that it achieves and the high percentage it has. But I will hand that over to the director.

Miss A.L. Forrester: I would like to put it slightly differently, if I could, in terms of 50–50 chances of acquittal or conviction because we assess cases on the basis that we proceed if there are reasonable prospects of conviction. Across the country, a slightly over 50 per cent key performance indicator is a good gauge that we are getting

a decent balance of cases that have a reasonable prospect of success. That does not mean they have great prospects and it does not mean we will definitely get a conviction, but it means we are prosecuting enough cases for a jury to decide; that is, there are enough prospects that a jury should decide a case. If the conviction rate is 100 per cent, too many cases are probably being dropped that would have had a chance had they been given a chance. We do not prosecute only things we can definitely win. The fact that we have a relatively high conviction rate at the moment means we are doing a good job of assessing the cases that have good prospects and appropriately weeding out, at a stage before trial, those that should not proceed, because these are convictions after trial. Matters can resolve right up until the doorknock of trial. It is more than 65 per cent now; it is 73 per cent at the moment. That is a standard we have maintained this year for convictions after trial. I think that means we are doing a good job of assessing which matters should proceed.

Mr A. KRSTICEVIC: In terms of the volume of cases that the office is putting through the system to achieve that target, how does that relate to other jurisdictions? The Attorney General said about 50 per cent was the general rule of thumb across the country, are we putting out the same percentage of cases as per our population compared with other states or are we doing less in terms of throughput?

Miss A.L. Forrester: Member, that is very difficult to compare. I have worked in one other jurisdiction and my experience is that we are more robust than that jurisdiction, but they have a lot more cases. Not in this particular case, but resourcing can come into it. Policies of particular directors of public prosecutions and the way they take particular attitudes towards sex cases or matters of that nature can all have an impact. It is very difficult to compare or find like for like to compare. We have increased the number of matters that we prosecute by 40 per cent over the last four years and our conviction rate has gone up.

Mr A. KRSTICEVIC: Is the director comfortable that she is prosecuting all the cases that need to be prosecuted? Does the office have enough resources and enough funding? When a case has come to the director, has she said, “Yes, we should do that but, no, we have not got the capacity to take it on board”?

Miss A.L. Forrester: We are not currently in a situation in which we are making decisions based on resources; that is, which matters to prosecute and which not to prosecute. If we were, I am confident that I could go to the Attorney General and tell him that and we would be adequately resourced, so that that does not become a factor. What I can say is that we make rigorous assessments about whether we have reasonable prospects of conviction in any case and we take great care to consult with victims and the police before we make decisions to discontinue or withdraw a prosecution. We hope—we always hope—that we have the right balance but we are continually striving to make it better.

Mr A. KRSTICEVIC: The director said her office has the resources to do the cases it needs to do, and if she needed to, she could ask for more funding for the cases that are on hand. Are cases moving through the system quickly enough or are they sitting there for an unreasonable length of time?

Miss A.L. Forrester: Member, it is not only, in fact hardly ever, that the DPP dictates the speed at which a case moves through the system, but also that disclosure has to be completed by police. We are at their mercy to some extent. We get some leeway, but not much, from the courts in preparing a case and getting it ready. Sometimes we are still waiting on expert evidence from police. Depending on the backlog in a particular court, a case is waiting for trial until it can get on when it is next in the queue.

Mr A. KRSTICEVIC: Are police appropriately resourced to get the cases to the office of the DPP in an appropriate length of time? Are they doing their job as best they can or is that part of the process?

The CHAIR: I think that is outside the role of the Attorney General.

Mr A. KRSTICEVIC: Obviously the DPP waits for the police.

The CHAIR: I will ask the Attorney General whether he wishes to comment.

Mr J.R. QUIGLEY: We would not answer that question because that is really a question about police resourcing and whether the police are well equipped to get the materials through. That should really be a question for the Minister for Police.

Mr A. KRSTICEVIC: I will rephrase the question. How many cases has the director got sitting in her office that are waiting for police to get all of that information collected so that her office can move to the next stage of prosecution?

Mr J.R. QUIGLEY: With respect, there would be a lot of cases going through various stages of prosecution. They are not just sitting there in dead water; they are active files waiting for materials to come in depending upon the stage of the prosecution.

Mr A. KRSTICEVIC: Is the director comfortable that that chain of activity is progressing in the way that it needs to to get the cases through the system as quickly as possible?

Mr J.R. QUIGLEY: I can answer that. I am sure that if there were any unreasonable delays, the director would approach the Attorney General—my office—immediately, as she did with the Macro task force and Operation Fledermaus for that matter, which is the Roebourne matters. I was approached immediately and the government responded immediately. One of the prime duties of my office is to see that the office of the DPP is properly resourced to prosecute all appropriate criminal cases on behalf of the community.

[7.20 pm]

Mr Z.R.F. KIRKUP: I refer to the significant issues impacting the agency on page 379. The Attorney General mentioned Operation Fledermaus and the prosecution associated with that in his last answer, but I am keen to understand whether, noting the significant issues impacting the agency, any additional funding might be required over the coming years.

Mr J.R. QUIGLEY: I do not know about the coming years—I will let the director answer that. We have already committed to what we are up to, but I will let the director answer about the coming years, because I cannot forecast where the end of this is.

Miss A.L. Forrester: It is very difficult to predict. We do not know how many arrests the police are going to make. At the moment, 49 accused have been charged and, given the time frames, we would hope that most of those are either completed or near completion by the end of the year, or close to it. In those circumstances, we have funding for the next financial year and, again, if we need more funding for that particular task force or its expanded version through other regional areas, we will seek it in the same way that we have sought it before, by providing business case and proper estimates of what we need.

Mr Z.R.F. KIRKUP: I appreciate that response. In terms of the complexity of what we are talking about versus Macro, for example, I imagine Macro is significantly more complex, but of course a lot more charges have been laid against individuals. In terms of the FTE allocation within the office at the moment, and the additional staff required for Macro, is this also being looked at? As an opposition, we are quite concerned about what is happening in Roebourne, as I suppose everyone in the community is, but we are trying to get a sense of how robust the office's resourcing has been, in anticipation of any charges, and the investigations there.

Mr J.R. QUIGLEY: I will refer to the director, but before doing so, and without being too political, one of the challenges I faced as an incoming Attorney General was that the previous administration had a workforce replacement policy, so that when a senior prosecutor left, going to the bench, they could only be replaced with a prosecutor at 60 per cent of that salary, which was having a concerning downward push. Our starting point, with all of these, was off a low bar, where we had to change that policy to have the office declared a frontline service, as the police were declared a frontline service. I do not want to avoid this situation, but there was a challenge that had to be met. As to the ongoing staffing of Operation Fledermaus, I will refer to the director.

Miss A.L. Forrester: The challenges of Fledermaus are different, but in their own way quite complex as well. Although it is not one person and 20 years of investigation, there are a lot of people with a lot of very challenging charges, and a lot of very challenged victims. Many of them have foetal alcohol spectrum disorder, issues with English as a second, third or even fourth language, difficulties with finding interpreters, the very nature of the offending behaviour, and the difficulties in proving it. It is quite an extraordinary challenge, and we have had to dedicate experienced resources to it. The previous policy that the Attorney General has already mentioned took a substantial amount of seniority, or value in seniority, out of our office over the first year that it was implemented, and so we are juniorised already, so we are assigning senior people to Macro, and senior people to Fledermaus, and there is no secret that we have a quite juniorised office at the moment that we are trying very hard to train up. Monetarily, we are sufficiently resourced to meet those challenges. Our biggest challenge is finding experienced enough staff, but we have certainly assigned senior staff, and certainly almost an equivalent team size to that of Macro, to the Fledermaus prosecutions.

Mr Z.R.F. KIRKUP: I appreciate the response, Attorney General, and I note the reference to the previous government's policies in that case. Why are the employee benefits being reduced by \$3.3 million, while the FTEs go up over the coming year? Is that a flow-over of that policy, or has something else occurred? The income statement is there. To clarify, employee benefits appear to be going down—that is, salaries to employees.

Mr J.R. QUIGLEY: Can the member take us to a line item?

Mr Z.R.F. KIRKUP: Of course I can. I refer to the line item for expenses under cost of services on page 383 of budget paper No 2. Employee benefits there seem to be reducing by \$3 million in 2019–20 from where we are at the moment, although I note that the FTE numbers appear to grow. I am trying to understand the reconciliation of that. Is that a reference to the previous government's policy being flowed through?

Mr J.R. QUIGLEY: The figure is shown as \$33 million for the 2017–18 year. Next year it goes to \$34.342 million.

Mr Z.R.F. KIRKUP: I am referring to 2019–20.

Mr J.R. QUIGLEY: I will refer to the director. It is to do with the cost–demand model.

Miss A.L. Forrester: The issues in relation to our funding, which were in large part a result of the workforce renewal policy in the agency expenditure review, which was also a policy of the former government through the forward estimates, was that those two reductions were causing some problems, so we went to Treasury and had a discussion about how we could revise our budgeting for next year and over the forward estimates. Between us, we have developed a cost–demand model, which has resulted in this year’s funding being what it is. We are still refining that for the forward estimates, so those figures over the forward estimates may not ultimately be what we have, but we are looking at the cost–demand model. We do not know what that cost–demand model is going to throw up so, as I say, we are refining that and working on what the drivers are, and we are confident that, if we need more money than is in those forward estimates, the government will accommodate that.

Mr Z.R.F. KIRKUP: How do we land at that figure of \$31 million then? I imagine some calculation must have taken place to get to that point.

Mr J.R. QUIGLEY: I think we need to go back to 2016–17, before we came to office, when the AER and the workforce replacement policy were in place.

Mr Z.R.F. KIRKUP: Is it just a long-term average, in that case?

Mr J.R. QUIGLEY: Yes, and then when we look at the coming year, that is 2018–19, at the \$34.342 million, that also includes Macro and Fledermaus.

Mr Z.R.F. KIRKUP: That is the lot, in that?

Mr J.R. QUIGLEY: Yes.

Mr A. KRSTICEVIC: I note in the fourth dot point on page 379 that the figures for indictable cases for 2016–17 and 2017–18 are similar. The projected number is slightly higher for 2017–18 than for 2016–17. Does the Attorney General see a similar number of cases in the forward estimates with that funding?

Mr J.R. QUIGLEY: For predicting the number of cases, I will defer to the director.

Mr A. KRSTICEVIC: I know that it is hard to predict, but there must be some idea of a pattern.

Miss A.L. Forrester: It is hard to predict. It depends on the resourcing given to police, what the police focus on, and how many arrests they make in any given year. As I said before, we have had a 40 per cent increase over the past four years. We seriously hope that it has levelled out. We cannot predict how many we are going to get next year. We have the 2016–17 figures there, and the 2017–18 figures seem to be about the same. That is about as much as we could say about where we are going with indictable cases. We will know more midway through next year.

[7.30 pm]

Mr A. KRSTICEVIC: On that point, just a further question. The director said there was a 40 per cent increase in cases coming through over the last 12 months. What are the characteristics of those cases? What sorts of cases is the DPP getting, why has there been a 40 per cent increase and what has changed?

Miss A.L. Forrester: It was over the last four years, and the principal increase is as a result of the methylamphetamine epidemic, so either drug-related crime or drug-associated crime. There has also been a spike in sex offence reporting as a result of the high profile commissions of inquiry and a royal commission in relation to that.

Mr Z.R.F. KIRKUP: I refer to page 382 and the asset investment program. Under the heading “Works in Progress” there is a line item dealing with computer and office equipment and the like. The estimated expenditure to the end of this financial year is \$1.4 million—is that about right? It then decreases quite significantly before bumping back up in 2019–20. Is there any reason for that lump at the front end, the amount going down, and then it jumping back up again?

Mr J.R. QUIGLEY: I will defer to the director on this question, member for Dawesville.

Miss A.L. Forrester: The \$1.4 million includes last year’s allocation; it has been rolled over to this year. We are trying to run a program of increased digitisation and renewal of our computer technology. We are concentrating very hard on trying to find efficiencies in that particular arena at the moment, so it was recommended we roll that figure over into this year so we can spend it on proper capital infrastructure and a proper program for replacement.

Mr Z.R.F. KIRKUP: Just economies of scale, in that case?

Mr J.R. QUIGLEY: I will refer to the director.

Miss A.L. Forrester: Yes.

Mr Z.R.F. KIRKUP: For the forecast, the figure grows again. Is that just inflation that has been applied to that? Has any modelling been produced? I note also that the FTEs continue to grow through the out years. I am keen to understand why that figure remains effectively in stasis after initially bumping back up to \$631 000.

Mr J.R. QUIGLEY: I refer to the director.

Miss A.L. Forrester: The figure going from \$550 000 to \$631 000 is a combination of a forecast increase in costs and equipment forecast to expire. For example, we have a rollout of multi-function device printers and things like that that need to be replaced, so it is just budgeting over the forward estimates.

Mr Z.R.F. KIRKUP: Nothing special, in that case—just wear.

Miss A.L. Forrester: Nothing at all.

Mr A. KRSTICEVIC: The director mentioned digitisation and the funding coming across for that. I assume that is for the government's Digital WA strategy. Can the Attorney General explain how far that strategy has progressed, what his plan is, when he thinks he will reach full digitisation of all the records, and whether he has enough funds and resources to achieve that within that time frame?

Mr J.R. QUIGLEY: I will refer that to the director.

The CHAIR: I have to say, member for Carine, I am finding the nexus a little difficult. If you want fresh questions, you can just say so. There is only two of you asking.

Miss A.L. Forrester: We are a bit behind a lot of other agencies in relation to digitisation. We are still working very much internally to upgrade our technology so that we can get on board with the government's strategy; we are that far behind. We do not have a time frame for full digitisation; we are well below getting to that point. We are currently working on getting a full business case together with appropriate strategic plans so we can work out how to do it. It is not as simple as just digitising our agency. Because we interact with police and courts and we are so heavily reliant on both, we have to work as a group to get an effective digitisation strategy. We are trying to work out, through the justice planning and reform committee, how to do that at the moment. We are very much in the initial phases and we are putting together a business plan for more resources, if they are required.

Mr Z.R.F. KIRKUP: I understand that in other jurisdictions, certainly internationally, we have seen the equivalent of district attorney's offices being hacked; they obviously contain valuable information. Noting what the director said about the computer systems being so old, has the DPP had any issues relating to unlawful access to information over the last two years?

Mr J.R. QUIGLEY: I will refer that to the director.

Miss A.L. Forrester: There are two issues. One, our computers are not old. We have good technology and we receive a great deal of support from the Department of Justice. Secondly, the fact that our records are all paper actually means it is much harder to hack. At the moment we are working on the initial phases of classifying our data and working out what level of security we need so as to futureproof ourselves against any such events before we go digital.

Mr Z.R.F. KIRKUP: So to clarify, the answer is no—there have not been any issues in terms of unlawful access to information.

Mr J.R. QUIGLEY: That is correct.

Mr A. KRSTICEVIC: I refer to page 379 and the dot points regarding criminal justice systems and office accommodation requirements for future needs for a modern prosecution service. What exactly are the accommodation needs for a modern prosecution service?

Mr J.R. QUIGLEY: I will let the director expand on it, but at the moment it is located at International House and spread over nine floors. I used to practice in that building and they are very small floor plans. Obviously there are inefficiencies when it is spread over nine floors, with people travelling in lifts all day and not interacting as closely as they would like. Obviously, a nice, big open floor plan would be desirable, but I will let the director further expand on that answer, if I may.

Miss A.L. Forrester: Just to build on what the Attorney General said, because I entirely agree with everything he just pointed out, it comes down to things like duplication of photocopying machines and transporting files between floors. We have to be close to the court complex, and because we are still paper based we have large numbers of tubs and trolleys to take to court. We cannot properly digitise at the moment because we are spread over nine floors. If I wanted to put wi-fi in my office, I would have to put wi-fi on every single floor, which is prohibitively expensive and a waste of money because our lease is up in two years. We do not have cross-pollination of knowledge and information; people are siloed. It is not good for morale. We do not have a big enough training room. There are enormous problems. We are desperately trying to find a building close enough to the court that will accommodate us, to a maximum of three floors.

Mr Z.R.F. KIRKUP: Is there an expectation of when that might land in terms of negotiations on new leases and ending the current lease at International House? Is there any idea of when that might be finalised?

Extract from *Hansard*

[ASSEMBLY ESTIMATES COMMITTEE A — Thursday, 24 May 2018]

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Chair; Mr Zak Kirkup; Mr John Quigley; Mr Tony Krsticevic

Mr J.R. QUIGLEY: I will refer to the director.

Miss A.L. Forrester: Our lease is up in 2020, but we have to have a building to move into, and we do not have one yet. It is as simple as that. We are in the process of working with Building Management and Works to get a new building and to advertise, but that is all commercial-in-confidence at the moment. We certainly have not found anywhere yet.

The CHAIR: Any further questions? All questions are done? Very good.

The appropriation was recommended.

Meeting suspended from 7.39 to 8.00 pm