

Division 33: Office of the Director of Public Prosecutions, \$11 908 000 -

Ms Guise, Chairman.

Mr McGinty, Attorney-General; Minister for Justice and Legal Affairs; Electoral Affairs; Peel and the South West.

Mr R. Cock QC, Director of Public Prosecutions.

Mr A. Malkovic, Acting Executive, Office of Director of Public Prosecutions.

The CHAIRMAN: Members, the question is that in respect to division 33, appropriation be recommended.

Mrs EDWARDES: Attorney, if I could refer you to page 566 dealing with output measures, whilst the director reports in his annual report on convictions after trial, there is no such measure listed there, unless it is elsewhere. Could you advise what is the percentage of figures for convictions after trial for the year 2000-01? I know the target measure is not less than 50 per cent. Secondly, in respect to the same matter what are the numbers and percentages of matters not proceeded with where a nolle is entered five days before the trial and prior to that period of time?

Mr McGINTY: I will ask Mr Cock to respond.

Mr COCK: We do not report on our conviction rates in the budget papers. They are in the annual report. For the year 2000-01 we achieved a conviction rate of 54.7 per cent. That was down from 58.8 per cent in the previous 12 months. In relation to the filing of nolle prosequi, we do not in fact separately categorise the percentage in which they are filed. However, I can tell you that in respect of the last financial year 43.5 per cent of trials listed did not proceed. The reasons for them not proceeding were adjournments, 41.9 per cent; pleas of guilty, 38.7 per cent, nolle prosequi, 16.1 per cent; bench warrants, 3.3 per cent.

Mrs EDWARDES: Thank you., Attorney.

Ms SUE WALKER: Minister, this morning you said that you were relying on the Director of Public Prosecutions Office to give public movements of accused to victims of crime. Is the director aware that you are relying on him for this?

Mr McGINTY: I think the answer to the question this morning was something to the effect that once somebody is convicted and put in prison, we are establishing a victim notification register which will ensure that the Department of Justice relays information about convicted prisoners to their victims and their families. I think the observation was made that to the extent that that occurs with accused before they are convicted, that is something which often falls to the prosecution to undertake. Mr Cock might be able to inform the committee of the extent to which that is undertaken.

Ms SUE WALKER: In particular I refer to page 566, "Major Achievements for 2000-02", so you know exactly what I am looking at - "Completed a comprehensive review of the DPP services provided to victims of crime and Crown witnesses." The major initiatives for 2001-02 are, "Analyse the 2000-01 report on the review of DPP services to victims of crime and implement key recommendations." Minister, what is the procedure in place in the office for the DPP to let victims of crime know where the accused is in relation to matters of bail, if they are on remand when they are going to be released and if they on bail whether they are going to be released or if they are being released to home detention. Is there a system in place? You seemed to be relying on that this morning.

Mr COCK: I presently have no system in place to ensure that every victim of crime is notified by my office of advice my office receives as to the location of the accused person. There are ad hoc arrangements whereby victims may seek material in addition to what I traditionally provide which is merely the trial dates. If a victim seeks additional information, that is transferred to the file manager who deals with that request consistent with my internal procedures. Those do not preclude the provision of that information but it is not customarily given.

Mr QUIGLEY: I refer the minister to page 566 of the papers, "Major Initiatives for 2001-02" where it says -

The DPP will develop internal processes to give effect to the new Criminal Property Confiscation Act and liaise extensively with the WA Police Service to integrate each agency's activities.

Could these laws be used to target the property of members of outlaw motorcycle gangs and could it be used specifically to target the motorcycle machines that they ride, with a view to dismounting them and perhaps starting to break up the gangs?

Mr McGINTY: The Criminal Property Confiscation Act was passed last year. Its full impact is not yet fully appreciated but I would ask Mr Cock if he could provide the committee with some information to response to the member for Innaloo.

[2.20 pm]

Mr COCK: Certainly the Act only was proclaimed to commence from 1 January this year. Generally my office had acted under old laws, the Crimes (Confiscation of Profits) Act 1988. We generally forfeited about \$500 000 worth of property per annum. I am able to say that already this year my office has received \$638 722.66 into the confiscation proceeds account. That is cash in the account. We have freezing orders totalling \$11 921 132.68 in respect of other property over which we have applications for forfeiture in various states of development presently outstanding. The team of prosecutors in my office who now comprise the unit number only three. I am expecting to increase that number generally over the next 12 months. I can tell you the minister has given me a commitment to fully fund my request in that respect.

In respect of the application of that act to outlaw motorcycle gangs, we have already successfully forfeited one property owned by members of a gang called the Coffin Cheaters. That forfeiture arose because they were growing cannabis hydroponically within it. We have also recently put under seizure large amounts of cash found in premises occupied by that gang. I think in one respect at least we have obtained orders from the Supreme Court to question members of a gang in relation to the ownership and source of that money.

In relation to motorcycles, there are essentially three bases upon which this Act could be used to forfeit motorcycles. The first one is if the motorcycle has either been purchased through the proceeds of crime or alternatively the owner of the motorcycle cannot satisfactorily explain the means by which he or she - generally he - purchased that motorbike. That would enable us to forfeit it. Alternatively if the motorbike is in fact used in the commission of a crime, and we are presently exploring with police and giving them advice as to the sorts of offences which would obviously be relevant - using it to decamp a scene, for example, would be a basis upon which the property could be said to be crime used and therefore automatically forfeited.

Alternatively it may well be if the gang member is involved in some sort of conspiracy which requires he or she - again predominantly he - to move from one place to another as part of the plan, that could also suggest that the motorbike is crime used. It may well even be if the outlaw gang member is in fact distributing drugs or something like that and using the machine for that purpose. Any of those bases will be bases upon which my office has instructed the police to issue orders seizing the motorbike and indeed that then automatically puts the ownership of that at risk. We will obviously pursue that through the courts if we need to.

Mr QUIGLEY: Can I ask a supplementary question there?

The CHAIRMAN: You may.

Mr QUIGLEY: There was a recent event involving the attendance of OMGs at a funeral in Fremantle where they were kept under light surveillance by the police.

The CHAIRMAN: Outlaw motorcycle gang. You need to explain. Somebody was looking puzzled about that.

Ms SUE WALKER: No, I was just wondering if it was supplementary, that is all. Is it relevant?

Mr QUIGLEY: Yes, it is to that. After leaving the funeral a lot of them used their motorcycles, I think, to menace and surround police on the road. Do those sort of traffic offences which are not used in the commission of the conveyance of drugs still render the motorcycle to be subject to confiscation under the law, that is, riding in a pack for the purpose of committing an assault?

Mr COCK: No, sir. It depends upon what the particular offence committed is. It has to be an offence, I think, the maximum penalty for which equals or exceeds two years imprisonment. Depending upon the nature of the assault and the use to which that bike is put in the context of that offence, yes, it could well be used. Just menacing may itself not be enough.

Mr MCGINTY: If could just add a little bit by way of elaboration of that, as I understand the Criminal Property Confiscation Act, it could equally be used against fortified bikie headquarters as well if the same test is applied in relation to either the unexplained wealth or use as part of a crime. The DPP might be able to explain to the Committee the circumstances in which bikie headquarters might be forfeited as well under the provisions of this act.

Mr COCK: Yes, certainly, Minister, I can confirm that the property owned by one motorcycle gang member has already been forfeited. That was used in the commission of the offence of the cultivation of cannabis with intent to sell or supply and that property has been forfeited and it soon to be sold. Property, of course, can be used in many other respects. Any offence in which the use of the property is somehow relevant would, as long as the offence was sufficiently serious, having a maximum penalty in excess of two years, expose that property to forfeiture.

Obviously if it was used for the purpose of perhaps manufacturing amphetamines, that would be a clear use which would justify forfeiture. Even if it was used for the purpose of some other offence, perhaps even the

plotting of a particular offence where it was used as the gang members' meeting quarters for the purpose of hatching a plot, that might well justify its forfeiture. The minister is also correct that another base upon which it could be forfeited is if the property was purchased through the proceeds of crime or alternatively the motorcycle owners are not able to establish on the balance of probabilities that they in fact acquired it through some other lawful means.

Mr QUIGLEY: From my earlier experience in another life, under the previous legislation there were ad hoc decisions made by individual prosecutors as to whether to make the application in a particular given circumstance. In relation to an attack upon the outlaw motorcycle gangs, will there be a hard policy from your office to pursue the root of confiscation whenever it is available?

Mr COCK: Yes, I can confirm that by saying I have a centralised team now that in fact is headed by a senior prosecutor with three other prosecutors now working with him and that team deals with all prosecution applications. They consult with me at least once a day in relation to their progress on general matters and consult with me as required in relation to specific initiatives.

Ms SUE WALKER: Minister, what are the key recommendations contained in the review of DPP services to victims of crime? How much, if any, will they cost to implement and where is that contained in the budget?

Mr MCGINTY: Mr Cock?

The CHAIRMAN: I will just clarify for the record, Minister, if I may, page 566 under "Major Achievements", second dot point.

Mr COCK: The review of the services my office has provided to victims of crime was conducted by a legal office on secondment to my office, Ms Nuala Keating. She delivered the report to me early this year and I in fact then released it in about July to relevant agencies, including particularly the ministry of justice, the Victim Support Service and the Child Witness Services. It is also available to any other person who would seek to inquire about it. Predominant recommendation was that my office should better focus upon the actual needs of victims of crime in relation to the preparation for trial rather than merely using our normal processes of simply preparing them as witnesses. That requires a far higher level of consultation with them and a far greater appreciation of their specific needs. I think it particularly identified that I need to react differently to different types of witnesses and accept that many victims require much more support than merely being told when the trial is to commence.

Many of the aspects found in the review are readily implemented. For example, our standard letters to victims were found to be quite inadequate in the sense that they were not simple. They were quite extensive in relation to the issues that they brought to the reader's attention but they were far too complicated in many respects and I think were often beyond the level of comprehension of some victims, so we have simplified the letters. That can be done without any real cost. It is simply done through the present operations committee that is maintained in my office to oversee matters such as this.

Other matters, however, of more significance such as the better liaison with victim services that are available through the ministry of justice and through non-government organisations require extra effort and more resources. I have had a preliminary discussion with the attorney-general concerning the employment of one office to coordinate those sorts of services and he has indicated to me that he would be receptive to a properly costed proposal and I think it could be funded through the confiscation proceeds account which is amassed out of the criminal assets from offenders under the Criminal Property Confiscation Act. I would expect the cost of that probably to be about \$100 000 but I have not yet made a proposal to the attorney.

[2.30 pm]

Ms SUE WALKER: Minister, that extra FTE, I suppose it is, is not contained within the budget yet.

Mr MCGINTY: No.

Mr QUIGLEY: I have one here from the member for Girrawheen who has left a question. The member for Girrawheen has asked me to relate that in her suburb the residents complain of a certain phone box that is regularly used to arrange drug deals from and the residents have partitioned Telstra to remove it. They have looked at the profit basis to that particular phone box and decided not to remove it. She has asked me to ask in committee whether there is the jurisdiction to seize the property of Telstra. That is the question I have been asked to ask on behalf of the member for Girrawheen.

The CHAIRMAN: Since I allowed one before that was a bit of a stretch, I will probably allow one more.

Mr QUIGLEY: That is not my question. It is all on behalf of the member for Girrawheen.

Mr McGINTY: I might have a go at the constitutional issues involved in section 109, the appropriation of Commonwealth property, but I will ask the DPP who might be able to throw a more informed view on the question asked.

Mr COCK: I hate to seek to avoid the constitutional issues that arise but it would be very difficult to establish that Telstra itself is actually party to the offence in a way in which would expose them to forfeiture applications under the Criminal Property Confiscation Act.

Ms SUE WALKER: Minister, the structural review report at the DPP - what are the key recommendations and how much will they cost to implement?

Mr McGINTY: This is a matter that the DPP discussed with me some many months ago now prior to the report being published. I indicated to him my full support for implementing the recommendations which he broadly described to me at that time and the implementation of those recommendations are being implemented in his office at the moment, but I will ask the DPP to answer your question in terms of its particulars.

Ms SUE WALKER: Minister, could I ask for a copy of the structural review report?

Mr COCK: I am happy, Minister, to make it available to the member.

Mr McGINTY: I have undertaken to provide by way of supplementary information the report into the structure of the DPP Office to the member for Nedlands.

The CHAIRMAN: Thank you very much. I believe you have indicated that your adviser can provide some additional information to the member for Nedlands in terms of a response.

Mr McGINTY: If the DPP can do that now.

The CHAIRMAN: Thank you

Mr COCK: Certainly. The key response from the independent reviewers who reviewed the key processes and structure of my office was that generally the office was structured in a satisfactory way consistent with modern management principles and was staff by hard-working prosecutors and clerks. However, it did feel that there was some real value to be achieved by taking more management-oriented focus on the legal activities that are conducted within the office and in that regard recommended the creation and appointment of a new position, a director of legal services, to have a predominantly administrative responsibility over the solicitors. It also recommended a more management focus to be adopted in respect of the clerical staff with a director of operations.

Those would be two new positions but they would be substantially funded by the abolition of two existing positions within the office. That has not yet commenced. However, I can advise that as of Tuesday of this week applications to be appointed as an implementation officer closed and I am about to review the applications and make an appointment. That will be a 12-month appointment. That is being funded through some moneys which were not spent in the last financial year. The approximate requirement there is \$95 000 which, as I say, will be met from moneys carried over of last year. The implementation officer will then immediately assist me in creating the new job descriptions necessary for this more management focused approach. We will then make those appointments. Then there will be a more performance management based system to the legal work in the office and a performance management system will be designed and implemented.

The review also significantly identified the need for a better training regime within my office. Whilst it appreciated the efforts existing already, I think it identified that there could be more done both to train not only the professional prosecutors but also the clerical officers and provide them with a greater career path. I am likely then to be appointing a training officer to supervise the training of in particular the junior lawyers but also some senior lawyers and all the clerical officers. I will be creating paralegal positions within the office for the first time to provide a career path for many of my enthusiastic clerical officers. Those are the major proposals in the review.

Ms SUE WALKER: Thank you. Supplementary, Madam Chair. In relation to the training regime, minister, what part of the budget has been put aside in relation to the office of the DPP for training Crown prosecutors? I am talking about advocacy skills, etc. It is normally done in-house. Because I have been there, I know, and it is an excellently run office, I can say that, but I am just wondering if in relation to the training budget, if there is one, is there any provision to provide advocacy services from the eastern States?

Mr COCK: I can advise that in fact one officer has already attended at our cost an advocacy training opportunity in Canberra which was over a one-week period. She reported back to me recently that she was quite advantaged by the attendance at that. I can advise that that training comes within my existing allocation of about \$32 000 per annum. I think it is really not a matter of putting more resources but perhaps being smarter with the use of existing resources. I have a lot of talented legal officers in my department.

What I expect a training officer to do is to do a needs analysis initially to identify what level of need there is for particular types of training and I would expect some, if not most, of the training that is going to be required to be available from my existing staff. In that respect I can tell you that a couple of my staff each year seek leave without pay to go to the University of Western Australia and train in the advocacy training course for law students. Those persons, for example, would be ideal to be put to use in my office as actually providing advocacy training, but I am not limiting it to advocacy training. Indeed I think the review has identified a much more management focus needed for the provision of legal work and I think I will be providing some management training too.

Ms SUE WALKER: Thank you, Minister.

The CHAIRMAN: Thank you. Members, the question is that in respect to division 33, appropriation be recommended. That is carried. Thank you very much.