

Division 31: Office of the Director of Public Prosecutions, \$46 878 000 —

Ms K.E. Giddens, Chair.

Mr J.R. Quigley, Attorney General.

Ms A. Forrester, SC, Director of Public Prosecutions.

Mr P. Rechichi, Chief Financial Officer.

Mr J. Lee, Principal Policy Adviser.

Mr D. Emerson, Principal Policy Adviser.

[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, a minister shall be examined only in relation to their 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 close of business Friday, 1 October 2021. I caution members that if a minister 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.

Are there any questions from the member for North West Central?

Mr V.A. CATANIA: I refer the Attorney General to page 472 in volume 2 of budget paper No 2.

Mr J.R. QUIGLEY: Yes; I am now organised. Someone had taken out a tab.

Mr V.A. CATANIA: I refer to "Cost and Demand Pressures" under "Ongoing Initiatives". Why has the budget more than halved from the 2020–21 actual to 2022–23, given the recent report of "overworked state prosecutors drowning in the growing number of court listings"? The Director of Public Prosecutions, Amanda Forrester, mentions in the annual report that the excessive workload was potentially impacting victims, offenders and the community.

Mr J.R. QUIGLEY: As the member knows, the annual report is not a line item in the budget, so the question is: why is the estimated actual at \$644 000 and the budget estimate at \$453 000? Is that the question?

Mr V.A. CATANIA: Why has it halved between the actual and the estimate?

Mr J.R. QUIGLEY: As the member knows, we introduced a cost–demand model for the Office of the Director of Public Prosecutions after it was decimated by the previous administration. As such, the estimated actual is trying to forecast what is going to happen in the future, whilst the budget estimate is a more solid figure.

Mr V.A. CATANIA: Also under "Ongoing Initiatives" is "Legal Information Service". What is it for and why is there a budget allocation only for 2021–22 of \$305 000?

Mr J.R. QUIGLEY: May I let the director answer this, please.

Ms A. Forrester: The legal information service is a service that we currently provide for the provision of information in relation to Redress—criminal injuries compensation. It comes out of the Redress allocation, so it is primarily in relation to that, but also subpoenas, criminal injuries compensation, and applications to ask for information so that people can commence lawsuits under the change to the limitation periods; all that sort of stuff. Three FTEs are funded under that initiative. We have been advised that consideration will be given in future years to continue funding that as needed.

[5.00 pm]

Ms M.J. DAVIES: I refer to page 472 and the line item "Cost and Demand Pressures". I refer to comments made by the Director of Public Prosecutions and discussions in the media about the fact that state prosecutors are performing substantially unpaid overtime, many without complaint.

Mr J.R. QUIGLEY: They serve our state wonderfully!

Ms M.J. DAVIES: There is no complaint on my behalf. The DPP has raised a legitimate issue because there is risk to not only those who they represent or prosecute, but also their own health and wellbeing. There is also enhanced risk of mistakes because they are under that pressure. Certainly, that was articulated in the annual report. Could the Attorney General give us an understanding of how the government is going to address this? From my reading,

it looks as though additional legislation will add to that workload, which, I think, was also articulated by the Director of Public Prosecutions. Serious concerns have been raised in the annual report.

Mr J.R. QUIGLEY: The annual report is not a line item in the budget; it is what we are forecasting and what we are putting aside to deal with officers' needs. I am very proud of the McGowan government's support for the office. As a stand-out indicator, in the period 2017 to end of the out years 2024–25, the budget injection is \$35.5 million, which will be utilised by the office for core service deliveries, including the difficult period during the pandemic period. Of the remaining \$34.6 million across the forward estimates, \$25.2 million is allocated in the 2022–23 financial year. If we go back to what has happened to the office historically, the previous administration made severe cuts to the Office of the Director of Public Prosecutions, and those cuts resulted from the workforce replacement policy whereby the director could only employ a replacement prosecutor at a salary level of 60 per cent of the person that they were replacing. There was a significant number of judicial appointments from the office. They were senior people and those senior people going to the bar had to be replaced, but they could not be replaced with a senior person; they had to be replaced with junior person at only 60 per cent of the wage. The office suffered significant and cruel cost cutting during the previous administration. I am pleased to say that there has been a huge uplift in the allocation to the DPP and although we are not here to debate the annual report or media coverage of the annual report, the concerns raised do not go to this government's budgetary support of the office of the DPP.

[Ms A.E. Kent took the chair.]

Ms M.J. DAVIES: I refer to page 475, "Criminal Prosecutions", specifically the line item "Employees (Full-Time Equivalents)". Can the Attorney General advise whether there has been a higher than what would be anticipated in the rest of the public service turnover of staff? What has the turnover been?

Mr J.R. QUIGLEY: I will ask the director to answer the question because she watches the turnover.

Ms A. Forrester: I do not have the information to hand, but we have had a 50 per cent higher than office average turnover in our senior staff because, from the feedback that we are getting, it is the most overworked cohort. I am not aware of the turnover rate of the rest of the public sector so I cannot comment on its relationship to the rest of the sector. One of our strengths is retaining staff in general, despite our heavy workload. The loyalty of the staff is something that I am very proud of.

Ms M.J. DAVIES: The DPP referred to a 50 per cent higher turnover of senior staff; what staff does that include? What sort of staff are we talking about? The DPP said senior staff in the office; what does that mean? Can the Attorney General outline their roles and responsibilities?

Mr J.R. QUIGLEY: It means very, very senior people. Senior counsel, very top end staff, are the ones who are leaving, not the ones who have been employed for a year. For example, I refer to Her Honour Judge Carmel Barbagallo, who did the Edwards trial. She is a brilliant prosecutor but she has gone to the bench. A lot of senior staff have left for the Magistrates and District Court. We are talking about senior counsel such as Her Honour Judge Amanda Burrows, SC, who with many years of experience went to court.

Ms M.J. DAVIES: Further to that, if the high turnover rate is put alongside the introduction of new legislation that will most likely increase the number of cases that the office will have to deal with, how does the government propose to deal with that? Will there be further increases in funding?

Mr J.R. QUIGLEY: There is what we introduced when we came to office—the pipeline of justice. As more police come on and new things are required, they will go up. Let us look at the appropriation figures for 2016–17, the last year of the previous administration. The appropriation was \$35 million against the total cost of the service of \$40 million. In 2021–22, the appropriation is \$46.88 million, which is a significant nearly \$12 million increase, against a total cost of service of \$52 million. That is a 32 per cent increase in the cost of service. We have brought about a 33.8 per cent uplift in appropriations over that period. More than \$11 million is allocated in the budget for the 800 extra police officers in the last budget.

That is the pipeline of justice I was talking about. The previous administration, Mr Barnett's administration, increased the number of police by about 1 000 over the life of that government. However, it did not give extra appropriate allocations to the DPP to deal with all the extra arrests. The pipeline of justice model, which I referred to in last year's estimates hearing, is all done by the bureaucrats. I have seen it: it looks like spaghetti junction, but it is incredible. If they put in 800 extra police at the start of the pipeline, that predicts how many extra arrests there will be, how many extra days in court will be involved and how many more prosecutors, judges, prison officers et cetera, are needed, so with the extra work coming through at all times with new legislation, that will be a further input to the pipeline of justice and will be reflected in the director's allocation.

[5.10 pm]

Ms M.J. DAVIES: From that answer, would the Attorney General refute that with the addition of more reforms on the agenda for the next three years, the government is not providing enough resourcing to set aside those changes that we are likely to see, or the further reforms he anticipates?

Mr J.R. QUIGLEY: If there is significant change, it will significantly uplift the work and that will affect the pipeline of justice in that budgetary year. These are forecasts. We have not got any hard forecasts on how many extra charges might result from any further work. There are perhaps some jurisdictional shifts to happen.

As to the resources of the Office of the Director of Public Prosecutions and its efficiency, I will ask the director to assist me on that.

Ms A. Forrester: The problem is far more complex than funding. The way the office is funded is based on forecasts, which, of course, change depending on things such as COVID-19. It is difficult to forecast in the forward estimates year by year. We are constantly in discussions with Treasury about how we are funded. It is difficult to predict what impacts those legislative changes will have. As with the cost-demand model, we have been advised that consideration will be given to funding our office if new legislation impacts on our resources. Of course, legislation can impact on our resources both up and down and we are making submissions to government about things that can be changed, and government gives consideration to those.

We are also working on things other than legislation, such as early resolution projects and things of that nature, to try to take some of the pressure off without requiring funding bids, so diverting resources from the preparation of trials to preparation of early resolution kinds of models. We are hoping to get court buy-in on that. That is what I am talking about in the report. It is far more complex than funding. The problem is that we cannot hire ready-made prosecutors. We are still trying to replace the prosecutors we lost five years ago. Our office is substantially juniorised and that is as much a cause of the burnout that we are experiencing, far more than any budgetary restrictions at this point. The fact is that I just cannot hire enough people.

Ms M.J. DAVIES: Perhaps the Attorney General can enlighten me: Is it because they do not exist in the system or because we are not paying enough? Is it the conditions? Is it the competition? Or is it all of the above?

Ms A. Forrester: We are reasonably well paid in comparison with the rest of the country, except New South Wales. Unfortunately, that means that if anyone on the eastern seaboard wants to move to a Director of Public Prosecutions office, they go to New South Wales; they do not come to us. They also have quite different legal systems, so we cannot attract people from other jurisdictions easily to this state. It takes about 10 years to train a prosecutor to sign indictments—unless they are exceptional—because signing an indictment is putting somebody's liberty at risk, and we take that very seriously. The training that is required to get someone to the experienced level of doing that task requires 10 years. The work we do that is unseen in the office—all the case preparation, quite apart from the trial process—takes a vast amount of our time. It is easily 50 per cent of our work and we do that when we are not doing trials, which is less and less often. We cannot have a prosecutor with two years' post-admission experience doing a trial that involves someone going to jail for 20 years—we just cannot. We need to retain people for 10 years in order to do that high number of trials. We have 98 homicide files floating around the office at the moment. They are allocated to people, but they require management. We have to manage victims and witnesses. Royal commissions have repeatedly said that we need to maintain continuity of the people handling the files. My people do a huge amount of unseen work. Barristers do not want to do that work. They regard it as solicitorial work and they do not want to be solicitors; they want to be barristers. We cannot just brief all our work because they will not do the work that we do, so we have to hire graduates. For a while there we were not even able to hire graduates. We have restarted our graduate program. We advertise nationally, so we try to attract staff, but I recently ran a process and was completely unable to attract quality applicants from any other state, or even external to the office. All our senior promotions pretty much come from within. It is a very difficult issue and it is creating a burnout risk, simply because those staff are doing so much work.

Ms M.J. DAVIES: From the Attorney General's perspective, are there any other ways to address that burnout risk, or requests that have been made by the office, that are not being met by government? As we have just heard, it is not just resourcing, so are there other matters?

Mr J.R. QUIGLEY: There are requests by the office to consider jurisdictions. The Leader of the Opposition might recall we moved a lot of the Supreme Court criminal work over to the District Court. If there is a request by the office, we look at all the charges that might be able to be dealt with by the Magistrates Court. If it goes to the Magistrates Court, that involves police prosecutors instead of DPP prosecutors, so that is under consideration.

The appropriation was recommended.

[5.20 pm]