

Division 56: Office of the Director of Public Prosecutions, \$27 041 000 —

Mr V.A. Catania, Chairman.

Mr C.C. Porter, Attorney General.

Mr R.E. Cock, Director of Public Prosecutions.

Mr P.J. Byrne, Director, Corporate Services.

[Witnesses introduced.]

The CHAIRMAN: The member for Southern River.

Mr P. ABETZ: I refer to page 735, the second dot point under “Significant Trends Impacting the Agency”. Could the Attorney General explain the reasons for, and the likely resource implications of, the proposal to increase the involvement of prosecutors from the Office of the Director of Public Prosecutions in Magistrates Court matters?

Mr C.C. PORTER: I will give the member a response, and I will then invite Mr Robert Cock to add to it. There are a number of reasons for that proposal. Traditionally, one of the reasons that there has been a view that the prosecutors from the Office of the DPP should become more involved in Magistrates Court hearings is training. The Magistrates Court offers a variety of matters that are shorter and less complex, and also less serious, and where the implications of mistakes are not as great. Mistakes always occur in prosecutions. There has been increased training for young prosecutors as time has gone on and as additional funding has been given to the DPP, so attracting prosecutors at more junior levels has been less difficult than it has been at the very senior levels. There has also been a growth in the office at many of the junior levels, and a desperate need to train people as quickly as possible. The Magistrates Court offers a very important avenue for that to occur. The service that we get from a trained lawyer may in many instances be superior to the service that we get from a police prosecutor. However, in many instances the police prosecutor will also be very experienced, while perhaps not legally trained. It is also the case—no doubt these reasons will be added to by the director—that the interface between the Magistrates Court and the District Court has become slightly more complex. That is because much of what was occurring in the District Court by way of procedure now occurs before committal in the Magistrates Court. That is perhaps a second reason. A third reason is that with the advent of what are known colloquially as either-way offences, some of the matters that have gone to the Magistrates Court have been comparatively more serious than they were historically and may warrant or require some more serious representation on the part of the state through the Office of the DPP. As to the resourcing requirements, it will in some senses be additional work, and I will leave it to the director to explain exactly how many people it is envisaged will be engaged and what the resourcing requirements will be.

Mr R.E. Cock: An additional reason to replace police prosecutors with trained lawyers is that it is widely known, I think, that the police are under pressure to be put back on the front line, and by sending lawyers to the Magistrates Court, senior sergeants and senior constables will be freed up for front-line duties. The economic consequences have not yet been determined, but it is anticipated that, as with the Children’s Court model, the police will transfer to my office resources that are currently being applied to their efforts. Quite surprisingly, despite earlier expectations that lawyers will cost a lot more to do the same work, the Children’s Court experience has shown that by better management of the trial load, earlier resolutions and a more rigorous approach to taking pleas in resolving matters without trial, we have actually been able to achieve it almost on a dollar-for-dollar basis with what the police were spending. I am very optimistic, with the negotiations with the police having started already, that we will be able to do it at almost no cost.

Ms M.M. QUIRK: When is it anticipated that this will occur? There is no money in this budget for that proposal. What sort of time frame is envisaged for doing this?

Mr C.C. PORTER: As I understand the position, there will be an effective transfer of resources from the police to the DPP.

Ms M.M. QUIRK: But there is no money in the police budget for that.

Mr C.C. PORTER: Some portion of the full-time equivalent numbers that the police were expending in court will be redirected to the director’s office, as I understand the director’s answer. My understanding is that this project is literally about to commence.

Ms M.M. QUIRK: I refer to page 737, which deals with the core business of the Office of the Director of Public Prosecutions. The answer may need to be provided by way of supplementary information. How many matters have been referred to the Office of the Director of Public Prosecutions from the Corruption and Crime Commission in the last calendar year; and, of those, how many have been nollod?

Mr C.C. PORTER: I may be testing the director's historic knowledge over the past year, and this question may need to be answered on notice, but is the director able to advise on that matter?

Mr R.E. Cock: Not with sufficient accuracy, no.

Mr C.C. PORTER: It would not be a great number I would have thought. We will take that on notice and give the member a written response.

Ms M.M. QUIRK: I am seeking the number of matters that the CCC has referred to the DPP for prosecution in the past year; and, of those, how many have been nolle.

Mr C.C. PORTER: In the last financial year—that is, to 30 June of last year?

Ms M.M. QUIRK: Yes.

[Supplementary Information No B10.]

Mr J.R. QUIGLEY: I refer to page 734 and the heading “3% Efficiency Dividend”. The first item under that heading is abolition of prerecorded hearings, at a saving of \$268 000. Can the Attorney General explain that saving?

Mr C.C. PORTER: Yes. I preface this by saying that the Office of the Director of Public Prosecutions is naturally an agency that is very wages heavy in terms of its overall budget. Therefore, a three per cent efficiency dividend is very difficult for an agency such as this to achieve. What that saving is, and how it has been created, is that when a child is a complainant in a sex matter, there is, of course, the first stage at which there is an interview by the police. Legislative changes have now meant that that interview in many instances, if it is conducted in accordance with best practice, can stand as evidence-in-chief. There is still the need for defence counsel to properly cross-examine the child complainant. It had previously been the practice that the overwhelming majority of those matters were prerecorded, such that a day would be set aside, and a prosecutor would be assigned or the matter would be briefed out, and that prerecording would occur. With the advent of the police interview also being able to stand as evidence, those prerecordings were generally in modern times just a cross-examination; however, that was not always the case. The director has identified that an area of savings could flow by having those matters not prerecorded but nevertheless occurring at the trial by use of a remote witness room. The rationale there was that one of the fundamental drivers for the prerecorded interview was that previously there was a much greater delay between committal and time to trial, and that stresses could be reduced on the child by having the prerecorded interview happen much earlier.

[8.10 pm]

Mr J.R. QUIGLEY: Have it out of the way.

Mr C.C. PORTER: That is right. The view was taken that that was an area in which significant savings could be derived, because the time to trial has so dramatically reduced that the child witness can still give evidence by remote witness room as though it were a video. However, the advantage in terms of time that was being created is now much, much less. I might add, member, that it is still the case that if the Director of Public Prosecutions, or the relevant prosecutor, determines that there will, for whatever reason, be an undesirable delay in the length of time from committal to trial, there is still the ability in those circumstances to prerecord. But now the standard practice will be that evidence will be given from a remote witness room at trial because of the closeness of the trial to committal.

Mr J.R. QUIGLEY: The second of the three items on the three per cent efficiency dividend is identified as being the increased stringency of prosecution guidelines. Do I take it that that refers to decisions to discontinue when public interest requires discontinuance, or is there some other reason?

Mr C.C. PORTER: That is precisely it, member. I will ask the director to add, in any way he sees fit, to my answers to these questions perhaps when the member has finished asking all three. As the member is well aware, the relevant guidelines on prospects of conviction and public interest give a broad discretion to the director as to under what circumstances he can offer what was called a nolle prosequi and is now called a notice of discontinuance. One of the areas in which there can be a saving is to apply a greater degree of rigour and scrutiny to what were very marginal cases that were previously going to trial and were almost inevitably resulting in acquittals. By doing that and increasing the number of discontinuances in the category where we have historically found there is a very, very low prospect of a conviction at trial, there are considerable cost savings.

Mr J.R. QUIGLEY: The third area outlined is not filling vacant positions, resulting in a cost saving of \$405 000. However, will that not require briefing out? That will eat into this saving of \$405 000.

Mr C.C. PORTER: Is the member looking at the final line?

Mr J.R. QUIGLEY: Yes, the final line.

Mr C.C. PORTER: Not filling vacant positions? As I understand the situation—again, I will ask the director to expand on all three of these questions—when there was a significant injection of funds into the Office of the Director of Public Prosecutions in 2005, the problem that the DPP then faced was filling the positions that those funds created. There has been some considerable success in filling those positions, particularly at the mid and lower ranges of experience, but at the very upper echelons of the office some positions have remained unfilled literally since the time of that funding. By not filling positions that have been unable to be filled, or indeed not filling some positions when they become vacant, there is a cost saving in staff wages and output.

Mr J.R. QUIGLEY: It might turn out that Hon Michael Mischin is irreplaceable!

Mr C.C. PORTER: He certainly takes that view, but I am not certain whether that is the case! It is quite proper to have the director expand on any of those answers in any way he sees fit. Are there any other specific questions?

Ms M.M. QUIRK: Through the Attorney General: how would the DPP describe his relationship with the police at the moment?

Mr C.C. PORTER: I find that a fascinating question, but I think it would have to appropriately be linked to a line item in the budget.

Ms M.M. QUIRK: Yes, that would be on page 737, under the heading of “Criminal Prosecutions”.

Mr C.C. PORTER: Page 737, which states, “The office conducts prosecutions against people accused of serious breaches of the state’s criminal laws.”

Ms M.M. QUIRK: Maybe I will put it a different way.

Mr C.C. PORTER: If the member could find some way of putting it that mentions the word “police”, it would be of assistance.

Ms M.M. QUIRK: Attorney, there has been some criticism levelled at the office of the DPP by an independent inquiry and also by senior members of the police, concerning the conduct of cases by the DPP—in particular, that the briefs are looked at, at the last minute, that proofing of witnesses may or may not occur, and that there are major cultural issues, including a lack of communication between DPP lawyers and investigating police—and these are all identified as systemic. I understand someone from the police is now working in the office to make some improvements on these issues, but I wanted to get the DPP’s take on that.

Mr C.C. PORTER: Perhaps if I can commence by answering that—I do have some notes, if the member would bear with me a moment.

Ms M.M. QUIRK: Sure.

Mr C.C. PORTER: I will commence with what I understand to be some of the complaints that have been levied by the police. I think some of them, which were aired in an article in *The Sunday Times*, related to the issue of the DPP —

Ms M.M. QUIRK: I could not get past *The Sunday Times Magazine*, Attorney!

Mr C.C. PORTER: Neither could my mum, but there we go!

That article in *The Sunday Times* was specifically related to the issue of what are known as “either-way offences”. Again, I will ask the director to add to this answer, but in my observation there is always a degree of tension between police prosecutors and DPP prosecutors. I think historically that has always been the case. I went through the complaints that were levied in *The Sunday Times* article through, as I understand it, a report—although I think that might be placing it a bit too highly—that the newspaper had received from the Western Australia Police Union. The article went through a range of offences, and, in effect, their contention was that some offences that are indictable were dealt with unlawfully in the Magistrates Court. I went through that article example by example, and I did eventually get my hands on the “report”—I put that in inverted commas, because it was not a particularly intricate document.

Ms M.M. QUIRK: Attorney, I am not actually referring to that article; I am referring to one that I think was prepared last year on behalf of the Western Australia Police. I think it involved some visiting officers from Scotland or the United Kingdom.

Mr C.C. PORTER: With respect to the issue that I was previously talking about, I did go through that to my satisfaction and in consultation with the office. I could not find a single example of something that was dealt with in the Magistrates Court that should not lawfully have been dealt with there, depending on the exercise of discretion.

As to the issue of those tensions that have been said to exist between the police and the DPP, I might let the director answer that question. I think it pertains to the existence of Project Anticus. One of the ways in which one of the problems has been alleviated has been by having a senior police officer in the office of the DPP. I might let the director answer directly on that matter.

Mr R.E. Cock: The position is that last year the Commissioner of Police was concerned with a number of issues involving his own force and some issues involving the force's relationship with my staff. He developed Project Anticus, which involved prosecutors from the Procurator Fiscal in Scotland, together with some detectives from Scotland, visiting Western Australia and conducting extensive inquiries and consultations. We actively cooperated because we saw it as a very positive initiative.

A very valuable report was prepared and provided to the commissioner and to my office in which there are numerous recommendations through which we are working. Critical recommendations include the placement, on a permanent basis, of a superintendent in my office to act as the liaison directly between the commissioner and my staff. Superintendent Lawrence Panaia was selected for that responsibility. He is situated in my office, on level 10 of the building that we occupy. He has been enormously valuable in breaking down barriers that had previously existed between some of my staff and police officers; in facilitating ways of dealing with information flows where they had stopped; in explaining to my staff—jointly and sometimes one-on-one—how better to operate with the police; and also in working with the police to resolve issues when my officers come to him with problems.

There are numerous other recommendations in the Project Anticus report with which we will be concerned. They include matters like negotiating a protocol with police regarding disclosure. That is almost complete, I am very pleased to say. They include the provision of my staff to assist the police academy at Joondalup to better train detectives and the formation of a number of special groups to resolve areas where there have been problems and difficulties in the past. Experience in the past six months, from my perspective, has been extremely positive. Despite what I might call a glitch, which gave rise to some concerns by the union that were sent to *The Sunday Times* and that the Attorney General has just spoken about, I think the position is that the relationship between my staff and the commissioner's staff has improved quite well. There is more room to move, but there is more to do, too. My corporate executive, which are my senior staff, are very enthusiastic about this proposal. Several of them have special tasks to implement the remaining recommendations that are pertinent to our office.

[8.20 pm]

Ms M.M. QUIRK: Does the Attorney General agree with the findings of that report? This is probably more directed to the director. I understand from what he said that he agrees with the findings that police need more training in criminal law and evidence so that the briefs he is receiving are of better quality.

Mr C.C. PORTER: Again, I will let the director add to this response. My view is that the report is fundamentally correct. Many of the difficulties that arise in criminal prosecutions are the result of inadequacy of disclosure and, frankly, they are not always the fault of the prosecutors. They arise from the quality of investigation, which in any large organisation is variable. I certainly take the director's point that there is some way to go in this respect. I will say that there are limits to the extent to which there can be coalescence or interface between prosecutors and the investigative agents—in this case WAPOL. A variety of models exist internationally. One sure-fire way in which to eradicate all tensions between police and the prosecuting agency is to make them one and the same thing at the level of investigation. America has a very highly integrated system. In South Africa the system is actually known as a prosecutor-led investigation. I would certainly never want to see us get to a point at which it becomes indistinguishable as to which agency is leading the investigation, but there is still some considerable distance to go involving DPP prosecutors in advising police on how best to go about their obligations that arise under the Criminal Investigation Act and the Criminal Procedure Act.

Mr J.R. QUIGLEY: The Attorney General was talking about the police union report. He stopped and cut back because the member was talking about another report. To return to that report, it was not a document of the police agency, was it; it was a union document?

Mr C.C. PORTER: It was a union document, as I understand it, but there were no identifying marks on it.

Mr J.R. QUIGLEY: It was forwarded by the union.

Mr C.C. PORTER: That is correct, yes.

Mr J.R. QUIGLEY: The Attorney General went through that report.

Mr C.C. PORTER: Yes.

Mr J.R. QUIGLEY: I can remember that one of the cases was meant to be the reduction in the value of assets involved in that case to keep it within a jurisdiction. Was there anything in that report that was substantiated? It seemed to be very attacking of the staff of the director by unnamed police officers. I was very concerned.

Mr C.C. PORTER: I have just been informed by the director that there was confirmation from the president of the police union that it was a union document. When I went through the report I saw seven scenarios that it raised, which were based on cases that the DPP had in effect required to be dealt with in the Magistrates Court. In each of them I found serious misunderstandings about how the either-way offence system works.

Mr J.R. QUIGLEY: Misunderstandings by the author of the report?

Mr C.C. PORTER: Correct, yes. I thought only one matter had any real interest or merit attached to it for the issue, and that was the issue of the boat.

Mr J.R. QUIGLEY: That was the boat that was meant to be valued at \$999 000 or something like that?

Mr C.C. PORTER: That is correct. If I may give an example, one of the examples it gave was that there was a presumption of an intent to sell or supply case —

Mr J.R. QUIGLEY: A narcotic?

Mr C.C. PORTER: Yes, that is right. The police union said that it should have been dealt with in the higher courts. It was misreading the schedule as to the prescribed amount to allow it to be dealt with as an either-way offence. There were significant errors in almost every respect. With respect to the boat example, I cannot recall off the top of my head what was alleged to be the value of the boat, but there is no doubt it was a matter the director looked into with respect to that final matter.

Mr R.E. Cock: The situation with the boat is that under section 378 of the code, if property is valued in excess of \$10 000, it cannot be dealt with as stealing, otherwise than on indictment. My office was sent a brief involving an allegation of the theft of a boat. It was placed in the prosecution notice that the boat was worth in excess of \$10 000. The brief when it was received by my office had no evidence of the value of the boat, so my office sent it back to the police. Prior to *The Sunday Times* article, the police officer who did the investigation got a valuation from a boat seller that the boat was worth well in excess of \$10 000. My office then took the brief back and an indictment was being prepared. That particular matter resulted from the absence of evidence of the value on the brief at the time it was sent to my office, which was resolved well before the article in *The Sunday Times*.

Mr J.R. QUIGLEY: Did it then go back on indictment?

Mr R.E. Cock: Yes.

Mr C.C. PORTER: As I said, the other matters were misreadings of the relevant schedules with respect to drug matters. For instance, one of them said that a possession with intent to sell or supply matter had to be dealt with on indictment pursuant to section 61 and schedule 3 if it was over six grams, which is the case; but also it was the case that it could be six grams and over and still be drafted as a simple possession, given the surrounding circumstances, in which case it could be dealt with in the lower courts. There were some fundamental mistakes of that nature. Four aggravated burglaries were pleaded down to trespassing and stealing, which is not at all an unusual occurrence. I went through it in some detail. I received advice from the director's office. I did not think there was anything in it.

Mr J.R. QUIGLEY: There was nothing in it?

Mr C.C. PORTER: No.

The appropriation was recommended.