

Division 30: Office of the Director of Public Prosecutions, \$55 673 000 —

Mrs L.A. Munday, Chair.

Mr J.R. Quigley, Attorney General.

Mr R. Owen, Director of Public Prosecutions.

Mr P. Rechichi, Director, Operations.

Mr M. Bugg, Director, Legal Services.

Mr L. Beeck, Manager, Financial Services.

Mr J. Lee, Principal Policy Adviser.

[Witnesses introduced.]

The CHAIR: The estimates committees will be reported by Hansard and the daily proof will be available online as soon as possible within two business days. The chair will allow as many questions as possible. Questions and answers should be short and to the point. Consideration is restricted to items for which a vote of money is proposed in the consolidated account. Questions must relate to a page number, item or amount related to the current division, and members should preface their questions with those details. Some divisions are the responsibility of more than one minister. Ministers shall be examined only in relation to their portfolio responsibilities.

A minister may agree to provide supplementary information to the committee. I will ask the minister to clearly indicate what information they agree to provide and will then allocate a reference number. Supplementary information should be provided to the principal clerk by noon on Friday, 2 June 2023. If a minister suggests that a matter be put on notice, members should use the online questions on notice system to submit their questions.

I give the call to the Leader of the Liberal Party.

Ms L. METTAM: I refer to page 459, outcomes, services and key performance information and the government goal of safe, strong and fair communities. I again refer to the fact that prosecutors have dropped the state's biggest case of public sector fraud, which came to light as a result of the work undertaken by the Corruption and Crime Commission. How did this happen?

Mr J.R. QUIGLEY: Certainly. Can I just correct the question?

The CHAIR: Absolutely, minister.

Mr J.R. QUIGLEY: It was temporarily dropped.

Ms L. METTAM: Right.

Mr J.R. QUIGLEY: It was a strategic move. As I explained before, Mr Whyte was charged with \$2.345 million worth of offences. He attempted to take his own life and went to hospital. Shortly thereafter, after conferring with his family, he made a massive confession that went even further than the disclosures he had made in the hearing room before he tried to take his own life. It was masses of information. The police prepared a spreadsheet. As I have said, they were trying to follow all the cheques everywhere. They charged him with all the offences, to which he pleaded guilty. He got 12 years in prison.

Ms L. METTAM: For \$2.5 million or \$25 million?

Mr J.R. QUIGLEY: No, the lot—\$22.5 million.

How were the charges dropped? That interview implicated—I always forget his name—Mr Anthonisz, who was charged. The police had the job of preparing the brief for the prosecution, which was forwarded to the prosecution. The prosecution advised the police that a lot of the evidence—nearly all of it—that had been gathered against Mr Anthonisz was in an inadmissible form. Had the trial proceeded at that stage and had his defence counsel taken objection to the evidence, he could well have been acquitted. During the year, the prosecution had been asking for extra statements and, as has been said in court, there was a communication breakdown because at the police end, there had been a turnover of staff in the section. The head investigator resigned from the force and others were moved out. People came in and looked at this massive job but the evidence was not prepared for the prosecutor in the format that could have been received by the court. If they had boxed on at that stage, Mr Anthonisz may well have been acquitted so the matter was discontinued. The police will do their job and complete the brief of evidence. There is no bar at law to recharging him on a refreshed brief. We will not have it that either the CCC or the Director of Public Prosecutions did anything less than a stellar job.

Ms L. METTAM: Will the Attorney General clarify whether it was under-resourcing of police that saw the evidence put not being in an admissible form?

Mr J.R. QUIGLEY: The member would have to ask the Western Australia Police Force; its members come on at eight o'clock tonight. It is not a question, as I understand it, of under-resourcing; rather, there was staff turnover with an officer resigning and another applying for a promotion and being moved to a sergeant in traffic, which happens.

Ms L. METTAM: There is an exodus; we know that many officers are leaving the force.

Mr J.R. QUIGLEY: One left while others were transferred out of the section. New staff came in to a job that was not properly finished and had to pick up it. The DPP requested more information and there was more staff turnover. To give the member an idea, the prosecution cannot go on a summary of where the money went through three primary bank accounts, 50 subsidiary bank accounts and 14 credit cards. The prosecution cannot say, "There's the summary, your Honour, to put to the jury." They have to get evidence from each bank behind it to show where he was putting the money and it has to be in an admissible form. That is a big job. If he had pleaded guilty, what the police had at that stage was sufficient for the court to sentence him, but it was not sufficient for a contested trial in front of a jury. Whilst it is regrettable, I hasten to add, as I said in the previous division, the CCC acted 110 out of 100, as did the Office of the Director of Public Prosecutions. It is just regrettable that there was this churn within the police section and that the issues that had been raised with them had not been properly attended to. All is not lost because of the wise decision by the Director of Public Prosecutions to discontinue, get the work done and file a new indictment.

[5.40 pm]

Ms L. METTAM: What is the time frame for the new indictment?

Mr J.R. QUIGLEY: The member will have to ask the police in the next section of estimates. We do not do the police work, nor can I forecast that. The police were asking for an 18-month adjournment of the trial. That is what the police wanted. No judge was going to adjourn a trial and put a person on bail for the next 18 months! It has been discontinued. Everyone is hopeful that it will be well under a year and that this time next year, when we come back to estimates, we can be smart Johnny and say, "I told you so."

Ms L. METTAM: Are we waiting on the police?

Mr J.R. QUIGLEY: At this stage we are waiting on the police to give the director the brief in the admissible format that the director and his staff have requested.

Ms L. METTAM: Once the evidence is in a form that the DPP is comfortable with, will that trigger it?

Mr J.R. QUIGLEY: I will defer to the director himself, because he makes the calls and is independent of me.

Mr R. Owen: It is a function of my office to always assess every investigation that is handed to us by police. That assessment involves whether there is a prima facie case and whether there are reasonable prospects of conviction. In that assessment of reasonable prospects of conviction, there is an assessment about whether the evidence is in an admissible form. There is also a public interest assessment. That is a continuing obligation on my office right up until trial. In respect of what is to happen in the future, if the evidence that has been requisitioned by my office of the police since approximately 2021 to 2022 comes in in an admissible form, that process of assessment will occur independently and afresh in respect of what evidence we have at the time.

Ms L. METTAM: Thank you. Is the DPP anticipating that the evidence will come before him within the next 12 months?

Mr J.R. QUIGLEY: I defer to the director as he has been in direct contact with the police.

Mr R. Owen: The police have indicated the time frame. We are not in control of the time frame. What was submitted to the court when the discontinuance was presented was that the time frame was estimated by the police to be 18 months. Whether that has changed is a matter for the police to address the member on.

Ms L. METTAM: How confident is the DPP that the police, the second time around and with a bit more certainty, will be able to get this right?

Mr J.R. QUIGLEY: I will defer to the director, but that does involve a bit of speculation.

The CHAIR: Mr Owen, you can answer as you feel comfortable.

Mr R. Owen: Thank you, chair. In this case, we were very specific about the nature and form of the evidence that was required in respect of why the prosecution could not proceed at this time. If that information is provided and no other circumstances or public interest factors change within the time period that is estimated at the moment, our reassessment will occur in that framework.

Ms L. METTAM: Thank you for that. We have only 15 minutes left, so we need to go to another division.

The appropriation was recommended.