

Division 31: Office of the Director of Public Prosecutions, \$30 879 000 —

Ms A.R. Mitchell, Chairman.

Mr C.C. Porter, Attorney General.

Mr J. McGrath, Director of Public Prosecutions.

Mr J. Plunkett, Director, Corporate Services.

Mrs H. Albiston, Manager, Finance and Administration.

Mr D. Creedon, Chief of Staff, Office of the Attorney General.

[Witnesses introduced.]

The CHAIRMAN: Member for Girrawheen.

Ms M.M. QUIRK: I refer to the heading “Relationship to Government Goals” on page 370 of the budget papers. During the division on the Corruption and Crime Commission, I asked about disclosure and would like to ask now whether the Attorney General or the Director of Public Prosecutions has any views about the need to tighten disclosure rules or whether reverse disclosure on defendants is needed. This obviously impacts practically on the conduct of prosecutions. I am really curious about disclosure. My questions during the CCC division were about a couple of instances in which I know that disclosure was very late in the piece and incomplete. I am not sure whether the DPP or the courts have some sort of supervisory jurisdiction. How can that disclosure be better controlled in the future?

Mr C.C. PORTER: I will invite the Director of Public Prosecutions to comment in a moment. The first part of the question was: is there a view on the director’s part that the rules about disclosure by the prosecution need to be tightened? I will invite the DPP’s response. I might guess at his response by saying that my response to that is that the rules about disclosure on the prosecution are onerous, and properly so, and comparatively so when compared with generations of prosecutors past. That is completely appropriate. The difficulty is not with the extent of the rules—I think they are about right—but with the tightening of the conduct and observance of the rules. I know that the director has placed that as a very high priority. He may care to comment about the matters that he has engaged in to ensure ongoing observance of those already tight rules. With respect to reverse disclosure or defence disclosure, I have said publicly that my view is that some form of modification of the right to silence is probably appropriate in this jurisdiction at this time. My initial view was that that might be best achieved by something similar to the United Kingdom’s system of police warnings and the ability of adverse comment on the part of a judge or a prosecutor. I still maintain that that is a good system, but of course the provision of counsel to every single accused in a jurisdiction of this geographical size would be difficult. My prevailing view is that the form of legislation that we are likely to see in this place in due course is more with respect to reverse disclosure and defence disclosure. I think there is significant support —

Mr J.R. QUIGLEY: I am sorry—more with respect to what?

Mr C.C. PORTER: With respect to defence disclosure—therefore, an extension of the types of disclosure that the defence requires pursuant to the alibi rules in the Criminal Investigation Act at present to other matters. This is a part of a wider debate, but, in my view, there are serious and significant statements from a range of senior judicial officers on both sides of the prosecution and defence bar who also agree, and have publicly stated, that some limited form of defence disclosure is probably well overdue for the administration of justice. That is a policy issue. I am very happy for the director to give any views that he might have about that. The final question was with respect to —

Ms M.M. QUIRK: I might ask a further question.

Mr C.C. PORTER: I have asked the director about the question of the observance of prosecution disclosure requirements and improvements and policies thereto and whether he wishes to comment about reverse disclosure obligations.

Mr J. McGrath: I agree with the Attorney General that the current disclosure laws are very onerous on the prosecution. I would not proffer an argument that those rules should be subject to any amendment; however, the prosecution agencies—that is, the DPP and the police—should be required to ensure timeliness in disclosure. That is the real difficulty in Western Australia. There is now a movement towards the recognition that not only the material said to be potentially relevant to the case, but also a list of unused material should be disclosed, so that there is a comprehensive disclosure of all material. The great benefit in a list of unused material is that it does not require the police or the prosecution lawyer to endeavour to anticipate what the defence will be, because what is potentially relevant requires a form of interpretation of the likely defence, and that in itself is an issue that impacts on whether there should be legislative reform on reverse disclosure.

The second aspect, which I accept, is that it is necessary for prosecutors of the Office of the Director of Public Prosecutions to engage in the early proofing of witnesses, because, as it is known, the evidence in court will comprise not what is said in the police statement, but what is said during proofing. The member referred to Corruption and Crime Commission prosecutions in which there is late disclosure. My understanding is that the late disclosure arose because of the further utterances of the witnesses during the proofing with the Office of the Director of Public Prosecutions lawyer. Therefore, it is a question of the quality of the statements. The unused material from the early disclosure and the early proofing is necessary.

I turn to the question of the role of the Corruption and Crime Commission. I heard what the acting commissioner said. It is certainly the case that the Corruption and Crime Commission conducts only summary matters—indictable matters will be conducted only by the Office of the Director of Public Prosecutions. The Director of Public Prosecutions does not act upon instructions from the Corruption and Crime Commission; the office does not represent the Corruption and Crime Commission. I represent the state of Western Australia. We will discontinue when it is necessary. In respect of summary matters, though, they are entirely a matter for the Corruption and Crime Commission unless it seeks my advice or, alternatively, under my act, I choose to take the matter over. With respect to indictable matters, the Corruption and Crime Commission has faithfully followed the legislative requirements by disclosing to us all the material, as far as I am concerned, in prosecutions that have occurred during my term.

[12.50 pm]

The CHAIRMAN: Keeping an eye on the time, I ask that questions and answers be kept short.

Mr C.C. PORTER: To add to that, a very interesting difference between the Crown Prosecution Service in the United Kingdom and the like prosecution service in Australia is that, as a matter of the cultural history of its conduct, the UK Crown Prosecution Service never proofs witnesses. As I understand it, the rule is that the witnesses are taken as found and taken to court. A way to ensure that disclosure obligations do not arise during the proofing of witnesses would be to adopt a similar system to that of the UK, in which prosecutors do not proof witnesses. I have raised this matter with the director, and I would say that he is less than enthusiastic about that prospect. Nevertheless, that is how prosecutions are conducted in the United Kingdom; witnesses come to court cold. I think that, on balance, it is not a better system, but one of its benefits is that there is no possibility of a prosecutor infecting the mind of a witness, even inadvertently, when no proofing is done. Of course, it also means that trials are more live and variable, if I can put it that way. One does not run into these disclosure problems. I think that, on balance, ours is probably the better system.

Mr J.R. QUIGLEY: As has been my wont, Mr Attorney, this morning and this afternoon in going back to old newspaper articles, I return to the newspaper article published in *The Sunday Times* —

The CHAIRMAN: Does the member for Mindarie refer to a budget paper line item or dot point?

Mr J.R. QUIGLEY: Certainly.

Mr C.C. PORTER: The member should just pick one; I will be generous!

Mr J.R. QUIGLEY: All right. I refer to the total appropriation on page 370 of the *Budget Statements*.

Mr C.C. PORTER: That is a very wise choice!

Mr J.R. QUIGLEY: On 4 April 2010, in an illuminating interview with *The Sunday Times*, the Director of Public Prosecutions, upon assuming office, is reported to have said —

LAWYERS will replace police prosecutors handling serious cases ...

He goes on to say —

The move ... would require a significant boost in staff numbers and government funding for the DPP ...

I want to know how the Office of the Director of Public Prosecutions' plan is going to take over the prosecution of some matters. In his interview, the director also cites the benefit of junior lawyers cutting their teeth in summary matters before they have to jump over the edge on indictable matters in front of a jury. How is that program going? Is it progressing? What additional funding will go to the director for that?

Mr C.C. PORTER: I will let the director respond fully on that in just a moment. My understanding of the director's views is that a very expansive involvement of the DPP in summary prosecutions is the best outcome for justice in Western Australia. That is not yet government policy, although I appreciate that the director holds that view. My view is probably somewhat back from that level of expansion of and infiltration into police prosecuting. My personal view—this is not government policy—is that some level of police officers prosecuting will be desirable into the future, although I think a better system would entail a staged growth of the DPP's involvement in summary prosecutions. The director will make whatever comment he wishes about what ultimate

system he thinks is preferable—whether it be one completely dominated by the DPP, some blend with the weight on the DPP or some blend with the weight on police. However, the view of the previous DPP is that Office of the Director of Public Prosecutions involvement is very desirable, even in a modest way, in the training it has given to junior prosecutors. The present director has started to infiltrate police prosecutions in a serious way, and he will describe how. Staff are now domiciled with police prosecutors. Mr Brent Meertens heads up, as practice manager, a practice team that in effect oversees police prosecutions. The infiltration is underway. The director will make further comment on that as he sees fit.

Mr J. McGrath: There is a great disparity between what was reported and what I said.

Mr J.R. QUIGLEY: Welcome to the club!

Mr J. McGrath: It was very illuminating for me, but probably not so for members. As I have said today, I have achieved what I set out to achieve in April 2010. The agreement and understanding with the Commissioner of Police was that we would send to the police prosecutions at the Perth Magistrates Court four junior prosecutors from the Office of the Director of Public Prosecutions as a pilot project.

Mr J.R. QUIGLEY: Is that that the DPP office would?

Mr J. McGrath: Yes; we would. This would further their professional training and would be coupled with the goal of assisting the police prosecutors. That has occurred; it has proved highly effective to date. The aim was for those four junior prosecutors to undertake the more serious summary hearings; they have also engaged in reviewing files to ensure that there is a timely review and matters can be discontinued. As to whether it is possible to expand that program, beyond, for example, the Perth Magistrates Court, I accept that it would be an enormous impost on the resources of the state; I have come to understand that in the last 12 months, but it is a view I have always held. In fact, attempts in the last 30 or 40 years in other jurisdictions to do exactly that have not succeeded. The best model may simply be a hybrid. In targeting the more serious offences—for example, a case involving dangerous driving causing death—there would be a lawyer from the Office of the Director of Public Prosecutions prosecuting.

The CHAIRMAN: Before the member for Mindarie asks his question, I inform him that he has a very short time to do this.

Mr J.R. QUIGLEY: I realise that. I refer to the same newspaper article and the same point in the budget I referred to earlier. In his interview the director states one of his aspirations as —

Completing a memorandum of understanding between his lawyers and police within six months to ensure pre-trial disclosure is carried out quickly.

Has the director been able to achieve a memorandum of understanding with the police, and is it available?

Mr C.C. PORTER: We have established that the director was egregiously misquoted by the errant press in that article, but he may want to comment on that quote.

Mr J. McGrath: There is a memorandum of understanding with the police; it has been signed. The principal part of that memorandum is the agreement that there will be a schedule of unused material that should be implemented as soon as possible.

Mr J.R. QUIGLEY: Is it a published document? Can we see it?

Mr J. McGrath: I can make that available to the member.

The CHAIRMAN: As we have four divisions to get through—I apologise to the member for Cannington—I now put the questions.

The appropriation was recommended.