

Division 40: Office of the Director of Public Prosecutions, \$35 063 000 —

Mr I.M. Britza, Chairman.

Mrs L.M. Harvey, Minister for Police representing the Attorney General.

Mr J. McGrath, SC, Director of Public Prosecutions.

Mr J. Plunkett, Director, Corporate Services.

Mr M. Connolly, Principal Policy Adviser, Office of the Attorney General.

[Witnesses introduced.]

The CHAIRMAN: Member for Butler.

Mr J.R. QUIGLEY: During the debate on home burglaries, it was recognised that there was no database of sentencing at first instance in Western Australia. There was the Director of Public Prosecution's appellate jurisdiction database, but no generally held database. I am looking at the general appropriation. Within this general appropriation, is there the capacity, the will or the intent of the director—it might be the function of the courts; I do not know—to start a comprehensive sentencing database such as that which New South Wales and the federal courts have the benefit of?

The CHAIRMAN: Before I give the call to the minister, I still need a page number from the member.

Mr J.R. QUIGLEY: I was going to the delivery of services on page 467, at line one. In the \$31.5 million in the budget, firstly, does the director agree with the benefit of having a first instance sentencing database? Secondly, does he see it as his role to create one? Thirdly, does he have the capacity to create one? They are the three questions I have for the minister within that appropriation.

[5.40 pm]

Mrs L.M. HARVEY: I will ask Mr McGrath to respond. He says that he has some information.

Mr J. McGrath: In answer to the three questions: first, when we look at other jurisdictions, the statistical reports are usually conducted by—for example, in New South Wales, the NSW Sentencing Council—sentencing commissions. Do I see it as my role? Each year I receive approximately 2 450 committals to the District and Supreme Courts. I am aware, from the nature of each offence, which provision is grounding that offence, so I am able to say what percentage are home burglaries et cetera. I do not see it is the role of the Office of the Director of Public Prosecutions to conduct some form of public database for research purposes or otherwise. Therefore, when we get to funding, the funding that I would have would be allocated to the prosecution of indictable offences in the District and Supreme Courts, which is my number one priority and further, then, the obvious conducting of other parts of the practice, being the confiscation practice.

Mr J.R. QUIGLEY: Does the DPP see the utility of such a database, and how do his practitioners get by in determining whether a sentence is appropriate for any disparate offence without knowing the sentencing practises of the judges across the range?

Mrs L.M. HARVEY: It is a somewhat unusual question asking for an opinion from the Director of Public Prosecutions but I think he has articulated that he does not see that database as a priority, but Mr McGrath can respond.

Mr J.R. QUIGLEY: For his office.

Mr J. McGrath: Statistics to which the member refers there, being the range of sentences customarily imposed, is information that is captured by some of the bigger states but I think the member will find that it is not a function of an Office of the Director of Public Prosecutions to undertake such a large task. What we have done, as the member has noted, is publish on our website tables summarising the appellate practice and showing the sentences customarily imposed, and that is for practitioners and members of the public.

Mr J.R. QUIGLEY: The minister has been waiting for this question because she heard me ask it of someone else. I knew that she was waiting for her adviser to come along. It relates to confiscation of assets on page 470 of the *Budget Statements*. In asking this question about the debacle of the Kizon–Mansfield confiscation, I note that it was not this director's responsibility to make the initial seizure and it certainly was not the minister's, sitting in the executive at the time the initial seizure was made. It has proved to be a very costly situation but the taxpayers do not know what the cost is. When I look at total cost of service, where do I find the appropriation to find out how much money was paid to Messrs Kizon and Mansfield?

Mrs L.M. HARVEY: The advice that I have received is that it is not recorded in the budget papers because that settlement is subject to a confidentiality agreement with Mr and Mrs Mansfield.

Mr J.R. QUIGLEY: And Mr Kizon?

Mrs L.M. HARVEY: Mr Kizon was not subject to that settlement. That settlement was between the state and Mr and Mrs Mansfield.

Mr J.R. QUIGLEY: In relation to the payment to Mr and Mrs Mansfield as a result of that confiscation—I asked this before when this director was in the chamber on previous budget matters—this settlement went beyond just the return of chattels; this was the payment of money for lost income. Do I understand that taxpayers' money has been paid out to settle a matter but the taxpayers are never allowed to know how much they paid out? How can that work in a democracy?

Mrs L.M. HARVEY: As I have previously stated, that figure is not recorded in these budget papers.

Mr W.J. JOHNSTON: Where in the budget papers is it recorded? There has to be an appropriation somewhere because money cannot be paid without the appropriation of the Parliament. It has to be somewhere. Where do we find it?

Mrs L.M. HARVEY: I cannot answer that. I can tell the member that it is not recorded here. By way of supplementary information, I can provide the member with advice on where that funding came from and who is the responsible minister.

The CHAIRMAN: Can the minister confirm what she is going to do?

Mrs L.M. HARVEY: I can certainly provide whose budget that settlement was drawn from.

[*Supplementary Information No A83.*]

Mr W.J. JOHNSTON: I just note that the efficiency indicator on page 470 of the *Budget Statements* is based on the cost-to-income ratio. Will this efficiency indicator be wrong if in this case we are returning seized assets to the person? Should that not be netted off the income for the year so we get a more accurate figure? Otherwise this figure is wrong because it is based on newly-seized assets but it is not netting the fact that we have had to give some assets back.

Mrs L.M. HARVEY: I will ask Mr McGrath whether he can advise how the inflows and outflows from that confiscation account are recorded.

Mr J. McGrath: The payment, which was subject to the confidentiality clause, resulting in payment from the DPP and the state of Western Australia to the Mansfields was not paid out of the confiscation fund or the budget papers of the ODPP. Therefore, it is not a case of returning assets; rather, it is really a payment pursuant to an undertaking. It is more properly understood as damages arising from litigation that the state of Western Australia was involved with.

Mr J.R. QUIGLEY: When I asked questions about this in the budget hearing earlier this afternoon, the minister said, "No, I cannot answer any questions; you will have to ask the DPP. Wait until the DPP comes." Now that the DPP is here as her adviser, he is saying that he cannot help us and we should go elsewhere. This is unsatisfactory in a democracy. The figure was reported in *The West Australian* as being north of \$10 million. That would well and truly fix up Yanchep Beach Primary School. I want to get to the bottom of this. How much in damages has the state paid out? It is all very well having confidentiality agreements. Disbursements cannot be kept from the Parliament. The minister is not suggesting that, is she?

Mrs L.M. HARVEY: No, and I would like to clarify the assertion made. My understanding of the question that I was asked previously and the answer I gave the member is that he would need to ask the Director of Public Prosecutions what legal costs had been incurred by the state with respect to that litigation. My response to him was not about the compensation payout or the damages payout or whatever it might be called. As I said previously, I can provide information on whose budget it came from and what the approval mechanism would be for that damages payout. I have agreed to provide by way of supplementary information the legal costs that the state has incurred as a result of that litigation.

[5.50 pm]

Mr J.R. QUIGLEY: Is the minister telling this Parliament that as a result of the insistence of Mr and Mrs Mansfield, this Parliament will never be informed how much taxpayers have spent in settling this litigation?

Mrs L.M. HARVEY: I cannot respond as to that. I am not privy to the agreement that has been struck and, as I said previously, those matters are likely to be subject to some kind of legal confidentiality. As I said previously, I will by way of supplementary information provide the member the name of the responsible minister as to where the appropriation will come from, but as to the conditions of that agreement, obviously we will be bound by the condition of the agreement that have been struck by the parties.

Mr W.J. JOHNSTON: Can the minister provide an assurance that the Crown did not ask for the confidentiality arrangement?

Mrs L.M. HARVEY: I cannot because I have not been privy to the agreement. The member would need to put that question on notice to the Attorney General. I will ask Mr McGrath to respond on how these agreements are constructed.

Mr J. McGrath: After I was appointed in 2010, I engaged and instructed the State Solicitor to act on behalf of the Office of the Director of Public Prosecutions with respect to the proceedings. My view was that it required strong independent legal advice to ensure that the matter settled expeditiously. We brought in the State Solicitor to do that. The State Solicitor conducted the negotiations and mediation. Certainly, I, as the client, along with the state, wanted and was in favour of a confidentiality agreement but that was agreed to by all parties to the proceedings. It is not unusual, as the member knows, to have confidentiality agreements with proceedings such as this.

Mr J.R. QUIGLEY: Does the minister agree? I put it to the minister that it is unusual to have a settlement of this sort of sum at the taxpayers' expense—not at a private litigant's expense—without taxpayers ever being able to be informed what they have paid out. Does that not jar with the minister?

Mrs L.M. HARVEY: The member is asking for an opinion, but I am only prepared to provide responses with respect to the budget papers. I am not prepared to provide an opinion.

Mr W.J. JOHNSTON: To help the minister, this is not Parliament and the rules of parliamentary questions do not apply. As the minister said, this is about the budget. We are asking: is the minister telling us that the policy of the state government is to allow confidential settlements at the request of the Crown and does the Crown see an advantage in keeping things secret?

Mrs L.M. HARVEY: No, that is not what I am saying. I am saying emphatically that the state government will honour its legal obligations with respect to contracts struck with its citizens.

Mr W.J. JOHNSTON: Does the minister not see the problem? The minister is saying that it is okay to do every transaction of government with a confidentiality agreement, and then to come to Parliament and say that it had bought pens and paper, but the contract requires confidentiality, so it cannot tell us how much the pens and paper cost. The idea is extraordinary that the government can use the contract law of the state to try to subvert the process of estimates, which is the process of appropriation. The Parliament is supposed to be the supreme decision-making body, not a contract entered into by the Crown without reference to anyone other than itself. That is exactly what Parliament was created to prevent. The minister should read the Magna Carta; we just celebrated its anniversary again. Why would the minister think that it is okay for the Crown to request—not to respond and agree to, but request—that these matters are not to be discussed with Parliament that is to authorise the payment? Why is that the policy of the government?

Mrs L.M. HARVEY: I am here representing the Attorney General and, as I said previously, this is not a debate—rather, it is an interrogation of the budget. I have already said how I will respond—by way of supplementary information. As I said previously, I am not prepared to break a legal contract that has been struck with citizens of the state. I will not do it. I cannot see that there is a need for me to respond further to the statements that are being made.

Mr W.J. JOHNSTON: I have not made any statements. I have asked questions. Again, I will ask the minister to contrast the decision of the government of Western Australia in the Bell Group matter to throw out every precept, including contract law—overturn all that—in that matter, but it is not prepared to provide Parliament with information about the appropriation for this issue. Please explain why it is okay for the government to throw out contracts with the citizens of Western Australia with respect to the Bell matter, but not with this issue—particularly when unlike the Bell matter, in which other people entered into contracts and the government overturned those contracts to which it was not party, in this case the government asked for the secrecy arrangement. Why has the government adopted that practice?

Mrs L.M. HARVEY: Mr Chair, there is no intention on my behalf to subvert the process of estimates by any stretch. My only attempt here is to respect the legal agreement that the state has struck. I have nothing further to add.

Mr J.R. QUIGLEY: In the settlement of litigation, I am now worried about the Rayney matter. Rayney wants millions and the government could enter a contract with him to settle the matter for millions and hide that from taxpayers. Where does the secretiveness of this government stop in hiding from taxpayers the costs they are incurring? Where?

Mrs L.M. HARVEY: It does not form part of this budget consideration, member.

Mr W.J. JOHNSTON: Of course it does. Has the minister not read the budget?

Mrs L.M. HARVEY: There is no appropriation in the *Budget Statements* in respect of the Rayney matter.

Mr J.R. QUIGLEY: What about future liabilities? Mr Bennett, on behalf of Mr Rayney, is pressing, as he was on behalf of Mr Mansfield, for a multimillion dollar settlement on behalf of Mr Rayney.

The CHAIRMAN: Give us a page and an appropriation for that, please—not an assumption.

Mr W.J. JOHNSTON: We are continuing to debate the exact same issue.

The CHAIRMAN: I think the minister has a point in the fact that we are dealing with appropriation figures. You are drawing a very long bow and you are entering debate. You do not even have a point. I want to protect you, but I am looking for the point.

Mrs L.M. HARVEY: This is matter is civil litigation between Mr Rayney and the state and the Office of the Director of Public Prosecutions will not be involved in that. As I understand it, the State Solicitor's Office would engage with the Rayney matter. It is not part of this budget consideration.

The CHAIRMAN: That is not in this appropriation.

The appropriation was recommended.