

**Division 32: Office of the Director of Public Prosecutions, \$25 543 000 -**

Mrs J. Hughes, Chairman.

Mr J.A. McGinty, Attorney General.

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

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

Mr P.J. Byrne, Director Corporate Services.

**Ms S.E. WALKER:** I refer the Attorney General to the second dot point on page 557, under “Significant Issues and Trends”, which states -

The *Dangerous Sexual Offenders Act 2006* has since May 2006 resulted in significant additional workload for the Office, principally involving senior prosecutors evaluating evidence and assessments to determine if sexual offenders nearing the end of their terms of imprisonment still pose a threat to the community. The impact of this legislation on the Office is being closely monitored to assess resource implications.

How many applications have been made to the Supreme Court under this act and how many have been successful?

**Mr J.A. McGINTY:** Five cases have been decided by the Supreme Court. In two of those cases the offenders were placed on supervision orders. In a third case the offender was made the subject of a continuing detention order. Two cases were unsuccessful, and one of those cases is now the subject of an appeal to the Court of Appeal. A further four cases are set down for a final hearing in the Supreme Court later this year, and two cases are set down for a preliminary hearing. Four cases for the making of an application under the act are under consideration. A decision has been made not to make an application under the act in 13 cases referred by the Dangerous Sexual Offenders Committee, while in a further eight cases it has been decided that consideration of whether to make an application under the act will be deferred until after the Prisoners Review Board has made its decision on whether those offenders will be released on parole.

**Ms S.E. WALKER:** I have a further question.

**The CHAIRMAN:** A further question.

**Ms S.E. WALKER:** Who is on the Dangerous Sexual Offenders Committee?

**Mr J.A. McGINTY:** That is a committee that I set up to advise either the Director of Public Prosecutions or me, but principally the Director of Public Prosecutions, about cases that the authorities believe warrant investigation into whether an application ought to be made to the court. It consists of psychiatrists, prison officers -

**Ms S.E. WALKER:** Is it a current and ongoing committee?

**Mr J.A. McGINTY:** Yes. The members of the committee were charged as a matter of urgency, particularly when the act came in and was new, with considering the cases of all the people who were about to be released to make some sort of an evaluation. The yardstick they took was to review anyone who had received a sentence of two years or more for a sexual offence, which resulted in those recommendations being made to the Office of the DPP. The DPP then reviewed the available evidence and decided whether to proceed; that is the figure I have just given the member.

**Ms S.E. WALKER:** I have a further question.

**The CHAIRMAN:** A further question.

**Ms S.E. WALKER:** Has it been contemplated by that committee that one way in which Mrs Birnie may get out of jail is by application under the Dangerous Sexual Offenders Act?

**Mr J.A. McGINTY:** Not to the best of my knowledge; no.

**Ms S.E. WALKER:** Can I have that by way of a question for further information?

**Mr J.A. McGINTY:** I have already answered it.

**Ms S.E. WALKER:** The Attorney General said not to his knowledge. Is that no?

**Mr J.A. McGINTY:** They advise me of what matters they do consider.

[11.30 am]

**Ms S.E. WALKER:** This legislation came on urgently in the Legislative Assembly because it dealt with a high-risk offender who, at the time, was not in prison. The legislation did not need to be debated urgently at all. Not long after that legislation was debated, or shortly before, the offender concerned committed an offence. He was picked up and charged. The Attorney General came into this Parliament and referred to him as a sex monster. Did the Director of Public Prosecutions receive any applications from the offender's defence counsel to abort the trial in light of the Attorney General's comments?

**Mr J.A. McGINTY:** No.

**Ms S.E. WALKER:** Did the Director of Public Prosecutions receive any applications for a trial by judge alone because of the comments made by the Attorney General?

**Mr J.A. McGINTY:** The Narkle case was dealt with by a judge -

**Ms S.E. WALKER:** I did not mention that name.

**Mr J.A. McGINTY:** No, I did.

**Ms S.E. WALKER:** He is still awaiting trial for a particular matter.

**Mr J.A. McGINTY:** I do not think so.

**Ms S.E. WALKER:** I thought he was. Has he been sentenced?

**Mr J.A. McGINTY:** If I can correct that information, it was Judge Sleight, not Judge Mazza, who conducted the trial by judge alone. Judge Mazza dealt with a Robert Bropho matter by judge alone. That procedure is not uncommon. That was the nature of the hearing before the court. It is an application that is agreed to in appropriate circumstances.

**Ms S.E. WALKER:** The question I asked was: did the offender's defence counsel ask the Director of Public Prosecutions for trial by judge alone as a result of the Attorney General's comments.

**Mr J.A. McGINTY:** I think the member for Nedlands is the only member in this place who has ever caused a trial to be aborted.

**Ms S.E. WALKER:** I am asking a question.

**Mr J.A. McGINTY:** My understanding is that the defence counsel sought trial by judge alone and that that was supported.

**Ms S.E. WALKER:** By the prosecution?

**Mr J.A. McGINTY:** Yes.

**The CHAIRMAN:** When members ask questions, they must relate them to the budget. I ask them to keep that in mind.

**Ms S.E. WALKER:** My questions relate to dangerous sexual offenders. Is that offender still awaiting trial on another matter?

**Mr J.A. McGINTY:** Not that we are aware of.

**Ms S.E. WALKER:** He is not?

**Mr J.A. McGINTY:** No.

**Mr D.F. BARRON-SULLIVAN:** I refer to the details of the administered transactions accounts on page 567 of the *Budget Statements*. The administration of the confiscation account became the responsibility of the Attorney General's department on 1 July 2006. There is an amount for the confiscation of assets income of just over \$2 million for the 2006-07 period. There is nothing in the forward years, which, I assume, is because of the transfer of the administration of the confiscation account to the Attorney General's department. Why does the \$2 million appear for 2006-07 if it was transferred on 1 July 2006? To simplify that question, what does the \$2.061 million on page 567 represent?

**Mr J.A. McGINTY:** I needed to seek some advice on that question. When criminal assets are frozen and confiscated, the money is paid into the confiscation account. The Office of the Director of Public Prosecutions administered that account until recently. It no longer does so. In 2005-06, the actual amount was \$2.2 million. The budgeted amount for the current financial year concluding 30 June was \$2.061 million. Out of that, amounts are paid to the police and the DPP. It is outlined on page 567 under "Net Appropriation Determination" that the DPP receives \$1.461 million to fund the operation of the confiscation units in the Office of the DPP. In addition, out of that fund - it does not show up here - the police are reimbursed some of their expenses, particularly for the holding of and dealing with goods that have been confiscated. They also receive financial assistance from the

fund to employ a forensic accountant. Police are funded out of the consolidated account for all their activities, with a small supplement from this fund. The DPP's confiscation unit is substantially funded out of this fund.

**Ms S.E. WALKER:** Returning to the Dangerous Sexual Offenders Act 2006 under "Significant Issues and Trends" on page 557 of the *Budget Statements*, I refer to the application by Narkle's defence counsel in his last case for a trial by judge alone. Was that application made in part or wholly because of the comments made by the Attorney General? They were pretty angry with the Attorney General when they came out of court.

**Mr J.A. McGINTY:** Not that I am aware of.

**Ms S.E. WALKER:** The Attorney General's advisor, who is sitting next to him, would know. The DPP would know.

**Mr J.A. McGINTY:** "Not that I am aware of" is the answer.

**Ms S.E. WALKER:** The Attorney General is not prepared to ask him. Does the Attorney General agree that as a result of his intemperate comments that Narkle is a sex monster, Narkle is walking free in the streets of Perth?

**Mr J.A. McGINTY:** Certainly not. As I said, the only trial that has been aborted as a result of the activities of any member of Parliament was that of a serious criminal in this state, and that was because of comments made by the member for Nedlands that were published on the front page of *The West Australian*.

**Ms S.E. WALKER:** Mr Narkle is free because of the Attorney General, and he does not have the courage -

**The CHAIRMAN:** I ask members to apply their questions to the budget.

**Ms S.E. WALKER:** In relation to Mr Narkle, I understood from publicity on television that he was subject to further charges following that trial. Were those charges dealt with or dropped?

**Mr J.A. McGINTY:** I do not know that the member's understanding is correct.

**Ms S.E. WALKER:** I am asking whether he was charged; and, if he was, were they dropped?

**Mr J.A. McGINTY:** No charges have been dropped against Mr Narkle.

**Ms S.E. WALKER:** Good. That is all -

**Mr J.A. McGINTY:** Let me answer the question. No charges have been dropped against Mr Narkle and, to the best of our knowledge, he is not currently facing any charges.

**Ms S.E. WALKER:** I refer to the last dot point on page 557, which reads -

In 2007, the Director of Public Prosecutions agreed with the Commissioner of Police to increase the Office's involvement in the management of police prosecutions in the Magistrates Court. This will be facilitated by the appointment of a Consultant State Prosecutor (funded via a transfer from Western Australia Police) to oversee the Magistrates Court prosecutorial function. This change will be evaluated during 2007-08 to determine its contribution towards improving the criminal justice system.

Does this mean that there will be an off-loading of indictable cases from the District Court to the Magistrate Court.

**Mr J.A. McGINTY:** No. The two are unrelated. In response to the member's question, I will ask the Director of Public Prosecutions to explain the processes involved and the greater role for the DPP in police prosecution matters.

[11.40 am]

**Mr R.E. Cock:** Last year the Commissioner of Police spoke to me about his concerns as to the superintendence of magistrate prosecutions conducted by his officers. He expressed the view that it would be more appropriate if a senior lawyer was in charge of the decision-making processes, rather than a senior police officer, and asked whether I would be prepared to cooperate in the appointment of an appropriately experienced lawyer to take over the management of police prosecuting. I thought that was a terrific initiative. I spoke with Treasury and the Attorney General, and each supported the proposal on the basis that it was cost neutral. We negotiated with the commissioner a successful arrangement, and an appointment was made and the officer commenced in April this year. To date, he has made some improvements. He has been available to the police prosecutors to make difficult decisions in cases that require legal expertise. He is about to rewrite the police guidelines for prosecuting and align them with those of my office. He is also looking at the processes the police apply in their appearances before the Magistrates Court and discussing them with the Chief Magistrate with a view to making some improvements in processes.

**Ms S.E. WALKER:** Is this similar to a position or a unit that used to exist in the DPP that was headed by Geoff Lawrence in relation to Petty Sessions prosecutions?

**Mr R.E. Cock:** No. The role of the new position has no relationship with the previous subsection of my office that was involved in managing indictable matters while still before a magistrate. This new position is solely concerned with managing magistrate prosecutions of non-indictable matters and those indictable matters that are able to be tried before a magistrate. There is another program presently in place similar to that to which the member refers, but it is not a consequence of this new initiative.

**Ms S.E. WALKER:** Is the other program contained within the budget for this year?

**Mr J.A. McGINTY:** The other program?

**Ms S.E. WALKER:** The one in relation to managing by the DPP indictable matters that come before the Magistrates Court. There was a sort of plea bargaining, if you like, in relation to matters that used to exist at the DPP. I think it was dropped. There is a pilot program; I thought that is what this relates to. I thought that was what the criminal trial delay reduction committee was looking at as well.

**Mr R.E. Cock:** The criminal trial delay reduction committee chaired by the Chief Judge of the District Court has, with the cooperation of the Chief Magistrate, achieved the commencement of a pilot program from December last year. It involves a practice direction issued by the Chief Magistrate requiring that matters are not committed to the District Court or Supreme Court until there has been consultation between the lawyers representing the accused person and the prosecution, full disclosure, and the formation of an indictment in a way such that it can be presented upon the first appearance of an accused before a higher court. In essence, that has necessitated a six-week additional delay in the commission of all indictable matters to the superior courts to enable discussions of the crime to which the member refers to be accommodated. My office's contribution to the process is to allocate matters to counsel well before the matter is committed to the superior court. I have instructed my counsel that they are to actively negotiate with defence lawyers to seek either a plea to the charge or an alternative charge, or, in some cases, discontinue with the prosecution, and to ensure that those discussions occur before committal. That is very similar to the earlier program, which was discontinued some time ago.

**Ms S.E. WALKER:** Thank you. How long ago was the original program abandoned? I think Geoff Lawrence from the DPP was heading that up. Is it a form of plea bargaining, in a sense, that the office is getting involved in in relation to matters before the Magistrates Court to clear the backlog? Instead of putting the two judges in, is it being attacked at the other end? Are people getting off more lightly?

**Mr R.E. Cock:** The earlier program was abandoned in 2001 when I took the view that the resource implications of maintaining it did not justify it in the context that my office was suffering pressures to find counsel to conduct trials. The new program has been facilitated by the injection of resources into my office following a decision of government in late 2005 that has enabled me to increase the number of prosecutors. No specific funding has been provided for the new program, but, as I say, it has been facilitated as a consequence of the increased resources I now have available. However, it is designed not to sell victims' rights short; it is designed not to produce outcomes that do not represent an appropriate resolution of a criminal matter; but it is designed to achieve an appropriate outcome at an earlier stage in the process.

**Ms S.E. WALKER:** Is it also designed to reduce the criminal trial backlog in the District Court?

**Mr J.A. McGINTY:** Yes.

**Mr D.F. BARRON-SULLIVAN:** If the DPP is involved in a prosecution against someone regarding, for example, a sex offence, is the office, of necessity, made aware if the person who has been charged has been convicted of a sex offence while resident overseas?

**The CHAIRMAN:** Does the member have a page number?

**Mr D.F. BARRON-SULLIVAN:** Yes. I refer to page 557, which states that the main mission of the DPP is to provide an independent and effective criminal prosecution service.

Can the minister see what I am driving it? There was some controversy a while back and I am trying to find out whether the foremost prosecution agency in the state would be aware of somebody's previous criminal history overseas in relation to sex offences against children, if that were the case. If someone were prosecuted here who had committed an offence overseas, possibly under a different name - maybe the name has changed in the meantime - would the DPP or the Attorney General be aware of that situation?

**Mr J.A. McGINTY:** The issue also raises itself in the context of people who have been investigated or charged - sometimes found guilty or sometimes acquitted - in other jurisdictions and in Australia as well. I will ask Mr Cock to answer.

**Mr D.F. BARRON-SULLIVAN:** I am interested in the overseas aspect particularly.

**Mr R.E. Cock:** My office has no formal arrangements with any national or international agency for the purpose of obtaining offender records. That is the entire responsibility at the moment of the Commissioner of Police. I

understand that there are arrangements that can be activated to obtain criminal records from agencies outside Australia, but I do not know the commissioner's approach and the regularity with which those arrangements are applied.

**Mr D.F. BARRON-SULLIVAN:** If, for example, someone had committed a serious sex offence overseas and his name and identity were changed and, lo and behold, he ended up living in Western Australia under a different name and different identity with all the background details changed, the only person in authority in Western Australia who would know about that would be the Commissioner of Police. Would not even the Attorney General know about that?

**Mr J.A. McGINTY:** I think that is right. The Commissioner of Police has protocols in place that can give the police access to that information in some places in the world. It is a police matter, not something that I would know about.

**Mr D.F. BARRON-SULLIVAN:** The Attorney General - the foremost legal officer of the state, elected by the people - does not know if someone fits that category.

**Mr J.A. McGINTY:** I think that is right.

**Mr D.F. BARRON-SULLIVAN:** Good grief!

**Mr J.N. HYDE:** I refer to the line item concerning the proceeds of crime at page 567 of the *Budget Statements*. I require some additional information on that. Obviously, the DPP puts in applications. Is there a ballpark figure of how much money is outstanding and waiting for final judgments to come down so that the money can be processed and given to the victims of crime and others?

[11.50 am]

**Mr J.A. McGINTY:** Even though this fund has been transferred, we think, to the Department of the Attorney General, I will ask Mr Cock to provide some information, given that the fund, up until this year, was in his agency.

**Mr R.E. Cock:** At any particular time there are several amounts represented. The estimated amount of property frozen by police and my office in respect of which applications are pending is approximately \$50 million, but this is a raw estimate and does not include any attempt to try to identify creditors or other stakeholders interested in a property. At any particular time, there is usually about \$3 million worth of property which has been the subject of a confiscation order but which has not been converted into cash and paid to the fund. I understand that at the moment there is about \$2 million in the fund itself.

**Mr J.N. HYDE:** My understanding is that, in terms of the bureaucracy, this fund has been transferred into the Department of the Attorney General. Why is there an annual \$100 000 amount continuing on for the Director of Public Prosecutions?

**Mr R.E. Cock:** Although the principal mechanism by which assets are confiscated is pursuant to the Criminal Property Confiscation Act 2000, there is still a residual power under the Misuse of Drugs Act 1981 to confiscate or forfeit property, and that residual power produces about \$100 000 worth of asset confiscations a year.

**Ms S.E. WALKER:** I refer to the first dot point under "Significant Issues in Trends" on page 557, which reads -

The changing of listing practices by the District Court, including the increasing level of cases over-listed together with rolling lists, continues to increase the workload of the Office of the Director of Public Prosecutions.

How many lawyers are there in the Office of the Director of Public Prosecutions?

**Mr R.E. Cock:** Ninety.

**Ms S.E. WALKER:** I will do a little preamble to this, because it is important. It relates to adjournments. I have gone back over all the Director of Public Prosecutions' reports. In 1995-96 the director, John McKechnie, QC, with the help of the Auditor General, set performance indicators that included the target of only 20 per cent of adjournments attributable to the DPP for listed trials not proceeding. At the time he wrote in his report that it was in the interests of justice that matters be brought to trial expeditiously and that the Crown should actively assist in obtaining this objective as a matter of fairness to the accused person, victims and witnesses. The indicator relates to the effectiveness with which the DPP is ready to proceed to trial on the day allocated by the court, and in part it reflects the concern of the DPP to give recognition to the principle that justice delayed is justice denied. Ten years ago, 49 lawyers ran the DPP; now there are 90. However, of the 1 350 trials listed in the District and Supreme Courts last year, only 697, or 52 per cent, proceeded. Of the 653 that did not proceed, a staggering 439 were adjourned. Only 189 were adjourned in the Perth District Court. In

comparison, 10 years ago, 907 matters were listed for trial in the District and Supreme Courts. Of the 291 that did not proceed, only 116 were adjourned, 46 of which were directly attributable to the Director of Public Prosecutions. I have tried to ascertain from the documentation how many of the 439 trials that were adjourned last year were attributable to the DPP. Can the Attorney General tell me how many there were?

**Mr R.E. Cock:** We analyse that statistic internally; we do not publish it. However, the information I have is that, in 2004-05, 32 per cent of the adjournments resulted from applications by the prosecution. In 2005-06, we managed to reduce that figure down to 11 per cent of adjournments attributable to the DPP. The year-to-date figure for trials in which responsibility for the adjournment lies with the DPP is 26 per cent.

**Ms S.E. WALKER:** Of the 439 that are in the last report, how many could the DPP not proceed with and had to seek an adjournment?

**Mr R.E. Cock:** We take responsibility for about 50 of those being adjourned, in the 2005-06 year.

**Ms S.E. WALKER:** Can the Attorney General tell me why the remaining 380 trials did not proceed when they were listed?

**Mr J.A. McGINTY:** That would be because of the court, the defence or a variety of other circumstances, but Mr Cock might be able to provide more information.

**Mr R.E. Cock:** The primary reasons for a trial not proceeding are that there is a plea to the charge about to move to trial, the prosecution discontinues the matter, the accused person passes away, the accused person absconds, witnesses are unavailable, there is late disclosure of evidence necessitating an adjournment to prepare, or the court does not have the facilities available because of its over-listing processes.

**Ms S.E. WALKER:** When the Director of Public Prosecutions says that his office takes responsibility for 50 of those adjournments, how many adjournments did the DPP actually apply for? Were there only 50, or were there others in which he thought other people were responsible, but the DPP made the application?

**Mr R.E. Cock:** My office would have applied for more than that figure. If, for example, a witness cannot be found or some proper reason is advanced on behalf of an accused person that necessitates an adjournment on the grounds of justice, the DPP would be prepared to make the application for an adjournment.

**Ms S.E. WALKER:** How many of those 439 did the Office of the Director of Public Prosecutions actually apply to be adjourned?

**Mr R.E. Cock:** We do not count that number specifically. It is not included in any information available to me.

**Ms S.E. WALKER:** I am concerned about the lack of statistics in relation to criminal justice in the state generally; that is why I have been calling for a judicial commission for about four or five years now. I find it incredible that the Director of Public Prosecutions cannot tell us how many trials he applied to have adjourned out of the figure of 439 given that, when the office of the DPP first started, that was seen as a key performance indicator.

**The CHAIRMAN:** Do you have a question?

**Ms S.E. WALKER:** I am asking whether those figures can be provided, because there has been an internal analysis.

**Mr J.A. McGINTY:** The answer is no. I think I just heard Mr Cock say that those figures are not kept. He identifies figures that apportion the responsibility for adjournments. He has given the member those figures today.

**Ms S.E. WALKER:** It is totally outrageous.

I refer to another performance indicator that is a measure of the efficiency of the DPP; that is, the early advice to the court indicator. I refer to the change of listing practices in the first dot point on page 557. Going through the reports for the performance indicator of early advice to the courts of indictments, in 1996-97, the figure was 55.4 per cent; 1997-98, 65.9 per cent; 1998-99, 63 per cent; 1999-2000, 58.1 per cent; 2000-01, 50.3 per cent; 2001-02, 51.6 per cent; 2002-03, 48 per cent; 2003-04, 53.2 per cent; 2004-05, 51.65 per cent; and, in the last report, 43.8 per cent - basically an all-time low. Can the Attorney General explain why the DPP has failed, or is that a significant drop in its early advice to the court? I think the budget estimate last year was a 65 per cent target.

[12 noon]

**Mr R.E. Cock:** The capacity of my office to file indictments five clear days before the first arraignment was dependent upon a number of factors; principally, the resources available to prepare the indictment and the extent to which the material available upon which the indictments were prepared was produced. A number of factors contributed to that, but, principally, delays in obtaining reports from chemical analysis and forensic biology have meant that, for some matters, it is simply not possible to file an indictment on the first arraignment. I am pleased

to advise, however, that since additional resources were made available by the government in November 2005, and our recruitment campaign has met with some moderate success, we have been able to improve that statistic such that the year-to-date figures are that on 52 per cent of the occasions on which a person has been arraigned, an indictment has been filed five or more days before the arraignment, and on 20 per cent of the occasions, it has been filed before the first arraignment but only a few days before. Now, on 72 per cent of occasions on which a person appears in court, an indictment is available at the first hearing.

[Mr G. Woodhams took the chair.]

**Mr P. PAPALIA:** I refer to the income statement on page 562 and to the line item for the cost of witness expenses. I note that the amount budgeted for 2006-07 is \$951 000 and the projected amount for 2007-08 is \$666 000. Can the Attorney General explain the reduction and give me some indication of what the expenses relate to?

**Mr R.E. Cock:** In 2006 we took up an initiative to appoint a number of paralegal officers whose purpose is to maintain close liaison with witnesses. Until that happened, it was, regrettably, rather arbitrary and ad hoc. That meant that our arrangements with witnesses were not always satisfactory, and that led on a number of occasion to witnesses being brought to trial and the trial not proceeding. We are optimistic that, with the addition of more resources and by better managing our witness relations, we will be able to better target the appropriate witnesses to ensure that those who are needed are able to come to court and that appropriate arrangements can be identified early for those who are not needed and they will be cancelled before costs are incurred.

**Mr P. PAPALIA:** It is anticipated that there will be efficiency gains.

**Ms S.E. WALKER:** The first dot point under "Significant Issues and Trends" refers to the listing practices of the District Court for trials. There was a significant increase in funding to the Office of the Director of Public Prosecutions as a result of, I like to think, my efforts. I think it was about \$14 million last year; is that right? What was the increase in funding? It had a significant increase.

**Mr J.A. McGINTY:** It was approximately \$6 million.

**Ms S.E. WALKER:** Was that all?

**Mr J.A. McGINTY:** It was a very significant boost to the funding of the office.

**Ms S.E. WALKER:** I heard that the Attorney General was not happy about it. I refer to the number of brief outs. The 2005-06 report indicates that 563 matters were briefed out, yet only 697 trials proceeded. That is a staggering percentage of matters being briefed out. Have I got that figure right? There were 697 trials and 563 were briefed out.

**Mr R.E. Cock:** Regrettably, many of the trials that have been briefed do not proceed, and so the figure of trials briefed out includes some that proceeded and some that did not.

**Ms S.E. WALKER:** I have done an analysis of the matters briefed out from 1993-94 to 2001-02. In 1993-94 there were 213 matters briefed out; in 1994-95 there were 309; in 1995-96 there were 236; in 1996-97 there were 303; in 1997-98 there were 342; in 1998-99 there were 318; and in 1999-2000 there were 240. Of the 697 matters in 2004-05, 563 matters were briefed out. Is that a result of the disastrous policy that came from the Deakin review, which resulted in a massive exit of senior prosecutors from the DPP? In fact, there are now very few experienced prosecutors at a senior level at the DPP.

**Mr R.E. Cock:** No.

**Ms S.E. WALKER:** Why is it then? There are 90 lawyers at the DPP now, but it is briefing out most of the trials when the policy is to not brief out.

**Mr J.A. McGINTY:** It was intended that the proportion of trials briefed out to private lawyers would decline in association with the significant boost to the resourcing of the Office of the Director of Public Prosecutions. It reached a peak in 2005-06. The year-to-date figure for 2006-07 has approximately halved the total number of cases briefed to external counsel. Although there is a good criminal bar in Perth, we think it is better to provide resources directly to ensure maximum efficiency, particularly when it relates to the listing at the District Court. It is a major focus of activity in reducing the delay from indictment to trial in the District Court if these matters are handled directly by the Office of the DPP. There will always be a role for the briefing of private counsel or external counsel, but, increasingly, this work will be done in-house.

**The CHAIRMAN:** Before I give the member for Nedlands a further question, I inform members that there are another five divisions to deal with by 12.30 pm. We have 25 minutes in which to go through another five divisions.

**Ms S.E. WALKER:** In relation to that, it has been in the Deakin report. The Attorney General referred to the DPP's reports of 2000-01 and 2001-02. There has been a mass exodus. Most of the DPP prosecutors are now at the bar as a result of that policy. Would the Attorney General agree that the state is now paying prosecutors at the bar - I do not know how much more - triple or quadruple the amount to do the same type of work? The Deakin report recommended no career changes. At page 9 of the DPP's 2001-02 report, he refers to Stephen Pallaras, QC, who left the office for the private bar; Jennie Girdham, who went to New South Wales for a better career opportunity; Eric Balodis, who left after 15 years' service; Gail Archer; and Lloyd Rayney. Those people are now being briefed. Will the Attorney General admit that it is the result of his disastrous policy that came from the Deakin report and the attempt to commercialise the Office of the DPP?

**Mr J.A. McGINTY:** No. By way of additional comment on that issue, I mentioned before that in 2005-06, 43 per cent of all trial listings were briefed out to private counsel. That was obviously excessive. During that year significant additional resourcing was provided to the Office of the DPP. The target set for 2006-07 was that 30 per cent of trial listings were to be briefed out. That target has been more than achieved, with the year-to-date figure for 2006-07 of only 21 per cent of trials being briefed out to private counsel, compared with 43 per cent in the previous year. As a result of the additional resources, we are seeing a dramatic turnaround in achieving the target that the DPP himself has set.

**Mr J.N. HYDE:** I refer to the table outlining the delivery of services on page 557. Is the actual cost of aborted trials itemised through the DPP, and do we undertake any cost recovery against people who have aborted trials?

[12.10 pm]

**Mr J.A. McGINTY:** There is a range of costs associated with an aborted trial, one of which is the enormous impact on the victims of crime of a trial that deals with significant criminal matters or significant criminals in this state not proceeding when it has been set down. There is also the impact on the witnesses who were due to give evidence, particularly when it deals with a high-profile criminal as well. These are the intangible costs of causing a trial to be aborted. Then, of course, there are the direct costs - the costs of the court and the absolute waste of time, particularly in a case that might have already gone for four or five days or more. I am aware of two trials that were aborted in the District Court and one in the Kalgoorlie court, I think, earlier this year. In each case, the evidence had been adduced, and the legal expenses were clocking up for both the prosecution and the defence. There is the cost of the judge's time, all the court attendants, and the police. All that time represents a very significant amount of money. At the time that those two trials were aborted, in each case the jury was about to retire to consider its verdict. In those cases, the direct expenses to the state, not counting the intangible damage that is done as a result of aborting a trial, were greater than \$100 000; that was just in immediate direct costs to the state. When it comes to the aborting of trials, we all need to be particularly careful. When things are said in Parliament, or by parliamentarians outside, which lead to the aborting of a trial, there is a very enormous cost that the entire community pays.

**Mr P. PAPALIA:** I refer to the second dot point on page 560 of the *Budget Statements* under the heading "Major Achievements For 2006-07". I note that the Office of the Director for Public Prosecutions has assumed responsibility for Children's Court prosecutions, and that that has been going smoothly. The office anticipates a positive benefit. Can the Attorney give some indication of what sorts of benefits that move will achieve, please?

**Mr R.E. Cock:** Already since December 2006 when my office assumed responsibility for prosecuting all the matters before the Children's Court, we have seen a noticeable reduction in the number of hearings. That is a consequence of the confidence and skill that the lawyers have been bringing to the decision-making processes in identifying those cases in which there is no appropriate prospect of a conviction, and therefore obviating trials. It is also a product of their negotiations with defence lawyers to achieve pleas of guilty in cases in which there had not been sufficient proactive case management in the past. Both these features have been recently identified and acknowledged by the Chief Justice in a recent statement.

**Ms S.E. WALKER:** Can the Attorney General please explain why the Office of the DPP has altered its "matter type" breakdowns from showing the usual break and enters and burglaries to subsuming them all for the first time in the 2004-05 report? This followed on from the Burglar Beware campaign. In the 2003-04 report, burglaries amounted to 35 per cent of all Supreme and District Court matter type breakdowns. I recall from my research that it was a regular statistic provided by the DPP. We heard in the budget estimates that more people are being held on remand for break and enter, yet the government says that it is combating break and enter. In looking at this matter, I went to page 16 of the latest DPP report and there is no longer any statistic for break and enter. Why have the matter types been altered so dramatically by the Office of the DPP?

**Mr R.E. Cock:** The Crime Research Centre publishes comprehensive statistics on each of those pieces of information. As such, I thought it was redundant to repeat similar figures in my annual reports.

**Ms S.E. WALKER:** In light of all these matters, is the Attorney General prepared to support my private member's bill to institute a parliamentary oversight committee for the DPP?

**Mr J.A. McGINTY:** I do not think so, but I must say that I have not given it a great deal of thought.

**The appropriation was recommended.**

**The CHAIRMAN:** Members, we will move on to division 28.

**Ms S.E. WALKER:** The opposition does not wish to address divisions 28, 30 and 31.

**The CHAIRMAN:** Can the member repeat those divisions please?

**Ms S.E. WALKER:** The opposition would like to address only division 33.

**The CHAIRMAN:** Can the member repeat the ones that the opposition does not want to address?

**Ms S.E. WALKER:** Divisions 28, 30 and 31.

**Mr J.N. HYDE:** Others may like the opportunity.

**The CHAIRMAN:** That would be my intention, member for Perth. I want to know whether other members are interested in those divisions.

**Ms S.E. WALKER:** Could we have division 33 first, please?

**Mr J.A. McGINTY:** With due respect, at the beginning we did wish to accommodate the opposition and we altered the agenda.

**Ms S.E. WALKER:** Why not now?

**Mr J.A. McGINTY:** We agreed at the very beginning of this session on a revised order to accommodate the opposition. Opposition members said that they wanted to deal with the Attorney General, the Corruption and Crime Commission, and the Director of Public Prosecutions, so they asked that those divisions be brought forward. It was my understanding that we were otherwise going to work our way through the list. I expected that we would now deal with the matters in the order in which they were laid down. We have already agreed once with the opposition for a major change to the order in which things are dealt with.