

**Division 40: Office of the Director of Public Prosecutions, \$34 723 000 —**

Mr N.W. Morton, Chairman.

Dr K.D. Hames, Minister for Health representing the Attorney General.

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

Mr J. Plunkett, Director, Corporate Services.

Mr H. Bhabra, Finance and Administration Manager.

[Witnesses introduced.]

[2.20 pm]

**The CHAIRMAN:** Member for Warnbro.

**Mr P. PAPALIA:** At page 81 of the *Economic and Fiscal Outlook* is the heading “Law and Order”.

**Dr K.D. HAMES:** We are dealing with division 40.

**Mr P. PAPALIA:** I am referring to a line in the budget. The paragraph under the heading “Law and Order” on page 81 of the *Economic and Fiscal Outlook* refers to the impact —

**Dr K.D. HAMES:** I have a point of order. I do not understand. We have had issues like this before. I thought that we were considering division 40 before us today.

**Mr P. PAPALIA:** Does the minister want me to read the words “Director of Public Prosecutions” to him, because they are in the paragraph?

**The CHAIRMAN:** Member! This is a point of order.

**Dr K.D. HAMES:** Please; I am trying to make a point. The member is referring to other papers that are not in the list for division 40; we do not have them here.

**Mr P. PAPALIA:** The minister does not know what I am talking about.

**The CHAIRMAN:** Member, this is a point of order.

**Dr K.D. HAMES:** I do not have all the budget papers here. I have only the papers for the division we are dealing with in this house. It is my understanding that we have to deal with those.

**Mr P. PAPALIA:** I can refer to any line.

**Dr K.D. HAMES:** The member can refer to it, but he has to provide a page number in this division.

**The CHAIRMAN:** The advice I have received on the point of order is that members can refer to statements in the *Economic and Fiscal Outlook* so long as they are relevant to the division we are dealing with.

**Mr P. PAPALIA:** Let me help the minister by reading out what I am referring to. At page 81 of the *Economic and Fiscal Outlook* is the heading “Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014”, under which the following two paragraphs read -

The Criminal Law Amendment (Home Burglary and Other Offences) Bill 2014 was introduced to Parliament on 12 March 2014. There is a risk that enactment of the proposed legislation will result in an increase to the State’s custodial population, due to increased sentence lengths for applicable adult and juvenile offenders (although the legislation may also provide an offsetting deterrent effect).

The proposed legislation may also increase workload demands on prosecutions, potentially leading to increased costs for Western Australia Police and the Office of the Director of Public Prosecutions, with flow-on effects to the court system. The potential financial impact is uncertain at this time and has therefore not been reflected in the 2014–15 Budget.

I note that at the time of publication, the government was uncertain of the impact of the legislation, but this morning in this place, the Commissioner of Corrective Services indicated the costs of the legislation to his department as a result of its projections and modelling, which show that an additional 200 adults and 60 juveniles will enter the prison and juvenile detention system in the next four years. What modelling has been done on the impact of the legislation on the Office of the Director of Public Prosecutions?

**Dr K.D. HAMES:** I defer to the director.

**Mr J. McGrath:** The position is that at this stage the impact is indeterminate. The experience of prosecution services in the commonwealth is that mandatory sentencing likely increases the number of accused persons who proceed to trial. The level of that increase is indeterminate and is extremely difficult to model; it depends on far too many factors. My answer is that no modelling has taken place because it is indeterminate at this stage.

**Mr P. PAPALIA:** Has the Director of Public Prosecutions consulted with the Department of Corrective Services to find out the numbers that the DPP will have to deal with according to the Department of Corrective Services' best modelling?

**Mr J. McGrath:** No, I have not. The information that flowed from the office of the DPP to the Department of Treasury was on the issue of what increase, if any, was indeterminate. There was no communication with the Department of Corrective Services about its modelling.

**Mr P. PAPALIA:** If the number of convictions and sentences as suggested by the Department of Corrective Services' modelling is accurate—that is, an extra 200 adults and 60 juveniles entering the prison system—will the department be able to reverse-engineer the costs the DPP might incur?

**Mr J. McGrath:** We may be able to do it. There is one aspect about the impact on prisons as against the prosecution service; that is, in modelling, the exact same number of accused persons could be sentenced and the workload of the prosecution service would not increase, but the term imposed on an individual person would increase. For example, a sentence of normally two years may go up to three years, which would have a significant impact on the prison system, but no impact whatsoever on the Office of the Director of Public Prosecutions. Returning to the question, if the Department of Corrective Services' modelling suggests an increase in the number of persons who will be sentenced, that would have an impact on the office of the DPP. That impact would be whether the accused persons proceed to trial. That is where the heavy workload and impost arises.

**Mr J.R. QUIGLEY:** I refer to the workload, or possible workload, of the Office of the Director of Public Prosecutions resulting from home burglary mandatory sentencing. Does the director's office have a database—I cannot find one—of all sentences at first instance across Western Australia—that is, not appeal sentences? Does the DPP have a comprehensive database of first-instance sentences?

**Mr J. McGrath:** All sentences imposed are recorded by both the Department of Corrective Services and the Director of Public Prosecutions. As the member knows, when we look towards the range of sentences, we ordinarily look at the sentences imposed by the Court of Appeal. That is what we focus on for sentencing purposes. The answer is yes, that information would be available on some databases.

**Mr J.R. QUIGLEY:** The judicial officers with whom I spoke have not been able to point me to such a database. Is there a comprehensive database of all sentences at first instance; and, if so, where can I find it?

**Mr J. McGrath:** The Director of Public Prosecutions records the sentences imposed on an individual offender; however, if the member is referring to whether that information is then encapsulated in tables, I do not believe that is the case. But the information that could form such modelling could be done.

**Mr J.R. QUIGLEY:** But it is not being done at the moment. How much would the Office of the Director of Public Prosecutions need—I know what judicial officers think—to create and maintain a database of all sentences struck at first instance so that one can look at a 401 aggravated burglary and call it up in the same way that one can call up appeal sentences? I think the minister knows what I am speaking about.

**Dr K.D. HAMES:** The DPP has suggested that this question would be more appropriately asked during division 37 on the Department of the Attorney General.

[2.30 pm]

**Mr J.R. QUIGLEY:** I will ask this, then: is the minister able to tell us how many charge offences were presented in the last 12 months that will be encapsulated under the new home burglary legislation?

**Mr J. NORBERGER:** I have a point of order. Just so I can follow the line of the questioning from the member for Butler, what page is it?

**The CHAIRMAN:** There is no point of order. Could you just give a reference specific to this division, member?

**Mr J.R. QUIGLEY:** On page 463 under the heading "Relationship to Government Goals", it states that broad government goals are supported by the agency. We have generally heard about how many home burglaries there are in the state, but how many people who presented on offences in the last 12 months will be encapsulated under the new amendments for home burglaries? How many people are we talking about?

**Mr J. McGrath:** There are two measurements: the number of indictments, which are preferred, or the number of committals we received; and the number of charges overall. If the member looks at the number of charges, we dealt with 7 551 charges.

**Mr J.R. QUIGLEY:** For home burglaries?

**Mr J. McGrath:** No, in total, and of that, approximately just over 1 000, which will be 13.5 per cent, was under the genre of damage and burglary. About 13.5 per cent were designated as what we call property offences. A property offence may occur or not occur within the household or a business premises. We would have to isolate what percentage of the 13.5 per cent of the 7 551 related to burglary. We received 2 170 committals last year. We will probably receive 2 150 committals this year, which ordinarily are presented to the Supreme and District Courts. One would have thought, using charges, it would be similar—that is, property offences would be around 13 per cent.

**Mr J.R. QUIGLEY:** I am really directing my inquiry to this. The Commissioner of Police was not able to help us two days ago either, so I make this inquiry: of the 13.5 per centum of offences charged, a much smaller number than that 13.5 per centum would be aggravated home burglary; is that true? I am trying to isolate what number of offences, on last year's figures, will be captured by the new amendments.

**Dr K.D. HAMES:** I am reluctant to prescribe this as supplementary information because the director advises me he is not certain that he can get the information. Can I request that the member put the question on notice, and we will seek to get an answer?

**Mr P. PAPALIA:** I refer the minister to page 463 of budget paper No 2 —

**Mr J.R. QUIGLEY:** Sorry; I have a point of order. Could we give that question a supplementary information number? It is not going to be put.

**The CHAIRMAN:** He is not providing it as supplementary information, as is the minister's prerogative. He said that you can put it as a question on notice, and that is your responsibility, member.

**Mr P. PAPALIA:** I refer to page 463. Under the heading "Significant Issues Impacting the Agency", the second dot point refers to the Dangerous Sexual Offenders Act 2006. I am wondering whether it is normal practice for the DPP to consult with the Attorney General about the release of dangerous sexual offenders in advance of their cases coming to court.

**Mr J. McGrath:** No, I do not consult with the Attorney General. I approach the Dangerous Sexual Offenders Act in that I am the authorised officer, having been the person who commences the proceedings in my own name as the statutory officeholder, and that it would be erroneous of me to seek direction as to whom to bring before the court and how to conduct the case.

**Mr P. PAPALIA:** I would not suggest that the director seek direction, but would it not be the case that he might even discuss the matter, rather than seek direction?

**Mr J. McGrath:** The experience through the commonwealth, and one of the reasons an independent Director of Public Prosecutions was commenced, was that the mere consultation between politicians and prosecutors leads to either an appearance or an actual outcome that the independent decision-making has been affected. Therefore, I would not do so.

**Mr P. PAPALIA:** Noting that, my next question is on the same matter: is it a consideration of the DPP, when deciding whether to object to the release of a dangerous sexual offender, that there is an opportunity for the offender to wear a GPS monitoring device? Prior to that being the case, is it possible that an individual would have had his release opposed on the grounds that it was less likely the police would have an idea of the offender's location? Now that GPS monitoring is part of the consideration for an offender's release, has that had an impact on the DPP's process and his likelihood to object to the release of an individual?

**Mr J. McGrath:** The use of GPS with dangerous sex offenders is an enormously important significant initiative. It forms the basis of securing the community. At the point in the Supreme Court that the judicial officer is required to make a decision as to whether there is a detention order or the person is released on a supervision order, what is required is a consideration of the weighing of the risk to the community and how that risk can be managed. When I approach the submission that I am required to make—because under the legislation it is what order do I seek; it is unlike sentencing—I look at the entire circumstances of the case: namely, the antecedence; in particular, the past offending; significantly, the psychiatric evidence; and, lastly, the means by which that person could be secured in the community and the risk properly restrained. Therefore, a short answer is: yes, it does affect the overall determination as to whether to release an offender. One could consider a position in which there would be no surveillance, no reporting and no manual surveillance; if none of that occurred, one would be left with a position in which the only way to manage risk is incarceration.

**Mr P. PAPALIA:** In the last five years, has there been any other change in the methodology for monitoring or mitigating the risk associated with releasing these individuals beyond the introduction of the use of GPS bracelets?

[2.40 pm]

**Mr J. McGrath:** A great deal of work has occurred and does occur. The recent one is looking towards the accommodation services and the use of non-government independent organisations that provide accommodation. That is coupled with normal police monitoring and reporting and the drug and urinal tests. An illustration of this would be what was published after the case referred to as TJD in which the supervision orders imposed by the Commissioner of the Supreme Court ran to some four or five pages, and only one line of that was about the electronic surveillance. There have been great initiatives and a great deal of work. It needs to be understood that we start with the proposition that these persons have completed their terms of imprisonment; they are otherwise free and the liberty of a citizen is being restrained. Successive governments are to be commended for the initiatives to ensure that community risk is protected, while ensuring that the citizen has a right to enter into the public. That is the balancing within the forum of the Supreme Court.

**Mr P. PAPALIA:** I am glad that the TJD case was raised. When I was looking at the restriction imposed on that individual, the only thing I could identify that has changed in the nature of the management of that type of person in probably the last five years was the imposition of the requirement to wear a tracking bracelet. I recall that at the time of the government's move to initiate that practice, there was some suggestion during the questioning of the minister of the day that it may result in a greater number of dangerous sex offenders being released from prison, and he acknowledged that that was the case. I guess that would be the only thing I would ask the director to comment on. I understand there is housing assistance, supervision and all manner of other mitigation factors, but the only thing that is new is a requirement for dangerous sex offenders to wear a bracelet. Is that not really the situation?

**Mr J. McGrath:** As the member may be aware, the conditions are ultimately determined by the Department of Corrective Services. I am not able to answer today as to whether that is the only single change over the years. I reiterate, though, that in the TJD case, there were some five pages of conditions and one could ask a rhetorical question: what further condition could have been imposed on TJD or what other initiative could have been taken? In my experience, I could not proffer an answer about any further positive step that could be taken. If there is, sure, it would be looked at.

**Mr J. NORBERGER:** On the point of dangerous sex offenders, I note that obviously the related workload has increased quite significantly over the last couple of years. I wonder what initiatives the agency has undertaken in order to accommodate that increase in workload.

**Mr J. McGrath:** The most significant change for the Office of the Director of Public Prosecutions was that in the midterm review of last year, we were fully funded to undertake dangerous sex offender applications and we got supplementary funding. In the forward estimates that will grow to \$513 000, which funds 2.5 full-time equivalent employees, which, when coupled with our senior state prosecutors, give us a full contingent within the office to handle the workload; there is no difficulty in respect to that.

**Mr J.R. QUIGLEY:** I refer to the broad government goals supported by the agency listed on page 463 of the *Budget Statements*. The Premier announced that the rationale for introducing mandatory sentencing was that everybody knows that some judges are not doing the right thing. Has the director been able to identify for the Premier which judges are not doing the right thing and how many of them are not doing the right thing?

**Mr J. McGrath:** I have not been asked that question, nor to provide information to anyone in government.

**Mr J.R. QUIGLEY:** Is the director of the opinion that of the 44, or thereabouts, judges of the District and Supreme Courts, there are judges not doing the right thing in sentencing for aggravated home burglary?

**Dr K.D. HAMES:** I do not think it is the role of the director to be making judgemental statements about whether judges are or are not doing the right thing. It was a comment from the Premier and if the Premier has a view about who they might be, I think it is up to him to make a comment. The director is a public servant and he does not need to be making comment on the performance of judges.

**Mr J.R. QUIGLEY:** With respect, on the point raised, it is the director's job to instigate and oversee appeals if he believes that a sentence is inadequate. It is directly the director's function, so I ask: has the director, in his opinion, been able to identify judges who are not doing the right thing; and, if so, who are they?

**Dr K.D. HAMES:** The director is happy to provide an answer.

**Mr J. McGrath:** The answer is no, I identify no difficulties; however, as the member is aware, in respect to any offending, there is always an appropriate sentencing range that could be imposed and that might vary for an offence between three years and eight months and four years and 11 months, and if the sentence is within that range, there may well not be an appealable error. It depends on the particular judge on the particular day. The other aspect is that, as the director, I exercise the power to bring state appeals and I will correct sentences through bringing it back to the court, but there is always a variation in sentences and it is known that different judges approach them differently.

**Ms J.M. FREEMAN:** I refer to the heading “Relationship to Government Goals” on page 463. In the column headed “Desired Outcome”, it states —

That the people of Western Australia are provided with a fair and just criminal prosecution service.

I note that there was some criticism of the DPP in previous years over the use of one-punch laws for the conviction of an intimate partner for domestic violence. I would like advice about whether the DPP is making submissions to the Law Reform Commission of Western Australia on enhancing family and domestic violence laws to mitigate those criticisms of using legislation that leads to lesser sentences for perpetrators.

**Mr J. McGrath:** Yes, my office did make submissions, which included written submissions, and I also met with the chair of the Law Reform Commission and the principal policy writer on that particular project. My submission was wholly reproduced in the discussion paper of the Law Reform Commission and I entirely agree with what it said. I say that because it wholly adopted what I said. The approach the DPP has always had to all offenders, whether or not in the domestic context, is to prefer the most serious count possible. As the member may know, before a jury on an indictment there are alternative counts, so when there is a preferring of murder, there are always two or three alternatives such as manslaughter and one-punch; that is common. The vast majority of occasions when there has been a finding on the one-punch count, it is because of a return on that. On the other occasions, and there are specific cases I am aware of, it happened after very senior state prosecutors or consultant state prosecutors reviewed the evidence and found that it was simply not possible to prefer murder. One thing I wish to make reassurances about is that one of the great criticisms of the Office of the Director of Public Prosecutions over many decades has been that it has gone for the most serious offences; we do not apologise for that and it is always done in the domestic situation. It is appropriate on circumstance to use the one-punch law even though it is in a domestic situation. The only alternative to not using it is that the individual offender would not be charged, because it may well be that the evidence only supports that. I commend what the Law Reform Commission says about this; there are about three or four pages and I wholly surrender to what it says.

[2.50 pm]

**Mr J.R. QUIGLEY:** I go to the significant issues impacting the agency on page 463. It is noted that in 2012–13 there were 59 homicide cases, but in the final sentence it is noted that the office anticipates a similar number this year. It appears that the 59 homicides in 2012–13 were not just a spike, but that there is a general increase in the number of homicide cases. The office anticipates that that will be sustained. Is that correct?

**Mr J. McGrath:** Yes. We anticipate this year that it would be heading towards 45 to 50 homicide cases, which includes manslaughter cases—any matter that is dealt with in the Supreme Court.

**Mr J.R. QUIGLEY:** Am I right that the prosecution of homicides in the last several years has become more complex, not only because of disclosure requirements, but also because closed-circuit television camera footage has to be played to juries over and over in front of witnesses and there are video records of interview, and that the length of these homicide trials has also increased —

**Mr J. McGrath:** That is correct.

**Mr J.R. QUIGLEY:** — since my day when we could get through one in four days?

**The CHAIRMAN:** Thank you, member. You have asked the question.

**Mr J. McGrath:** Yes, the duration of murder trials has increased, and virtually always it is double figures. Homicides are demanding prosecution in all cases—some more than others, but they have that characteristic.

**Mr J.R. QUIGLEY:** And conversely for the court.

**The appropriation was recommended.**