

Division 31: Office of the Director of Public Prosecutions, \$43 316 000 —

Ms J.M. Freeman, Chair.

Mr J.R. Quigley, Attorney General.

Ms A. Forrester, SC, Director of Public Prosecutions.

Mr L. Beeck, Manager, Finance Services; Chief Finance Officer.

Mr R. Monte, Budgeting and Contract Manager.

Mr J. Lee, Principal Policy Adviser.

Mr D. Emerson, Senior Policy Adviser.

[Witnesses introduced.]

The CHAIR: This estimates committee will be reported by Hansard. The daily proof *Hansard* will be available the following day. It is the intention of the Chair to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point. The estimates committee's consideration of the estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. Questions must be clearly related to a page number, item, program or amount in the current division. Members should give these details in preface to their question. If a division or service is the responsibility of more than one minister, a minister shall be examined only in relation to their portfolio responsibilities.

The Attorney General may agree to provide supplementary information to the committee rather than asking that the question be put on notice for the next sitting week. I ask the Attorney General to clearly indicate what supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the Attorney General's cooperation in ensuring that it is delivered to the principal clerk by Friday, 30 October 2020. I caution members that if the Attorney General asks that a matter be put on notice, it is up to the member to lodge the question on notice through the online questions system.

Member for Hillarys.

Mr P.A. KATSAMBANIS: Welcome, Director of Public Prosecutions. If I can take the liberty of saying, on behalf of everybody, that we would all like to commend you on the amazing body of work that you have put in, particularly in relation to the most high-profile case that you have dealt with this year, and have been for some years, in relation to Bradley Robert Edwards. Well done to you and all of your staff. The Western Australian public held you in the highest regard but they hold you in an even higher regard now. Well done on that.

Ms. A. Forrester: Thank you, member.

Mr P.A. KATSAMBANIS: I want to focus on that case for one moment. I refer specifically to the line item "Special Prosecution Division" under the spending changes on page 473 of budget paper No 2. Is the allocated amount of \$2.854 million exclusively related to that case or does it represent some other division that I am, to this day, not aware of?

Mr J.R. QUIGLEY: I will defer to the director.

Ms. A. Forrester: Yes, it relates solely to the tail end of the Edwards prosecution and the proceedings that are still ongoing, which at the moment is sentencing.

Mr P.A. KATSAMBANIS: Is there a total cost so far, either to the Office of the Director of Public Prosecutions or the case generally?

Mr J.R. QUIGLEY: Do we have a cost so far?

Mr P.A. KATSAMBANIS: A total cost so far.

Mr J.R. QUIGLEY: For this division, we can give the costs of the prosecution. The department will give it for the courts and of course the director of Legal Aid during the Justice division.

Mr P.A. KATSAMBANIS: I am happy to get it that way. Let us get it for this division. What are the total costs so far?

Mr J.R. QUIGLEY: Certainly. I will defer to the director. It is there in the papers.

Ms. A. Forrester: At the end of the last financial year, it was \$6.146 million. Sorry, that was the budgeted expense. I will just check with my advisers. It was \$5.1 million at the end of the last financial year. This year has obviously not yet been accounted for.

Mr P.A. KATSAMBANIS: So, \$5.1 million is the actual to the end of —

Ms. A. Forrester: Yes.

Mr J.R. QUIGLEY: The sum of \$5.104 million is the actual at the end of the year. That was the cumulative from 2017–18 through to 2019–20.

Mr P.A. KATSAMBANIS: Sure. Is that \$2.854 million in addition to the \$5.104 million? If that is the case, is that anticipated to be the highest level of total cost or are we considering that there may be costs beyond this current financial year?

Mr J.R. QUIGLEY: The member can ask this again in the division on Justice and Legal Aid. It will depend upon when this matter finally resolves; Mr Edwards has not yet been sentenced.

Mr P.A. KATSAMBANIS: I do not think they would be at liberty to tell me that.

Mr J.R. QUIGLEY: And also there would be considerations about whether he attempts to appeal and how far that sort of a process might run, whether it is through the Court of Appeal or whether he seeks special leave beyond the Court of Appeal. All those unknowns make it very hard to estimate the future cost.

Mr P.A. KATSAMBANIS: Yes, certainly. I do not want to ask how long is a piece of string, but clearly, from what I have been told, on top of the \$5.104 million there is a further allocation of \$2.854 million for this year.

Mr J.R. QUIGLEY: Because the trial did not finish until into this year.

Mr P.A. KATSAMBANIS: Yes, it is still going. Obviously, we cannot anticipate what else might happen post-trial. Is \$2.854 million an allocation that has been provided to cover off between now and sentencing, or has the allocation taken into account the potentiality of any further work of the Office of the Director of Public Prosecutions post-sentencing?

Ms. A. Forrester: Yes, member; the allocation has taken into account the possibility of further work, but also the significant end costs of a prosecution of this nature. It is no secret that we had a whole floor dedicated to this. That will need to be packed up. A case like this is not packed up easily, or without significant organisation, because it will be one of those cases that we may need to go back to in the future.

Mr P.A. KATSAMBANIS: There is a lot of interest in this. I know exactly what the director is talking about. I have never been involved in a criminal case of this size, but I have been involved in plenty of civil cases of a significant size. Perhaps with the Attorney General's indulgence, could we get some further detail on the record about end costs, for the general public who may not necessarily be as cognisant of those sorts of procedures; as much as can be put on the record, obviously?

Mr J.R. QUIGLEY: I do not know that we can provide end costs. The director is capable, for the public interest, to talk about the end tasks that must be undertaken. Post-conviction tasks must be undertaken.

Mr P.A. KATSAMBANIS: I was not asking for the actual cost of those.

Mr J.R. QUIGLEY: I think it is better to talk in post-conviction —

Mr P.A. KATSAMBANIS: What would be incurred—not financially, but what would be involved procedurally in ending the case?

Mr J.R. QUIGLEY: Correct.

Mr P.A. KATSAMBANIS: Between the two of us, have we got there?

Mr J.R. QUIGLEY: That is right. I will defer to the director because she has intimate knowledge.

Ms. A. Forrester: There are very sensitive record-keeping requirements in relation to that. We had any number of prosecutors involved at various times. Each of them would have made notes on various parts of the brief. All of that sort of material needs to be kept. It is not the sort of case that only one fresh copy of the brief can be kept and we can throw the rest into the shredder. We need to ensure we have captured every single piece of paper that has notes on it. We need to ensure that all the material that has been disclosed by the police is properly sorted and ordered. It all ends up having to go into storage at Iron Mountain because at the moment there are hard-copy briefs for everything. We also need to cover the electronic storage of the material and make sure all the exhibits are properly secured. Obviously, with the one acquittal, there is always the option of going back one day, so there would be every need to make sure that this case is meticulously filed, packed up and stored, with integrity, in a secure way so that if we ever need to go back to it, we can.

[3.10 pm]

Mr P.A. KATSAMBANIS: As raised by the director, there was an acquittal. I do not want to be accused of asking how long is a piece of string, or of mirror gazing, but what else can be done to bring that case to its ultimate finality? Has advice been provided by the office to the Attorney General and other agencies?

Mr J.R. QUIGLEY: Are we talking about the case in which there was an acquittal?

Mr P.A. KATSAMBANIS: The acquittal—yes.

Mr J.R. QUIGLEY: As a result of amendments to the Criminal Code brought in some years ago, the prosecution can be reinstated by leave of the court only if there is fresh and compelling evidence. I do not want to speculate or hypothesise about what that fresh and compelling evidence might comprise, but in the eyes of the investigators and the prosecution service, that is clearly still a live case. That is why the director, in her earlier answer, detailed the need and imperative to make sure that everything relating to the case so far is meticulously documented and kept in good order in case an application for the presentation of a fresh indictment ought to be made in the future.

Mr P.J. RUNDLE: I also acknowledge the efforts of the Director of Public Prosecutions and her team. Well done.

Ms. A. Forrester: Thank you, member.

Mr P.J. RUNDLE: My question is also about the spending changes on page 473. For the line item “Impact of Additional Police Officers”, over the forward estimates the allocations are \$1.815 million, \$3.745 million and \$5.799 million, so up to around \$12 million. Can the Attorney General detail what will be provided in the form of resources and numbers? I assume that this is part of the government’s commitment to another 800 police officers. Can the Attorney General enlighten us?

Mr J.R. QUIGLEY: I will start by talking about how we go about that. As indicated, in previous years we commissioned what is called the pipeline of justice. In the past, governments have increased police numbers, which resulted in more arrests, and a need for more magistrates, more legal aid staff to represent the accused, and more accommodation for courts and for convicted prisoners. That was all reactive, so the justice system was always under immense stress, particularly the Office of the Director of Public Prosecutions, in trying to always catch up with the extra work that had been placed upon it by the provision of extra police numbers. Promising increases in police numbers is always an attractive policy for political parties going into elections. When we get to the Legal Aid and Justice divisions members will see the marvellous computer model we have. We can input data to predict what we will need further down the pipeline. An extra 150 police officers were added during the COVID recovery; and, through the budget itself, a further 800 police officers will be added. Over the four years, that will be an extra 950 police. If that input is done at the start of the pipeline, we can predict what we will need further down the pipeline. It is a marvellous model and a detailed piece of work by the Departments of Finance and Treasury, and the agencies. That is reflected in the significant uplift in the budget allocation for the director’s office. That uplift will come about without the director subsequently having to come to government to beg for resources. The director will be able to forward plan, knowing what financial resources will come down the pipeline. I will defer to the director to further to explain to the member the planning that she and her office is going about to meet the demand that will be thrown on them by the extra police and the extra workload from our new high-risk offenders’ legislation. At this point, I will defer to the director.

Ms. A. Forrester: The funding over the forward estimates provides an estimated FTE of 43 new staff. The fact that the budget provision starts in the next financial year and not this one means that we have some advance warning; therefore, we can start planning by way of advertising and recruiting staff, making arrangements for space for those staff, and training them and getting them ready, so that when we start to get increased numbers, we will be able to meet those demands quickly.

Mr J.R. QUIGLEY: If I can add to that, this is what the pipeline of justice has produced. In 2011–12, there was a diminution in the director’s office, with nearly \$1.7 million sliced off the budget. In 2016–17, there was an uplift of \$5.8 million. Through our last budget of this term of government, the total uplift is \$55.5 million. The member can see the extra resources that the McGowan government has put into the Office of the Director of Public Prosecutions. Please compare that \$55.5 million with the last government’s \$5.8 million.

Mr P.J. RUNDLE: Thanks for the history lesson, Attorney General!

When I look at the budget totals for the DPP, Justice and Legal Aid, it is up around \$30.6 million over the three departments. Is there any interchangeability between those different departments? Do resources switch from one department to another during a given year, or will the 43 new FTE that will be allocated to the DPP stay within that department?

[3.20 pm]

Mr J.R. QUIGLEY: That is correct. They do not transfer to other departments. This is a very highly specialised area. We have had some challenges in the past, because the previous government said that if someone resigned from the department, they could be replaced at only 40 per cent of their salary. This meant that when a senior prosecutor went to the bench, the department could hire only someone earning 40 per cent of the senior prosecutor’s salary, which resulted in, if I can use an American phrase, the juniorisation of the office. The department lost senior people to the Supreme, District or Magistrates Courts and could hire only people on 40 per cent of those senior people’s wages. On assuming office, one of the first things we had to do was declare prosecutors to be frontline servants of the state in the same manner as police. We do not lose policemen and replace them with someone earning only 40 per cent of their wage; we had to do the same with the Office of the Director of Public Prosecutions. I can remember the stress that the office was under when we first came into government. That was addressed. Those people

then have to be kept there and trained, because criminal trials in this state have become a lot more complex, especially in the 20 years since I last practised. I said 40 per cent; it was 60 per cent of the wage, so a 40 per cent reduction. Trials have become a lot more complex with the advent of DNA and other evidence. It is imperative to try to keep a stable workforce and keep it trained to the highest level. They are not interchangeable between offices.

Mr P.J. RUNDLE: Do those associated police officers undergo other training during their tenure in relation to legal skills et cetera? Is there any allocation of training at all in the department?

Mr J.R. QUIGLEY: There are a number of programs within the office. All legal practitioners are required to maintain continuing professional development, and the Office of the Director of Public Prosecutions is no exception. It has a very high quality program for the professional development of all its staff.

Mr M.J. FOLKARD: I refer to the line “Impact of Additional Police Officers”, which is at page 434 of budget paper No 2, volume 2 under the heading “Spending Changes”. Bear in mind that I was one of the 1 000 officers who hit the system last time, and I witnessed the train wreck that occurred then. I note that \$11 million has been allocated to the DPP to deal with the expected increase in activity from the hiring of an additional 800 police officers. How was that sum arrived at?

Mr J.R. QUIGLEY: As I have explained, we now have this justice pipeline model, which is able to predict increased workload. As I said before, that is crucial. As I also mentioned before, the total increase in funding is actually \$11.359 million. That will provide 43 full-time equivalent positions at the office of the DPP. That is not this year; that is over the forward estimates. The determination of this funding has been scenario tested through the office of the DPP’s own cost–demand model, and this is the first such determination under the McGowan government’s justice pipeline model. I will let the director expand on that a little further, if she is able to.

Ms. A. Forrester: There is little I can add to it at this stage. The 43 FTE is an approximation; it is based on a funding amount, and obviously we have different levels of staff, but that is based on an average staff level. We will work out the correct mix of seniority of staff to address the work that comes in. The justice pipeline model has been very effectively applied in this case in response to a longstanding problem.

Mr M.J. FOLKARD: Will that grow as the officers come through the system?

Ms. A. Forrester: Will what grow? I am sorry, member.

Mr M.J. FOLKARD: Will the number of FTEs grow as the 800 officers hit the system over the next couple of years?

Ms. A. Forrester: Yes. The way the numbers work, having regard to the funding as it is rolled out over the forward estimates, is 14 in the first year when the provision is made, an additional 14 in the following year, and an additional 15 in the final year, so it will grow incrementally.

Mr P.A. KATSAMBANIS: I refer to page 476 of budget paper No 2, volume 2, “Outcomes and Key Effectiveness Indicators”. The third outcome is “Application for a declaration of confiscations filed within four months of the drug trafficker declaration”. The budgeted target is 60 per cent. In 2018–19, the actual was 6.3 per cent. In 2019–20, the actual was 16.9 per cent. I do not have any figures before that. When I see figures like this, I ask a series of questions, because I do not know what is driving that. One, is it resourcing? Two, is it the increased complexity of the workload? Three, is that budgeted figure just something that some Treasury bureaucrat has plucked out of the air, and it has no real relevance to the changing nature and complexity of the work that the office has to do in this confiscation regime? We all agree that is an important part of the office’s work. I have some other questions on that as well. I just want to get an understanding of whether this target figure is even relevant.

Mr J.R. QUIGLEY: I will defer to the director on that as she sets the targets.

Ms. A. Forrester: It is a 250 per cent improvement, I guess.

Mr P.A. KATSAMBANIS: Yes, and it is still 75 per cent away from the target.

Ms. A. Forrester: I know; it is very low. We are working on it. In effect, it is an arbitrary figure because we cannot file an application until we get certain information from WA police, and WA police needs to find the information. That can take a long time or it can take very little time. Unfortunately, I think that at the moment one of our issues is that we prioritise them in order of when they come up, and sometimes that means we do not pick up all the easy ones and file them on time. We are talking to WA police about that at the moment in an effort to get the ones that can be lodged quickly, or at least more quickly. But this is a historical KPI that has been in since the act’s inception. As a result of the review, it is no secret that the act is very difficult to administer. It is becoming more difficult to administer every year. It is an out-of-date KPI, and we are reviewing that as well, because it does not perhaps match the reality of these applications anymore.

Mr P.A. KATSAMBANIS: This question is in relation to confiscation. I refer to page 477, “Services and Key Efficiency Indicators”. The second point is “Confiscation of Assets”. The income shown for that line is \$3.489 million. Can I take it that that is the amount recovered through confiscation, or is that just some budget allocation income figure? That is what I want to clarify.

Mr J.R. QUIGLEY: I defer to the director.

Ms. A. Forrester: That is a budget allocation from the confiscations fund. That is not the income that has been seized in any given year.

Mr P.A. KATSAMBANIS: Can I get an indication of what has been seized in the last financial year and what is anticipated in this financial year, and where that might be recorded in the budget papers?

Mr J.R. QUIGLEY: I will defer to the director.

Ms. A. Forrester: It is contained in our annual report. For the last financial year, it was \$15.419 million. It is not possible to estimate what will be taken in this financial year.

[3.30 pm]

Mr P.A. KATSAMBANIS: Is it then possible to find out what it was in 2018–19, if the director has that information there?

Ms. A. Forrester: I can do that. In 2018–19 it was \$10.681 million. All the figures for 2015–16 are contained in the annual report.

Mr P.A. KATSAMBANIS: I will just conclude this with a further question. The last figure on page 477 under efficiency indicators is the ratio of cost to return, which is 22.6 per cent for 2019–20. That is actually the ratio that refers to that \$15.49 million in proceeds, derived by dividing that by the \$3.489 million in actual allocation. Conceptually, that now makes sense, so thank you for clarifying that.

The CHAIR: I give the call to the member for Roe.

Mr P.J. RUNDLE: I have no questions on confiscation.

The CHAIR: Have we finished the division?

Mr P.A. KATSAMBANIS: No, I have not quite finished. I still have a question on confiscation. Is the figure of \$15-odd million that the director mentioned reflected in the statement of cash flows?

Ms. A. Forrester: Do you mean to my account?

Mr P.A. KATSAMBANIS: Yes.

Ms. A. Forrester: No, it goes into consolidated revenue.

Mr P.A. KATSAMBANIS: That is right. It does not hit the director's books.

Ms. A. Forrester: Sorry, it goes into the proceeds account. My apologies.

Mr P.A. KATSAMBANIS: It goes into the proceeds account through the act, but it does not hit the director's books at all.

Ms. A. Forrester: No, not at all.

The appropriation was recommended.