

**STANDING COMMITTEE ON ESTIMATES AND
FINANCIAL OPERATIONS**

2013–14 BUDGET ESTIMATES HEARINGS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 26 SEPTEMBER 2013**

**SESSION THREE
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

Members

**Hon Ken Travers (Chair)
Hon Peter Katsambanis (Deputy Chair)
Hon Martin Aldridge
Hon Alanna Clohesy
Hon Rick Mazza**

Hearing commenced at 3.01 pm

Hon MICHAEL MISCHIN
Attorney General, examined:

CONNOLLY, MR MARTIN
Principal Policy Adviser, Office of the Attorney General; Minister for Commerce, examined:

McGRATH, SC, MR JOSEPH
Director of Public Prosecutions, examined:

BHABRA, MR HARDIP
Manager, Administration and Finance, examined:

The CHAIR: On behalf of the Legislative Council Standing Committee on Estimates and Financial Operations I would like to welcome you to today's hearing. Witnesses before the committee are required to read and sign a document headed "Information for Witnesses". Can the witnesses confirm for the benefit of Hansard if you have read and signed a copy of this document?

The Witnesses: Yes.

The CHAIR: For the benefit of Hansard, can you confirm that you understand the document that you have signed?

The Witnesses: Yes.

The CHAIR: I note that all of the witnesses indicated in the affirmative.

Witnesses need to be aware of the severe penalties that apply to persons providing false or misleading testimony to a parliamentary committee. It is essential that all your testimony before the committee is complete and truthful to the best of your knowledge. This hearing is being held in public, although there is discretion available to the committee to hear evidence in private either of its own motion or at the witness's request. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session before answering the question.

These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. The committee reminds agency representatives to respond to questions in a succinct manner and to limit the extent of personal observations. To assist the committee and Hansard, please quote the full title of any documents you refer to during the course of this hearing for the record; and please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them. Members, it would greatly assist Hansard if, when referring to the budget statements volumes or the consolidated account estimates, you give the page number, item, program, amount, and so on in preface to your questions.

Government agencies and departments have an important role and duty in assisting Parliament to scrutinise the budget papers on behalf of the people of Western Australia. The committee values your assistance with this.

For the benefit of members and Hansard I ask the Attorney General to introduce his advisers to the committee, and for each adviser to state their full name and the capacity in which they appear before the committee.

[Witnesses introduced.]

Hon ADELE FARINA: I note with interest “Significant Issues Impacting the Agency” on page 613. Each of the dot points refers to a significant increase in workload over recent times. I then look at page 114 and note that there is going to be a cut in FTEs to the office and also that the early advice to court on charges is actually falling behind. The budget estimate for 2012–13 was 85 per cent and the estimated actual for 2012–13 is 75 per cent. I then look at the appropriation to the office, which has been cut, and ask: how does the Attorney General expect the office of the DPP to meet the increasing workloads that it is facing when it is having FTEs cuts and funding cuts of a significant proportion while facing increases of workload in the order of 25 per cent in some cases? It just seems to me that something is going to give here. I think we will find those key effectiveness indicators will start dropping quite significantly.

Hon MICHAEL MISCHIN: If I can pick up on a couple of matters: an increase in workload of 25 per cent—sorry, where did you find that?

Hon ADELE FARINA: On page 613 of the budget papers under “Significant Issues Impacting the Agency”. It states —

The Office experienced a significant rise in the number of new homicide cases in 2012–13—approximately 50 cases—which was up by 14 (39%) from the previous year.

The next dot points talks about an increase in workload as a result of the Dangerous Sexual Offenders Act 2006, with the figure from three offenders in 2006–07 to now 30 dangerous sex offenders. The next dot point talks about the number of Court of Appeal matters managed by the office, which has increased by 26 per cent, with another further increase in 2011–12 of 25 per cent. It continues down that vein through the rest of the dot points.

Hon MICHAEL MISCHIN: The 25 per cent increase you are talking about is the work of a number of Court of Appeal matters managed by the office in the last financial year—or the previous financial year to that.

Hon ADELE FARINA: I cannot hear you, sorry.

Hon MICHAEL MISCHIN: The 25 per cent increase in the work of the office that you are referring to was the increase of 25.6 per cent in the 2011–12 financial year. An increase of 26.6 per cent was in the financial year prior to that.

Hon ADELE FARINA: There is an increase in homicide cases in the first dot point; an increase of 50 cases in 2012–13.

Hon MICHAEL MISCHIN: No, it is not an increase of 50 cases; it is 50 cases —

Hon ADELE FARINA: Sorry, up by 14; you are right.

Hon MICHAEL MISCHIN: Up by 14 cases.

Hon ADELE FARINA: That represents a 39 per cent increase.

Hon MICHAEL MISCHIN: Yes, a 39 per cent increase.

Hon ADELE FARINA: And an increase in workload as a result of the Dangerous Sexual Offenders Act.

Hon MICHAEL MISCHIN: That is right, yes, over a period of seven years an increase from three to 30. As I have indicated, from time to time there will be increases and fluctuations in the work that any government agency has to perform. When there appear to be permanent increases, cases can be made for an increase in budget and in resources. It has happened from time to time over several occasions. It does not happen systemically every year or automatically every year. The increase in the number of homicide cases, as I mentioned earlier in proceedings, I am not aware of the reason for that increase. It is 14 cases. If you look at the percentage, yes, it is a significant amount—a 39 per cent increase—but it is only 14 cases out of something like over 2 000 committals that occur in the course of a year.

[3.10 pm]

Hon ADELE FARINA: They probably represent the more complex cases as well.

Hon MICHAEL MISCHIN: They may and they may not. The nature of the charge does not necessarily indicate the complexity of the case. What does reflect the complexity is the obligations that are increasingly placed on the prosecution and expectations as to the results of every case. What I have noticed from the figures is that the Office of the Director of Public Prosecutions is staying within its KPIs and its performance indicators and is doing an exemplary job. The director has spoken to me from time to time about the need for supplementary funding and resources. Indeed, at the end of last year, there was an additional injection of funding and resources into the office in order to tide it over some difficulties that had been exposed and some shortfall in funding.

Hon ADELE FARINA: How much was that?

Hon MICHAEL MISCHIN: I do not recall what the figure was now. Perhaps I will ask the director if he has those figures available; he may be able to assist.

Mr McGrath: At the end of the year, the supplementary funding was \$500 000 but that was coupled with the receipt of \$1 million in a one-off payment from the criminal confiscation fund, \$600 000 of which was directed to fund a confiscation practice and a further \$400 000 to permit the briefing of external counsel. In total, the extra funding received from the two sources was \$1.5 million.

Hon MICHAEL MISCHIN: I can provide some further information as to one aspect of what Hon Adele Farina was raising. The early advice to court on charges indicator has improved. The target is 85 per cent and in the 2012–13 year it went up to 83.4 per cent. Its objective—its aspiration—is 85 per cent of indictments will be filed within 90 days of committal. In 2012–13, it was 83.4 per cent; in 2011–12, it was only 81.8 per cent; in 2010–11, it was 79 per cent; and in 2009–10, it was 69 per cent. The office is improving its performance in that regard quite significantly.

Hon ADELE FARINA: Why does the budget paper then say that the 2012–13 estimated actual is 75 per cent if your figures indicate something completely different?

Hon MICHAEL MISCHIN: It is an estimated actual, to be confirmed. In fact, it proved to be a whole lot better than that.

Hon ADELE FARINA: It is an estimated actual, which is 10 per cent lower than the target that was set. If all your figures are indicating that it is on target, why would you include in the budget papers an estimated actual that is 10 per cent lower than what it is achieving?

Hon MICHAEL MISCHIN: Perhaps I will ask the director to explain the reason for that.

Mr McGrath: The estimate that we provided in the papers had no correlation to any underlying funding issue. It was a determination of a conservative estimate of what an office could achieve. The KPI of filing an indictment within 90 days is a difficult KPI to reach on occasions because we rely on police and other investigative agencies to provide us with the information post-committal. Therefore, we approach it with a realistic estimation that we will not achieve that KPI and we then say 75 per cent. What I can say with confidence is that when we look at past figures, we are on target, as we were last year, at 83.4 per cent. But recall that the year before I commenced—I have only been in the job coming up four years—we were at 69 per cent. I want to ensure that this is not just a peak but it will be the future position. It was a conservative decision made by me.

Hon ADELE FARINA: Even though you achieved 82 per cent in the previous year?

Mr McGrath: We achieved 83.4 per cent.

Hon ADELE FARINA: The budget papers say 82 per cent. I do not know what you are reading from. I do not quite understand why we are working from different figures.

Mr McGrath: Eighty-two would be the figure.

Hon MICHAEL MISCHIN: I do not know either. As I indicated before, you do not set performance targets on a year-to-year basis. You set some aspirational figure that is hopefully realistic that you aim for and hopefully exceed. There will be variations over time. What has been indicated is that over the last four years the office has achieved better towards its aspirational target and actually is meeting it, if not exceeding it. Just because you may have met a particular figure the previous year does not mean you change your KPIs for the future.

Hon ADELE FARINA: No, but the aspirational figure is 85 per cent. You achieved 82 per cent the previous year and you say the estimated actual is 75 per cent.

Hon MICHAEL MISCHIN: That is an estimate. As the director has indicated, that was for the purposes of making an estimate as to whether it would achieve its target, a conservative one. One can argue about whether it was a good estimate or a bad estimate. Plainly, it was a bad estimate in hindsight. The important thing is whether or not the office actually achieved those targets, not whether it thinks that it will in a couple of months' time. From the figures that have been provided, it appears that the office is performing very well and has been improving its performance under this director over the last several years.

Hon ADELE FARINA: I have additional questions but if Hon Peter Katsambanis has a question on this issue, I defer to him.

Hon PETER KATSAMBANIS: I have some questions on the issues that Hon Adele Farina touched on both in relation to the number of homicide cases and to the issues relating to the additional work for the dangerous sex offenders. They are quite brief. First of all, on the homicide cases, is there any evidence as to whether the increase in caseload for the office is a result of an increase in the rate of homicide or as a result of more successful methods of policing that are leading to charges being laid for the commission of homicide offences?

Hon MICHAEL MISCHIN: That is a very good question. It was one of the factors that informed my recent decision regarding additional permanent judicial resources for the Supreme Court. I have already outlined the extent of the Supreme Court's jurisdiction in these matters, which is far more limited than that in the District Court. I refer to my decision about assigning a commissioner from the District Court to assist the Supreme Court in dealing with this unexpected increase in part of its workload. I should add that from time to time commissioners can appear on circuits where the District Court is on circuit and dealing with a Supreme Court matter. This is not an unusual occurrence; it can happen from time to time. There is flexibility in the system when you are dealing with things in the regional areas.

As for this particular figure about homicides, I do not know the answer to that at the moment. I am not sure whether the director has any insights given the nature of the briefs that are coming across the desks of his prosecutors for management. It may very well be something to do with uncovering some historical cases that could well have been prosecuted in the previous financial year. It could be a variety of reasons. It could just be an unseasonal upsurge in violence of some form or another. I would hope that it is not a continuing trend because, as I understand it—perhaps the director can confirm—homicides in Western Australia tend to be reducing over time, as they are across the country generally, although there are some little variations in places.

[3.20 pm]

I will give an example, which I do not suggest is reflective of all those additional homicides we are concerned about at the moment. Homicides include the so-called one-punch homicides under section 281 of the code, which previously may not have been the subject of a prosecution at all because of the inability to establish a causal link between the act or omission and the death. An assault charge or a grievous bodily harm charge laid in the past would now be lumped in with a homicide charge, which may account for that. Although conviction for such a charge carries a finite term of imprisonment, it would not ordinarily be dealt with by the Supreme Court; nevertheless it

would be a homicide-type committal. Raw statistics may not therefore be of great significance. I will ask the director whether he has any insight into what might be informing this increase in these particular cases.

Mr McGrath: In answer to the question, the factors causing on the extraordinary increase in cases shown in the budget papers over the last few years, certainly in the last year, are unlikely to be due to the improved investigative powers of the police, in that there is always an extremely high clean-up rate of murders in Western Australia and throughout the commonwealth. Ordinarily, the police are very successful in investigating and prosecuting homicides. That explanation may not inform the answer. It is difficult at this stage to know whether it is a historical high or an anomaly, or whether it will increase. In time, over the next couple of years or so, we will have a fair idea. Certainly, the types of murders and manslaughters are occurring in varying circumstances, and often regrettably as a cause of drug-fuelled type violence.

Hon PETER KATSAMBANIS: I want to ask a question about the causes for the growth of work under the Dangerous Sexual Offenders Act 2006. The budget papers state that the growth will continue due to a variety of reasons. One cause is stated as —

... including operational implications arising from those on detention orders requiring full annual reviews in court ...

Has any consideration been given, since the act has been in operation now for quite some time, to alter the legislative provisions that require that full annual review, particularly in cases when judicial discretion might indicate strongly that the decision made one year is highly unlikely to alter for one or more years following?

Hon MICHAEL MISCHIN: Yes. In fact, there is correspondence passing at the moment regarding some proposals to work on the act. Some amendments were made to the act about a year ago in any event to provide increased powers to the court to deal with dangerous sex offenders in other respects. I am also looking at some further amendments to improve the operation of the act. One area under consideration that interests me, although I do not want to pre-empt any decision by government on it, is whether the current review period set at 12 months could be extended to 18 months or two years with the opportunity for a review if a material change in circumstances occurred in the meanwhile. That would still provide an avenue for a detained offender to have his or her case—more likely his case—considered afresh if a change of circumstances occurred. It would also take pressure off the courts and the prosecuting authorities and ancillary services that feed into them, such as psychiatrists and psychologists and so forth. It would take pressure off having to finish a process, get it dealt with by the court and then almost immediately start working on a review process. As the member pointed out, it seems unnecessary, if there tends to be a material change in the case, for there to be some review of it. Generally in my experience—I do not know whether the director would confirm it—there does not tend to be an awful lot of change in the scope of 12 months after a court has dealt with a case.

Hon PETER KATSAMBANIS: I thank the Attorney. Given the time constraints today, I will not invite the Attorney General to comment on what I am about to say. Other groups in the community that would welcome an extension of the review period are the victims and the families of victims of offending by dangerous sexual offenders in the first place. I therefore thank the Attorney General for looking into the matter.

Hon ADELE FARINA: Can the minister please give me an update on the status of the civil confiscation unit? We have an indication of criminal confiscation activity but there is nothing in the budget papers on the status of the civil confiscation unit.

Hon MICHAEL MISCHIN: I will defer to the director to give us some advice on that since he is most familiar with the operations of that unit within his office.

Mr McGrath: This year in total the funds obtained by the confiscation branch was \$9.36 million, which is higher than the average over the last five years. Since inception of the act, over \$71 million has been paid into the account. Approximately 70 per cent of the \$9.36 million, consistent with previous years, is derived from drug trafficker declarations; that is, from a person who is declared to be a drug trafficker under the Misuse of Drugs Act. That has always been the greatest source of the funds. If you are asking specifically in respect of non-conviction based applications, such as unexplained wealth applications, they have always been a more minor aspect of the practice relative to from where the funds are received. Approximately \$7 million to \$8 million has been received from those applications over the number of years since inception of the act. Last year from the non-conviction based proceedings \$600 000 was obtained, which reflects the difficulty often of conducting such proceedings.

Hon ADELE FARINA: Is that a reflection of the effort that is going into civil confiscation?

Mr McGrath: When we talk about civil confiscations, all confiscations are civil proceedings, as you would be aware. There is no necessary nexus with a criminal prosecution in what I call “non-conviction based” applications. It does not reflect a lack of effort on the part of the police or on the part of my office; it just reflects the difficulties with such investigations. The amount of funds received at the moment is consistent with the amount that has been achieved since inception of the act. I can say that we in Western Australia are as successful as, if not more than, the other states and that the other states often look towards our legislation.

Hon ADELE FARINA: Note 1 on page 615 under the headings “Confiscation of Assets” and “Explanation of Significant Movements” states, in part —

At the time of finalising the Budget, a decision had not yet been made on the amounts to be paid to the Office from the Confiscation Proceeds Account for 2013-14 and across the forward estimates.

Has that decision been made yet; and, if so, what are those amounts? If not, when will it be made?

[3.30 pm]

Hon MICHAEL MISCHIN: No; the decision has not been made yet. It is currently, I believe, in my office. I have not seen the correspondence. I think the director has written to me about it. I have not seen the correspondence yet. I will take advice on it and I will make a decision as soon as practicable.

Hon ADELE FARINA: Can I make that a supplementary question to get that information as to what funding will be paid into the office from that account in 2013–14 and across the forward estimates?

I also understand from page 616 that the agreement in terms of the amount of money to be paid from that account to the office has actually expired. So my next question is: has a new agreement been entered into?

The CHAIR: Sorry, member; just before you go on, if you are asking for supplementary information rather than moving on to more questions, I just want to confirm that the Attorney General is able to provide that information as supplementary information.

Hon MICHAEL MISCHIN: I am happy to provide the information, but it may not actually give the member an answer.

The CHAIR: We are quite used to that in this place, Attorney General! You know that. We get responses.

Hon MICHAEL MISCHIN: I will do the best I can, but you will not get a figure until I have made a decision on the subject, and I will take advice on that.

Hon ADELE FARINA: So what is the time line for making a decision?

Hon MICHAEL MISCHIN: As soon as I get to it.

Hon ADELE FARINA: Given that we are a fair way into 2013–14 already —

Hon MICHAEL MISCHIN: When I read the letter then I will be able to decide what advice I need to take on it and be able to form some idea as to whether I can make a decision in a hurry. I cannot give you a time line as to when I am going to decide by. There is no time criticality to it that I understand at this stage.

Hon ADELE FARINA: Does that hinder the operations of the DPP in terms of seeking to recoup assets if you do not actually have the funds to run the unit?

Hon MICHAEL MISCHIN: We are not even halfway through the financial year. I do not think the director is going to run out of money within the foreseeable future. I understand that it will not affect his operations, as long as the office does not run into some kind of a deficit within the next nine months. I will make a decision once I have considered the matter and taken what advice I need on the subject.

The CHAIR: Member, are you still asking for that as supplementary information or has the minister answered your question? In fact, I think he is saying that he is not going to be in a position to answer it even if we put it in as supplementary.

Hon ADELE FARINA: I will put it as a question on notice. It does not bother me. I will just do it through question time.

The CHAIR: I am happy to do it if you want to continue to seek it as supplementary.

Hon ADELE FARINA: No; I will do it through parliamentary questions, because you have a 10-day turnaround for an answer and he has indicated that he is not going to provide an answer in 10 days, so that is fine.

Hon MICHAEL MISCHIN: I may not be able to make a decision in 10 days.

Hon ADELE FARINA: Going to my next question, on page 616, the budget papers indicate that the agreement has actually expired and a new agreement needs to be entered into. I would like an understanding of the status of finalising the new agreement. Has it been finalised; and, if not, what is the time frame for finalising the new agreement?

Hon MICHAEL MISCHIN: That also is work in progress.

Hon ADELE FARINA: Things move very slowly, given that it has already expired.

Hon MICHAEL MISCHIN: There are a number of parties that need to be negotiated with, including Western Australia Police, who are also part of that agreement. The funds are generally used for community crime prevention purposes, so there are a number of factors that are taken into account.

Hon ADELE FARINA: Yes, but I think everyone would have had some notice as to the termination date of the agreement. It would not have come as a surprise to the parties, I would have thought.

Hon MICHAEL MISCHIN: At the end of the day, an agreement is an agreement. It is something that needs to be agreed between several parties, not just me alone.

Hon ADELE FARINA: So what is the time frame for finalising a new agreement?

Hon MICHAEL MISCHIN: As soon as practicable.

The CHAIR: Members, we will need to call the session to an end. The committee will forward any additional questions it has to you via the minister in writing in the next couple of days, together with the transcript of evidence, which includes the questions you have taken on notice. Responses to these questions will be requested within 10 working days of receipt of the questions. Should you be unable to meet this due date, please advise the committee in writing as soon as possible before

the due date. The advice is to include specific reasons as to why the due date cannot be met. If members have any unasked questions, I ask them to submit these to the committee clerk at the close of this hearing.

On behalf of the committee, I again thank the witnesses for their attendance today.

Hearing concluded at 3.34 pm