COMMUNITY DEVELOPMENT AND JUSTICE STANDING COMMITTEE

INQUIRY INTO THE METHODS EMPLOYED BY WA POLICE TO EVALUATE PERFORMANCE

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 12 AUGUST 2015

SESSION TWO

Members

Ms M.M. Quirk (Chair)
Dr A.D. Buti (Deputy Chair)
Mr C.D. Hatton
Ms L. Mettam
Mr M.P. Murray

Hearing commenced at 10.47 am

Mr JOSEPH McGRATH, SC
Director of Public Prosecutions, Office of the Director of Public Prosecutions, examined:

Ms AMANDA BURROWS
Senior State Prosecutor, Office of the Director of Public Prosecutions, examined:

Mrs NARI VANDERZANDEN
Instructing Officer, Legal Projects, Office of the Director of Public Prosecutions, examined:

The CHAIR: On behalf of the Community Development and Justice Standing Committee, I would like to thank you for your interest and appearance before us today. The purpose of this hearing is to assist the committee in gathering evidence into its inquiry into methods employed by WA Police to evaluate performance. Specifically, we are looking at performance measures related to family domestic violence. I would like to begin by introducing myself and the other members of the committee present today. Dr Tony Buti, the deputy chair, is absent, but on my left is Ms Libby Mettam, the member for Vasse; on her left is Mr Mick Murray, the member for Collie–Preston; and on his left is Mr Chris Hatton, the member for Balcatta. The committee is a committee of the Legislative Assembly of the Parliament of Western Australia and this hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings in the house itself. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as contempt of Parliament. This is a public hearing and Hansard will be making a transcript of proceedings for the public record. If you refer to any document during evidence, it would assist Hansard if you would provide the full title for the record.

Have you completed the "Details of Witness" form?

The Witnesses: Yes.

The CHAIR: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

The Witnesses: Yes.

The CHAIR: Did you receive and read the information for witnesses briefing sheet provided with the "Details of Witness" form today?

The Witnesses: Yes.

The CHAIR: Do you have any questions in relation to being a witness at today's hearing?

The Witnesses: No.

The CHAIR: We have some questions for you today, but before we get on to that, Mr McGrath, do you have an opening statement that you wish to make?

Mr McGrath: At this stage no real opening statement which I wish to make. I am available for any questions to assist the committee.

The CHAIR: By way of introduction, we are looking specifically at how police manage their performance, rather than the broader issue of family domestic violence per se. Do you think successful prosecutions would be an appropriate measure for police to have in terms of measuring their own performance?

Mr McGrath: By "successful prosecutions", what is meant by that? If it is as to how many persons ultimately plead guilty or who are found guilty after trial, if you turn to the KPIs which my office uses, two significant KPIs are the measure of what percentage of prosecutions are taken from the jury at the end of the state case, because, as you would be aware, the trial is conducted and the prosecution of the state leads all its evidence, and at the end of that part, before the defence is called upon, the judge must be satisfied that there is a case to answer. We measure what percentage of cases we properly prepare and properly put before the jury. Our KPI this year will be 100 per cent. That is a significant measure, because we should not really be putting up matters where there is not a case to answer. The second KPI that we use for our office is: what is the conviction rate after trial? The conviction rate after trial for us this year will be approximately a 75 per cent conviction rate, which will be one of the highest in the country, which, in my view, reflects that we properly prepare and conduct matters and assess matters properly in light of what are the reasonable prospects. However, to go back to your question, one has to be very careful that the sole measure cannot be the outcome of a prosecution. One has to bring matters before the court, and in areas such as domestic violence, when it is often oath against oath—a person against another person—cases can be properly brought and really extensively prepared by the police, and the result will still be an acquittal. That will just turn upon the evidence and the assessment by the jury.

The CHAIR: In fact, I am being punished for being imprecise. That is a good lesson there in tightening up my questioning. Maybe if I put it this way: would it be an effective performance indicator for police that the DPP determines that the matter that they brought to the DPP is not an appropriate one to proceed to trial or to determination by the courts?

Mr McGrath: It is a difficult question because it is important for police to bring matters to the DPP to determine whether or not they should go ahead. The question is: in Western Australia do the police on the whole appropriately charge the correct charge, my answer would be yes. I think the Western Australian police officers are excellent at choosing the correct charge in the correct circumstances. For decades there was criticism in England and Wales in respect of that, and the consequence was that they took away this charging discretion from officers and needing the DPP's authorisation to commence. I think it is fair to say that we find on the whole that the police are very good at charging the correct charges. Then it is a question of preparing the brief.

The CHAIR: The brief is the next question I am going to, which I suspect might be more contentious. From your experience and that of your colleagues who are here, do WA Police investigations into family domestic violence provide sufficient information to be able to prosecute offenders or is it routinely necessary, for example, to go back and contact police and say, "We are missing this and there's no contemporaneous corroboration of this and that et cetera"? So, in other words, are briefs coming to you in this area that are deficient; and, if so, what measures do you take to ensure that you can proceed with greater confidence?

Mr McGrath: The police do, on the whole, produce sound briefs of evidence that demonstrate diligence in application of well-trained skills. Further, the police, when they are requested to make further inquiries, are very receptive to ODPP requests to undertake further inquiries, and they do complete the requests on the whole in a timely manner. The very nature of the transfer of a brief of evidence from the police to a specialised prosecution office involves a detailed analysis of the brief of evidence. Invariably, as you would be aware, Chair, that analysis does lead to further requests for other inquiries. But it is fair to say that the police do, on the whole, appropriately identify the charges, identify the correct witnesses and identify the necessary forensic tests required. The last part is that they are very consultative in respect to preparing further investigations. But I do acknowledge that there will always be on every brief a request for further analysis or information, but that is to be expected.

The CHAIR: So there is no systemic problem in this regard?

Mr McGrath: I do not believe there is any systemic problem with respect to the question that you asked.

The CHAIR: The Law Reform Commission found in its report that in 2012 there were only 75 applications for VROs. This is obviously done before your office is involved, but what impact does that have more generally on the criminal justice system, in your view?

Mr McGrath: It is a very complex question. As an office, we are not involved with those early VROs and the use of them, and it probably goes to the worth of them; is that the best way to approach trying to restrain persons? On the broader question, it is really difficult to provide an answer about the impact generally on the system. I do not know if Ms Burrows has an answer?

Ms Burrows: What type of VROs are you talking about? Are you talking about the compulsory ones that follow certain charges where the court will make it on sentencing or applications by individual applicants?

The CHAIR: I have not got that information in front of me at the moment.

Mr McGrath: Do you want to explain the compulsory aspect? Ms Burrows is heavily involved with prosecuting domestic violence, especially in the Kimberley with the Aboriginal communities.

Ms Burrows: Under the Restraining Orders Act, there are a number of prescribed offences where violence restraining orders—lifelong ones—automatically follow a conviction for an offence. Unless the victim says that they specifically object to that order being made, it will be made at sentencing, so we will always obtain those. We do not obviously act for the parties, so we do not bring violence restraining orders on behalf of applicants, but we will ensure that where there is a victim who is the subject of a violent offence that there are protective bail conditions in place prohibiting the alleged offender from contacting the victim. That is our involvement in relation to violence restraining orders. Obviously, we do not appear in the Magistrates Court; we obtain them on behalf of victims of violence.

The CHAIR: A few years ago, there were some issues about DPP and police communication—it might have been before your time, Mr McGrath—where prosecutors were not directly communicating with police and vice versa, contact was via email rather than telephone, and I think someone at an inspector level was actually brought into the office of the DPP to try and improve those communications. Has there been any specific work or focus done on domestic and family violence cases and that level of communication?

[11.00 am]

Mr McGrath: I will let Ms Burrows look at some of the specifics, but some of the points you raised—you are correct, there were issues pre-2010, but before my arrival what was put in place was a designated liaison officer. That officer has been at the superintendent level. The superintendent is attached as the head of the police prosecutions but also is the liaison point who meets with me regularly, does come into the office and talks about specific matters. That has been, on the whole, an enormous success—having that one designated person. The second aspect is our pre-trial review process requires, upon the receipt of a brief of evidence or charge, for our designated file officer to meet with the police officer. The meeting should involve a complete discussion of all the issues and we ask the police officer to bring his file in. We obviously need to address any possible disclosure issues to assist the police. I demand that of my officers and, on the whole, they do follow that. In respect to domestic violence, the police play a critical role—a critical role—in dealing with the victim, in particular in the regions. One of the reasons for the great success in the Kimberley Chief Justice's project there to bring justice to the Kimberley in respect to what I call the Aboriginal sexual offence issue is because of this pivotal role by the police. That would illustrate how much they consult and deal with the victims. Ms Burrows may be able to assist there.

Ms Burrows: In relation to the compulsory case conferences that we have in the office—for the regions, obviously, we cannot have the case officers come in but we encourage our officers to go and meet with them when they are up there on circuit. We also do those by way of telephone. Senior state prosecutors go out to the police academy to talk to senior investigators and encourage the picking-up-the-telephone approach, as opposed to making demands via email, and the importance of communication.

The CHAIR: Usually on a Friday afternoon; the trial starts on Monday.

Ms Burrows: Yes. We are really actively encouraging that in terms of our prosecutors and the police, and if they are not hearing from us, to pick up the phone and actually ring the case officer. In terms of liaison, the biggest issue with, of course, victims of domestic violence, particularly sex offences as opposed to violence offences where you have some independent corroborative evidence or medical evidence where the whole case hinges on the complainant giving evidence as to what occurred, getting her or him to trial is the crucial aspect. We liaise very heavily with victim support in the community and the officers on the ground because it is keeping the person engaged in the process and people going back to the offender, which is the big issue that we need to deal with. We find, overall, that they are fantastic in relation to that role.

The CHAIR: Just in terms of the Kimberley in particular, there are specific cultural issues which mean that all those involved in the case need cultural appreciation and training. Is there any formal training that the DPP give police officers in terms of, for example, presenting witnesses to court or particular issues that might be involved in cases in the Kimberley?

Ms Burrows: We do not train the police—the police train the police—but we train our officers. They are required to undergo—we have just completed Kimberley-specific training. We have a dedicated team of prosecutors who go up to the Kimberley regularly so we have generally got six or eight people regularly coming up and down every second month when we have a circuit and dealing with all of the Supreme Court circuits as well. We train our people and we have people come in to do a two-day course each year, and that is compulsory, including representatives from the Indigenous community up there.

The CHAIR: Have there been issues in terms of interviewing witnesses where things have come unstuck because there has been either language difficulties or cultural misunderstandings, or whatever, that have caused some problems when the matter gets to trial?

Mr McGrath: I will make a broad comment and Ms Burrows can talk about her experiences. The great challenge, as you know, would be to ensure that we have high-level, well-qualified interpreters available to assist the police in the interviews. As you may be aware, a recent difficulty arose in the matter of prosecution of Mr Gibson, which has been subject to media comment. There was the judgement of His Honour Justice Hall, which would be available, and that is in respect to the issues of the failure to use an interpreter. As you would be aware, that is subject to investigation by the Corruption and Crime Commission and the police themselves. That is really the challenge to do that. The police—I will let Ms Burrows answer—on the whole appear to be very good at conducting the interviews so long as they have got the interpreters to assist when necessary.

Ms Burrows: That is the case. They need to engage; there is an interpreting service available. From our perspective, we will engage if we need to and if witnesses say to us that they need an interpreter for court. But you are talking about the earlier issues.

The CHAIR: No, but the problem might be earlier in the piece and you are not able then, if you like, to salvage it. That is really what I am after.

Mr McGrath: That would be correct. If there was an issue, you would not be able to salvage it. The nature of the police training, we would not know. We assist by providing lectures at the police academy for the new detectives but that is focused on preparing briefs and that aspect but I cannot assist really on the training given to police in respect to Indigenous matters.

The CHAIR: There are certain time lines in prosecutions where the prosecution is required to provide various things to the defence and also, obviously, disclosure requirements and so on. What is your experience in police measuring those time lines and what are the issues that they raise when they cannot do so?

Mr McGrath: The first one is that the police are, on the whole, very receptive to requests and when they do raise issues about whether they can address requests, it often is funding and as to whether they are not in a position at this point with the resource to do it. It is about managing resources to meet requirements. But on the whole, they do meet the requests. The great challenge with disclosure, as you may know, is forensics in this state—the extensive use of forensic testing now and balancing what should be tested, when, and the necessary delay in obtaining that. PathWest works extremely well but if a request is made in respect of a DNA test, it would take a minimum of 12 weeks. That is satisfactory, but it does then push out the timeline, so that is the real difficulty. The other is the use of technology and the extent to which digital cameras and other recordings are used. There is a greater mass of material now being obtained by police officers.

I say to judicial officers that what is unusual about criminal litigation compared with civil, as you well know, Madam Chair, is that we do not choose when to commence it. The offender commits an offence—there may be a homicide in the suburbs today—and the train starts running. We have a trial lined up at some point and the police working. The investigation commences with massive forensic testing et cetera, and that is difficult to complete in the most timely manner when there are competing demands. It is about balancing it. Our time to trial, for example, in the District Court at the moment is probably one of the best in the country.

The CHAIR: Despite being down a couple of judges.

Mr McGrath: Homicides is the challenge in the Supreme Court.

Mr M.P. MURRAY: Can I just jump in on that? I will probably come down a level under homicides. I am certainly not across the board on this issue. There have been some complaints to my office about people lining up and asking if they are going to court this week. Then an adjournment is asked for and granted. Some of them are going out to 12 months or more. That person's life is on hold. They could win their case and then there is no compensation for that. There is quite a high-profile case in the press this week. How can that be tidied up? It is a DPP and police issue. Some of them are mid-range drug issues or violence without murder, but that is very frustrating for the system as much as for the person whose life is on hold. Is any work being done on trying to tidy that up?

[11.10 am]

Mr McGrath: A great deal of work is always being done to bring matters to trial in the most timely manner. Often one needs to look at a particular case to know why it is slowing down. When you move away from forensics and into say, drugs, it is a matter of testing the drugs, getting a certificate of analysis and moving it through the system. I know that in the metropolitan area the Chief Magistrate's courts push matters through and the judiciary in the higher courts list matters. The prosecution lists matters whether people are ready or not and say, "That is your date, start moving." When you look at most of the offences before the District Court, our time to trial is very, very good in this state. I agree with you about the delay when someone has a charge hanging over their head; justice delayed is to be avoided. We need to look at particular cases. Do you have any observations about that in your experience, Ms Burrows?

The CHAIR: Just to follow up from that question, whose responsibility is it to notify the witnesses or the victims? Do the police have an ongoing responsibility? Is that something that should be a performance indicator—keeping the witnesses or the victims notified?

Mr McGrath: We have the stage—someone gets charged for the superior court. It stays in the Magistrate's Court at the point of committal when there is a working brief and then it goes to the

superior courts. We really do not appear until post-committal, or just at the committal stage in the metropolitan area. The police have the obligation to keep the victim engaged and informed throughout, and I understand that they do that, particularly in respect of any bail variation. At the point of committal, we liaise with the police. We also have a computer-generated report that immediately goes into our system and we then undertake meetings with the victim and would notify the victim of the further adjourned dates, and that would be done by either meeting or telephone—whatever the victim wants. There is that close liaison. As Ms Burrows said, we also use Victim Support, which is part of the Department of the Attorney General and is outstanding. So that does occur with regard to that.

Mr M.P. MURRAY: If the person is in jail because they cannot raise bail, the cost to the state is huge, yet there is an extended time frame of 12 months in jail. Not only that, but if they then do not proceed with the case, or if they win their case, my understanding is that there is no compensation for that person being in jail. I know that laws cannot be made simply because one cannot afford something, but generally the social demographics of the people involved are very clear, whether they are Aboriginal people or anyone else. To me, it is a problem within our system that those who are in jail, generally with finance or education problems, cannot get out, but then it disadvantages to some degree the person who is able to raise the finance to get out of jail. There is a huge cost to the state as well. We have heard about overcrowding in jails. I do not have any figures but I know that some people in jail just cannot raise bail.

Mr McGrath: I agree with the general proposition of what you say: that if persons are in jail for extended periods, awaiting trial, it is simply not acceptable and it has all the failings that you identify, both monetary for the government and the community and also for the person. With bail, on the whole—it is followed—it is invariably granted in the vast majority of cases. The two types where it is not would be with homicide or an offence where the person has prior flight or there is a high risk of flight to overseas. The second aspect—judicial officers normally follow this—is to set bail with particular notice of the need to ensure that a person can meet it. That is, do not make the surety requirement prohibitive—take into account a person's capacity to meet some surety. On the whole, most people do get bail. But I agree that for persons incarcerated for an extended period awaiting trail, it has to be that that is totally unacceptable and has what I call the externalities that you refer to. The great challenge in Western Australia has been in respect of the homicides because of the forensic issues and the delay there.

The CHAIR: Speaking of homicides—you will probably have to take this on notice, Mr McGrath—how many prosecutions have there been under section 221 of the Criminal Code for family violence or murders, perhaps for the last three years?

Mr McGrath: Can I just ask, is that section 281 that applies to one-punch offences?

The CHAIR: No, section 221.

Mr McGrath: Section 221. I will have to take that on notice but I can provide that.

The CHAIR: Maybe the last three years.

Mr McGrath: I can provide that.

The CHAIR: And also how many prosecutions which have resulted in conviction in relation to family violence–related crimes? And those that did not result in conviction due to insufficient evidence or inefficient police investigations. I do not know if you are going to be able to pull that up in that form, but maybe for the same period, the last three years, if that is possible.

Mr McGrath: Yes.

The CHAIR: One of the issues that seems to be emerging is the use of social media as evidence of threats or apprehension of violence. I just wondered is there any need to change the law in relation to that to give those threats sort of equal status to if they are done verbally, or is there any problem

there from a perspective of using them as evidence? I do not know if that has been an issue that is emerging—no?

Mr McGrath: I was going to say in respect to use of evidence where there is domestic violence and social media is used, that evidence would be used as part of the case, as part of harassment and threats; and on the whole it can be the current legislation permits the use and it could be used as specific charges. For example, if you use social media to threat to harm or threat to kill, you have got the current charges. Whether or not further legislation is required is something I would have to consider, which I have not done.

The CHAIR: No, but I mean if it was an endemic problem, you probably would have already done that.

Mr McGrath: Yes. But it is, as I said, admissible and it would be admissible under section 31A, sort of propensity-type evidence proving the relationship.

The CHAIR: Is it anyone's observation within the DPP that you are aware of that police need more training or guidance in gathering evidence for family or domestic violence cases?

Mr McGrath: I am not aware. Ms Burrows?

Ms Burrows: No. The people, obviously the trained detectives, are a lot more experienced in relation to that as compared to the uniformed officers responding to incidents in the home, so that is just an ongoing sort of training issue within WAPOL—an experience issue.

[11.20 am]

The CHAIR: Are there directives in terms of prosecution briefs between the DPP and police in relation to these kinds of cases? Are there specific directives to police about what you need in the brief and so on, or do they just come under the general —

Ms Burrows: General, and if there are deficiencies in the evidence gathered or the statements gathered from the complainants, then they will be asked for further statements.

The CHAIR: In most prosecution guidelines there is usually a sort of catch-all that says the prosecution will proceed if it is in the public interest. As you have mentioned, Mr McGrath, sometimes in these cases it is a he said, she said–type scenario and it is reasonably evenly poised as to whether to proceed. Is there any public interest imperative to therefore proceed as a matter of course because of the nature of the offence; or is it done on a case-by-case basis? Is there any specific public interest in relation to these kinds of cases?

Mr McGrath: I think it is fair to say there is, because they are regarded as serious offences; and the fact that it is oath on oath would not of itself lead the prosecutor not to continue with a prosecution. We would consider that to be a question for the trier of fact, like a jury. What we do is obviously assess whether there are any other surrounding circumstances, other evidence, that so contradicts the claims of the complainant that we form the view there is either not a prima facie case or a reasonable prospect; and that could be other witnesses or other persons or a prior inconsistency. But on the whole we approach it that an oath-on-oath case we put before a jury, so long as there is not extensive contradiction. The other aspect which takes domestic violence types of cases out of the ordinary would be our guidelines, 41 through to 43, where if a person who is a victim says they do not want the matter to go ahead, we will, after assessing that, still go ahead because that in itself is not an exceptional circumstance. We understand and appreciate the fear that a victim of domestic violence has, and we will do everything to ensure that goes ahead; whereas in respect to other matters, maybe a minor stealing type thing, if the shop says, "We are not interested", it may just be an easier decision to make. We are very committed to doing that, so oath on oath does go ahead. The experience has been this as well, that—and Ms Burrows may be able to comment on this—triers of fact, in particular members of the community who sit on a jury, do assess the evidence

critically and we invariably find that we are getting convictions at a high rate in respect of oath-on-oath cases. Ms Burrows, do you want to comment?

Ms Burrows: Yes, we are, and we will encourage the complainant to continue and talk to them about, "If you are telling the truth, we are not going to discontinue it." We are very mindful of guidelines 41 to 43. But if a complainant comes along and says, "I can't do this because I'm going to self-harm" or something like that, then obviously we are not going to force them through with that if they are in a very, very fragile state.

The CHAIR: My colleagues have questions. I just have one before I pass on. Family violence by definition actually includes elder abuse, and there have been a few high-profile cases recently, one which involved—I cannot remember the name of the case—I think the son who actually killed his mother, murdered his mother and buried her, you know, to get hold of the assets. So, there is not a very high presentation of those cases before the courts, yet they come within the definition. Is there any specific work that you are doing with police in terms of being in a position to have a higher representation of elder abuse cases coming before the courts?

Mr McGrath: As far as I am aware, we have not been requested to do so and we are not involved with any training in respect to that. But certainly I agree that clearly is domestic violence offending and should be a priority in the community for the police.

Mr C.D. HATTON: Earlier you mentioned when cases are brought to you, it is uniformed officers and maybe detectives—correct?

Ms Burrows: It really depends. Most of the material that we deal with and indictable matters would be investigated by detectives.

Mr C.D. HATTON: Most indictable matters?

Ms Burrows: Yes, so most of the matters, and particularly in terms of domestic violence it is such a wideranging sphere, we would deal with a lot of, say, intra-familial sexual penetrations without consent where there may be accompanying violence, so that would fall within that ambit. Otherwise the matters that we actually deal with would be serious grievous bodily harms, threats to kill, deprivations of liberty. So, most of those as a general rule would be investigated by detectives.

Mr C.D. HATTON: So just to go grassroots, the frontline police, even with the frontline police model, the new model, deal with it on the ground.

Ms Burrows: And then they will call in the detectives.

Mr C.D. HATTON: Then they will call in the detectives; okay, thank you for that. You have sort of said that the synergy or, if you like, the relationship with the police is very good and you have said a lot of good things about the police in supporting and bringing cases forward. With police KPIs in domestic and family violence, would there be anything that you would say could be done differently or better that would support you more, if you know about the KPIs of course?

Mr McGrath: That is what I was going to say. I am not well versed in the actual use of the KPIs the police use, and that is when I answered the Chair's question about the measure of what cases there is a successful conviction. There is a use of that but it is limited. I am not really in a position to advance anything.

Mr C.D. HATTON: I am not trying to stump you.

Mr McGrath: No, I understand the broad question. It would require me to consider their KPIs et cetera, and like a lot of these, it is continually a matter of training. But, as I said, the police do heavily engage with my office in respect of the preparation of the briefs, and that is a very important part of the ingredients of a successful prosecution. But, otherwise, on the specifics of the KPIs, I could not develop—but I could do that if there was any follow-up question that is in writing.

Ms L. METTAM: Mr McGrath, you mentioned the success in the Kimberley of dealing with domestic violence specifically. I am talking specifically in relation to WA Police. What does that look like? What indication is there? I guess this flows on from the question that Chris asked. What is the indication there?

Mr McGrath: Your question is very good. When I say "success", it is obviously limited to the role of my office. The Kimberley task force project, of which Ms Burrows is one of the leaders, with other people to assist, was to endeavour to bring justice in there, encourage persons to come forward, encourage them to go to court, help them to come to court and put them before the community so there could be a trial. That project was successful in that that outcome was achieved, but if you asked: has it resulted in their being less offending or less domestic violence or less assaults on children? I do not know that would be a measure you would have to assess—if that goes to the heart of your question. It was about ensuring these trials went ahead and witnesses were looked after. Ms Burrows, do you have anything to add?

Ms Burrows: Anecdotally—I cannot give you any figures in relation to it—what we have noticed is that by having a dedicated team going up there, there is more familiarity with the environment. A long time ago we used to have significant problems with witnesses not actually making it to court, and we are not having the same level of adjournments because people do not come up to their trial dates anymore. I think that is probably a reflection of just having familiarity.

Ms L. METTAM: So the number of adjournments can sometimes be a bit of an indicator?

Ms Burrows: Sometimes it can. Getting people to court in remote areas is very difficult, and getting them through the process. I think that is probably because, in terms of our prosecutorial response, it has been improved. As Mr McGrath said, the figures are no doubt exactly the same on the ground in terms of the levels of domestic violence, but we have just changed our response method towards it.

[11.30 am]

Ms L. METTAM: There was a reference to the use of technology in bringing information to court or to you, for charges. How widespread and to what extent do WA Police utilise the new technology that is available to bring together the best evidence for a successful —

The CHAIR: What do you mean by "new technology"?

Ms L. METTAM: The technology—there was a reference earlier to the various bits of—the use of technology for sexual assault cases.

The CHAIR: Do you mean video statements? I think that might need a bit of clarification.

Ms Burrows: Are you talking about things like child interviews?

Ms L. METTAM: Yes.

Ms Burrows: Whereby interviews of children are recorded—that is widely used and effectively used.

Ms L. METTAM: Yes.

Ms Burrows: I am not quite sure what you are focussing on.

Ms L. METTAM: There was a comment earlier on in relation to rapes or sexual assaults and the use of—and how you had to get—how important it was for victims to, I guess, to be assessed using—I do not know what the term is—using new —

Mr C.D. HATTON: Social media.

Ms L. METTAM: It was just a reference to new technologies.

The CHAIR: I think that was that reference in relation to forensics.

Ms L. METTAM: Forensics.

Ms Burrows: There are very good protocols in place with SARC examinations of victims of sexual abuse. They have been rolled out into the regions. There is a fairly close liaison with regional doctors—the SARC doctors down here, and SARC down here is fabulous—in terms of the response. Is that what you are talking about in terms of the collection of forensic specimens?

Ms L. METTAM: Yes.

Ms Burrows: Yes, the ideal model is, of course, down here; but in the regions there is a fair amount of liaison there, but they only have limited regional offices in terms of—and that is limited by funding constraints, I understand.

The CHAIR: And it would be the case, would it now—I have heard anecdotally that because of programs like *CSI* if that evidence is absent, then the jury usually makes an adverse—has adverse views about the strength of the police case?

Mr McGrath: Absolutely, and this is the challenge with forensic evidence. To answer the first question, the police are very good at embracing new technology, using forensics, but it is the weight of the technology. For a murder scene 10 or 20 years ago, there might be 100 photographs. Every officer has a digital camera now; there could be tens of thousands. Everyone is taking photographs and that is all disclosable. The *CSI* factor is very important. Forensics will be taken—swabs from everywhere. Then the question is: what do you send to PathWest for DNA? If a thousand samples are taken and there is a question, we will just do this room. A trial could descend into a defence counsel saying, "You didn't do this, this, this and this; you didn't look at that", and then say to the jury, "Well, if you've got a reasonable doubt, because they didn't properly test", that's it. That raises questions about how we conduct a criminal trial. What are the obligations of defence disclosure? Should there be more collaboration about what is it that should be tested? What do you want tested? So it is extremely complex because of the weight of the forensics. It is easy to go into a room and take swabs, but what do you send to be done? So the *CSI* factor is there, and the system has to confront this—how we manage this enormous collection of material.

Ms Burrows: Increasingly, we will call experts to say why something will not be found to explain away and to talk to the juries about what has happened behind closed doors of a historical—you are not going to get forensic evidence, you are not going to get a photograph, and that is the issue that they need to deal with.

Mr M.P. MURRAY: My question is very basic and it is about facilities. We do quite a few referrals out of our office to go and get VROs or at least go and talk to someone about it, and you get a horrified look when they realise that they have got to go the courthouse. At the same time in the courthouse people are doing their licensing and everything else, and they are standing, very public, where people can listen to what they are trying to talk about—what sort of violence or what is happening at the house, or that. So a lot of them pull out straightaway. They just go, "I'm not baring my soul to every person that's walking in the door to do their licensing, or getting their driver's licence." The facilities are poor, and to me that could cause problems further down the line because, especially for women, certainly their pride about everyone in town knowing what is happening in their household is not a real good look. What do you do to analyse facilities for those people so that we can encourage them and save problems down the track?

Mr McGrath: The point raised is very good. Ultimately, it is about, one would have thought, designating an appropriate officer and space within a courthouse. I am sure that the director of the Department of the Attorney General would be very interested in the observation you have made in respect of that, because as you know the department is very committed to looking after victims with the victims commissioner et cetera. If you wish, I could raise that. I am very happy to do that. But a public point where someone needs to fill out forms or discuss it is not acceptable, I agree.

Ms Burrows: In terms of giving evidence we utilise remote rooms within the courthouses extensively if there is any allegation of sexual abuse or if children are involved. So they will not come into court. They will give evidence from a remote room. They will not see the alleged perpetrator of the offence. That is used all the time unless the person says, "I want to come and give evidence in open court."

The CHAIR: Now a couple of just general final questions. Firstly, there seems to be a big gap between reports and sanction rates. Criminal prosecutions is only one of the sanction rates but there is a really big gap now between a higher rate of reports and a lower rate of sanction rate. Have you any views on this? I mean, I think it has particularly marked the difference in family and domestic violence. Have you got any instinct as to why that might be?

Mr McGrath: From my own experience within the office, it is difficult to provide any great assistance on that, because we are obviously only dealing with when it becomes an indictable act of violence. So what is occurring in the lower courts, I am unable to assist. It appears to be the disparity, what you are saying is: is it willingness of persons to go to and actually formally make the report to the police? But if the issue is should there have been charges and why not, I am unable to really assist in respect to that.

The CHAIR: Now I am really going to push the envelope.

Mr McGrath: I will turn to Ms Burrows then!

The CHAIR: Yes! As I said at the beginning of the hearing, we are really looking at how do we measure whether the police have been effective or not in this area and the performance measures that are used? I think one of them that we sort of tangentially talked about was the sort of victim satisfaction and so on and communicating with victims more effectively. If you were police commissioner for a day, what sort of measures do you think would be appropriate in general terms for this area of criminal law enforcement?

Mr McGrath: You know, I would keep doing what former Commissioner O'Callaghan is doing.

The CHAIR: The former?

Mr McGrath: Well, you just appointed me for the day!

The CHAIR: Oh!

Mr McGrath: Do not report that one! So, it is fair to say that my assessment is that you have a sound police force working very hard in this area, and it is a matter of continuing training and consulting with the victims, encouraging them and supporting them. But, remember, police are only one aspect of the entire system about the support.

The CHAIR: Sure.

Mr McGrath: And your question about what goes on in these country courts about having designated space, and the complexity of all the issues involved in the justice system.

The CHAIR: But, I mean, you are able to develop KPIs for your prosecutors, which have the same sort of factors involved really. I mean, okay, we will limit it to production of briefs for your office; what are you looking for there, for example?

[11.40 am]

Mr McGrath: For us, when you talk about when we get a brief of evidence from the police, we are assessing it as to whether or not it can satisfactorily form the basis to continue a prosecution and for a reasonable prospect of an outcome. So, it is not otherwise an assessment of quality for any other purpose. We do not keep a database on that. We are assessing it: Is it the appropriate charge? Two, have the correct witnesses been identified? Should further witnesses have been identified? Has the real evidence been obtained or what alternate real evidence such as forensics is required? If you then try to assess a general success, what you are asking is, you might say, "Well, what is the

extent of the request for the follow-up?" That may just be it. My response to that is, from what I hear from the prosecutors and what I see, the briefs on the whole are sound and generally have the core work and a proper analysis —

The CHAIR: Yes; this is not a criticism.

Mr McGrath: But I am saying that is the only way you can —

The CHAIR: But more to say how would you measure, you know, at the end of the day how does the cop that is involved in this area, leave the office and say, "I've done a good job, bad job, mediocre job today" or whatever? So it would be, "Oh well, I've prepared this brief and I believe to the best of my ability that it met the requirements of the DPP" or "I've communicated effectively with victims in a timely fashion" or "I've responded to the report". What I am asking you for—I mean, you are one of the senior people in the criminal justice system, so I know it is a bit outside your bailiwick—is you obviously are on a lot of committees and, you know, dealing with these issues on a broader public policy and I am just asking as an informed individual, what sort of things do you think?

Mr McGrath: You have probably addressed that anyway, Chair, in that number one it is often timeliness. A complaint is received day one from a victim. What is the timeliness in respect to the proper full engagement with an officer where a detective or someone sits down? At what point is there a determination as to a charge or not? And that would be the timeliness. You could measure the timeliness of the consultation points.

The CHAIR: So, linking it up with the other agencies.

Mr McGrath: Linking up with the other agencies, so timeliness is important. Then when you try to measure the quality of something in the criminal justice system, as I said, the one we have adopted, and other DPPs, is we do look to outcomes but there is limitation in respect to that. But it may just be an outcome into what matters do they refer, police, that we say no to, for example; and that may just be a matter of judgement as well. But that is the sort of KPIs one would use. But often KPIs can be somewhat artificial, as you may be aware in trying to measure this, but they are necessary. What about you, Ms Burrows?

Ms Burrows: Purely from a practical prosecutor's point of view, it is having an officer available from the beginning of the matter to the end of the matter.

The CHAIR: So that there is some continuity and ownership?

Ms Burrows: Yes, continuity with victims and continuity with the file manager seeing the prosecution through to the end. What we often see, of course, is officers changing tenure, location, moving on. They take the file with them or sometimes they do not and it is that availability to be able to see things through and say, "Come and have a look at the trial"; you know, work out where things come unstuck. That, I think, is an important part of the education of a police officer, seeing it through.

Mr McGrath: When you look at talking about satisfaction, I think just merely asking somebody, "Were you happy or content with the service provided?" may not be the best or an appropriate measure. You could have a more specific question: were you contacted by a police officer within 21 days of your complaint? You could do that. We have victims, understandably, and secondary victims, understandably, who go through the system, we secure a conviction against the offender and they are still not happy because of the sentence, and the sentence may well be a severe sentence and they express a general unhappiness. I understand the sentiments and appreciate the pain and then you could have the officer or the prosecutor did not secure the best outcome. But they are the type of measures.

The CHAIR: That is helpful. I am mindful that Ms Vanderzanden has been sitting there very patiently. Is there anything that you would like to add to this? You have a public policy perspective on these issues.

Mrs Vanderzanden: No.

The CHAIR: You concur entirely with your colleagues?

Mrs Vanderzanden: Yes, absolutely!

The CHAIR: All right, okay, at least we have got you on the record.

Mrs Vanderzanden: He has followed my notes very well!

The CHAIR: Thank you very much. All right, thanks for your evidence and you will follow-up on those statistics for us, if you would not mind, Mr McGrath.

Mr McGrath: Certainly.

The CHAIR: A transcript of the hearings will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. Thanks very much.

Hearing concluded at 11.46 am