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Legal and Constitutional Affairs Legislation Committee - 30/05/2013 - Estimates - ATTORNEY-GENERAL PORTFOLIO - Office of the Director of Public Prosecutions

### Office of the Director of Public Prosecutions

[17:30]

**CHAIR:** Mr Bromwich, good afternoon and welcome. Do you have an opening statement?

Mr Bromwich : No, I do not.

**CHAIR:** Senator Pratt has questions.

**Senator PRATT:** Mr Bromwich, hello. Your organisation is clearly responsible for prosecuting alleged offences against Commonwealth law, from minor regulatory infringements through to quite serious terrorism charges – and I know that is a very broad remit. In your opinion of all the types of offences your organisation prosecutes, which are the most important?

Mr Bromwich : I do not think it is really capable of being described in terms of one particular area being inherently more important than another. Different areas have a different importance for different parts of government and the community.

**Senator PRATT:** My questioning today is really in relation to the prosecution policy of the Commonwealth. I note that that policy states:

The Policy is a public document based on the principles of fairness, openness, consistency, accountability and efficiency that the Office of the Director of Public Prosecutions (DPP) seeks to apply in prosecuting offences against the laws of the Commonwealth.

Mr Bromwich : That is correct.

**Senator PRATT:** Indeed, those are the attributes that are supposed to be applied. My question is about the prosecution of Mr Peter Slipper. The offence that he is charged with concerns a sum of money that would usually be acquitted internally in the department of finance, according to the Minchin protocol.

Mr Bromwich : The Minchin protocol, as I understand it, is a protocol within the department of finance. This matter came to my office from the Australian Federal Police and we assessed the brief that came from the Australian Federal Police in the way that we assess every other brief of evidence that comes to the office.

**Senator PRATT:** When Sophie Mirabella's staffer had a \$906 cab charge, that was dealt with under the Minchin protocol. Is that because it was not referred to you by the AFP?

Mr Bromwich : We are not an investigative agency. We do not carry out any form of investigation. We advise, of course, from time to time on investigations, but we deal with briefs of evidence that come to us and unless a brief of evidence comes to us there is nothing for us to assess.

**Senator PRATT:** What is the decision based on for someone to be dealt with under the Minchin protocol or by the Department of Public Prosecutions or the AFP.

Mr Bromwich : We have no part to play or no say in relation to that protocol. That is a protocol for, as I understand it and I have read it, dealing with matters within the department of finance in determining whether or not a matter, amongst other things, should or should not be referred to the police. That is the question of how the department determines what it will and will not, for example, and not only that, refer to the Australian Federal Police. It is not something that we have any part to play in.

**Senator PRATT:** I note your office made a decision not to prosecute former Liberal Party minister Peter Reith or his son on \$50,000 worth of private phone calls. Is that because his son thought that use of the card was innocent or within the use of entitlement?

Mr Bromwich : My knowledge of that matter is limited to what I read about it in the press. I was not with the office at the time; I was at the private bar. I would have to take it on notice to look into that. But the prosecution policy of the Commonwealth has, amongst other things, at its core, two questions: sufficiency of evidence and whether or not a prosecution is in the public interest. All cases are assessed against those two criteria. Whether that was a case of sufficiency of evidence or whether there was a public interest test, I could not say in the abstract.

**Senator PRATT:** That is entirely reasonable. I note that the Minchin protocol provides a process by which someone can argue that they thought that their use of that entitlement was innocent and then repay any debts that they might have incurred. It appears to me that similar behaviours could be treated entirely differently depending on which forum they land before, be that the AFP, the DPP or the department of finance.

Mr Bromwich : I really cannot comment on how the department of finance chooses to administer that protocol. I can only speak about the rigorous and uniform application of the prosecution policy of the Commonwealth in relation to briefs of evidence that come to us.

**Senator PRATT:** So you cannot comment on whether it is fair or consistent as to whether Mr Reith was afforded an opportunity under the Minchin protocol to resolve that but that Peter Slipper was not?

Mr Bromwich : I cannot comment on a case like that without having knowledge of what example, for example, was available by way of admissible evidence, what it was capable of proving and what other public interest factors were present. I should add, though, that there has been prosecutions on both sides of politics over time. When matters come to us, they are assessed in accordance with the policy not in accordance with something like that protocol.

**Senator PRATT:** I understand the decision to prosecute over a debt of about \$900 worth of cab charges has been made—is that correct?

Mr Bromwich : Yes, it has.

**Senator PRATT:** My question goes to the efficiency of government. I appreciate the process by which this has landed before you is not something that you can control. But it has been reported as a seven-day criminal trial with 39 witnesses, seven Australian Federal Police and significant legal fees and costs for each party. When you look at value for the taxpayer, it would seem to me to be more efficient to resolve that issue via the Minchin protocol. Clearly, you have outlined that that question was never put before you.

Mr Bromwich : The prosecution policy has those two central features. We have not yet reachedâ€”and I hope we never reachâ€”the point of making decisions to prosecute on the basis of resources alone, given that the two thresholds that have to be passed is sufficiency of evidence and public interest in prosecuting. Both of those matters were seriously and carefully considered in relation to this matter.

**Senator PRATT:** So I can ask how many barristers from the DPP are working on this matter?

Mr Bromwich : There are no in-house barristers working on the matter.

**Senator PRATT:** Does this mean they are contracted to work from outside on it?

Mr Bromwich : Amongst the lawyers that we have within the office are legal practitioner lawyers. The greater number are solicitors rather than barristers. So in most cases, any lawyer working on a matter will be a solicitor. Occasionally one of the in-house lawyers happens to be a barrister and we do have some counsel including a senior counsel and one of our officers employed in-house. In this case, the lawyers involved in this matter are solicitors. They are not barristers.

**Senator PRATT:** Are there any private consultants and expert witnesses?

Mr Bromwich : I would have to go back and check. I think there is one expert witness. There may be more than one but I recall one. 'Expert witness' is a term that has a fluidity about it because there are people who have a form of expertise which is not the same for example as a scientist or something like that.

**Senator PRATT:** Have the costs of this trial been estimated at all?

Mr Bromwich : There will have been some degree of estimation but I do not have any figures of that nature available to me at the moment. There may well have been some sort of estimate done but we do not make decisions ordinarily on the basis of dollars as such. The public interest test is the principal test in relation to resources and resources do have a part to play. That forms part of the public interest component.

**Senator PRATT:** So resources do play part of the part interest component.

Mr Bromwich : It is measured. I can find you the paragraph in the policy. But it is rarely a determinative factor.

**Senator PRATT:** What other kinds of costs do you expect to incur?

Mr Bromwich : There is the staffing cost. If any witnesses have to be brought from outside of the ACT there would be those costs. I do not recall for the moment, without looking them up, who they are.

**Senator PRATT:** Are you able to provide me with what a total cost might look like?

Mr Bromwich : We would be able to obtain a figure for that, I imagine, but we would have to take that on notice.

**Senator PRATT:** I understand it was reported in the *Financial Review* on 24 May that one senior lawyer told paper that a seven-day criminal trial could exceed \$150,000 in legal fees and court time.

Mr Bromwich : He might be talking about defence costs rather than prosecution costs. To speak in the abstract like that rather depends on how much out of court time there is and how big and complex the matter is. Sometimes your out of court time can be equivalent to your in court time. Sometimes it can be half, sometimes it can be 10 times more. It depends on the matter. I have prosecuted cases that fit all of those different criteria.

**Senator PRATT:** How many child pornography offences could the DPP prosecute with that kind of money?

Mr Bromwich : Again, if you are talking about the \$150,000, that is to somehow suggest that such cases have some almost cookie cutter single figure. They do not. It depends on the size and complexity of the matter, the number of offences, the amount of expert evidence that is required, whether they are defended or not, whether they are dealt with at a local court or more often these days given the indictable offences the dominant offence in the district or county or equivalent courts and so on. Very few of our matters are highly homogenous in their nature to allow that sort of single calculation.

**Senator PRATT:** So in relation to consistency for those matters that get resolved inside and outside the mentioned protocol, you are essentially saying that that is not a matter for the DPP?

Mr Bromwich : The Minchin protocol as I read it, as I mentioned before, is a process for deciding whether or not something, amongst other things, will be referred for investigation.

**Senator PRATT:** Yes. That is correct.

Mr Bromwich : That point has been passed by the time a brief of evidence is referred to us, and so a determination about whether or not something is going to be referred for investigation—that point has passed.

**Senator PRATT:** That makes sense, except that it was never put before that protocol.

Mr Bromwich : But that is because the matter did not go from the department of finance to the Australian Federal Police.

**Senator PRATT:** Essentially, do you think that means that matters can be resolved in entirely different ways in terms of similar behaviour being resolved one way under the Minchin protocol—for example, to repay a debt and not to behave in such ways again? Or the Minchin protocol might also decide that that is inappropriate and repaying the debt is not appropriate and then it should, at that point, be referred to the AFP. But that was never questioned in this case, was it?

Mr Bromwich : As I said, the Minchin protocol appears to be at least in part directed to whether or not something should or should not be referred to the Australian Federal Police. It is a sterile debate, with respect, senator, to have a debate about whether something should or should not be referred to the Australian Federal Police when they have already investigated it and referred it to us.

**Senator PRATT:** The only issue being that when you look at consistency in terms of how things are resolved, someone who makes \$50,000 worth of private telephone calls is given the opportunity to resolve it through that protocol. I am not familiar with what it is that Mr Slipper has or has not been accused of doing, but it surprises me greatly that

the Minchin protocol was never looked to in order to resolve them, that that opportunity before the department of finance never came up.

Mr Bromwich : But it did not go from the department of finance to the Australian Federal Police. That was not the path by which it went to Australian Federal Police. And any other matter that goes directly to the Australian Federal Police will similarly not go through what is a referral protocol. That is essentially what it is.

**Senator PRATT:** Yes, okay. I think I understand that now very clearly, Mr Bromwich. But I think it leads me to some concern, given I have just been asking questions in estimates of the department of finance to try and give me some clarity around what is and is not within the use of entitlements when it comes to parliamentary travel. The discussion left me rather more confused than less confused in terms of what use of entitlement might be within or might be without reasonable use. So I can understand that, should questions be raised with the department, if someone is seen using their entitlement in what may be an appropriate or an inappropriate way, those questions would come up before the department of finance. But it would leave me with some displeasure if I am unclear about whether catching a Comcar, as it has just appeared to go to dinner, is within or without entitlement and that that could be a matter for the Federal Police.

Mr Bromwich : All I can say is that the case is before the courts. It is best that I do not comment on the content of a case that is before the courts. However, I do not believe the case is of that character.

**Senator PRATT:** Thank you.

**CHAIR:** That is all we have got then I think, Mr Bromwich. There is no one else due to come? No? Thanks very much.

Mr Bromwich : The question we had effectively on notice is as to the legal costs of anticipated legal costs of the prosecution.

**Senator PRATT:** Yes, that is correct. Thank you.