

The Hon. Michael John Daley MP  
Attorney General

Budget Estimates Hearing  
6 March 2024

Supplementary Questions – ODPP

Question #	Member	Supplementary Question	Answer
<b>Office of the Director of Public Prosecutions For the last 5 years:</b>			
1	The Hon. Chris Rath MLC	How many costs orders have been made against the DPP?	<p>The ODPP has advised:</p> <p>“Costs orders” are not “made against the DPP”. Sections 2 and 3 of the <i>Costs in Criminal Cases Act 1967</i> provide that a judge may grant a certificate to a defendant who is acquitted after the commencement of a trial (or where no further proceedings are directed after the commencement of a trial), where the judge considers that if the prosecution had, before the proceedings were instituted, been in possession of evidence of all the relevant facts, it would not have been reasonable to institute the proceedings.</p> <p>A costs certificate may be granted following an acquittal or discharge of a defendant at any time during a trial, whether a hearing on the merits of the proceedings has occurred or not. It should be noted that it is a fundamental premise of a criminal trial that an accused is not required to disclose their defence or the evidence on which they rely before the trial. The test under the <i>Costs in Criminal Cases Act 1967</i> is a ‘hindsight’ test that is quite different to the test that is applied to the question of whether to institute or maintain a criminal prosecution.</p>
2		In what amounts?	<p>The ODPP has advised:</p> <p>Neither the Court nor the ODPP has any role in determining what costs are paid. The ODPP has no record, or access to any records, of the amounts paid by DCJ to persons granted a costs certificate.</p>

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<b>Office of the Director of Public Prosecutions For the last 5 years:</b>			
3		Please provide a copy of the reported or unreported judgment making the costs order.	The ODPP has advised: This information is not readily available within the ODPP's case management system.
4		For each year how many costs orders were made in sexual assault cases?	<p>Please note this data varies from the response to LC QON 1837 due to differences in methodology.</p> <p>The ODPP has advised:</p> <p>According to ODPP data (based on the presentation of costs certificates to the ODPP):</p> <p><b>2022/2023:</b> 1255 matters committed for trial (across all offence categories). 14 costs certificates granted in sexual offence matters.</p> <p><b>2021/2022:</b> 1158 matters committed for trial (across all offence categories). 11 costs certificates granted in sexual offence matters.</p> <p><b>2020/2021:</b> 1375 matters committed for trial (across all offence categories). 4 costs certificates granted in sexual offence matters.</p> <p><b>2019/2020:</b> 1502 matters committed for trial (across all offence categories). 9 costs certificates granted in sexual offence matters.</p>

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<b>Office of the Director of Public Prosecutions For the last 5 years:</b>			
			<b>2018/2019:</b> 1916 matters committed for trial (across all offence categories). 10 costs certificates granted in sexual offence matters.
5		For each year how many costs orders were made in non-sexual assault other cases?	The ODPP has advised:  <b>2022/2023:</b> 7  <b>2021/2022:</b> 9  <b>2020/2021:</b> 4  <b>2019/2020:</b> 23  <b>2018/2019:</b> 11
6		For each year, what was the number of sexual assault cases prosecuted at hearing by the DPP?	The ODPP has advised:  <b>2022/2023</b> 197 guilty pleas (across all stages), 384 trials.  <b>2021/2022</b> 342 guilty pleas (across all stages), 283 trials.  <b>2020/2021</b> 345 guilty pleas (across all stages), 315 trials.

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<b>Office of the Director of Public Prosecutions For the last 5 years:</b>			
			<p><b>2019/2020</b> 373 guilty pleas (across all stages), 309 trials.</p> <p><b>2018/2019</b> 315 guilty pleas (across all stages), 323 trials.</p>
7		For each year, what was the number of non-sexual assault cases prosecuted at hearing by the DPP?	<p>The ODPP has advised:</p> <p><b>2022/2023</b> 1959 guilty pleas (across all stages), 222 trials.</p> <p><b>2021/2022</b> 2136 guilty pleas (across all stages), 244 trials.</p> <p><b>2020/2021</b> 2415 guilty pleas (across all stages), 298 trials.</p> <p><b>2019/2020</b> 2398 guilty pleas (across all stages), 270 trials.</p> <p><b>2018/2019</b> 2783 guilty pleas (across all stages), 386 trials.</p>
8		For each year, what was the number of sexual assault cases successfully prosecuted at hearing by the DPP?	<p>The ODPP has advised:</p> <p>The role of the prosecutor is to determine the evidence to be called and the case for the Crown to be presented, with an overarching obligation of fairness to the accused: <i>Richardson v The Queen</i> (1974) 131 CLR 116.</p>

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<b>Office of the Director of Public Prosecutions For the last 5 years:</b>			
			<p>A “successful prosecution” is one where the Crown case is presented properly and conformably with the dictates of fairness to the accused. If this question is seeking the number of convictions in sexual assault matters:</p> <p><b>2022/2023</b> 186 convictions. 48% conviction rate.</p> <p><b>2021/2022</b> 139 convictions. 49% conviction rate.</p> <p><b>2020/2021</b> 156 convictions. 50% conviction rate.</p> <p><b>2019/2020</b> 171 convictions. 55% conviction rate.</p> <p><b>2018/2019</b> 152 convictions. 47% conviction rate.</p>
9		<p>For each year, what was the number of sexual assault cases prosecuted at hearing by the DPP where there was a verdict of not guilty?</p>	<p>The ODPP has advised:</p> <p><b>2022/2023</b> 155 verdicts of not guilty</p> <p><b>2021/2022</b> 107 verdicts of not guilty</p> <p><b>2020/2021</b></p>

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<b>Office of the Director of Public Prosecutions For the last 5 years:</b>			
			120 verdicts of not guilty  <b>2019/2020</b> 152 verdicts of not guilty  <b>2018/2019</b> 198 verdicts of not guilty.
10		For each year, what was the number of sexual assault cases prosecuted at hearing by the DPP where there was a hung jury?	The ODPP has advised:  <b>2022/2023</b> 43  <b>2021/2022</b> 37  <b>2020/2021</b> 39  <b>2019/2020</b> 30  <b>2018/2019</b> 27
11		For each year, what was the number of sexual assault cases prosecuted at hearing by the DPP where there was a hung jury and a retrial took place?	This information cannot be accurately captured by the ODPP's case management system however information on hung juries is published in the District Court's Annual Review.

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<b>Office of the Director of Public Prosecutions For the last 5 years:</b>			
			Discretionary considerations are taken into account in deciding whether a retrial occurs: see Chapter 1.8 of the Prosecution Guidelines at <a href="https://www.odpp.nsw.gov.au">Chapter 1. The decision to prosecute   ODPP (nsw.gov.au)</a> . The fact that there has been a hung jury is not determinative of whether a retrial will be directed.
12		For each year, what was the number of non sexual assault cases successfully prosecuted at hearing by the DPP?	The ODPP has advised:  <b>2022/2023</b> 222 trials. 117 convictions.  <b>2021/2022</b> 244 trials. 141 convictions.  <b>2020/2021</b> 298 trials. 158 convictions.  <b>2019/2020</b> 270 trials. 147 convictions.  <b>2018/2019</b> 386 trials. 221 convictions.  Also please refer to question 8 regarding the meaning of ‘successful prosecution’.
13		For each year, what was the number of non sexual assault cases prosecuted at hearing by the DPP where there was a verdict of not guilty?	The ODPP has advised: See above.

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<b>Office of the Director of Public Prosecutions</b> <b>For the last 5 years:</b>			
14		For each year, what was the number of non sexual assault cases prosecuted at hearing by the DPP where there was a hung jury?	The ODPP has advised:  <b>2022/2023</b> 14  <b>2021/2022</b> 6  <b>2020/2021</b> 6  <b>2019/2020</b> 10  <b>2018/2019</b> 13
15		For each year, what was the number of non sexual assault cases prosecuted at hearing by the DPP where there was a hung jury and a retrial took place?	The ODPP has advised:  This information cannot be accurately captured by our case management system.  The fact that there has been a hung jury is not determinative of whether a retrial will be pursued. Discretionary considerations are taken into account in deciding whether a retrial occurs: see Chapter 1.8 of the Prosecution Guidelines (link: <a href="https://www.odpp.nsw.gov.au/chapter-1-the-decision-to-prosecute">Chapter 1. The decision to prosecute   ODPP (nsw.gov.au)</a> )
16		Please provide a list of judicial complaints made against the ODPP.	The ODPP has advised:

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<b>Office of the Director of Public Prosecutions For the last 5 years:</b>			
			Judges may express concerns by raising matters directly with the Chief Judge who may raise them with the Director. There is also an informal dialogue between members of the Judiciary and senior ODPP staff regarding the individual performance of practitioners. However, the ODPP has not directly received any formal judicial complaints, either from the Chief Judge or through any other formal complaints process.
17		What matters have the ODPP received complaints about?	The ODPP has advised: See above. There have been no formal complaints from the judiciary.
18		Is the audit of sexual assault cases to be conducted internally by the ODPP or externally?	The ODPP has advised:  A review of sexual assault matters (not including child sexual assault matters) listed for trial in 2024 is to be conducted by Deputy Senior Crown Prosecutors and Crown Prosecutors experienced in prosecuting sexual assault matters.
19		What are the terms of reference for the audit?	The ODPP has advised:  The reviewer will consider whether the decision to prosecute/the maintenance of the prosecution is in accordance with the Prosecution Guidelines (available at: <a href="https://www.odpp.nsw.gov.au/prosecution-guidelines">Prosecution Guidelines   ODPP (nsw.gov.au)</a> ), taking into account: <ul style="list-style-type: none"> <li>a. the public interest</li> <li>b. whether it can be said that there are no reasonable prospects of conviction on some or all of the charges</li> <li>c. all matters referred to in Prosecution Guidelines 1.3, including the reliability and credibility of the complainant</li> <li>d. if the indictment is correct</li> </ul>

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			<p>e. any appropriate plea offer f. if disclosure is complete.</p>
20		Will staff be consulted?	<p>The ODPP has advised:  Yes.</p>
21		Will comments made by staff in the course of the audit be confidential or available to their managers?	<p>The ODPP has advised:  The review will be conducted in accordance with the terms of reference.</p>
22		On what grounds was the complaint about the judgement of Justice Newlinds made?	<p>The ODPP has advised:  This matter is currently under consideration by the Judicial Commission, which has legislated processes and is subject to the review of the parliament. It is inappropriate to canvass the grounds of the complaint before this committee.</p>
23		Please provide a list of all complaints made to the judicial commission over the last 5 years.	<p>The ODPP has advised:  We refer to our previous answer and refer you to the Judicial Commission.</p>