

Division 26: Justice — Services 1 to 7, Attorney General, \$637 413 000 —

Ms M.M. Quirk, Chair.

Mr J.R. Quigley, Attorney General.

Dr A. Tomison, Director General.

Mr R. Montilva, Acting Chief Financial Officer.

Mr A.D. Kerr, Executive Director, Corporate Services.

Mr M.H. Johnson, Acting Executive Director, Court and Tribunal Services.

Ms K. Maj, Acting Executive Director, Strategic Reform.

Mr M. Hainsworth, Director, Advisory Services.

Ms P. Bagdonavicius, Public Advocate.

Mr N.A. Egan, State Solicitor, State Solicitor's Office.

Ms K. Kraszlan, Acting Commissioner for Victims of Crime.

Dr G.R. Hill, Director, Legal Aid WA.

Miss L.A. Markussen, Ministerial Liaison Officer.

Mr J. Lee, Principal Policy Adviser.

[Witnesses introduced.]

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

The minister may agree to provide supplementary information to the committee rather than asking that the question be put on notice for the next sitting week. I ask the minister to clearly indicate what supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the minister's cooperation in ensuring that it is delivered to the principal clerk by Friday, 31 May 2019. I caution members that if a minister asks that a matter be put on notice, it is up to the member to lodge the question on notice through the online questions system.

There are almost enough people occupying the seats to form government, minister. I give the call to the member for Hillarys.

Mr P.A. KATSAMBANIS: Before I ask my first question, can I clarify that it is the Attorney General's intention to deal with the Department of Justice and then with the Office of the Director of Public Prosecutions?

Mr J.R. QUIGLEY: Yes. The director is present in the gallery up the back with her assistant.

The CHAIR: It is a separate division, member.

Mr J.R. QUIGLEY: It is a separate division.

Mr P.A. KATSAMBANIS: That is fine. I think last year we dealt with them together but it does not matter in any respect.

I refer to court and tribunal services on page 373. Will the Attorney General confirm that there has been no provision for any additional judges or magistrates in the budget for the forthcoming financial year?

Mr J.R. QUIGLEY: That is correct.

Mr P.A. KATSAMBANIS: Can the Attorney General provide us with an indication of why, on 4 May 2019 in *The Weekend West* there was a report from Daniel Mercer, indicating it was exclusively provided to him by someone from the Department of Justice, titled "No jail for low-risk offenders" —

The CHAIR: Member, You are straying from the budget item.

Mr P.A. KATSAMBANIS: I am not, because I want to clarify why we do not have any new judges. The article states —

There has been no material increase in the courts budget for years and it is understood Attorney-General John Quigley will announce funding for new judges, crucial to efforts to lower the number of prisoners held on remand, which has rocketed from about 10 per cent of the muster a number of years ago to about 30 per cent now.

On 7 May we were briefing out that there would be no judges and then there are no judges.

The CHAIR: Member, you have had your answer.

Mr J.R. QUIGLEY: We were not briefing that out; that is speculative. There is no new money for judges. When we came to office, we increased the number of judges in the District Court by two. We made up the Supreme Court to a full complement of Supreme Court judges and transferred some of the jurisdiction of the Criminal Court down to the District Court. That work is just starting to flow through and we will monitor it closely to see what additional judicial support may or may not be needed. I will look at that at the half-yearly review. A few things are happening in the District Court. There is the transference of the jurisdiction—that is, everything but homicide going down to the District Court. Now, of course, we are just starting to see, although they have not got to trial, writs for damages from child sexual abuse being filed in the District Court registry. They are not at judicial determination yet. We will watch this very closely but there is no new money for a judge in this budget.

Mr P.A. KATSAMBANIS: Over the last two weekends, advertisements appeared in *The West Australian* for magistrates in the city and “regional location”. I assume that is one regional location. Can the minister clarify that these advertisements are for replacement magistrates for those who are retiring and moving on rather than additional magistrates? Which regional location are we talking about?

Mr J.R. QUIGLEY: The person best equipped to answer that is the acting manager of court services, Mr Michael Johnson.

Mr M.H. Johnson: The two advertisements are for the replacement of two magistrates who will retire in July and September this year. The location of the regional area that the magistrate will be going to is not known at this stage. At the end of the year, the Chief Magistrate will determine who will move, or the rotations that will be required, and that will then allow for the regional location to be known. That is what all applicants who are ringing up are being told at this stage.

[4.50 pm]

Mr P.A. KATSAMBANIS: I have one more question on the services and key efficiency indicators on page 373. The list of efficiency indicators shows a breakdown of cost per case in court and tribunal services, which are also separated, where applicable, into civil and criminal. Is that cost per case a gross cost prior to any cost recovery from litigants when costs are awarded against particular parties, or is it net of any return brought forward by cost orders against various parties?

Mr J.R. QUIGLEY: They are gross numbers.

Mr P.A. KATSAMBANIS: Where in the budget papers is the recovery reflected for each court, broken down by criminal or civil jurisdiction?

Mr J.R. QUIGLEY: I will throw to Mr Montilva.

Mr R. Montilva: I refer the member to page 383 of the budget papers, which shows the recoveries. It shows by division the fees and charges that are recovered and lists the fees of the District Court, Family Court and Magistrates Court. If the member needs the actual locations, we can take that as a supplementary question.

Mr P.A. KATSAMBANIS: I acknowledge and thank you for that, but those figures are grossed up figures. That table shows the regulatory fees and fines that are charged for lodgement. My question was about income arising from cost orders. For example, even in the Magistrates Court people can be charged court costs of, say, \$60 or \$80. I would like to know where those figures are recorded in the budget papers—not the lodgement fees, but the cost-recovery orders.

Mr J.R. QUIGLEY: I will get Mr Montilva to answer that in a moment. But, first, further down the page, on the fourth and fifth last lines, is “Recoup of Legal Costs” at \$412 000 and “Recoup of Other Costs” at \$5.981 million.

Mr P.A. KATSAMBANIS: Is it possible to have that broken down by court or tribunal, even if by supplementary?

Mr J.R. QUIGLEY: I will ask Mr Montilva to answer that.

Mr R. Montilva: The fees the member is referring to are not court or departmental fees. Cost orders are not appropriated revenue. They are paid to a third party or to whomever the court awards them. They will not be in the budget. Normally, the recouping of legal costs is recovered by the State Solicitor’s Office through clients. That

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is reflected in the \$400 000 in the budget papers. But if costs are awarded to a third party, which is what I think the member is referring to, they do not come through the books of the Department of Justice.

Mr P.A. KATSAMBANIS: I understand that. I am not asking about costs awarded to third parties; I am asking about court costs. I will leave that issue for now. I might pursue some more information in other forums.

Mr P.J. RUNDLE: I refer to page 370 and the item “Safe communities and supported families” under the heading “Relationship to Government Goals”. I refer to the government’s proposed legislation on animal activism. I welcome that potential legislation. On 10 April, the Attorney General said that that would be forwarded through to cabinet in two to three weeks. Today the front page of the paper reveals that the Attorney General has said that that will happen in another two to three weeks. Can the Attorney General tell us why the legislation has taken so long to get to cabinet?

Mr J.R. QUIGLEY: When we were working out the exact defence and the circumstances of aggravation we needed to overcome some complexities. For example, the Commissioner of Police first postulated, and this precipitated a response from the Premier, that it could be a circumstance of aggravation if one livestreamed a trespass on agricultural land. As we worked through the elements of the offence, we realised that that prosecution would seldom be used because it would be expensive to prove whether it was livestreaming and not a video that had been pre-recorded and posted subsequently and that one would have to call Facebook or YouTube managers, perhaps outside of the jurisdiction, to prove that. It became very complex. As we worked through that, we decided that we wanted a workable law to protect farmers from incursions on their property and to stop interference with the food production chain. Therefore, we had to work around a couple of different circumstances of aggravation. I can now tell the member that the latest version of the legislation will be going to cabinet imminently. Without giving too much away, I can reveal that the circumstances of aggravation will revolve around trespassing on agricultural land for the purpose, or with the intent, of interfering with agricultural production. That is the real gravamen of the offence—interfering with the working of the farm. The police commissioner postulated that the making of a live video would be the offence after that chap made that live video. I hope that I have explained that clearly so the member understands that we did not want to make it about proving that the video was live and not posted later after being recorded previously. Similarly, we did not want to capture media photographers who may have taken pictures of a farm but who were not on the farm. There were all sorts of problems. We were mainly concerned about bringing to a halt the activities of those people who repeatedly, despite the law and despite having been arrested, say “Anywhere, anytime, we will interrupt agriculture that raises livestock.”

The member mentioned this morning’s paper. I would like to address one thing on that. It said that I had mentioned five-year restraining orders. I did not say that at a press conference yesterday. The author of the article must have looked at *Hansard* and saw an answer that I had given in this chamber to a question by the Leader of the National Party. I said at that time that I would like to have ongoing purchase on these people to restrain them in the future from going there. I said that I would contemplate five-year restraining orders. As we have looked at that and the Restraining Orders Act, it appears not to be the best vehicle; rather, it appears that it would be a community supervision order on top of any other punishment that they will get, because the restraining order might end up restraining them only from a particular farm, whereas we want them to be on a community behaviour order that prevents them from going onto not just a farm in Katanning, but one in Mullewa. We have now come to the conclusion, on the advice we have received, that, rather than a restraining order, a community supervision order that covers the field is the preferable way. The cabinet submission is nearly complete. When I say “nearly complete”, I mean it is within a day of completion. The member for Nedlands would know that it then goes into a 10-day cycle. I will get it this week, but it will not go to cabinet on Monday; it will go to cabinet on Monday week. That is my intention anyway.

[5.00 pm]

Mr P.J. RUNDLE: I am a bit concerned that a community supervision order would be a fairly feeble method rather than a restraining order, which appears to me to be a much more suitable pathway.

Mr J.R. QUIGLEY: That is what we are working on at the moment with the department and the State Solicitor’s Office. I understand what the member is saying, but, at the end of the day, the restraining order is aimed at where the offence occurred. That is the advice I have been given. I do not want these coves just moving locality because they were restrained in respect of a particular property. The order that will be made will have certain mandated conditions, in the same manner as the magistrate in Bunbury recently put bail conditions upon two or three people who appeared in the Bunbury court. I think it was in relation to a Yarloop offence, but I might be wrong. The magistrate said that, as part of their bail, they were not to trespass on any agricultural land. I think there was also a curfew and they were not allowed to be out after certain hours whilst on bail. We feel that we can put all those bail-type conditions into the community order and cover a wider area than one farm. At the end of the day, all

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these farmers are small business men and they are trading under difficult circumstances, so we want to give all those farmers the maximum protection we can.

Mr P.J. RUNDLE: I understand what the Attorney General is saying, but I have a real concern obviously about the interruption of day-to-day farming activities, which he has addressed to some extent. I worry about the resources he might have to implement the community supervision orders for this type of activist and activism.

The CHAIR: Attorney General, that may well be outside your portfolio.

Mr J.R. QUIGLEY: I referred to them as mushy-headed individuals this morning, because they are mushy headed in the sense that they think that, because of where they have arrived for what they regard as their own personal moral code, this puts them above the law and that, in prosecution of their own moral code, they are going to shut down an industry. That is what they said the day before. What headed thinking is that? The law will get on top of these people. This has developed as a reasonably recent phenomenon. I am not criticising past governments for not bringing in this law. These activists are a reasonably recent phenomenon. We intend to support our farming community. When we bring in this legislation, which will not be too far away, we can argue the to-and-fro of it then, member.

Mr P.J. RUNDLE: I have a further question.

The CHAIR: I counsel you that if you ask an imprecise question, you will get an imprecise answer.

Mr P.J. RUNDLE: That is not a problem. Will this legislation follow the New South Wales legislation and also look at surveillance laws for drone use and social media live streaming, which the Attorney General has briefly spoken about?

Mr J.R. QUIGLEY: We have not looked at drones, because the flight of drones, at least, seems to be within the purview of the commonwealth. The recording of persons without their permission constitutes an offence under the Surveillance Devices Act. The recording of a moo-cow chewing its udder or whatever it chews —

Ms J.J. SHAW: Cud.

Mr J.R. QUIGLEY: Its cud.

Mr P.A. KATSAMBANIS: That would be a very flexible moo-cow!

Mr J.R. QUIGLEY: Do not worry; I am a bushy. I have been to Kings Park. Seriously, my Land Rover has been up there to Fraser's several times!

We do not know that the videoing of a cow would be covered by the Surveillance Devices Act, but the surreptitious filming of a farmer going about his business most certainly would be.

Mr P.A. KATSAMBANIS: We can throw epithets around and we can also laugh at these things —

The CHAIR: And we can also ask a question, member!

Mr P.A. KATSAMBANIS: We can. This is quite important.

Mr J.R. QUIGLEY: It is very important.

Mr P.A. KATSAMBANIS: The Attorney General indicated in his response to the member for Roe that he has now moved from considering restraining orders to considering community-based orders. He has also indicated that he is yet to draft a cabinet submission, so we will have to go through that process that he outlined. He will draft a submission, he will put it into the mixer —

Mr J.R. QUIGLEY: No. My latest advice is that I will be ready to sign the cabinet submission today or tomorrow morning to lodge.

Mr P.A. KATSAMBANIS: Can I finish my question? The Attorney General will sign it soon, it will go into that mixer, and it will eventually be considered by cabinet. The best-case scenario after it is considered by cabinet is that he will get permission to draft it and then it will go to the Parliamentary Counsel's Office and then we will go on. How long will it be before we see this legislation that the Attorney General has been announcing and changing for the last couple of months?

Mr J.R. QUIGLEY: I have not been changing it because the legislation has not been drafted.

Mr P.A. KATSAMBANIS: The Attorney General has been changing his position.

Mr J.R. QUIGLEY: My contemplated position was to go down the restraining order track. Then, after discussions with the Department of Justice and the State Solicitor's Office, I was advised that I was perhaps using the wrong vehicle. That was my contemplation. As I said, we can look at problems in our community. I have acted very swiftly.

Mr P.A. KATSAMBANIS: When are we going to see the legislation? That is my question.

The CHAIR: Member!

Mr J.R. QUIGLEY: As soon as I can get it to members. I have come to this job of Attorney General and I have been dealing with reports that had been in my predecessor's office since 2012 or 2013. I said, "What's happening with all these reports?" and they said, "They're doorstops." This problem became gross in the last three months, and, within 12 weeks, we are taking forward a cabinet submission. That is pretty swift.

Mr P.A. KATSAMBANIS: When does the Attorney General think we are likely to see this legislation? This is important for the livelihood of farmers and their families. Are we going to see it in August? Are we going to see it in September? Are we going to see it in October? Are we going to see it in November?

[5.10 pm]

The CHAIR: That is five questions, member.

Mr P.A. KATSAMBANIS: That is one question.

Mr J.R. QUIGLEY: I would say within 10 days to two weeks it will be through the cabinet process—my expectation is that it will be through the cabinet process and down at the Parliamentary Counsel's Office. I am then in the hands of a number of people who are at the Parliamentary Counsel's Office to return the legislation. I cannot do better than that; unless you guys can write the legislation as good as they can.

Mr P.J. RUNDLE: Taking into account Parliamentary Counsel and all those elements, for the farmers out there who are reading the *Countryman* and the *Farm Weekly* next week, when does the Attorney General anticipate they will have something to look forward to? What is his best guess?

Mr J.R. QUIGLEY: My best guess is this year. We go through this process of budget estimates, which is what we are doing at the moment, and the member knows what happens next—we have more budget speeches to make as a result of this process and then Parliament adjourns for six weeks. A lot of legislation that should have been attended to is screaming for priority. I will give the member a couple of examples. The legislation for mentally impaired accused, who we are racking and stacking in the prisons, is screaming for priority. I hope to introduce that legislation before we get up. There is also guardianship and powers of attorney around what is happening with elder abuse. That is pressing, because the elderly are being ripped off. It is a matter of getting this into the Parliamentary Counsel's Office. I cannot say that we will push old people out of the way or we will push the mentally impaired accused back. That matter has been hanging around now for several years. The member has seen how many bills I have brought into this Parliament and he can rely on me to deal with it expeditiously.

Mr P.J. RUNDLE: I would rate farmers being able to run their farms on a day-to-day basis in the very highest of categories. I understand the Attorney General has dealt with various pieces of legislation that have flowed through the over the last 12 to 18 months —

The CHAIR: Is there a question?

Mr P.J. RUNDLE: Where does the Attorney General rate this amongst his many other pieces of legislation?

Mr J.R. QUIGLEY: It is not whether I rate it. As the member for Nedlands knows, all cabinets have a legislation subcommittee. Once a bill is approved for drafting, ministers go before the subcommittee to argue their priority. The Premier has publicly commented on the situation that farmers find themselves in. We can rely on the Premier to give it some priority. When I talk about the mentally impaired accused bill, look at Gene Gibson who was held on a murder he did not do because he was mentally impaired but he could not plead mentally impaired because of the dreadful state of the legislation. He was a guy who spent years in jail. Do I say he has lower priority? Does an Indigenous person in that situation have lower priority than a farmer whose land is being trespassed upon? Alternatively, do elderly folk who are blindly being ripped off by people using out-of-date or fraudulent powers of attorney take priority? Where do they fit? Everyone comes before the subcommittee asking for their legislation to be given "the" absolute top priority.

I will give members another example. Following the national royal commission into child sexual abuse, and the maintenance of privilege for religious people who go to confession and confess child abuse, there is a whole sector out there saying, "We want this through urgently. We need this through urgently. These Catholic priests shouldn't be able to keep these secrets." I am trying to explain that there are a whole lot of competing circumstances. The farmers should understand that this government treats this seriously. It is 12 weeks since this first blew up as a big issue. I am ready to sign the cabinet submission and will prosecute the case on behalf of the member's constituents as a matter of priority.

Mrs J.M.C. STOJKOVSKI: I refer to service 7, "Legal Aid Assistance", on page 376. I note that at line item 5, "Average cost per legal representation", there is no significant variation between the 2018–19 actual figure and the 2018–19 budget figure. How much has Legal Aid Western Australia been granted to fund the defence team for

Mr Bradley Robert Edwards and how will this funding ensure that this important case goes ahead and will be a fair trial?

Mr J.R. QUIGLEY: I am going to do two things. Firstly, I will give the forerunner to the answer, which is the reason a large amount of money needs to be allocated to Mr Edwards. Back in 1992, the High Court, in *Dietrich v The Queen*, ruled that serious criminal cases in which the accused was indigent—did not have any money; could not pay for a defence—could be permanently stayed. We certainly do not want any murder case against Mr Edwards stayed or delayed. That is why it is a very important function of the Legal Aid Commission to make sure that, on all indictable matters, appropriate levels of representation are extended. When we get to the next division, which is the DPP’s division, no doubt someone will ask how much the prosecution is costing. I will now invite the director of Legal Aid, Dr Graham Hill, to respond in more detail to the member’s question.

Dr G.R. Hill: We have established a line of supplementary funding from Treasury for this particular case. To date, we have spent \$1.1 million on the case. As to what the cost will be in the future, that depends how long it goes and how intensive it all is. At the moment, the case is scheduled to start on 22 July and run for nine months, but there are also some indications that it might be delayed. We will have to wait and see.

Mr J.R. QUIGLEY: If I can just add to that. The Director of Public Prosecutions will, in due course, be able to give the member an idea about how many folios or pages are involved and how many witnesses are involved. That will give a better appreciation of why Legal Aid needs supplementary funding to fund this case.

Mr P.A. KATSAMBANIS: I thank the director of Legal Aid for providing that answer. Legal Aid has spent \$1.1 million to date. I realise we are asking to foresee what might happen in the future, but I ask, through the minister, what has Legal Aid budgeted to spend on defence costs in this particular trial in this forthcoming 2019–20 financial year?

Mr J.R. QUIGLEY: I want to predicate the director’s answer by saying it will not be given with specificity as to what any particular counsel or solicitor is getting.

Mr P.A. KATSAMBANIS: I did not ask that.

Mr J.R. QUIGLEY: No; I am just saying. I wanted to make it clear that we are talking “globally” because we do not want to disclose confidential contracts with counsel. The director could give a global outlook.

[5.20 pm]

Dr G.R. Hill: We have not budgeted for anything, so to speak, in the sense that we will get supplementary funding from Treasury for it. Our estimate is that it could be up to \$2 million in the next year.

Mr P.A. KATSAMBANIS: I am happy to go to a new question, and, as the Attorney General indicated, we will probably pursue this issue a little bit further with the Office of the Director of Public Prosecutions if we get time. I refer to page 371 of budget paper No 2, and outcomes and key efficiency indicators. The first outcome is “An efficient, accessible court and tribunal system”. I preface it by saying that I note the State Administrative Tribunal has had a good record. But in the case of every single court that is listed there, when we compare the 2018–19 budget with the estimated actual, the time to trial has blown out significantly. In almost all cases, perhaps with the exception of the Magistrates Court, the comparison between last financial year’s actual and this current financial year’s estimated actual has also blown out. Can the Attorney General explain why our courts’ time to trial in all respects—criminal and civil Supreme Court, criminal District Court, and even the Family Court of Western Australia, was budgeted from 27 weeks —

The CHAIR: I think the Attorney General has the gist of the question.

Mr P.A. KATSAMBANIS: Why has that happened?

Mr J.R. QUIGLEY: For the first item, Supreme Court criminal, time to trial, in 2017–18 the actual was 32 weeks, and for 2018–19 the estimated actual is 36 weeks, so it is a four-week blowout.

Mr P.A. KATSAMBANIS: But it is eight weeks to budget.

Mr J.R. QUIGLEY: Everyone has aspirations of what we are budgeting for, and then things happen. One of the things that has happened in the criminal sphere that affects the Supreme Court and District Court, and, to a lesser extent, the Magistrates Court—which was not the case when I practised law—is the heavy reliance on expert evidence. Nearly every case now involves DNA in some form and then there are challenges to the DNA. The trials now are of a more technical nature. When I started in law, the average murder trial was three or four days—the barman would be called in, the people at the bar would be called in and the bloke who witnessed the stabbing would be called in—but now the average murder trial is a couple of weeks, as they call on all sorts of experts. There is always pressure on the court as the trials become more complex. This was not the case under the previous government, but we now have six general division judges sitting in crime in the Supreme Court. There are six of

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them to handle that, but we anticipate some winding back in the Supreme Court as the jurisdictional shift washes through. The Chief Judge of the District Court is waiting for the tsunami.

Mr P.A. KATSAMBANIS: Yes, exactly. The pressure is just going to be pushed down.

Mr J.R. QUIGLEY: That is right.

Mr P.A. KATSAMBANIS: The pressure is just going to be pushed to another court.

Mr J.R. QUIGLEY: I know, but it was a sensible thing to do. It was a very sensible thing to do.

Mr P.A. KATSAMBANIS: I supported it. Do not forget that I supported it.

The CHAIR: Member! The member will get his answer if he keeps quiet.

Mr J.R. QUIGLEY: It was a sensible thing to do because there was too much minor crime—when I say minor crime, I mean armed robbery where someone goes into a service station and says “Give us a packet of cigarettes” and pulls out a pocketknife. That is armed robbery and the case goes off to the Supreme Court, when the District Court could well have handled that. It was the same with those drunks at Northbridge who were wandering home late at night and set fire to the wheelie bin, which melted. The bin is the property of Perth and they damaged that property by fire. Under Hon Christian Porter’s amendments, when he was in this Parliament as Attorney General, that now carries life and the case for burning a wheelie bin goes off to the Supreme Court. It had to happen, and we had to take that out. But the member is right—there is going to be more pressure on the District Court.

Mr P.A. KATSAMBANIS: Given the pressures on all the courts that the Attorney General has spoken about and given the changes in the length of criminal trials since the Attorney General first started in law—even when I first started in law, a civil trial is exactly the same; the length has blown out—is that not more of a reason why we need additional judicial resources, additional judges in both the Supreme Court and District Court, additional magistrates and more capacity in the Family Court of Western Australia? Why has the Attorney General not been able to get those resources in the budget process to assist people who are sitting around waiting for these matters to go to trial?

The CHAIR: Attorney General, there are two questions there, but you can proceed.

Mr J.R. QUIGLEY: The question about the Family Court of Western Australia would really have to be directed to Hon Christian Porter.

Mr P.A. KATSAMBANIS: How about the other courts?

Mr J.R. QUIGLEY: Hang on. I would like to get another judge in the District Court. I think the commonwealth owes us another judge there, quite frankly. In fact, I have sent it an invoice for \$1.36 million, but I have not received a reply yet. This relates to a conspiracy case involving Vietnamese workers in the northern suburbs somewhere around Wanneroo. The case was so badly handled by the Australian Federal Police and the commonwealth Director of Public Prosecutions that the whole case collapsed and the court eventually ordered that there be a permanent stay on the re-presentation of any indictment of these people, because the case was just such a mess. That cost us over \$1 million; it was just wasted. Judge Stephen Scott held it up for the best part of a year. The Chief Judge was fuming, and I found out from him that the wasted cost was \$1.36 million. If the federal government did the right thing and repaid us the \$1.36 million that it lost, we would be in a better position. Also, do not forget that we appointed two extra judges at the start of the term, and, recently, I have made up an extra judge in the Supreme Court. Mrs Jennifer Hill will become a justice of the Supreme Court when she is sworn in tomorrow week to commence on 4 June. In the meantime we have also filled vacant positions in the court, so I think we have moved pretty swiftly in relation to court resources. The District Court knows that we will be closely watching, together with the Chief Judge, the workload with the jurisdictional shift.

The CHAIR: Before we proceed on that, we have three members who want to ask some questions. I note that the time is pretty close to 5.30 pm and we have another division to do. Does the member for Hillarys have a further question?

Mr P.A. KATSAMBANIS: I have another quick question. Is this proof, as Daniel Mercer wrote a couple of weeks ago, that the Attorney General wanted additional judges and had been rolled by the Expenditure Review Committee and Treasury on this?

The CHAIR: The member is not able to answer that. Those are confidential discussions.

Mr P.A. KATSAMBANIS: The minister is capable of providing that answer.

Mr J.R. QUIGLEY: If I had my way, I would appoint maybe 10 or 20 more judges. We have to be realistic. We are in an economy in which we have to look after waiting lists and new schools. I have not been rolled. We are managing the court, and I can tell members now —

The CHAIR: The Attorney General does not need to disclose that, because it is part of the cabinet process.

Mr J.R. QUIGLEY: I was just saying that the Chief Justice was very happy with the resources we are getting down there.

[5.30 pm]

Mr W.R. MARMION: I refer to page 370, “Relationship to Government Goals”, and to the fifth desired outcome for legal aid assistance, “Equitable access to legal services and information”. Can the Attorney General outline how Legal Aid Western Australia allocates its services? For example, I refer to a family dispute in which one side of the dispute gets legal aid and the other side does not. Is there any way to make sure that the person with the least amount of money gets legal aid as opposed to one who has a job and more money?

Mr J.R. QUIGLEY: I think it best to let Dr Hill answer on the question of grants of aid.

Dr G.R. Hill: Legal aid has a means test that looks at the income and assets and the only eligible people are those who pass the means test. We work very hard using that device to target legal aid to those who are most in need. But, of course, if both parties are entitled to legal aid, 74 per cent of legal aid is carried out by the private profession in this state; indeed, 442 private lawyers in Western Australia did legal aid work in the last financial year, as well as Legal Aid’s in-house practice, so there is always the capacity to handle a potential conflict simply by using different lawyers.

Mr W.R. MARMION: I think Dr Hill may have answered the question. In a situation in which a husband qualifies for legal aid despite having a job, the wife, who has no job, can also get legal aid without there being conflict. Can both parties get legal aid in the Family Court?

Mr J.R. QUIGLEY: Dr Hill.

Dr G.R. Hill: The answer is yes. That is no barrier at all. It happens all the time.

Mr P.J. RUNDLE: I refer the Attorney General to page 376, “Services to Government”, which relates to the services and costs of the State Solicitor’s Office. I note the budget states that the cost of services of the State Solicitor’s Office is divided by the number of recorded matters. I am concerned about the number of cases involving one government arm versus another and the cost of that to the taxpayer. An example is the recent Western Australian Supreme Court case in which the Commissioner of Police challenged some liquor restrictions put in place by the director of Liquor Licensing. Which agency determines whether a case is pursued in court? Is it the State Solicitor’s Office, the Attorney General or the police, and whose budget is used?

Mr J.R. QUIGLEY: I refer to Mr Egan, the State Solicitor.

Mr N.A. Egan: It depends upon the circumstances of each particular case. There is no general hard and fast rule. Likewise, it depends on who seeks advice from the State Solicitor’s Office in the first instance because obviously if we provide advice about a matter to one particular client, we would be conflicted if we provided advice to the other on the same sorts of matters. Of course, we act on instruction to provide advice. It is others who instruct us to proceed in a particular way.

Mr P.J. RUNDLE: In a case like the one to which I referred in which the Commissioner of Police or the Minister for Police decided to have a crack at the Liquor Commission, is there much involvement from the State Solicitor’s Office? I am asking on behalf of the taxpayer because it is quite concerning when there is one arm of government versus another.

Mr J.R. QUIGLEY: I will go to the State Solicitor again.

Mr N.A. Egan: Member, we can act on behalf of only one party at a time. We cannot act on behalf of both parties. Both parties would be represented in the ordinary course, and we would act on behalf of one of them. In the particular example to which the member referred, I do not know on whose behalf we acted. As I said, we cannot act on behalf of both parties.

Mr P.J. RUNDLE: How many times have the police disregarded the advice of the State Solicitor’s Office, how much did the litigation cost the state and what has been the success rate of these cases?

The CHAIR: That is out of order, member, but the Attorney General can have a go.

Mr J.R. QUIGLEY: I would have to go to a line item to determine the cost to the state.

Mr P.J. RUNDLE: Would I be able to get supplementary information about what —

The CHAIR: The member can put it on notice if he wants to. It depends upon what the Attorney General wants to do.

Mr J.R. QUIGLEY: It depends on what the member is asking me. Even if it goes on notice, it still has to relate to a line item in the budget and a spend that we are now examining.

Chair; Mr Peter Katsambanis; Mr John Quigley; Mr Peter Rundle; Ms Jessica Shaw; Mrs Jessica Stojkovski; Mr Bill Marmion

The CHAIR: He can ask a general question on notice, Attorney, which seems to be the appropriate way to go, but it is up to you.

Mr P.J. RUNDLE: What is the hourly rate of charge by the State Solicitor's Office to other departments, and what is the total amount?

Mr J.R. QUIGLEY: Mr Egan.

Mr N.A. Egan: I can address that in broad terms. The State Solicitor's Office treats work as core and non-core work; 80 per cent of the State Solicitor's Office work is core work and 20 per cent is non-core work. We do not charge for core work but we charge for non-core work. For matters of the nature that the member is talking about, that is core work and we do not charge the client.

Mr P.J. RUNDLE: Can the Attorney General tell me the hourly rate when the office does charge?

Mr J.R. QUIGLEY: I throw that to the State Solicitor.

Mr N.A. Egan: I do not have the figures to hand. The rates are not significant. My rate, for example, as State Solicitor is in the vicinity of—I would need to check this figure—\$310 per hour in circumstances in which I charge for a non-core matter. That would cascade down to a junior solicitor in the office who would charge somewhere in the vicinity of \$120 an hour, but, again, that is for non-core work. The majority of that work in the office is done in either commercial or certain litigation matters, not prosecution matters.

Mr P.J. RUNDLE: For a layperson like me, it seems unusual for the Commissioner of Police to override the State Solicitor's advice and have a crack at another arm of government.

The CHAIR: Member, what budget item is it?

Mr P.J. RUNDLE: It would be the average cost for legal matters, which is \$4 464.

The CHAIR: The Attorney General can make his own judgement on that one. I think it is too general for him to answer.

Mr J.R. QUIGLEY: I cannot answer whether on any particular occasion it is usual or unusual for the Commissioner of Police to accept or reject the advice of the State Solicitor. The member should ask the Minister for Police in budget estimates.

The appropriation was recommended.

[5.40 pm]