

Division 3: Department of the Premier and Cabinet — Service 4, Aboriginal Affairs, \$24 264 000 —

Ms C.M. Collins, Chair.

Dr A.D. Buti, Minister for Aboriginal Affairs.

Ms E. Roper, Director General.

Ms F. Hunt, Deputy Director General, Aboriginal Engagement and Community Policy.

Ms S. Meaghan, Special Adviser, Native Title.

Mr A. Brender-A-Brandis, Chief Financial Officer.

Ms T. Nynette, Executive Director, Aboriginal Engagement.

Mr D. Stewart, Executive Director, State Services.

Mr S. Hayden, Special Policy Adviser.

[Witnesses introduced.]

The CHAIR: The estimates committees will be reported by Hansard and the daily proof will be available online as soon as possible within two business days. The chair will allow as many questions as possible. Questions and answers should be short and to the point. Consideration is restricted to items for which a vote of money is proposed in the consolidated account. Questions must relate to a page number, item or amount related to the current division, and members should preface their questions with these details. Some divisions are the responsibility of more than one minister. Ministers shall be examined only in relation to their portfolio responsibilities.

A minister may agree to provide supplementary information to the committee. I will ask the minister to clearly indicate what information they agree to provide and will then allocate a reference number. Supplementary information should be provided to the principal clerk by noon on Friday, 2 June 2023. If a minister suggests that a matter be put on notice, members should use the online questions on notice system to submit their questions.

I give the call to the member for Central Wheatbelt.

Ms M.J. DAVIES: I refer to the heading in budget paper No 2, volume 1, on page 62, “Aboriginal Affairs and Native Title Agreements”. My understanding is that native title agreements that were settled by the state and between proponents and traditional owners prior to the Aboriginal Cultural Heritage Act coming into play were written with the 1971 definition of Aboriginal cultural heritage. Will the introduction of the new legislation have an impact on existing native title agreements?

Dr A.D. BUTI: No. Is the member talking about native title agreements?

Ms M.J. DAVIES: I am talking about agreements already in existence, such as the south west land agreement and the Yamatji agreement. They are the ones settled by the state, but there are others between project proponents and traditional owners obviously. Will there be any impact from the Aboriginal Cultural Heritage Act coming into play on 1 July? Will they need to be rewritten or revisited or will it happen automatically?

Dr A.D. BUTI: Some components of the native title agreements will not be affected. It depends on what we are talking about. Various government departments are working through possible implications for the standard heritage agreements that are part of native title settlements, such as the south west settlement, Yamatji nation Indigenous land use agreement and the Esperance Nyungar Indigenous land use agreement. They are looking at that. A template has been developed. The Department of Premier and Cabinet is working closely with the Department of Planning, Lands and Heritage and the State Solicitor’s Office to consider the impact of the new act on the operation of existing Indigenous land use agreements and standard heritage agreements.

Ms M.J. DAVIES: There are implications of that that the state will be working through. Will they be settled before 1 July or is that likely to continue beyond that date when the new act commences?

Dr A.D. BUTI: The plan is that the work being done currently will be completed by 1 July.

Ms M.J. DAVIES: I refer to page 62 of budget paper No 2, volume 1, new initiatives and the native title team expansion. Could the minister advise the number of project teams and their size? For example, there is the native title team and the Aboriginal Cultural Heritage Act team. What are those teams within the department and how many staff are in each?

[11.40 am]

Dr A.D. BUTI: I will make some general comments about the native title team expansion. We are incredibly proud of our work in native title. We lead the nation. We are working through 136 determinations in Western Australia, which is 54 per cent of the nation’s native title determinations. We have reached landmark decisions, such as the

Extract from Hansard

[ASSEMBLY ESTIMATES COMMITTEE B — Tuesday, 23 May 2023]

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Ms Mia Davies; Dr Tony Buti; Dr David Honey; Ms Divina D'Anna; Chair

south west settlement and the Yamatji Indigenous land use agreement. The final registration of the Tjiwarl settlement was just yesterday. They are groundbreaking settlements. As I said, there are 136 determinations and we need an appropriate number of people working in the department's native title team. We sought additional funding over the forward estimates to expand the team to include seven FTEs on a recurrent basis. The allocation also includes provision for one FTE within the Department of Treasury. Basically, as I said, it is to deal with the increase in the number of native title determinations.

Dr D.J. HONEY: The minister, in the explanation that he just gave, referred to agreements that have already been reached and settled, and said that we are well ahead of the nation in doing that. Given that the south west, in particular, and the Yamatji agreements have been settled, why do we need additional staff? I would have thought that there is now a substantial amount of experience in team and that the hard work has been done with those very large claims.

Dr A.D. BUTI: I think the member maybe does not quite understand that each settlement is different. We are dealing with different country with different requirements that are impacted by government differently and have different composition elements and demands. The Tjiwarl settlement is completely different from the south west settlement. We cannot just use the existing one. When the south west settlement was determined, there was not 136 determinations in the background. I would have thought that 136 determinations would alert one to the fact that more people are needed to deal with the sheer volume of work. In the long run, we are very keen to reach agreement on all these determinations rather than go through a long, tortuous court process, which would be much more expensive to the native title holders and the state.

Dr D.J. HONEY: Just to be clear, minister, is that 136 outstanding determinations?

Dr A.D. BUTI: Yes.

Dr D.J. HONEY: And what number have been completed?

Dr A.D. BUTI: There might be more.

Ms M.J. DAVIES: How does the department prioritise the 136 determinations? Are they worked on together?

Dr A.D. BUTI: No.

Ms M.J. DAVIES: What is the process?

Dr A.D. BUTI: It depends, obviously, on when the determinations come on foot, their scale and what native title infringements may have happened. It also depends on where the native title holders stand in that process, whether they ready to go to the negotiation table and so forth.

Ms M.J. DAVIES: Is there an active list of the determinations or agreements that the department is working on currently?

Dr A.D. BUTI: We can give the member a list of the determinations.

Ms M.J. DAVIES: I think I can get them through the court. My question, minister, is which settlements and agreements is the department actively working on?

Dr A.D. BUTI: It depends on what the member means; does she mean negotiations or paperwork? It depends on what the member actually means.

The CHAIR: Member for Central Wheatbelt, can you please clarify?

Ms M.J. DAVIES: I will clarify, minister. The minister spoke about—apologies if I do not say it right—the Tjiwarl agreement so that has obviously come through —

Dr A.D. BUTI: That has been done. That is registered.

Ms M.J. DAVIES: That has been done, yes. How many is the department actively working on to get to that point?

Dr A.D. BUTI: It is difficult to say in the sense that—I am not trying to fudge the question.

Ms M.J. DAVIES: I am not trying to be difficult; I am just trying to understand what the department is doing.

Dr A.D. BUTI: And I am just trying to give the member an answer. It is difficult to provide clarity here. For example, I might get a letter from a group on a determination today, but there are two current compensation applications in the Federal Court, and they would be given higher priority at this stage. It is difficult to be precise on this because they are all at different stages and have different demands.

Ms M.J. DAVIES: Just to confirm, did I hear correctly that the minister said there is an additional seven FTE within the native title team?

Dr A.D. BUTI: Yes.

Ms M.J. DAVIES: Is that in addition to the number of people already working in that team?

Dr A.D. BUTI: I will just correct the previous answer. I believe the native title team is working on five compensation claims rather than two. There are two in the court and five outside the court at the moment so that is seven. In regard to the question, we have gone from 22 to 29 staff with the additional seven, but most of them are dealing with the implementation, not the negotiation, of agreements so we needed to increase the number of staff working on negotiations.

Ms M.J. DAVIES: I refer to page 62 of budget paper No 2, volume 1, new initiatives and the Tjiwarl ILUA in the goldfields that was announced yesterday, I think. I have had only a brief opportunity to look at the paperwork, but included under schedule 5 of the agreement is exploration charges for the agreement. There is a \$150 per square kilometre up-front cost and then seven per cent of the annual exploration on the licence or 30 per cent of the annual rent payable to the state. Is that seven per cent rate considered to be consistent with other charges across the state? How does the department take advice on that? The advice from the industry is that it seems out of step with some of the charges in other agreements.

The CHAIR: Member, can you please clarify which line you are referring to?

Ms M.J. DAVIES: It is under new initiatives in the table. It is not listed in terms of funding because the note says that it remains confidential until it is registered, and that happened yesterday.

[11.50 am]

Dr A.D. BUTI: Yes; that is right. Does the member want me to provide what the agreement entails?

Ms M.J. DAVIES: The minister can do that; I have had a quick look at it.

Dr A.D. BUTI: The package includes monetary compensation of \$25.475 million, which includes \$18.81 million in cash payments to be paid following conclusive registration; \$2.29 million for a research and development fund, to be paid over two instalments over the first two years; \$3 million for an economic empowerment fund, to be paid in two annual instalments over the first two years; a \$1.375 million one-off payment for the implementation fund to be paid following conclusive registration; and up to \$400 000 to fund a socio-economic baseline study. There are a number of other initiatives to support and fund Tjiwarl business and economic empowerment opportunities and the transfer of ownership of land parcels to Tjiwarl, including the grant of freehold preserving native title rights and a process for any future grants of land; the creation and expansion of the Tjiwarl conservation estate; recognition of exclusive rights under section 47C of the Native Title Act; involvement of Tjiwarl in the ongoing management of water on Tjiwarl country; and Tjiwarl-specific future act processes for the grant of certain mining tenements and petroleum titles on Tjiwarl land. There are other things as well.

My team and I are not really sure about the question. We might take it on notice, if the members wants to put it on notice, because we really do not understand what the member is saying.

Ms M.J. DAVIES: It is around exploration charges. The question comes back to whether the government, in negotiating these agreements, consults industry on the charges for exploration. There is a seven per cent charge of an annual exploration expenditure licence, plus an up-front fee. Industry is saying that that seems high as part of the agreement. I suspect it will be raised with the minister in coming days.

Dr A.D. BUTI: I think that question should be asked of the Department of Mines, Industry Regulation and Safety rather than us.

Ms M.J. DAVIES: I thought this department was responsible for negotiating the agreements.

Dr A.D. BUTI: Yes—the agreement of native title, but other agencies are involved. The point is that I do not have the answer and my advisers are unclear. We can continue, but we do not have the answer.

Ms M.J. DAVIES: I refer to “Significant Issues Impacting the Agency”, specifically “Aboriginal Affairs and Native Title Agreements”. I will ask a new question so that I am clear about this because I am relatively new in this shadow portfolio. Is it correct that the Department of the Premier and Cabinet has the lead role in negotiating agreements?

Dr A.D. BUTI: Yes.

Ms M.J. DAVIES: It will take advice from other departments, but it is essentially responsible for the settlement and finalising of agreements between the proponents. I want to be clear that the Department of the Premier and Cabinet has the lead.

Dr A.D. BUTI: Yes. I add that although we take the lead, it is a whole-of-government approach. There are many other departments. The member’s question is not in our division; therefore, we do not have the detail. I am trying to assist the member. The member might have a better chance of getting an answer if she asks the Minister for Mines and Petroleum; otherwise, she should put it on notice and we will try to provide the answer.

Ms M.J. DAVIES: I suspect I will be told that it comes under the Indigenous land use agreement, which is listed under this department.

Dr A.D. BUTI: Just put it on notice and we will find the answer.

Ms M.J. DAVIES: I refer to page 67, budget paper No 2, volume 1, and the heading “Government Policy Management — Aboriginal Affairs”, under which the preamble states in part —

The Department provides strategic policy advice and coordination to the Minister for Aboriginal Affairs including cross-portfolio advice ...

I also refer to the *Annual report on Closing the Gap: Western Australian government*, which states in part —

Treasury established the Aboriginal Affairs Coordination Unit ... in 2021 to elevate and consolidate advice to the Government on Aboriginal policy outcomes and priorities, and to provide a central point for collaboration ...

There is a unit within the Department of the Premier and Cabinet and a unit within Treasury. I would like to know who takes the lead on advice and policy in setting the strategy and the decision-making because it seems that since the decision to remove the Department of Aboriginal Affairs, a raft of these units are popping up across government. These two are very senior in the hierarchy. Who has the lead and how is the division of responsibilities prioritised?

Dr A.D. BUTI: I will ask Ms Hunt to provide an answer to that.

Ms F. Hunt: Thanks, minister. The member is correct. The Department of Treasury and DPC are central government agencies that have complementary but very distinct roles. With respect to DPC’s role in statewide policy coordination, Closing the Gap is a case in point. We take a central agency coordination role bringing agencies together to establish the statewide governance arrangements to respond to that agreement. We work closely with the Aboriginal Affairs Coordinating Unit and Treasury be it in Closing the Gap or taking their advice on matters that relate to statewide fiscal policy. With respect to native title, the teams are highly collaborative with central agencies with a lead role. There is a lot of work in both native title and Closing the Gap. They work collaboratively and often take a coordinating role in supporting line agencies that have various responsibilities, be it under Closing the Gap or, as we have discussed, native title, which impacts multiple government agencies.

Ms D.G. D’ANNA: I refer to page 62, budget paper No 2, “New Initiatives”, specifically the line item “Aboriginal Community Controlled Organisations Peak Body”. Can the minister please outline the WA government’s investment in the Aboriginal community-controlled organisation sector?

Dr A.D. BUTI: Thank you very much, member. The whole issue of trying to build up the Aboriginal community-controlled organisation network, capacity and capability in Western Australia is something that the government takes very seriously. We have made the significant commitment of \$6 million over the forward estimates to the Aboriginal community-controlled organisation sector. The funding has been allocated to establish WA’s ACCO peak body and continue support in the Aboriginal Health Council of Western Australia. The ACCO peak body, which has been named the Council of Aboriginal Services Western Australia, will provide a centralised point of interaction and collaboration between government, ACCOs and Aboriginal communities. This new investment in the ACCO sector will help to increase capabilities, ensure culturally responsive and secure service delivery and improve Aboriginal employment opportunities. The Council of Aboriginal Services will also assist the WA government to fulfil its commitments under the National Agreement on Closing the Gap.

Dr D.J. HONEY: I refer to page 73 of budget paper No 2, volume 1, “Details of Administered Transactions”. There are ongoing payments under both the south west and Yamatji claims of \$21 million and \$71 million and those go over the forward estimates. Can the minister explain what the ongoing payments are for?

[12 noon]

Dr A.D. BUTI: In regard to Yamatji —

Dr D.J. HONEY: It is at the top of the table headed “Details of Administered Transactions”.

Dr A.D. BUTI: The Yamatji Nation Indigenous Land Use Agreement is a process that will provide \$325 million in cash and \$70 million in economic development initiatives to be delivered between 2021 and 2036. That involves cash payments under the agreement totalling \$325 million over 15 years. The fourth tranche of annual funding of \$15 million is due to be paid into the Yamatji charitable trust in September this year. We also oversee the provision of funding for the mining revenue stream, groundwater investigations and a corporate headquarters under the agreement. We are also providing \$2 million per year over 10 years to the Yamatji charitable trust to fund groundwater investigations under the groundwater investigations project agreement. The third groundwater payment of \$2 million plus CPI will be paid to that charitable trust in September this year. The department leads the implementation and coordinates the 13 agencies with commitments under the agreement. Implementation funding of \$9.845 million has been allocated across the 15-year implementation period to fund the implementation of the activities. In 2023–24, implementation funding of \$659 000 will be provided to the department to fund the FTE salaries for implementation officers, legal advice and logistical support for the governance committees that underpin the partnership approach to implementation.

Dr D.J. HONEY: Within those payments, the minister mentioned issues around groundwater and so on. In reference to the previous question that the member for Central Wheatbelt asked about the Tjiwarl Palyakuwa ILUA,

I think the minister mentioned that they had full rights for management of any water on their land. Is this a new policy of the government that the Aboriginal PBCs or equivalent will be given control of any waters on their land?

Dr A.D. BUTI: This is a negotiated settlement. Native title is not just one holistic template for everyone. You have to look at the particular title holders and what is important to them—what their country involves and where water fits into that et cetera. It is not a new policy; it is part of an overall agreement. It will vary between groups in the state. Different agreements will have different outcomes.

Dr D.J. HONEY: I appreciate that they may be individual agreements, but there must be some overarching government policy on this issue. Is there an overarching policy that the control of waters will be given to Aboriginal prescribed body corporates or relevant bodies under future agreements?

Dr A.D. BUTI: The overall agreement is that we will reach an agreement. We will negotiate with the native title claimants on what should happen.

Ms M.J. DAVIES: I am on the same page, minister—page 73. I refer to the line item “Noongar Boodja Trust” under “Details of Administered Transactions”. Could the minister provide some advice on when all the lands that are within that agreement will be settled? I will provide some context to help sharpen my question. Many of our local governments are keen to develop land. They are waiting on the finalisation of details with the traditional owners. It is part of the settlement, but it has not been finalised and it is proving challenging for them to be able to develop land. That seems to be consistent feedback.

Dr A.D. BUTI: I will ask Ms Hunt to respond.

Ms F. Hunt: With respect to the member’s question on the trust, Central Services Corporation and the six regional corporations were recently established and the schedule and milestones of the agreement are being actively worked through at the moment. We are currently working with Central Services Corporation and in support of the regional corps that have recently been appointing CEOs and their various committees to their respective roles. The transfer of land will occur as a consequence of that. That is something that is being worked through and is a consequence of the time taken to appoint the regional corporations to their roles and obviously to transition to Central Services Corporation.

Ms M.J. DAVIES: Is there any idea of timing? Are we talking in the next financial year? I can imagine that there is some keen interest in some of the more lucrative parts of the coastal communities that will necessarily create opportunities for those groups. It typically tends to be some of the smaller communities in my electorate and maybe the electorates of the members for Moore and Roe that fall to the bottom of the list, but for those little communities, they are important. That does seem to be an inhibitor to being able to progress. A time line or an indication of when that will be settled would be much appreciated.

Dr A.D. BUTI: All I can say at this stage is that they are all under active processes and negotiations, and transfers and settlements will take place as soon as possible. Because it is an agreement and structures have to be put in place, I cannot tell the member that on this particular day there will be finality of the transfer of the land. It is an ongoing process and we are trying to achieve it as soon as possible.

Ms M.J. DAVIES: Does the department have KPIs on when it would like to see these things resolved? Is it working to a time line or a preferred time line, or is it open-ended?

The CHAIR: Minister, would you like to put it on notice?

Dr A.D. BUTI: I will make two points. The first is to ask the member to put the question on notice for further clarification. The second is that we are actively working on it and trying to resolve these issues as quickly as possible.

Ms M.J. DAVIES: I have only one more question on this and then maybe we will move to the Department of Planning, Lands and Heritage.

The CHAIR: The member for Central Wheatbelt with the final question.

Ms M.J. DAVIES: I refer to page 62 of budget paper No 2, volume 1, and the significant issues impacting the agency. The first paragraph refers to the National Agreement on Closing the Gap. I noted the minister’s comments on Closing the Gap at the *Business News* event last Friday. I thought I heard him say that some of those priorities might need to be revisited. I understand that the government will start to do that work in 2023. Could the minister confirm that work has commenced on the state’s Closing the Gap jurisdictional information plan update, noting that it is due to be updated this year? Maybe the minister could answer that question first, as I have another one.

Dr A.D. BUTI: I will ask Ms Hunt to respond.

Ms F. Hunt: Yes, work is well underway for the WA update to the Closing the Gap implementation plan for the state.

Ms M.J. DAVIES: Would the minister like to expand on his comment that some of the priority areas on which the government is focusing need to be revisited?

Extract from *Hansard*

[ASSEMBLY ESTIMATES COMMITTEE B — Tuesday, 23 May 2023]

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Ms Mia Davies; Dr Tony Buti; Dr David Honey; Ms Divina D'Anna; Chair

Dr A.D. BUTI: I formed that view not long after coming into this role, but this has to be agreed on a national stage. I am not in a position to say at the moment whether that prioritisation will take place in the sense of focusing on five, six or whatever number it may be, but I am very keen for that to happen. Because there has been no settlement on that, I am really not in a position to elaborate any further.

Ms M.J. DAVIES: Would the minister agree that outcome 11, which relates to Aboriginal and Torres Strait Islander young people and their representation in the criminal justice system, needs to be elevated?

Dr A.D. BUTI: I would say that every single one is important, but some are more important than others. It is something that we are prioritising. As I said, I am not going to pick each one today because they are all very important. Over time, with my colleague on the national stage, we will come up with the priorities.

The CHAIR: Minister, would you like a comfort break before move on to the next division?

Dr A.D. BUTI: I do not think we will have time for that, so we had better move on.

The appropriation was recommended.

[12.10 pm]