

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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**Division 48: Attorney General, \$390 765 000 —**

Mr P.B. Watson, Chairman.

Mr C.C. Porter, Attorney General.

Mr D. Creedon, Chief of Staff, Office of the Attorney General.

Ms C.M. Gwilliam, Director General.

Mr A. Andersson, Director Business and Financial Services.

Ms P.M. Bagdonavicius, Public Advocate.

Mr G. Hamley, Executive Director, Office of Native Title.

Mr J. F. Skinner, Public Trustee.

Mr R. Warnes, Executive Director, Court and Tribunal Services.

Mr G. Turnbull, Director, Legal Aid Commission.

Ms L. Baker, Manager Finance, Legal Aid Commission.

Ms Y. Henderson, Commissioner for Equal Opportunity, Equal Opportunity Commission.

**The CHAIRMAN:** This estimates committee will be reported by Hansard; the daily proof *Hansard* will be published at 9.00 am tomorrow.

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; this is the prime focus of the committee. Although there is scope for members to examine many matters, questions need to be clearly related to a page number, item, program or amount within the volumes. For example, members are free to pursue performance indicators that are included in the *Budget Statements* while there remains a clear link between the questions and the estimates.

It is the intention of the chairman 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 Attorney General may agree to provide supplementary information to the committee rather than asking that the question be put on notice for the next sitting week. For the purpose of following up the provision of this information, I ask the Attorney General to clearly indicate to the committee which supplementary information he agrees to provide, and I will then allocate a reference number. If supplementary information is to be provided, I seek the Attorney General's cooperation in ensuring that it is delivered to the committee clerk by Friday, 11 June 2010 so that members may read it before the report and third reading stages. If the supplementary information cannot be provided within that time, written advice is required of the day by which the information will be made available. Details in relation to supplementary information have been provided to both members and advisers, and, accordingly, I ask the Attorney General to cooperate with those requirements. I caution members that if the Attorney General asks that a matter be put on notice, it is up to the member to lodge the question on notice with the Clerk's office. Only supplementary information that the Attorney General agrees to provide will be sought by Friday, 11 June 2010.

It will greatly assist Hansard if when referring to the program statement volumes or the consolidated account estimates, members give the page number, items, program and amount in preface to their question. If any of the advisers want to answer, they must answer through the Attorney General.

I now ask the Attorney General to introduce his advisors to the committee.

[Witnesses introduced.]

**The CHAIRMAN:** Are there any questions from members? The member for Wanneroo.

**Mr P.T. MILES:** Listed on page 629 in the tenth line item on new works is the Carnarvon police and justice complex. Can the Attorney General outline what is involved in the construction of the facility, please?

**Mr C.C. PORTER:** I will perhaps give a little history of the Carnarvon police and justice complex. An amount was allocated by the previous government for that facility. We agree that the new facility should be located at the site identified by the previous government, which is the Gascoyne traders site at the corner of Robinson Street and Babbage Island Road. The state government will invest \$52.5 million to deal with a new police and justice complex in Carnarvon. That will bring together the courts, the police and community justice services into one facility. Part of that \$52.5 million appeared in the budget out years under the previous government. Provisional

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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on the capital audit that occurred prior to last year's budget, when all capital infrastructure projects over \$20 million were reviewed, that amount was taken out of the budget so that it did not appear in last year's budget. We have reviewed that decision with the slight improvement in financial conditions. That project is planned to go ahead. The provision in that line item also has an amount of royalties for regions funding, which is \$9.5 million of the \$52.5 million. That represents the fact that the build estimate has increased since the time of the previous government's estimation. There are some real difficulties with the current courthouse in Carnarvon—that may be a question that occurs with respect to the Department of Corrective Services—but we have had to bypass the police facilities in Carnarvon as a holding facility for prisoners who are en route to Perth. The view was taken that the facilities, as they presently stand, were not fit for purpose. That has caused some difficulties with respect to travel, and it indicates that there is a desperate need in Carnarvon for that court to go ahead. In the present facility there are no rooms presently for witnesses or victims, no pre-trial mediation rooms, no separate area for jurors and no contact interview rooms. As I said, the previous government allocated \$38 million, but this will be increased to \$52.5 million. Prior to the tender going out for construction for the new facility, there will need to be appropriate time to ensure that the occupiers of the site who are responsible for contamination will remediate the site. Some public comments have been made about the prospect of that delaying the construction. In meetings that my director has had with respect to the parties, which are the Shire of Carnarvon and Wesfarmers, who are the owners of the site, all indications are that it will not prevent the site from being constructed on time and according to schedule. It will be therefore a very good facility and one of several, hopefully. There were some other questions about Kununurra and Kalgoorlie.

**Mr P. PAPALIA:** Mr Chairman, can I pursue that briefly with the Attorney General?

**The CHAIRMAN:** Yes.

**Mr P. PAPALIA:** With regard to the environmental considerations that the Attorney General referred to, is it a requirement that an environmental approval process be concluded; and, if so, what is the status of that process and are there any time lines for the approval to be achieved?

**Mr C.C. PORTER:** My understanding of the very general background to the —

**Mr P. PAPALIA:** I realise it is not really the Attorney General's portfolio.

**Mr C.C. PORTER:** Yes, I know, but the mechanics of it are that the site was used for a purpose which now means that there is a presumption in favour of contamination having occurred. I think that is because it had fuels or some other items that had been stored on the site. Therefore, as a matter of balance of probabilities testing, it is not necessarily the fact that the site is actually contaminated, but there is a presumption in favour of its contamination. The environmental auditor has determined that there will be a report available at the end of the month as to the actual level, if any, of contamination, and that is what we were expecting. That report goes to the Department of Environment and Conservation. Obviously, I cannot guess at what that will be.

**Mr P. PAPALIA:** Yes, that is fair.

**Mr C.C. PORTER:** But that is the first and prequel stage, and that is on track.

**Mr P. PAPALIA:** That was not my question, Chair.

**The CHAIRMAN:** No.

**Mr P. PAPALIA:** I refer to division 48, page 621, significant issues impacting the agency. The top dot point refers to the government's law and order reform agenda being a priority and a number of bits of legislation have been listed that have been worked on. Can I have an indication of how much of a priority and what sort of time frame we are talking about for things like prostitution, which was a significant talking point prior to the election two years ago? I would also like an indication of some of the priority and time frames involved with the other items that are listed there as being such important priorities for the government.

[9.10 am]

**Mr C.C. PORTER:** Certainly. Perhaps I will start with prostitution. Of all of those items listed as being a priority, prostitution, without question, is the most complicated and controversial. Perhaps, to put it in context, the manner in which a government might successfully bring in legislation of that level of controversy is a matter of history. The previous government—the member's government—had two attempts at prostitution legislation. The first attempt was in 2005. It had not passed through Parliament at the time of the second to last election. The second piece of legislation, which actually was very different from the first piece of legislation, passed through Parliament prior to the time of the last election, but we, pursuant to our promise to have what we think is a —

**Mr P. PAPALIA:** I am much more interested in what the Attorney General is doing about it.

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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**Mr C.C. PORTER:** Indeed; but I think that the timing of these issues that the member has asked about has to be put in context as to how difficult they are. My aim with respect to prostitution is to have a green bill available and tabled by the end of this year so that public comment can flow from that green bill. That is aspirational—I believe I can meet that —

**Mr P. PAPALIA:** Is that an indication of how quickly high priorities pass through the government’s process—three years by the time we get a green bill?

**Mr C.C. PORTER:** Although it is one of several key priorities —

**Mr P. PAPALIA:** We have slightly slipped on the 100-day promise is what I am getting at.

**Mr C.C. PORTER:** I actually do not think prostitution was in the 100-day promise.

**Mr P. PAPALIA:** I am sure it was. I am sure that in the lead-up and during the campaign, the Premier made this particular piece of legislation one of his highest priorities.

**Mr C.C. PORTER:** I know the 100-day document guessed pretty well. In the 100-day document we said that we would repeal the Labor bill. In fact we met the substance —

**Mr P. PAPALIA:** The Attorney General knows the indication given to the community of Western Australia was not that a Liberal government was going to repeal the Labor bill; it was going to sort it all out. Particularly members on the government side of the committee at the time were very interested in what the Attorney General intended. I am still interested to find out.

**Mr C.C. PORTER:** We will sort it all out, but the member’s contention is that we promised to sort it all out in 100 days. We never made that promise.

**Mr P. PAPALIA:** My contention is it was this government’s highest priority, and we are looking at three years down the track. It will not go through before the next election.

**The CHAIRMAN:** Members, can we get to the point? We could be here all day.

**Mr C.C. PORTER:** We simply never made that promise. Of course such a promise would never be made because it would be ridiculous to conceive that an act could be repealed—in this case not proclaimed being the route that we chose—and replaced in an area as serious and as controversial as prostitution in 100 days. That promise was never made.

**Mr P. PAPALIA:** I agree that it was ridiculous.

**Mr C.C. PORTER:** It would have been ridiculous to have been made if it was ever made, but it was not made. My aim is to have a green bill by the end of this year. That will beat the previous government’s effort by six years, which is really not a bad effort.

**Mr P. PAPALIA:** I will wait and see whether it is achieved!

**Mr C.C. PORTER:** The member has also asked about the procedure. A senior officers’ group has been working across several departments. The central aspect of the promise that we have made in terms of the legislation is that we will not have lawful—that is, registered prostitution—in what the Premier termed prior to the election “residential areas”. There are obviously complications associated with that; that is, land use issues in terms of local government regulations. There are mixed areas of land use. I believe that we will and can make good on that promise not to have lawful, registered prostitution in residential areas. That has involved a lot of interagency cooperation in terms of the fundamentals of the plan as between the offices of the Minister for Local Government and the Minister for Planning, and my own. I intend to have the green bill out for public comment rather than have the consultation period prior to the final bill being drafted. In my view that is a way to avoid the situation that has occurred previously of bills coming into Parliament too late to be effectively passed during a term of government. If a green bill is tabled by the end of the year—which I have every confidence that it will be—that is a relatively good effort when compared with the history of this matter over the last eight to 10 years.

**Mr F.A. ALBAN:** I refer to the seventh line from the top of page 622 of the *Budget Statements*, “Coroner’s Court — Time to trial”. Can the Attorney General inform the house on the number and makeup of backlog files at the Coroner’s Court?

**Mr C.C. PORTER:** I thank the member for the question. The first thing to point out is that the item “Coroner’s Court — Time to trial” that appears at page 622 represents figures in terms of weeks, which are far in excess of both the Supreme Court criminal and civil times to trial and the District Court criminal and civil times to trial. There is a reason for that that I will come to in a moment.

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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We have had significant improvements with respect to that area in terms of affecting what was a large backlog of matters. One of the reasons there will always be a much longer wait in terms of time to trial for the Coroner's Court is that the time is measured from the death that is to be later investigated to either the administrative hearing or the full hearing in the Coroner's Court. There are a number of matters that bear upon whether or not and how long that will take that do not necessarily bear on a usual criminal trial. It might be the case, for instance, with a coronial matter, that there is a wait for a criminal investigation to finish before any cause of death can be determined or any indication given as to whether it actually requires a coronial investigation. Sometimes it is the case that quite complicated pathology occurs, including the sending of organs to other jurisdictions; as I understand there is only one person qualified in the Western Australian jurisdiction to undertake the sort of examination that the coroner routinely requires on organs. In some instances delay is occasioned by families of deceased requiring secondary opinions and themselves commissioning those opinions, either consequent to a police investigation or initial coronial findings. That also has the tendency to delay the matter.

What occurred in terms of the backlog—that was the important factor for this government—was that a backlog had developed because the coroner's office had been underfunded. In the midyear review, consequent to last year's budget, we allocated an additional \$822 000 to the coroner; \$622 000 of that was for an increased number of full-time employees for the coroner. That has had a significant impact on the backlog of matters. Another \$200 000 was for pathology services. In this budget, the \$641 000 for the additional FTEs continues. Again, that will have a major impact on the backlog of cases that are waiting to be heard. I think there are 75 backlogged inquest cases at the moment.

The number of cases older than 12 months, which is a key indicator, is currently 705. The time to trial is 99 weeks. That is down from 112 in the previous financial year, and is a significant improvement. That is the improvement that we can directly attribute to the extra funding. It is certainly my hope to have that extra funding on an ongoing basis for the coroner. To this point we have delayed putting that funding clearly in all of the out years based on waiting for a Law Reform Commission report into the coroner's office, which, in part, will deal with funding but also will deal with matters such as structure—which funding is obviously intimately related to. It is certainly the case that we will look into that in the future. It seems to me appropriate that the coroner's funding increase continues. By the end of 2009–10 the backlog will be reduced to 400 files; and by the end of 2010–11 it is anticipated that most, if not all, of the 75 inquest files will be completed and the backlog of administrative files will be reduced to 150 files. That is a significant improvement in terms of the timeliness, but the timeliness for the Coroner's Court will never be as good as it is for the District Court or Supreme Court in criminal matters.

[9.20 am]

**Mr J.R. QUIGLEY:** Page 631 of the *Budget Statements*, under the heading "Details of Controlled Grants and Subsidies" has a line item, "Act of Grace and Ex-Gratia Payments". In 2008–09 that allocation was \$3.072 million; in 2009–10 no payments were made, and nothing has been allocated for the out years going forward. The Treasurer's Advance Authorisation Bill 2010 contained a line item of \$10.5 million, but that amount is not shown in the *Budget Statements*. Given that there is an act-of-grace payment outstanding for the family of the late Mr Ward and that the Director of Public Prosecutions has stated that there will be a withdrawal of the confiscation application against Mr Nigel Mansfield, which we have been told is in the order of between \$6 million and \$15 million depending upon who people listen to, why is there no budget allocation for these large payments?

**Mr C.C. PORTER:** There has been some confusion about this, and I appreciate the member's question. At the time of the Treasurer's advance authorisation an estimate is made of any additional payments—that is, payments that may have to be made between April and, for instance, 30 June of this year. That \$10.5 million is an estimate made by officers of the Department of Treasury and Finance of amounts that may have to be paid during that period of time. I will come back to that in a moment and give the member some description of what it appears that DTF has in its mind when it sets out that figure.

The second part of the member's question appears to ask why it is that this budget does not contain an allocation for ex gratia payments that may need to be made between 1 July 2010 and 30 June 2011. The answer to that is procedural in that it has never been done that way, as far as I understand it. Moneys are not prospectively allocated in the budget for ex gratia payments that may be made in the next final year. Through the *Government Mid-year Financial Projections Statement*—or the Treasurer's advance—moneys are allocated for payments that have either been made or are about to be made, or, in the case of the Treasurer's advance, payments that may be made between April or June. It appears that with respect to that \$10.5 million, DTF officers settled on some estimate as to moneys that may have needed to have been paid out by the end of this financial year. It appears that they included in that amount mesothelioma payments that may have had to have been made—I think they

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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were in the vicinity of \$2.5 million. They also included an estimate that the final Ward payment may be made by the end of the financial year. They also made an estimate for the fact that it may have been that any moneys going to Mr Mansfield pursuant to the settlement of his court action may have been paid out by the end of the financial year. DTF officers estimated what those payments may have been for Mr Ward and Mr Mansfield, but those payments may or may not occur by the end of the financial year. If they do not occur by the end of the financial year, we will, in effect, go through the same process in the midyear review and the Treasurer's advance to have those moneys allocated forward. They will not be allocated in this budget per se.

**Mr J.R. QUIGLEY:** I have a supplementary question. But the Attorney General has conceded that the DPP has already indicated to the Supreme Court that this payment has to be made to Mr Mansfield, and the Attorney General himself has said there will be a substantial payment to the relatives of Mr Ward.

**Mr C.C. PORTER:** Yes.

**Mr J.R. QUIGLEY:** These are not theoretical payments; these are payments that are due to be made, yet there is no provision in the budget.

**Mr C.C. PORTER:** The member is pointing to what he views to be an imperfect procedure, and he may well be right. If the Mansfield and Ward matters were to be concluded and paid on 13 July this year, my department would pay those out of cash reserves and would be reimbursed. They are just simply the accounting measures that have always been in place for those matters. It appears that one of the reasons that occurs is because it is very, very difficult to estimate what those amounts will be given that, in one instance, they rely upon ongoing negotiations between the DPP and Mr Mansfield; in the other instance, conversations and negotiations are ongoing between myself and the Aboriginal Legal Service on behalf of the family of Mr Ward. That makes the quantum very difficult to predict, which appears to me—without having a deep historical knowledge of it—why it is that this process, which the member considers imperfect, has been adopted. Nevertheless, that is the process that has been in place for some time.

**Mr J.R. QUIGLEY:** I am not saying the process is imperfect—I am saying the budget is imperfect. But if the Attorney General looks at what the government put before the Parliament, the Treasurer's Advance Authorisation Bill 2010 contains an allocation of \$10.5 million for act-of-grace payments, of which the Attorney General said that approximately \$2.5 million has been set aside for the mesothelioma payments, leaving a balance of \$8 million, in respect of which the Attorney General said that the Department of Treasury and Finance has allocated a substantial sum for the relatives of the late Mr Ward and for Mr Nigel Mansfield. How much did they allocate for Mr Ward and how much did they allocate for Mr Mansfield in the figure put before the Parliament of Western Australia?

**Mr C.C. PORTER:** That might be a matter that the member needs to ask Treasury because that is its estimate, not mine. The fact is that any estimate may be extremely inaccurate because the decision about the payment to Mr Ward's family will ultimately be a decision of the executive and cabinet, which is not known either to me or to Treasury. The Mansfield amount will be pursuant to any agreement that can be reached pursuant to negotiations between the DPP and Mr Mansfield. In any event, because that money has to be approved by the cabinet, it ultimately becomes a cabinet decision to in fact authorise any result of the negotiations. Treasury officers, knowing that the two processes are in place, have obviously made some kind of estimate about those matters. That is not my estimate and neither is it, as I understand it, the DPP's estimate. The Treasurer's advance considered what may be a possibility between April and the end of the financial year. It may be that neither of those payments will be made between now and the end of the financial year, in which case the Treasury estimates are, if we like, 100 per cent wrong because the payments will not be made. That is just the system that is in place.

**Mr J.R. QUIGLEY:** This is a totally murky area of the budget, is it not? The government has come before the Parliament and asked the Parliament to vote on a Treasurer's advance of \$10.5 million on the basis of what the Attorney General has told the chamber today is merely a guesstimate. The government has asked the Parliament to vote on speculation—is that not right?

**Mr C.C. PORTER:** Indeed, but there are reasons for that. If it were the case that either or both of those matters concluded before the end of the budget and no money had been included in the Treasurer's advance, the member would equally be complaining that no money had been included in the Treasurer's advance. When matters have timing issues that are outside the control of any agency or minister there will either be an inaccuracy in the previous year or an inaccuracy in the prospective year. It appears to me that that is why it is done in the way it is done. But of course the way it is presently done is the way it has been done for many years. If there is a better way, that may be something that Treasury may look into, but how Treasury goes about the timing of making the estimates is not a matter in my control.

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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**Mr P. PAPALIA:** I have a further question. I am interested in this, too, from an administrative point of view with regard to the budget, because this \$10 million was in the Treasurer's advance and then suddenly disappeared. Other items under the control of the Attorney General as Minister for Corrective Services are the court security and custodial services contract and the Coroner's Court. Did those allocations also disappear if they were not spent? Has the money allocated in the midyear financial review gone?

**Mr C.C. PORTER:** Sorry, what why items is the member looking at? Give me a line item.

[9.30 am]

**Mr P. PAPALIA:** I am looking at any of these other line items. "Court and Judicial Security" is a line item on page 629.

**The CHAIRMAN:** Member, we do not want to get away from the line we are talking about at the moment.

**Mr P. PAPALIA:** This is related, Chair, because the line we are talking about does not appear. The question was why the \$10 million allocated in the midyear financial review does not appear in this year's budget. For the same reason, I ask: are all the other allocations in the midyear financial review there or there only if they were spent? Is this part of the Premier's never-never land approach to the budget or is this a special rule just for ex gratia payments?

**Mr C.C. PORTER:** I think the member's question is: with respect to line items appearing in the Department of the Attorney General's budget, if there is an overspend, is it possible that some of those moneys are brought over into the next financial year? That is possible but there are forms that need to be filled in and procedures that need to be observed. That is the answer to your question.

**Mr P. PAPALIA:** Would I be able to find an allocation in the midyear financial review in the budget for something other than ex gratia payments?

**Mr C.C. PORTER:** The purpose of the midyear review is to allocate funding for matters that have not appeared in the budget and that could not have been anticipated.

**Mr P. PAPALIA:** That is last year's budget.

**Mr C.C. PORTER:** That is correct.

**Mr P. PAPALIA:** In this year's budget, should not the estimated actual have a line item for expenditure from the midyear financial review that has subsequently taken place between then and now? If it were not spent, would it somehow be reflected in this year's budget?

**Mr C.C. PORTER:** On page 619, under the heading "Major Spending Changes" it reads —

Details of major decisions impacting on the Agency's Income Statement since publication of the 2009–10 Budget ...

These are moneys that were, in effect, allocated in the midyear review process that appear in the four out years of our budget. One example is the Bell litigation appeal. We secured considerable funds, which are, for all intents and purposes, to pay for an additional three judges to come into this jurisdiction and hear the Bell matter. It appears to me, at least, that Treasury does the midyear review process in terms of line items for things like Bell because we definitely know that Bell will go ahead and require certain funding in this next financial year. There is "planability" and predictability. It may have been the case and may still be the case that the negotiations between the DPP and Mr Mansfield, for instance, are concluded by the end of this financial year. But I simply do not know that. If that is completed and whatever agreement is reached is authorised in terms of a payment by cabinet, the moneys, or part of them, that were allocated in the figure the member for Mindarie has spoken of will flow this financial year. But they have not been allocated across the next financial year because there is no guarantee that agreement will be reached in the next financial year. We simply do not know whether that is the case. That will depend on negotiations that are out of my control. It appears to me that it is a matter of Treasury process; that is, the distinction between the line items in the midyear review that appear in the budget and matters that occur in the Treasurer's advance that do not appear in the budget.

**Mr J.R. QUIGLEY:** Further to the act of grace payment line item on page 631, the Attorney General is saying that the Department of Treasury and Finance arrived at the figure of \$10.5 million by way of guesstimate, without any input from the Attorney General or his department as to the likelihood of these matters being resolved in the current financial year. The Attorney General is saying that Treasury arrived at this figure without any expectation there will be a payment in the current financial year.

**Mr C.C. PORTER:** No. DTF officers became aware of the possibility —

**Mr J.R. QUIGLEY:** From reading *The West* or how?

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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**Mr C.C. PORTER:** No; through inter-officer communications they became aware of the fact that negotiations are ongoing between the DPP and Mr Mansfield. They are also aware that there is some possibility that the Ward matter may be resolved by the end of the financial year. They are made aware through officer level communications. The member used the word guesstimate, but as I understand it, having regard to its own experience in matters of this type, Treasury makes some estimate. But the estimate is not my estimate and it is not the DPP's estimate. In my view, it is a very overly cautious estimate made by Treasury, but it is Treasury's estimate.

**Mr J.R. QUIGLEY:** The Premier talks about never-never land. This is fairyland is it not? The Attorney General is not prepared to give even an indication to this chamber this morning that these matters are likely to be concluded, despite what he publicly said to Mrs Ward, even by 30 June 2011. He is not prepared to put that forward as a realistic proposition is he?

**Mr C.C. PORTER:** I think it is realistic and possible, but I do not know whether it will be —

**Mr J.R. QUIGLEY:** If it is realistic, why has some provision not been made in Western Australia's public accounts for that contingency?

**Mr C.C. PORTER:** There are two reasons for that. First of all, it may not occur before the end of the financial year, notwithstanding that it may realistically occur. The second is that, as a matter of procedure, as it was under the previous government, if the Department of the Attorney General became responsible for any ex gratia payments, it would pay them out of cash reserves, and then the Treasurer's advance or the midyear review would be reimbursed. If there were any possibilities of payments being made, whether they be likely, real or remote possibilities of payments needing to be made between the Treasurer's advance in or about April and the end of the financial year, the Treasurer's advance would include an amount that was based on an estimate from DTF officials as to what those amounts may be. That is the process that existed over the last financial year and it is the same process that existed under the previous government for eight years. My department does not get paid in advance in line items in the budget, either predicated on the midyear review or this process, for ex gratia payments that may or may not be made in the ensuing financial year. It has simply never been done that way.

**Mr J.R. QUIGLEY:** On the same line item, in respect of the former of the two examples cited, the Attorney General will have a reasonable idea of the amount of assets seized from Mr Mansfield and a reasonable idea of the amount of compensation flowing from the amounts of the assets seized, and that this is likely to be concluded within the coming financial year.

**Mr C.C. PORTER:** Not at all. In fact, as a matter of proper process and in observance of the independence of the Director of Public Prosecutions, I am in no way involved in the negotiations that are going on pursuant to the damages claim that Mr Mansfield has against the DPP.

**Mr J.R. QUIGLEY:** But the Attorney General worked in that section; he knows that the assets were seized. From working in that section under Mr Staples, he would have an idea from his own work history of the amount of assets seized.

**Mr C.C. PORTER:** I never worked under Mr Staples.

**Mr J.R. QUIGLEY:** Finally, in relation to that line item with nothing going forward and the Attorney General saying this is historical accounting, for the public of Western Australia, will any other prospective large quantum ex gratia payments need to be considered by the government over the next 12 months?

**Mr C.C. PORTER:** That is a very fair question. My answer is: none that I am aware of. I am aware of the potential for a substantial payment in the case of Ward. I am aware of the potential for a substantial payment in the Mansfield matter. The distinction between the two though, member, is that I am intimately involved in the negotiations, the correspondence and the legal views that are being put by the Aboriginal Legal Service on behalf of the Ward family. In the Ward matter, I have some inclination to consider what is a reasonable figure that we may reach in consultation with Mr Ward's legal representatives. Whereas, in the matter of Mr Mansfield, although I am aware of the legal basis upon which damages are payable, I am not involved at all in the ongoing negotiations between the DPP and Mr Mansfield. Indeed, all I have done with respect to those negotiations is seek a briefing from the DPP on when those negotiations are likely to be concluded. These are questions that the Attorney General is obviously free to ask the director during debate on his division. The best available advice that he has given to me is that, whereas those negotiations were proceeding relatively quickly, they have settled and at the moment it is not possible for the Director of Public Prosecutions to say when they may be concluded. I take that to mean that they may be concluded in this financial year, but that now appears highly unlikely. They may be concluded in the next financial year, but that is as yet unknown. Apropos the member's question about why we would not have a line item in this budget for a potential ex gratia payment pursuant to the negotiations in damages that are going on between the DPP and Mansfield, the two answers are: firstly, that is simply never how

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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it has been done; and, secondly, there is a reason for that—we do not even know whether that matter will settle and need to be paid in the 2010–11 financial year.

[9.40 am]

**Mr J.R. QUIGLEY:** Would the Attorney General take this point? When he says “potential payment”, these payments are, as far as Western Australia goes, definite liabilities. They are not potential payments; they are payments that certainly have to be made and they will be in the order of millions and millions of dollars.

**Mr C.C. PORTER:** With respect to the Mansfield matter, I would agree with the member’s assessment that that is a payment that legally must be made. As to its quantum, I would not wish to guess; the member may want to ask the Director of Public Prosecutions. The Ward matter is solely in the province of the executive and solely a matter of executive discretion; however, we have said publicly that a final amount will flow and it will be substantial. I think that the point of the member’s question is: am I aware of anything like those two matters that is impending in the next financial year? I have not received any advice from the DPP or any other agency that there are matters of a similar quantum that may arise in the next two years. The closest thing that I can think of is the Butcher matter, but no formal application of any type has been made to me with respect to that, so I would not even put that in the category of being a definite matter. The member must keep in mind that Mr Ward, unfortunately, died some time ago during the time of the member’s government. The question that might be asked is: why did his government not put in its out years provision for an ex gratia payment? The previous government did not do that for the same reason that we did not—we do not know when it will occur or how much it will be.

**Mr J.R. QUIGLEY:** The answer might be that that was before the Coroner’s Court delivered its finding. Leaving that aside for a moment —

**The CHAIRMAN:** I think the member has had enough on that question. The member for Southern River.

**Mr P. ABETZ:** I refer to the fifth note on page 623 regarding the effectiveness of the Fines Enforcement Registry. Can the Attorney General inform us of the amount of fines outstanding and what is being done to reduce the amount of outstanding fines?

**Mr C.C. PORTER:** A good deal has been done and more will be done over the next financial year. The member will note that provision has been made in a line item for moneys to flow in the next financial year and in the subsequent financial year under the banner of new fines enforcement measures. If the member looks at page 619, he will see that for 2010–11 there is just over \$1 million, which increases to \$1.4 million and then to \$1.492 million and then decreases to \$850 000. Those figures are for measures that involve changes to legislation that will be brought before cabinet shortly. The reason that that amount increases and then decreases is that it is considered that the measures, by virtue of the increased revenue that they will bring in, will potentially be self-funding. The question that the member has asked is one of those questions that appears to me to be asked each year in estimates. The level of outstanding debt as at the end of March this year was \$240 million, of which \$235 million is subject to active enforcement and \$5 million is due to be written off.

We have had some success over the past year in stabilising the key indicator. Each year more and more fines become registered with the Fines Enforcement Registry. It has as its source both court fines and other fines from a whole variety of agencies; they might be traffic infringements or parking infringements. We anticipate that by the end of the financial year the total number of fines and infringements registered will top the three and half million mark, which obviously is an enormous number of fines. One of the key indicators is the number of fines incomplete. The member will see that three and a half million registered fines since 1996–97 represents a very sharp increase in the fines being registered with the Fines Enforcement Registry. Since coming to government, we have, thankfully, managed to stabilise the matter of fines incomplete. With the increasing number of lodged fines, we cannot have an increasing number of fines becoming incomplete. The number of fines incomplete has very much stabilised; it has stabilised at about the 750 000 mark. I am working off a graph that I am happy to provide. It has stabilised since about 2008. We have increasing registrations and we have managed to flatline the number of fines that are becoming incomplete, which is a very positive development. But we will not start to increase the completion rate, if I can put it that way, until the new measures come into play.

I will give the member some factual background about the overall number of registrations. Since 1995, 3.97 million fines and infringements have been escalated to FER—that is, registered with it. More than \$982 million in fines have been registered with the Fines Enforcement Registry to the end of March. Although I think that figure of \$240 million in outstanding debt absolutely needs to be brought down, that must be kept in context with the fact that there is \$982 million of value in the fines that have been registered. Of all the matters that have been lodged with the Fines Enforcement Registry, 82 per cent have been completed—that is, they have been either paid, acquitted or, in a very small number of cases, written off. The total value of completions is

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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\$725 million; an amount of \$598 million has been collected or obtained through other means, such as warrants of commitment; and \$128 million has been written off or referred back to court. A further \$17 million has been collected through partial payments being made, including time-to-pay arrangements, which is one area that we are very definitely trying to hit to decrease that amount of \$240 million.

One other thing I would add is that almost \$70 million of that \$235 million that is under active enforcement comes under time-to-pay arrangements. They are the arrangements whereby people agree to have an amount deducted from either their Centrelink benefit, which they can do voluntarily but which we cannot obtain compulsorily, or a wage, or from any other source. Since coming to government, we have managed to stabilise the number of incomplete matters, notwithstanding very dramatic increases in lodgements. We can start to get that amount down with the new measures which we are bringing into place and which we have budgeted for; nevertheless, there has been a significant stabilisation. This is an area that the government definitely needs to get right by virtue of the fact that the number of lodgements that have been made since the Fines Enforcement Registry was created in 1995 is increasing at a very substantial rate.

**Mr P. ABETZ:** Is any record kept of, or is it possible to determine, the extent to which Indigenous people are represented or overrepresented with outstanding fines?

**Mr C.C. PORTER:** We keep identifiers for Indigenous persons, certainly, with respect to prison and certainly with respect to community corrections orders. I seem to recall that we keep them with respect to those people who have determined to transfer a fine into community work because we keep them for community work. I understand that we do not keep information on the criteria of Indigenous or non-Indigenous, or on any other ethnic-based criteria, for people who get fines. I am informed that we can do it by postcode.

[9.50 am]

**Mr P.T. MILES:** Will we spend half an hour on each division?

**The CHAIRMAN:** That is something that the committee decides. I do not decide that; members decide that.

**Mr P. PAPALIA:** With regard to that, can the Attorney General confirm which departments we have here? We have equal opportunity here as well.

**Mr C.C. PORTER:** All departments are here other than the Department of Corrective Services.

**The CHAIRMAN:** Members have to put a question.

**Mr P. PAPALIA:** This is in relation to the question just posed. I am trying to confirm which departments are here because I do not think that was made clear at the start.

**The CHAIRMAN:** If members look at the sheet, it shows divisions 48, 49 and 50.

**Mr P. PAPALIA:** It is not that clear.

**Mr P.T. MILES:** It is, Mr Chairman. We are on division 48, which is the Attorney General's department. If we want to go to division 49, we will be dealing with the Corruption and Crime Commission.

**Mr P. PAPALIA:** Will we jump around divisions in this session?

**The CHAIRMAN:** No. We have started with division 48. We must pass division 48 and then go to divisions 49 and 50. The next question is from the member for Kimberley.

**Mrs C.A. MARTIN:** I draw the Attorney General's attention to new works, services and physical infrastructure on page 629 of the *Budget Statements*. Could the Attorney General give me more information about the Broome and Kununurra courthouses?

**Mr C.C. PORTER:** The member will be aware that the Broome courthouse is beautiful.

**Mrs C.A. MARTIN:** It would be better suited for a restaurant.

**Mr C.C. PORTER:** Indeed. It is an aesthetically pleasing courthouse but its facilities for both victims and witnesses could not be described as terribly modern. I am very keen to try to preserve the aesthetics of that courthouse but to ensure also that it grows and is redeveloped so that it is fit for modern court purposes. Every time someone comes to town and wants to film a courtroom scene, they go to Broome courthouse. It would be terrible if we lost the court's aesthetics. We have put aside \$500 000 for planning for the Broome courthouse. That envisages the planning to take into account the fact that we want to keep the existing facilities and either modify or build around those facilities so that we can have a modern courthouse in Broome. I probably cannot add too much more than that at the moment, given that that is money for planning and I am not a planner. However, it is envisaged that the heritage value will remain and that whatever is built will be built in sympathy with the existing courthouse, but it will be a modern courthouse.

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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**Mrs C.A. MARTIN:** Is the government looking at maintaining that location rather than walking away from it and finding somewhere that is more appropriate and closer to the new police complex and the new police station, which are across the road?

**Mr C.C. PORTER:** The planning brief is able to look at locations other than the immediate geography of the court as it exists at the moment because the police station, as the member points out, is across the road. A co-facility may be built there. However, as I said, regardless of whether it remains as a courthouse or something else, the courthouse as it presently exists will continue to exist.

**Mrs C.A. MARTIN:** It would be a great restaurant.

**Mr C.C. PORTER:** Quite possibly. No doubt, it will be a very broad and interesting consultation process. The redevelopment of the Kununurra courthouse is set to commence in 2010–11 and is expected to be completed by 2013–14. A new magistrate was appointed to Kununurra in 2009 to deal with the growing demand in criminal cases there. Frankly, there were a lot of complaints coming from that magistrate and from visiting District Court judges, even down to arguments over who should vacate a room when the District Court judge came.

**Mrs C.A. MARTIN:** It is a terrible place.

**Mr C.C. PORTER:** Indeed. It was causing difficulties internally. The holding cells in the police station are not very good. As we funded an extra judicial officer in Kununurra, the complaints increased.

**Mrs C.A. MARTIN:** There is no doubt that they were valid.

**Mr C.C. PORTER:** Indeed. Given the strength of the complaints, my staff and I looked at it and I was convinced that something needed to be done about Kununurra. In my view, it was probably the number one priority in the state in terms of underdone court facilities. We will have two courtrooms, six interview rooms, four non-contact interview rooms, a room for witnesses and victims, a room for mediation and pre-trial conferences, and a separate area for empanelling a jury. The estimated total cost is \$43 million. That will start in 2010–11 and be completed in 2013–14. That is all royalties for regions money. This is a matter that I have spoken about at length with —

**Mrs C.A. MARTIN:** Does the government not have the money in its own budget?

**Mr C.C. PORTER:** It is all the government's money.

**Mrs C.A. MARTIN:** No, the royalties for regions money is different, I am told. It is to be above and beyond what is normally required. That is what the promise was. I do not know whether it was a real promise.

**Mr C.C. PORTER:** The Kununurra courthouse redevelopment was identified as one of several priorities. In my mind, it was perhaps a more urgent priority than had been listed when I first came to government and when Labor was in government. I approached the Leader of the National Party and put to him my view that although it is not necessarily glamorous to spend capital infrastructure on courts in the regions, it provides a real and immediate service to people who are accused of committing a crime and to people who are the victims of crime.

**Mrs C.A. MARTIN:** It was not safe in the courthouse for anyone.

**Mr C.C. PORTER:** We have undertaken some modifications over the past 12 months.

**Mrs C.A. MARTIN:** As I said, it was not safe, and the Broome courthouse was even worse. Broome has a greater population, with 20 000 people.

**The CHAIRMAN:** Can members stop having a conversation and ask questions? If you have a question, put a question.

**Mr C.C. PORTER:** The member is right to raise these concerns. The modifications that we have put in place, at significant expense over the past year, have made the court safe. We spent nearly \$600 000 just to get the court to meet the minimum standards. It clearly needs a complete overhaul. A capital spend of \$43 million will provide an absolutely first-class criminal justice facility. I am very pleased that the Leader of the National Party and his party saw that this was an important infrastructure project for the community.

**Mrs C.A. MARTIN:** Will the Attorney General approach the Leader of the National Party for the other very, very urgent courthouse restructuring for Broome, or will the Attorney General take that on as his responsibility through his department and the budget process?

**Mr C.C. PORTER:** What members have seen in the budget in terms of court infrastructure facilities is a mix of royalties for regions funding and general government funding. For instance, in my view, there was an underallocation to the Carnarvon project. Our government has put back into the budget a similar amount of funding and that the previous government had provided, and that has been topped up with royalties for regions

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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funding. Royalties for regions funding is providing the planning money for Broome, and construction of the Kununurra courthouse. It will always be a blend. However, it seems to me that the royalties for regions money can be used for projects that we have identified that could be brought forward by the allocation of royalties for regions money. Obviously, that matter has to be determined by the Leader of the National Party. If the Leader of the Nationals determines that that is a priority for the region, it would be possible. It will be a mix of funding. The next area that I think is in need is the Karratha facility. Of course, a new police station has been opened there. A terrible donga at the back of that facility is being used for Magistrates Court proceedings. The member must also keep in mind that the other infrastructure project that will start very soon is Kalgoorlie, which will also be a very large spend on an absolutely excellent piece of infrastructure for Kalgoorlie. That also is a consolidated funding with a top-up above and beyond what was previously allocated. Funding being provided by the royalties for regions funding allows projects to proceed more quickly than they otherwise would have.

[10.00 am]

**Mrs C.A. MARTIN:** Further to that question, we have \$500 000 from royalties for regions for the Broome project. I am sorry for being pedantic, but I really need to get this on the public record. Once the Attorney General has done the research, will he then take responsibility for his department to actually do its core business, which is to provide this form of infrastructure for the wider community? That is what I want to come back to. I want to know whether the Department of the Attorney General will pass this on to royalties for regions, or whether it will take on its core business—which is what these projects are to me. I live in a democracy, like everybody else. I want to know why all of a sudden the department's core business is actually going somewhere else. Will the Attorney General pass this on to royalties for regions, or will he make sure that these projects are a part of the forward estimates and that he does his job so that we can enhance our community without having to do this sort of thing?

[Mrs L.M. Harvey took the chair.]

**Mr C.C. PORTER:** That is a fair question. I view my job as being to do my absolute best —

**Mrs C.A. MARTIN:** I think the Attorney General is doing a great job, by the way!

**Mr C.C. PORTER:** That is very nice of the member.

**Mr J.R. QUIGLEY:** I would not say that!

**Mrs C.A. MARTIN:** I am getting what I want!

**Mr C.C. PORTER:** I view my job—in terms of the intense competition for funding between departments—as being to do my absolute best to secure funding for my portfolio areas that I consider can be justified as a priority, or, above and beyond that, as critical. I think the member's question has two parts. The first is: is there any intention for us to divest ourselves—that is, my Department of the Attorney General—of the core business of running courts?

**Mrs C.A. MARTIN:** Or building them, which is also the department's core business, in my view.

**Mr C.C. PORTER:** Indeed. But let me answer quickly the first question. There is no prospect of any recurrent funding from royalties for regions for the provision of services. They will always be services that are delivered out of the general revenue of our own budget, which is the Department of the Attorney General. As to construction, will I undertake to build only courthouses with Department of the Attorney General money, no. I will undertake to be in conversation with the Nationals about infrastructure funds that they may have available to build facilities in criminal justice. These are questions that could also be directed to the Leader of the Nationals. My understanding of the way in which royalties for regions infrastructure funds are used is that they have to be new projects. That does not mean to say that they cannot be projects that traditionally have come out of non-royalties for regions funding—keeping in mind that was all the funding there was before there was such a thing as royalties for regions. But they have to be appropriately tailored in terms of providing critical infrastructure to regional communities. So it seems to me, dare I say it, a very sensible decision on the part of the Leader of the Nationals to identify criminal justice facilities—which have been delayed over many years by virtue of a shortage of funds in other areas—to be provided from royalties for regions.

**Mrs C.A. MARTIN:** So the Attorney General is not going to go back to his core business? That is what he has just said. He will be negotiating with the Leader of the National Party to provide core business that used to belong to the Department of the Attorney General. I just need the answer.

**Mr C.C. PORTER:** I think the member's question is: will I keep trying to achieve some portion of royalties for regions funding for criminal justice facilities? The answer to that is yes. At the end of the day, this is all taxpayers' money. The point of royalties for regions was to provide a particular focus for the expenditure of taxpayers' money on infrastructure and other matters in the regions that may have been, in the view of many,

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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neglected. I do not think that I am giving up my core business. My core business is providing infrastructure in my portfolio areas. If I can do that with the intelligent cooperation of the Leader of the Nationals, then I will keep trying to achieve that.

**Mrs C.A. MARTIN:** I thank the Attorney General.

**The CHAIRMAN:** I just want to draw members' attention to the time. We are still on division 48 and we have a number of divisions to get through by 3.00 pm. Three members have indicated that they would like to ask questions on division 48. The member for Mindarie.

**Mr J.R. QUIGLEY:** I have a question about the fourth dot point on page 621, under "Significant Issues Impacting the Agency". Before I do that, to put my question in context, I refer to page 620, item 6, "Legal Aid Assistance", under "Service Summary", "Expense". There seems to be a structural bias in Western Australia in favour of the rich and the corporate rich versus the average working person. The budget for the legal aid assistance scheme is to be increased from \$66.56 million to \$69.319 million, basically to achieve nothing. I say that because, according to page 622, only 66 per cent of eligible applicants get legal aid. However, it is projected that despite this modest increase in the budget for the legal aid assistance scheme, only 65 per cent of eligible applicants will now get legal aid; therefore, this increase in the budget will achieve nothing. I draw the Attorney General's attention to the fourth dot point. Is it not a fact that in heavy corporate litigations such as the Bell Group appeal, the average Western Australian taxpayer, by the provision of a gold-plated, A-class court service, is subsidising a fight between a liquidator and the banks, for the benefit of one or the other, but not the taxpayers? Will the government give consideration to law reform to require that at the upper end of corporate fights, the corporations pay a portion of the court costs—that is, the court costs beyond filing fees; namely, the cost of hiring these three judges, and the cost of running these appeals? These costs may run to millions of dollars for the taxpayers of Western Australia. That is money that could be made available, for example, to deserving causes like the Legal Aid Commission of Western Australia. I am not saying that is where the money has to go, but I am citing that as an example. Does the Attorney General see that there is a structural imbalance in that the taxpayers of Western Australia are funding this gold-plated, A-class court service for a fight between corporations?

**The CHAIRMAN:** Member, you need to ask a question specific to the budget.

**Mrs C.A. MARTIN:** He has to give some information. That is what he is doing. He did say that.

**Mr C.C. PORTER:** That is a very fair question. The member has asked whether I have thought about this situation. I have thought about it long and hard. With respect to the member's observations, I want to make a few observations of my own that are relevant. The member points out the issue of the stress on legal aid. That is certainly the case. It may be that we will speak about that some more in a moment. What legal aid of course provides, as the member knows, is assistance in litigation in terms of representation. A legal aid client—a person accused of a criminal matter, or, indeed, a person who is proceeding through the Family Court—will receive the full benefit, subject to any fees that apply, of the court infrastructure, of the judges, and of all the fixed costs of operating the criminal justice system. So although it is fair to say that the legal aid service provision is under stress—although legal aid is doing a very good job within the budget that it has—the member's analysis falls down somewhat in that what is provided by legal aid is representation. Legal aid clients, as well as corporate clients, receive the benefit of a court system that I would say is publicly-funded—the member says subsidised, but I would say publicly funded. The secondary question that the member has raised is: is there not some room in the future to consider whether "top-end" clients, as the member referred to them, could pay more —

**Mr J.R. QUIGLEY:** I think that is a fair categorisation.

**Mr C.C. PORTER:** Yes, I think that is a fair categorisation. Could they pay more? I think there is some room for consideration of that matter. What I did not want to do is undertake that consideration just as a reaction to the Bell matter. It may be that we learn some lessons from the Bell matter as to how we can have a sliding scale of fees.

**Mr J.R. QUIGLEY:** On the eastern seaboard, we have seen the C7 litigation. It is not isolated just to Bell.

**Mr C.C. PORTER:** Indeed. There have been a number of notable pieces of litigation that have been very protracted and that have tied up state resources. Indeed, the advice that came to me from the Chief Justice was that if three Court of Appeal judges were to be tied up for a year, or perhaps longer, to work solely on the Bell matter, the public would suffer in terms of the fact that time to trial and timeliness of appeals—all key performance indicators of public service—would be blown out. The first question that then arose was: would I force the court to make do? I did not do that. The second question was: would I try to make that \$4 million-odd come out of the pockets of the two litigants? The third question was: would I go to consolidated revenue?

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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[10.10 am]

**Mr J.R. QUIGLEY:** Really!

**Mr C.C. PORTER:** In this case I have chosen to go to consolidated revenue, and there are several reasons for that. The first is that the alternative to the argument that the member raised—as to whether a person is rich or poor or a moneyed litigant or a not-so-moneyed litigant—is that the provision through consolidated revenue of a court system with its infrastructure and judicial expertise has long been a matter of providing a core service by government through consolidated revenue. Of course we do recoup amounts in fees and administration fees; that has always been the case and always will be the case, and there may be room to manoeuvre there. In fact the cost-recovery rate following fee increases that we will institute in this year in the Supreme Court is about 21 per cent. Therefore, for all litigants, irrespective of their financial background, cost recovery is at about 21 per cent. Could we increase that cost recovery more on a biased basis against litigants that we identify as moneyed litigants? There may be room for that. I am disinclined to think that it is time to go about that quite slow, cautious law reform simply because of one matter that will cost the state a lot of money. The member should bear in mind, firstly, that the provision of the court system is something that the state has generally provided for rich and poor litigants, but, secondly, these parties are by their very nature litigious. If it were a case in which something was novelly applied only to this litigation and these litigants, my view—without being an expert on the case—is that that, in itself, could easily become the basis for a later appeal. That would be a very dangerous situation to arise in what could be then one of the largest pieces of litigation in Australia's history. If we were to move down that path, it would have to be done very cautiously and not in response to one case. There may be room for the Law Reform Commission to involve itself in such research. The final thing I would say is that making Western Australia an attractive destination for litigants is good for the Western Australian economy. The \$4 million —

**Mr J.R. QUIGLEY:** For lawyers!

**Mr C.C. PORTER:** They are, with respect, part of the Western Australian economy, and a very important part of the Western Australian economy. Making Perth a destination for litigation—arbitration or commercial litigation—is something that pumps a lot of money, yes, into the legal fraternity, but let me assure the member —

**Mr J.R. QUIGLEY:** Which requires us to subsidise it by having a gold-plated, A-class service at taxpayers' expense.

**Mr C.C. PORTER:** The member says “subsidise” —

**Mr P. PAPALIA:** Are you serious?

**Mr C.C. PORTER:** I am absolutely serious—it is one thing I have realised, having spent time as Attorney General—in the context of a very profitable business-like industry. Our legal industry is a very large part of the commerce of Western Australia. There are risks associated with making ourselves a high-cost jurisdiction for litigants. In fact one agenda item for the Standing Committee of Attorneys-General for many years now has been to ensure that there is parity in terms of fees between state Supreme Courts and the Federal Court of Australia to stop jurisdiction shopping. One of the perhaps unintended but nevertheless very deleterious results of what the member is suggesting—I am not saying it should not be considered—and one of the possible negatives is that people would jurisdiction shop either into other states or into the Federal Court. That would, first of all, breach general agreements that we have with the other states and with the Federal Court, but it would mean that expensive litigation is not conducted in Western Australia. The fact is that expensive litigation is very good for the Western Australian economy.

**Mr P. PAPALIA:** So a taxi could go to Melbourne, pick up the lawyers and bring them back!

**Mr C.C. PORTER:** That is a kind of simplistic analysis, I have to say. When I first entered the legal profession in 1995, some of my closest friends started working on the Bell case, and people have been working on it ever since. It would have employed hundreds of lawyers in this jurisdiction from 1995 to 2010. Those people earn wages, they spend money, they buy houses and, frankly, the more that we can grow the legal industry in Western Australia, the better for the overall economy. It is a serious point to suggest that if we made this a high-cost jurisdiction, we would put ourselves at a disadvantage. If the member looks at our cost-recovery rates compared with other jurisdictions, he would see that we are fairly even. I can provide those figures on cost recovery if the member is interested in them. Our cost-recovery rate is to be 21.9 per cent; the average across all Australian jurisdictions is 22 per cent. At the moment in Australia we say that we have always publicly provided court services to rich and poor. Although we make everyone pay a little—20 per cent for the recouping of those services—a move from that would be a very big philosophical and practical move with economic consequences;

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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and I was not prepared to do it for just one case, which in my view would not be the way to conduct such serious law reform.

**Mr J.R. QUIGLEY:** Is the Attorney General prepared to ask the Law Reform Commission to investigate reform in this area?

**Mr C.C. PORTER:** I certainly am.

**Mr J.R. QUIGLEY:** Will the Attorney General?

**Mr C.C. PORTER:** I have not engaged in a habit of forcing upon members of the Law Reform Commission matters that they think are outside the proper ambit of their investigation. But I will certainly raise it with them. This is an ongoing matter. My view would be that that type of reform could not be conducted in isolation from what occurs in other states. If we were to have some form of cut-off to identify moneyed litigants and in effect charge them more, that would need to be done cohesively amongst the other states to stop jurisdiction shopping. But I am willing to consider it and I did consider it.

**Mr J.R. QUIGLEY:** But in a cause of action that is seated in Western Australia, the only jurisdiction shopping could be between the Federal Court and the state Supreme Court.

**Mr C.C. PORTER:** Indeed.

**Mr J.R. QUIGLEY:** And whether it is litigated in the Federal Court in Perth or in the Supreme Court in Perth is neither here nor there, except that the federal government would pick up the tab for the cost of the service in the Federal Court.

**Mr C.C. PORTER:** Not necessarily. The member might find that the complexion of solicitors employed in a state court matter would be quite different from those employed in a Federal Court matter.

**Mr P. ABETZ:** The fifth dot point on page 621 of the *Budget Statements* refers to over-representation of Indigenous people in Western Australia as victims and offenders. Could the Attorney General elaborate on the phrase “considerable departmental resources are devoted”, and outline some of the measures that are being undertaken?

**Mr C.C. PORTER:** I thank the member for that question. It is certainly the case that there is over-representation of members of the Indigenous community. Even when the previous government came to power, it was about 34 per cent. That increased over the course of eight years of the previous Labor government to about 41 per cent. It has dropped down again to just under 40 per cent based on recent figures. What certainly appears to occur in the context of this debate in my view—and views will differ—is that there is a tendency to look either at the Department of the Attorney General or the Department of Corrective Services and ask: what are you doing right or wrong? In some ways that is the equivalency of looking at a hospital and blaming it for people who are admitted as patients. Many Indigenous people have difficulties in their communities and end up in contact with the criminal justice system to the extent that the causal factors are not about individual decision making, or individual decision making tempered by other factors. Those factors are education, health, welfare, social matters and housing in particular. That might be something that I will come back to at the end of this answer, but an enormous amount of money in this budget is devoted to programs that address directly all of those criminogenic factors—health, welfare, housing and so forth. However, as a preliminary matter, there is an extent to which people—because they do not see it in their day-to-day lives—do not realise that departments such as my department do a great deal, albeit in part of the criminal justice process. If the member has a look at the types of things that occur already, he will see that we have very strong partnership agreements, such as the “Aboriginal Justice Agreement”. I meet with members of the WA Aboriginal Justice Congress and they put in place agreements in regional areas on what they will be doing to try to reduce those criminogenic factors and how the Department of the Attorney General can assist. There are today 24 local justice agreements that specifically target geographic areas to try to work out inside those areas the programs or facilities that are required and what the department can do to improve rates of offending. There are specific dispute resolution services in both Family Court of Western Australia hearings and criminal hearings for dispute resolution.

[10.20 am]

I faced a difficult decision with respect to the Kalgoorlie–Boulder Community Court this year. I determined to keep it running. Unfortunately, that has not been a very productive program in terms of decreasing rates of recidivism. There is also the Geraldton Family Violence Court, which has been another positive development. Aboriginal liaison officers are very important—they exist in eight courts. If I might add to all of that: when we look at what happens inside the department, it is specifically tailored to those things which also occur outside the Department of the Attorney General. When we look at the expenditure that has been set aside in this budget, there is \$49.7 million for improved access to community child health services, which is absolutely critical, and

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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\$13.9 million for English language tuition for the children of 457 visa holders. One of the things that we find, particularly in juveniles who enter the criminal justice system, is language problems.

Infrastructure—school upgrades of about \$20.5 million under royalties for regions; \$43.5 million allocated in this budget for support and protection services for children in the Department of Community Services; \$27.9 million for the responsible parenting program in regional areas, again in community services; \$6 million in the Foodbank project; \$195 000 in the expanded school breakfast program; \$5 million over three years, again from royalties for regions, to expand the work done by Clontarf; and \$13 million in royalties for regions in terms of short-stay accommodation for Aboriginal people particularly in Broome and Kalgoorlie. I think that will be some of the best money this government ever spends. One of the reasons there are elevated levels of offending in those areas is not merely because of the peculiar criminogenic factors that Aboriginal people are subject to over many years leading up to the time of offending, but at the actual flashpoint of offending people come into town and literally have nowhere to stay. If a person is domiciled on an oval or in or about the main street, the chances of that person running into trouble are significantly elevated. The amount of \$15 million has been allocated for Aboriginal housing in the Kimberley; \$110 million over five years as part of the Browse LNG Precinct project —

**Mr P. PAPALIA:** The Attorney General could probably give them the document!

**Mr C.C. PORTER:** Where would the fun be in that?

**Mr P. PAPALIA:** I am aware of other members waiting.

**The CHAIRMAN:** No-one is allowed to table documents during estimates.

**Mr C.C. PORTER:** There is also, in my own department, youth justice services. In my estimation, the amount of expenditure that goes to welfare, community services, the criminal justice system, and housing and health issues—all of which have a significant criminogenic factor—is larger in this budget than in any other single budget. We may not see the flow-on effects of those in the immediate term, but in the mid to long term I am very positive about those things. It is a significant increase in expenditure in the crime prevention area.

**Mr P. ABETZ:** That is a very encouraging answer. Thank you, Attorney General.

**Mrs C.A. MARTIN:** I draw the Attorney General's attention to page 620 of the *Budget Statements* headed "Service Summary". I refer to point 7 "Native Title Policy Development, Implementation and Negotiation". How many native title claimants is the Attorney General dealing with; and what is the nature of the services provided?

**Mr C.C. PORTER:** The answer is we are dealing with a lot of native title claimants. A problem has arisen in dealing with overlapping native title claimants in one claim area. If I understand the member's question, she wants to know what services are provided.

**Mrs C.A. MARTIN:** What type of services, yes; and which native title claimants. I know what is going on in my area but there is a broader picture here.

**Mr C.C. PORTER:** If the member would like, I can probably take on notice a question about all of the existent native title claims and the stage of the process that they are at. That information is probably more amenable to a written response. I am very happy to take that on notice, not because I cannot read it now.

To give an overview, the policy of this government has been to settle these matters by agreement wherever possible. That is not to say that we will not litigate when disagreements in terms of overlap cannot be resolved. One of the policy positions I have taken is: the point about mediation and negotiation is that it is meant to be quick. I will resort to litigation when a litigated outcome might be quicker. There have been a limited number of cases in which mediation and negotiation have not worked. Since being elected in 2008, we have entered into a number of native title agreements. The Yawuru people in Broome obviously —

**Mrs C.A. MARTIN:** All very happy.

**Mr C.C. PORTER:** Indeed; and that was something the previous government had done an enormous amount of work on, but getting it across the line also required about nine months of intensive effort from my department and my office. The Yamatji people, through the Murchison radio observatory agreement; the signing of the heads of agreement with the Nyoongah people to resolve native title in the south west of the state—I might come to that briefly in a moment—the signing of the heads of agreement with the Jabir Jabir people with respect to the progress of the Browse LNG Precinct —

**Mrs C.A. MARTIN:** Can I ask a question on that?

**Mr C.C. PORTER:** Yes.

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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**Mrs C.A. MARTIN:** Have they actually lodged a native title claim?

**Mr C.C. PORTER:** I do not know whether the heads of agreement represents that. I will ask Gary Hamley to answer that briefly for the member.

**Mr Hamley:** The heads of agreement was signed with the Goolarabooloo–Jabir Jabir registered native title claimants, but subsequent to that signing there is now a Jabir Jabir native title claim filed in the Federal Court, separately.

**Mr C.C. PORTER:** It is also the case with the Miriuwung Gajerrong people—negotiations have been continuing, with \$12.5 million in an Aboriginal development package to facilitate Indigenous participation in the Ord–East Kimberley expansion project —

**Mrs C.A. MARTIN:** Is that with Leighton?

**Mr C.C. PORTER:** That is correct. That has just occurred. There have been two native title consent determinations in terms of the Thudgari and Nyangumarta people. There has been a lot of activity in this area. Over the next two years of this government, Mr Hamley’s office will spend a lot of time on negotiations with the Nyoongah people in terms of resolving native title in the south west. A decision was made fairly quickly after coming into government to agree to negotiate that process. The member will obviously appreciate that will be with its complications.

The other thing I will mention is that there was a heads of agreement formalising the negotiation process to resolve native title over Perth and the south west of the state. That was signed by the government and the South West Aboriginal Land and Sea Council on 17 November 2009. This is the first step in that negotiation process.

**Mrs C.A. MARTIN:** But that is the whole group.

**Mr C.C. PORTER:** Indeed.

**Mrs C.A. MARTIN:** That is great.

**Mr C.C. PORTER:** The department has been a busy place. Mr Hamley’s office is doing a very good job. As the minister responsible, I have tried to look at all of the claims, look at the ones that are either close to resolution or are reaching key targets, and pour our resources into those to try to get resolution of matters that are otherwise stymied.

**Mrs C.A. MARTIN:** If we do that right, we will not need to build any more prisons. It should fix itself. It will deal with poverty.

**Mr C.C. PORTER:** It raises this important philosophical point: how much of the money which flows, in terms of mandatory benefits and compensation packages, should be, if I can use the clumsy word “tied”? It seems to me that in terms of structure and management of the flow of moneys, we are certainly getting better, both Indigenous people and the government, at ensuring that the development corporations and the directorship structures that are in place ensure that moneys are well spent and state moneys are getting better and better —

**Mrs C.A. MARTIN:** As long as there is an economic framework and not a welfare framework.

**Mr C.C. PORTER:** I think that is right, but my preference going forward would be for more detailed agreement between the state and the Aboriginal development corporations about the areas and ways in which moneys will be spent; which is not to say that these moneys are an abrogation of state responsibility on welfare and justice matters but, nevertheless, there is some expectation that the moneys will be spent in certain ways. That is happening; and it is happening more and more with better detail attached to it. That is an area for significant improvement.

**Mrs C.A. MARTIN:** With prescribed body corporates, will there ever be real funding to set them up and manage them in a way that allows the broader scene of Aboriginal communities to manage their own affairs? I know the big ones, which have made good deals and get millions of dollars coming in to their organisations, they are all fine; but if we look at, for example, the mob down at Le Grange, they have not got their PBC up properly. There are a number of smaller ones. The Wanjina–Wunggurr Wilinggin in the east Kimberley has not got any funds for a prescribed body corporate, yet it is a legal vehicle with no money. I just wonder about that.

[10.30 am]

**Mr C.C. PORTER:** One good thing about prescribed body corporates—they have been few and far between—is that the federal government has put \$50 million into trying to enhance the structures and assist in the development and functioning of prescribed body corporates. A very disappointing thing that has come from the federal government is that previously an agreement had been reached—in my view, a very clear agreement—that

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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the federal government would fund 75 per cent of all of the compensation payments for past and future settlements of native title, yet at a native title ministers' meeting late last year, the commonwealth simply turned up and said that it now did not consider that that deal was on foot any longer and that it would be considering matters on a "case-by-case basis". That, to me, is highly unsatisfactory, but nevertheless it is an ancillary matter.

In final answer to the member's question, I have both declined and agreed to give extra moneys to PBCs. What I am conscious of is that where moneys are given specifically to get PBCs up and functioning—they are reasonable amounts of money—they have one bite of the cherry and that money must be used to get the PBC up and functioning. I have declined in instances that subsidiary funds are sought when really the problem should have been sorted out. That is a matter of maintaining discipline in the operation of PBCs across the board. I simply will not say yes to every request for money for PBCs. That may be something that Gary may want to add to.

**Mr G. Hamley:** The whole issue of funding for PBCs is complex and all states and territories in Australia are dealing with it. Recent changes to the Native Title Act have enabled native title representative bodies to provide ongoing legal support and legal services to prescribed body corporates after a determination of native title. Also a review, or consideration, of regulations is taking place for PBCs to enable them to establish costs on a fee-for-service basis, so that when parties come to do business with them, they are able to charge for that service.

**Mrs C.A. MARTIN:** Does the state government have the mechanism to fund PBCs?

**Mr C.C. PORTER:** I have some funds in the land and equity facilitation fund that can be attributed —

**Mrs C.A. MARTIN:** Sorry; what is it called? I will check it out.

**Mr C.C. PORTER:** The member is not going make an application, is she?

**Mrs C.A. MARTIN:** I might!

**Mr C.C. PORTER:** It is the native title facilitation fund. I have both granted and declined requests for money from that fund for the purpose that the member suggested, I have been very conscious that that fund cannot be used to fund failure.

**Mr P.T. MILES:** I was just going to ask the Attorney General a question about the native title information. The second table on page 627 of the *Budget Statements* gives the average time taken to achieve the resolution of prioritised native title applications. Is there any way that they can be determined more quickly? It seems as though it is taking about four years to have an application resolved. Is the Attorney General considering ways to try to reduce that time?

**Mr C.C. PORTER:** It is very difficult. A decision that a native title claim exists and that the state agrees that it exists over a certain geographic area can be achieved by agreement or by litigation—our preference is certainly by agreement. Once that determination is made, then the issue of extinguishment to the extent necessary, and compensation, flows. In terms of trying to make that decision about where and to what extent native title exists, mediation, negotiation and agreement is definitely the way to go. But a lot of things are outside of the control of myself as minister, one of which has already been mentioned—that of overlapping claims. A primary point is one of whether the claimants—those arguing that native title exists—can agree who the claimants are. That is a major delaying factor. The threat of litigation is sometimes a matter that can hurry things along, but not always, and often that is very counterproductive. I think my honest and short answer to the member's question about whether the time taken can be reduced significantly is that I would not have thought it could be reduced to the tune of 25 per cent or anything of that nature, but we always have an eye to the timeliness of these matters.

**Mr J.R. QUIGLEY:** This is the last question from the opposition on this division. Page 622 of the *Budget Statements* has a heading "Outcome: Equitable access to legal services and information". In answer to my previous line of questioning, the Attorney General said, in relation to the court service, that it is important that everyone has access to it. I point out that that line item shows that in 2008-09 the percentage of eligible applicants who received a grant of legal aid was 78 per cent. That erodes, by a whacking 15 per cent, under the Liberal-National government in 2010-11 to only 65 per cent of eligible applicants receiving legal aid. I put to the Attorney General that that means that for a lot of average Western Australians who are fronted with accessing the courts, their position vis-a-vis accessing legal aid is deteriorating, and that rate of deterioration is accelerating. Under this Liberal-National government, far fewer people will have access to legal aid than had previously—not that previously it was terrific at 78 per cent, but now we are sliding backwards. What can we do to help the Legal Aid Commission, and, given that a lot of the legal aid services are delivered in the regions and \$430 million was unallocated in the regions, why can the Legal Aid Commission not be given a whack of great money out of royalties for the regions so that the people in the regions can access the court system?

Chairman; Mr Paul Miles; Mr Paul Papalia; Mr Christian Porter; Mr Frank Alban; Mr John Quigley; Mr Peter Abetz; Mrs Carol Martin

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**Mr C.C. PORTER:** The short answer as to how we can improve those figures is to receive more money from the commonwealth government in the areas for which it is responsible and with respect to divergences of funding as between the various states and territories. The commonwealth government needs to pay more money in total, and more money needs to come to Western Australia compared with what, historically, has been the case in comparison with other states.

**Mr J.R. QUIGLEY:** In my electorate office—I do not know about the Attorney General’s—the constituents who come to see me from the working-class suburbs in my area have no problem in accessing legal aid in relation to federal matters where there are tied grants, but they have real difficulty accessing legal aid in relation to state matters, particularly for criminal matters, and as a result of the accelerated law and order agenda, there will be more of those people needing legal assistance. What can be done for them?

**Mr C.C. PORTER:** I will have Mr Turnbull —

**Mr J.R. QUIGLEY:** The problem is not the federal area; it is the state area.

**Mr C.C. PORTER:** I will ask Mr Turnbull to comment on that in a moment, but what the member is asserting is not necessarily borne out by the statistics on from where the growth in demand for legal aid is coming. The highest area of growth for legal aid is coming from the family law area. That places strain across the entire organisation. Indeed, the legal aid budget had exceeded its family law expenditure by mid-December of last year by about 15 per cent. The increase in family law applications received was 28.8 per cent, compared with the same period in the previous year. The increase in family law grants of aid was 21 per cent, compared with the same period in the previous financial year. I am not disputing that the member has, as a matter of anecdote, had people come in who have been declined legal aid for criminal matters, but the stresses in the system do not come directly from the growth in people requiring representation for criminal matters; the stresses in the system come by virtue of the quite rapid increase in people who require legal aid funding for family law matters, and the fact that the commonwealth, which has the responsibility for funding those matters, has not, in my view, been keeping appropriate pace with demand.

[10.40 am]

I cannot prove this as a matter of statistics, but as a matter of historical commonsense, we have had increased applications for family law, and thereby family law grants of aid have increased, because a range of families have been under a good deal of financial stress due to the downturn in the economic climate we have experienced over the past 18 months or so. That is where the pressure is coming from. I have been lobbying the commonwealth government very hard and we have had some success with that. The total amount of funding that has been allocated in the federal budget is an extra \$19 million annually over four years. That will take an enormous amount of heat off Legal Aid WA because that is money that will go into areas of growth, which are also the commonwealth areas, and that will free up resources in the other areas. That is a considerable step forward. In addition, those percentages, which are the eligible applicants who receive a grant of legal aid, to some extent, represent a more stringent application process being applied by the Legal Aid Commission. Mr Turnbull might want to speak about that and perhaps add something about where his growth is coming from and the division between commonwealth and state funding.

**Mr G. Turnbull:** It is certainly the case that there are stresses across the board both in respect of state and commonwealth law. The minister is correct in saying that perhaps the most acute area of difficulty at the moment is in the area of family law. I think he is correct in saying that it is probably a result of fairly low levels of funding that have been coming from the commonwealth. That has been the situation probably for almost the past 13 years now. Currently, the commonwealth contribution to the whole-of-government funding for legal aid is roughly 40 per cent and 60 per cent comes from the state. Thirteen years ago the commonwealth contributed 60 per cent of all government funding to legal aid and the state contributed 40 per cent. Over time, the relative contributions from both governments have been reversed. It is true that, at least provisionally, some additional funding has been earmarked for Western Australia in the federal budget that was recently handed down. That is subject to agreement, but it represents a fairly significant boost to our funding. Nonetheless, it brings the commonwealth up to only about two-thirds of the state’s contribution from roughly 50 per cent. Although it is welcome, it is still a long way short of what we see as a reasonable amount.

**Mr J.R. QUIGLEY:** They are all the questions the opposition has.

**The appropriation was recommended.**