

Division 28: State Solicitor's Office, \$50 408 000 —

Mr D.A.E. Scaife, Chair.

Mr J.R. Quigley, Attorney General.

Ms A. Komninos, Acting State Solicitor, State Solicitor's Office.

Mr A. Panzich, Acting Chief Financial Officer.

Mr J. Lee, Principal Policy Adviser.

Mr D. Emerson, Senior Policy Adviser.

[Witness introduced.]

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

A minister may agree to provide supplementary information to the committee. I will ask the minister to clearly indicate what information they agree to provide and I will then allocate a reference number. Supplementary information should be provided to the principal clerk by close of business Friday, 3 June 2022. If a minister suggests that a matter be put on notice, members should use the online questions on notice system.

I call the Leader of the Opposition.

Ms M.J. DAVIES: Attorney General, we might come back to the question that I asked at the beginning about Magistrate Crawford and President Quail. I refer to page 451 of division 28 under total cost of services in the table at the top. Can the Attorney General advise what the final cost of the case between Magistrate Crawford suing President Quail was? What was the cost to the state in defending President Quail? Was Magistrate Crawford reimbursed her costs?

Mr J.R. QUIGLEY: Leader of the Opposition, I will have to take that on notice. That was a civil proceeding that was settled before completion. The parties settled it. I am not quite sure of the confidentiality terms that surround the settlement, but I will take that on notice, and the Acting State Solicitor and I will look at that subsequently.

Could I just put on notice that what the member is asking for is the total costs and the total legal fees incurred by the state in that case?

Ms M.J. DAVIES: Correct, and whether or not Magistrate Crawford was reimbursed her costs.

Mr J.R. QUIGLEY: Certainly.

The CHAIR: So is the Attorney General offering to provide that as supplementary information?

Mr J.R. QUIGLEY: I am happy to provide that as supplementary information.

The CHAIR: That is the total costs incurred by the state and any amount paid as reimbursement of Magistrate Crawford's costs in the case concerning President Quail and Magistrate Crawford.

[*Supplementary Information No B16.*]

Ms M.J. DAVIES: Under the same total cost of services, there were reports of—I think we have asked questions about this in Parliament—the Attorney General's intervention in the unfair dismissal case brought by the member for Kwinana's former electorate officer.

Mr J.R. QUIGLEY: Sorry? The Member for Kwinana, that is the —

Ms M.J. DAVIES: Mr Cook.

Mr J.R. QUIGLEY: Yes, and the staffer who —

Ms M.J. DAVIES: The Deputy Premier.

Mr J.R. QUIGLEY: The staffer who parted ways.

Ms M.J. DAVIES: The former electorate officer.

Could the Attorney General advise how much that intervention has cost in both expenditure and staff time from the State Solicitor's Office or other employees in the Department of Justice or other contractors?

[11.20 am]

Mr J.R. QUIGLEY: This matter has not been finalised. There is still a hearing listed and it would be inappropriate to publicly disclose this matter at this stage before the matter is finalised because negotiations are taking place.

Ms M.J. DAVIES: Under the same appropriations, expenses and cash assets table in the total cost of services, I refer to the Attorney General's evidence as part of the Clive Palmer case and the requirement for the Attorney General to return to Sydney to provide additional evidence. Does the Attorney General have details on how much that part of his participation cost?

Mr J.R. QUIGLEY: No. This matter is still before the court, and the costs and all that are still live before the court.

Ms M.J. DAVIES: My question is not about the costs that might be awarded one way or the other; my question is about the cost of the Attorney General having to return to Sydney.

Mr J.R. QUIGLEY: As I say, I am not prepared to discuss any costs related to that case. No doubt, once it is finalised, there will be further questions put to us, but I do not want to discuss the costs in that matter prior to the finalisation of the case. I am so instructed by the State Solicitor. We do not want to compromise the state's position.

Mr P.J. RUNDLE: Has the Attorney General given any thought to paying for some of those costs himself, considering that he gave incorrect evidence and had to return to do that? Given the Attorney General's extensive experience in the courtroom, does he think it is appropriate that the WA taxpayer should have to foot the bill?

Mr J.R. QUIGLEY: The SSO has nothing to do with that and it is not in any part of the appropriation under this division.

Ms M.J. DAVIES: I am seeking some clarity because the question that the member for Roe just asked was very similar to the one that I asked and the Attorney General declined to provide an answer for, given that the case is ongoing. Now he is saying that the State Solicitor's Office has nothing to do with that particular case.

Mr J.R. QUIGLEY: There are different parts of the expenditure. There are the legal costs and disbursements—the whole lot. I am not going to discuss any of those costs, disbursements or anything else prior to the finalisation of matters. We have got very hot litigation going on with Mr Palmer, and I do not wish to compromise the state's position on costs or otherwise.

Mr P.J. RUNDLE: My question was: has the Attorney General given any thought to actually paying for the costs of having to return to redo his evidence, given his experience in the courtroom? It is very unusual that someone of his stature would have to return to give evidence after having provided incorrect evidence. Has the Attorney General given any thought to actually covering that expense himself, rather than the WA taxpayer?

Mr J.R. QUIGLEY: As I said, I am not discussing any of the costs in this case prior to the finalisation. This is not an exercise in hiding from the taxpayers or anything like that. Whether or not the costs are properly incurred and what can be recovered from Mr Palmer in the event of a win and what we might have to pay to Mr Palmer if the decision goes the other way are all matters for the court to determine on the issue of costs, and I am not going to get ahead of the court—full stop.

Mr P.J. RUNDLE: In light of the revelation that the State Solicitor's Office had a conflict and could not advise the Attorney General, as the Attorney General, how much did it cost to get alternative advice, and what was the nature of the conflict?

The CHAIR: Sorry. If the Attorney General he wants to indulge this, he can. But your question is that the State Solicitor's Office had a conflict and therefore other costs were incurred. That would seem to suggest that the costs were not incurred by the state —

Mr J.R. QUIGLEY: I am sorry. I did not quite pick that up because of the mask. I am sorry, chair.

The CHAIR: The member for Roe is asking about the State Solicitor's Office's line items.

Mr P.J. RUNDLE: Yes.

The CHAIR: But you seem to be saying in your question that the costs were not incurred by the State Solicitor's Office, so it would seem to me to not be relevant to the line items under consideration. But, Attorney General, if that is incorrect or you want to indulge the question, you can.

Mr J.R. QUIGLEY: No. That is what I was going to say.

The CHAIR: It is not in order, member for Roe. It is not relevant to the appropriation under consideration. Further questions? The Leader of the Opposition.

Ms M.J. DAVIES: Sorry, just bear with me for a moment. Under "Other Significant Issues" on page 452 of budget paper No 2, volume 2 are a number of cases that the State Solicitor's Office is working on. Is there a line item or provisioning in the budget that is set aside for defamation lawsuits against ministers? How is that allocated from a state budget perspective, Attorney General?

Mr J.R. QUIGLEY: The representation of ministers or other employees of the state, of course, is covered by the guidelines of providing a legal service, and when they are provided by the State Solicitor's Office, they are absorbed into the normal budgetary process of the department.

Ms M.J. DAVIES: There is the actual cost of providing the advice, but if there is a finding against a minister, is that amount provisioned for in this budget?

Mr J.R. QUIGLEY: It is not part of the State Solicitor's responsibility to pay the damages.

Ms M.J. DAVIES: Is it just for the provision of the defence?

Mr J.R. QUIGLEY: Yes.

Ms M.J. DAVIES: How much is allocated for that in the budget under "Total Cost of Services"? Is that considered when the budget is being created? Is an amount set aside for that as part of the budgeting process?

Mr J.R. QUIGLEY: No. It is the same with all the other litigation that the State Solicitor's Office is involved in. It is not budgeted case by case for the purposes of the budget; it is given a global figure for legal services. If a particular case absorbs much of the resources of the State Solicitor's Office, the SSO can apply for supplementary funding, and it will not be denied.

Mr P.J. RUNDLE: In the case of the Clive Palmer trial, when the Attorney General had to return to give further evidence, was the State Solicitor's Office required to apply for supplementary funding to assist in that situation?

Mr J.R. QUIGLEY: There has been no request for supplementary funding.

[11.30 am]

Ms M.J. DAVIES: I refer to the spending changes for the State Solicitor's Office on page 451.

The CHAIR: Is this a new question?

Ms M.J. DAVIES: It is a new question, chair.

Mr J.R. QUIGLEY: Yes. I am just seeing what note it is. Page 451 has got notes here.

Ms M.J. DAVIES: One of the ongoing initiatives is legal costs on behalf of the state. I note that there is an estimated actual in 2021–22 but nothing into the forward estimates. Could the Attorney General just outline what that line item for \$1.9 million actually is?

Mr J.R. QUIGLEY: I am sorry. I am just trying to find the line item on page 451.

The CHAIR: This is the final line item on page 451.

Mr J.R. QUIGLEY: Sorry, yes.

Ms M.J. DAVIES: I am sorry. I should speak up. The estimated actual legal costs on behalf of the state are \$1.9 million and there is nothing across the forward estimates. Could the Attorney General please explain what the legal costs that were incurred on behalf of the state were and what that line item pertains to?

Mr J.R. QUIGLEY: It is inappropriate to discuss the nature of these legal costs publicly. This has the potential to compromise the state's position in the ongoing negotiations. It may pertain to matters that are before the court and under judicial consideration. In some of the instances, the terms of settlements are confidential and it would be inappropriate to divulge the name of the parties. Some of these cases are the subject of confidential settlements. I am informed by the acting State Solicitor that the cases that are involved in that last line item are some matters that are still being litigated before the courts, and it would be inappropriate to discuss or itemise any particular case in advance of the court making a decision.

Ms M.J. DAVIES: Is the Attorney General able to advise whether it the legal costs for representation or defence costs, or is it for costs that have been awarded against the state?

Mr J.R. QUIGLEY: It is for legal costs only.

Ms M.J. DAVIES: So the legal costs incurred by the —

Mr J.R. QUIGLEY: State.

Ms M.J. DAVIES: — state in the pursuit of something that the Attorney General cannot tell me. Okay.

Mr J.R. QUIGLEY: No. We do not hide information on cases that have been concluded; that is different. We have already undertaken to give supplementary information on Magistrate Crawford's case against Quail. That matter is concluded. If it is not subject to confidentiality that is insisted upon by the magistrate, that is not a problem.

Ms M.J. DAVIES: Okay. I have a new question. I refer the Attorney General to the same on page 451. Could the Attorney General advise in relation to ongoing initiatives, additional senior —

Mr J.R. QUIGLEY: I am sorry, there was a cough. I am so sorry.

Ms M.J. DAVIES: It is not permitted, Jeremy; it is not allowed!

Mr J.R. QUIGLEY: And not a COVID cough either!

Ms M.J. DAVIES: Could the Attorney General provide some advice on what the amount of \$865 000 for class actions under “New Initiatives” pertains to? It is not a huge amount of money.

Mr J.R. QUIGLEY: Yes, certainly. The State Solicitor’s Office will receive fixed-term funding. That is why there is no funding in the out years there. The fixed-term funding is for three FTEs—one legal grade 5 and two legal grade 6 FTEs—to meet the preliminary costs, with two upcoming class actions.

Ms M.J. DAVIES: Is the Attorney General able to advise what class actions that refers to?

Mr J.R. QUIGLEY: Certainly. There are a couple of class actions and one threatened class action. The late Ms Dhu’s family, together with others in a class, have commenced a class action in the Federal Court relating to the Fines, Penalties and Infringement Notices Enforcement Act 1994. That one is ongoing and there is another one. That is separately provided for. The second one that provision is being made for is a threatened class action relating to Banksia Hill that the member may have read about. I hesitated then because I was looking for where in the figures there was the stolen wages class action, but that is further down, just above that bold heading “Ongoing Initiatives”. That is a class action relating to stolen wages. We have briefed external counsel.

Mr P.J. RUNDLE: The fourth significant issue on page 452 says “The SSO continues to provide legal advice on significant commercial matters”. One of those matters is the sale of the Western Australian TAB. Has the State Solicitor’s Office raised any concerns around the enabling legislation for the Western Australian TAB?

Mr J.R. QUIGLEY: This is a matter of commercial law, and the acting State Solicitor headed that section or that division, so I wonder if I could defer to Ms Komninos?

Ms A. Komninos: Thank you. The sale of the TAB commenced some time ago. The original process was abandoned because of COVID and because the market changed substantially through the lockdown. The appetite for the method of the sale and the way the project was being sold changed significantly because of the conditions in the market and the way people attended racecourses and betted. When the original legislation was amended, it was amended and enacted to reflect that original sale process and the sale plan that had been agreed to by government. The process has just been re-enlivened in the last—I dare not say now—six or so months. It seems like yesterday, but it might be longer than that. I sit on the steering committee. The new process is somewhat different to accommodate the change in the way society responds in the betting world. The outcome of that, I understand, will probably require, or may require, amendments to the legislation again. But, again, the steering committee is working through that from the point of view of the new sale.

Mr P.J. RUNDLE: In view of that, can the SSO foresee the time frame for the sale process going ahead?

Mr J.R. QUIGLEY: I am just thinking. No, will I defer to the acting State Solicitor.

Ms A. Komninos: We are in the process of engaging and discussing with the preferred proponents who are putting forward their bids. I actually cannot say how long that process will take. Significant due diligence needs to be undertaken by the proponents, and so it is still part of that normal process of engaging with each and every one of them and for them to do their due diligence before they can put an offer to the state.

[11.40 am]

Ms M.J. DAVIES: I refer to the significant issues impacting the agency on page 452. The seventh point under, “Other Significant Issues” states that it is estimated that litigation matters will increase from 3 959 to 4 341. They are very specific numbers. How did the SSO arrive at those numbers and how does it anticipate what those matters will look like? Is it because the SSO can see the pipeline coming down the track? I do not quite understand how the SSO knows how to arrive at those figures.

Mr J.R. QUIGLEY: I will defer to Mr Panzich to discuss those figures, please.

Mr A. Panzich: The calculation was based on the increase in the matters that had occurred over the past financial year from 1 July 2021. We were just using what was pretty much our increased workload from the past seven months and we then forecast it out.

Ms M.J. DAVIES: Is there any one particular issue that the SSO can attribute to the increase? I am not being very clear. It is quite a specific number and it is a reasonable increase. The SSO is expecting to see that growth again. Is the Attorney General able to shed some light on the type of litigation that the SSO is expecting? Has a particular issue or issues driven that growth, or is it a dark art?

Mr J.R. QUIGLEY: There are two areas that have grown substantially, and they are, firstly, COVID-19 matters. Do not forget, all those health directions and emergency directions were drawn by the office. The State Emergency Coordinator would, obviously, with Health, liaise with SSO in the drawing of all those directions. So there was

that, and, secondly, there has been a significant new workload with the passage of the high-risk serious offenders legislation. The Leader of the Opposition might recall that under the previous legislation, which was subsumed into the high-risk serious offenders legislation—that being for dangerous sex offenders—the directions were handled previously by the Director of Public Prosecutions. That has now been transferred through to the State Solicitor. The new legislation captures way more than serious dangers sex offenders. All those people who are coming up for parole and who fit within that category have to be triaged as to whether or not an order will be sought. It is quite a lot of work.

Ms M.J. DAVIES: I am just trying to get an understanding of how much the Attorney General expects the SSO to still be involved in the creation or writing and checking of those directions, given that we are seeing, I would say, a significant reduction—or we are hopeful that there will be a reduction at some point in the future—in the number of those directions. That is not going to be a large proportion over the course of the next 12 months, Attorney General.

Mr J.R. QUIGLEY: In terms of the legal work, it is easier to reduce them than it is to create them, obviously, because that is just a notice of cancellation. But we are still in a pandemic, or, as some doctors would say, it is approaching a permanent situation. The State Solicitor's Office, as I said, provides legal advice and assistance to all the ministers and to the Chief Health Officer on the proper responses to the pandemic. All emergency management and many public health directions, authorisations and approvals relating to COVID-19 are drafted. Over 1 100 such instruments have been drafted, not including all public health directions or directions given to individuals. During 2021–22, nine applications for judicial review have been filed in the Supreme Court and a further 27 proceedings have been commenced in industrial tribunals or other courts. The State Solicitor's Office has established a COVID-19-specific legal team so that directions can be drafted and detailed advice on complex legal matters can be given promptly whenever it is required.

Ms M.J. DAVIES: How many FTE are assigned to that COVID-specific legal team?

Mr J.R. QUIGLEY: Last year, it was 10.5. With the turning of the corner, it has come down to 9.5.

Ms M.J. DAVIES: Does the Attorney General anticipate that will reduce further?

Mr J.R. QUIGLEY: We do not, at this stage, anticipate it running down any further, with all the litigation we have got on.

Ms M.J. DAVIES: Is that for the COVID-specific litigation?

Mr J.R. QUIGLEY: Yes. That is why we have the extra people.

Ms M.J. DAVIES: Does the SSO have a COVID-specific team that is providing advice on the directions and is it also managing COVID-specific litigation?

Mr J.R. QUIGLEY: The team changes in and out. I will defer to the acting State Solicitor, if I may, on the details of that.

Ms A. Komninos: The COVID team has some movements within it because of the relentless volume of work. We have put people in and out of the team as the demands and the requirements of the nature of the work has changed. When we commenced, it was very much about advising on the drafting element. The head of the COVID team is no longer Kirsten Chivers; it is now Craig Bydder. Craig Bydder is the head of the litigation team. We evolve and adjust the team, and backfill other areas as necessary to ensure that the proper skills are available to government on such short notice and to be responsive.

Ms M.J. DAVIES: Could the Attorney General perhaps provide an example of the type of litigation that the SSO is dealing with?

Mr J.R. QUIGLEY: What type?

Ms M.J. DAVIES: Yes, relating to COVID.

Mr J.R. QUIGLEY: Certainly. There is the judicial review—I forget how many. There are 17 matters lodged in various jurisdictions and seven appeals lodged with the Public Service Appeal Board. Of those, there are nine applications to the Supreme Court for a judicial review and 27 proceedings that have been commenced in industrial tribunals or the courts.

The CHAIR: Noting the time, we have 10 minutes left before these divisions end. Do members want to continue asking questions on this?

Mr P.J. RUNDLE: I have one more final question.

Ms M.J. DAVIES: Can we just let the Attorney General finish?

Mr J.R. QUIGLEY: No, that is it.

The CHAIR: Does the member for Roe have a further question or a new question?

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

The CHAIR: Member for Roe.

[11.50 am]

Mr P.J. RUNDLE: The seventh point on page 457 says that in response to the growth in the demand for legal services, the government has approved an additional \$25.3 million for resourcing as part of this budget. Given the Attorney General's efforts criss-crossing the country for the Clive Palmer trial, the Premier countersuing Clive Palmer, the Attorney General's intervention in the former case of the health minister, and now Dr Tracy Westerman suing Minister McGurk for defamation, would the Attorney General agree that he and his ministers are one of the main contributors to these increased costs?

Mr J.R. QUIGLEY: Of all the cases brought by Mr Palmer, which has really driven these costs up—I think he has brought eight cases against the state—we have not lost one. We have not lost one, despite his National Press Club performance when he got up and said that he has not lost a case. He must have overlooked the fact that he lost the border challenge, and that was a massively expensive case. He lost the challenge to the Mineralogy amendment act, which wiped out his \$30 billion. That was massively expensive. The amount of money he has cost the state is incredible. He started this whole defamation action, and he started it interstate. He could have started it here, but he started it interstate to cause the maximum inconvenience. We applied to give our evidence via video, but that was not accepted. It was his election that has put us to all this expense. We have yet to recover costs—millions of dollars to recover. I do not want to go into exactly what those figures are, although a firm of cost experts has estimated that one of our recovered costs should come to \$1.2 million, but Clive Palmer does not want to pay that, so we will have further litigation that is going to cost further expense and further time. What is happening is just absolutely outrageous. Do not forget that he then brought an action against the then State Solicitor, Mr Egan, and against me, the Premier and the State of Western Australia, claiming \$50 million from each of us. Then he served us with a statement of claim that is about 30 pages long. What he is alleging against us just keeps on going and going. Then we have to employ solicitors and all of this sort of thing. What does he do after we are put to all this expense? He discontinues. He just files a notice of discontinuance after the member and his constituents have been paying for our defence. I do not want to go into the costs of all this because the matter is still before the court. We are still arguing over this. It is outrageous, because he has got unlimited resources—the deepest pockets in Australia. We saw that in the federal election when he spent \$100 million on advertising. He has unlimited resources. What is the state to do? Is it to roll over in the face of him and just give up on these eight cases? Not a bit of it. Now, of course, he has given notice that he intends to start proceedings—this is all public; Senator Cash made a public comment on it—under the Singapore–Australia Free Trade Agreement, which is going to cost us more. There are Queen's Counsels from London and Sydney. It is outrageous.

Mr P.J. RUNDLE: My constituents and I do not want to pay for the Attorney General's second trip across to Sydney to give evidence for something that he forgot. Aside from that—I will go to the last part of my previous question—does the Attorney General have a total for the legal costs that were incurred defending Minister McGurk being sued by Dr Tracy Westerman?

Mr J.R. QUIGLEY: All as I can say is there is a confidential settlement involved here.

Mr P.J. RUNDLE: Again?

Mr J.R. QUIGLEY: We are not the parties that are demanding this. Other people are demanding confidential settlements, but then Ms Westerman came out publicly and said, "Well, tell the public how much." All I can do is go to what the minister herself said. The minister herself said —

I rise further to refer to a statement I made last week in response to legal proceedings commenced by Dr Tracy Westerman. The matter has been settled by mutual agreement of both parties and the terms are confidential. However, in the public interest, I take this opportunity to inform the house that, as part of the settlement agreement, a total of \$16 500 has been paid, being a contribution towards the legal costs and disbursements incurred by Dr Westerman and Indigenous Psychological Services Pty Ltd in connection with the claim. This payment was made without any admission of liability and no other payments were made to Dr Westerman or Indigenous Psychological Services. As the terms remain confidential, I will make no further comment on the matter.

That is as much as I know on the matter.

The appropriation was recommended.