

**STANDING COMMITTEE ON
ESTIMATES AND FINANCIAL OPERATIONS**

2021–22 BUDGET ESTIMATES



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
THURSDAY, 21 OCTOBER 2021**

**SESSION ONE
DEPARTMENT OF JUSTICE (ATTORNEY GENERAL)
STATE SOLICITOR'S OFFICE**

Members

**Hon Peter Collier (Chair)
Hon Samantha Rowe (Deputy Chair)
Hon Jackie Jarvis
Hon Nick Goiran
Hon Dr Brad Pettitt**

Hearing commenced at 10.00 am

Hon MATTHEW SWINBOURN

Parliamentary Secretary to the Attorney General, examined:

Dr ADAM TOMISON

Director General, examined:

Mr ALAN SEFTON

State Counsel/Acting State Solicitor, State Solicitor's Office, examined:

Mr ALEXANDER KERR

Executive Director, Corporate Services, examined:

Mrs KYLIE MAJ

Acting Executive Director, Strategic Reform, examined:

Ms JOANNE STAMPALIA

Executive Director, Court and Tribunal Services, examined:

Mr MARK HAINSWORTH

Director, Advisory Services, examined:

Dr GRAHAM HILL

Director, Legal Aid Commission of Western Australia, examined:

Mr JOHN DEERY

Director, Finance, examined:

Mr AARON PANZICH

Chief Financial Officer, State Solicitor's Office, examined:

Dr JOHN BYRNE

Commissioner for Equal Opportunity, examined:

Mrs KATI KRASZLAN

Commissioner for Victims of Crime, examined:

Ms PAULINE BAGDONAVICIUS

Public Advocate, examined:

Mr JEREMY LEE

Principal Policy Adviser, Attorney General, examined:

Mr DANIEL EMERSON

Policy Adviser, examined:

The CHAIR: I would like to welcome everyone to today's estimates hearing, particularly the witnesses. Thank you for coming in today. The committee acknowledges and honours the traditional owners of the ancestral lands upon which we meet today, the Whadjuk Noongar people, and pays its respects to their elders, both past and present.

Have the witnesses read, understood and signed a document titled "Information for Witnesses"?

The WITNESSES: Yes.

The CHAIR: Your testimony before the committee must be complete and truthful to the best of your knowledge. This hearing is being recorded by Hansard and broadcast live on the Parliament's website. The committee will place the uncorrected transcript of your evidence on the internet a few days after the hearing. When the transcript is finalised, the uncorrected version will be replaced by the finalised version. This is a public hearing but the committee can elect to hear evidence in private. If for some reason you wish to make a confidential statement, you should request that the evidence be taken in closed session before answering the question. Members, before asking your question, I ask that you provide the relevant page and paragraph numbers. However, as you would be well aware in the Legislative Council, we are much broader in our understanding of that interpretation.

Before we start, as Dr Byrne has indicated, he is profoundly deaf. I intend to digress a little from normal procedure and ask if any members have any questions for Dr Byrne, the Equal Opportunity Commissioner. No? In that case, Dr Byrne has a very, very short day; he can go and have a cup of tea. You are quite welcome to stay, but there are no questions. Thank you.

Parliamentary secretary, do you have any opening comments?

Hon MATTHEW SWINBOURN: No, thank you, chair, other than to thank you for your indulgence with respect to Dr Byrne.

The CHAIR: It is my pleasure. Do any members of the committee have a question? I know that Hon Nick Goiran, as shadow Attorney General will, but I give the call to Hon Jackie Jarvis.

Hon JACKIE JARVIS: Thank you, chair. I refer to page 425 of budget paper No 2, volume 2. We had the police in this week—I was going to say yesterday, but it is all a bit of a blur—and we have had a bit of a focus on the Kimberley. I am particularly interested in understanding a bit more about the Halls Creek justice reinvestment project. I will not butcher the traditional language by trying to pronounce the actual title of it, but it is page 425 and about six or seven down—the Halls Creek justice reinvestment project. Could I get a little more detail about what that project is and any outcomes that you might have seen from it?

Hon MATTHEW SWINBOURN: That is the Olabud Doogethu Halls Creek justice reinvestment project. I do not know that I will be saying that too many more times either, so my apologies to that community. The department is spending \$1.452 million over the forward estimates to support the second stage of this justice reinvestment project, which is strategically aligned to and complements the Kimberley juvenile justice strategy, the KJS. The Olabud Doogethu includes 11 Aboriginal communities working together in partnership with the Shire of Halls Creek to address juvenile justice issues. The project aims to develop localised solutions that strengthen local communities and neighbourhoods, support families and young people and improve justice in building community capacity and developing collaborative actions. Member, is there any more information you want about that particular project?

Hon JACKIE JARVIS: No, that is fine. Thank you.

Hon SAMANTHA ROWE: My questions are in relation to budget paper No 2, volume 2. Paragraph 15 on page 427 is around the Broome Aboriginal-led specialist family violence court. Are you able to advise when this initiative will commence?

Hon MATTHEW SWINBOURN: My advice is that it will be in about a year or so.

Hon SAMANTHA ROWE: I refer to page 426 of budget paper No 2, volume 2. Now that the family violence restraining orders conferencing has commenced in the Perth Magistrates Court, are you able to advise when the expansion of the outer metropolitan and regional courts will occur?

Hon MATTHEW SWINBOURN: The family violence restraining orders conferencing will commence at Fremantle and Joondalup courts during the second quarter of 2021–22—it is anticipated to commence the week beginning 6 December 2021—and a further expansion into Armadale court is expected towards the end of the 2021–22 financial year. The regional expansion to the Bunbury and Broome courts during the 2022–23 financial year depend upon the completion of the required infrastructure.

[10.10 am]

The CHAIR: Just on that, can you explain how the conferencing will operate?

Hon MATTHEW SWINBOURN: Sorry, you are going to have to —

The CHAIR: It starts in Armadale does it not?

Hon MATTHEW SWINBOURN: The Armadale justice centre is currently under construction, yes.

The CHAIR: Sorry, it is the justice centre that is under construction.

Hon MATTHEW SWINBOURN: Yes, that is happening now. They are building the justice centre. Are you talking about the shuttle conferencing and you want to know how that actual shuttle conferencing works?

The CHAIR: Yes.

Hon MATTHEW SWINBOURN: I might ask Ms Stampalia to provide an answer for that. Sorry, chair, I was a little bit at cross-purposes there. I was thinking about buildings rather than processes.

Ms STAMPALIA: In relation to the shuttle conferencing, what will happen is if an application for a restraining order is objected to, and both parties consent, a conference will be held in the presence of a registrar who will conduct those conferences with a view to resolving the issues relating to that objection. If those issues cannot be resolved, it will move forward to the normal process, which would involve a final order hearing.

The CHAIR: A court procedure.

Ms STAMPALIA: That is correct.

The CHAIR: Good to hear.

Hon SAMANTHA ROWE: My last question is, again—budget paper No 2, volume 2, page 427, point 17. It is in relation to the shortage of criminal jury courtrooms. Are you able to advise how soon additional criminal courtrooms, including jury courts, will be made available?

Hon MATTHEW SWINBOURN: I might ask Ms Stampalia again to address that issue.

Ms STAMPALIA: What we anticipate at the moment is that we will build a business case to go forward to the budget process in 2022–23. It is a two-staged approach. The first stage is looking at our existing facilities to actually examine what adjustments we could actually make to maximise extra courtrooms relating to criminal jury trials. One of the challenges we have is the number of multi-accused and also the size of the deliberation rooms and the facilities for juries. We are looking

in Central Law Courts in particular to see what we can adjust. There will be a presentation relating to that in the near future in terms of that business case. We will look at how far we get with those particular options and, if we need to, we will go forward with further options for a longer term solution to government as well.

The CHAIR: Hon Nick Goiran, as shadow Attorney General you get a little additional time.

Hon NICK GOIRAN: Thank you, chairman. Parliamentary secretary, just to follow up on some of the answers provided to my colleagues on the committee, Hon Jackie Jarvis was asking about the Halls Creek justice reinvestment project. Has it commenced?

Hon MATTHEW SWINBOURN: Yes, it has.

Hon NICK GOIRAN: What date did it commence?

Hon MATTHEW SWINBOURN: My advice is that the program started before we actually started funding it, so the program has been going for a couple of years.

Hon NICK GOIRAN: Can it be taken on notice then, parliamentary secretary, to provide some information to the committee on the extent to which the program was able to be undertaken, notwithstanding there was no funding provided?

Hon MATTHEW SWINBOURN: I will ask Dr Tomison to answer that.

Dr TOMISON: Olabud has been going for around a couple of years, I believe. The local shire at Halls Creek was one of the instigators, along with Social Ventures Australia, who were interested in doing justice reinvestment projects, and we have got very strong involvement of local Aboriginal people. They have been running a night patrol for some time and quite successfully in terms of engaging young people on the street in Halls Creek and hopefully then taking them to a place of safety for the night rather than just being out and running wild late in the evening. Another part of the program is also the follow-up the next day. Local Aboriginal people go to the families and, essentially, see why are these kids out and what can we do to help them to avoid having these young people on the streets. It is seen as a positive engagement program. The program has also been expanded to local communities outside of Halls Creek. A lot of Aboriginal communities are interested in how it works. That has also been happening for some time. The government's money will allow the night patrol to continue and expand and also, I expect, provide some additional follow-up type of services.

Hon NICK GOIRAN: So the night patrols originally funded via the local shire?

Dr TOMISON: That is my understanding, but I would have to confirm that.

Hon NICK GOIRAN: That is fine. You do not need to take it on notice.

Hon MATTHEW SWINBOURN: Can I just add a further point of clarification? It was a 2021 election commitment to fund it to the tune of \$1.5 million. That is where some of this additional money has come through— that election commitment.

Hon NICK GOIRAN: There was discussion earlier about shuttle conferencing in response to the questions from Hon Samantha Rowe and the Chair. This is in respect to, as I understand it, contested family and domestic violence restraining orders. Is there an intention by the government to roll this out with respect to contested restraining orders generally?

Hon MATTHEW SWINBOURN: In terms of the government's intention, obviously you are asking about something that I, in my representative capacity, am not able to give an answer to, and it is not necessarily something that is part of the budget papers at this point in time. You are asking

about a future event. There has not been a policy decision, as far as I am aware, made, and I would not necessarily be aware, as the representative parliamentary secretary.

Hon NICK GOIRAN: Might the director general be aware?

Hon MATTHEW SWINBOURN: There have not been any decisions made in relation to those things. He might be aware, but I do not know if he is aware. It is not something that is subject to the current budget papers.

Hon NICK GOIRAN: There was discussion with respect to the lack of criminal courtrooms and some suggestion that there is going to be a business case. When will the business case, the preparation of it, commence?

Hon MATTHEW SWINBOURN: I will get Dr Tomison to answer that.

Dr TOMISON: We had roughly half a million dollars allocated to the department in the current budget to hire a consultant to start looking at options around the courts. That person has been hired and I would expect we will be going back in the next year with options for government once we have had a chance to see the consultant's report and can discuss that with our key stakeholders, such as the heads of jurisdiction.

Hon NICK GOIRAN: So a consultant has been hired, but the preparation of the business case has not commenced.

Dr TOMISON: The consultant has been hired to start undertaking the work. The business case itself will not have been written yet. Yes, that is correct.

Hon NICK GOIRAN: On what date was the consultant hired?

Hon MATTHEW SWINBOURN: We do not know the answer to that at this point in time. Perhaps that is a question that the committee might want to put on notice.

[Supplementary Information No A1.]

Hon NICK GOIRAN: Moving to a different topic, how much of the total appropriations have been used for assisting either of the parties in the recent Supreme Court matter of Crawford and Quail?

[10.20 am]

Hon MATTHEW SWINBOURN: Member, I think you are asking a very precise question about the total amount. I do have some information here about what has been incurred. But there has been a changeover, as I am sure you are aware, between the creation of the sub-department of the State Solicitor's Office and the previous Department of Justice in terms of costs that have been incurred that may not have been paid yet for the period the budget is set. I cannot give the member a very precise answer in terms of the exact amount there because I do not have them before me at this particular point in time, but I am aware that currently the State Solicitor's Office has incurred \$274 725.87, GST exclusive, until 20 October 2021.

Hon NICK GOIRAN: Until this month, the State Solicitor's Office has incurred \$274 000?

Hon MATTHEW SWINBOURN: It is \$274 725.87.

Hon NICK GOIRAN: Yes, with respect to this matter. What proportion has been allocated in assisting either of the parties?

Hon MATTHEW SWINBOURN: My advice is that those amounts relate to President Quail and that at this point in time they have not incurred any expenses in relation to Magistrate Crawford, although it may be possible that at some later time she might seek funding under the relevant guidelines that relate to seeking public funds to support legal proceedings. That may happen at a later date. But that is probably in the hands of Magistrates Crawford rather than anyone else here.

Hon NICK GOIRAN: The \$274 000 incurred by State Solicitors is just with respect to President Quail, but that figure, I think you maybe gave an indication, is not yet finalised?

Hon MATTHEW SWINBOURN: That is right. The matter, as you might have noted from media reports, was withdrawn halfway through the hearing. It is our understanding that it has ended but there may be additional expenses coming towards the state as a consequence in terms of further invoices being received.

Hon NICK GOIRAN: Not for further services that are required, but just invoices that are yet to be provided?

Hon MATTHEW SWINBOURN: I think that would be a fair summary of it.

Hon NICK GOIRAN: The invoices must therefore be coming from an entity outside of government.

Hon MATTHEW SWINBOURN: That is for independent legal representation, yes.

Hon NICK GOIRAN: Parliamentary secretary, what are the cost implications for the department in exclusively assigning Magistrate Crawford as a full-time Children's Court Magistrate in the Fremantle, Armadale and Rockingham Magistrates Courts?

Hon MATTHEW SWINBOURN: I might ask Ms Stampalia to answer this question, please.

Ms STAMPALIA: The cost implications, in particular the salary of Magistrate Crawford, are covered in existing appropriations. The facilities in relation to the locations where the magistrate will sit are already part of our portfolio facilities. There will be one requirement in terms of making sure that the magistrate has the appropriate judicial support, so there is likely to be an impact of allocating a level 2 judicial support officer to support the magistrate when the magistrate works at those particular locations.

Hon NICK GOIRAN: What is the cost of that judicial support?

Ms STAMPALIA: Probably between \$70 000 and \$80 000 a year, with all associated on-costs.

Hon NICK GOIRAN: Is that with respect to one of those three Magistrates Courts?

Ms STAMPALIA: There will be one judicial support officer. It may be different people but it is one judicial support officer full-time equivalent.

Hon NICK GOIRAN: Has Magistrate Crawford otherwise been sitting in the Children's Court in Perth?

Ms STAMPALIA: That is correct.

Hon NICK GOIRAN: And would have been provided some judicial support when doing so?

Ms STAMPALIA: That is right.

Hon NICK GOIRAN: Why would there not just be a reallocation of that person, or that position, to these other three locations? Why is it costing the taxpayer another \$70 000 or \$80 000?

The CHAIR: Are you comfortable with this?

Hon MATTHEW SWINBOURN: I am comfortable for Ms Stampalia, but if questions can be directed through you, chair, and then to the parliamentary secretary.

Ms STAMPALIA: We have a number of judicial support officers at each location, so one judicial support officer is not allocated to a particular magistrate; there are multiple. Depending on the listings and how the court operation on the day works, it may be that all the judicial support officers at the Children's Court are allocated. With the circuit requirements that will exist with Fremantle and the other two locations you referred to, we are just mindful that we may need to supplement

those resources to allow for travel time and other things that may occur. We are really just working through that process now.

Hon NICK GOIRAN: Parliamentary secretary, it sounds like an interesting trial. Perhaps the government may consider this novel solution being applied more broadly. How many magistrates currently sit in the Children's Court?

Hon MATTHEW SWINBOURN: Ms Stampalia.

Ms STAMPALIA: At the moment, we have six magistrates in the Children's Court, including the magistrate that is allocated to the care and protection pilot.

Hon NICK GOIRAN: Parliamentary secretary, there are six, but obviously Magistrate Crawford is one of the six. Are either of the other five routinely required to travel to any of the other locations—for example, Fremantle, Armadale or Rockingham?

Ms STAMPALIA: It varies. I am not in possession of particular information around which of the other five magistrates go to locations but they do at times go to other locations to hear Children's Court matters.

Hon NICK GOIRAN: Parliamentary secretary, you might need to take this on notice. Can we be provided, for the last financial year, the number of occasions that the six magistrates were required to go to locations outside of Perth? On how many occasions were each of them required to sit outside Perth?

Hon MATTHEW SWINBOURN: If the committee wants to put that question to us, we will seek an answer for it.

[Supplementary Information No A2.]

The CHAIR: Do you want to move on to another area?

Hon NICK GOIRAN: It will be a different area, yes.

The CHAIR: I will move on and share the love.

Hon AYOR MAKUR CHUOT: My question is on the online certificate application system on page 436 of the budget papers. The registry has commenced the development of the online application system. I need to know, and I ask: what is the objective of the online application certificate system?

[10.30 am]

Hon MATTHEW SWINBOURN: The system is to enable members of the public to apply for their birth, death, marriage and change of name certificates through the secure online facility. I had the misfortune of having had my own name changed as a child and then having to change it back to my current name, so I can attest to the difficulty that you have to go through to have that name changed, so I welcome the online facility. This functionality is a continuation of the registry's commitment to provide accessible services for all community members, including those Western Australians who may reside interstate, overseas, have mobility issues or be remote from Perth in that regard. The online platform will provide a safe and secure environment for applications and reduces the risks associated with customers posting or emailing proof of identity documents, because, obviously, that is one of the ways in which those that are inclined to scam us have been using the mail service to take people's mail and steal them. Whilst obviously no system is perfect, we think an online secure system would be a better way for people to be able to securely access that information and hopefully get that information going.

Hon AYOR MAKUR CHUOT: My next question is on the guardianship and administration amendment, and that will be on page 432. My question is: what has been the result of the operation of the guardianship and administration amendment?

Hon MATTHEW SWINBOURN: The Guardianship and Administration Amendment (Medical Research) Act commenced in April of last year, and it enables incapacitated persons to now be enrolled in medical research in certain circumstances. What we mean by that, member, is that sometimes someone may have a medical condition where they are not able to consciously give consent, and it might be important for medical research reasons to be able to take samples from their body to understand their disease. This is not for the purposes of treatment but for research. Prior to these amendments, an incapacitated person did not have the benefit of being enrolled in medical research even if their decision-maker consented to their participation, so legal advice had been sought by the Department of Health in 2018. Legal advice that had been obtained limited the application of the Guardianship and Administration Act to medical treatment being provided to an incapacitated person, excluding their participation in medical research, and that is problematic, because sometimes the need to get them to participate is a time-sensitive issue, so if you waited until they were actually able to give consent themselves, the opportunity to gather that information was lost. So, the amendments to the Guardianship and Administration Act corrected this anomaly and permitted an incapacitated person to be enrolled in medical research in two situations: one, with the consent of their research decision-maker; two, in urgent circumstances, without the need to obtain consent from research decision-makers, with various statutory safeguards in place to protect the incapacitated person.

It is worth noting that the Minister for Health must report annually to the Parliament, according to section 110ZZD of the Guardianship and Administration Amendment (Medical Research) Act 2020, on medical research that has been carried out according to these provisions. The minister's report will outline the number of incapacitated persons who have been enrolled in medical research and any other issues related to the operation of the new medical research legislation.

Hon AYOR MAKUR CHUOT: My third question, I want to ask about elder abuse, but this is a general question. I have no reference.

The CHAIR: We allow that.

Hon AYOR MAKUR CHUOT: Thank you.

Hon JACKIE JARVIS: I think it is 436; there is a comment there that relates to elder rights legal services.

Hon AYOR MAKUR CHUOT: Thank you, honourable member. What is the government doing to address elder abuse?

Hon NICK GOIRAN: Not much!

Hon MATTHEW SWINBOURN: Thank you, chair, and the unwelcome comment from Hon Nick Goiran, but he knows that we both have a shared interest in this matter, so I will provide this answer. In late 2019, Western Australia's first ever strategy into elder abuse, *WA strategy to respond to abuse of older people (elder abuse)*, was released. This 10-year strategy led by the Department of Communities is a blueprint for the priorities, actions and outcomes required to effectively prevent and respond to the abuse of older people. The Department of Justice is working with other agencies to provide an integrated and coordinated response to elder abuse, and obviously today we are interested in that part of the response that relates to the Department of Justice. Justice is working with Communities, the commonwealth and other states and territories to implement the national plan to respond to the abuse of older Australians from 2019 to 2023. The

national plan was launched in March 2019 and fulfils the key recommendation from the Australian Law Reform Commission report, *Elder abuse—A national legal response*.

A further key recommendation of the Australian Law Reform Commission was the development of a national online register of enduring powers, and a national register of financial enduring powers of attorney is one of the priorities of the Meeting of Attorneys-General, and significant progress has been made in this area. The department continues to work with the commonwealth and other states and territories to finalise the design of the national register, including appropriate access arrangements, interacting with existing land title registers, and safeguards for vulnerable users. The state government is also committed to implementing the recommendations of the statutory review of the Guardianship and Administration Act. A number of the recommendations from the statutory review are aimed at deterring the financial abuse of vulnerable adults, which can include older members of our community. We have already mentioned the Guardianship and Administration Amendment (Medical Research) Act, which commenced its operation, so we see that having some relevance to that, as well.

The Department of Justice is also working with the Department of Health to develop a new advance health directive template under the Guardianship and Administration Regulations—I know Hon Dr Sally Talbot is interested in that issue—arising out of the Ministerial Expert Panel on Advance Health Directives, or the MEP. The MEP recommended that the advance health directive template be revised after findings by the Joint Select Committee on End of Life Choices that the current template lacks guidance for those completing it and could be enhanced and in particular made more user-friendly. I think Hon Nick Goiran was also involved with that committee, as well. Work has been conducted by the Office of the Commissioner for Victims of Crime on the adequacy of legislative frameworks to respond to elder abuse.

Hon NICK GOIRAN: Parliamentary secretary, you say that the government is committed to implementing the recommendations from the statutory review. It has been more than 1 600 days since the government promised that they would expedite such reforms. Is it not the case that the government has abandoned this commitment?

Hon MATTHEW SWINBOURN: Member, I am not going to—I mean, no. The answer to that is no, there is no abandonment of commitments.

Hon NICK GOIRAN: There is a bill in existence, then, is there?

Hon MATTHEW SWINBOURN: I am not in a position to talk about the drafting of bills. They are subject to cabinet-in-confidentiality.

Hon Dr SALLY TALBOT: Parliamentary secretary, my questions are related to pages 426 and 427. I have two or three questions about the significant issues impacting the agency. I see there are a couple of references to COVID-19, but I recall from last year that we did look at several justice bills in relation to the COVID emergency bills. I wondered if you could just take us through what legislative amendments have been introduced and what the cost elements of those might be for us?

Hon MATTHEW SWINBOURN: The Department of Justice has worked proactively to respond to restrictions, risks, limitations and protection of personal information associated with the COVID-19 pandemic. There were three pieces of legislation introduced over the 2020–21 year which have ensured the continuity of the administration of justice, protecting our public officers as well as ensuring confidence in our contact registration requirements. As part of the government's response to the pandemic, the department contributed to cross-government omnibus legislation, which was enacted as the COVID-19 Response and Economic Recovery Omnibus Act 2020. This was necessary

to facilitate business continuity during the COVID-19 pandemic and allow effective economic recovery. I do not think I have had enough coffee this morning, or perhaps I have had too much!

[10.40 am]

Specifically, the department drafted a range of provisions to ensure continuity of the administration of justice during pandemic restrictions. Amendments included facilitating video link for bail surety undertakings, allowing audio link for sentencing where necessary, and where an accused in special hearings involving a child cannot attend court. Electronic processing was enabled for a range of court-related acts where processes or lodgements are usually done in writing or in person.

Earlier this year, it became necessary to enact an urgent response to the use of contact registration information that is mandated to be provided by individuals under the Contact Register Directions, in recognition of the importance of providing contact information through the SafeWA app and written contact registers for effective public health responses, that act being the Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Act 2021. This was led by the department enacting a statutory framework for regulating the use and disclosure, storage and destruction of entry registration information provided by the public. The act limited the use and disclosure of this information to contact tracing and purposes relating to contact tracing, reflecting that public health is the paramount priority.

Finally, the department also contributed to vital legislation that extends the operative time frames of the COVID-19 emergency legislation, that being—there are two of them—the COVID-19 Response Legislation Amendment (Extension of Exploring Provisions) Act 2020, and the 2021 act, and where necessary to extend the amendments made to the Emergency Management Amendment (COVID-19 Response) Act 2020 and the Criminal Code, in response to the COVID-19 pandemic. The sunset date that applies to section 72A of the Emergency Management Act was extended twice through these expiring provisions acts, and through these acts the department could amend the Criminal Code Amendment (COVID-19 Response) Act 2020 to ensure that the higher penalties continue to apply to serious assaults and threats against public officers committed in the context of COVID-19, which I think we all continue to live through.

Hon Dr SALLY TALBOT: My second question is on significant issue 4, which mentions the Closing the Gap outcomes. I wonder if you can talk about what the department is doing in an active sense to work towards those outcomes, and what those outcomes might be.

Hon MATTHEW SWINBOURN: The department continues to prioritise its efforts to address the over-representation of Aboriginal young people in detention and Aboriginal adults in prisons in WA associated with outcomes 10 and 11 of the National Agreement on Closing the Gap. In accordance with priority reform 1 of the national agreement, the department has actively supported the Department of the Premier and Cabinet to draft WA's jurisdictional implementation plan, which was endorsed by joint council on 6 August 2021. Also under priority 1, reform 1, all parties committed to establishing joined-up approaches to five policy priority areas, between the commonwealth, states, territories and Aboriginal and Torres Strait Islander representatives. These will identify opportunities to work more closely across governments, reduce gaps and duplication, and improve outcomes under Closing the Gap.

On 16 April 2021, the joint council agreed to accelerate the critical work of establishing a policy partnership on justice, with the aim of reducing youth and adult incarceration, given the urgency and enduring nature of this issue. On 20 August 2021, the joint council approved the details of the new justice policy partnership to be established, including a draft agreement to implement the partnership. The inaugural meeting of the justice policy partnerships was held on 23 September 2021, and the Department of Justice played an active role in representing Western Australia.

Outcome 11 of the National Agreement on Closing the Gap sets a target requiring a reduction in the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30 per cent by 2031.

The Kimberley juvenile justice strategy, which we have mentioned in part before, aims to empower Aboriginal community-controlled organisations to co-design targeted, innovative local solutions that will address key drivers of youth offending specific to their individual communities. This will ensure that the funding supporting diversionary measures will be utilised in the most efficient manner and have a meaningful impact on reducing Aboriginal youth offending and reducing the number of Aboriginal young people in detention. To this end, the department has held several focus meetings with Aboriginal communities, local organisations and local government in the last six months in the Kimberley to inform ongoing development of the KJJS. It is expected that because the KJJS initiatives will be targeted towards a specific community, they will have a substantial impact within that community. For instance, as we have discussed, the Olabud Doogethu project in Halls Creek is a partnership including 11 Aboriginal communities and the shire, resulting in the development of a number of initiatives aimed at diverting Aboriginal young people from the justice system. The people of Halls Creek experience high rates of youth offending, youth suicide, foetal alcohol spectrum disorder and instances of complex trauma. Furthermore, 69 per cent of children in Halls Creek are considered to be developmentally vulnerable. Aboriginal young people from this area are an especially vulnerable cohort, and are often at high risk of early enmeshment with the criminal justice system. We are working towards those targets.

The CHAIR: I would like to follow up on one part of that, if Hon Dr Sally Talbot does not mind. Does the regional reform unit still exist within government?

Hon MATTHEW SWINBOURN: Within the Department of Justice?

The CHAIR: No, it is an all-of-government unit that was established under the previous government, but it continued to exist under this government. I only reason I ask is because a lot of the initiatives that you are talking about overlap a lot of what was being done with the regional reform unit. The incarceration rate of Aboriginal youth is unacceptable; anyone will acknowledge that. I just hope we are not reinventing the wheel and doing something else. Sorry; this is just important to me. If in the twenty-first century we are still going around with a new program with a new government, we may as well go fishing. I just hope that that regional reform unit is part of this process. I would be interested to know. Can I take that on notice?

Hon MATTHEW SWINBOURN: We might have an answer, but if I do not have one, we can see if we can do that. We will take that on notice, if that is what the committee wants.

The CHAIR: Just to clarify, it is the regional reform unit, which is an all-of-government approach towards improving outcomes across the region, but particularly in the Kimberley, for Aboriginal people. I am looking at, firstly, whether it still exists, and whether the initiatives that were just read out to this hearing are part of the initiatives that have already commenced with the regional reform unit, or separate.

Hon MATTHEW SWINBOURN: The committee will construct its question as it goes along, but we will do our best.

[Supplementary Information No A3.]

Hon Dr SALLY TALBOT: I note that the parliamentary secretary referred to the Kimberley juvenile justice strategy, which is great, because I was going to ask a question about that. I will move on to my last question, which again refers to significant issue 4, where there is mention made of the department's reconciliation action plan. I wonder whether you can outline what that plan consists

of and whether it contains any internal targets or how you measure the success of the plan. Probably more importantly and more practically, what part does the RAP play in reducing the over-representation of Aboriginal people in the justice system in WA?

Hon MATTHEW SWINBOURN: The Department of Justice will complete its inaugural reconciliation plan in December this year. This document has guided the department's strategic approach towards reconciliation since July 2018, containing over 80 separate, discrete deliverables, each of which contributed to advancing reconciliation with other states and improving outcomes for the department's Aboriginal stakeholders and the department's workforce. It is pleasing to note that the department is well on track to complete every one of the deliverables within its current reconciliation action plan and transition into its next reconciliation action plan in January 2022. Some of the more significant achievements identified within the current reconciliation action plan include developing and implementing a cultural protocol document to guide both acknowledgement of country and welcome to country at significant department events; promoting understanding of, and respect towards, Aboriginal culture through NAIDOC Week events; and significantly improving the management of art created by Aboriginal prison artists, including that which was historically donated to the department. It is worth noting that the Department of Justice as it exists now also includes the Corrections part of Justice as well as the Attorney General's part, so some of these relate obviously to the Corrections part of it.

[10.50 am]

Other significant achievements include developing and implementing an Aboriginal workforce development strategy and increasing the number of Aboriginal employees to comprise in excess of six per cent of the department's overall workforce, far exceeding the aspirational target set by the Public Sector Commission; developing and implementing an agreement between the department, WA police, the Aboriginal Legal Service of Western Australia to deliver an Aboriginal custody notification service; developing and implementing a strategy to improve Aboriginal engagement with justice services and reduce Aboriginal incarceration; improving the accessibility of identification documents and the ability to address outstanding fines matters prior to escalation through increasing the number and reach of Aboriginal justice open days across the state; revamping the Aboriginal services committee initiative within the prison estate to improve service delivery and outcomes for Aboriginal prisoners; expanding and improving outcomes associated with the Aboriginal driver education training program; and supporting Aboriginal business through our focus Aboriginal procurement.

Many of these achievements either directly focus on reducing the over-representation of Aboriginal people in the criminal justice system or support the development of improved practices and services that result in improved engagement and subsequently increased diversion or reduced recidivism that contributes to the reduction of Aboriginal people in the criminal justice system.

Significantly, the department has established the Aboriginal Justice Advisory Committee, as a commitment made under its reconciliation action plan. The Aboriginal Justice Advisory Committee will provide advice to the department and its initial focus will be on issues affecting Aboriginal women and young people in contact with the justice system. Cabinet has approved, in principle, the establishment of the AJAC and, following a recruitment process, the department is now in a position to recommend to cabinet appointments to the committee. It is expected that the first meeting will be able to occur in November of this year.

The CHAIR: With regard to that RAP, parliamentary secretary, are they achievements or are they what the RAP intends to achieve?

Hon MATTHEW SWINBOURN: They are a mix, I am told. Some of them are works in progress and some of them have been achieved.

The CHAIR: I would have assumed acknowledgement of country has been a part of our culture for a number of years and a number of other things there—a workforce development strategy and reducing Aboriginal incarceration—are really good, but I hope that it is not just words.

Hon MATTHEW SWINBOURN: In relation to acknowledgements of country and welcomes to country, it is still an evolving area and I think many organisations, including government organisations, are moving to make sure that they remain meaningful and relevant. Obviously, we are in a very large state and there are different Aboriginal groups and so what is appropriate in one area may not necessarily be appropriate in all areas. I must admit that I was fortunate enough to attend a recognition of service event with the Department of Justice for its Aboriginal workforce. It was very pleasing to see the number Aboriginal people within the Department of Justice who were being recognised for service—the usual five and 10, but there was one Aboriginal person there who had 35 years of service. It was a wonderful event. Unfortunately, it had to be delayed initially because of COVID, but when the event kicked off, it was very well run and very impressive for the number of Aboriginal people engaged by Justice.

Hon Dr BRIAN WALKER: I have to confess I must digress from my original points to follow on from what has been said. I am quite concerned, having worked in the Kimberley and the Pilbara, about the over-representation of Indigenous peoples in the criminal justice system. A quite simple question—yes or no. Is it true, or would you agree as a department, that alcohol plays a major role in increasing the amount of access to the criminal justice system?

Hon MATTHEW SWINBOURN: Yes, there is a recognition of that.

Hon Dr BRIAN WALKER: Would it also be true to say that by decriminalising cannabis—you know where I am going with this—we would see a reduction in the amount of Indigenous representation within the criminal justice system?

Hon MATTHEW SWINBOURN: I going to ask how that relates to the budget papers.

The CHAIR: I think you may be asking for an opinion.

Hon MATTHEW SWINBOURN: I just do not understand the correlation between the budget papers and what is effectively an opinion about that.

The CHAIR: As you would be well aware, parliamentary secretary, we do allow a bit of latitude for this one. I would not mind the question, honourable member, if you could somehow relate it to spending or something particular in relation to the current hearing.

Hon Dr BRIAN WALKER: Indeed, so. The average of \$100 000 per year per prisoner would certainly count in the budget in the spending and also in the losses and damages caused by, say, alcohol-fuelled rampages on the road. As against, if you reduce the amount of alcohol and increase access to cannabis, would that result in a reduction in the costs to our state?

The CHAIR: That was a pretty good try. How do you go there, parliamentary secretary?

Hon MATTHEW SWINBOURN: Chair, I am not willing to speculate on those matters.

Hon Dr BRIAN WALKER: I will accept that. It is something we could ask on notice later.

I can move on to my prepared questions now. The first one is: I refer you, parliamentary secretary to budget paper No 2, volume 2, pages 426 and 427. I see a reference there to the justice reform project. I am a little less happy about page 425 and the spending changes table. I am looking at the justice reform project and seeing there is a reduction in costs over the estimates to 2024–25. I am

wondering: would the project that we are talking about here include a response to that damning report by Wayne Martin into criminal confiscation here in WA and is any time frame attached to the response to that very significant report?

Hon MATTHEW SWINBOURN: I think we are just trying to unpack that and work towards an answer. Chair, I am advised that we may need to take that one on notice.

[*Supplementary Information No A4.*]

Hon Dr BRIAN WALKER: Thank you, chair and parliamentary secretary.

If I carry on with this, at the bottom of page 425, paragraph 2, there is a reference to the Parliamentary Counsel's Office continuing to provide drafting services. You mentioned earlier that you cannot really comment on things currently before cabinet, but do these services include any work yet in response to Mr Wayne Martin's recommendations?

Hon MATTHEW SWINBOURN: I think you have answered your own question about how I can answer that question about bills that are being drafted. They are subject to cabinet confidentiality.

Hon Dr BRIAN WALKER: Wonderful. May I accept, though, that it is actually in drafting?

Hon MATTHEW SWINBOURN: I cannot confirm that either, member.

Hon Dr BRIAN WALKER: Going on, in that case. I am struggling to find any reference under Justice to the proceeds of criminal confiscation. Is the parliamentary secretary able to help me and point me in the right direction in that regard? There are presumably funds coming in on an annual basis. Where might I find details of these?

Hon MATTHEW SWINBOURN: I will ask Mr Kerr to answer that question, please.

Mr KERR: On page 446 of the budget papers, being the last page for the Department of Justice, you can see the proceeds coming in under "Income" "Confiscation of Assets" and "Confiscation Expenses Paid from the Confiscation Proceeds Account", being \$8.756 million in actuals.

Hon Dr BRIAN WALKER: Thank you. I note also from the Auditor General's report into criminal confiscation back in 2018—I will take this old report here—that both the DPP and WA police have performance measures in place in regards to confiscation. How much has the DPP received in terms of account funding, inclusive of annual bonuses and one-off payments, since 2014, the last year of the auditor's report that was covered?

Hon MATTHEW SWINBOURN: Chair, I think you have the same issue I have. We do not have the DPP here; they were not called before estimates so I cannot answer that question.

Hon Dr BRIAN WALKER: Can I have that on notice, in that case?

Hon MATTHEW SWINBOURN: No, because they are not here.

The CHAIR: You may need to put that one in as a question through that normal question process, honourable member.

Hon Dr BRIAN WALKER: I shall do so, thank you.

Hon MATTHEW SWINBOURN: Member, we are not trying to be difficult on that; we just do not have the DPP here.

[11.00 am]

Hon SHELLEY PAYNE: My question, parliamentary secretary, relates to page 425, which is "Significant Issues Impacting the Agency", paragraph 1. It says there —

... the Department is also progressing a number of Bills for introduction or reintroduction, including the Criminal Law (Mental Impairment) Bill 2021 ...

I just wondered if you could talk to me a bit about that Criminal Law (Mental Impairment) Bill and also any other associated service redesign that might be required.

Hon NICK GOIRAN: It is subject to cabinet-in-confidence, so you would not possibly be able to comment on that, surely?

Hon MATTHEW SWINBOURN: Thank you, honourable member. Maybe I will turn all the answers over to you!

That is correct; I am not able to talk about those matters that are currently in progress, or potentially in progress, because of the cabinet confidentiality. I think I can only say that the department continues to support the government's reform agenda in the justice system, and so we have passed a number of bills. It would be fair to say that bills continue to be worked on, but, other than that, I cannot be any more specific.

Hon SHELLEY PAYNE: Just moving on with those significant issues. If we could go to paragraph 3 where it talks about the Western Australian Office of Crime Statistics and Research. If you can just tell me a bit about the work that they are doing and that they will be doing, and also about the advisory board, whether that is set up yet and operating.

Hon MATTHEW SWINBOURN: The Western Australian Office of Crime Statistics and Research has been established within the Department of Justice, fulfilling our government's commitment to provide an independent, evidence-based approach to the analysis, evaluation and development of criminal justice policy programs. The director general has some additional information that he might want to add to this, so the director general can speak further to that.

Dr TOMISON: Thank you, parliamentary secretary. As the secretary said, the office has been established since 2020. It is fully funded. We have actually developed the capacity of the number of staff in the agency by amalgamating some existing business intelligence research units but also supplementing that with some new additions around research analysts, and also appointing Dr Shona Hyde as director of WACSAR late last year. WACSAR is pretty much focused around the evaluation of a number of key departmental projects. So the main focus has been—I guess, first and foremost—is what we are doing working, and trying to determine that more accurately because there is a genuine dearth of good-quality information about what works and what does not in the sector and across the world in terms of criminology and criminal justice-related responses. There are some good programs. There are lots of things that we think work, but we do not know for sure. So they have been doing a lot of work on that and that is going to take quite a period of time. That includes things like starting the evaluations of our two new alcohol and other drug treatment facilities at Wandoo Rehabilitation Prison for women and the Mallee rehabilitation unit at Casuarina Prison for men.

The other element of WACSAR is about also engaging with the broader research community and creating a capacity to undertake primary research support of the department's and government's agendas, and that is something which is a work in progress and which we are still expanding out to, given we have focused on the internal evaluation first and foremost. Helping to guide that will be the establishment of a non-statutory advisory board, as the member has identified. That board will be chaired by me and will include the Chief Justice of the Supreme Court, commissioner of Western Australian police, the deputy director of the Australian Institute of Criminology and three university representatives. Where we are currently at is doing an expression of interest to get those three university members' expressions of interest and see who is interested in joining the committee, after which the first meeting of the board will take place.

One of the key elements the board will consider is the new moneys that were given in the budget to fund a research grant program of \$300 000 per annum, and that will likely to be targeted towards getting early-career researchers, financing collaboration between WA researchers institutions and also allowing us to put out targeted calls for research across the criminal justice sector into experts outside the department so we can work collaboratively to, again, identify what works and what could work and what we can do to improve our systems. The board will oversee that project. It will oversee the call for our research submissions, if you like, proposals, and will also oversee the assessment of those proposals once we get going. That is a work in progress. It has not happened yet, but it will happen probably early next year.

Hon SHELLEY PAYNE: Just my final question. I refer to page 442, at the bottom of the table, which says, “Details of Controlled Grants and Subsidies”. I just had a question about the second line item. It talks about the “Criminal Injuries Compensation Payments”. The budget amount is \$31.8 million and I noticed that the actual amount spent was \$68.5 million. I just wondered if you could tell me why there is that big difference between the budgeted and actual expenditure.

Hon MATTHEW SWINBOURN: Yes, that difference in the amounts is a point of note. In 2020–21, a total of \$68.5 million of criminal injuries compensation payments were paid to victims of crime, and the department has spent an additional \$36.7 million above the budget, of \$31.8 million, as you have noted. The number of CIC applications assessed and awards granted has increased significantly by 92 per cent, from 2 488 in the 2019–20 period to 4 777 in the 2020–21 period. And it is noted that an increase in overall amounts awarded under the CIC during the previous financial year is as a result of dedicated effort to reduce the backlog of claims. A total of 66 per cent of all matters finalised by the Office of Criminal Injuries Compensation during 2021 were older than 12 months, accounting for approximately \$51 million of the total of \$78 million awarded during the financial year. While in 2020–21, applications lodged have increased by 55.2 per cent, the average award amount has decreased from \$18 238 to \$16 581.

The increase in the number of applications assessed is due to the implementation of e-lodgements, the introduction of streamlined processes and the appointment of an additional assessor and additional supporting case managers. It should be noted that the amount paid and the amount awarded each year differs because the amount awarded is the award order figure, which may include future payments that are not paid out at the time the award is granted, and that future payments can be paid out at a later date up to a period of 10 years from the date of the award order.

Hon NICK GOIRAN: Further to this line of questioning, parliamentary secretary, you indicated in your response that part of the reason is because the continuation of an additional assessor. How many assessors are there and if the additional assessor is to stay on, will that not therefore mean that there will be a continued need to fund the awards that that assessor will be making a decision on?

Hon MATTHEW SWINBOURN: Chair, perhaps, if Ms Stampalia can answer this question.

Ms STAMPALIA: There are four assessors in criminal injuries compensation and the fourth assessor is now permanent. So, in terms of the clearance of backlog, in a number of years we expect that that will taper. Because our backlog was quite significant, the chief assessor has put a number of strategies in place to clear the backlog. So whilst I cannot tell you exactly when that backlog will taper off, yes, there will be a high number of awards again this year, but in year three or year four, it is possible that will start to trend down as we catch up.

Hon NICK GOIRAN: Further to that then, parliamentary secretary, that means that there is a problem in the budget, because as the witness has just indicated, it might taper off in future years. But, plainly, in the current financial year, and even in the next financial year, if the figure that has

been provided of \$31 million—and I note that it is the same figure that is used in each of the forward estimates, \$31.8 million; this is at page 442, which is the same as the budget in the last financial year which was blown out of the water; that cannot possibly be met because you have now got four assessors. And, indeed, it was interesting to be informed that they are four permanent assessors now. It was the case previously there were three permanent and one which I had understood was temporary. I mean, I certainly support the addition of a fourth permanent one, but the problem here is the line item. There is no way that that criminal injuries compensation payment budget of \$31.8 million can sensibly be achieved this financial year on the basis of just the evidence that we have just received and the information from the last financial year.

Hon MATTHEW SWINBOURN: Ms Stampalia.

[11.10 am]

Ms STAMPALIA: We have drawn that to the attention of the Department of Treasury, member. We are currently in discussions with Treasury as to what that will mean for future budget papers.

Hon NICK GOIRAN: Treasury are in next, in the next session.

The CHAIR: It might be an own goal!

Hon NICK GOIRAN: Parliamentary secretary, in answers provided prior to today's hearing, I did ask some with respect to the Coroner's Court and the very significant backlog. Are either you, or one of the witnesses here, in a position to be able to respond to questions in respect to that backlog?

Hon MATTHEW SWINBOURN: Obviously, the Coroner's Court is a court, so there are limitations. Ms Stampalia again, can you please —

Hon NICK GOIRAN: If there is somebody who is available, I will proceed with the questions and we will see how we go. Mr Chairman, through you to the parliamentary secretary and through the witness: I found the responses very enlightening. There are 810 cases backlogged in the Coroner's Court as at 30 June 2021. The response that was provided seems to indicate that the vast majority of those cases are backlogged because of problems with Health and Police. The response provided says —

Should there be a rapid completion of these reports —

That is reports from Health or Police —

and subsequent provision to the State Coroner, this may cause resourcing pressures on the Coroner's Court, however this is unlikely.

In other words, Police and Health are not going to do anything to get through that backlog of 77 per cent of cases, so there is going to be no pressure on the Coroner's Court. I find that absolutely astounding, not that that is a problem for the Department of Justice per se, but it takes me to my question, parliamentary secretary: the other 23 per cent of matters—that is 183—are said to be due to the direct control of the State Coroner. How many of the 183 cases have been with the coroner for more than two years?

Hon MATTHEW SWINBOURN: Ms Stampalia; through you, chair.

Ms STAMPALIA: In terms of that number, member, I do not have the details around how much of the number you have just quoted is in the backlog of more than two years.

Hon NICK GOIRAN: Parliamentary secretary, we will take that on notice; that is, how many of the 183 matters backlogged as at 30 June 2021 are older than 24 months? If that is going to be taken on notice, can we also ask how many of them are older than 12 months?

The CHAIR: Ms Stampalia?

Hon MATTHEW SWINBOURN: He is asking for that to be on notice, chair.

The CHAIR: Does it need to be on notice?

Ms STAMPALIA: Yes.

[Supplementary Information No A5.]

Hon NICK GOIRAN: Further to that, the genesis of those questions was of course in respect to the 27 unnatural deaths that I reported to the coroner. We know, pursuant to these answers that have been provided, that those cases are on hold pending the finalisation of consideration of proposed amendments to a health act. Are the 27 unnatural death cases part of the backlog of 810 cases as at 30 June?

Ms STAMPALIA: Again, we would have to get that on notice.

Hon MATTHEW SWINBOURN: Again, on notice, please.

[Supplementary Information No A6.]

Hon NICK GOIRAN: Parliamentary secretary, earlier, you helpfully provided the committee with some information with respect to the total appropriation that had been used to assist either one of the parties in the Supreme Court matter of Crawford v Quail. There was also another high-profile matter, in fact I think there were two cases involving the Legislative Council of Western Australia. How much of the total appropriation has been used to facilitate that matter with respect to assistance to parties?

Hon MATTHEW SWINBOURN: I think I will get the acting State Solicitor to answer that question; if that is okay with you, chair.

The CHAIR: Certainly.

Mr SEFTON: Could I indicate in response that there were two proceedings. One proceeding has been determined. There was a related proceeding commenced by the Attorney General, which is still on foot technically, and in circumstances where that proceeding is still on foot and has not been finally disposed of by discontinuance or any other matter in relation to the question of costs, it would seem to be inappropriate, given the matter is technically still before the court and sub judice, to comment on a specific amount of cost at this point in time. However, the question ultimately of costs at a point down the track, once proceedings are finished, might be a different matter.

Hon NICK GOIRAN: Fair enough. Parliamentary secretary, can we confirm, though, that some appropriation, as yet unspecified, was utilised to assist the Attorney General in respect to that, shall we call it, ancillary matter?

Mr SEFTON: To the extent that the appropriations relate to staffing within this office, or the Solicitor-General's office, and they are involved in conducting it, one could say there is a connection back to appropriation as it relates to staffing, yes. Our office has acted in respect —

Hon NICK GOIRAN: I want to understand the difference between that and the matter where \$274 000 of assistance was provided to President Quail. Are we comparing apples with apples here?

Mr SEFTON: In respect of President Quail, the reference to that sum of money related to disbursements which were paid—sorry, some have not yet been paid—disbursements incurred on behalf of the state for independent legal representation of President Quail. There was at an earlier point, for a very brief period, a point at which my office acted on behalf of the president. In that respect, certain time would have been expended in that regard. That is separate to the question of the \$274 000 which is the actual incurrence of expenditure rather than the use of staff within our office.

Hon NICK GOIRAN: That, helpfully, provides some explanation which will be pursued at a later date with respect to that ancillary matter. What about the substantive matter, which was the Legislative Council v Corruption and Crime Commission; what appropriation was allocated for that?

Mr SEFTON: Again, it is a case of various staff members within our office having involvement in matters connected with the proceedings. I am not in a position to separately identify and extract from work which may be performed at this point. To what extent that may have had a connection to the principal proceedings which are being determined, or the connected proceedings, I could not provide an answer at this specific moment.

Hon NICK GOIRAN: No-one in the State Solicitor's Office kept a time sheet as to how much time they spent on the case of the Legislative Council v CCC?

Mr SEFTON: There are various interconnected matters in respect of those proceedings. It would be necessary, from existing records, to examine them to try to extract to give an accurate answer to the question that is being asked. It is not a case of there not being—we have standard record keeping in relation to various matters; it is a question of extracting it to best provide the most accurate answer, which I am not in a position to do so at this moment.

Hon NICK GOIRAN: I can understand, with respect to the witness and the candidacy of his information to the Council committee here, that there were indeed a number of interrelated matters, but I would have thought that the State Solicitor's Office would at least, as a minimum, have one file with regard to this case, and at least with respect to that one file it should be apparent how much time has been spent by employees within SSO. I accept that there may well be some further ancillary files which, when we add all of them together, we will get a true picture as to the involvement of the state in this case and the true cost to taxpayers. As a minimum, is there not a file with regard to that primary case?

[11.20 am]

Hon MATTHEW SWINBOURN: I think Mr Sefton has made it clear that we cannot give you a precise answer. I think there has been a recognition that work has been conducted and in that respect we are not in a position today to give you any more clarity than you are seeking. I do not think we are going to get any more than that. We do not have an answer for you in relation to a specific budget allocation in that regard. I know where you are going to go from there, but I do not think Mr Sefton can take the matter any further today.

Hon NICK GOIRAN: But we can take it on notice?

Hon MATTHEW SWINBOURN: That is up to the committee, of course.

The CHAIR: Can we take that on notice then as supplementary information?

Hon MATTHEW SWINBOURN: Can we just clarify what is actually being asked?

Hon NICK GOIRAN: I would like to know precisely how much time has been spent —

Hon MATTHEW SWINBOURN: Time or the money? You are saying time.

Hon NICK GOIRAN: I am saying time because according to the witness there was no money spent because that relates to independent legal advice, as was the case in the Quail case. This one here is different, as I understand the evidence. If it is a matter of time instead of money, that is fine; I am just interested in the amount of time that has been spent on that primary case.

[*Supplementary Information No A7.*]

Hon NICK GOIRAN: I just want to confirm one of the answers that has been provided prior to today's hearing. The answer that was provided by the State Solicitor's Office says that SSO did not provide

legal advice regarding the reappointment of Mr John McKechnie as the commissioner of the CCC. I just want to make sure there is no typo there—that they “did not” provide legal advice. It is not that they did provide legal advice; is that right?

Hon MATTHEW SWINBOURN: Do you know what question number that was?

Hon NICK GOIRAN: It is question 3.

Hon MATTHEW SWINBOURN: I do not think I have that one before me. My advice is that the answer was “did not”.

Hon NICK GOIRAN: Okay. You might have to take this on notice then, parliamentary secretary, because my recollection is that there were certainly indications from the Attorney General that legal advice was obtained, so if it was not from SSO, can you take on notice who provided the advice?

Hon MATTHEW SWINBOURN: I think it would be appropriate to take that on notice.
[*Supplementary Information No A8.*]

Hon NEIL THOMSON: I refer to regional prison planning —

Hon MATTHEW SWINBOURN: Sorry, can you tell us what page that is on?

Hon NEIL THOMSON: It is on page 440, and it is to do with the planning for the Broome prison. I have a couple of questions around that issue.

Hon MATTHEW SWINBOURN: Member, that will be difficult because the Department of Justice as it is here is not corrections, and the Broome prison comes within corrections.

The CHAIR: It is not the Department of Corrective Services; it is a different division.

Hon NEIL THOMSON: Okay; I will come back to the issue of the juvenile justice strategy and the spending changes in relation to that. I was privy to the parliamentary secretary’s comments in relation to the Halls Creek initiative. I was listening in; I just was not sitting in the chamber at the time, and that has motivated me to ask some further questions. Specifically around the juvenile justice strategy, just by way of background, prior to my coming into this place I was involved in putting together submissions on behalf of Aboriginal corporations in relation to the establishment of facilities in the Kimberley. I believe there has been some funding of that line item, the Kimberley juvenile justice strategy, of \$2.355 million, at page 425. This may come under corrections also: is there any proposal to work in partnership with an Aboriginal corporation for the development of a diversion facility in the Kimberley to divert youth from Banksia?

The CHAIR: I do not think so—parliamentary secretary?

Hon MATTHEW SWINBOURN: The director general is happy to take that question.

Dr TOMISON: After the Kimberley juvenile justice project began, one of the key elements of that was to hire KALACC, the Kimberley Aboriginal Law and Cultural Centre, to do consultations across the Kimberley, east and west, to try to get an idea of what communities wanted up north to try to prevent issues of young people coming into crime and also then reducing recidivism. One of the things we heard in different parts of the Kimberley was an element around an on-country type facility. Some suggested a youth detention facility. Most suggested a more therapeutic, cultural healing, education-type facility—an alternative to detention. On that basis, in this current budget there is funding of \$1.7 million assigned for a co-design or a partnership process to further scope out and work with community agencies for the potential for an on-country residential facility around Broome at this point.

Hon NEIL THOMSON: Would that be a detention or detention-like facility, or have you not yet determined whether that would be something that would be —

Dr TOMISON: It will not be a formal youth detention facility like Banksia Hill. The intention would be perhaps—this will have to be worked out—that it will be some sort of therapeutic place where young people can be re-engaged with education and get some mental health and some healing and also some development of skills, so it gets them on a more positive lifestyle path, if you like. As part of that, it was envisaged that it may be set up in such a way that a Children’s Court could actually issue community-based orders with a residential component. The other words, we are not sentencing them because of a crime committed to Banksia Hill as a youth detention child, young person or detainee; this will be around, “You’re on a community order, but we would like you to spend some time here. Are you willing?” Provided the young person did that and was supported appropriately, hopefully we would get some good results there and, again, a desistance from criminal behaviour.

Hon NEIL THOMSON: Thanks for that. I am very interested in a difference being the community order, and maybe this is something that we could have some further discussion on after this. I am interested to know whether those orders might be compelling a child to be on those premises as an alternative to a detention.

The CHAIR: Is that a question?

Hon NEIL THOMSON: I suppose maybe a little more explanation as to how they might distinguish between—let me clarify. One of the problems that we see —

The CHAIR: We are actually running out of time, so can we have a question?

Hon MATTHEW SWINBOURN: Chair, if I can just interject, I think that really we are in the corrections area. It is a difficult space because I do not represent the Minister for Corrective Services and if I give permission for the director general to answer questions without recourse to the Minister for Corrective Services, I am stepping outside my authority. Without trying to be difficult with you, member, I think you might have a foot in both camps.

The CHAIR: We can try to get an answer, but we just need a question. We have a couple more now to come. Do you have one last question?

Hon NEIL THOMSON: Well, it is about a level of compulsion, so the question is on the co-designed proposal for the residential or therapeutic facility: would a child if they committed a crime be compelled to attend one of those facilities?

Dr TOMISON: As I indicated, this is yet to be fully determined. This is a discussion, a co-design, a partnership process, and this stuff will have to be worked out. At this point it is only just speculation. But the intention is not to create a youth detention facility that I can say; it is about providing an alternative that is meant to be therapeutic in nature, but also aids in the desistance of criminal behaviour.

Hon JACKIE JARVIS: Earlier I indicated that I did not have a question specifically for the Equal Opportunity Commissioner, but I have just noticed a note at the bottom of page 429 that the Equal Opportunity Commission transitioned from a standalone agency to be part of the department. Could the parliamentary secretary provide some background on the transition into the department? I accept that it may not be able to be answered if the Equal Opportunity Commissioner is not here.

[11.30 am]

Hon MATTHEW SWINBOURN: I think I can get the director general to answer because originally it sat within his area of responsibility. I will ask the director general to answer.

Dr TOMISON: Thank you, parliamentary secretary. This was not a case of Justice seeking to empire build. The commissioner actually came to us for a discussion, and also with Treasury, around

providing greater support to enable him to undertake his statutory functions. As you may be aware, his agency is a small one and in government there is quite a lot of responsibility around policies and the regulations of government. He was finding that it was detracting from his main role. As a result of which, he sought to join the Department of Justice. Obviously, he would maintain his statutory independence in terms of his role, but we would provide basically his backroom, essentially, helping him with his human resources, IT and finance systems. Essentially, on that basis, Dr Byrne approached us and got approval from government to join the department to become part of my corporate executive, recognising that he would still work independently in terms of his actual day-to-day job. I can say that, based on his testimony in the lower house estimates, that he is quite pleased with the results so far and it has freed up some of his staff to do more work related to his main task around the Equal Opportunity Act. I think he is very happy with the machinery-of-government change to date.

Hon MATTHEW SWINBOURN: Can I add that there have been savings for the Equal Opportunity Commission as a consequence of that because those costs are shared, and through the economies of scale.

Hon NICK GOIRAN: The Commissioner for Victims of Crime is involved in WA's participation in the National Redress Scheme. Have any complaints been received with respect to the time it takes to make FOI applications for these victims of crime?

Hon MATTHEW SWINBOURN: Complaints to whom?

Hon NICK GOIRAN: Has the Commissioner for Victims of Crime received any complaints or is she aware of any exasperation by victims of crime with respect to the time it takes to get FOI applications processed?

Hon MATTHEW SWINBOURN: I will refer to the Commissioner for Victims of Crime.

Mrs KRASZLAN: We have not received complaints in regards to FOI requests, which occur prior to an application coming to the redress scheme. We have received complaints around the length of time taken to process a redress scheme application. Most of those delays are at the scheme operator level and not at the state level.

Hon NICK GOIRAN: Further to that, what is the current backlog for a National Redress Scheme application to be finalised?

Mrs KRASZLAN: Within Western Australia, 87 per cent of all applications are processed within the eight-week time frame. We know from the recent report from the scheme operator that as at 31 March 2021, 21 per cent of applications were done within less than six months—noting that these are cumulative—47 per cent were done within nine months, 61 per cent are now processed within 12 months, and 39 per cent are over 12 months.

Hon NICK GOIRAN: So 39 per cent of victims applying for national redress have to wait more than a year for their application to be processed?

Mrs KRASZLAN: The 39 per cent includes a number of applications where institutions have not joined previously, so they are on hold. For us, those included a considerable number of Fairbridge applications that are now being processed. They also include a number of applications where reviews have been requested by the applicant, and also a number where there is no institution as yet that has accepted participation.

Hon NICK GOIRAN: This is more of a comment than a question to the Commissioner for Victims of Crime. It would be worthwhile having a look at the FOI application backlog; it is massive and it is causing exasperation for victims.

If I can then turn to the Office of the Public Advocate. The Ombudsman recently made some recommendations in the final report tabled in July of this year. Does the new practice standard that has been put in place instruct the steps that the office must take to inform families after a death?

Hon MATTHEW SWINBOURN: I will direct that question to the Public Advocate.

Ms BAGDONAVICIUS: I reassure the member that we have put in place the steps that are required. For your information, in the first quarter of this financial year there have been the deaths of 64 represented persons made known to our office and in only one case have we not been able to make any contact with next of kin—where there is no next of kin known.

Hon NICK GOIRAN: The new practice standard, is that a document that is able to be made publicly available?

Hon MATTHEW SWINBOURN: Perhaps if we just take that one on notice at this particular point in time and you will get an answer through that.

[Supplementary Information No A9.]

Hon NICK GOIRAN: What is the total appropriation that has been allocated towards the cost of establishing a working group, which I understand is being convened by the Commissioner for Victims of Crime in relation to sexual assault laws in Western Australia?

Hon MATTHEW SWINBOURN: We will refer that to the Commissioner for Victims of Crime.

Mrs KRASZLAN: I just seek some clarification as to which working group.

Hon NICK GOIRAN: This is an excellent response, commissioner, because it has been probably one of the more convoluted, confusing things to get to the bottom of. Perhaps it may assist if you could indicate, through the parliamentary secretary, what working groups you are involved in at the moment.

Mrs KRASZLAN: The initial working group set up to advise the Attorney General in regards to changes to legislation was government employees who were all funded from within—existing resources. Currently, there are no additional funds provided for the working group or the reference group, which is attached as a community and funded from within our existing resources.

Hon NICK GOIRAN: Does the working group still exist?

Mrs KRASZLAN: There is a reconstituted working group.

Hon NICK GOIRAN: A reconstituted one? Right. Through the parliamentary secretary, what are the terms of reference of this reconstituted working group and what does the membership consist of?

Hon MATTHEW SWINBOURN: I think, with your indulgence, we will take that one on notice and provide a response.

The CHAIR: That is the composition of the reconstituted working group and the terms of reference.
[Supplementary Information No A10.]

Hon NICK GOIRAN: There is also discussion of a steering committee. Is that different to the working group?

Mrs KRASZLAN: The working group is officers who are undertaking the work required to develop a strategy. The steering committee has an authorising role to approve any recommendations from that working group to go through to the responsible ministers as the sponsor of the project.

[11.40 am]

Hon NICK GOIRAN: To be clear, do terms of reference exist with respect to the working group and do terms of reference exist with respect to the steering committee?

Mrs KRASZLAN: Terms of reference have been drafted for both the working group and the steering committee. They are in the final stages of approval.

Hon NICK GOIRAN: Through you, chair, to the parliamentary secretary. I believe that there is also a reference group, which I think the commissioner made reference to just a little earlier. Does that reference group also have a terms of reference?

Hon MATTHEW SWINBOURN: Chair. Thank you, commissioner.

Mrs KRASZLAN: The reference group has not yet met. Terms of reference have been drafted for them to endorse once they have met.

Hon NICK GOIRAN: Could we expand the question that was taken on notice, with your concurrence and the parliamentary secretary's, to have the terms of reference and the composition of the three groups—that is, the steering committee, the reference group and the working group—because I think the question taken on notice was just in regards to the working group?

The CHAIR: Certainly, I am a little confused, I can say, with all these different groups, but it would be nice to know who is who in the zoo. It would be great if we could get that.

Hon MATTHEW SWINBOURN: As I say, it is up to the committee, of course, about the questions that they want to ask.

The CHAIR: That is all part of A10.

[Supplementary Information No A10.]

Hon NICK GOIRAN: Thank you. Parliamentary secretary, earlier in response to a question I asked about the elder abuse law reform and the more than 1 600 days it has taken for the McGowan Labor government to expedite the promised changes to the Guardianship and Administration Act, you indicated that you could not respond to that because it is subject to cabinet confidentiality. Why then at page 425 does the government list a raft of bills being handled by this agency?

Hon MATTHEW SWINBOURN: Thank you, chair. I am just going to try to find the reference.

Hon NICK GOIRAN: It is number 1 in "Significant Issues Impacting the Agency".

Hon MATTHEW SWINBOURN: These are all bills that the Department of Justice is working on. I suspect it is also a matter of public record that they are working on them. Are you referring to the Criminal Law (Mental Impairment) Bill 2021, the Criminal Law (Unlawful Consorting) Bill 2021 and the Evidence Bill?

Hon NICK GOIRAN: And the Criminal Appeals Amendment Bill, although I know the Criminal Appeals Amendment Bill has been introduced, as has the unlawful consorting one, albeit with a different name. But we have seen nothing with respect to the mental impairment bill, or the Evidence Bill, to say nothing of the more than 1 600-day-old commitment on the Guardianship and Administration Act.

Hon MATTHEW SWINBOURN: Yes. In my representative capacity as the parliamentary secretary, as much as I can take this answer is that those matters are a matter of public record that the government is working on them in terms of the Criminal Law (Mental Impairment) Bill, the Criminal Law (Unlawful Consorting) Bill, which has been tabled and, obviously, the Evidence Bill, which I think relates to a uniform evidence act. I do not think anything here is outside of what has been the subject of cabinet confidentiality. What it does not tell you is the progress on all those other matters in relation to those things. I take the member's point about what he is saying, but I cannot take it any further than what I have said before. I am not in cabinet.

Hon NICK GOIRAN: Fair enough. It appears that the parliamentary secretary has indicated that, really, the threshold is whether things are on the public record or not. It might interest the parliamentary secretary to know that the Attorney General on 22 September indicated that instructions had been settled and the matter is before Parliament Counsel's Office. That is with respect to the long-awaited changes to the Guardianship Administration Act. Is either the parliamentary secretary or one of the witnesses able to provide an update with respect to that matter, which is on the public record?

Hon MATTHEW SWINBOURN: As I say, the progress of that is a matter for cabinet, of which I am not a member. As you say, those matters are on the public record as to the fact that it is being worked on, but where it is at, what progress it is making and when it might be introduced are all matters that will be up to cabinet.

Hon NICK GOIRAN: Parliamentary secretary, is any work being done on amendments to the Bail Act?

Hon MATTHEW SWINBOURN: Member, I do not know what the broader discussions are in relation to what is in the public sphere because I do not know, but I can seek some further advice about that.

I can confirm that the Attorney General is currently considering a package of reforms to the Bail Act and associated legislation. I know the Annaliese Ugle thing is a live issue and these aim to improve the operation of the bail system and address other emerging issues. The department is urgently progressing targeted amendments to the Bail Act to introduce additional provisions relating to adults charged with sexual offences against a child, in response to the tragic death of Annaliese Ugle.

Hon NICK GOIRAN: Who is progressing something, did you say, at the end of that response?

Hon MATTHEW SWINBOURN: It was the Department of Justice.

The CHAIR: Thank you, everyone. Can I thank everyone for their attendance today, particularly the witnesses. Members, you may submit any remaining questions that you have through the electronic lodgement system, which will close at 5.00 pm on 29 October 2021. Witnesses, the committee will forward the uncorrected transcript of evidence, with questions taken on notice highlighted, as soon as possible after this hearing. Responses to questions on notice are due by 5.00 pm on 17 November 2021. Should you be unable to meet the due date, please advise the committee in writing as soon as possible before the due date. The advice is to include specific reasons why the due date cannot be met.

Once again, I thank you very much for attending today—very much appreciated.

Hearing concluded at 11.46 am
