

**STANDING COMMITTEE ON ESTIMATES AND
FINANCIAL OPERATIONS**

2014–15 BUDGET ESTIMATES HEARINGS

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 10 JUNE 2014**

**SESSION THREE
DEPARTMENT OF THE ATTORNEY GENERAL**

Members

**Hon Ken Travers (Chair)
Hon Peter Katsambanis (Deputy Chair)
Hon Martin Aldridge
Hon Alanna Clohesy
Hon Rick Mazza**

Hearing commenced at 7.20 pm

Hon MICHAEL MISCHIN
Attorney General, examined:

Ms CHERYL GWILLIAM
Director General, examined:

Mr JOSEPH McGRATH
Director of Public Prosecutions, examined:

Mr RODOLFO MONTILVA
Acting Chief Financial Officer, examined:

Ms PAULINE BAGDONAVICIUS
Public Advocate, examined:

Mr PAUL EVANS
State Solicitor, examined:

Mr BILL HEWITT
Executive Director, Corporate Services, examined:

Ms JENNIFER HOFFMAN
Commissioner for Victims of Crime, examined:

Mr BRIAN ROCHE
Public Trustee, examined:

Mr RAY WARNES
Executive Director, Court and Tribunal Services, examined:

Mr GEORGE TURNBULL
Director, Legal Aid Western Australia, examined:

Mr MALCOLM BRADSHAW
Director, Business Services, Legal Aid Western Australia, examined:

Ms ALLANAH LUCAS
Equal Opportunity Commissioner, examined:

Mr HARDIP BHABRA
Finance and Administration Manager, Office of the Director of Public Prosecutions, examined:

Mr JEFF PLUNKETT

Director Corporate Services, Office of the Director of Public Prosecutions, examined:

Mr MARTIN CONNOLLY

Principal Policy Advisor, Office of the Attorney General, examined:

The CHAIR: On behalf of the Legislative Council Standing Committee on Estimates and Financial Operations, I welcome you all to tonight's hearing. Firstly, can I ask all of the witnesses to confirm that they have read, understood and signed a document headed "Information for Witnesses"?

The Witnesses: Yes.

The CHAIR: Witnesses need to be aware of the severe penalties that apply to persons providing false or misleading testimony to a parliamentary committee. It is essential that all your testimony before the committee is complete and truthful to the best of your knowledge.

This hearing is being recorded by Hansard and a transcript of your evidence will be provided to you. The hearing is being held in public, although there is discretion available to the committee to hear evidence in private either of its own motion or at the witness's request. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session before answering the question.

Government agencies and departments have an important role and duty in assisting Parliament to scrutinise the budget papers on behalf of the people of Western Australia. The committee values your assistance with this.

For the benefit of members and Hansard, I would ask the Attorney General to introduce each of the witnesses and for the witness to state their full name and the capacity in which they appear before the committee.

[Witnesses introduced.]

The CHAIR: Are there any questions?

Hon ADELE FARINA: My first question relates to the appropriations table at page 431, line item "Total appropriations provided to delivery services". Given that the total increase in appropriations to deliver services is just 0.8 per cent, well below inflation, how will the current service levels be maintained in the coming year and what services will be cut?

Hon MICHAEL MISCHIN: Thank you. It is truth that there is only a relatively small increase. There have been, on various line items, increases in total appropriations and for particular services that are to be delivered by the department. For example, there is the Sunday court initiative. There will be increases in respect of state expensive cases. There will be increases to the Coroner's Court in respect of forensic pathology and toxicology services, body removal and medical reports. There will be extensions and increases in funding for the mental health court diversion and support program pilot projects, and increased funding for the State Solicitor's Office to deal with the south west native title agreement and also to cover the expenses that are being imposed on the state in its response to the Royal Commission into Institutionalised Responses to Child Sexual Abuse. There will be increases in funding to cover accommodation rental increases; and increases in funding for the operation of the new Kalgoorlie court, which was completed last year, for the Kununurra courthouse complex, which will be opened later this year, and, of course, ultimately for the Carnarvon court complex. There will be a variety of increases along the way. Those will be offset by reductions in appropriations for particular purposes. There will be procurement savings achieved, and various district allowance adjustments and other savings and economies along the way. So, although the overall is not an enormous increase, economies have been achieved and will

be achieved in order that front-line services are not affected; in fact, in various particular areas of operation, there have been significant increases.

Hon ADELE FARINA: Mr Chairman, I do not really feel that the minister has answered my question. Could that question be put on notice so that I can get an itemised list from the minister of where the cuts are being made to fund the funding increases that he has outlined in his answer?

Hon MICHAEL MISCHIN: It is my understanding that those are reflected in the spending changes, but if the member wants to have it on notice, then we will provide it on notice.

The CHAIR: So, just to be clear, member, are you asking on a program-by-program basis within the agency what the previous budget was and what the new budget is?

Hon ADELE FARINA: The minister has announced increases in expenditure in a number of programs, yet there is only a 0.8 per cent increase in appropriations. So if there is increased funding being directed to certain programs, that means that it has to be coming from somewhere. I want to know where it is coming from.

Hon MICHAEL MISCHIN: There are procurement savings of \$5.6 million, corrective measures in respect of the Browse project for work that no longer needs to be done to the tune of \$1.3 million, and adjustments to accommodate the reductions in royalties for regions district allowance adjustments of \$0.6 million. That is where the savings will come from, and those are set out in the spending changes on page 432.

Hon ADELE FARINA: So the minister will give an assurance that no services will actually be cut.

Hon MICHAEL MISCHIN: No services are being cut is the information that I have.

The CHAIR: Sorry, minister; if you do not mind, I just want to understand what you meant by the changes with respect to the royalties for regions district allowance. How does that work? How is that a saving, because surely you were getting moneys from royalties for regions? If you are no longer getting moneys from royalties for regions, that would go back to the royalties for regions fund.

Hon ADELE FARINA: No; it is cost shifting.

The CHAIR: That is why I want the minister to tell us what it is. If it is cost shifting, I am sure that will come out in the minister's answer.

I should have said this at the beginning for members. While the minister is getting his answer, my intention is that members should just ask any questions in relation to any of the agencies that are here and I will leave it for members to decide what they prioritise, because we certainly have limited time. Rather than trying to break it up on time, I will just let members choose, so I urge you to just prioritise which sections or which agencies that are here and put your questions in. Whilst I will try to get around to everyone more than once, certainly it is quite possible that everyone will not get a second go. I will certainly give the lead speakers a bit more time than the others, if that makes it clear to people.

[7.30 pm]

Hon MICHAEL MISCHIN: The district allowance changes vary from region to region, so there will be less that will be required for particular regions and that will mean that less money will be required by the department to spend in respect of district allowances. The aggregate amount, I am advised, is \$0.6 million, so the increases in funding will be offset by a requirement for a lesser amount in respect of district allowances.

The CHAIR: But minister, the member was asking that you have talked about a whole range of new programs that, as I understood it, are not currently funded in the budget. What you have given us are global savings that your agency is required to make from your existing budget; they are savings that Treasury now has, not your agency. What I think the member was asking for is: what

are the additional areas that you will cut to fund the new programs that are not currently budgeted for? Is that the member's question?

Hon ADELE FARINA: That is right, for which increased funding is now being provided.

The CHAIR: If there is increased funding provided, that is how they will be funded, but what I understood —

Hon ADELE FARINA: But it has to be funded by cuts because they only have a 0.8 per cent increase in appropriations, so it cannot be funded out of —

Hon LJILJANNA RAVLICH: New moneys.

Hon ADELE FARINA: New moneys, that is right, or very little!

The CHAIR: So how are the new programs being funded?

Hon MICHAEL MISCHIN: It is additions to programs that are currently underway, not new programs, and so that amount would go on the ordinary amount required for the operation of the department; however, that amount is offset by lesser amounts being required for other things. That is why the overall is only point whatever it is.

Hon ADELE FARINA: I want to know what those other things are that are missing out on money—that used to have money that are now missing out on it.

Hon MICHAEL MISCHIN: They are not missing out on money; that is what I am trying to tell you.

Hon ADELE FARINA: That is what you just said.

Hon MICHAEL MISCHIN: No, I did not say that.

Hon ADELE FARINA: Yes, you did.

Hon MICHAEL MISCHIN: No, I did not say that. But if you can point out the *Hansard* where I did say that, I would be happy to be corrected, but I did not say that. What I said was that you have pointed out that there is only a relatively small increase in the overall budget for the department; how can it provide the same level of services as in the past? I am saying that there are in fact increases of funding that are being provided to the department to fund additional resources that are necessary to accentuate certain services that are currently being provided; however, that is offset against savings in other areas for things that are no longer required like work done on the Browse project to a certain substantial sum, procurement savings of \$5.6 million—the less required to pay district regional allowances offsets. So overall there is in fact an increase in funding, but some savings that are achieved along the way, so that it makes for a relatively small overall amount.

Hon ADELE FARINA: So are you saying that district allowances are now being funded out of royalties for regions? It was my understanding that royalties for regions were only funding an increase in allocation for district allowances.

Hon MICHAEL MISCHIN: There is a lesser call for district allowances because in some areas the rate of district allowance has been reduced substantially; it is still royalties for regions money, but less of it is required.

Hon ADELE FARINA: I refer to page 439, “Services and Key Efficiency Indicators” and just draw to the minister's attention recent media articles or stories about magistrates in the south west recently expressing concern about long delays in notification to clients about whether or not they have qualified for legal aid and that they are causing delays in the court being able to list matters for the hearing and I ask: what are the causes for the delays and what is being done through this budget to minimise those delays?

Hon MICHAEL MISCHIN: You will notice that there is in fact a significant increase in funding for legal aid and under the course of the history of this government there have been substantial

increases in legal aid. In fact, I think there have been three funding increases in 2009 and 2010 or something and the latest increase—I think it is four additional FTEs for legal aid services. There is additional stress on the Legal Aid Commission and that has been very much the results of cuts in legal aid funding from the commonwealth under the last Labor government where the balance over time has shifted from the commonwealth funding something like 69 per cent of legal aid services in Western Australia to it funding something in the order of 37 per cent, and the state has had to make good that additional burden, so it does put strains on legal resources. Along with that there has been a reduction in the commonwealth support of the Aboriginal Legal Service in Western Australia under the last six years of the Labor government, which of course has put additional stress on Western Australia's legal aid service to make good the gap. There is only so much the state can do to accommodate that abrogation of commonwealth responsibility. Furthermore, Western Australia has not been particularly well serviced by commonwealth legal aid funding over the previous six years. Our per capita funding is the second lowest in Australia despite the distances involved and the need for providing services to remote areas—once again a product of the Labor government's neglect of this area. So there are inevitably stresses on our legal aid system; however, I will ask the director of Legal Aid whether he can expand on the particular problem that you say has been identified and what steps he is taking as the responsible agency to address those issues.

Hon ADELE FARINA: Just before he does that, minister, perhaps just responding to your comment, in the first Abbott government budget, did they address any of those cuts to the Aboriginal Legal Service and to Legal Aid?

Hon MICHAEL MISCHIN: No, they have not to my knowledge, but that has been a longstanding problem that has been raised with the commonwealth government over the years and I received no favourable response from the previous government and I remind you that the Abbott government has only been in office for some six months or so and it is facing its own particular problems, so this is something we have had to deal with for several years now.

Hon ADELE FARINA: But no doubt you will make it your priority in discussions with the current government?

Mr Turnbull: In relation to the delays that were reported in the south west, I have been advised that those delays have now been remedied and it is now back to what is an average time for the assessment process to take place, which is around two weeks.

Hon ADELE FARINA: I understand that in the current budget there is an increase of five FTEs for 2014–15. How many of those additional employees will be located in the south west?

Mr Turnbull: They will all be located in the Perth area and the reason for that is, as the minister has indicated, basically the withdrawal of services by the Aboriginal Legal Service. It has virtually withdrawn all services from the metropolitan area and also some country courts, and that is a result of the reduced funding level from the commonwealth. I might say that the position is set to become much worse we suspect, because the commonwealth has now removed the fund that was previously available for the Aboriginal Legal Service to engage counsel, particularly for more serious criminal matters, and so that has not flowed through at this stage, but we expect that that will make matters even more difficult.

Hon ADELE FARINA: I am just not really clear as to what was the cause of the problem and how it is being addressed.

Mr Turnbull: The problem in relation to the —

Hon ADELE FARINA: The south west, the one that magistrate Fisher raised.

[7.40 pm]

Mr Turnbull: The assessment process essentially takes place in the Perth office. There were some delays in the assessing process at that time, through staff attrition et cetera, but those delays have now been rectified.

Hon ADELE FARINA: Are you saying that those vacant positions have been filled?

Mr Turnbull: Yes. I am informed there are no longer any delays in those processes.

Hon ADELE FARINA: Of the 29 additional FTE positions funded in 2013–14, how many were allocated to the south west?

Mr Turnbull: I may have to take that on notice. I may have the years out, but my understanding is that in 2011–12 there was a significant increase in the number of junior lawyers funded, but I will take that on notice, if I may.

[*Supplementary Information No C1.*]

Hon ADELE FARINA: A significant issue impacting the agency on page 434 of the *Budget Statements* is the transference of the administration of the Law Reform Commission to the department. What are the expected savings to be generated through that transfer, and will those savings be returned to the operations of the Law Reform Commission?

Hon MICHAEL MISCHIN: The first point that needs to be made is that the Law Reform Commission will still be maintained as a separate agency; it is just the administration of the commission that will be transferred to the Department of the Attorney General to achieve economies. The commission will still have legal independence in its work and findings, and the commissioners will continue to undertake peer review of the work that is done by the commission. The estimated savings will be in the order of \$800 000 per annum from 2014 to 2015. It will not be retained by the department; it is a saving. However, as particular terms of reference arise and are costed, then I will make the necessary representation to obtain funds for that particular project.

Hon ADELE FARINA: On that point, how much money has been allocated to the Law Reform Commission for the Asbestos Diseases Compensation Bill that the Attorney General referred to it?

Hon MICHAEL MISCHIN: My understanding is that an estimate has not been given of the amount of work necessary to be done on that, so no estimate can be made at this time. The commission will revert to me with a quote as to what resources will be necessary to conduct that inquiry. The funding will be obtained as necessary. The commission will use departmental resources and its cash resources of \$1.7 million to fund any references it undertakes.

Hon ADELE FARINA: When is that report due? I recall the Attorney General provided an approximate date.

Hon MICHAEL MISCHIN: The date set for the report is 30 June 2015.

Hon ADELE FARINA: So, most of it is to be funded in the current financial year out of reserves held by the Law Reform Commission?

Hon MICHAEL MISCHIN: It will be in the coming financial year.

Hon MARTIN ALDRIDGE: I asked a question of Treasury this morning about an allocation of \$166 000 as an act of grace payment from Treasury. The advice given to me and the committee is that those moneys were authorised by you as the Attorney General and the question was better directed to you. On page 442 of budget paper No 2 an amount of \$110 000 has been allocated for ex-gratia and act of grace payments. Why is that number different from the advice we received from Treasury this morning about an act of grace payment of \$166 000, and what was the act of grace payment for?

Hon MICHAEL MISCHIN: Can the member point me to the other figure?

Hon MARTIN ALDRIDGE: I refer to page 604 of budget paper No 2 in the Treasury section.

The CHAIR: In this committee, you ask and you receive, which is a bit easier than the Economic and Expenditure Reform Committee, I suspect. Treasury said it was a payment that you approved for the Director of Public Prosecutions, if that assists. I do not know whether the DPP might also be able to assist with the act of grace payment. Treasury clearly said the Attorney General would have the details and not them.

Hon MICHAEL MISCHIN: That would be right. I cannot be definitive on this, because I have not had a chance to look at that line in item 91. For a start, there is a difference between act of grace payments and ex gratia payments. Act of grace payments are at the discretion of ministers under the Financial Management Act, which allows a certain sum to be paid at ministerial discretion. The process for ex gratia payments is far more involved and requires cabinet approval. I am not sure what this \$166 000 act of grace payment covers and whether it also embraces ex gratia payments, but the ex gratia payment that is referred to on page 442 of the budget papers was approved as an increase to the department's recurrent appropriation. It was a District Court matter that was commenced in the Third Party Claims Tribunal back in February 1969.

[7.50 pm]

The Third Party Claims Tribunal was a precursor to the District Court of Western Australia, which commenced in 1969, was presided over by a chairman—there may have been some other members of that tribunal—and dealt with claims for motor vehicle insurance personal injury cases. So this is rather an old one. An action was commenced in this particular case by the victim's solicitor in the Supreme Court of Western Australia seeking damages and the loss of chance arising from alleged misstatements: misstatements made, as I understand it, by the court, which plainly compromised the ability to pursue the claim. It was settled at a mediation conference on 2 August 2013, and by way of deed of release dated 30 August 2013 payment was to be made by the Insurance Commission of WA for the sum of \$90 000 in full and final satisfaction of the claim and action together with a contribution towards legal costs and disbursements, which was agreed at \$20 000. That amounts to the \$110 000 that you are talking about. There is some information that is of a sensitive nature that affects the agreement that was reached, particularly the name of the person concerned and the like, but that is essentially what that sum involves. As to whether that is included under the act-of-grace line item I cannot say, but technically acts of grace are a different fish to ex gratias.

Hon MARTIN ALDRIDGE: Can you just clarify for me, minister, that the \$110 000 payment was an ex gratia payment?

Hon MICHAEL MISCHIN: That is my understanding, yes.

The CHAIR: Did you want any more information taken on notice over that or are you satisfied now?

Hon MARTIN ALDRIDGE: I am pretty satisfied with the Attorney General's response. I think what I might do is give a supplementary question to Treasury on their response to me this morning.

Hon RICK MAZZA: On the same line item, in 2012–13 there is \$1.425 million paid out; what was that actually for?

Hon MICHAEL MISCHIN: Well, that would be the cumulative amount of not only act-of-grace payments, but also ex gratia payments over that financial year. Some of them would have involved, I think, payout for the Kimberley Ultramarathon for example. I think that may have fallen within that. We can provide you with a breakdown, but there have been a number of significant ex gratia payments made over the last several years; the one that does spring to mind is the ultramarathon. I am reminded that all of these would be detailed in the Department of the Attorney General's annual report.

Hon RICK MAZZA: In the forward estimates you do not have any provision at all for ex gratia or act-of-grace payments. Are you not expecting anything in the next three or four years or how do you provide for it?

Hon MICHAEL MISCHIN: That is right; there may be none or they may vary depending on the matter that is being considered at the time. As I understand it, that tends to be one of the reasons you have a cabinet approval for it, because then it is a particular allocation to deal with that. The resource agreement provides that Treasury shall provide the funds for any ex gratia payments that are made. So it can vary in amount and in the number of claims. It is one of those things where it is not sensible to try to budget, because there may be no historical trends that you can pick on that would mean a sensible allocation for the department; it is one of those things that arises from time to time.

Hon RICK MAZZA: Are there any guidelines surrounding what constitutes a claim for an act-of-grace —

Hon MICHAEL MISCHIN: There are for act-of-grace payments. From recollection, they can be up to \$50 000 without the need for cabinet approval and there are a number of guidelines issued by Treasurer's Instructions as I understand it, as I recall, which set out the criteria that need to be met before an act-of-grace payment is made. It tends to be administrative errors, things of that nature, where there is some fault in a sense on the part of the department. Ex gratia payments are more open-ended. Perhaps I will make it a little clearer. Act of grace is a term that is used to refer to payments made under the statutory payment process provided for in section 80 of the Financial Management Act 2005 and any associated regulations. Ex gratia is used in the context of payments made outside the statutory process as a consequence of cabinet decisions made under executive power. In both cases there is not necessarily any legal obligation on the part of the government or the department to make those payments. They are strictly at the discretion of government and they cover a wide variety of circumstances. The Kimberley Ultramarathon one is an example. There is the particular one that I have spoken of.

Hon RICK MAZZA: Can we get a copy of those guidelines on notice?

Hon MICHAEL MISCHIN: Yes, I do not see any problem with that. They would be Treasurer's Instructions, as I recall.

[*Supplementary Information No C2.*]

Hon MARTIN ALDRIDGE: The 2013–14 *Government Mid-year Financial Projections Statement* outlined in its spending risks the Department of the Attorney General as one of the risks to the government's budget as it related to several contractual commitments that the department undertook. It concerns me from the events that were explained to me by Treasury of how those things came to be; that the department has taken on, I guess, those contractual obligations that Treasury has deemed sufficient enough to list as a risk within the mid-year review. Could you provide some feedback on the allocations provided to the department in the 2014–15 budget as to whether or not those risks have been extinguished by, perhaps, additional allocations to deal with those contractual obligations?

Hon MICHAEL MISCHIN: Look, the particular expenditure that you are referring to was threefold: there was some for court security and prisoner transport services to service the temporary Kununurra courthouse pending the opening of the substantive facility; there was also some need for lease space expansion as a result of an increase in the number of staff one of the agencies in the department—I cannot recall which now—and there was also a need for accommodation for the Legal Profession Complaints Committee. Those were expenditures that the department needed to enter into, arrangements it had to enter into, otherwise you would find people that were sitting in corridors in certain offices. That has all been addressed under the usual processes, and it is covered in the current budget at page 432 of the *Budget Statements* for the accommodation rental increases of \$646 000, and the increased operational costs for not only the Kununurra courthouse, but also the Kalgoorlie and Carnarvon court buildings when those are commissioned.

[8.00 pm]

Hon MARTIN ALDRIDGE: To clarify, the answer is that the risks identified by Treasury have been extinguished, for want of a better word, by additional allocations listed within the spending changes of the budget?

Hon MICHAEL MISCHIN: Yes, and to the extent that there is any shortfall, the department makes up for that out of its current budget.

Hon MARTIN ALDRIDGE: Was it the case that the contractual arrangements that led to the agency being listed as a risk were not approved in the previous budget cycle, the department entered into the contractual arrangements, and then I guess Treasury and government were obligated to fund the agency to that level? If that was the case, is that the way in which we should be encouraging our departments to operate?

Hon MICHAEL MISCHIN: There were no additional contracts entered into; there were increases in exposure that had to be paid. So, increases in rent that had not been budgeted for, but had to be paid, and so that is where the department —

The CHAIR: Sorry, minister; you leased additional space. How is that not entering into a new contract? It is a play on words to suggest extending or increasing a contract.

Hon MICHAEL MISCHIN: I understand it was a mixture of both. Perhaps I could get the director general to explain the intricacies of what occurred, rather than me just paraphrasing what she is telling me.

Ms Gwilliam: There are two parts to it: firstly, there is the increased cost per square metre of accommodation within Westralia Square. We had staff in the building who were due to move to Cannington as part of the shared services rollout of the agency. As you know, the government ceased shared services at Cannington, so staff who were to roll out were no longer moving to Cannington and were retained by the department to continue with the shared service function we provide to the Department of the Attorney General and to the Department of Corrective Services. So, yes, we did not have the lease for them, but because they were no longer going to Cannington, we needed the space for them. Treasury was well aware of that, and in the end we did get funding for it.

The CHAIR: And the court security increased operational costs for Kalgoorlie, Kununurra and Carnarvon courts?

Ms Gwilliam: That is being funded from the department's budget.

The CHAIR: You have been given additional funding, according to this.

Ms Gwilliam: As well; it is a mixture of additional, plus also the department providing the dollars because we have three new court facilities. When you are in a current location but you move, you have expanded scale that needs to be met.

The CHAIR: I understand that, but under the strategic asset management framework those additional costs should have been identified at the time of the development of the business case. One would have thought that at that time they should have then been entered into the budget of the agency; when government took the decision to build the new courthouses, the additional operational costs should have been entered into at that time. The question I have is: did you identify what the additional operational costs would be at the time you got approval for the actual construction of those new courthouses?

Hon MICHAEL MISCHIN: I will ask Mr Warnes to expand on that as executive director of court and tribunal services.

Mr Warnes: I think the simple answer to your question is, yes, they were put up in the package for funding—Kalgoorlie and Carnarvon particularly. But there was a growth in costs for those locations that needed to be met, and that has been provided for in this budget here.

The CHAIR: What was the driver of the growth in costs?

Mr Warnes: Some of that was the costs of maintaining cleaning services and costs of maintaining other associated services with running the building—electricity, energy-type costs—but they were basically the additional costs for it. As to the additional costs associated with CSC and CS Services, I think Carnarvon, off the top of my head, had an increase of about \$120 000 or \$180 000. That might not be the right figure but they had an increase —

The CHAIR: In the number of officers?

Mr Warnes: Not in the number of officers, but the cost of those officers on a per annum basis.

The CHAIR: What was the reason that the costs went up? Is there not a fixed-price contract with Serco?

Mr Warnes: It would have been their labour costs; they would have negotiated an industrial agreement, perhaps, that would have meant an additional cost would have been passed on to us by Corrective Services for that costing.

The CHAIR: Is part of those additional costs the fact that those officers now need to fly in and fly out of some of those locations?

Mr Warnes: Certainly not Kalgoorlie or Carnarvon; there may be an impost on fly in, fly out in Kununurra, but I do not have the details of that cost breakdown.

The CHAIR: I would like the operational costs of those courthouses for each, broken down into Kalgoorlie, Kununurra and Carnarvon; what it was previously; what your estimated cost was as part of your assessment under the strategic asset management framework and what you now have been funded, or what your current estimated cost is; any details of what have been the drivers for any increases; and, particularly with respect to Kununurra, what is the cost of providing fly in, fly out court security officers above the standard cost for provision of court security?

[Supplementary Information No C3.]

Hon LJILJANNA RAVLICH: Can I just ask a question specifically in relation to that?

The CHAIR: Of course you can, Hon Ljiljanna Ravlich.

Hon LJILJANNA RAVLICH: I have a press release here dated Thursday, 17 April 2014 that clearly states that Serco is billing the state government almost \$1 million a year for seven court and custodial security officers to staff the Kununurra court complex. Are you telling me you did not know that? Are you telling the house you did not know that?

Hon MICHAEL MISCHIN: We are not the contractor; that is a contract with the Department of Corrective Services, not directly with DOTAG.

The CHAIR: Added to C3, if you could also provide, in full-time equivalent terms, the number of court security officers at each of those courthouses, and, in FTE terms, how many court security officers there will be at the new courthouses?

Hon LYNN MacLAREN: I have a question regarding the closure of the Midland and Fremantle legal aid offices. I know this has come up before, and I would like the Attorney General to enlighten us about the cost benefit of that. Do you have the cost of the operations at Fremantle and Midland, and how does closing them and moving them to the city affect the bottom line?

[8.10 pm]

Hon MICHAEL MISCHIN: I will ask the director to deal with the detail of that, but it was a decision that was taken by Legal Aid Western Australia as to how it allocates its resources and where they can be used most efficiently. Contrary to the suggestion that there was some kind of funding cut on behalf of the state that has resulted in that, it is not right; in fact, you will have seen that there has been an increase in funding for Legal Aid, and it is better serviced now than it has

been in the past, but there are stresses on that organisation, for the reasons that I have already outlined. It was a decision about which I was informed, but not one where I directed the decision as to how it best use its resources. As far as the specifics of savings might have been achieved by that and the rationale for closing those offices is concerned, I will refer you to Mr Turnbull.

Mr Turnbull: We anticipate that, over time, the savings will be in the order of \$600 000 per annum. As the minister as said, the decision taken to close those offices was not directly related to our budgetary circumstances. It was based on an operational review which, in effect, concluded that, when we analysed the services provided by both of those offices, it was found that the overwhelming number of services were duty lawyer services, which are court-based and do not require access to a local suburban office. The main legal representation services that we provide under our grant of aid program was also in no way affected by the proposed closure of those offices. It is true that a number of people who received legal advice services will be inconvenienced, but when we did further analysis on where those people resided, we discovered that the majority of those people lived beyond a 10-kilometre radius of either Fremantle or Midland. But we acknowledge that some people will be inconvenienced, and as a result of that we are taking steps to work with some of the other service providers to fill whatever gap that might mean is left.

Hon LYNN MacLAREN: That is very interesting; thank you for that information. I understand that the Fremantle office, in particular—which is where my electorate office is located—services clients as far away as Rockingham; is that correct?

Mr Turnbull: That is correct.

Hon LYNN MacLAREN: So if someone required information and advice, for example, that is offered by Legal Aid, and they lived in Mandurah, where would they go?

Mr Turnbull: The advice services that would be provided to Rockingham and Mandurah are essentially a flow-on effect of the duty lawyer services that we provide. What we will be doing now is to provide those services from Perth; the duty lawyers will simply travel to Mandurah from Perth, rather than from Fremantle, for example.

Hon LYNN MacLAREN: Can I see the review that actually looked at the details and the fact that mainly duty lawyer services are provided?

Mr Turnbull: Yes.

Hon LYNN MacLAREN: Perhaps we could also look at the costs. As you have mentioned, the cost in the city is something like \$650 per square metre, and it strikes me that Fremantle would be a better deal for that. I am just wondering about your cost–benefit analysis in that regard.

Mr Turnbull: In relation to the accommodation side of things, we are required to move within 12 months to new accommodation at 32 St Georges Terrace. In the design of that accommodation, we have been able to effectively cater for more staff and more lawyers, so it will really be no additional cost by bringing in staff from both Fremantle and Midland.

Hon LYNN MacLAREN: Is it possible to have that review as supplementary information?

Mr Turnbull: Yes, we can produce a copy of the business case for you.

Hon LYNN MacLAREN: Thank you; I would appreciate it.

[Supplementary Information No C4.]

The CHAIR: We talked about the cost of the accommodation in Perth; does the business case include the actual rental of the Fremantle office and what the costs there are?

Mr Turnbull: It does.

The CHAIR: All right.

Hon MICHAEL MISCHIN: It must be remembered, in terms of distance to services, that many country towns do not have legal aid offices either and provide only a duty lawyer service as necessary. An example, simply because it is the most recent in my memory, is Esperance, which relies on services from Kalgoorlie, as I understand it. Those services are provided when the magistrate is in town. There are a lot of remote areas in Western Australia that rely on telephone contact with head office and apart from just the cost of the accommodation in Fremantle, you would be looking at the support services that may be necessary to maintain an office over there, such as staff to man it, even though at head office you may be able to achieve economies of scale and have the same number of staff servicing more lawyers. There would be a number of elements to it; I am confident that if the director and Legal Aid have decided that this is where significant economies can be achieved in order to spread the Legal Aid dollar further, then it is a worthwhile decision, but you will no doubt form your own opinion from looking at the business case.

The CHAIR: Just on that point, minister, does the government actually have a policy about trying to decentralise government activities as part of trying to address the congestion crisis gripping Perth?

Hon MICHAEL MISCHIN: Yes; it is desirable to decentralise services where that is feasible and cost-effective, but in some cases it may be more effective to have them in particular places. By centralising some services, it does not necessarily mean all in Perth; there are some services, of course, that are in Midland, such as Landgate and the like. It is horses for courses. The Department of the Attorney General would not have separate offices in each major regional town either if it were not necessary to do so, and there are no regional offices for the Director of Public Prosecutions, for example, even though circuit prosecutions are conducted regularly and routinely.

The CHAIR: Hopefully, funding for the info line will mean that people will actually be able to get through to your department, minister.

Hon LJILJANNA RAVLICH: I refer to page 435 and the table under the heading “Outcome: an efficient, accessible court and tribunal system”. It records the times to trial for the Supreme Court, the District Court and the State Administrative Tribunal. Can the minister comment on the success or otherwise in reducing the time to trial or tribunals? It would appear to me that very little progress has been made to date. I know that some additional resources were put into the District Court a couple of years ago, but that seems once again to have risen to 32 weeks; I think there had been some success and then it seems to have blown out again. Can the minister comment in relation to why we are not making any great headway in this area?

[8.20 pm]

Hon MICHAEL MISCHIN: Hon Ljiljanna Ravlich asked about tribunals, but I take it that she is referring to all manner of tribunals—the Supreme Court, the State Administrative Tribunal, the District Court and the like.

Hon LJILJANNA RAVLICH: I am referring to those listed here. The time to trial in the Supreme Court in 2014–15 is projected to be 28 weeks, which was the actual in 2013–14. The Supreme Court civil time to finalise non-trial matters sits at 19 weeks. The District Court criminal time to trial is currently 32 weeks. The State Administrative Tribunal time to finalise is 15 weeks. The 2013–14 actual for the Family Court of Western Australia time to finalise was 66 weeks; the budget targets is 27 weeks. Perhaps the minister can explain whether some money has been poured into reducing that. The Magistrates Court criminal and civil time to trial is 19 weeks. The Coroner’s Court is pretty consistent at 128 weeks—it has been around that figure for quite some time—which means that it takes two and a half years before somebody who has lost a loved one can get to trial to find out what happened to that loved one. The Attorney General would be aware that I have asked questions about Ruby Diver. Ruby passed in May 2011; her family has been waiting for three years to get to the Coroner’s Court to find out what happened. Can the minister put some light on this?

Hon MICHAEL MISCHIN: The median time to trial has varied and depends as much as anything on the particular cases going through. Each of the tribunals that the member mentioned has different pressures and mechanics as to how they operate, which governs their time to trial. These targets are set with the hope that they will be achieved, if not bettered. In fact, this government has successively reduced the KPI targets for some of the courts. The KPI target for the Supreme Court in 2007–08 was 38 weeks; in 2008–09 it was reduced to 35 weeks. This government has set 28 weeks as the aspirational target. The member will see that within certain fluctuations that target is pretty much well achieved with intolerances. Likewise, the aspirational target time to trial finalised for non-trial matters is 19 weeks; it was 20 weeks in 2012–13. I would have thought that that was pretty well within the parameters. There is not much science in all this; these are aspirational targets. The District Court time to trial, bearing in mind that criminal matters are the major portion of the District Court’s work, has been particularly good. The actual in 2003–04 was 74 weeks; we have brought it down to 26 weeks. The information that I have received for the State Administrative Tribunal is that it has a realistic target of 15 weeks to achieve the finalisation of matters, bearing in mind the relatively informal processes that are concerned. In fact, that has been relatively stable since 2012 with a slight rise, but it is going down again and is a stable figure. The Magistrates Court is, of course, the first point of contact and the general point of contact for most of the population within the court system because it deals with relatively low-level civil matters and the majority of criminal work. The target that is attempted to be achieved is 19 weeks; we are currently at 18 weeks. The Family Court has faced its difficulties. Part of that was due to the fact that for quite some time, two judges of the Family Court were out of action with illness. One subsequently died while the other was invalided out and retired. Those two judges were replaced fairly early in my term as Attorney General; I think it was towards the end of 2012. The Chief Judge undertook a significant backlog reduction exercise that has put strains on the court, but it is looking as though that backlog is being cleared. In some cases that exercise has involved rehearing cases that had already been heard because of the incapacity of the judges to deliver a decision. It was a very unfortunate circumstance that sometimes happens but, fortunately, not often. That has been addressed. Yes, there have been difficulties with the Coroner’s Court, but significant resources have been put into the Coroner’s Court. At the time I took up my responsibilities, temporary resources had already been assigned to that court to address the workload and backlog coming through. A number of very significant inquests were conducted at the initiative of the then State Coroner, including one into the incident in which asylum seekers drowned off the coast of Christmas Island. Those sorts of inquiries take up a lot of resources and time. The Coroner’s Court builds up a backlog when the more routine matters, as it were, are left in abeyance. We have reduced that backlog significantly, however, by providing permanent significant resources to the Coroner’s Office. It now stands at some 460 cases as opposed to about twice that much a couple of years ago. Work is being done on that. It has more permanent resources with an additional 12 FTEs, which will see further progress in that regard. The new State Coroner is also, of course, implementing, in consultation with the department, the results of the two reviews conducted in the Coroner’s Court. One of the governing features of the Coroner’s Court work, of course, is that it is not dependent merely on the resources of that court, but dependent on other agencies. As for the Ruby Diver case, I recently set out the history of that to a publication in which there had been some complaint from her father about the length of time it had taken. A significant amount of that delay has been the result of awaiting the results of police investigations. Other variables that may delay the coroner’s writing off a case are awaiting statements from witnesses, awaiting medical reports and toxicology reports and trying to get the cooperation of witnesses. Sometimes matters can be delayed months while waiting for a medical practitioner to get around to writing a report on something. Those matters are out of the control of the coroner and in the hands of the investigating officers or otherwise.

[8.30 pm]

Hon LJILJANNA RAVLICH: Chief Justice Martin has been critical of you for not replacing retiring judges in the Supreme Court. I do not know how many have retired but in a media release he claimed that we have the same number of Supreme Court judges now as we did eight years ago and, in addition to the reduced level of support staff, which have been locked into the FTE ceiling as part of the government's cost-saving measures, it is putting real pressure on the Supreme Court. Apparently, you responded by saying that you would need to be convinced that judges who retired need to be replaced before making new appointments. What would you need to be convinced of in terms of the need to make that appointment and why have you not replaced the Supreme Court judges who have retired?

Hon MICHAEL MISCHIN: There is only one who has not been replaced as such, and that was Justice Johnson, who retired earlier as a result of medical issues.

Hon LJILJANNA RAVLICH: Justice Pullin retired too, did he not?

Hon MICHAEL MISCHIN: Yes, and he has been replaced. Justice Chaney, who had been president of the State Administrative Tribunal, has now returned to the Supreme Court. Justice Pullin has left. I have replaced Justice Chaney with Justice Curthoys. The only one who has not been replaced since she retired at the end of 2012 is Justice Johnson. Of course no replacement can seriously be found until she chooses to retire from the bench.

What I need is a case to establish that there is an actual need for additional judicial resources. They are an expensive article. Admittedly, it is not necessarily a case of comparing apples with apples. We have more Supreme Court judges per head of population than New South Wales. We have 100 000 people for every 1.2 Supreme Court judicial officers in Western Australia. It is the highest of the comparable states, which are New South Wales, Victoria, Queensland and South Australia. Our Supreme Court, on the figures that we have available, has 8.4 judicial officers for every 1 000 finalisations.

Hon LJILJANNA RAVLICH: It is like comparing apples with pears, with due respect, given the geographical difference between some of these comparative states.

Hon MICHAEL MISCHIN: That is not quite right because our Supreme Court sits in Perth. It goes on circuit in the criminal sphere to regional areas, as does the District Court. Just geographical area is not a factor in this.

Hon LJILJANNA RAVLICH: It is one factor.

Hon MICHAEL MISCHIN: I would not have thought so, not in my experience. The Supreme Court rarely goes on circuit in crime. It never goes on circuit, as far as my memory serves, on civil matters. Maybe it has from time to time. The major cases that have been imposed on it, but in other jurisdictions might be considered part of the ebb and flow of work, have been resourced. We had the Bell litigation, which was specifically resourced. We had the Rayney trial, which was specifically resourced. We have now appointed His Honour Judge Sleight from the District Court as a commissioner in the Supreme Court to deal with the apparent increase in the Supreme Court's criminal jurisdiction at the moment. He has been assigned there for six months, and we will gauge the situation after that. Judicial resources are expensive and they are permanent until such time as those judges retire. We cannot just simply allocate them from department to department if the workload goes down. So I need to be satisfied that there is a consistent increase in the work that that court is dealing with and I need a business case for it.

It is no mystery—I made that quite plain when I took up my position—that like in any other area of government that relies on public funds and resources, there has to be a case made for it. It is not just a matter of one-for-one swapping. Sure, the jurisdiction of the Supreme Court has changed in various ways but simply basing it on the amount of population is not necessarily a valid argument in my view because not everyone goes litigating in the Supreme Court when they arrive in the state. It is generally dealing with homicides as its criminal jurisdiction, arsons and armed robberies, and

Customs Act importations—smuggling drugs and that sort of thing for the commonwealth jurisdiction, which is very small. It has a very high level of civil practice. But again, if one looks at the figures available, its finalisations are very good and it has practically no backlog and is cutting into its cases very well. It seems to be working efficiently. I just need to be persuaded that it is the best use of resources. Just to finish off on that, the more information we have as to how the court is functioning, the better government is placed to say whether an additional judge or perhaps an additional registrar or perhaps some legislative change that can improve the flow of work is a better and more economical way of addressing any difficulties it is facing. That is the sort of information that I need. I have not closed off providing resources. I just feel it is a responsible thing to do—that I need to be persuaded it is needed before I make that investment on behalf of the public.

Hon PETER KATSAMBANIS: Attorney General, I would like to ask some questions around the section in budget paper No 2 headed “Office of the Director of Public Prosecutions”, specifically page 463. That page highlights the significant issues impacting the agency. The second point makes specific mention of the increase in workload resulting from the operation of the Dangerous Sexual Offenders Act 2006. I am not usually one for supporting gratuitous increases in government spending but I am very happy to see that additional resources have been provided to meet the workload that we are seeing from this act. I ask the Attorney General to clarify whether the additional resources are being provided in the 2014–15 year to deal with a further escalation in the numbers of offenders who we are likely to see subject to orders under this act or are they being provided to deal with the fact that the 37 offenders who at the end of February 2014 were subject to this act need to be dealt with on an annual basis as a result of the operation of the act itself?

Hon MICHAEL MISCHIN: There has been stress on that office through insufficient resources to deal with these sorts of applications. It is a specialised area of practice. It is an issue that I propose to address at the conclusion of the current review into the operation of the Dangerous Sexual Offenders Act that was initiated recently. Some work had been done in that regard anyway to look at whether a two-year review period rather than a 12-month review period was an appropriate way of dealing with those who are subject to orders under the legislation. There are also arguments that there may be better ways of approaching these sorts of cases and the processes will be under review—the mechanics of bringing breach applications and the like. There is also an interesting question—I have not formed a view on it but it is one of the issues that I am hoping the review will address—of whether the DPP’s office is the best place to be conducting these sorts of applications. There is an argument that it does not quite fit with the prosecutorial function. In fact, in other jurisdictions, it is dealt with by other agencies. I think in Queensland these sorts of decisions are made by the Attorney General, who instructs the state solicitor to do this sort of work. There are a number of ways that the issues can be addressed. So far as the capacity of the office to deal with these sorts of applications, it may be that the director can make some contribution as to the resources that have been provided and any view he has as to how efficiencies can be obtained.

[8.40 pm]

Mr McGrath: The funding is on the basis of the establishment of a standalone team that will conduct the dangerous sex offenders, but the actual counsel work is distributed to the most senior lawyers in the Office of the Director of Public Prosecutions, and that includes myself; I appear in the Supreme Court. One should be reassured that the Office of the Director of Public Prosecutions is in a position to allocate sufficient resources to meet the demand in the forward estimates. The tension, obviously, is whether there is growth in other work. The review, which the Attorney General referred to, we are being consulted in respect to and we will make submissions. But, in short, the allocation of the funding was of particular significance to the office and does create fully the necessary team for the next couple of years or more.

Hon PETER KATSAMBANIS: The director has partly answered a question I was going to ask and it seems that there will be a specific team at least allocated to dealing with these matters at first

instance before they are passed on to the more senior officers within the office. What are the FTEs that will be dedicated to this team initially?

Mr McGrath: The initial allocation is 2.5 FTEs. It is led by a senior state prosecutor, who is at level 6, which is the equivalent of a class 3 public servant, a mid-level prosecutor and paralegal. However, they are surrounded by the most senior counsel in the office, who provide ongoing counsel. The Office of the Director of Public Prosecutions receives a referral from the dangerous sex offenders referral committee, invariably the head of the dangerous sex offenders team will be consulting with me or the deputy director as to whether or not an application will be made and the decision as to whether an application is made to the Supreme Court is only ultimately made by me as the director, and, if I am out of the state, it would be the deputy director.

Hon PETER KATSAMBANIS: In relation to the review, just on this matter for a moment because it is not only of significant public interest, but I would say it is of paramount public interest. Just on the review itself, who is conducting the review? Is it the office? Is it the Attorney General's department?

Hon MICHAEL MISCHIN: It is the department.

Hon PETER KATSAMBANIS: It is the department; okay. When are we likely at this stage to see, firstly, the review being finalised and, secondly, possibly any recommendations of the review being implemented?

Hon MICHAEL MISCHIN: I expect to see the fruits of the review by the end of this month.

Hon PETER KATSAMBANIS: Will the review actually be tabled in the Parliament or made publicly available?

Hon MICHAEL MISCHIN: I will decide that when the time comes, but at the moment it will be to me so that I can consider what further action needs to be taken and it may be that it requires some further work, but at this time it would be expected at the end of the month. I understand that it is on schedule and I will be able to give further thought to whether it ought to be tabled at that stage.

Hon PETER KATSAMBANIS: I do not in any way want to prejudice the outcomes of the review or the scope of the review itself, but I am alarmed that tonight an interview was aired by one of the dangerous sex offenders who was treated or considered under this act and subsequently released. That person had conducted an interview with a media organisation that was aired here tonight. I do not actually even want to comment on whether that should have happened in the particular circumstances, but, more generally, will the review address the nature and type of conditions that could be placed on released offenders so that, possibly, these media interviews may not take place in the future?

Hon MICHAEL MISCHIN: The scope of the review was to consider the extent to which improvements could be made to the process of applications to the Supreme Court for either a continuing detention or for a supervision order under the act, the length of the time between any periodic reviews of detention and the possible consequences of contravening a supervision order, including a question of granting bail to a person who is charged with such a contravention and the process and the penalties for dealing with contraventions of supervision orders. It is very broad. Issues like the one that you mentioned is something that if it is not covered in the review when I receive it, is something that, as I say, there may be a need for some further work on, on some aspects. The advice I received is that this offender is not through this broadcast contravening his orders. It is not clear—it is not final, but at this stage until what was said in the interview is analysed, in theory, he was able to do it. As I understand it, the alleged motivation was to apologise to victims in a broad sense and to reassure people about his commitment to rehabilitate—all very laudable, but as to the effect on victims, that is another issue. Whether or not it was appropriate to air such a broadcast, even if it were one that could lawfully have been made is another issue and a matter for the media that conducted the interview and has chosen to broadcast it. It may be that the

Commissioner for Victims of Crime can say something about the subject and any involvement that she has had in the matter and her views on the subject. I invite her to comment.

Hon PETER KATSAMBANIS: Sure, I would be interested in it. I am not sure if other members are interested, but I am interested now or at some other point.

Hon MICHAEL MISCHIN: I would ask through the Chair if Ms Hoffman could say something on the subject.

The CHAIR: Yes. Ms Hoffman.

Ms Hoffman: Yes. Thank you, minister. That media interview that was screened tonight—I was invited to comment or be interviewed in relation to that matter and the kinds of comments that I offered in relation to the matter were, firstly, regardless of the state of motivations of the dangerous sex offender, we would have to be curious about whether the offender in question is, in fact, enjoying his notoriety. I imagine that would be quite re-traumatising for his victims and certainly we would prefer that the media took that into account.

The other matter I raised and will continue to raise in relation to the matter is that the government has in place some excellent and appropriate measures if an offender under supervision or in custody and in some circumstances prior to sentencing—if an offender wishes to offer an apology, there are good skilled people within the victim mediation unit in the corrective services department, for instance, who are in a very good position to actually —

Hon PETER KATSAMBANIS: Can I interrupt for one second? I am actually having a bit of trouble hearing the answer. I am not sure if it is the location where I am sitting, because I also had problems with the Attorney General in parts, but if you could possibly speak up, I would appreciate it.

The CHAIR: I can assure you normally we can always hear the people who sit in that corner.

Hon PETER KATSAMBANIS: I understand that.

Ms Hoffman: I will speak up. The other issue that I will continue to raise is that we have appropriately skilled and trained people within the Department of Corrective Services who, if an offender wishes to make an apology, the skilled people work with the offender obviously to see whether they think there is a level of genuineness in making an apology and the other matter is to determine whether it is going to be beneficial for the victim in that matter to actually receive an apology, whether there is any actual capacity for solace for that victim out of the apology. Clearly, these are matters that should be dealt with by people who have some expertise and training in this regard. The idea that this is something that would be conducted in the media is obviously something I am concerned about in relation to its effect in creating further trauma for the victims involved.

[8.50 pm]

Hon PETER KATSAMBANIS: Thank you. That is obviously something that is currently available but not obviously well understood publicly. That leads on to my next question and probably my last question on this issue. What we have had broadcast tonight has been unprecedented, so it is sometimes very hard to anticipate what might happen in the never-never. But given that it has happened, I would like to seek information from either the Attorney General or the officers here at the table who are very learned in these areas, as to whether, under the current regime, it is possible under the existing supervision order regime for a condition to be placed on the supervision order that these media interviews are not given totally—total prohibition—or are given only after the process the commissioner has outlined tonight has been properly ventilated and properly exhausted or some other way, or whether the existing legal structure prohibits those sorts of orders from being made.

Hon MICHAEL MISCHIN: In my experience of these applications—admittedly it is dated but I represented the director on about half a dozen of them in my previous life—it was unusual. I do not

think I ever saw a condition being applied prohibiting someone from broadcasting matters. There would be routinely limitations and conditions on contact with victims and next of kin of victims unless it was impracticable for some reason such as a familial relationship. Each set of conditions would be crafted to the particular case and some might be considered routine but, again, it would be subject to the considerations of a particular instance. The director can no doubt expand on what the current practice is, but I guess it would not have been reasonably foreseeable that an offender of some notoriety would wish to expose themselves and attract attention to themselves in this fashion. The vast majority tend to want to get back into the community with as low a profile as possible, not with a high profile, and those who are motivated to be reabsorbed into society and to demonstrate that they have rehabilitated are the ones who are very circumspect about attracting attention to themselves. This case has been unusual from a number of perspectives, including the suggestions that were touted at the time that somehow there ought to be executive interference in the function of the Director of Public Prosecutions in the management of the case. I suspect the director's officers have learnt a lot from this particular case and the possibilities that might arise from time to time and will be able to give further thought to other possibilities such as an offender wishing to come forward without availing themselves of the processes already in place such as the victim mediation unit or if they are genuine about their concerns to demonstrate remorse to go through the Commissioner for Victims of Crime. I have no doubt the commissioner will also give an assessment of this particular case as part of the review, if she has not already. I look forward to seeing the fruits of that review and seeing what needs to be done. It is unfortunate for victims concerned. My sympathy goes out to them, but I think the system will emerge better at the end of it and the ability to deal with these unusual cases that will come up from time to time. If the director has anything he wishes to add on the current experience and the way his office deals with these things, it may be useful.

Mr McGrath: I agree with what the Attorney General and the victims commissioner said. What has occurred tonight is unprecedented; it has never been anticipated, and, as the Attorney General said, ordinarily, on every other occasion, an offender who is released with a supervision order would keep his head truly down. One of the conditions imposed upon this offender is that he must not have any direct or indirect communication with any victim—an issue that arises as he speaks on television. Will that cause difficulty? My preliminary view would be, no, it would not if it is in the broad sense. As the victim commissioner is saying, it is his own so-called apology. However, given this evening, it may be that we reconsider the wording of the particular order sought, to make it broad. Obviously, there are other issues arise. Freedom of speech may be raised. The decision of whether a particular order can be granted will be up to the Supreme Court judge. Certainly though, what is in place, as the victims commissioner has said, is a mechanism or means so that if a person is genuine and wishes to apologise, they can use departmental officers and the Department of Corrective Services as a conduit to do so. We will review this particular case within the office as the Attorney General's office and the department is reviewing the entire legislation.

Hon PETER KATSAMBANIS: I am heartened by that series of answers. I do not want to verbal anyone or put words in anyone's mouth. I sense from the commissioner's answer there is some level of scepticism as to the genuineness of the remorse expressed in the interview as opposed to a level of notoriety or 15 minutes of fame. I have to put on the record my own very strong scepticism as to where the balance in that interview lay tonight. Obviously, we cannot predict every circumstance before it happens but now that we have had one of these incidents happen, I get some level of satisfaction from your answers tonight that this will be considered and the system will be enhanced as a result to primarily protect victims of extraordinarily serious and horrific crimes.

Hon MICHAEL MISCHIN: I have already touched on this; there are two elements to this. It may be that this person is lawfully entitled and may even be genuine. I do not want to judge that. I do not know about his motives but we would not be having an argument about a broadcast if there was not someone prepared to broadcast it. A level of social responsibility falls on others who want to be the

conduits for this sort of interview without due regard perhaps to the harm they may cause the victims. I have in mind of course the TV station concerned. I understand that there are competing interests there but at the end of the day there has to be some regard for the consequences of giving oxygen to people who wish to speak publicly on these sorts of issues.

The CHAIR: I think we do need to move on.

Hon PETER KATSAMBANIS: I have other questions, but I have had a good go, so I am happy to hand on to other colleagues.

The CHAIR: I have not interrupted because it is an important issue, but I do think we need to move on.

[9.00 pm]

Hon RICK MAZZA: I refer to page 434 of budget paper No 2, the eighth dot point where the Law Reform Commission will be transferred to the Attorney General's office on 1 July. I want to find out how many projects the Law Reform Commission currently has.

Hon MICHAEL MISCHIN: Currently, it has before it the domestic and family violence laws review. The report on that is imminent. I understand it is currently being proof checked before it is submitted. That is project 104, for reference. Project 103 that it is currently working on is that of representative proceedings where it is examining whether the principles, practices and procedures pertaining to representative proceedings require reform. The final report for this reference is currently being drafted and its presentation is imminent. Project 105 is the review of the Firearms Act 1973, a matter that might of some interest to you.

Hon RICK MAZZA: It is of some interest, yes.

Hon MICHAEL MISCHIN: The commission has been asked to provide advice on and recommended the appropriate legislative and/or procedural changes concerning licensing and storage of firearms, penalties for firearm offences, and to review issues arising from a range of reports on gun control strategies operating in Western Australia and other jurisdictions. Now the commission received that reference in March this year and it has been asked to report back to me by 1 September next year.

Hon RICK MAZZA: Just on that if I can interrupt, please, why is it going to take so long for the report to come out of the Law Reform Commission for that review of the Firearms Act? I mean, we are talking 18 months—at least 18 months, and the police minister had promised late last year that this would be dealt with this year. As I understand it, submissions or public comment has not even been called for yet.

Hon MICHAEL MISCHIN: The usual process when a reference is made is that someone will be found who is specially experienced to be the drafter of the discussion paper, who will analyse the issues and present a final report.

Hon RICK MAZZA: Has that person been found yet? Have we got someone appointed for that position?

Hon MICHAEL MISCHIN: I am informed that the commission currently has the project plan for this and is considering the resources that will be necessary in order to pursue it. What it will then do is engage someone to have the carriage of the project. That person, after analysing and seeking submissions, will prepare a discussion paper identifying a variety of issues. That discussion paper will be put out for public comment and, following that public comment, a report will be prepared making certain recommendations, and that will have to be proof checked by a peer review.

Hon RICK MAZZA: So when are we expecting the public comment referred to?

Hon MICHAEL MISCHIN: I do not know.

Hon RICK MAZZA: We still do not know?

Hon MICHAEL MISCHIN: It is early days at this stage. It is for the commission to determine that, once the project has achieved a certain level of maturity. I do not control the way it handles its work, but the estimate of time—I cannot recall now whether that was set on advisement from the Minister for Police or whether it was set after consultation with the commission as to the likely time frame that would be required in order to complete the project. I suspect the latter, but just off the top of my head I do not remember, but that would be one of the factors that would be taken into account. So some of these things do take significant periods of time, some do not.

Hon RICK MAZZA: Where did the 1 September 2015—who chose that date?

Hon MICHAEL MISCHIN: That is what I am saying, I do not know. I cannot remember who chose it. It may very well have been, and would usually be the case that a proposal would be put to the commission. There may be some toing and froing in order to refine the terms of reference, and, along with that, some estimate as to the amount of time based on its experience it considers it would take to address that term of reference. Of course, the commission has got two others that it is currently finalising, so there is a prioritisation of the work before it. Lastly, there is project 106, which has been referred to the commission. It is in the early stages there, but the reference has been made and that is to inquire into the compensation regimes for persons suffering from asbestos-related diseases with regard to the “once and for all rule”, and the question of compensation for gratuitous services, and whether it ought to be confined to those suffering from asbestos-related diseases will be more broadly framed. That is another project that it will be undertaking over the next 12 months.

Hon RICK MAZZA: Are these reviews funded? They are all funded within the department to go ahead?

Hon MICHAEL MISCHIN: Yes, I am assured that the resources will be available for all of these references, whether they be the internal resources of the department or drawing on cash reserves or in some cases drawing on external resources in order to supplement those.

The CHAIR: But minister, do we have any idea of how much additional resources will be provided? Because you just have outlined a fairly heavy workload that, I suspect, sounds like it is a bit more than what the commission would normally be doing. I mean, have we got a quantum of the additional resources that will be provided to it?

Hon MICHAEL MISCHIN: I have not received anything from the commission as to the resources that it considers it will require in order to complete projects 105 or 106 at the moment. So it will be a matter for the commission to tell me what it needs in order to complete those by the due dates. Once I receive those, then I will find the money for them. Whether it comes out of the department and the director general has to start reaching behind the cracks in the couch to find cash, or whether it comes out of cash reserves or —

The CHAIR: I think she has already searched down there, minister, to pay for the court’s security!

Hon RICK MAZZA: I would like to move on to page 446, if I could, please, on the “State Solicitor’s Fees”. It is the line item towards the bottom.

The CHAIR: I am sorry, Hon Rick Mazza, but I just wanted to see whether we will get an answer as to what the quantum is that you would expect. Is the minister looking to get some further advice?

Hon MICHAEL MISCHIN: I have not received an estimate of the resources yet, so it is too early for me to tell; I do not know —

The CHAIR: Are you saying —

Hon MICHAEL MISCHIN: These are priority matters and the money will be found for it.

The CHAIR: Just to finish off on that point, are you saying that the asbestos review will be completed before the firearms review? Because you said it would be done in 12 months; whereas, I think you said the firearms review will be —

Hon RICK MAZZA: It is over 18 months. The firearms review is over 18 months.

The CHAIR: Is that correct?

Hon MICHAEL MISCHIN: That is right, on 30 June 2015 is when I expect the —

The CHAIR: For the asbestos —

Hon MICHAEL MISCHIN: Yes.

Hon RICK MAZZA: Page 446, towards the bottom, the line item of “State Solicitor’s Fees” which are between \$4.2 million and \$5.5 million a year. What I wanted to find out is: did the State Solicitor’s Office give any legal advice to the Department of Environment and Conservation in regard to the Peter Swift case down at Manjimup, which was heard by Magistrate Hamilton in Manjimup in December 2012?

Hon MICHAEL MISCHIN: I will have to ask the State Solicitor whether he has any information on that. Generally, the State Solicitor’s Office would provide legal services and advice to agencies of government. There may be exceptions to the rule from time to time where external solicitors or counsel are briefed or it may be done in-house, but perhaps the State Solicitor can expand on that.

Mr Evans: Thank you, minister. I am not personally familiar with the case, member. We do advise the Department of Environment Regulation and its predecessors, which at that stage would have been the Department of Environment and Conservation. They also have their internal legal team, which has a number a legal officers under the control of the department. Advice in relation to that matter may have been given by either the department or officers in my office. If the matter proceeded to a prosecution—as I am not personally familiar with the case, if it proceeded to prosecution, I would expect that it would have been handled in my office.

Hon RICK MAZZA: By your office?

Mr Evans: Yes.

Hon RICK MAZZA: In that case, can I take that on notice then because I know that the prosecution was unsuccessful. What I want to know is what the cost was in prosecuting—in attempting to prosecute that case?

[Supplementary Information No C5.]

Hon RICK MAZZA: Whether the DEC actually continued to prosecute the case on the advice of the State Solicitor or against the advice of the State Solicitor?

The CHAIR: Are you happy for that to be included as supplementary information C5?

[9.10 pm]

Hon MICHAEL MISCHIN: That raises a question of legal professional privilege. I would not have thought it would be the sort of thing that would ordinarily be revealed. I do not know why that would be relevant in any event to the exercise that we are conducting. It would set an unfortunate precedent if legal advice that would ordinarily be privileged were to be disclosed.

Hon RICK MAZZA: I accept that, Chair, but I would like on notice the cost expended by the SSO in that case.

Hon ALANNA CLOHESY: Given the time, the minister might want to take this one on notice. I note that there are a number of reviews that the department is carrying out or that are being carried out by the Law Reform Commission on specific pieces of legislation. What reviews of legislation, parts of legislation and functional areas are being carried out across the portfolio and what is the timetable for those? In the last five minutes we have mentioned three reviews. What is the breadth

of those reviews? What is the timetable of those reviews and reviews that may have also been committed to but not yet commenced? Where possible, I want to know what the resource implications for that in the Attorney General's department might be. For example, the review of the Equal Opportunity Commission is undertaken by the Public Sector Commissioner. I would not imagine that would have terribly many resource implications for the department, but where it does have resource implications for the department, what that might be?

Hon MICHAEL MISCHIN: There are a number of reviews. Some of them would be initiated by the need to explore certain areas. It may be fairly isolated and discrete inquiries to improve a piece of legislation. Others may be more wideranging and some may be required as a matter of statutory provisions that have the need for a regular review at certain instances. I am happy to try to find out which ones are currently being undertaken, but it may be a bit fuzzy in the sense there may be things that I have asked the department to review and inquire into that are very discrete areas that are not strictly reviews of the law generally. There are some that are more significant or wideranging or involved than others. Currently, for example, the Criminal Law (Mentally Impaired Accused) Act 1996 is being reviewed. A discussion paper is due shortly, after a limited consultation with stakeholders to set the direction of that review. That will be one of them of course.

Hon ALANNA CLOHESY: So maybe in view of the time and the extensive nature of the number of reviews, maybe the kind of line in the sand is what we would consider —

Hon MICHAEL MISCHIN: Are you after the ones that are looking at various things that fall under the responsibility of the department or ones that are being conducted by the department? The Public Sector Commissioner, for example, is responsible —

Hon ALANNA CLOHESY: Both. Legislation, sections of legislation and functional areas.

Hon MICHAEL MISCHIN: All right.

Hon ALANNA CLOHESY: I am sure that your managers will have a handle on what those reviews would be.

[Supplementary Information No C6.]

Hon ALANNA CLOHESY: I move onto a question on notice that I put to your office prior to the estimates hearing. I asked about procurement savings across the Attorney General's department. The department was not able to provide information on that procurement savings, presumably because of the size of the department, though we have received similar information from other departments that are bigger than yours. To make it a little easier: what is the procurement savings expected in relation to the Equal Opportunity Commission? I am happy to take that on notice as well. In addition to that, what savings were made under program rationalisation in the last financial year in relation to the Equal Opportunity Commission? I am happy to take that on notice as well.

Hon MICHAEL MISCHIN: I do not know whether the acting commissioner is able to answer that or whether she would like to deal with it on notice. She has given me the nod that it is on notice.

[Supplementary Information No C7.]

Hon ALANNA CLOHESY: You might want to add this to it: what are the expected increasing resource implications and other expenditure that might result in the federal government decision not to continue the position of the Disability Discrimination Commissioner and the Human Rights Commission? What are the resource implications for the Equal Opportunity Commission?

Hon MICHAEL MISCHIN: It looks like she is in a position to answer that one. I defer to the acting commissioner.

Ms Lucas: Strictly speaking, it would be more a situation for the Human Rights Commission rather than us, except that it is important to note that a good percentage of the Human Rights Commission's work which relates to Western Australia is done under the racial-disability

discrimination areas. I do not believe that the position is being abolished. I believe it may be shared, from my understanding.

Hon ALANNA CLOHESY: There will not be a Disability Discrimination Commissioner per se. The implication of that is the lack of focus on particularly the systemic disability discrimination work but also the lack of focus on complaints as well.

Ms Lucas: We are anticipating already, because we have had quite a few queries in this area, that we may have more extensive education and information programs that will be required. That is the most likely result, though I believe the Human Rights Commission will be picking up the actual complaints that go to them.

Hon ALANNA CLOHESY: At the moment it is just a general feeling about what the resource implications of that will be?

Ms Lucas: Yes.

Hon ALANNA CLOHESY: Is it possible to get an indication of what that might be when you start to firm up those ideas? Can we take that on notice?

Ms Lucas: Yes, I am sure we could.

[*Supplementary Information No C8.*]

Hon ALANNA CLOHESY: Still on the Equal Opportunity Commission, page 456. Parts of the role of the substantive equality unit are being incorporated into the commission's core functions. What parts of the role of the substantive equality unit are being incorporated? What remains of the substantive equality unit?

Hon MICHAEL MISCHIN: I will ask Ms Lucas to expand on that. The unit was established in 2004. It was established as a consequence of a desire to look into the question of implicit or rather —

Hon ALANNA CLOHESY: Indirect maybe?

Hon MICHAEL MISCHIN: — discrimination that may flow as a consequence of certain housing policies regarding allocation of public housing. It has served a purpose, but the government's view is that it has run its course. These things are capable of, and most appropriately ought to be, the responsibility of those responsible for their departments and the implementation of policies in those departments. What may have been novel concepts at one point requiring public awareness and awareness amongst public sector officers and chief executive officers has now become an accepted process of evaluation of the implications of policies and how they are implemented. The government's policy framework on substantive equality remains in place. The work of the unit will be absorbed into the community education area of the Equal Opportunity Commission. Public sector agencies are still expected to implement the policies and report on their work in annual reports, so there will be continuing accountability.

[9.20 pm]

Hon ALANNA CLOHESY: The Public Sector Commission's review is not due to be completed until August? Is that right?

Hon MICHAEL MISCHIN: Yes.

Hon ALANNA CLOHESY: However, a decision about a function of the Equal Opportunity Commission was made prior to any development of that review or any findings of that review?

Hon MICHAEL MISCHIN: That is right, because it is looking at a slightly different thing. The commission has been in place for almost 20 years now.

Hon ALANNA CLOHESY: Thirty years—since 1984.

Hon MICHAEL MISCHIN: Time flies! Thirty years, yes. It has been around for a long time. It seemed timely, at a point where the latest commissioner was due for retirement, or due to have her term renewed, that there be a proper re-evaluation of its function, bearing in mind that in the interim we have also seen an increasing role for the Australian Human Rights Commission, and there are real questions as to whether the functions might overlap and there is an unnecessary duplication. There is also the question of whether our commission and commissioner can deliver the expectations and objectives under this piece of legislation in a better way, and whether some improvements can be effected. The act came into force in 1984, I think. It has been operating under a limited number of commissioners. We need to have a fresh look at it and an evaluation of how it is working, how it can be improved, what efficiencies can be made, whether it is sufficiently aligned to the objectives under the legislation, whether some changes need to be made, and whether some of the support that is currently provided can be provided by other agencies in a more effective and cost-effective manner, and the like.

Hon ALANNA CLOHESY: What are the anticipated savings through the abolition of the substantive equality unit?

Hon MICHAEL MISCHIN: I do not know yet. I presume there are a couple of FTEs that have been involved in that.

Hon ALANNA CLOHESY: Does the minister know how much has been saved by abolishing the unit?

Hon MICHAEL MISCHIN: I will ask the commissioner if she can tell us that. But as far as economies and efficiencies more generally, I will await the outcome of the review, which is being handled at arm's length by the Public Sector Commissioner. I have no final view as to what its fate ought to be and how it ought to be restructured, if at all. I am trying to find out some exploratory exercise. Perhaps Ms Lucas can tell us a bit more about that.

Hon ALANNA CLOHESY: The question is what are the expected savings from the abolition of the substantive equality unit?

Ms Lucas: It is \$500 000 as of this coming financial year, and it was four positions. In terms of what remains of the unit, there is one position that still remains, because we are still in this financial year, and the rest have taken redundancies.

Hon ALANNA CLOHESY: So that position will conclude as at 30 June?

Ms Lucas: Yes.

Hon ALANNA CLOHESY: Thank you.

Hon KATE DOUST: I refer to page 434, "Significant Issues Impacting the Agency". The first dot point states that the department continues to develop, implement and coordinate legislation. Can the minister give us an update on the development and progress, and introduction, hopefully, of the foetal homicide bill?

Hon MICHAEL MISCHIN: The most recent development is that I have considered yet again the cabinet submission and the rationale and reasoning behind it. I was not satisfied that it had dealt with a number of issues, and I have sent that back to the department—this was a month or so ago—for some further work to be done on aspects that I felt could have been explored a little bit more.

Hon KATE DOUST: Is there a proposed time frame within which the minister would like to see it resolved?

Hon MICHAEL MISCHIN: Yes. I would like to get it resolved and introduced as soon as practicable. I thought some aspects had been overlooked, and I did want to get some advice on that. I am told it is not far off. The DPP has responded to the department in respect of matters that have been raised, and we are just waiting for advice from the State Solicitor.

Hon KATE DOUST: Can the minister explain to the chamber what the issues were that are holding it up or causing concern?

Hon MICHAEL MISCHIN: I would rather not, because there are several approaches that one can take to the issue, and some of those approaches might expose arguments on matters of law and policy that had already been resolved by Parliament several years ago. There are a number of different models that one can use to approach the issue. One of them is to create separate offences. One is to accentuate current offences. I thought that some aspects had been overlooked for consideration. I simply wanted to ensure that those matters had been addressed and that I understood the rationale for not taking that particular approach.

Hon KATE DOUST: Minister, I will continue to raise this, and I look forward to the eventual introduction of that bill.

Hon MICHAEL MISCHIN: So do I.

The CHAIR: I note that with the Solicitor General who was appointed back in 2012, the pay structure was adjusted to allow for some private work. Was that adjusted based on the amount of private work or is there a set figure that is now paid to the Solicitor General?

Hon MICHAEL MISCHIN: At the time that he was appointed, there was an expectation by both him and government that he may be able to do private work, and so his remuneration was set accordingly. Since then, it has become apparent that that was not practicable, and so the Salaries and Allowances Tribunal has readjusted his remuneration accordingly, on the basis that he is working full-time as Solicitor General, with no private work being conducted by him.

The CHAIR: So he is now a full employee?

Hon MICHAEL MISCHIN: Full-time engagement, yes, and with the appropriate level of remuneration, which I think is in the order of a Supreme Court judge.

The CHAIR: Did he ever undertake any private work?

Hon MICHAEL MISCHIN: I do not recall. I think he may have taken on one or two matters, but it became apparent that that was not feasible as well as devoting a priority to performing functions for government.

The CHAIR: If that was still occurring, my next questions were going to be how do we manage conflicts of interest, and how is that made public, because I never saw a public register of conflicts or anything like that?

Hon MICHAEL MISCHIN: He would disclose matters. There was one occasion that I recall in my term when he disclosed to me a matter that he was involved in and had been for some time and was seeing to a conclusion, in order that I was aware of that interest, and the assessment we had was that there was no conflict in that particular case. But, since then, it has been rendered moot. One of the things that moved me to accept a different arrangement for him was the fact that he would be forgoing private work and therefore avoiding the potential for any conflict of interest to arise, both in terms of conflicts of legal interest and conflicts of time and devotion to attending to the government's work.

The CHAIR: Thank you. If there are no other questions, noting the time, I will conclude the hearing. The committee will forward any additional questions it has to you via the minister in writing in the next couple of days, together with the transcript of evidence, which includes the questions you have taken on notice. Responses to these questions will be requested within 10 working days of receipt of the questions. Should you be unable to meet this due date, please advise the committee in writing as soon as possible before the due date. The advice is to include specific reasons as to why the due date cannot be met. If members have any unasked questions,

I ask them to submit them to the committee clerk at the close of the hearing. On behalf of the committee, I thank you all for your attendance this evening.

Hearing concluded at 9.29 pm
