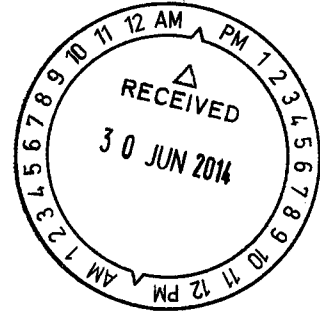




ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our Ref: 44-11181



Hon Ken Travers MLC
Chair
Standing Committee on Estimates and Financial Operations
18-32 Parliament Place
PERTH WA 6000

Dear Chair

2014/15 BUDGET ESTIMATES HEARINGS

Thank you for your letter dated 13 June 2014 concerning my appearance before the Estimates and Financial Operations Standing Committee on 10 June 2014.

Please find attached a copy of the relevant Hansard transcript, the requested supplementary information, and the answers to the additional questions asked by the Committee.

Yours sincerely

Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

27 JUN 2014

Attach:

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2117/114

**ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE
SUPPLEMENTARY QUESTIONS**

Tuesday 10 June 2014

Department of the Attorney General

Question C1: Hon Adele Farina asked: Of the 29 additional FTE positions funded in 2013-14, how many were allocated to the South West?

Answer: No positions were allocated to the South West.



**Hon. Michael Mischin MLC
ATTORNEY GENERAL**

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**ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE
SUPPLEMENTARY QUESTIONS**


Tuesday 10 June 2014

Department of the Attorney General

Question C2: Hon Rick Mazza asked: Are there any guidelines surrounding what constitutes a claim for an act-of grace?

Answer: Yes, the guidelines are contained in Treasurer's Instruction 319 Act of Grace Payment which the Department's accounting processes comply with. A copy of Treasurer's Instruction 319 as contained in the Financial Administration Bookcase, a compendium of financial management legislation and related instructions, administered by the Department of Treasury is attached.

Attached TI 319



**Hon. Michael Mischin MLC
ATTORNEY GENERAL**

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319 ACT OF GRACE PAYMENTS

BACKGROUND

Act of Grace payments are those payments that are not payable in pursuance of the law or are not payable under a legal liability. Although not legally bound, the government makes these payments when it considers that it is appropriate to do so because of special circumstances even though the payment would not otherwise be authorised by law or required to meet a legal liability.

Section 80(1) and (2) of the Act provides that the Treasurer may approve Act of Grace payments up to an amount prescribed by regulation and, where that payment exceeds the prescribed amount prior approval of the Governor must be sought. Financial Management Regulation 8 sets the limit that may be approved by the Treasurer at \$250,000. Under section 74(1) of the Act the Treasurer has delegated to Ministers of the Crown the authority to approve Act of Grace payments up to \$250,000. Amounts in excess of \$250,000 require the prior approval of the Governor.

Where a Minister has delegated authority to approve such payments, accountable authorities shall cause all such requests to be addressed to the Treasurer and delivered to the responsible Minister to ensure compliance with section 80(1) of the Act. This reflects that the Minister is acting under a delegated power from the Treasurer, and that the power to approve payments remains a function of the Treasurer. The Minister, acting as delegate of the Treasurer, must personally approve each payment made under section 80 prior to the making of such payments.

TREASURER'S INSTRUCTION

- (1) All submissions for Act of Grace payments pursuant to section 80(1) of the Act shall provide details of the proposed payment including full details of the incident or occurrence which gave rise to the request for the Act of Grace payment.**
- (2) Where a delegation from the Treasurer under section 74(1) of the Act so provides, requests for Act of Grace payments up to \$250,000 shall be addressed to the Treasurer and submitted to the responsible Minister for approval.**
- (3) Submissions for Act of Grace payments in excess of \$250,000 seeking the prior approval of the Governor in accordance with section 80(2) of the Act shall be forwarded through the responsible Minister to the Under Treasurer.**
- (4) The agency shall maintain a register of all Act of Grace payments made pursuant to section 80.**
- (5) All Act of Grace payments are to be disclosed in the annual report of the agency.**

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GUIDELINES

Requests for an Act of Grace payment arise from many and varied situations and each request will be assessed on the circumstances associated with that particular request.

Requests for Act of Grace payments should be reviewed for reasonableness by the agency prior to being submitted for approval.

Where consideration is being given to a person who has suffered damage, loss or injustice as a result of an act or omission of the agency, or that person's employment by the agency, the following criteria may be used in the assessment of claims for Act of Grace payments:

- (i) any contributory negligence on the part of the claimant;
- (ii) any defect or fault on the part of the government;
- (iii) the purchase price and current value of the article lost or damaged;
- (iv) the cost of repairing or replacing the article; and
- (v) is approval likely to create a precedent with unintended consequences?

Where there is a reasonable possibility that further claims for similar payments will be received as stated in point (v) above, the accountable authority should refer the matter to the State Solicitor's Office before any approval is sought.

Where a request for an Act of Grace payment is not directly attributable to actions of the agency, and the matter is considered to be contentious, complex and uncertain, the Minister should seek the Cabinet's approval before seeking the Treasurer's approval.

Where injustice is suffered, agencies are to ensure that all relevant avenues have been pursued in settling the matter, and that the advice of the State Solicitor's Office has been obtained as to the appropriateness and quantum of compensation.

Where appropriate, agencies should consult with Treasury prior to preparing any request for Act of Grace payments.

The State Solicitor has advised that costs to be met in relation to the following matters are not in the nature of Act of Grace payments:

- (i) payments to satisfy a judgment; or
- (ii) payments arising from out of court settlements, which stand in lieu of judgments and which may be evidenced by deeds of release, or the filing of documents in court where legal action has commenced.

Where an agency is involved in litigation and the litigation is not covered under professional indemnity and public liability insurance cover, the agency must immediately seek the State Solicitor's assistance with settlement of the matter.

Claims for breach of contract, breach of copyright or defamation are examples of actions that would not be included under professional indemnity or public liability insurance cover.

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When an act of grace payment is made as a result of:

- (i) a moral obligation to compensate for damage, loss or injustice as a result of an act or omission, or that person's employment by the agency or related body or affiliated body; or
- (ii) responsibility to relieve a person from financial hardship and that it would be proper and fair to do so

the payment should be funded from the agency's existing budget allocations.

However, where supplementary funding is considered necessary, Ministers must obtain the Treasurer's approval to such funding in accordance with Treasurer's instruction 302 'Supplementation of Appropriations' prior to making a payment.

It should be noted that as agency appropriations are to "deliver services", any Act of Grace payment should be linked to, or be incidental to, the services delivered by the agency. In cases where there is no apparent linkage it will be necessary to seek guidance from Treasury as to the appropriate funding arrangements.

Responsible Minister

The reference to Minister in section 74(1) of the FMA includes Ministers Assisting.

Individual or grouped

For the purpose of this instruction, act of grace payments are to be individually approved. Where there are a number of requests for consideration, the agency may prepare a single submission for consideration by the Treasurer or a delegate.

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**ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE
SUPPLEMENTARY QUESTIONS**

Tuesday 10 June 2014

Department of the Attorney General

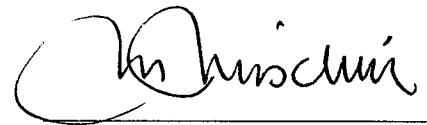
Question C3: Hon Ken Travers asked: I would like the operational costs of those courthouses for each, broken down into Kalgoorlie, Kununurra and Carnarvon; what it was previously; what your estimated cost was as part of your assessment under the strategic asset management framework and what you now have 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?

Answer:

1. Existing Costs, Required and Funded Operating Costs of New Courts

	2013/14 Approved funding	2014-15 Estimated Operating Costs	2014-15 Funded Operating Costs	Reasons for Increases
Kalgoorlie	231,925	466,322	364,934	Increased costs are related to the increase in size and operational capability of the new facilities from 2014/15. The table contains cost increases relating to: <ul style="list-style-type: none"> • gardening; • cleaning; • energy; and • water rates and water consumption.
Kununurra	88,472	348,197	234,107	
Carnarvon	28,597	125,870	112,955	
TOTAL	348,994	940,389	711,996	The Department will examine efficiencies to meet any shortfall between estimated operating costs and funded operational costs in 2014/15.

Does not include Court Security Costs.



**Hon. Michael Mischin MLC
ATTORNEY GENERAL**

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**ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE
SUPPLEMENTARY QUESTIONS**

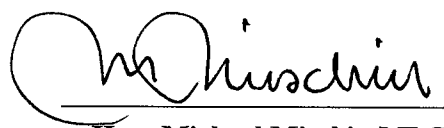
Tuesday 10 June 2014

Department of the Attorney General

Question C4: Hon Lynn MacLaren asked for a copy of the business case for the removal of duty lawyer services from Fremantle and Midland.

Answer: A copy of the business case is attached.

Attached Business Case


**Hon. Michael Mischin MLC
ATTORNEY GENERAL**

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LEGAL AID WA FILE NOTE

BUSINESS CASE FOR THE CLOSURE OF LEGAL AID WA'S FREMANTLE AND MIDLAND OFFICES

APRIL 2014

Background

1. As part of LAWA's strategic planning process for 2015-17, discussion took place regarding the future necessity of the two suburban offices located at Fremantle and Midland.
2. The nature of the discussion centred on the traditional classification of both offices as "regional", placing them in the same category as LAWA's offices at Bunbury, Albany, Kalgoorlie, Geraldton, Carnarvon (satellite office), South Hedland, Broome and Kununurra. It was agreed that the suburban offices could not be strictly considered to be regional in nature because they were both located in relatively inner suburban locations, with a service delivery profile which was predominantly based on the delivery of duty lawyer services.
3. On this basis it was agreed that the future necessity for both offices be reviewed in the context of the 2014-15 business planning process.

Closing the Fremantle and Midland offices – savings estimates and service delivery impacts

4. The net financial benefit of closing the offices is estimated to be \$1.9 million over the forward estimates period. The majority of these savings relate to the termination of leases at the two offices and avoiding the requirement to outlay additional funds on new fitout. This savings calculation includes an offsetting amount of \$157,000 over the forward estimates associated with duty lawyer travel from Perth to Fremantle, Armadale, Midland, Rockingham and Mandurah.
5. The capacity to absorb the Fremantle and Midland staff within LAWA's new tenancy at 32 St Georges Terrace from mid-2015 onwards avoids any new accommodation expenses. The cost of workstations is fully funded from within the cash incentive provided to LAWA for entering into the new lease.
6. In terms of service impact, the majority of the outputs of both offices are duty lawyer services. From 1 April 2013 to 31 March 2014 the Fremantle office provided 9,646 services, 8,581 (or 89.0 per cent) of which were duty lawyer services. Over the same period the Midland office provided a total of 6,294 services, of which 4,038 (or 64.2 per cent) have been duty lawyer services at the Midland Magistrate's Court.
7. LAWA currently provides an extensive duty lawyer service at the Joondalup and Armadale Magistrate's Courts by providing lawyers based at LAWA's Perth office. This service operates effectively and is not diminished by its lack of proximity to a local

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office. Based on this experience, there appears to be no reason why duty lawyer services at Fremantle, Rockingham, Mandurah and Midland cannot also be delivered using resources based at the Perth office. This point reinforces the operational reality that duty lawyer client contact principally occurs at court, rather than at a LAWA office.

8. The main outstanding issue is the delivery of the non-duty lawyer services by both offices and the impact this will have on clients. In this regard the main other service provided by both offices is legal advice and minor assistance, with Fremantle providing 916 services from 1 April 2013 to 31 March 2014 and Midland providing 2,197 services in 2012-13. For Fremantle, 16.0 per cent of this category of clients resided within 5 kilometres of the Fremantle office, while a further 18.9 per cent resided within 5 to 10 kilometres of the office. In the case of Midland, 14.1 per cent of this group of clients resided within 5 kilometres of the Midland office, while a further 12.7 per cent resided between 5 to 10 kilometres from the office.
9. In relation to all clients (including duty lawyer clients), 78.9 per cent of Fremantle office clients reside more than 10 kilometres from the office and 64.6 per cent of all Midland office clients reside more than 10 kilometres from the Midland office.
10. In this regard it is noted that from an urban planning perspective the Fremantle and Midland offices are not well located. Perth's major population centres are concentrated in the northern, southern and south-eastern corridors. Fremantle and Midland have smaller conurbations in the western and eastern corridors, with the demography of Fremantle and its immediate surrounds becoming less consistent than the general profile of LAWA clients.

Staff impacts

11. The Director of Legal Aid has met personally with the staff of both offices. Overall, there was a limited negative response to the proposal. The staff of the Midland office were more positive about the change than the staff of the Fremantle office.
12. About 18 staff in total are affected, with 12 based on Fremantle and 6 based in Midland. It is planned that all staff will be relocated to Perth. No staff member will lose their job as a result of the move.
13. The majority of the legal staff have strong backgrounds in criminal law and it is expected that they will be absorbed into the Criminal Law Division. These additional staff will improve the capacity and flexibility of the Criminal Law Division to provide duty lawyer services across the metropolitan area and to increase the level of casework output. There will be a real increase in organisational capacity because a number of the lawyers will be released of the administrative burdens associated with managing a stand-alone office.

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14. Consultation will take place with the administrative staff to ensure that they are placed in areas which best match a combination of their skills and personal preferences.

Implementation

15. LAWA currently leases its Fremantle tenancy (in the Queensgate Building) from the City of Fremantle. The building is currently subject to a redevelopment proposal and LAWA is subject to a 6 month termination clause exercisable by the lessor. LAWA as lessee has an unconditional right of termination with 9 months notice. On this basis it is likely that LAWA would exercise its right of termination in September 2014, enabling the Fremantle staff to relocate in May-June 2015. If LAWA were to retain a presence in Fremantle it is highly likely that a new office would need to be found. As well as additional net rental expenses, there would almost certainly be a cost associated with new fitout, which could easily be in the order of \$500,000. These expenses are yet to be budgeted and have therefore not been included in the savings projections. Moreover, given the changed demography of Fremantle, it is more probable that if the office were to be relocated it would be moved to a more suitable location in the southern corridor, such as Rockingham.
16. LAWA occupies its Midland office subject to an arrangement with the Minister for Works, which is administered by the Department of Finance. This arrangement has never been formalised, although the Department of Finance would prefer LAWA to enter into a Memorandum of Understanding for a fixed term of occupancy. Based on the existing arrangement, LAWA can very easily terminate its tenancy at Midland.
17. The design brief for the new office at 32 St Georges Terrace has included sufficient work spaces for the Fremantle and Midland staff.

Consultation

18. The Attorney General has been briefed on the proposal and has publicly supported the prerogative of LAWA to manage its budgetary arrangements in the most appropriate way. This comment was made in the context of the media reporting of the proposed closure of the Fremantle and Midland offices.
19. An extensive public information program will be implemented to inform clients of the forthcoming closure of both offices.

Next steps

20. It is recommended that the proposal to close the offices be put to the LAWA Board of Commissioners.

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**ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE
SUPPLEMENTARY QUESTIONS**

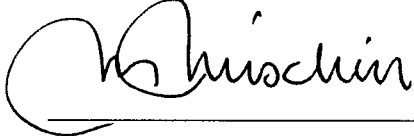
Tuesday 10 June 2014

Department of the Attorney General

Question C5: Hon Rick Mazza asked: What was the cost expended by the SSO on that [Peter Swift] case?

Answer: The total internal cost of resources committed, using the State Solicitor's internal cost model, was: \$37,004 consisting of Department of Environment Regulation (\$17,310.50) plus the Department of Environment & Conservation (\$19,693.50).

There was no cash expenditure as the work undertaken was core work within the State Solicitor's Office.



**Hon. Michael Mischin MLC
ATTORNEY GENERAL**

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**ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE
SUPPLEMENTARY QUESTIONS**

Tuesday 10 June 2014

Department of the Attorney General

Question C6: Hon Alanna Clohesy asked: What reviews of legislation, parts of legislation and functional areas are being carried out across the portfolio and what is the timetable for those?

Answer:

Review Title	Timetable
<i>Dangerous Sexual Offenders Act 2006</i>	Report to be with the Attorney General by 30 June 2014.
<i>Criminal Law (Mentally Impaired Accused) Act 1996</i>	Public discussion paper to be released by 30 September 2014. The development of amendments to the Act will follow; the timeline for these will be determined by the extent and type of matters arising from the public consultations and other research and investigations being conducted by the DotAG.
Statutory Review of the <i>Guardianship and Administration Act 1990</i>	Report to be with the Attorney General by 30 September 2014.
Statutory Review arising from the <i>Criminal Law and Evidence Amendment Act 2008</i>	Report to be with the Attorney General by 30 September 2014.
Statutory Review arising from the <i>Criminal Law Amendment (Homicide) Act 2008</i>	Report to be with the Attorney General by 30 September 2014.
Statutory Review of the <i>Prohibited Behaviour Orders Act 2010</i>	Report to be with the Attorney General by 31 December 2014
Law Reform Commission reference: Representative Proceedings	Report to be with the Attorney General by 31 July 2014.
Law Reform Commission reference: Enhancing Family and Domestic Violence Laws	Report to be with the Attorney General by 30 June 2014.
Law Reform Commission reference: <i>Firearms Act 1973</i>	Report to be with the Attorney General by 1 September 2015.
Law Reform Commission reference: Provisional Damages and Damages for Gratuitous Services	Report to be with the Attorney General by 30 June 2015.



**Hon. Michael Mischin MLC
ATTORNEY GENERAL**

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**ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE
SUPPLEMENTARY QUESTIONS**

Tuesday 10 June 2014

Commissioner for Equal Opportunity

Question C7: Hon Alanna Clohesy asked: 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.

Answer:

- (a) There are no specific procurement savings being applied to the Equal Opportunity Commission
- (b) There was no specific program rationalisation during the last financial year. The abolition of the Substantive Equality Unit and the rationalisation of its program is scheduled for this financial year.



**Hon. Michael Mischin MLC
ATTORNEY GENERAL**

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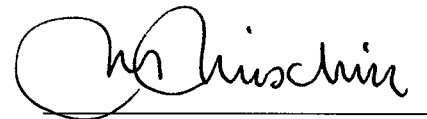
**ESTIMATES AND FINANCIAL OPERATIONS COMMITTEE
SUPPLEMENTARY QUESTIONS**

Tuesday 10 June 2014

Commissioner for Equal Opportunity

Question C8: Hon Alanna Clohesy asked: What are the resource implications for the Equal Opportunity Commission?

Answer: The effect of no longer having a sole Federal Disability Discrimination Commissioner is not yet known (as the role will be assigned to another Federal Discrimination Commissioner). Predictions are that the Equal Opportunity Commission could have an increase in enquiries regarding impairment discrimination and following from that an increase in rights based education work.



**Hon. Michael Mischin MLC
ATTORNEY GENERAL**

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