

**JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION**

**INQUIRY INTO A SYSTEMIC ISSUE ARISING OUT OF
NINE COURT AND TRIBUNAL FEE INSTRUMENTS**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 18 JUNE 2014**

Members

**Mr P. Abetz (Chair)
Hon Robin Chapple (Deputy Chair)
Mr G.M. Castrilli
Hon Peter Katsambanis
Hon Mark Lewis
Ms S.F. McGurk
Mr P. Papalia
Hon Ljiljanna Ravlich**

Hearing commenced at 10.07 am**Mr ALISTAIR JONES****Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, sworn and examined:****Mr KURT SIBMA****Assistant Director, Department of Treasury, sworn and examined:**

The CHAIR: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I need to ask you to take either the oath or the affirmation. Please state your full name, contact address and the capacity in which you appear before the committee.

[Witnesses took the affirmation.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make too much noise near them. It is always best, and that applies to us as well, to speak one at a time because that makes it easier for Hansard. I remind you that your transcript will become a matter for the public record. 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. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Would you like to make an opening statement to the committee before we start asking questions?

[10.10 am]

Mr Jones: Yes, chair, I would like to do that. Firstly, I will just introduce ourselves and what we do to give you some context. I am Alistair Jones. I am the acting executive director of the strategic policy and evaluation business unit in Treasury. That business unit is responsible for the Department of the Attorney General for its funding, amongst others. In part of that business unit there are two directorates called program and evaluation groups. In both of those program and evaluation groups, there are cost and demand modelling teams. Mr Sibma is the assistant director in charge of the cost and demand modelling team in the program evaluation group that is responsible for DOTAG.

Thank you for the opportunity for making an opening statement. I would like to start by providing a general overview of Treasury’s role in the annual review of tariffs, fees and charges before then making some specific remarks about the Department of the Attorney General’s costing model. Each year Treasury liaises with agency counterparts as part of the annual review of tariff fees and charges and reminds agencies of their obligations under Treasury’s instruction 810. Our role is to ensure that we receive a certification from the accountable authority and the minister to confirm that a

review has been undertaken and the agency's costing methodology is materially accurate. During the annual tariff fees and charges process, analysts do not look at individual's entire fee setting models, only at the changes requested, which meet a defined approval threshold triggering government consideration. In essence, an approval mechanism is established for agencies seeking new fees, increases for fees in excess of CPI, fees which affect the household model and also fees that are considered contentious or which over cost recover. As has been stated to the committee at previous hearings, Treasury is not resourced to conduct more in-depth analysis or to provide an audit or oversight of agency activities.

In the case of the Department of the Attorney General, Treasury has not been involved in the development of their model, nor have we been given the opportunity to review the model in its entirety. Treasury was introduced to a single component of the Department of the Attorney General's model in March 2014. The spreadsheet provided to us related to the District Court only and focused mainly on allocating costs at the court level. Based on a preliminary assessment of the spreadsheet, we concluded that the framework used to estimate costs at the whole of court level appeared reasonable. However, we also pointed out that this committee recommended that DOTAG develop a costing model that demonstrates at or below cost recovery for individual fees. The validity of DOTAG's fees ultimately rests on whether there is a reasonable relationship between the fee and the cost of providing that service. In part, this depends on the technical difficulties and financial costs of developing and maintaining a model that estimates costs for individual services. At this stage, we are unable to express an opinion on whether it is reasonable to invest more resources into developing a model that costs fees at the individual level. It follows that we have not expressed an unqualified view that DOTAG's model is fit for purpose. Given the concerns raised by this committee, we have offered to work with DOTAG to further explore the feasibility of developing a cost model that costs individual services.

The CHAIR: Thank you. Mr Sibma, do you want to add anything to that?

Mr Sibma: No, I have nothing to add.

The CHAIR: To make it clear, Treasury was not involved in setting up the model they set up in 2006?

Mr Sibma: No.

The CHAIR: Is that normal?

Mr Jones: To be honest, we fund agencies. How they allocate their funding within their agencies is not usually a function that we get heavily involved in. There are other agencies where they are funded on a cost and demand basis, areas such as Health and Education. We are now working on Child Protection and also Corrective Services. When their funding requests are based on that cost and demand modelling or for activity, in conjunction with the agency, we develop a cost and demand model, which is used in the budget process and midyear review process to inform that costing. However, in those agencies, we do not, unless asked by government, actually drill down to how they allocate the funding that they are given.

The CHAIR: But in terms of helping them develop their costing model, is that the role of Treasury to normally assist or is it up to each department to seek if it wishes it?

Mr Jones: It is the department's choice. We would only get involved if there is a clear decision of government to do that, and there has been in Health, with the national health agreement and obviously activity-based funding. Education involved us in the student-centred funding model, which the minister is rolling out in 2015. In those cases there has been a government decision for Treasury to be involved in that process.

Mr G.M. CASTRILLI: You said that, based on concerns expressed by the committee in terms of the modelling, you have offered your assistance in helping develop that model to DOTAG. Was that recent or have you offered that assistance previously?

Mr Jones: When this committee released report 63, we obviously read the recommendations and at an officer level, we approached DOTAG and said that we will offer our services to assist in that process. The former Treasurer, Treasurer Buswell, wrote to the Attorney General offering that. Then obviously the committee wrote to former Treasurer Buswell about the net appropriation determination and in that reply again, we reiterated that we were happy to work with them to look at developing a cost and demand model for DOTAG. Obviously, after he sent that letter to you, former Treasurer Buswell also sent the Attorney General a letter, again offering that service. In our subsequent conversations with the department, the offer is still open for us to help them develop it. I guess the first stage would probably be to ascertain whether you could do it or not. Mr Sibma will probably go into a bit more detail later on why that work would need to be done. A general observation is you are not just purchasing a simple service, like a lot of other departments. Obviously, court cases are quite complex. There is no one size fits all for a civil case or a criminal case. That obviously has a lot of variables in it, and we would have to look at whether you could do that or not.

Mr G.M. CASTRILLI: Was this letter sent early this year?

Mr Jones: I actually have a time line. You released your report 63 in September. We replied and former Treasurer Buswell wrote a letter to the Attorney General on 31 January as well.

Hon LJILJANNA RAVLICH: Mr Jones, from a general overview, it would appear that, obviously, it is in the interests of Treasury and the state that agencies achieve efficiencies and operate in an efficient manner. In view of that, obviously, there is a role to ensure that happens and Treasury, one would think, might have an overview role there. I am a little bit surprised, if you like, that Treasury is not more hands-on with government agencies to ensure that there is a systematic approach about the way they, in fact, establish their costing models to make sure that there is some uniformity in terms of what government agencies do. Can you just give us a comment in relation to why Treasury has been missing from that area, or from that space?

Mr Jones: I would not say we are missing from it. If I use the Department of the Attorney General's example, their court services, from memory—I can check my file—it is about a \$380-million annual operation, and basically the funding they get from fees is about \$80 million. In terms of its fee setting, if you have a CPI increase, or a slightly bigger fee, that increase on a base of \$80 million is \$2 million or \$3 million. In my area, for example, I have got 50 FTE in charge of \$19 billion of the \$27 billion state budget. For example if Health has a one per cent blowout in their costs, that is an \$80 million blowout. I have got one analyst that works on the Department of the Attorney General. The net return for me of dedicating a whole lot of resources for a \$3 million issue just is not there. I mean, I have got my hands full with Health, Education and some of the other bigger agencies where we do keep a more—what could you say?—rigorous check on how they actually spend their money. The other issue too is obviously the level of cost recovery in DOTAG. It has actually fallen since 2005. I have got the figures if the committee want it, but it was at about 27 per cent, and it is now forecast for 22 per cent. That is a concern for me. Obviously, we have got some questions about the operations of courts. Obviously, you had the SAT come in in 2005, which was supposed take up some of the slack from courts. The CPINS came in, which were the infringement notices. We have seen a drop-off in activity in the Magistrates Court. Ideally, if I had the resources I would like to understand that and whether we look at the way we resource Magistrates' Courts going on in the future but, again, in terms of my total \$19 billion spend, the DOTAG fees—a \$3 million issue—is important, but obviously it is not up there with me.

[10.20 am]

Hon LJILJANNA RAVLICH: Are you saying you have not got the resources so some things have to go by the wayside and you have to make an assessment about what your priorities are?

Mr Jones: I guess out of a \$19 billion spend—I used the analogy for you before—if I have a one per cent blowout in Health that is \$80 million, and if I have a one per cent blowout in education

spending, that is \$45 million. The fees issue here is about \$3 million a year in terms of the increase. I would love to have the resources to look at it but, to be honest, I have to work obviously in risk areas to the state and the state's finances and I obviously put those bigger agencies ahead. I have to make that judgement call as an executive. If government gives me a clear decision or resourcing to look into the court system and DOTAG, I will certainly take that on, but in the absence of a clear government decision, in terms of risk, it is just not there for me in terms of value.

Hon ROBIN CHAPPLE: In the discussions with DOTAG, has there been a seeming reluctance for them to take on some analysis internally and try to sort it out, or am I going too far with my question?

Mr Jones: Look, I think it is no secret this committee has had a longstanding issue with the fee setting for courts and recovery. To be honest, we have tried to avoid getting involved in it. I have read the transcripts of DOTAG and the Attorney General has a different view and the State Solicitor from the committee. They are by the wayside. In terms of engagement, we have offered engagement. I think the department and the minister have a clear view that that process is probably a waste of time, from their evidence. To date, they have not taken up our offer to do that further work.

Hon ROBIN CHAPPLE: Just as a sup to that, is it usual practice for you to offer assistance or do the departments invariably come to you and say, "We would like you to help us sort ourselves out"?

Mr Jones: Historically, agencies stay away from Treasury; they do not like us looking at their cost structure or their operation. Historically, levels of cooperation between agencies and Treasury are pretty low. They sort of think it is like letting the fox into the hen house. If we get in there, we obviously look at how they operate and ask some tough questions. This has not been a priority for us. I will use some other agencies in my business unit for example. Child Protection had a huge increase in demand, which was causing huge budget risk and Mr Sibma has worked closely with them to build a demand model and we are now looking at the costs side of that. That demand was due to a number of issues, including the Ford review, and mandatory reporting and other things. The data Mr Sibma and his team looked at has enabled us to predict demand and look at it. Again, Mr Sibma is doing a model on Corrective Services. We are looking at the prison population—the effects of sentencing, different government policy decisions, all that sort of stuff. We have gone back with historical data. They are issues where we are seeing a lot of risk to the state's finances by very large budget requests at budget, and also in a lot of cases, requests for supplementary funding, as basically the prison system had more prisoners than had been predicted under the original way of calculating it. We had a number of years of that and then government said to us, "Look you need to go and look at this process and come up with a solution." In terms of the court fees, government has not asked us to go and do that, so we have not taken it on ourselves. Our original offer of help, after the sixty-third report—my staff have been proactive; they read the report and they offered at an officer level for us to assist them in terms of developing a cost-and-demand model, or at least providing some advice.

Hon ROBIN CHAPPLE: Going back to my original question, has there been a reluctance for DOTAG to take up your offer?

Mr Jones: You would have to ask DOTAG for that; that offer is still open. The offer has been on the table for only a couple of months. In some departments the wheels of government turn very slowly.

Mr P. PAPALIA: This is kind of a left-field question; when we were talking to DOTAG people, they indicated that the court security costs—they book them as a cost—but the court security and custodial services contract is paid for by Corrective Services.

Mr Jones: Yes, correct.

Mr P. PAPALIA: To my mind, I am wondering whether there is some fairness in the way you assess Corrective Services as to whether these costs they are actually incurring are booked by somebody else in a different department.

Mr Jones: I am not an accountant and the whole resources free-of-charge thing I would probably have to get one of my financial policy people to explain it to you, but I will give you another example. We split with the Department of Finance and all our corporate services are basically provided as resources free of charge. So in the Corrective Services case, they are given the funding to engage that. They have the contracts with the provider and there is then an accounting adjustment, which basically expenses it and puts it on to DOTAG's books. If you are going to ask me how that works, I would probably have to provide you with that on notice. But that is a common treatment. That happens in a lot of cases where a person who holds a contract provides a service to an agency. The way to make sure that it is covered in the recipient agency's costs is through a resources free-of-charge adjustment.

Mr P. PAPALIA: I am fine with that. I am not that concerned. I am just wondering about the fairness with the Corrective Services budget being impacted in that it looks to get an increase in costs without any actual return.

Mr Jones: It does, but there will be a journal adjustment out of their books, so it is an in-and-out adjustment.

Mr P. PAPALIA: So there is an out adjustment.

Mr Jones: Yes, and I am happy, if you would like, to give you that. I have actually got Corrective Services in my area as well.

Mr P. PAPALIA: That is fine. I sit next to Rita Saffioti; I do not want any more! It is probably fine. As long as there is an out adjustment so that it does not look like their budget is being blown out as demand goes up inside courts.

Mr Jones: Correct. So what happens with the resources free of charge, if you provide that service—the Department of Finance does it a lot with government accommodation. Essentially, they are funded and then they provide resources free of charge to a whole lot of departments. But with Corrective Services, they will be given the funding—the appropriation of government—then there will be a book adjustment taking it out of their books and then a book adjustment putting it into DOTAG, so on the balance sheet it appears. Even though they are not paying for it, they are a recipient of it. For all intents and purposes on their balance sheet, they have got the funding for it, hence they will then cost recover for that.

Mr P. PAPALIA: It is a net neutral thing.

Mr Jones: Correct, yes.

Ms S.F. McGURK: I think we are going to go into a bit more detail about how DOTAG is costing a lot of work. I understand you made some preliminary remarks, but what is your view of the costing model in DOTAG?

Mr Jones: We were literally provided the same thing that you were at your hearing, which is essentially, I think it was, an hour-long presentation. They provided us with a spreadsheet which basically shows how they allocate costs within the District Court. I will get Mr Sibma to probably describe how it works. He will be able to do that —

Ms S.F. McGURK: I think we are going to go into how it works, but I was specifically asking —

Mr Jones: In my original statement, at a whole-of-court level—I have read their evidence—essentially, they construct it from their actuals from the year before. They basically apportion a notional amount for each service. That is not inconsistent with the way a lot of other agencies do their cost centre budgeting. I guess the issue you have is in terms of the actual fee-for-service

charge that they charge and how that relates to it. Our advice at the moment is we do not have oversight of how that money is actually allocated. In terms of the overheads from their model, they seem consistent with what is common practice across the sector, including ourselves. You basically do it either on FTE or on the actual share of the budget of the department. Both those ways of setting a budget are fine.

In terms of a court, we are comfortable that it looks reasonable at first glance. In terms of answering your concerns on individual fees, we do not have enough information and that model does not provide us with that level of depth to give you an informed opinion on it.

Hon MARK LEWIS: Do you know if the now abandoned pilot model is the basis for the current costing model?

Mr Jones: The first time we saw the pilot model was the document attached to your report 63. We were not involved in that process at all. Mr Sibma has read the report and could probably give you a little bit more information on your question. The first time we saw that was when you released your report. DOTAG did not engage us or ask us for advice on constructing the model.

[10.30 am]

Hon MARK LEWIS: They did not use the template for this current model?

Mr Sibma: My understanding is that they are separate and distinct models, but the pilot model was attempted to cost fees at the individual service level, whereas the existing model we are looking at today is based on the whole of the District Court and only costs a small number of individual services.

Hon PETER KATSAMBANIS: I want to go back to the offer, as you put it, to assist that was formalised in writing from the Treasurer to the Attorney General. Has there been any formal response to that letter?

Mr Jones: Not at ministerial level. At officer level, my director is still talking to Mr Hainsworth. That offer still stands for us to go in there, if they want us to, to assess whether it is feasible to actually do the model. That is, I guess, a big question. It may turn out that it is not feasible and too expensive to actually cost it by an individual fee, but without actually getting some access to the way their system works and Kurt's team working with them, we cannot even advise whether they could do it or not.

Hon PETER KATSAMBANIS: Sure. Is it unusual for a letter from one minister on 31 January not to be responded to by mid-June?

Mr Jones: The Attorney General wrote back and essentially said to the former Treasurer what he was going to say to the committee in terms of his government response, so we did get a response to that.

Hon PETER KATSAMBANIS: There was a formal response?

Mr Jones: Yes, from the minister. I could check the letter for you. Actually, I will check the letter if you want. Bear with me a second. Former Treasurer Buswell on 31 January basically said, "However, I am concerned that DOTAG is unable to cost its court services to an individual court level"—at that stage we were not sure whether they could or not—"to the satisfaction of the joint standing committee. To avoid continued delays in implementing government-approved increases to fees and charges, I request that DOTAG work with the Department of Treasury to determine the viability of developing a costing model for individual courts. To do so, access to the District Court project costing model, relevant DOTAG systems and staff will assist. Such a review will also inform DOTAG's response to the Legislative Council by 31 March 2014 on the progress of developing a court fee costing model."

Hon PETER KATSAMBANIS: I do not know if you can answer this question: In a perfect world, what would a DOTAG costing model look like from Treasury's perspective? In what ways would it differ from the current model, taking into account the Premier's guidelines, the size of the agency and all the other factors that you take into account?

Mr Jones: In a perfect world, if we were given the resources to do it, we would probably not just do a costing model, we would do a demand model. One of the issues your committee has been looking at is the number of lodgements decreasing. We would try to understand that. We would also look at the flexibility within the system to actually move activity around the courts. For example, with the different types of courts, if you have reduced activity in one court, you have still got fixed costs in terms of judges and staff. Obviously, judges are a fixed cost that you cannot change, but certainly the costs of court security and staff that are actually in a court while it is in session, we would look at whether the department was utilising those staff efficiently—that is, moving them to areas where there was more demand or not having that FTE sitting there unused for a period of time.

In terms of the fee-setting stuff, it would be interesting to see the level of cost recovery and which fees are at what level. To be honest, the actual amount of fee revenue—it is \$80 million out of an almost \$400 million cost—is an issue. Without looking at it too closely, it is the question of whether that work would actually have benefit in terms of better outcomes for the state. The concern I have more is how the level of cost recovery since 2005 has dropped by five per cent. You are always going to be constrained in courts. Obviously, there is a perception in some areas of the community that the court system is for the rich. If you actually significantly increase levels of cost recovery, you would have issues in terms of access and equity for the people who are accessing it. Again, balancing those two things off, would it be worthwhile looking at the fees compared to the fact that in most agencies we push cost recovery up to 100 per cent? In the court system, you probably do not do that because you would create a system that no-one could actually afford. In terms of that, it would be good to get as good a picture as possible but whether it would actually be particularly useful to us is another question.

The CHAIR: I have a quick question for explanation: you have referred to a “cost demand model” a few times. What does that exactly mean?

Mr Jones: With a number of government agencies, we look at a number of things. A lot of them are in agencies; for example, Health, where you have patients coming into a system. With Education, for example, it is the amount of kids coming into the system. We use modelling to predict how many kids will be coming into the education system. We also predict how many levels of activity—they call it “weighted average units of activity” in Health. We use that to set budgets. In Health, there is a national price for each type of activity. What we do each year is sit down and predict with the Department of Health, based on population predictions and a whole lot of other things, what the appropriate level of activity is. In Education, we have a stab at forecasting how many kids will go into the system. That work in Education was driven by the fact that literally for 10 years we had zero growth in government schools. Then we had a number of years where we had huge levels of net overseas migration up to 20 per cent. What that did was it drove a whole lot of students into the school system. We needed to understand what was driving that, whether it was births coming from the lower end or whether it was interstate or intrastate migration. The other one, too, we do a lot of is Child Protection. Mr Sibma can give you more detail on all of them. We try to understand what is bringing the kids into the system and predicting that so there is enough funding to actually deal with those areas.

Hon ROBIN CHAPPLE: Just quickly on that—whilst you do your assessment using demand modelling, do you encourage the departments to do their own demand modelling?

Mr Jones: The reason we do it in partnership with them is that we found previously when the departments did it themselves, they did not have the expertise to get the right numbers and they were either massively overestimating it or underestimating it, and both of those situations are not

good. What we do, in terms of Kurt's team, is memorandums of understanding with the departments; we build the models with them. It is not just a case of us building a model. We need to have people who are in the business who understand how the business works to actually explain it, and our people provide technical expertise in the best design of that model. For example, if we were to do it with DOTAG, we would need obviously to engage heavily with their people to understand their business because we simply do not have the oversight or the insight into how their business operates, especially something as complicated as the court system.

Mr G.M. CASTRILLI: One of my concerns is about cross-subsidisation. I think that when you are trying to do a costing model on an individual court, like you say, it is difficult and can be done, but it depends on the level of detail you go to and the cost of it determines how far you get. I suppose you have to get to some level of proficiency and then you will get efficiencies in the individual court that hopefully might save government money and, more importantly, keep it affordable for citizens of WA. However, when we get to costs and we start allocating overheads, what I have not been able to confirm is, is there a level of cross-subsidisation that occurs between jurisdictions?

Mr Jones: Within the courts?

[10.40 am]

Mr G.M. CASTRILLI: Yes, within the courts, because in different jurisdictions the people who use the system need to pay for it and the people who do not, at different levels, do not need to pay for it—if you understand where I am coming from.

Mr Jones: Sure.

Mr G.M. CASTRILLI: I suppose I want your reassurance, but one of the concerns I have about cross-subsidisation is that one jurisdiction is not paying its full share and it is being cascaded down to another jurisdiction.

Mr Jones: I have read the pre-questions that you gave us. Our definition of cross-subsidisation is where, basically, a department or a function exceeds the cost by quite a bit of an amount, and that money is then put to another function. There is a bit of an issue with the court system. I guess the first issue is with the tariff fees and charges process. One of the triggers is that if they over-cost recover, to let us know. I was reading the transcript last night and I asked my people to give me advice this morning of where we had approved that in the last three, four or five budgets. I can share that with the committee, if it wants. The other issue though is the actual level of cost recovery across the whole of the courts systems, which is at 22 per cent. There may be a case, but I cannot tell you of any examples where they are over-cost recovering in a certain function, because we do not have that data. In terms of the overheads, it is standard practice to do it on either a share of a budget or the number of FTE. If you are worried about the overhead allocation, I do not think we have a particular problem with that. If you are worried about fees for a specific court or a specific thing within a court subsidising another function within that court, because we do not have that level of data, I could not tell you. To be honest, I am more concerned about the drop in cost recovery of five per cent rather than whether individual fees within a court are basically subsidising another function out of that court. The other complicated issue you have got in terms of court processes is that often they can go over a number of years for an individual court case. That makes it reasonably difficult then to apportion costs because you are dealing with very complex matters. Some stuff that goes in and has pleadings is dealt with and is in and out within a short period of time; other stuff can take months or years. I guess I have some sympathy for the department in developing a cost model. It is not like they have homogenous products or services like most departments have—that is, they issue a permit for something or something like that—which are very easy to cost. It is very dynamic, and that is one of the issues that DOTAG has had. It is a complicated beast and whether they are able to accurately do it for the return that they get is an issue that we would need to sit down and discuss with them.

The CHAIR: I think it is a really key issue. You have summed up that the key issue here for DOTAG is to try to itemise exactly what everything costs, but if the cost of that is so great to do, there is no real benefit to the taxpayer in doing that because it exceeds the cost to be recovered, with cost recovery being so slow anyway, and the complexity. Given the complexity of the court system and the variation, what is your view in terms of whether it is worth pursuing a more detailed breakdown of cost, or is this really just chasing after the wind?

Mr Jones: I can understand your concerns and I suspect in the case of some courts it is probably too complicated. Again, we would want to satisfy ourselves that there may be some functions or courts or part of courts in which it can be done relatively easily. That, I guess, is where we have offered, with DOTAG, to identify what areas can be done. We are happy to support them if we have been given the evidence that it is too complex to do. Again, we just do not know, because we have not been given access to the information or an understanding of how all the individual components of the courts work.

Ms S.F. McGURK: Can I just interject on the same subject—I know that other people are waiting to speak? It seems that the issue is as much about whether it could drive efficiencies within the courts, so it would be illuminating to find out if there are problems as much as whether there is cost recovery.

Mr Jones: That is what we do with other departments. Our job is to ensure that the taxpayer gets value for money and that the money we are giving to government departments is not wasted. We welcome any opportunity to do that, because DOTAG's budget, and its court budget, is a big budget. We are looking at \$400 million a year for court services. That is a fairly significant budget. It is a lot bigger than most government agencies.

Mr G.M. CASTRILLI: Just to clarify that—one of the main reasons for the question that I asked about cross-subsidisation is in fact the efficiency. I think I mentioned the word "efficiency" before and about keeping court fees down for the benefit of the public, which is why my question is about cross-subsidisation. I know that the Auditor General does not view cross-subsidisation in a very good light.

Mr Jones: No, I agree.

Mr G.M. CASTRILLI: So I presume that other people out there would be looking at whether this cross-subsidisation occurs. That is one of the main efficiencies and one of the main reasons that I asked that question. How do we get on from there? You have offered your services to be able to do work in that area, I presume. What you need is for somebody to then take up your offer to help and to work with you.

Mr Jones: Correct.

Hon LJILJANNA RAVLICH: Does the member's question follow on from that, because I am happy to wait?

Hon PETER KATSAMBANIS: It sort of follows on from there; it follows on from a lot of what we have discussed today. The thing is that there is a model that seems to be not best practice. It does not take into account any of the demand factors. It does not provide the opportunity to look at how you can move staff and other resources around to reduce inefficiency. Although this may not be directly relevant to the direct work of the committee as legislators and as people involved in the finances of Western Australia does that not ring an alarm bell that perhaps this organisation does not have a costing demand model that provides it with the most efficient information, the best possible information, for it to manage its own resources on an ongoing basis and therefore reduce the cost of services?

Mr Jones: If you look at the example where they had an increase in fees of 13.8 per cent and they said the reason why they needed to increase the fees was because of lodgement. Reading their evidence, it struck me that their budget setting is backward looking. It looks at either what the

actuals were last year, and then probably factor some growth in it, maybe CPI or something else depending on the money we fund, and then they do a notional distribution. What we do with other agencies is we try and look forwards because obviously we need to know if there is a risk going forwards. We do not have that with DOTAG but, to be honest, probably 90 per cent of government agencies probably do not have that. I guess where DOTAG is different is it is reasonably large and also its operations are very complex. You have got added difficulties such as the fact you are dealing with the judiciary. So, there is obviously our ability or government's ability to influence that. There are a whole lot of factors that make them probably a rare case. Most of the big agencies now we do cost and demand modelling. If I was in a perfect world, I would love to be able to assist them to help predict where their court activity and stuff is going. But again that needs cooperation and also needs a government decision. Again, without scoping out what would be required, I still cannot make an informed decision of whether it is worth my resources and the money of the taxpayer to actually put a whole lot of Treasury people on building a model to look at court fees. I would like to look at demand but, again, that is work that is not closed off. The Attorney General on 1 April said his department officers, however, would continue to liaise with Treasury if any improvements can be made to any existing costing models' robustness. We would certainly encourage them to work with us to improve that. But would you mandate that or dictate? No. That is not our role.

Hon LJILJANNA RAVLICH: Just as follow on from that, my question really is how widespread is this problem and you have sort of touched on it when you said that 90 per cent of agencies, particularly the smaller agencies, are backward looking, which means they do not do projections et cetera. It seems to me it is a fairly significant issue across the whole of government and whilst we are —

[10.50 am]

Mr Jones: That 90 per cent of agencies would probably be 10 per cent of the budget. I mean, a lot of small agencies, we would look at their historical results, give them a growth, and that would be perfectly sufficient to fund them going forward. The ones where you have risks are the ones where you have people. So, the health system, obviously, because you have got no control of the amount of people actually going through it. Education again. Child protection is another one where—which is why we are doing models in all of those areas. Another one, obviously, is corrective services, the amount of people we put in in jail, obviously government decisions, policy decisions, legislation, have an impact on that and we need to be able to advise government, for example, if they bring in a type of sentencing change, what that would do to the prisoner population because we could end up with a situation where we do not have a that funded or we need to build a new prison. So, in the areas where we have got that dynamic sort of nature, we are working actively with the agencies. I mean, DOTAG does deal with people, but again, I am not across the historic profile of their lodgements across all their courts so without actually looking at that, it would be difficult to actually ascertain whether this would be of any benefit.

Hon LJILJANNA RAVLICH: Alistair, are you saying that DOTAG is not an isolated case? I would just like you to put that on the record if that is what you are saying.

Mr Jones: DOTAG, basically, do their budget allocation, like, probably about 90 per cent of government agencies, which is you, basically, look at the previous year, you escalate it and you set your budget that way.

Hon LJILJANNA RAVLICH: Also you said that those 90 per cent account for 10 per cent of the budget and 10 per cent of the budget is how much in dollar terms?

Mr Jones: Ten per cent of \$27 billion is probably about \$2 billion. That figure is just me using that figure as an example. I could take on notice what that is.

Hon LJILJANNA RAVLICH: My next question is: would it not be in the public's interest to actually do something about trying to save 10 per cent of the budget?

Mr Jones: I think the point I made before is most of that 10 per cent, the growth that we give them each year is completely adequate for what they do so there is not a risk with those agencies and I guess what we do not know is whether there is a risk with DOTAG. Without going into it, I cannot predict that. If you look at their actual appropriation and the growth in court services, it is not going up at 10, 15 per cent a year, like we were seeing in health and a lot of the social service departments where we needed to actually understand that because that is not sustainable over an extended period of time.

The CHAIR: Perhaps we could go to an example from the spread sheet to explain how DOTAG use is formally determined at a particular fee. I think that might be in your court, Mr Sibma.

Mr Sibma: I might need some assistance with the technology.

The CHAIR: All right. It has gone to sleep. There is no signal.

Mr Sibma: As Mr Jones indicated earlier, this spread sheet is mainly concerned with estimating costs at the whole of district court level but there are some exceptions and those exceptions are listed in this sheet here, which is entitled, "Input: Individual fee costing". So, those exceptions are the daily hearing fee, the extraordinary licence, Road Traffic Act, or applications for those licences, applications for an order under the spent convictions act, officers expenses to attend any court or place outside of the district court building for each hour that the officer is absent from the office and document certification. If we use daily hearing fees as an example, what the model attempts to do is estimate the amount of time required by different staff members on a daily basis for a court trial. So, you will see here in cell D8 the estimate is that a district court judge would spend a full day—that is 7.5 hours or 450 minutes—at trial that day. The spread sheet then allocates a cost associated for that particular officer, in that case the district court judge. Those costs are found elsewhere within the spread sheet. I will quickly give you an example. So, in this sheet here labelled "input: salary settings" we have the annual salary that is associated with different officers within the district court system or in this case the Department of the Attorney General. So, the cost of a district court judge in this case is \$370 781. So, that can then be converted on what is the daily cost of a judge, and that works out to be something in the order of \$1 426 per day. Then the example just continues in a similar fashion for other officers required to attend a daily hearing. Those are listed here and include various levels of staff and the time taken. So, those are the direct costs in a daily court hearing. Estimated here as being \$2 066. Overheads are then added to those costs. So, that is the daily cost of all the overheads associated with the District Court system and then the sum is given as \$3 776. That is then calculated relative to the fees that are charged. In this case, \$486 is the fee for an individual and \$1 264 for a corporate litigant and then those figures can be compared with the cost, which works out to being 13 per cent cost recovery for individuals and 33 per cent for corporates. A similar method is used for those other services listed there.

The CHAIR: There is only six fees that they can do this on?

Mr Sibma: I count five there, but a small number.

The CHAIR: A small number—let us put it that way, yes.

Mr Sibma: As we said at the outset, the focus of this spread sheet is really what are the costs for the district court as a whole.

Hon ROBIN CHAPPLE: They are really quite separate.

Mr G.M. CASTRILLI: How is the cost of individual jurisdictions, like different towns and cities, in terms of the premises costed? They are not costed at a notional level, or are they all costed at an individual level? I am assuming that rents or notional rents, or whatever it is, is calculated at the

local cost; you might pay, I do not know, \$100 a square metre in Albany, whereas you might pay \$150 or \$200 a square metre in Perth. How is that all —

Ms S.F. McGURK: It could be \$500.

Mr G.M. CASTRILLI: Or \$500. I am using that —

Hon MARK LEWIS: That is in the overheads.

Mr G.M. CASTRILLI: Yes, in the overheads. Is that lumped into one bin and then calculated and then spread evenly, or is it spread on an individual locality-specific basis in all those costs, like rent, cleaning and all that sort of stuff?

Mr Sibma: My understanding is that those costs are calculated at the global level and that no distinction is made between costs for different locations.

Mr G.M. CASTRILLI: So, can I just get this right? Every jurisdiction is charged at one rate, it goes into a bin and then work is done on the FTE or square metre level of the building or whatever and then it gets allocated across, even though a building in, say, Albany is probably 10 per cent of the cost or 20 per cent of the cost of a rental in the CBD of Perth or suburb of Perth. Is that what you are telling us?

Mr Sibma: That is my understanding. I would also make the observation that litigants are not charged different fees according to the locations in which they present.

The CHAIR: Otherwise, people would want to go to Albany because it is cheaper there, and we would not have any magistrates sitting here in Perth because everyone would want to use the Albany court; it is cheaper.

Mr G.M. CASTRILLI: To me, this gets down to the question of cross-subsidisation. How do you then ensure that all the overheads and everything are not cross-subsidised? If you are locating one specific cost per unit to everybody, in effect, is that not cross-subsidisation?

[11.00 am]

Mr Sibma: It could be classed as cross-subsidisation, but then you run into issues around equity and access to the justice system and you levy a different fee for those living in higher cost jurisdictions, so that becomes a policy issue, which obviously we cannot answer. But I would suggest it is common practice to do so and I would not imagine that the difference in cost would be hugely material.

Mr Jones: In terms of this model, that is the case, but in terms of the actual budgeting, I read the evidence they gave. So, as an example, in setting the budget for the Albany court, they will look at what the actual cost of running the Albany court was the year before and then, obviously, notionally, put overheads on top of that. I guess the other issue, too, is that if that court is only at 20 per cent cost recovery, it is actually the consolidated account which is providing that cross-subsidy rather than the fee, and that is obviously a conscious decision of government to deliver that fee, be it in Port Hedland, Meekatharra, Albany or the CBD of Perth. If you were at 100 per cent cost recovery, I think you would have an argument there that cross-subsidisation was strong. We make a conscious decision to subsidise justice to make it equitable, and the 80 per cent that the consolidated account pays is effectively doing that cross-subsidisation and that is appropriate in my view.

Hon PETER KATSAMBANIS: At a macro level, it is appropriate that we make that decision, but I guess what all this is proving is that we do not have it at a micro level to understand which aspects of the justice system are being subsidised fully and which are not, because there could be a strong argument, for instance, to suggest that the subsidisation of the criminal justice system should be at a higher level or potentially the subsidisation of individuals within the civil system or some parts of the civil system that they have difficulty to access should be at a higher level than possibly

subsidising corporates using the civil system. It seems to me again, even from what you showed up there, that we cannot get that at the moment as a starting point. Secondly, once again, because of the high-level nature of the breakdowns, it is not really an appropriate management tool for the agency itself to allocate its resources effectively.

Mr Jones: This is not our model; this is theirs. But I suspect it would not be too much different from the way police allocate their budgets. The cost of running a police station in Port Hedland is probably more than it is in an outer suburban area or in the wheatbelt. You have got district allowances, GROH housing and a whole lot of factors that would build the cost of a police officer in that area. I think what you have described is probably an interesting policy issue for government—whether it needs to look at those levels and that breakdown within the justice system. But in terms of DOTAG's ability to distribute the money that we give them to fund that each year, I think that is an adequate model at a macro level to do it.

Hon MARK LEWIS: In terms of whatever the magnitude of error is, if you like, what is it—plus or minus 10, plus or minus 20 or plus or minus 30? What is your gut feel on it?

Mr Jones: In terms of that model?

Hon MARK LEWIS: Yes.

Mr Sibma: I think, again, that is a difficult question to answer and we would really need much more granular level data from the department to determine what the costs are.

Hon MARK LEWIS: Would it be plus or minus 80?

Mr Sibma: I am sorry.

Mr Jones: Plus or minus what, sorry?

Hon MARK LEWIS: The level of error. In terms of order of magnitude, is it plus or minus 80 or is it more likely to be plus or minus 20?

Mr Jones: Again, it is difficult to quantify. Look at the question there. You are costing a judge sitting in a courtroom for seven and a half hours. What is actual practice? He might only sit there for three and a half hours a day and you are paying the other staff for that time that it is down.

Hon MARK LEWIS: I understand it is a systemic inquiry, but if we go back to our terms of reference, is this over 100 per cent? Even if the order of magnitude of error was 100 per cent, we would still land at 44 per cent of total cost recovery. So, under our terms of reference, we are well within the bounds. However, I understand this is a systemic inquiry. From my perspective—I have had to do this myself—I am comfortable, I guess, that the order of magnitude of error within that is enough comfort to give some confidence that we can make a decision when cost recovery is below 50 per cent. If it was getting up into the 80s and 90s, then I would think, yes, we would have a serious issue to dig a bit deeper, but the bottom line —

The CHAIR: The chances of us actually imposing a tax in this system I think is very, very remote.

Mr Jones: I think it is minimal, given we subsidise 80 per cent of the service.

Mr G.M. CASTRILLI: I think with the point you made about the cost recovery of 22 per cent, or it comes down from 27 or 28 to 22 per cent, in terms of the cross-subsidisation, it really does not make that much of a difference when you look at it from that percentage point of view. So I accept what has been stated percentage-wise. It sort of clarifies it a little bit for me, I suppose.

The CHAIR: We have sort of covered question 14 that we put on the sheet we sent through to you. What is your view of DOTAG being exempted from the requirements of the new Premier's circular that each fee is to be costed and accompanied by a percentage of the cost recovery achieved for each fee? Effectively, we have kind of exempted DOTAG from doing that. Do you see any way around that, or is it just a matter of saying that the reality of trying to impose that on DOTAG is just

too difficult to actually do it, there is no cost benefit to it and therefore just let it go? What are your thoughts on that?

Mr Jones: When we wrote some written answers to this, basically our position was we really do not have a view because we do not understand the reasonableness of all the individual fees; we have seen only a small cross-section of it. The circular was issued only on 15 February this year and we have not had any indication from DOTAG that they will be seeking an exemption. Now, they may have told you that they are, but they certainly have not told us. The other thing with the Premier's circular is I looked at the guidelines and, really, it is not clear whether we actually sit in that approval mechanism for any exemption request anyway and whether the Department of the Premier and Cabinet will actually seek our advice on it. With those three factors, we are not really sort of in a position to comment on whether they will do it or not or whether it will be appropriate or not.

The CHAIR: I guess DOTAG's position is very much that it is all too hard.

Hon MARK LEWIS: On the cost of drilling down —

The CHAIR: Yes; to break it down into the details is too difficult to actually do and that is why they have banded —

Mr Jones: And they may well be right. We have offered to work with them to figure out whether that is going to be cost prohibitive, and hopefully they will take that offer up. I cannot say that they are incorrect on that. It may well be the case.

The CHAIR: Is there anything that either of you gentlemen would like to say in summing up at all?

Mr Jones: No, thank you.

The CHAIR: In that case, I thank you sincerely for your input. Basically, in seven days you will get the transcript of Hansard and you will have X number of days to make any corrections. If you do not send it back, we will assume that it is correct and then that will be the public record. Thank you very much for your input. It was very much appreciated.

Hearing concluded at 11.08 am
