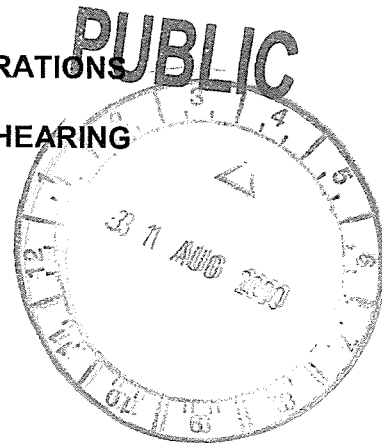


STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS  
ADDITIONAL QUESTIONS FOR 2009/10 ONGOING ESTIMATES HEARING

DEPARTMENT OF COMMERCE

WEDNESDAY, 29 JULY 2009



*Question No. 1: The Hon Ljiljana Ravlich MLC asked in relation to the government's aspiration for savings of 7.6 billion over five years across government as outlined on page 13 of the budget overview and ask-*

- 1.1 *Is your agency redirecting any capital works expenditure - if so can you provide details including the value?*
- 1.2 *Is the agency selling surplus government land and/or assets and if so can you provide a list of land and/or assets earmarked for sale?*
- 1.3 *Is the agency proposing to privatise any of its function or contract out any of its services - if so which ones?*
- 1.4 *Is the agency intending to reduce staff numbers over the next 4 years and if so what ceiling has the agency set and how many staff will be shed over the forward estimates?*
- 1.5 *Is the agency aware of the government's new responsible public sector wages policy – if so, what is it?*
- 1.6 *What Public Private Partnerships are anticipated to be entered into by the agency over the forward estimates?*

**Answer:**

- 1.1 No
- 1.2 The Pemberton Sports Club property will be sold by auction.
- 1.3 Yes, management of the Bentley Technology Park
- 1.4 The Council of Australian Governments (COAG) has agreed to an ambitious program of reforms intended to achieve a seamless national economy. Under the program of reforms, several areas of consumer protection, including regulation of credit and finance brokers, trade measurement, registration of business names and registration of personal property securities, will be transferred to the Commonwealth Government by 2011. As a result of the reforms, potentially up to 70 permanent positions in the Department of Commerce are expected to no longer be required.

1.5 Yes. A copy of the policy is attached.

1.6 None.

**STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS**  
**ADDITIONAL QUESTIONS FOR 2009/10 ONGOING ESTIMATES HEARING**

**DEPARTMENT OF COMMERCE**

**WEDNESDAY, 29 JULY 2009**

*Question No. 2: The Hon Ljiljana Ravlich MLC asked in relation to page 551 of the Budget -*

- 2.1 Are you aware of a one off definitional change between Capital Works Program and Asset Investment Program?*
- 2.2 Do you know why the definition was changed and the reason for it?*
- 2.3 What to you understand the difference between the Capital Works Program and Asset Investment program to mean?*
- 2.4 What programs have been deleted from the Capital Works Program published in the 2008-09 budgets and the Asset Investment program published in the 2009-10 budgets due to the change in the definition of Capital - could you provide examples?*
- 2.5 Please provide the full list of projects that have been deleted?*
- 2.6 What is the status of those deleted programs, are they being reconsidered or abandoned, and by what process is this being done?*

**Answer:**

- 2.1 Yes.
- 2.2 The Department of Treasury and Finance has advised that this definitional change will bring Western Australia in line with all other Australian jurisdictions with the reformed program comprising solely of fixed asset purchases to be referred to as the "Asset Investment Program."
- 2.3 The Department of Treasury and Finance has advised that this definitional change means that capital works undertaken by Government have been redefined to only include the purchase of fixed assets. All forms of expensed capital - including grants to off-balance sheet entities and purchases that fall below the capitalisation threshold - will no longer be included in the capital works budget, but will continue to be included in agency expenditure reporting.
- 2.4 The threshold for capitalisation of assets has been adjusted up to \$5,000 (previously \$1,000) therefore capital fund programs which previously funded assets purchased under \$5,000 (mainly computer replacement programs) have been moved to the recurrent funding. No funding was lost to Commerce.

2.5 There are none.

2.6 Not applicable

## STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

### ADDITIONAL QUESTIONS FOR 2009/10 ONGOING ESTIMATES HEARING

#### DEPARTMENT OF COMMERCE

WEDNESDAY, 29 JULY 2009

*Question No. 3: The Hon Ljiljana Ravlich MLC asked in relation to SAT Chequecash Pty Ltd T/A Financial Express –*

- 3.1 How many legal cases have been halted against other lenders because of the unlawful collection of information by the department?*
- 3.2 Are departmental compliance officers who deal in this area of finance expected to understand the Credit Administration Act?*
- 3.3 How many officers were working directly on this case at any one time?*
- 3.4 Why did officers of the department make a total of 25 visits to the lenders office as a part of a national compliance strategy - does this not seem excessive.*
- 3.5 Why did the department seize the bank records of 470 people in Western Australia and interstate when only involving 320 consumers that had been overcharged an average of \$73 cash (more than \$23,000 in total) as at February 2009?*
- 3.6 Why did the department seize the bank records of 470 people in Western Australia and interstate and then pass them on to a major accounting company?*
- 3.7 Were the banks in question (Westpac, NAB, ANZ, Commonwealth, Aussie Home Loans, Wizard etc) or the 470 people in Western Australia and interstate involved advised that their bank records were being passed and if not, why not?*
- 3.8 On what basis could the department hold the view that bank records belong to anyone else other than the banks and their clients?*
- 3.9 Is it usual practise to pass such information on?*
- 3.10 What is the name of the accounting company?*
- 3.11 What is the name of the Report prepared by the department on this matter and when was that report completed?*
- 3.12 Who was the report in question prepared for?*
- 3.13 Who has lodged an FOI application for access to that report and when was it lodged?*

- 3.14 *To your knowledge is there anything in the FOI Act that limits access based on how a report was prepared knowingly or unknowingly?*
- 3.15 *Have you sought advice on this matter from the FOI Commissioner and if so, what was his advice?*
- 3.16 *Have you discussed with the Minister and if so, what was his advice?*

**Answer:**

- 3.1 The only legal case before the courts was the matter of Chequecash Pty Ltd T/A Financial Express. This case was not halted by reason of the unlawful collection of information by the Department.

It is relevant to note that in this matter the SAT has now determined that the evidence gathered by the Department in relation to the alleged breaches is admissible. This follows the Department volunteering against its interest that the evidence had been gathered without the correct delegation of the Commissioner's authority to the Department officers who conducted the search pursuant to s 54 of the *Credit (Administration) Act 1984*.

Investigations are continuing in relation to one other lender who was visited without the correct delegation of authority.

If there are concerns about the admissibility of evidence, the option to obtain information by reissuing a compulsion notice to obtain the required information, using the correct delegation of authority, remains.

By way of background, the Department will not take Court action unless it is considered in the public interest to do so. For instance, if there has been either no, or negligible, financial detriment to consumers then court action may not be considered appropriate. Furthermore, in situations where alleged breaches relate primarily to incorrect or inadequate disclosures by lenders, the Department's response has tended to focus primarily on educating lenders in relation to compliance with the legislation rather than taking legal action through the courts. Follow-up compliance visits by Department officers to ensure lender processes have been corrected are being undertaken.

- 3.2 Yes.
- 3.3 At any one time there were up to 2 compliance officers and 1 legal officer working on this matter.
- 3.4 The Department has regulatory responsibility for lender compliance with the Uniform Consumer Credit Code (UCCC). The UCCC provides a range of disclosure and procedural protections for WA consumers who borrow money.

During 2007 two areas warranting focus were identified by the Department in relation to the regulation of credit:

- Assurance was needed that vulnerable consumers using “payday lenders” were receiving the protections available through the UCCC. It was also appropriate to consider whether any further consumer protection policies were required. Therefore information about the extent to which a “capacity to repay” assessment was being undertaken for borrowers was required in addition to an assessment as to whether interest rates and other fees were reasonable.

Fourteen visits to short term lenders were undertaken between April and June 2007. A total of 140 borrower loan files were sampled as part of these visits.

One of the 14 visits to short term lenders was to Chequecash t/a Financial Express.

- In addition to concerns about the extent to which the capacity of the borrower to repay the loan was being properly assessed, the Department was also concerned about the broader availability of large amounts of credit to home buyers. As the requirements of the UCCC are not generally understood by borrowers, there was also a need for audits to ensure that disclosures and contracts were lawful and to understand the process to assess the capacity of borrowers to repay loans. The Department’s concern about adequate processes was well founded, given the significant credit issues recently experienced internationally.

A proposal to undertake an audit of home loan lenders was supported by other State and Territory jurisdictions, with WA as the lead agency.

WA staff undertook visits to 11 home loan lenders. At each visit approximately 30 loan borrower files were reviewed to ensure compliance with the UCCC.

- 3.5 The Department sampled approximately 470 consumer credit records through the two broad audit programs for the reasons outlined in response to Question 3.4.

The reference in the Committee’s question to “320 consumers” appears to relate to the individual matter of the Commissioner for Consumer Protection v Chequecash Pty Ltd. As the Chequecash matter is still before the State Administrative Tribunal, it is not appropriate for the Department to comment further in relation to this matter.

- 3.6 The Department sampled approximately 470 consumer credit records for the reasons outlined in response to Question 3.4.

No borrower information collected from banks (or any other lender) as part of the audit program outlined at Question 3.4 was provided to a third party. The exception to this, is information in the public arena through Court processes, or when the Department seeks confidential legal advice.

Aside from the process to ascertain UCCC compliance by lenders, Consumer Protection was investigating whether fees and charges by payday lenders were appropriate, and specifically whether interest rate caps were viable.

Consumer Protection engaged an accounting firm to provide an independent assessment of the interest rates (and other fees) being charged by short term lenders, to ascertain whether these were excessive. The accounting firm was only given generic annual accounts for the short term lenders, in "blind form" without any information that might identify businesses.

No bank records or consumer details were passed to a major accounting firm.

- 3.7 The Department has written to all affected lenders to assure them that no borrowers' information, or information that could identify their business, has been passed to any third party.

It should also be noted that the Department did not undertake any visits to Westpac or the Commonwealth Bank. These visits were undertaken by other jurisdictions.

- 3.8 The Department does not hold this view. The Commissioner for Consumer Protection, or any other person authorised in writing by the Commissioner, has the power under s 54 of the *Credit (Administration) Act 1984* to enter the premises of credit providers, require the production of records and make copies of those records. The Department officers who undertook the compliance visits did so in good faith believing that they had the necessary authority under section 54 of the *Credit (Administration) Act 1984* to make the visits.

- 3.9 No information about bank clients was passed on to any third party by the Department.

- 3.10 PricewaterhouseCoopers undertook the review of interest rate charges.

- 3.11 The report, entitled "Review of the Viability of Interest Rate Caps on Consumer Credit Providers", was completed in October 2008.

- 3.12 The Department, for the purposes of policy development.

- 3.13 The Department declines to comment on individual FOI requests.

- 3.14 This question is unclear.

- 3.15 No.

- 3.16 The Minister has received an explanation of the Department's actions in obtaining information on lenders' compliance with the Uniform Consumer Credit Code.



**STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS**

**ADDITIONAL QUESTIONS FOR 2009/10 ONGOING ESTIMATES HEARING**

**DEPARTMENT OF COMMERCE**

**WEDNESDAY, 29 JULY 2009**

*Question No. 4: The Hon Ken Travers MLC asked in relation to the last date you reported to Treasury on your finances:*

- 4.1 Can you please identify all accounts held by your agency?*
- 4.2 How much cash is held in each of these accounts?*
- 4.3 How much of this cash is restricted or subject to approval or control?*
- 4.4 As of this date, what is your estimated annual average cash as a percentage of your appropriation?*

**Answer:**

- 4.1 The Department of Commerce has only one operating bank account. It is a sub account of the government's bank account with the Commonwealth Bank. The entire department's receipts are paid into that account.
- 4.2 The balance in the bank account at the last report date, which was the 31 July 2009, was \$40,116,904.
- 4.3 Of that balance, \$17,055,341 was restricted by legislation or subject to external control.

A further \$20,566,785 was specific funding for grants funds held by the department pending grant recipients achieving milestones.

The remaining balance is subject to operating and capital works commitments.

- 4.4 The total 2009/10 budget appropriation for Commerce is \$126,262,000. Therefore the cash at bank balance at 31 July 2009 is approximately 32% of the annual total appropriation. The percentage is high because of the amount of restricted funds held and grant monies pending dispersal.

**STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS**

**SUPPLEMENTARY INFORMATION**

**DEPARTMENT OF COMMERCE**

**WEDNESDAY, 29 JULY 2009**

*Question No. 5: The Hon Ken Travers MLC asked in relation to the last date you internally monitored each account your agency has:*

- 5.1 How much cash is held in each of these accounts?*
- 5.2 How much of this cash is restricted or subject to approval or control?*
- 5.3 As of this date, what is your estimated annual average cash as a percentage of your appropriation?*

**Answer:**

- 5.1 See response to question 4.2.
- 5.2 See response to question 4.3.
- 5.3 See response to question 4.4.

**STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS**

**SUPPLEMENTARY INFORMATION**

**DEPARTMENT OF COMMERCE**

**WEDNESDAY, 29 JULY 2009**

*Question No. 6: The Hon Ken Travers MLC asked in relation to each account held by your agency the figures as of 30 June 2009 for each question below?*

- 6.1 *How much cash is held in each of these accounts?*
- 6.2 *How much of this cash is restricted or subject to approval or control?*
- 6.3 *As of this date, what is your estimated annual average cash as a percentage of your appropriation?*

**Answer:**

6.1 The balance in the Department's bank account at 30 June 2009 was \$23,562,530

6.2 Of that balance \$17,079,341 was restricted by legislation or subject to external control.

A further \$3,039,798 was specific funding for grants funds held by the department pending grant recipients achieving milestones. The remaining balance is subject to operating and capital works commitments.

6.3 The total 2009/10 appropriation budget for Commerce is \$126,262,000, Therefore the cash at bank balance at 30 June 2009 is approximately 18.6% of the annual total appropriation. The amount is high because of the amount of restricted funds held and grant monies pending.

# STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

## SUPPLEMENTARY INFORMATION

### DEPARTMENT OF COMMERCE

WEDNESDAY, 29 JULY 2009

*Question No. 7: The Hon Ken Travers MLC asked in relation to the following categories-*

- 7. *i) Media and Marketing;*
- ii) Advertising; and*
- iii) Consultants.*

7.1 *Please provide how much was spent on the above in the 07/08 and 08/09 financial years.*

7.2 *How much is budgeted to be spent in each area in the 09/10 financial year?*

7.3 *Can you please define what activities you include in each of these areas?*

7.4 *Are there any activities that could be included in the ordinary meaning of the words that are not included in the above figures and if yes, please detail?*

#### **Answer:**

7.1	Media and Marketing:	2007/08	\$ 38,534	2008/09	\$ 10,515
	Advertising:	2007/08	\$ 1,842,571	2008/09	\$ 433,765
	Consultants:	2007/08	\$ 144,193	2008/09	\$ 297,494

7.2	Media and Marketing:	\$ 25,000
	Advertising:	\$ 400,000
	Consultants:	\$ 220,000

7.3	Media and Marketing:	Payments to organisations to develop content
	Advertising:	Payments for media time or space
	Consultants:	Payments to high level managerial consultants

7.4 No

## INTRODUCTION

1. This policy establishes the general bargaining framework that is to apply for all public sector wage negotiations. The framework clarifies the roles and responsibilities of key stakeholder agencies, and establishes the approved negotiating parameters to be observed.

## TERM

2. This policy applies to all agreements expiring after 1 July 2009, and remains in force until replaced. The Government will determine the application of this policy to agreements expiring prior to 1 July 2009.

## WAGES

3. The Government seeks to achieve public sector wage outcomes that are industrially and economically sustainable, and reflect Government priorities.
4. This is given effect by:
  - (a) Maintaining the real value of wages by increasing wages by an amount equivalent to the projected growth in the Perth Consumer Price Index (CPI), as published from time to time by the Department of Treasury and Finance.
  - (b) Requiring any increases above projected CPI growth to be linked to improved efficiency / work practice reform initiatives, assessed on a case-by-case basis by the Economic and Expenditure Reform Committee ("EERC") and included within the proposed agreement. The business case for wage increases in excess of CPI growth must be justified by quantitative assessments of the value of improved efficiency / work practice reform initiatives where this is feasible.
  - (c) Capping total wage increases (incorporating both projected CPI and any additional amount for improved efficiency / work practice reform initiatives) at an amount equivalent to projected growth in the WA Wage Price Index (WPI) for all sectors, as published from time to time by the Department of Treasury and Finance.
5. Retrospective wage increases are not to be offered or included within agreements. The earliest a wage increase may apply from is the latter of:
  - (a) the expiry date of the previous agreement (if any); or
  - (b) the date *in principle* agreement is reached between the negotiating parties for a new or replacement agreement (providing it is subsequently registered);

6. Wage offers should explicitly state that increases will not be provided to employees who leave an agency before an agreement is registered.
7. Wage increases in agreements should:
  - (a) be expressed as percentage increases;
  - (b) be payable from the "first pay period beginning on or after" key dates; and
  - (c) not be linked to external variables that cannot be determined at the time of registration, including minimum and award wage case decisions.
8. The term of agreements will depend on an assessment of the economic, financial and industrial considerations at the time.

## **FUNDING ARRANGEMENTS**

9. With the exception of self-funded agencies, additional funding required to meet increases for public sector agreements will be from the consolidated account. The EERC will assess the value of any improved efficiency / work practice reform initiatives at the time of approving any agreement providing for increases in excess of projected CPI growth.

## **BARGAINING PROCESS**

10. This section clarifies the planning process and roles and responsibilities of key stakeholder agencies in negotiations, and is read in conjunction with the Premier's Circular on the *Coordination of Public Sector Labour Relations*, as amended from time to time [available from the Department of Premier and Cabinet's website at:  
<http://www.dpc.wa.gov.au/PSMD/Governance/PremiersCirculars>].

### ***Planning For Negotiations – Bargaining Coordination Committee***

11. To facilitate a cooperative, collaborative and timely whole-of-government approach to negotiations, a bargaining coordination committee ("BCC") is to be established at the commencement of planning for new industrial agreements.
12. Representation on the BCC will consist of at least one person from the following agencies:
  - The employing agency (except in circumstances of cross agency agreements)
  - Department of Commerce, Public Sector Labour Relations Directorate ("PSD")
  - Department of Treasury and Finance ("DTF")
  - Public Sector Commission ("PSC")
13. In the case of cross agency agreements, agency representation will be provided by the PSD.

14. It is envisaged that each BCC will include people experienced in an aspect of the planning and negotiation process. It may also include others who are expected to take a lead role in negotiations in future years.
15. The extent to which the BCC remains involved with the development of bargaining parameters for new agreements will depend on the circumstances that exist at the time.
16. In the case of single agency agreements, face-to-face negotiations with unions will continue to be conducted by the employing agency, with the assistance of the PSD. The PSD will determine the level of its involvement as it deems appropriate.
17. The BCC is to liaise with the State Solicitor's Office ("SSO") on matters requiring legal advice or representation, particularly where there is a potential for arbitration.
18. The BCC will ensure that appropriate Media and Communications Offices are involved and that a communication strategy has been developed for high profile agreement negotiations.

### ***Roles of the Parties Involved***

#### Employing Agency

19. In the case of single agency agreements, the employing agency is expected to be involved in all parts of the planning and negotiation process. The agency holds specialist knowledge regarding its particular work environment, and its participation in the process is important.
20. The employing agency facilitates the provision of relevant information to the BCC regarding union claims, comparative data and proposed responses, including cost estimates.
21. The employing agency develops proposed bargaining parameters, including any improved efficiency / work practice reform initiatives to be negotiated or implemented. It prepares submissions for the review of the BCC, and ultimately, the approval of the relevant Minister, EERC and Cabinet.

#### Department of Commerce, Public Sector Labour Relations Directorate

22. The PSD provides expert advice regarding historic and contemporary industrial relations matters. It provides advice with respect to current industrial relations strategies and initiatives, and ensures that precedent and flow-on effects of negotiations across the Public Sector are considered.
23. Proposed wage outcomes, improved efficiency / work practice reform initiatives, employment conditions and negotiation strategies are all subject to the comment of the PSD, which prepares submissions to the EERC and Cabinet accordingly.

24. Consistent with the Premier's Circular on the Coordination of Public Sector Labour Relations as updated from time to time, the PSD represents the Government in all face-to-face bargaining that involves cross agency negotiations, as well as single agency negotiations as it considers appropriate.

#### Department of Treasury and Finance

25. The DTF brings economic and fiscal expertise to the bargaining process. It assists with the preparation of bargaining parameters, and reviews costings and any improved efficiency / work practice reform initiatives developed.
26. All costing and funding aspects of industrial agreements are reviewed or prepared by DTF for submission to the EERC and Cabinet. The DTF assesses the longer-term impact of industrial agreement funding, including the economic context and duration of an agreement. It provides strategic advice regarding negotiation strategy in this respect.

#### Public Sector Commission

27. The PSC provides strategic advice regarding the workplace reform agenda for the State Public Sector. This includes consideration of the potential impact negotiations may have on other whole-of-government initiatives.

#### State Solicitor's Office

28. The SSO provides legal advice and/or representation to agencies and Government, as required.

#### Economic and Expenditure Reform Committee and Cabinet

29. The EERC endorses, and refers to Cabinet for approval, all bargaining parameters. No offer can be made formally without the endorsement of EERC and approval of Cabinet. All offers must be made within approved bargaining parameters.

### **PROCESS**

30. Agency forward planning for bargaining is to commence at least 12 months in advance of an agreement expiring, to enable detailed bargaining strategies to be endorsed by Government before formal negotiations are due to commence.
31. A guideline process is outlined below for the benefit of all parties involved. In the case of cross agency agreements, the PSD will represent the agencies involved.



**Bargaining Process Guidelines**  
**Key Milestones, Responsibilities and Timeframes**

<b>Timeframe</b> (Months prior to date of expiry)	<b>Action</b>	<b>Responsibility</b>
At least 12 Months	BCC group formed between DTF, PSD, PSC and Agency, and initial meeting held.	Agency / PSD
	Agency to provide summary, and where practicable quantification, of improved efficiency / work practice reform initiatives proposed for the agreement to BCC.	Agency
	Agency to provide national comparative wage and conditions data for its occupational groups to BCC.	Agency
11 months	BCC meetings held to discuss comparative data, improved efficiency / work practice reform initiatives, negotiation strategy and communication strategy.	BCC
9 -10 Months	Bargaining Parameters Paper prepared by the Agency and provided to the BCC for review.	Agency / BCC
8 Months	Any recommended changes incorporated into Bargaining Parameters Paper and forwarded to the relevant Minister for approval.	Agency / BCC
At least 7 Months	Bargaining Parameters Paper submitted to EERC and Cabinet for endorsement and approval.	Agency / BCC
6 Months	When received, Union claim to be analysed, costed and a position on each item prepared and provided to the BCC.	Agency
	Negotiation meetings with Union commence. Initial meetings used to clarify aspects of the Union's and Employer's claims.	Agency / PSD
6-4 Months	Proposed Offer to Union developed, and where necessary, new EERC submissions submitted.	Agency / BCC

3-4 Months	Feedback from EERC / Cabinet to BCC. Offer amended as required and presented to Union.	EERC / BCC / Agency
0-3 Months	Should a negotiated outcome not appear possible, SSO may be involved, as required (this does not preclude earlier assistance being obtained from SSO as the matter requires).	BCC / SSO
0 Months	Registration of an Agreement, or if necessary, further assistance.	BCC / Agency / SSO / WAIRC / EERC

### **EMPLOYING AGENCY**

32. For assistance with any part of this wages policy, please contact your representative at the PSD or DTF.