



**THIRTY-NINTH PARLIAMENT**

**REPORT 75**

**JOINT STANDING COMMITTEE ON DELEGATED  
LEGISLATION**

**REPORT**

**IDENTIFYING A SYSTEMIC ISSUE ARISING OUT  
OF NINE COURT AND TRIBUNAL INSTRUMENTS**

Presented by Mr Peter Abetz MLA (Chairman)

and

Hon Robin Chapple MLC (Deputy Chair)

September 2014

## JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

### Date first appointed:

28 June 2001

### Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### “10. Joint Standing Committee on Delegated Legislation

- 10.1 A *Joint Standing Committee on Delegated Legislation* is established.
- 10.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.
- 10.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 10.4 (a) A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.
- (b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
- 10.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 10.6 In its consideration of an instrument, the Committee is to inquire whether the instrument –
- (a) is within power;
- (b) has no unintended effect on any person's existing rights or interests;
- (c) provides an effective mechanism for the review of administrative decisions; and
- (d) contains only matter that is appropriate for subsidiary legislation.
- 10.7 It is also a function of the Committee to inquire into and report on –
- (a) any proposed or existing template, *pro forma* or model local law;
- (b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and
- (c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.
- 10.8 In this order –
- “instrument” means –
- (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
- (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;
- “subsidiary legislation” has the meaning given to it by section 5 of the *Interpretation Act 1984*.”

### Members as at the time of this inquiry:

Mr Peter Abetz MLA (Chairman)

Hon John Castrilli MLA

Hon Mark Lewis MLC

Mr Paul Papalia MLA

Hon Robin Chapple MLC (Deputy Chair)

Hon Peter Katsambanis MLC

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## **Government Response**

This Report is subject to Standing Order 191(1):

*Where a report recommends action by, or seeks a response from, the Government, the responsible Minister or Leader of the House shall provide its response to the Council within not more than 2 months or at the earliest opportunity after that time if the Council is adjourned or in recess.*

The two-month period commences on the date of tabling.



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# EXECUTIVE SUMMARY, FINDINGS AND RECOMMENDATIONS

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## EXECUTIVE SUMMARY

- 1 The Department of the Attorney General (**DotAG**) first developed a Costing Model (**Model**) for court and tribunal fees in 2006 which today, remains unchanged.
- 2 The Committee has attempted to describe the mechanics of the Model and how it allocates corporate overheads to calculate costs at a ‘whole of court or tribunal’ level within Court and Tribunal Services.
- 3 The Model sets fees via a convoluted and complex series of spreadsheets.
- 4 The way DotAG has structured its Model means the Committee cannot properly perform its role of scrutinising individual, fees for services. However, the Model can provide cost recovery percentages for a very small number of fees in the District Court with some extrapolation to similar fees in other courts. This means the existing costing model will not enable DOTAG to comply with the requirements of the new, *Premier’s Circular 2014/01* in relation to the vast majority of its court and tribunal fees.
- 5 DotAG’s demonstration of the Model revealed that a very small number of individual ‘fee for services’ in the District Court could be calculated. Similar costing models exist for all other courts and the State Administrative Tribunal.
- 6 The Committee observed that there is no single method for costing court and tribunal fees amongst other jurisdictions. Further, DotAG’s preference for costing fees at a ‘whole of court and tribunal’ level is the same as other States and Territories. This method has shown significant levels of under-recovery. The Department of Treasury (**Treasury**) revealed concern at the low quantum of recovery rather than the methodology.
- 7 The Committee is of the view that the likelihood of a tax, rather than a fee being imposed in the annual, fee review process is remote given Treasury’s statement that it subsidises 80% of Court and Tribunal Services. However, whether civil litigants’ fees for services are over recovering remains uncertain.
- 8 DotAG’s historical reluctance to approach Treasury for assistance in developing a ‘fee for service’ costing model is puzzling. The Committee encourages DotAG to take up Treasury’s invitation for assistance with developing a model for court and tribunal fees.
- 9 The Committee made three Findings and three Recommendations.

**FINDINGS AND RECOMMENDATIONS**

Recommendations are grouped as they appear in the text at the page number indicated:

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**Finding 1:** The Committee finds that costing fees at a ‘whole of court or tribunal level’ means the Committee is prevented from its task of scrutinising individual ‘fee for service’ type fees.

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**Finding 2:** The Committee finds that DotAG’s spreadsheet tab titled *Costing of Individual Fees (Court of Appeal Fees, Daily Hearing Fees & Searching/Copying Fees)* is a key document in meeting the fee table requirements of *Premier’s Circular 2014/01*. Its highly specific formula involves a number of other spreadsheets which calculates the costs and sets the fees with certainty. The calculations are essentially based on tangible items such as predictive staffing levels and time spent by those staff on providing one unit of service in minutes.

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**Recommendation 1:** The Committee recommends that the Department of the Attorney General provide Explanatory Memoranda showing percentages of cost recovery achieved where an activity associated with a fee in each court or tribunal is sufficiently identifiable and quantifiable.

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**Recommendation 2:** The Committee recommends that the Department of Treasury identify those agencies that lack homogeneous services to the Department of the Attorney General. The Committee further recommends that the Department of the Attorney General then engage in a dialogue with those identified agencies as to how they cost such services.

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**Finding 3:** The Committee finds no evidence of cross-subsidisation in the costing of fees either at a whole of court or individual fee for service level. Based on the overall level of ‘whole of court and tribunal’ recovery, the Committee doubts that fees are currently over-recovering.

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**Recommendation 3:** The Committee recommends that the Department of the Attorney General request assistance from the Department of Treasury to begin the development of a ‘fee for service’ cost-demand model for court and tribunal fees.



# CHAPTER 1

## INTRODUCTION

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### BACKGROUND

- 1.1 On 10 April 2014, the Joint Standing Committee on Delegated Legislation (**Committee**) advised the Legislative Council and the Legislative Assembly of its intention to conduct an own motion inquiry pursuant to Term of Reference 10.7(b). It states:

*It is also a function of the Committee to inquire into and report on-*

*any systemic issue identified in 2 or more instruments of subsidiary legislation.*

- 1.2 The Committee identified a systemic issue arising out of nine court and tribunal instruments gazetted on 15 November 2013. Those instruments increased fees by 13.6% in part because of a decline in the number of lodgments, particularly corporate lodgments over the previous three years.<sup>1</sup> The systemic issue the Committee identified in those nine instruments was that the Department of the Attorney General (**DotAG**):

- could not accurately cost its fees to the satisfaction of the Committee;
- in the absence of further information, lacked an appropriate costing model; and
- had not costed the fees individually.

- 1.3 In contrast, other government departments and agencies have been able to cost their fees individually and calculate a percentage of cost recovery achieved for each fee that satisfies the Committee's concerns as to whether fee increases are in fact, unauthorized taxes.

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<sup>1</sup> The Instruments were the *Children's Court (Fees) Amendment Regulations 2013*; *Civil Judgments Enforcement Amendment Regulations 2013*; *Coroners Amendment Regulations 2013*; *District Court (Fees) Amendment Regulations (No.2) 2013*; *Evidence (Video and Audio Links Fees and Expenses) Amendment Regulations 2013*; *Magistrates Court (Fees) Amendment Regulations (No.2) 2013*; *State Administrative Tribunal Amendment Regulations (No.4) 2013*; *Supreme Court (Fees) Amendment Regulations (No.2) 2013*; and *State Administrative Tribunal Amendment Regulations (No. 2) 2013*.

- 1.4 The Committee left aside the question as to whether or not there had actually been a decline in lodgments but at a later public hearing, DotAG acknowledged that the “*lower demand was definitely of concern*”<sup>2</sup> in setting the fees. DotAG said:

*Also of concern was the need to, where possible, ensure that we have the revenue to undertake our business. Because our business has fixed costs as a large component, there is a need to maintain that base. One of the ways in which we can do that is to recommend an increase in fees.*<sup>3</sup>

- 1.5 The Committee is of the view that increasing fees because of a decline in lodgments is neither an appropriate justification for the increase, nor an appropriate costing methodology. Thus, pursuant to Term of Reference 10.7(b), the Committee resolved to inquire into and report on:

- (1) *The actual methodology for calculating fee increases applied within the Department of the Attorney General;*
- (2) *The extent to which the Department of the Attorney General fee increases are calculated in accordance with relevant law, together with appropriate standards including Department of Treasury guidelines and Office of the Auditor General recommendations;*
- (3) *The extent to which individual Department of the Attorney General fees can be said to be reasonable cost recovery in all the circumstances; and*
- (4) *Other matters of relevance to the foregoing.*

- 1.6 These Terms of Reference were tabled in the Parliament on 10 April 2014.

- 1.7 During the course of this Inquiry, the Committee considered Treasury’s *Costing and Pricing of Government Services Guidelines for Use by Agencies in the Western Australian Public Sector*<sup>4</sup> as well as Auditor General commentary in public sector performance reports. However, the focus of this Report is the methodology for calculating the setting of DotAG’s annual court and tribunal fees for the benefit of the Parliament.

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<sup>2</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p7.

<sup>3</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p7.

<sup>4</sup> 5<sup>th</sup> Edition, April 2007.

**INQUIRY PROCESS**

- 1.8 Details of the Inquiry were placed on the Committee’s webpage. Two public hearings were held with DotAG and the Department of Treasury (**Treasury**). The Committee extends its appreciation to those officers who gave evidence. Transcripts of the hearings are at (respectively) **Appendices 1** and **2**.

DotAG provided its costing model (**Costing Model**) in a spreadsheet. The spreadsheet is too large to include in this Report but may be accessed through the Committee’s webpage.



## CHAPTER 2

### BACKGROUND TO THE INQUIRY

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#### REPORTS 32 AND 63

2.1 Over the past 17 years, the Committee and its predecessors have frequently and consistently reported to the Parliament its approach to departments and agencies setting fees. This approach was thoroughly canvassed in Report 32<sup>5</sup> and more recently in Report 63.<sup>6</sup>

#### AMENDMENTS TO THE PREMIER'S CIRCULAR

2.2 As a result of historical reporting, the Premier's Circular to all government departments and agencies regarding information the Committee requires to perform its scrutiny function has been amended on a number of occasions. The most recent is Circular Number 2014/01 issued 15 February 2014, titled: *Subsidiary Legislation – Explanatory Memoranda*.

2.3 An extract of the fee table in the *Premier's Circular 2014/01* is located at **Appendix 3**. The extract is relevant for this Inquiry as it requires agencies to provide details of the amount of the fee immediately prior to the change and that the information be summarised in table format showing:

- the type of fee charged;
- the date it was last amended;

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<sup>5</sup> Western Australia, Joint Standing Committee on Delegated Legislation, Report No. 32, *Supreme Court (Fees) Amendment Regulations (No. 2) 2008, Children's Court (Fees) Amendment Regulations (No. 2) 2008, District Court (Fees) Amendment Regulations 2008, Magistrates Court (Fees) Amendment Regulations (No. 2) 2008, Fines, Penalties and Infringement Notices Enforcement Amendment Regulations (No. 2) 2007 and Other Court Fee Instruments*, 14 May 2009. The principal issue in that Inquiry was whether four types of imposts, found in eight instruments increasing court fees, were authorised or contemplated by empowering legislation in the circumstance that the imposts were significantly over-recovering the cost of provision of the services. In the case of the application for grant of probate fees, the over-recovery was up to 291%.

<sup>6</sup> Western Australia, Joint Standing Committee on Delegated Legislation, Report No 63, *Information Report in relation to: Children's Court (Fees) Amendment Regulations (No. 2) 2012, Civil Judgments Enforcement Amendment Regulations 2012, Coroners Amendment Regulations 2012, District Court (Fees) Amendment Regulations (No. 3) 2012, Evidence (Video and Audio Links Fees and Expenses) Amendment Regulations (No. 2) 2012, Magistrates Court (Fees) Amendment Regulations (No. 3) 2012, State Administrative Tribunal Amendment Regulations (No. 3) 2012, Supreme Court (Fees) Amendment Regulations (No. 3) 2012*, 19 September 2013. In that Report, the Committee found it was unable to properly perform its scrutiny of eight instruments seeking to increase court and related fees by the Consumer Price Index. This was due to the inadequate level of financial information given by the DotAG to justify the increase in fees, including the lack of a costing methodology that could be used to cost individual fees.

- the dollar amount of the old fee;
- the dollar amount of the new fee;
- the percentage of the increase or decrease;
- the dollar amount of the increase or decrease;
- the percentage of cost recovery achieved for the new fee; and
- whether or not the new fee is cross subsidising.

2.4 Following the Costing Model demonstration, described in the next chapter of this Report, the Committee formed the view that the existing costing model will not enable DOTAG to comply with the above requirements in relation to the vast majority of its court and tribunal fees.

**CONTINUING THE DEBATE AS TO WHETHER AN IMPOST IS A ‘FEE FOR SERVICE’ OR AN UNAUTHORIZED TAX**

2.5 The Committee re-iterates its view in Report 32 that where:

- empowering legislation authorises the imposition of a “*fee*”; and
- evidence is received that the amount of an impost does not bear a ‘reasonable relationship’ to the costs of providing the relevant services<sup>7</sup> in respect of which it is imposed,

the Committee views the impost as being of the nature of a tax, regardless of its label of “*fee*”.<sup>8</sup>

2.6 In contrast, DotAG’s position (quoting State Solicitor Office advice) is that:

*It is sufficient if the fee imposed under each relevant Act as a whole reflect a reasonable estimation of the cost of the operations of the relevant court or tribunal under the Act, and there is a rational basis for the division of those estimated costs between the different kinds of fee.*

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<sup>7</sup> (or the costs incurred in establishing or administering a licence scheme)

<sup>8</sup> Western Australia, Joint Standing Committee on Delegated Legislation, Report No. 32, *Supreme Court (Fees) Amendment Regulations (No. 2) 2008, Children’s Court (Fees) Amendment Regulations (No. 2) 2008, District Court (Fees) Amendment Regulations 2008, Magistrates Court (Fees) Amendment Regulations (No. 2) 2008, Fines, Penalties and Infringement Notices Enforcement Amendment Regulations (No. 2) 2007 and Other Court Fee Instruments*, 14 May 2009, Executive Summary, page i.

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*...it is not necessary that the revenue for particular; fees be matched to the exercise of the particular functions to which those fees relate.<sup>9</sup>*

- 2.7 These contrasting views have been an annual discourse for both the Committee and DotAG since the tabling of Report 32 in May 2009.
- 2.8 The Committee and DotAG remain at an impasse over the approach to the costing and setting of fees with no sign of resolution. This is the context for the Committee's Inquiry and investigation into the mechanics of DotAG's Costing Model.

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<sup>9</sup> Letter from Hon Michael Mischin MLC, Attorney General, 31 March 2014,p1 as the Government Response to Western Australia, Joint Standing Committee on Delegated Legislation, Report No. 63, *Information Report in relation to: Children's Court (Fees) Amendment Regulations (No. 2) 2012, Civil Judgments Enforcement Amendment Regulations 2012, Coroners Amendment Regulations 2012, District Court (Fees) Amendment Regulations (No. 3) 2012, Evidence (Video and Audio Links Fees and Expenses) Amendment Regulations (No. 2) 2012, Magistrates Court (Fees) Amendment Regulations (No. 3) 2012, State Administrative Tribunal Amendment Regulations (No. 3) 2012, Supreme Court (Fees) Amendment Regulations (No. 3) 2012*, 19 September 2013.





## CHAPTER 3

### DOTAG'S METHODOLOGY FOR COSTING COURT AND TRIBUNAL FEES

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#### DEPARTMENTAL STRUCTURE

3.1 At a public hearing, DotAG provided the following slide to explain various elements of the department's structure.

<b>DIRECTOR GENERAL</b> Cheryl Gwilliam  <b>Executive Officer</b> Lyn Lubicz	<b>Manager Advisory Services</b> Mark Hainsworth
	<b>Public Affairs</b> Manager: Michelle Downie
	<b>Management Assurance</b> Manager: Duska Separovic
<b>Policy &amp; Aboriginal Services</b>	Director: Bob Taddeo
<b>Commissioner for Victims of Crime</b>	Commissioner: Jennifer Hoffman
<b>Court and Tribunal Services</b>	Executive Director: Ray Warnes
<b>Parliamentary Counsel's Office</b>	Parliamentary Counsel: Walter Munyard
<b>Office of the Public Advocate</b>	Public Advocate: Pauline Bagdonavicius
<b>Public Trustee</b>	Public Trustee: Brian Roche
<b>Registry of Births, Deaths &amp; Marriages</b>	Registrar: Brett Burns
<b>State Solicitor's Office</b>	State Solicitor: Paul Evans
<b>Corporate Services</b>	Executive Director: Bill Hewitt
* Fee generating Jurisdiction	
Costs allocated as overheads as applicable	

3.2 It can be seen from the slide that DotAG is comprised of a number of fee generating and non-fee generating 'jurisdictions' (areas). Of these,

- Court and Tribunal Services;
- the Public Trustee; and
- the Registry of Births, Deaths & Marriages

are the only three fee generating jurisdictions.

3.3 In contrast, there are five non-fee generating jurisdictions. These are:

- Policy & Aboriginal Services;

- the Commissioner for Victims of Crime;
  - the Parliamentary Counsel's Office;
  - the Office of the Public Advocate; and
  - the State Solicitor's Office.
- 3.4 All services provided by DoTAG need to be funded. The question is whether these services should be funded from the Consolidated Account or by a 'user pay' system. If a 'user pay' fee is higher than the cost of production for a particular activity, then cross-subsidisation may be occurring. (Cross subsidisation is addressed more fully at paragraphs 4.12 to 4.18.)
- 3.5 The services these five non-fee generating jurisdictions provide are unique. They must be costed and funded but it is neither appropriate nor required they engage in cost recovery. Their nominal services are funded from the Consolidated Account after the departmental budget allocation.<sup>10</sup>

#### **CURRENT FUNDING**

- 3.6 DotAG is allowed to retain the receipts it collects from fees to be offset against the total cost of providing services, rather than securing the equivalent funding through the Consolidated Account.<sup>11</sup>
- 3.7 In the 2013-14 financial year, DotAG was budgeted to retain \$83.3 million in fees and charges to offset the \$374.5 million<sup>12</sup> in budgeted cost for Court and Tribunal Services alone. This equated an average level of 22.2% cost recovery across Court and Tribunal Services.<sup>13</sup>

#### **STRUCTURE OF COURT AND TRIBUNAL SERVICES**

- 3.8 DOTAG provided the following slide depicting Court and Tribunal Services.

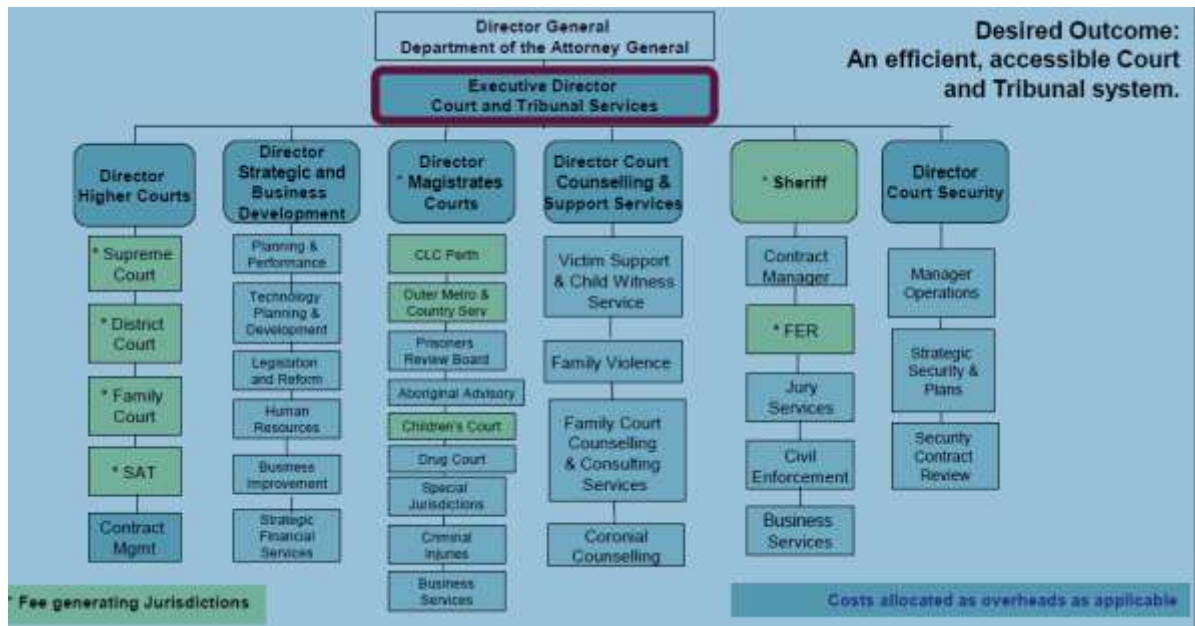
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<sup>10</sup> DotAG, response to an additional question, 9 June 2014, p4. DotAG is a 'Net Appropriation Determination' department pursuant to section 23 of the *Financial Management Act 2006*.

<sup>11</sup> DotAG's Annual Report 2012/13, p63 states: "*Items covered by the agreement include Commonwealth recoups, court fees, births deaths and marriage registration fees, proceeds from Public Trustee fees, Public Trustee common fund interest revenues, legal services, workers' compensation recoups and other miscellaneous revenues*". [http://www.department.dotag.wa.gov.au/files/DotAG\\_AR\\_2013.pdf](http://www.department.dotag.wa.gov.au/files/DotAG_AR_2013.pdf) accessed on 23 June 2014.

<sup>12</sup> This was adjusted to \$375.7 million in 2014-15 Budget Paper, No. 2, Volume 2, p436.

<sup>13</sup> Letter from then Treasurer, Hon Troy Buswell MLA, 31 January 2014, p1.



3.9 The colour coding is useful. It illustrates DotAG's divisions within Court and Tribunal Services. Green is for those services that generate fees while the blue areas do not generate fees.<sup>14</sup> However, those blue areas still have to be costed and funded. This is achieved by the costs being allocated as overheads from a portion of the costs from the fee generating jurisdictions.

### HISTORICAL PRINCIPLES BUILT INTO THE COSTING OF FEES IN COURT AND TRIBUNAL SERVICES

3.10 DotAG advised that in September 2001, Cabinet approved a submission to develop a new fee structure for the civil jurisdictions of the civil courts. On 1 January 2002, two 'foundation' fee Instruments, the Supreme Court (Fees) Regulations 2002 and the District Court (Fees) Regulations 2002 became operational. They were based, in part, on the "achievement of cost recovery between 25 and 30%".<sup>15</sup>

3.11 Cost recovery was targeted at three 'charging points'. That is, at the point when:

- an action commenced;
- a hearing was entered; and
- hearing dates or daily hearing fees were allocated.

<sup>14</sup> CLC is an acronym for the Central Law Courts and the Magistrates Court Perth operates out of it. The 'Outer Metro and Country Service' are also Magistrates Court locations. Magistrate Court fees are generated as per the *Magistrates Court (Fees) Regulations 2005*. Children's Court fees are minimal, and mainly transcription cost related. However, fees are received as per the *Children's Court (Fees) Regulations 2005*.

<sup>15</sup> DotAG, response to an additional question, 9 June 2014, p3.

3.12 Cabinet also approved three key principles:

- (1) relative parity;<sup>16</sup>
- (2) higher rates for corporate entities over individuals;<sup>17</sup> and
- (3) access to justice,<sup>18</sup>

as relevant to the process of costing fees.

### HOW DOTAG CURRENTLY COSTS FEES

3.13 DotAG's Annual Report 2012/13 states that the court system has adopted a policy of partial cost recovery largely confined to the civil jurisdiction.<sup>19</sup> In setting court fees, DotAG "*aims to strike an appropriate balance between access to justice, incentives to settle and user pays contributions*".<sup>20</sup>

3.14 When DotAG reviews its court and tribunal fees, the assessment includes a comparison with fees charged in other jurisdictions.<sup>21</sup> However, the Committee is of the view that inter-jurisdictional comparisons are not relevant to Western Australian cost recovery because of the methodology disparity by other jurisdictions. (This is explored more fully in Chapter 5.) Further, the *Report on Government Services 2014* cautions on comparisons.

*In 2012-13, average court fees paid per lodgement were greater in supreme courts than in district/county and magistrates' courts. The average fees collected by the Australian, State and Territory courts vary for many reasons and caution should be used in making direct comparisons.*<sup>22</sup>

3.15 The Committee noted there are no fees for criminal proceedings except for proceedings under the:

<sup>16</sup> According to Mrs Owen, 'relative parity' maintains the hierarchy of the courts. It means that the fees will be more in each hierarchy of the courts. Thus, a fee in the District Court (the middle court) will be more expensive than the fee in the Magistrates Court and less expensive than a fee in the (higher) Supreme Court. *Transcript of Evidence*, 7 May 2014, p2.

<sup>17</sup> DotAG advised in a response to an additional question, 9 June 2014, p3 that fee differentiation was a recommendation of the Western Australian Law Reform Commission.

<sup>18</sup> According to Mrs Owen, the judiciary has great interest in ensuring that fees are set to ensure the principle of access to justice. *Transcript of Evidence*, 7 May 2014, p2.

<sup>19</sup> With the exception of some criminal enforcement activities.

<sup>20</sup> [http://www.department.dotag.wa.gov.au/files/DotAG\\_AR\\_2013.pdf](http://www.department.dotag.wa.gov.au/files/DotAG_AR_2013.pdf) accessed on 23 June 2014, p124.

<sup>21</sup> [http://www.department.dotag.wa.gov.au/files/DotAG\\_AR\\_2013.pdf](http://www.department.dotag.wa.gov.au/files/DotAG_AR_2013.pdf) accessed on 23 June 2014, p124.

<sup>22</sup> [http://www.pc.gov.au/data/assets/pdf\\_file/0016/132325/rogs-2014-volumec-justice.pdf](http://www.pc.gov.au/data/assets/pdf_file/0016/132325/rogs-2014-volumec-justice.pdf) accessed on 23 June 2014, p7.26.

- *Civil Judgments Enforcement Act 2004*; and
- *Prohibited Behaviour Orders Act 2010*.<sup>23</sup>

3.16 Transcription and video link fees can be charged at a criminal level and thus are able to be costed.

### **BACKGROUND TO THE DEMONSTRATION OF THE COSTING MODEL**

3.17 DotAG used fees in the *General Division* of the District Court to demonstrate its Costing Model, a model based on a 'whole of court' approach. This was the same demonstration given to Treasury officers in March 2014. That demonstration arose out of the Committee's Report 63 and an invitation from former Treasurer Buswell that DotAG seek "*the Department of Treasury's assistance in reviewing its draft costing model and to advise on the viability of developing a suitable court costing model*".<sup>24</sup>

3.18 The demonstration also showed that the Costing Model can calculate a very small number of individual 'fee for services' in the District Court and that similar costing models exist for all other courts and the State Administrative Tribunal.<sup>25</sup>

### **VARIOUS ASSUMPTIONS BUILT INTO THE COSTING MODEL**

3.19 The current Model was developed in 2006 and has never been amended. Although the structure is unchanged, its agreed assumptions are reviewed annually.<sup>26</sup> The Model makes assumptions for the following.

- corporate overheads (based on key performance indicators);<sup>27</sup>
- judicial pensions (currently set by the *Report on Government Services* at 40%);<sup>28</sup>

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<sup>23</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p2.

<sup>24</sup> Letter from former Treasurer, Hon Troy Buswell MLA, 31 January 2014, p1.

<sup>25</sup> *Answer to a Question on Notice* Number 2, 9 June 2014.

<sup>26</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p3.

<sup>27</sup> Key performance indicators are those contained in DOTAG's budget statements. An example is cost per finalisation in the Coroner's Court. Mrs Owen referred to an 'effectiveness' indicator as well as a 'time to trial' indicator and an 'efficiency' (cost per case) indicator. DotAG advised in a response to an additional question, 9 June 2014, p4 that allocation of corporate costs to the Court and Tribunal Services' actual costs are undertaken using the percentages that are used when overhead costs are added to actual costs for key performance indicator calculation.

- criminal/civil proceedings (currently apportioned at 50/50);<sup>29</sup>
- security costs (based on work performed);<sup>30</sup> and
- other costs.<sup>31</sup>

3.20 These assumptions are each allocated a percentage amount for the purposes of the Model and according to DotAG, “*worked out with some logic behind it*”.<sup>32</sup> The assumptions are used to allocate the costs so that DotAG can report on its key performance indicators in Annual Reports.

### STEPS IN THE PROCESS OF COSTING FEES

3.21 How DotAG commences its process is revealed in the following exchange:

**Mr G.M. CASTRILLI:** *What is the basis of your model? Do you look at the three different levels and at the statewide and regional components of the District Court and all the other levels? Do you base it on individual courts, such as Bunbury or Albany, or do you just lump them all together and base it on the overall total cost of a District Court. How far do you go to form the basis of your model?*

**Mrs Owen:** *The basis for the cost recovery component of the model works from the ground up.*

**Mr G.M. CASTRILLI:** *From each individual court?*

**Mrs Owen:** *Yes, but when we do the overall work, it is at a higher level.*

<sup>28</sup> This differs every year. According to Mrs Owen, “*it can go from the nothing to an enormous amount of money. To enable us to bring to account an amount that is consistent over time, we have adopted the “Report on Government Services”, the ROGS, which is a national report released by the Productivity Commission. The commission’s accounting rules are sent to each of the states as how to collect the costs for that. Its accounting rule says that each year you will bring to account 40 per cent of the value of a judge’s salary as judicial pension. We have adopted that rule. It is a national rule and it is what we need to put into the “Report on Government Services” and that is how we allocate the judicial pension*”. *Transcript of Evidence*, 7 May 2014, p8.

<sup>29</sup> Mr Mark Hainsworth, Manager Advisory Services, DotAG, *Transcript of Evidence*, 7 May 2014, p16 and Mrs Owen, p7.

<sup>30</sup> Mr Mark Hainsworth, Manager Advisory Services, DotAG, *Transcript of Evidence*, 7 May 2014, p6 said: “*The bottom line is that the provision of court security to the court is an overhead for the court. Under Treasury guidelines we are obligated to include it in our costs*”.

<sup>31</sup> Such as court counselling, the District Court building costs and percentage allocation costs determined by the business area.

<sup>32</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p7.

**Mr G.M. CASTRILLI:** *To give you a base costing model, each individual court would have to do its own costings.*

**Mrs Owen:** *That is how we collect the costs by individual courts.*

**Mr G.M. CASTRILLI:** *They would have overheads, wages and all of that sort of stuff. Is that what you are telling me?*

**Mrs Owen:** *No. We allocate overheads as part of the annual fee review model. The cost collection part of the business is done at a court model. Each court has its own performance centre.<sup>33</sup>*

**Mr G.M. CASTRILLI:** *There has to be overheads and except for the notional allocations and maybe an allocation it has to be an actual cost derived at an individual court basis location, if you like.*

**Mrs Owen:** *Yes, they are.*

**Mr G.M. CASTRILLI:** *You would know the actual cost of each individual thing and you allocate a notional over the top.*

**Mrs Owen:** *Yes.*

3.22 The next stage involves collecting the costs into four 'buckets' and are recognizable from the assumptions listed at paragraph 3.19 . These are:

<p><b>Direct Costs</b> Costs directly allocated to the business area performance centre as per the General Ledger</p>
<p><b>Court &amp; Corporate Overheads</b> Allocation of Court and Corporate Overheads sourced from the General Ledger apportioned across Courts on an FTE basis.</p>
<p><b>Other Costs</b> (e.g. security, Court Counselling and District Court Building costs) percentage allocation of costs as determined by the business area.</p>
<p><b>Judicial Pensions</b> As per ROGS counting rules, an agreement to allocate 40% of judicial salaries and wages as Judicial Pension, this excludes retired judges.</p>

<sup>33</sup> A 'performance centre' also known as a 'cost centre' describes where costs are in an organisation. It tends to be very low level and may equate to an organisational unit.

3.23 Using the ‘other costs’ assumption, the following exchange describes how this stage of the process works.

*Ms S.F. McGURK: ... I understand what the costs are. What I am asking is how you allocate them, because it just reads “as determined by the business area”. Is that how much the business area used of that particular cost?*

*Mrs Owen: Yes, it will have a way of looking at its business and the type of work it will do and it will have a percentage that says it will do X-amount percentage for the District Court and, therefore, the cost associated with that would be allocated to the District Court.*

3.24 The final step in the process is to examine revenue for the next year or up to 18 months. This involves:

- each court area looking at its first three months’ worth of work and conducting an assessment or a forecast for the rest of the financial year;
- looking at the forecast for the next financial year using Treasury’s economic forecasts to give a suggested CPI;
- examining the factors that are influencing business. For example, using the Australian Bureau of Statistics ‘WA population growth’ to see how that could impact on the number of court services that may come through;
- looking at the impact of policy changes that have come through; whether any new courts are opening or whether there is a change to policing strategies and other policy areas; and
- looking at finalisations of cases and lodgements.<sup>34</sup>

3.25 DotAG then put forward a proposed future year revenue increase and a strategy paper is developed. That paper goes to the Court and Tribunal Executive to decide how DotAG will manage future revenue coming forward.

3.26 All these processes produce the core data that is “*built in and dropped into*”<sup>35</sup> a spreadsheet. DotAG said the data used in the framework for developing the fee

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<sup>34</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p8.

<sup>35</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p9.



settings is the same data that is used in the *Report on Government Services*<sup>36</sup> compiled by the Productivity Commission.<sup>37</sup>

### ATTRIBUTING/ALLOCATING THE CORPORATE OVERHEAD ASSUMPTION

3.27 The Committee uses the terms 'attribution' and 'allocation' interchangeably, noting that attribution is a method of allocating costs to a particular group, output or program based on pre-defined rules and drivers.<sup>38</sup>

3.28 All the assumptions listed at paragraph 3.19 are important but the 'allocation of corporate overheads' assumption is particularly important. Both the structure of the department and in particular, Court and Tribunal Services are relevant to the allocation of corporate overheads because corporate overheads are for the whole of the Department of the Attorney General, not just Court and Tribunal Services. DotAG said:

*At the moment we apportion that by an FTE basis. We determine a total cost and we allocate it according to the number of FTEs in each of the fee jurisdiction business areas.*<sup>39</sup>

3.29 Using the 'corporate overheads' assumption as an example, the Committee observed how overheads were allocated by the Ministerial Liaison Unit (MLU) Performance Centre to the District Court.<sup>40</sup> From the spreadsheet tab titled "*Overheads/Jurisdiction Expenditure*", the following line item is extracted.

Corporate Overheads							
Performance Centre	Title	Total Actual Expenditure	% Applicable to Courts	Total Attributable Expenditure - Courts	Annual Overhead Per Courts FTE (\$)	Does this Apply to the District Court?	Amount Applicable per FTE to the District Court
1001	CP Ministerial Liaison Unit	169,635	85.60%	145,208	119	YES	119

3.30 It can be seen that the total yearly cost of the MLU was \$169,635. The MLU determined that 85.60% of its work related to the courts. This equates to \$145,208 and that amount was attributed to the District Court as a corporate overhead. DotAG

<sup>36</sup> Mr Mark Hainsworth, Manager Advisory Services, DotAG, *Transcript of Evidence*, 7 May 2014, p2.

<sup>37</sup> The annual *Report on Government Services* provides information on the equity, effectiveness and efficiency of government services in Australia. The 2014 report was progressively released between 28 - 31 January 2014 and accessed on 9 June 2014 at: <http://www.pc.gov.au/gsp/rogs>

<sup>38</sup> Australian National Audit Office, *Developing and Maintaining Internal Budgets Best Practice 2008*, [http://www.anao.gov.au/~media/Uploads/Documents/developing\\_and\\_managing\\_internal\\_budgets1.pdf](http://www.anao.gov.au/~media/Uploads/Documents/developing_and_managing_internal_budgets1.pdf), p3. Viewed on 11 June 2014.

<sup>39</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p4.

<sup>40</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p4 said: "*Each court has its own performance centre*".

surmised it “probably .... used the number of ministerials as a basis to do their assessment”.<sup>41</sup>

- 3.31 Attribution of the other assumptions listed at paragraph 3.19 occurs across Court and Tribunal Services using other tabs in the spreadsheet.

### COSTING FEES AT ‘WHOLE OF COURT AND TRIBUNAL’ LEVEL

- 3.32 DotAG prefers to show levels of cost recovery at ‘whole of court or tribunal’ level. The extract below of the spreadsheet tab titled Summary of District Court Recovery reveals that cost recovery in the District Court is currently 36%.

	Total Expenses (including overheads) (\$)	Total Revenue (\$)	% Cost Recovery
District Court General Division - Civil	11,939,069	4,353,381	36%
Transcribing Services - Civil	0	0	0%
Video Link Services - Civil and Criminal	0	0	0%
Transcribing Services - Criminal	0	0	0%
District Court General Division - Criminal	26,068,640	0	0%
<b>Total</b>	<b>38,007,709</b>	<b>4,353,381</b>	<b>11%</b>

- 3.33 The following exchange reveals this ‘whole of court and tribunal’ approach, using photocopying fees as an example.

***The CHAIR:** In terms of the policy, for want of a better way of working out the costings, the impression I have got from this presentation is that basically you look at the whole court operating costs and to divide it up into all the little boxes is simply not a practical thing in a court type of setting. Is that what you are saying to us?*

***Mrs Owen:** We can do it at a court level through the allocation of overheads and by the split of criminal and civil.*

***The CHAIR:** But not into the photocopying and all these little things? That is too difficult to break that down. Is that what you saying?*

***Mr Hainsworth:** It is, and the point we would make is that even if we were to attempt to do that, the level of assumption that we would make to bring it down further and further, by the time we have gone through three or four levels of assumption to get to your photocopying price, the inaccuracy of that would mean that we still could not tell you whether it was over cost recovery or not. It simply just picks up the assumption and the inaccuracy contained in it.*

<sup>41</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p7 and p15.

- 3.34 DotAG concluded that attempting to “*get it down to a lower level is just not feasible or possible*” because the “*the level of assumption that basically you start to apply as you get lower down renders the answer that you get as something having a wide, if you like, variation. So, it would be a cost plus or minus 200 or 300 per cent, which would not give you the level of comfort that we were not over cost recovery*”.<sup>42</sup>
- 3.35 The Committee acknowledges that Court and Tribunal Services is a difficult system to cost for two reasons:
- 3.35.1 First, the criminal law is accessed by all Western Australians equally. This means it carries a public service obligation on the part of government to those who need it whereas the civil law only applies to those who seek it. This raises the question of the validity of allocating corporate overheads for both civil and criminal functions.
- 3.35.2 Second, Court and Tribunal Services deliver unique services. As Treasury explained:
- 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.*<sup>43</sup>
- 3.36 Although understanding of Treasury's view, the Committee makes the following Finding.

**Finding 1: The Committee finds that costing fees at a ‘whole of court or tribunal level’ means the Committee is prevented from its task of scrutinising individual ‘fee for service’ type fees.**

### **COSTING INDIVIDUAL FEES FOR SERVICES**

- 3.37 In contrast to costing fees at a ‘whole of court and tribunal’ level, DotAG's spreadsheet can calculate a very small number of fees for services and determine a percentage of cost recovery achieved for each service.<sup>44</sup> For example, the extract below of the spreadsheet tab titled *Summary of District Court Recovery* reveals five fees showing the:

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<sup>42</sup> Mr Mark Hainsworth, Manager Advisory Services, DotAG, *Transcript of Evidence*, 7 May 2014, p16.

<sup>43</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p2.

<sup>44</sup> Mrs Su Owen, Executive Manager, District Court of WA, *Transcript of Evidence*, 7 May 2014, p9.

- cost of performing the service;
- fee an individual litigant is charged;
- fee a corporate litigant is charged; and
- percentages of cost recovery achieved.

Fee name	Cost of performing fee service (\$)	Fee Amount (\$)		% Cost Recovery	
		Individual	Corporate	Individual	Corporate
<b>General Division</b>					
Daily hearing fee	3,776	486	1,264	13%	33%
Extraordinary Licence Road Traffic Act	259	159	n/a	61%	n/a
Spent Convictions Application	265	81	n/a	30%	n/a
Officer's expenses to attend at any court or place outside	79	70	70	88%	88%
Document certification	29	14	14	47%	47%
<b>Transcribing Fees</b>					
Copy of a transcript per page	n/a	5.45	5.45	n/a	n/a

- 3.38 Although the above worksheet does not show cost recovery for a sixth fee, the 'copy of a transcript per page' the Committee ascertained from workings using the Model that recovery is at 43%.<sup>45</sup> The Committee asked DotAG to explain why this particular fee is not disclosed on the *Summary of District Court Cost Recovery worksheet*. DotAG said:

*Transcription and Video Link Services were not costed in the 2014-15 Fee Review. This was due to a transcript contract changeover which occurred in May 2013 which introduced a different charging model for transcript and [audio visual] services ... providing these services in a significantly different way. Therefore, the existing [worksheet] titled: Transcribing & Video Link fees used to individually review the costs and revenues associated with these fees was no longer appropriate for the task.*

*The new tool to perform this work is still to be developed. The information on the worksheet which you are quoting above was from a previous review and was not used in the 2014-15 review.*<sup>46</sup>

- 3.39 Given this, the Committee expects the new tool to reveal that particular fee costed at an individual fee for service level during the next annual fee review process and given a percentage of cost recovery achieved in future Explanatory Memoranda.
- 3.40 How the cost recovery percentages for the five fees were calculated is best shown in the attached spreadsheet tab titled *Costing of Individual Fees (Court of Appeal Fees, Daily Hearing Fees & Searching/Copying Fees)*.

<sup>45</sup> From using information on the EXCEL Workbook worksheet titled *Transcribing and Video Link Fees*.

<sup>46</sup> DotAG, response to an additional question, 9 June 2014, p2.

Name of Fee	Fee Amount (\$)		Staff Levels and Time Spent on Providing one unit of Service (Minutes) *Select staff levels from drop down list below and enter time*							Other Costs (\$)	Total Time minutes	Direct Salary (\$)	Overheads (\$)	Total Unit Cost (\$)	% Cost Recovery Individual	% Cost Recovery Corporate
	Individual	Corporate	Judge District Court	Level 4 Step 1	Level 3 Step 3	Level 1 Step 8	Level 2 Step 1	District Court Reg								
	<b>General Divison</b>															
Daily hearing fee	486	1264	450	330	99	330	38	15		1,262	2,066	1,710	3,776	13%	33%	
Extraordinary Licence Road Traffic Act	158.50		10	30	5	100	15			160	116	143	259	61%	0%	
Spent Convictions Application	80.50		10	20	0	100	40			170	115	150	285	30%	0%	
Officer's expenses to attend at any court or place outside the District Court building, for each hour when the officer is absent from the office	69.5	69.5								60	31	48	79	88%	88%	
Document certification	13.5	13.5				17	5			22	11	17	29	47%	47%	

3.41 Using the 'Daily Hearing Fee' for an individual litigant as an example, the workings can be summarised thus:

- the actual, total cost to run a daily hearing is \$3,776;
- six, various levels of personnel take 1,262 minutes to undertake the task;
- the cost of the personnel in salaries is \$2,066;
- overheads are then added to the costs. These are attributed and cost \$1,710;
- the actual daily hearing fee charged to the individual litigant is \$486; and
- the workings calculate the cost recovery percentage to be at 13%.

3.42 The percentage level of cost recovery achieved for either a corporate or individual litigant listed above is the type of 'drilling down' *Premier's Circular 2014/01* requires of departments when setting fees for Committee scrutiny purposes. DotAG said:

*It has been possible to quantify individual level of cost recovery for a number of fees in the District Court where the activity associated with the fee is sufficiently identifiable and quantifiable to calculate cost.*<sup>47</sup>

3.43 The Committee queried why more fees in the spreadsheet tab titled *District Court – Civil Fee Revenue* cannot calculate the level of cost recovery for each fee to the same level of particularity. DotAG explained its difficulty:

*It would only be possible to calculate other fees to this level by investing significant amounts of time and financial resources. Time would be needed to review each process for the delivery of the service associated with the fee, to document the timings and assumptions associated with the provision of the service (assuming of course that there was a standard process, which there isn't).*

*Financial resources would be needed to fund the additional staff required to do the set up work and to provide a system that would adequately support the assumptions, collect the required information and provide an easy way of reviewing and maintaining the information collected.*

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<sup>47</sup> Spreadsheet tab titled *Summary of District Court Recovery*.

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*Then, even if this were to occur, as the foundation of the workings would be assumption based, the level of accuracy of the result would be questionable.*<sup>48</sup>

- 3.44 DotAG used the example of a filing fee paid when an originating document or counterclaim is filed in the District Court to illustrate the problem.

*An action is commenced in the District Court with the Filing of Writ of Summons, Originating Summons or Notice of Appeal. A filing fee is payable at this time for any and all matters to progress. Matters can be commenced via eLodgment, fax or attendance at a registry counter. Different ways to commence a matter come with different associated costs.*

*The similarity ends here as each matter then follows its own unique course, in its own time, depending on:*

*the numbers of documents lodged, for instance a small number versus many documents each of which needs to be accepted, checked for compliance, entered into the courts management system and filed on the physical file. Document and letters are accepted at various times whilst the matter progresses, generally with no additional fee payable;*

*the number of plaintiffs / defendants / third parties ie how many people need to be involved in the progress of the matter;*

*whether the parties in the matters are legally represented or self-represented litigants which can take longer and are sometimes more difficult to manage;*

*the requirement for Registrar mediation, conferencing and decision making, sometimes multiple times;*

*the parties involved, for instance do they want to settle quickly, are their expectations reasonable;*

*whether Registrar orders are appealed; and*

*the case management rules of the court.*

*In short, there could be many actions taken before a matter arrives at the next "fee" point. It is possible for matters to be open and closed*

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<sup>48</sup> DotAG, response to an additional question, 9 June 2014, p1.

*in the same day, others could take a number of years going through active to inactive to active status a number of times. Some might have one directions hearing, some might have multiple hearings. As explained above it is the lack of a standardised repeatable process which makes the allocation of costs to fee provision impractical.*

*Allocation of hearing date, for each day allocated - When a case is ready to be entered for hearing a certificate of readiness indicating all preparatory steps have been taken must be signed by the plaintiff's solicitor. A length of trial is then estimated and the plaintiff pays the daily hearing fee for the estimated number of days in advance as well as the entry for hearing fee.*

*There are multiple tasks that go on behind the scenes to allocate a hearing date. The individuality of each matter such as case complexity needs to be taken into account to determine the estimated length of time required. The availability of judicial resources, location of parties and representatives and court/chamber availability all need to be considered before a hearing date and location can be allocated. These will vary from matter to matter.*

- 3.45 The Committee find this example compelling of the problem DotAG encounters when costing and setting fees. The Committee agrees that for those fee points where a lack of a standardised repeatable process is unknown, this complexity necessarily makes the allocation of costs to fee provision impractical.

**Finding 2: The Committee finds that DotAG's spreadsheet tab titled *Costing of Individual Fees (Court of Appeal Fees, Daily Hearing Fees & Searching/Copying Fees)* is a key document in meeting the fee table requirements of *Premier's Circular 2014/01*. Its highly specific formula involves a number of other spreadsheets which calculates the costs and sets the fees with certainty. The calculations are essentially based on tangible items such as predictive staffing levels and time spent by those staff on providing one unit of service in minutes.**

- 3.46 The Committee makes the following recommendation.

**Recommendation 1: The Committee recommends that the Department of the Attorney General provide Explanatory Memoranda showing percentages of cost recovery achieved where an activity associated with a fee in each court or tribunal is sufficiently identifiable and quantifiable.**



## CHAPTER 4

### DEPARTMENT OF TREASURY ASSESSMENT OF DOTAG'S COSTING MODEL

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#### INTRODUCTION

- 4.1 At a public hearing, Treasury said it had neither been involved in the development of DotAG's Costing Model in 2006 nor given the opportunity to review it in its entirety. Treasury first became involved in March 2014 and then (like the Committee) only in relation to a single component of the model (the District Court) and a focus on allocating costs at a whole of court level.
- 4.2 Treasury was also not involved in the development of DotAG's (abandoned) *District Court Fee Pilot Project* which aimed to determine whether a costing model could be developed that would cost individual fees and link them to services performed by the District Court. Treasury said:

*The first time we saw the pilot model was the document attached to your Report 63.<sup>49</sup> We were not involved in that process at all. ....*

*DotAG did not engage us or ask us for advice on constructing the model.*

- 4.3 The following exchange reveals that Treasury appears to have been 'missing in action' with respect to DOTAG's modelling.

**Hon LJILJANNA RAVLICH:** .... from a general overview, it would appear that, ... Treasury.... might have an overview role there. I am a little bit surprised... 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...it is about a \$380-million annual operation, and basically the funding they get from fees is about \$80 million. In terms

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<sup>49</sup> Report 63 was a Committee Report about an earlier set of fee increase Instruments. It was tabled on 19 September 2013.

*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. ... you had the [State Administrative Tribunal] come in in 2005, which was supposed take up some of the slack from courts. The [Criminal Penalty Infringement Notices] came in.... 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.*

#### **TREASURY'S VIEW ON COSTING AT A WHOLE OF COURT AND TRIBUNAL LEVEL**

- 4.4 Based on a preliminary assessment of the spreadsheet, Treasury concluded that the framework used to estimate costs at the whole of District Court level appeared reasonable.<sup>50</sup> Treasury said: "...we have not expressed an unqualified view that DOTAG's model is fit for purpose".<sup>51</sup> However, this does not accord with DOTAG's recollection. DotAG, in summarising the Model said: "*Treasury officers have looked*

<sup>50</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p2. Also *Answer to Question on Notice Number 6*, 26 June 2014.

<sup>51</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p2.

*at the Model and independently verified that it is fit for purpose and meets Treasury guidelines.*<sup>52</sup>

- 4.5 Treasury described how DOTAG constructs its Model. This is done from actuals from the previous year.

*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.*<sup>53</sup>

#### **TREASURY'S VIEW ON COSTING FOR INDIVIDUAL FEES FOR SERVICES**

- 4.6 Treasury acknowledged the technical difficulties and financial costs of developing and maintaining a model that estimates costs for individual services and how:

*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.*<sup>54</sup>

- 4.7 Treasury could not express an opinion on the very small number of fees that were costed in the demonstration. Treasury said:

*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.*<sup>55</sup>

- 4.8 Treasury said that “*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*”.<sup>56</sup>

<sup>52</sup> Mr Mark Hainsworth, Manager Advisory Services, DotAG, *Transcript of Evidence*, 7 May 2014, p2.

<sup>53</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p6.

<sup>54</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014 ,p2.

<sup>55</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p6.

4.9 The Committee considered why costing at an individual fee for service level is so difficult. Treasury explained that DotAG do not 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.*<sup>57</sup>

4.10 In a later, *Answer to a Question on Notice*, Treasury listed the following as potential challenges to estimating costs at the individual level.<sup>58</sup>

- Conceptual problems and issues – for some of DotAG’s activities, clearly identifying and defining the service, or the process used to deliver that service, may be difficult. (In the Committee’s view, this is because there are number of charging points in the process of fee setting).
- Logistical and technical issues – measuring the cost of an activity can be difficult if a single cost centre (or FTE in that cost centre) is responsible for providing multiple services.
- Resourcing and cost issues –DotAG may need to redesign its existing data collection and financial systems in order to collect information at a more granular level. (The Committee is of the view that the data in the spreadsheet is complex).

4.11 It is clear that Treasury is receptive to a dialogue with DotAG about how to cost an agency’s non-homogenous services and that Treasury has experience in such matters. Therefore the Committee makes the following recommendation.

**Recommendation 2: The Committee recommends that the Department of Treasury identify those agencies that lack homogeneous services to the Department of the Attorney General. The Committee further recommends that the Department of the Attorney General then engage in a dialogue with those identified agencies as to how they cost such services.**

<sup>56</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p3.

<sup>57</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p8.

<sup>58</sup> *Answer to a Question on Notice* Number 10, 26 June 2014.

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**IS DOTAG CROSS-SUBSIDISING ITS FEES?**

- 4.12 Cross-subsidisation of fees occurs where a department or agency imposes fees which over-recover in order to subsidise other fees which under-recover. This issue was discussed in *AirServices Australia v Canadian Airlines International Limited*. Gaudron J commented that:

*It is not sufficient that the charge be levied to defray the expenses of an authority charged with the performance of functions which benefit the class of persons from whom it is exacted. There must be 'particular identified services provided or rendered individually to, or at the request or direction of, the particular person required to make the payment.'*<sup>59</sup>

- 4.13 *Premier's Circular 2014/01* requires agencies to state whether their fees are cross-subsidising.

- 4.14 Throughout the years, the Committee has heard many definitions of cross-subsidisation such as, "*financing of an unprofitable part of a business or agency with a more profitable part*"<sup>60</sup> Treasury said:

*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.*<sup>61</sup>

- 4.15 Put another way, it is the practice of "*charging recipients a higher price for one service in order to subsidise a lower price for another service*".<sup>62</sup>

- 4.16 Treasury could not give any examples of DotAG over recovering (and therefore cross subsidising) fees for either a specific court or a specific fee within a court subsidising another function within that court. Treasury said "*we do not have that data*".<sup>63</sup> Treasury made it clear that its primary concern is with the drop in overall cost recovery of the courts rather than whether individual fees within a court are "*basically subsidising another function out of that court*".<sup>64</sup>

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<sup>59</sup> *AirServices Australia v Canadian Airlines International Limited* (1999) 202 CLF 133, pp189-90.

<sup>60</sup> Mr Graeme Doyle (Director, Financial Policy, Department of Treasury and Finance), *Transcript of Evidence, Cost Recovery Guidelines*, 19 March 2003, p7.

<sup>61</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p8.

<sup>62</sup> Department of Treasury, *Answer to Question On Notice Number 9*, 26 June 2014.

<sup>63</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p8.

<sup>64</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p8.

4.17 Treasury is of the view that DotAG is not cross subsidising.

*... if [a] 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.<sup>65</sup>*

4.18 Based on Treasury's evidence the Committee is unable to ascertain whether DotAG is cross-subsidising but concedes it is unlikely. Therefore, the Committee makes the following Finding.

**Finding 3: The Committee finds no evidence of cross-subsidisation in the costing of fees either at a whole of court or individual fee for service level. Based on the overall level of 'whole of court and tribunal' recovery, the Committee doubts that fees are currently over-recovering.**

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<sup>65</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p12.

## **CHAPTER 5**

### **COST RECOVERY IN OTHER JURISDICTIONS**

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#### **PROCESS**

5.1 The Committee resolved to contact other jurisdictions to ascertain how their Attorney General departments cost their court and tribunal fees. The following questions were asked:

- i) In this financial year, how much revenue will be raised from court fees?<sup>66</sup> What percentage of cost recovery is achieved overall?
- ii) Does your Department retain revenue from court fees or is it passed onto Treasury?
- iii) Do you allocate costs at an individual ‘fee for service’ level in each court and tribunal? If so, what percentage of cost recovery do you achieve with each fee?
- iv) Do you allocate costs at an individual court and tribunal level? If so, what percentage of cost recovery do you achieve with each court and tribunal?
- v) Do you allocate costs between civil and criminal jurisdictions within a court or tribunal? If so, what percentage of cost recovery do you achieve with each jurisdiction?
- vi) Does your Parliament scrutinise court and tribunal fees?
- vii) Can you provide a sample spreadsheet of costings showing the allocation of costs of either an individual ‘fee for service’ in a particular court or a whole of court cost?

#### **RESPONSES**

5.2 Seven of eight jurisdictions responded. These are tabulated below.

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<sup>66</sup> Other jurisdictions were told that in Western Australia, the Department of the Attorney General is budgeted to retain \$83.3 million in fees and charges in 2013-14 to offset the \$374.5 million cost for Court and Tribunal Services. This reflects an average level of 22.2% cost recovery across the Court and Tribunal Service.

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**1. Northern Territory**

- (i) Revenue raised from court fees is \$1.5M. Percentage of cost recovery is achieved is 5.4%.
- (ii) Fee revenue is not retained.
- (iii) Costs are not allocated at an individual ‘fee for service’ level.
- (iv) Costs are allocated at an individual court and tribunal level and in the higher courts it is 7.47% while in the lower, Magistrates Courts, it is 5.29%. No fees are set for tribunal services.
- (v) Costs are not allocated between civil and criminal jurisdictions.
- (vi) Parliamentary scrutiny of fees occurs except for admiralty fees.
- (vii) No sample spreadsheet of costings could be provided because costs are not allocated in that manner.

**2. Australian Capital Territory**

- (i) Revenue raised from the Supreme Court is \$2.883M to offset expenses of \$9.786M. Cost recovery appears to be 29.46%. In the Civil and Administrative Tribunal revenue is \$0.546M to offset costs of \$5.371M. Cost recovery appears to be 10.16%. However, the figures “*are not considered to be cost recovery*”.<sup>67</sup>
- (ii) Fee revenue is not retained by the courts. In the Civil and Administrative Tribunal, lodgement fees are deposited into a statutory trust account and used for the tribunal’s operations.
- (iii) Costs are not allocated at an individual ‘fee for service’ level.
- (iv) Costs are not allocated at an individual court and tribunal level.
- (v) Costs are not allocated between civil and criminal jurisdictions.
- (vi) Parliamentary scrutiny of fees occurs.
- (vii) No sample spreadsheet of costings could be provided.

**3. Tasmania**

- (i) Revenue raised from the Supreme Court is \$2.2M. Cost recovery is 25%.
- (ii) In the Magistrates Court, fee revenue is retained if a threshold of \$672,000 is reached. In the Supreme Court fee revenue is retained if \$669,000 is reached.
- (iii) Costs are not allocated at an individual ‘fee for service’ level.
- (iv) It is not stated whether costs are allocated at an individual court and tribunal level.
- (v) Costs are allocated between civil and criminal jurisdictions in the Magistrates Court.
- (vi) Parliamentary scrutiny of fees occurs.
- (vii) A sample spreadsheet of costings was unable to be provided.

<sup>67</sup> Letter from Hon Simon Corbell MLA, Attorney General for the Australian Capital Territory, 23 June 2014, p1.



**4. Queensland**

- (i) Revenue raised from courts is \$24.8M for courts and \$18.8M for its tribunal.
- (ii) The courts can retain \$24.8M to offset \$165.2M in costs (17.43% cost recovery). The tribunal can retain \$2.7M to offset \$18.8M in costs (14% cost recovery). \$234,000 in criminal fees are not retained.
- (iii) Costs are not allocated at an individual ‘fee for service’ level.
- (iv) Costs are allocated at an individual court and tribunal level.
- (v) Costs are not allocated between civil and criminal jurisdictions.
- (vi) Parliamentary scrutiny of fees occurs only through the Estimates Hearings process.
- (vii) A sample spreadsheet of costings was unable to be provided because not based on a ‘fee for service’ model.

**5. South Australia**

- (i) Revenue raised from courts is overall \$30.3M and 30.4% cost recovery. The percentage of civil only cost recovery is used in the ROGS process. For the Supreme Court it is 40.3%; the District Court 44.4% and the Magistrates Court 35%.
- (ii) Revenue of \$4.8M is retained by the Courts Administration Authority. Remaining revenue of \$25.5 is paid to Treasury.
- (iii) Costs are not allocated at an individual ‘fee for service’ level.
- (iv) Direct costs are allocated to an individual court level for management budgeting and control.
- (v) Costs are allocated between civil and criminal jurisdictions only in the annual agency budget statement and the ROGS.
- (vi) Parliamentary scrutiny of fees occurs.
- (vii) A sample spreadsheet of costings was unable to be provided because the Courts Administration Authority does not allocate on an individual ‘fee for service’ model in a particular court.

**6. NSW**

- (i) Civil cost recovery only in the Local Court is 30.9%. In the District Court 30.2% and Supreme Court 37.4%.
- (ii) Fee revenue is not retained.
- (iii) Costs are not allocated at an individual ‘fee for service’ level.
- (iv) Certain direct costs are passed on to applicants on a full cost recovery basis but indirect costs are less easily quantified.
- (v) Fees are not collected in the vast majority of criminal matters.
- (vi) Parliamentary scrutiny of fees occurs.
- (vii) A sample spreadsheet of costings was not provided.

## 7. Victoria

(i) The Committee was referred to a Regulatory Impact Statement (**RIS**) dated 5 June 2014 for the proposed Supreme Court (Fees) Regulations 2014. It states that the full annual cost of the Commercial Court is \$12.629 million (in 2013-14 dollars), which includes direct and indirect costs related to both judicial and administrative operations. Commercial Court fees “*currently raise a potential 23% of that Court’s costs*”.<sup>68</sup> The full annual cost of the Court of Appeal is \$6.539 million with about 9% of these costs currently recovered through fees. The RIS also refers to the level of cost recovery by New Zealand civil courts at “*around 17% to over 80% in the United Kingdom*”.<sup>69</sup>

(ii) Fee revenue is not retained. However, a small portion of the collected total is returned to the courts.

(iii) Costs are not allocated at an individual ‘fee for service’ level but some of the information provided in the RIS indicates a small number of fees are costed at an individual ‘fee for service’ level.

(iv) Information about whether costs are allocated at an individual court and tribunal level was not provided.

(v) Information about whether costs are allocated between civil and criminal jurisdictions was not provided. The RIS concerned only the civil jurisdiction.

(vi) Parliamentary scrutiny of fees occurs.

(vii) A sample spreadsheet of costings was not provided. However the RIS concerning nine individual Commercial Court fees showed cost recovery percentages between 6% and 136%. Similarly six individual court of appeal fees showed cost recovery percentages between 2.2% and 74.1%.

## CONCLUSIONS

5.3 There is no single method for costing court and tribunal fees amongst the other jurisdictions.

5.4 Methods varied such as the Northern Territory “*applying the median of fees that are charged on other jurisdictions and increasing them by CPI*”.<sup>70</sup> In contrast Western Australia appears more rigorous in that it could at least produce a costing spreadsheet. No other jurisdiction was able to provide a sample spreadsheet.

<sup>68</sup> Department of Justice Victoria, Courts and Tribunal Service, Regulatory Impact Statement, Supreme Court (Fees) Regulations, 5 June 2014, p20. <http://www.vcec.vic.gov.au/Regulation-Review/Search-for-a-RIS> accessed on 28 July 2014.

<sup>69</sup> Department of Justice Victoria, Courts and Tribunal Service, Regulatory Impact Statement, Supreme Court (Fees) Regulations, 5 June 2014, p19. <http://www.vcec.vic.gov.au/Regulation-Review/Search-for-a-RIS> accessed on 28 July 2014.

<sup>70</sup> Letter from Hon John Elferink MLA, Attorney General of the Northern Territory, 14 May 2014, p1.

- 5.5 The norm in Australia is that costs are allocated at a ‘whole of court or tribunal’ level, rather than an individual ‘fee for service’ level. However, Victoria and Western Australia are able to cost and set a very small number of individual fees for services.



## CHAPTER 6

### CONCLUSIONS FROM THE DEMONSTRATION OF THE COSTING MODEL

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#### INTRODUCTION

- 6.1 The Committee tasked itself with determining the extent to which individual DotAG fees can be said to be reasonable cost recovery in all the circumstances. Given the very small number of individual fees for service that have been costed in the District Court, the Committee is satisfied that the workings of the Costing Model reveal significant under-recovery is occurring in the District Court. The Committee does not know if those results can be extrapolated to other courts and the State Administrative Tribunal as it has not seen the data.

#### CONCLUSIONS ON COSTING AT A WHOLE OF COURT AND TRIBUNAL LEVEL

- 6.2 The Committee acknowledges that DotAG's preference for costing fees at a 'whole of court and tribunal level (the same as other States and Territories) results in significant levels of under-recovery. This has raised alarms bells for Treasury, concerned at the quantum of recovery rather than the method. However, the Committee agrees with Treasury that if levels of cost recovery significantly increased, this would have access and equity ramifications for users of the justice system.<sup>71</sup>
- 6.3 The Committee is of the view that the likelihood of a tax, rather than a fee being imposed in the annual fee review process is remote. Treasury agree that the chance is minimal "given we subsidise 80 per cent of the service".<sup>72</sup>

#### CONCLUSIONS ON DOTAG'S RELATIONSHIP WITH TREASURY

- 6.4 The Committee is puzzled by DotAG's historical reluctance to approach Treasury for assistance in developing a 'fee for service' costing model, preferring instead, to develop it in-house when clearly, DotAG lacked expertise.<sup>73</sup> This might be explained by Treasury revealing that agencies:

*stay away from Treasury; they do not like us looking at their cost structure or their operation. Historically, levels of cooperation*

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<sup>71</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p7.

<sup>72</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p13.

<sup>73</sup> Evidenced by auditors *Deloitte Touche Tohmatsu Report* in 2012.

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*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.*<sup>74</sup>

- 6.5 Further, the Committee is surprised that DotAG outsourced the auditing of its only attempt at developing a ‘fee for service’ costing model, the (abandoned) *District Court Fee Pilot Project* to auditors *Deloitte Touche Tohmatsu* in 2012 rather than Treasury.<sup>75</sup> Those auditors found that information underpinning the model was so insufficient, unreliable and unfit for purpose that they were unable to verify that the model was capable of costing individual fees and linking them to services performed by the District Court. However, the Committee is vexed by the fact that DotAG abandoned such a worthwhile project and did not seek Treasury assistance.
- 6.6 It is clear from the evidence that Treasury is willing to assist DOTAG to develop a ‘cost and demand’ model<sup>76</sup> and “*the offer is still open for us to help them develop it*”<sup>77</sup> but “*to date, they have not taken up our offer to do that further work*”.<sup>78</sup>
- 6.7 The Committee concurs with Treasury that if DotAG attempted to itemise exactly what everything costs, the exercise itself may be cost prohibitive.<sup>79</sup> However, the cost of investigating such an exercise should be explored with Treasury.

#### CONCLUSIONS ON COSTING AT AN INDIVIDUAL FEE FOR SERVICE LEVEL

- 6.8 The Committee gave serious consideration to the view that, given the complexity of the court system, it may no longer be worth pursuing DotAG for a more detailed

<sup>74</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p4.

<sup>75</sup> According to the *Deloitte Touche Tohmatsu report*, they were appointed on 29 March 2012 under the ‘common use arrangement contract 23706. Common use arrangements are whole-of-government standing offers, awarded to a single or panel of suppliers to provide goods or services commonly used by government agencies. Contract 23706 provides audit services.

<sup>76</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p7 described demand modelling this way using Department of Education as an example: “*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*”.

<sup>77</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p2.

<sup>78</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p4.

<sup>79</sup> The Auditor General’s Second Public Sector Performance Report 12 November 2010 also acknowledges the cost factor. At page 15, the Auditor General said: “*Developing and maintaining a detailed costing system can be a costly exercise. It is not surprising therefore to find that some agencies balance the administrative effort involved in producing and updating a detailed costing system against the level of revenue that is generated by the fees in question*”.

breakdown of costs. However, in the desire to take a pragmatic approach to this vexing issue, the Committee has borne in mind that pertinent question: *How can DotAG financially manage its own department if it cannot track its costs with certainty?* This led the Committee to consider inefficiencies in the costing of fees in order to keep court fees as trim as possible for the benefit of the public. The following exchange reveals the Committee's concern with inefficiency.

*Ms S.F. McGURK: ... 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.*

- 6.9 The Committee is encouraged by Treasury's view that it would want to be satisfied that:

*... there may be some functions or courts or part of courts in which it [a breakdown of costs] 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.*

- 6.10 As Treasury said:

*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.*

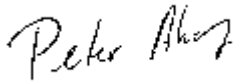
*The Attorney General on 1 April said his department officers, however, would continue to liaise with Treasury if any improvements*

*can be made to any existing costing models' robustness. We would certainly encourage them to work with us to improve that.*<sup>80</sup>

6.11 Given that it is not Treasury's role to mandate DotAG liaise with it, the Committee makes the following recommendation.

**Recommendation 3: The Committee recommends that the Department of the Attorney General request assistance from the Department of Treasury to begin the development of a 'fee for service' cost-demand model for court and tribunal fees.**

6.12 The Committee will revisit the outcomes of any liaison between Treasury and DotAG regarding the progress (if any) of the development of a 'fee for service' costing model for court and tribunal fees through its annual reporting process.



**Mr Peter Abetz MLA  
Chairman**

**18 September 2014**

<sup>80</sup> Mr Alistair Jones, Acting Executive Director, Strategic Policy and Evaluation, Department of Treasury, *Transcript of Evidence*, 18 June 2014, p10.



**APPENDIX 1**  
**TRANSCRIPT OF EVIDENCE WITH DEPARTMENT OF THE ATTORNEY**  
**GENERAL**



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**TRANSCRIPT OF EVIDENCE WITH DEPARTMENT OF THE ATTORNEY**  
**GENERAL**

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**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, 7 MAY 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 Ljiljana Ravlich**

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**Hearing commenced at 10.07 am**

**Mr MARK HAINSWORTH**

**Manager Advisory Services, Department of the Attorney General, sworn and examined:**

**Mrs SU OWEN**

**Executive Manager, District Court of WA, sworn and examined:**

**Ms JOANNE STAMPALIA**

**Director Strategic Business Development, Department of the Attorney General, sworn and examined:**

**The CHAIR:** Thank you very much for your presence. On behalf of the committee, I welcome you to the meeting. Before we begin, you need to take either the oath or the affirmation.

[Witnesses took the oath or affirmation.]

**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 the hearing for the record. Please be aware of the microphones. Try to talk into them and ensure that you do not cover them with papers or make too much noise near them.

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 contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

[10.10 am]

I will invite you to make an opening statement, but before you speak I will tell you what sparked this particular inquiry. In the past few months, nine explanatory memoranda were submitted to the committee about various court and tribunal fee instruments that increased fees by 13.6 per cent. Justification for the increase was a decline in the number of lodgements, particularly corporate lodgements, over the past three years. Leaving aside the issue as to whether or not there has actually been a decline in lodgements, increasing fees because of a decline in lodgements is, in the committee's view, neither an appropriate justification for increasing fees nor an appropriate costing methodology. Fees must be based on the actual cost of providing itemised services using a prescriptive costing method, which the Department of the

Attorney General lacks. Over the past 17 years, former delegated legislation committees have reported to Parliament their legal position with respect to imposing fees. Today, given the continuing impasse over the legal position, the committee expects to hear from the personnel responsible for calculating the proposed fees. At a later stage, the committee expects to be provided with detailed documentation on how the proposed fees were calculated. This information should be provided on an individual fee basis similar to, for example, how Western Australia Police itemises its fee increases. We refer you to report 68 on the committee's webpage for that purpose.

I now invite you to make an opening statement before giving us the detailed presentation you gave Treasury officers.

**Mr Hainsworth:** Thank you, Mr Chairman. The department welcomes the opportunity to present the model as we presented it to Department of Treasury officials. From our perspective the model is consistent with Treasury guidelines with respect to the costing of services. Secondly, we have had legal advice from the State Solicitor's Office that the approach to the modelling of costs and the setting of fees is legally valid. Thirdly, in response to the committee's recent correspondence with the Treasurer, Treasury officers have looked at our costing model and independently verified that it is fit for purpose and meets its guidelines. Su Owen, who will do the presentation to the committee, will point out that the data used in the model is from the department's accounting system, which is audited by the Office of the Auditor General. In the past two years, auditing of our accounts has shown that the department has best practice with respect to managing its accounts. Finally, the data used in the framework for developing our costings is the same data that is used in the "Report on Government Services" that is compiled by the Productivity Commission. We have made those points to the committee before, but we would like to reiterate them. On that point, I will hand over to Mrs Owen to present the model.

**Mrs Owen:** Good morning. My role here is to take you through the court and tribunal services fee review process and the model. To do that, I will introduce the structure of both the department and the court and tribunal services because that is important to understand from the viewpoint of the allocation of overheads. We will look at the principles that are currently built in to the fees and charges review. There is a slide on the fees as per legislation. I know that you are aware of those, but it is just for it to be presented as a complete picture. We will look at the cost recovery model, the process we go through and the final step in the process, which is the revenue forecasting. Following that, I have an Excel spreadsheet model to show you the details.

The Department of the Attorney General is made up of a number of divisions. They are colour-coded for ease of understanding. The green is fee generating jurisdictions and the blue, for us, is the costs that are allocated as overheads. I will talk about the court and tribunal services division of the Department of the Attorney General. The court and tribunal services structure is colour-coded the same way through. The green is the fee generating jurisdictions and the blue are those areas where we allocate the overheads as applicable. The model that I will be showing you today is the fee review for the District Court.

I refer to the principles that over time have been built into the fees and charges review. Cabinet approved key principles, including relative parity. Relative parity maintains the hierarchy of the courts. It means that the fees will be more in each hierarchy of the

courts. A fee in the District Court, which is the middle court, will be more expensive than the fee in the Magistrates Court and less expensive than a fee in the Supreme Court. That is what I mean when I say relative parity when we set the fees.

**Mr P. PAPALIA:** Do you try to maintain parity with interstate jurisdictions?

**Mrs Owen:** Reviews on interstate comparisons have been done. That is contained in the “Report on Governments Services” each year, maybe not so much necessarily on fees, but it is not part of this process.

In the early 2000s cabinet decided that corporate entities should be charged higher rates over the rates for individuals. The judiciary has great interest in ensuring that the fees that are set ensure the principle of access to justice. Our legislation does allow for some exemptions. One of those is that all costs associated—There are no fees for criminal proceedings. The Civil Judgments Enforcement Act proceedings are exempted because it has its own fee mechanisms in the act. The prohibited behaviour orders proceedings are also exempted. You will know from the legislation that it is particularly in the District Court that we have general division fees. They are all civil by the nature of the exemption of the criminal, and we also have transcript and video link fees. These can be charged at either a civil or criminal level.

The background of our cost recovery model is that we received advice from Treasury that it complies with government policy. That government policy is stated in the “Costing and Pricing, Government Services: Guidelines for use by agencies in the Western Australian Public Sector”. As well as the obvious direct costs that everybody can understand, the guidelines require corporate overheads and central budget items, such as security, to be included in the full costing. I will show you the model that does that. Our cost recovery calculations are based on the last full financial year data that is available at the time of the calculations. To meet the budget estimates process and the approvals process—and working backwards—we do the fees and charges review in October and November each year. For example, the 2014–15 review was started in October 2013 and the costs used were from 1 July 2012 to 30 June 2013. That is just to explain that a full year’s worth is used.

**Hon LJILJANNA RAVLICH:** Can you advise the committee when the costing model was first developed?

**Mrs Owen:** I cannot answer that question, because I started in the finance role only two and a half years ago. The model existed then. What I can say is that in that time we have looked at—I have learnt through my use and understanding of the model that improvements have been made, but there has been no change to the structure of the model since I have been there.

**Hon LJILJANNA RAVLICH:** Mr Chairman, through you, I am wondering whether either of the other two witnesses might be able to provide that information.

[10.20 am]

**Ms Stampalia:** I can. I arrived at court and tribunal services in around 2004. Predominantly, this model commenced in 2006. We had models previously to calculate the costing of fees, but in 2006 we started to pull together more detailed elements of modelling. As Su just mentioned, over time it has become a lot more robust and that is what we see today and that is what you will see Su present.

**Hon LJILJANNA RAVLICH:** How many times has the model been reviewed since 2006?

**Mrs Owen:** We undertake an annual fees and charges review. As part of the set up at the beginning of each year, we pick the model up and we look at what is influencing it. You could say that we review this model every year.

**Hon LJILJANNA RAVLICH:** You look at the fees and charges; do you look at the structure of the model, so to speak, as a part of that and make appropriate adjustments?

**Mrs Owen:** The structure of the model—no; assumptions built into the model—yes.

**Mr G.M. CASTRILLI:** What is the basis of your model? Do you look at the three different levels and at the statewide and regional components of the District Court and all the other levels? Do you base it on individual courts, such as Bunbury or Albany, or do you just lump them all together and base it on the overall total cost of a District Court. How far do you go to form the basis of your model?

**Mrs Owen:** The basis for the cost recovery component of the model works from the ground up.

**Mr G.M. CASTRILLI:** From each individual court?

**Mrs Owen:** Yes, but when we do the overall work, it is at a higher level.

**Mr G.M. CASTRILLI:** To give you a base costing model, each individual court would have to do its own costings.

**Mrs Owen:** That is how we collect the costs by individual courts.

**Mr G.M. CASTRILLI:** They would have overheads, wages and all of that sort of stuff. Is that what you are telling me?

**Mrs Owen:** No. We allocate overheads as part of the annual fee review model. The cost collection part of the business is done at a court level. Each court has its own performance centre.

**Mr G.M. CASTRILLI:** There has to be overheads and except for the notional allocations and maybe an allocation it has to be an actual cost derived at an individual court basis location, if you like.

**Mrs Owen:** Yes, they are.

**Mr G.M. CASTRILLI:** You would know the actual cost of each individual thing and you allocate a notional over the top.

**Mrs Owen:** Yes.

**Mr G.M. CASTRILLI:** Thank you.

**Mrs Owen:** Just on the last point, the costs and revenue represent the costs within DOTAG, not any external parties. In terms of the overall approach to our review, cost recovery has a number of steps. The costing part of it has four buckets that we look at. We have direct costs, which are costs directly allocated to the business areas, so down to court level in the Magistrates Court area performance centre. It is as per the department's general ledger. All our costs go to the audited financial system. Our direct costs come out of that. Then we have court and corporate overheads. Similarly for those areas of the business, they also have their own performance centres. Their

costs are collected in a bucket. After we collect their costs, we look at ways in which we can take those costs and allocate them to court and tribunal services, recognising that the corporate overheads are for the whole of the Department of the Attorney General. The courts have some areas, those blue areas on the second structure slide that I showed you. At the moment we apportion that by an FTE basis. We determine a total cost and we allocate it according to the number of FTEs in each of the fee jurisdiction business areas.

**Mr G.M. CASTRILLI:** Would the majority of your overheads be allocated or apportioned on an FTE basis? I suppose you would apportion rents per square metre and FTE allocations to each area.

**Mrs Owen:** Whenever possible and when we are able to specifically identify that, we do. Generally that is the direct costs. We do FTE for corporate and courts overheads because that appears the fairest. There is no way that you could collect all the information at an individual level. Moving to the other costs, the cost of security, for example, can be allocated directly to a court. Court counselling services are provided to courts and to the users of a court. The District Court building has a different type of structure so we allocate those costs there. Wherever we can, we will allocate it according to a percentage allocation, and that percentage allocation is worked out with some logic behind it; but, as with most percentage allocations, there are assumptions behind that and assumptions can be challenged, checked and reviewed.

**Mr P. PAPALIA:** Is the security to which you referred in excess or in addition to the security provided through the court securities and custodial services contract with the Department of Corrective Services?

**Mrs Owen:** Those costs are included in our finances as resources received free of charge, and they get allocated across.

**Mr P. PAPALIA:** Before you said that this costing model includes all the direct costs to the Department of the Attorney General. You calculate those costs, but you do not assume that they are free of charge.

**Mrs Owen:** That is how they are treated in the financial policy.

**Mr P. PAPALIA:** Do you charge for the provision of those services in your court costing model?

**Mrs Owen:** They are an overhead that is allocated.

**Mr P. PAPALIA:** So they are a part of the overheads.

**Mrs Owen:** Yes.

**Mr P. PAPALIA:** You take a component of court security and add it to the overall cost to the individuals that you charge in your costing model —

**Mrs Owen:** No, we add it to the total costs of the court.

**Mr P. PAPALIA:** But then you charge people based on that total cost.

**Mrs Owen:** That is the fee area. Charging people is in the raising of fees area. I am talking about the way that we collect our costs.

**Mr P. PAPALIA:** Yes, but that determines how you charge people, does it not? Your overall costs, as a component of that, dictates how much you will charge people.



**Mrs Owen:** It is included in our cost recovery rate, our percentage of cost recovery, yes.

**Mr P. PAPALIA:** The cost of court security contributes to the overall costs, a component of which goes towards developing a fee that you charge individuals for using the courts.

**Mrs Owen:** Yes.

**Mr P. PAPALIA:** Yet there are no costs associated with the provision of those security services in your actual operational costs.

**Mrs Owen:** Yes, we do. It gets debited into our account as resources received free of charge. It appears as a total cost to the running of the court and tribunal services system.

**Mr P. PAPALIA:** But it has zero bite.

**Mrs Owen:** Respectfully, millions of dollars comes into our account. We do not pay cash, but we still account for the expense.

**Mr P. PAPALIA:** I assume that the Department of Corrective Services gets no money from you for the provision of that service, which is effectively what you said.

**Mrs Owen:** I take this on advice, but the other side of the accounting equation is revenue received.

**Mr P. PAPALIA:** It costs the Department of Corrective Services X-million dollars for the provision of court security, but it gets no money from the Department of the Attorney General for the provision of that service.

**Mrs Owen:** Corporate finance would be able to explain the resources free of charge other side of the journal entry.

**Mr P. PAPALIA:** It is a cost to corrective services, you get the benefit of the service from corrective services, but it does not appear anywhere.

**Mrs Owen:** There is another side to a debit entry in bookkeeping. The debit entry is the expense entry. We get the expense. A credit entry is shown on someone's books to say that it received resources free of charge. I suspect that that is the directive of the Department of Corrective Services.

**Mr P. PAPALIA:** You have the ability to charge people, even if it is only a percentage of the actual cost, for the provision of that service. Corrective services does not have the ability to recoup any of its expenditure on the provision of court security.

**Mrs Owen:** Are you asking whether we have the provision to or do we?

**Mr P. PAPALIA:** I know you do. You said it is part of the component of how you develop your fees.

**Mrs Owen:** It is part of the costs around how we look at cost recovery and what we can charge for as legislated by the fee regulations.

[10.30 am]

**Mr P. PAPALIA:** I have an interest in this because I am the shadow for corrective services. The Department of Corrective Services pays for your service, which you

charge a fee for even if it is only a part of the fee, and it cannot get any money for the service that it is providing your department for free.

**Mrs Owen:** To my knowledge there is not a fee in the legislation that says that we can charge you this for security.

**Mr P. PAPALIA:** No, but it is part of your overall overheads and you use the overheads to develop your fee.

**Mrs Owen:** It is actually a requirement of the financial policy that is put out by Treasury that we include that as a cost of the provision of the service.

**Mr P. PAPALIA:** I will stop that line of questioning. It is of interest, but it is not really that big a deal.

**Mr Hainsworth:** The bottom line is that the provision of court security to the court is an overhead for the court. Under Treasury guidelines we are obligated to include it in our costs.

**Mr P. PAPALIA:** It does not really matter because somewhere government is recouping some sort of money.

**Ms S.F. McGURK:** I want to understand a bit better the other cost item you were talking about before your discussion on security. The slide refers to other costs—security, court counselling, the District Court building costs and percentage allocation costs determined by the business area. Can you elaborate on that?

**Mrs Owen:** These are costs that are incurred. I refer to the District Court, for example. Lots of our costs fall into the direct-cost bucket. Other people provide services that are about the service we provide. Court counselling will have a number of counsellors for family violence services, child witness services.

**Ms S.F. McGURK:** Sorry for interrupting, but I understand what the costs are. What I am asking is how you allocate them, because it just reads “as determined by the business area”. Is that how much the business area used of that particular cost?

**Mrs Owen:** Yes, it will have a way of looking at its business and the type of work it will do and it will have a percentage that says it will do X-amount percentage for the District Court and, therefore, the cost associated with that would be allocated to the District Court.

**Ms S.F. McGURK:** Are those percentages available?

**Mrs Owen:** The workings are available. I do not have the specifics because we do as we are directed in terms of that.

**Hon LJILJANNA RAVLICH:** I refer to the assumptions of the cost recovery model. We are not there yet, but five points are itemised. I refer to the testing of your assumptions. Assumptions can play a big part in the robustness of the model you apply in the agency. How often and by what means do you test your assumptions?

**Mrs Owen:** Yes. I will jump to the civil–criminal percentage allocation on the chart. Once we have all our costs, the one that I have not mentioned is the judicial pension cost that we need to bring to account. I can give more detail on that later. If I look at the civil–criminal percentage allocation, you can say percentage allocations are all assumptions. Each year the courts look at their workload. To determine the civil–

criminal split, they look at three or four groupings. Firstly is the judiciary—the judges; then judicial support; then we have the registrars and the public servants who are the registry staff. At the end of each financial year, we do what is called an apportionment model, where each of the court areas are required to have a look at that. We look at a judge’s roster for the judicial costs. A judge’s roster is exactly that. It says what work the judge has done. It includes not only sitting times, but also thinking time, the writing of judgements time and any other activity that the judge has been involved in. That can clearly be delineated in terms of whether it is a criminal case or a civil case. For the allocation of judicial costs, we use the judge’s roster that we get civil and criminal from. Then with the judicial support staff, we know that for each judge there are two support staff—an associate and an usher. We know what the judge has allocated their time to so we use that allocation for the judicial staff. For the registrar’s time, we know that registrars do predominantly civil work. The majority of their work is allocated to the civil proportion. There are some criminal matters—we have a commissioner—on which they sit, so we look at their workload and we allocate that, but the majority of it is civil. The registry staff take in things from the front desk, manage the evidence, collate the files and manage the case management. Over time, we have done some analysis on that and it is generally worked out that it is a 50–50 criminal–civil split. Each year that piece of work is done by each of the courts for that allocation.

**Hon LJILJANNA RAVLICH:** Given that the FTE cost is generally one of the biggest costs in government agencies, and given the determination and what makes up the split in terms of percentage allocation for the judge’s roster, the registrar et cetera, they are all assumptions; there is absolutely no science. There does not appear to be any hard science associated with one of the biggest cost components in the agency. Would you agree with that?

**Mrs Owen:** I would say that the work to do that to the level of the court work that we do, particularly in registry staff, given that the process of providing the services is often unique, it is an enormous expense of time and effort to do that in a great amount of detail. That work has not been done. There are some areas that can be contained where it is generally a standard way of doing it and it generally has the same standard costs associated with it. But that is more the exception than the rule.

**Hon LJILJANNA RAVLICH:** Do you agree that one of the biggest components of your costs is the time put in by senior members, whether it is judges or registrars, et cetera? They are based on assumptions rather than detailed analysis.

**Ms Stampalia:** As Su described earlier, though, a judge’s roster is looked at, as an example. We know that judges sit in crime and civil cases. We are able to tell how much time in terms of workload is spent in those jurisdictions. Su walked through that in terms of each jurisdiction each year looking at the amount of time a judicial officer has spent in either civil or criminal. Sometimes judges sit in only civil. The information is there for us to check.

**Mr P. PAPALIA:** On that matter, the thing that drew our attention to your costing methodology is the recent fees increase and the justification for that being a reduction in corporate lodgements. Is that what happened? Did you determine that there was a reduction in the number of court lodgements and, therefore, you increased the fees as a

consequence and that is why you are putting the fees up 13.6 per cent—or is there some other reason?

**Mrs Owen:** The process we go through is to look at our revenue forecasts. The last step in our process of our fees and charges review is to look at revenue for next year. There is a slide on that. I explained the process that we go through. A strategy paper is then developed and goes to the court and tribunal executive to decide how we will manage future revenue coming forward. The lower demand was definitely of concern. Also of concern was the need to, where possible, ensure that we have the revenue we need to undertake our business. Because our business has fixed costs as a large component, there is a need to maintain that base. One of the ways in which we can do that is to recommend an increase to the fees.

[10.40 am]

**Mr P. PAPALIA:** Is that not a tax as opposed to a fee?

**Mrs Owen:** I think you would have to ask a solicitor for that advice. The advice that we have received is that according to our fees they are valid within our legislation.

**Mr Hainsworth:** It would become a tax if we were cost recovering over 100 per cent. We are not cost recovering 100 per cent.

**Mr P. PAPALIA:** Let us say that hypothetically a year or two years ago there were more corporate lodgements and you could charge less per person per lodgement for the fee and still get the same amount of money. Now there are fewer corporate lodgements. Your response is to increase the cost per lodgement to recoup the same amount of money. Is that not increasing your cost recovery per person per activity without any real justification?

**Mrs Owen:** All of that movement did not take cost recovery up over 30—The total cost recovery of court and tribunal services is around 30 per cent. Despite the movement, at no level has it been that we have over-recovered the costs according to the legal advice we have received.

**Mr Hainsworth:** The point I make is that over the last six or seven years that I have been with the department, cost recovery, with the exception of some fees, has been about 20 to 30 per cent across that jurisdiction.

**Mr P. PAPALIA:** So as long as you stay under 100 per cent, it is not a tax.

**Mrs Owen:** That is our advice.

The last one of our costs is the judicial pension. It is an interesting cost. It differs every year. It can go from the nothing to an enormous amount of money. To enable us to bring to account an amount that is consistent over time, we have adopted the “Report on Government Services”, the ROGS, which is a national report released by the Productivity Commission. The commission’s accounting rules are sent to each of the states as how to collect the costs for that. Its accounting rule says that each year you will bring to account 40 per cent of the value of a judge’s salary as judicial pension. We have adopted that rule. It is a national rule and it is what we need to put into the “Report on Government Services” and that is how we allocate the judicial pension.

I explained the civil criminal percentage allocation and how we get to that. That then gives us criminal court costs and civil court costs, which takes us to our total court

costs. From a revenue perspective it is a little different inasmuch our general fees are all civil. Within the accounting financial system, the general ledger, we have a general ledger account regulatory and fees and fines area of the chart of accounts and the civil fees all go to one type account number, which is 1311. All the general schedule civil fees come into that account number. We do get criminal revenue from transcripts and audio, which is why we have those two other general ledger accounts, but the accounting financial system pulls all the civil fees into one bucket.

The final step in our revenue model future year forecast it is at the exact same time—October, November. We have got only July to September of that year’s actuals to use as basis for our scenario planning for the next year or 18 months going forward. Each court area looks at their first three months’ worth of work and does an assessment or a forecast for the rest of the financial year. That gives us the current revenue we can expect for the current year we are in. We then look at the forecast for the next financial year. We are given Treasury economic forecasts, which gives us a suggested CPI. We then look at the factors that are influencing our business and the sorts of areas that we go to for help. We go to the Australian Bureau of Statistics “WA population growth” to see how that could impact on the number of court services that could be coming through. We look at the impact of policy changes that have come through—whether new courts are opening or whether there is a change to policing strategies and other policy areas. We then look at how that will impact the court area and then we look at our finalisations and lodgements and make the best sense we are able to of those. We take all those and then put forward a proposed future year revenue increase. That is the forecasting approach we go through.

**Mr G.M. CASTRILLI:** What other sorts of costs are you looking at?

**Mrs Owen:** Most of our costs are allocated by FTE. It is only those components of costs that are big enough and easily enough to recognise that are unique to a particular court that are put into that percentage allocation field. The security contract is one of them. The businesses account for their own rent in direct costs.

We will look to the Excel model that has the specific lists. This framework has been helpful for me as a teaching tool when I have spoken to people who have not worked within the model before. The big conceptual model that we work with is to start with inputs. We agree to the assumptions, we do the calculations and we finish with outputs. For our cost recovery model, our inputs are the Office of the Auditor General audited costs from the department’s finance system. This is “let’s go and find as many buckets of audited costs that we can and bring them in to the base of our system.” There are corporate costs, which is the Department of the Attorney General structure; the courts’ non-fee-generating costs, that is the second structure. We look at the individual court costs so we get costs for the District Court, the Family Court, the Supreme Court and the State Administrative Tribunal and the fee schedule as at the time of the review. We look at the fees that are currently within the legislation and whether any more will be legislated by the time we need to consider them. We get the salary table as per the award. For the areas that we do an individual fee costing for, we go to the salary as per the award for that year. The other cost is the judicial pension and security because they are large components of costs. We know how many judges are allocated to each court and we know where the security is given. Then we go to the FTE numbers as per the budget statement. That becomes the core data that is built in

and dropped in to our Excel model to work with. Our assumptions are our corporate allocations. Our corporate allocations are worked out by—It is a huge piece of work done by our corporate finance area. It is used to allocate the costs so that we can report on our key performance indicators. Whilst at a court and tribunal services level we deal with actual costs coming to us, from a key performance indicator perspective, which is effectiveness and is our time to trial indicator, and the efficiency indicator is the cost per case indicator. We need to include overheads when we look at those KPIs. That is how the corporate allocation is done. We use the percentages that are used when reporting back against our KPIs.

[10.50 am]

**The CHAIR:** What do you mean by key performance indicators? Do you mean the work that you expected?

**Mr Hainsworth:** Key performance indicators are the key performance indicators that are contained in our budget statements, for example, cost per finalisation in the Coroner's Court.

**Hon LJILJANNA RAVLICH:** I do not know whether there have been improvements, but it takes about three years for a case to get to trial in the Coroner's Court. You are actually lagging. I do not have that information in front of me, but over the past few years the time to trial has extended further and further. There was some improvement in the District Court.

**Mrs Owen:** Yes. The point to make here is that the same base data is used for all our review processes. When we are preparing our key performance indicators for the budget statements, we use corporate cost allocation percentages. When we are doing the cost recovery model for court and tribunal services, we use the same indicators. We use the same dollar costs because it is coming out of the audited financial systems. It is not about having a lot of different data sets that we pull for each purpose; it is about going back to the same data set and using that for each review.

**Mr P. PAPALIA:** Going to back to why we started the inquiry—this is revisiting a little bit what we have talked about already—the process of identifying the fact that there have been fewer corporate lodgements and a decision to charge more per corporate lodgement effectively to achieve the same revenue; is that a valid practice? Is it used more widely in government as a process—that is, if the workload goes down, you put up the prices? Is that what government does?

**Mrs Owen:** I am sorry, I cannot answer that question.

**Mr Hainsworth:** We would not like to comment on that as a practice of this government.

**Mr P. PAPALIA:** What piqued the interest of the committee and drew us to initiate an inquiry was the apparent increase in fees, which appeared to be excessive, and the justification for doing it, which was that because you were doing fewer tasks and you had to charge more per task.

**Hon LJILJANNA RAVLICH:** Maybe I could put that question this way: did Treasury ask the agency to deal with the issue of a reduction of lodgements by making sure revenues were retained from different sources?

**Ms Stampalia:** I am not aware of it asking us to do that.

**Hon LJILJANNA RAVLICH:** So you never got an instruction from Treasury to increase the fees to make up for the reduction of revenue from decreased lodgements?

**Mrs Owen:** No. The information for our fees and charges review is informed by Treasury in its costing and pricing policy. It provides a process by which we need to do the review and what costs need to be included and it provides us with economic information that needs to be taken into account. Treasury could answer what it expects of the department, but it is my understanding that it is up to the department to put forward a proposal for fee reviews, which then goes through an approval process, of which Treasury is a part.

**Mr G.M. CASTRILLI:** I am pretty versed with your cost recovery model framework—it is quite straightforward. What assurance can you give me that there is sustainability in how this is done and on what work is done and how efficient the work is done in the courts and all that sort of stuff? Has anybody done that? Is the efficiency of the courts reviewed on a regular basis to get the costs as trim as possible? There are certain courts that you do charge, as you said before. How can I be absolutely sure that the workings and the costs incurred on the non-fee-assessable courts are not cross-subsidised by the fee-assessable courts? I am trying to get somebody to clarify for me that somebody does an analysis and that fees paid by people are fees for fee assessable actions. Courts that do not charge or do not incur, obviously CRF and all that sort of stuff takes care of that. I want to be absolutely clear that people who are not supposed to be charged for services, whether it is for security, judicial pensions et cetera are not charged and that the fees charged are properly incurred by that particular jurisdiction. How can you convince me that that is happening? How can you convince me that the work performed by the courts is assessed every year, every two years or every five years to determine the level of work performed and so that Mackenzie does not come in to do work assessment to say that we only need 10 FTEs when we have 15 or we need 15 and we only have 10. How do you then determine the sustainability, effectiveness and efficiency of the court system?

**Ms Stampalia:** I can talk a little bit about the efficiency of the court system by referencing that back to a major information technology development we have had underway for a while around building case management systems for the courts. We had a number of legacy systems for more than 20 years. We knew we had to replace them because the technology was old. Government funded us to do a large part of that. As part of that project, we do business process improvement reviews. We look at a business process and look at opportunities for streamlining. We are always looking at ways to do things better. IT actually enables us to make efficiencies in that regard. That is one element. The other element is the directors of the respective business areas. Each court jurisdiction has a director who looks after it. The executive managers that report to them are always looking at opportunities to make sure that we are doing things in the best possible way. In recent times with some of the budget settings we have had to be very, very clear around the need to do that. That does happen.

**Mr G.M. CASTRILLI:** I am sure it does. I just need a demonstration to say that that is happening and that the figures being evaluated are right. At the moment, yes, it is happening, but without any justification. I am not looking for chapter and verse. I just

want an assurance that people are getting charged for precisely what they are paying for.

**The CHAIR:** I saw it there somewhere that it is \$1.50 per page for a court transcript, for example. Is that over cost recovery in terms of the actual cost of that? I may go to court for one of my constituents who has done the wrong thing and ask for a transcript—which is X-number of pages—and somebody presses a button and it spits out. I am charged \$1.50 per page and the transcript is several hundred pages. The actual cost of providing that service to me as a client to the department is, I would suggest, over cost recovery. If I had not asked for that, the marginal cost of producing the document is more likely to be 10c a page rather than \$1.50 a page. Do you understand what I am trying to say?

[11.00 am]

**Mrs Owen:** Just for the record, the \$1.50 is per photocopy, as opposed to a transcript. A transcript is different; it has a different costing structure around it. The price per photocopy is interesting, because where does it stop? Is it the piece of paper that you get as the end product or is it the work that it actually takes to get access to people who can give you the information that is documented and written on a piece of paper? They are the assumptions that you make. The start and end points determine how the cost is actually calculated. We could say that somebody comes into the desk in the registry and they want a photocopy of a file that was dealt with by the court or a writ on a file that was dealt with by the court three years ago. That is going to take the time of the registry staff to take all the details and go and find the file. They are not thin files, generally; court matters generally come in fairly thick boxes. Depending on how old or the length of time from when that file had been closed, it could well be in storage. That would require us to issue an order to the transport company to go and get that and to bring it back. It would then mean that we would have to go through that file. We would have to find the information that they wanted. We would have to contact them to say, “We’ve got it here for you”. They would come in and we would say, “Here you are. Here’s your file. The photocopier is over there”. It is provided on a certain square metreage of land. It takes toner. It takes paper. I understand the point you are trying to make and I hope that in the way I have explained it, the time that it would take to actually do that amount of costing for all the possibilities of photocopy requests that come into court is almost cost prohibitive.

**Mr Hainsworth:** I think the point that Su is also making is that it is not just simply a point of putting a sheet of paper on a photocopier and photocopying it at marginal cost. There are other costs associated with it.

**Mr G.M. CASTRILLI:** I am assuming then, through you, Mr Chair, that the way the court works and the data collection and the data storage—it still does not happen like that, does it? Are you telling me that the Old Bailey still ties strings around everything and puts it away but they do not put it on a database so you can go and look it up on a database?

**Mrs Owen:** We actually have a database. The investment in dollars in improving our systems is leading to more efficient ways of doing our business. We are getting there, but all of that takes money. The thing about court matters is that there are lots of people who have lots of interests and they are not all technologically enabled. Even if



we do offer e-lodgement as a service, which is a way that we can build efficiencies, it is up to the end court users to choose to use it that way. Until we get to that point where they are all making that choice, we have to provide them with a place where they can come in and make their photocopy and give them access to their information.

**The CHAIR:** In terms of the policy, for want of a better way of working out the costings, the impression I have got from this presentation is that basically you look at the whole court operating costs and to divide it up into all the little boxes is simply not a practical thing in a court type of setting. Is that what you are saying to us?

**Mrs Owen:** We can do it at a court level through the allocation of overheads and by the split of criminal and civil.

**The CHAIR:** But not into the photocopying and all these little things? That is too difficult to break that down. Is that what you saying?

**Mr Hainsworth:** It is, and the point we would make is that even if we were to attempt to do that, the level of assumption that we would make to bring it down further and further, by the time we have gone through three or four levels of assumption to get to your photocopying price, the inaccuracy of that would mean that we still could not tell you whether it was over cost recovery or not. It simply just picks up the assumption and the inaccuracy contained in it.

**Hon LJILJANNA RAVLICH:** Did the agency have a value-for-money audit in the last few years?

**Ms Stampalia:** The Auditor General has done —

**Hon LJILJANNA RAVLICH:** No, a value-for-money audit, which I think was done by PricewaterhouseCoopers.

**Ms Stampalia:** I am not aware of a value-for-money audit. Sometimes they might have a particular title of audit but I am not aware of a value-for-money audit.

**Hon LJILJANNA RAVLICH:** There was a series of value-for-money audits done across peak government agencies—health, education and many others had them. You do not seem to be sure or unsure.

**Ms Stampalia:** I cannot recall that we had one.

**Hon LJILJANNA RAVLICH:** I am wondering whether you might take that on notice and provide the information. If you have had that value for money audit, let the committee know and provide the report to the committee.

*[Supplementary Information No 1.]*

**Mr G.M. CASTRILLI:** I just want to clarify way back when you were talking about the cost structures. You are telling me that each individual court, like a regional court—like a Bunbury, or each individual court—you can determine on the exact costs what they are, right; so, for instance, the wages of people, security allocated to it, stationery costs, telephones going into the court, all that sort of stuff, right—the actual real costs. Then you allocate from a corporate level, if you like, costs to each, depending on the service or whatever. Therefore, at each individual level you can determine what is the cost of photocopying, what is the cost of paper, what is the cost of electricity, what is the cost of wages—you know, all that sort of stuff—at that particular court.

**Mrs Owen:** The cost of the photocopier, not the photocopying.

**Mr Hainsworth:** But that is in the FTE.

**Mr G.M. CASTRILLI:** Okay. So the cost of photocopier, plus the raw material of paper and toners and everything.

**Mrs Owen:** Yes, we collect those as materials purchased.

**Mr G.M. CASTRILLI:** Right; then the actual cost of photocopying—does that not get allocated on the staff? If the documents are held at the regional level, surely the staff time is already costed at the regional level, so there will not be any more costs at the regional level? If the documents are held at a corporate level, then there is a different allocation, is there not?

**Mrs Owen:** It is as well as where the documents are held, there is also the steps in the process that you need to take to get the information, and that is very different for each customer. So, as I say, the types of costs that we collect in our direct costs are the materials purchased; our FTE labour hours; our superannuation expense; our interest charged, if that is appropriate; our rent.

**Mr G.M. CASTRILLI:** So there is a real solid cost.

**Mrs Owen:** It is the tangible dollars.

**Mr G.M. CASTRILLI:** At each individual level and at each individual location.

**Mrs Owen:** Yes.

**Mr G.M. CASTRILLI:** Plus a bit coming out. Okay; thank you.

**Mrs Owen:** Yes.

**The CHAIR:** Where each employee actually spends their time to actually allocate that time to individual activities is exceedingly difficult to do in the court system, other than it is in that court and that is about as far as you can go?

**Mrs Owen:** Yes

**The CHAIR:** Fair enough.

**Mr Hainsworth:** Other than a broad split between criminal and civil, but to break it down into the individual components would be incredibly difficult.

**Mr G.M. CASTRILLI:** Thanks.

**Mr P. PAPALIA:** In the budget papers will there be a breakdown of those individual components of your court costings for 12 months—the financial year? Does it get down to other costs including —

**Mr Hainsworth:** No, what you get in the budget papers is a sort of a line cost for court and tribunal services, so we have got our output areas. What we do have is our efficiency indicators, which are things like cost finalisation.

**Mr P. PAPALIA:** And you have cost recovery in the budget, do you not, you recoup all the revenue that you generate?

**Mr Hainsworth:** It does have, though, revenue that we generate, contained, obviously, within our budget papers.

**Mrs Owen:** It is very broad

**Ms Stampalia:** I think when Su gets to the Excel spreadsheet, though, for the District Court, you will see what you are asking.

**Mr P. PAPALIA:** We have got to get to that.

**The CHAIR:** We had better get to that, had we not?

**Mrs Owen:** So from the model, we have got to start with the assumptions. We have done those. Then we will do the calculation. Now the calculations are just by Excel formula. That gives the result of the total District Court costs. We finish with our outputs, our summary of court cost recovery—and there are some individual fees that we do do some overarching analysis with. So that is our outputs; I will get to the model now.

[11.10 am]

So this is actually the spreadsheet model that we use. What I will do is take you to our direct costs. So the first bucket that we have on your slide, on your handout—shows my age—District Court —

**Ms S.F. McGURK:** No, I think we have only got —

**Mrs Owen:** I meant in terms of the overall model of cost allocation. On page 9, just the top cost bucket, this “direct costs”. You will see here, these are the account codes as per our general ledger account, which is the financial system for the department. This is the description. This is the total actual expenditure for the financial year. So we have salaries, super, clothing, medical, travel and accommodation, training, computer services, legal costs, professional procurement services, audiovisual books, magazines, subscriptions—all of the costs that are associated come in by invoice. We have suppliers that provide them and they are collected according to the department’s chart of accounts.

**Mr P. PAPALIA:** So is there a court security line?

**Hon MARK LEWIS:** Yes, there was. I saw that.

**Mr P. PAPALIA:** No, there was security bins.

**Hon MARK LEWIS:** That was security, was it?

**Mrs Owen:** Because this is the District Court, District Court security services are provided by, as part of the District Court building contract, and so District Court operates as a court and then it has its own performance centre for the District Court building, and that is where the services that are contracted are collected, and that is different to this one. That is what we do by allocation, and I do have that here. So, not in the District Court performance centre do we collect those.

So that is the direct costs. Then if we are looking at the court overheads—for the District Court there are a number of roles, or positions, in the court that are not directly related to the provision of finding a service; so the administrative roles in the court. So the leadership roles of chief judge, principal registrar, executive manager—generally the management coordination roles—are brought in as an overhead if we are looking at doing some individual fee costing; so we need to know which of those roles need to be allocated.

**Hon MARK LEWIS:** Just one thing, the overheads are all 40 per cent, are they? Are they all 40 per cent?

**Mrs Owen:** The judicial pension is 40 per cent.

These are the sheriff and bailiff costs. This is the CSCS contract, which is court security and custodial services. It is an allocation of the costs as we collect it with ROGS—with the “Report on Government Services”. So, once again, within that “Report on Government Services” that the Productivity Commission publishes, they have accounting rules for the provision of security services to courts across the nation. So the way that we allocate security costs within our cost-recovery model is that we go back to our ROGS information that we provided to the productivity report, and we say, “Great; that is what we have given to them”, and we pull it in here and we allocate it across the courts, because we also in our “Report on Government Services” collect that by court in that report as well. So that is where the security costs are allocated. Then we have District Court building overheads. Again, there are a number of services that are covered under the District Court building contract. It includes cleaning, the provision of transcription services, security services and AV services—they are all under the District Court building. This is unique. This is not in any of the other courts. This is specific to the financing decision that was made by the government around how we were going to do the District Court. So this is the allocation of those costs.

**Mr G.M. CASTRILLI:** What about allocations like depreciation?

**Mrs Owen:** Depreciation is actually dealt with corporately. It is not dealt with at a court-based level. Each year we get a journal —

**Mr G.M. CASTRILLI:** In things like the District Court—in areas where fees are chargeable, do you then allocate a percentage of depreciation to those particular centres?

**Mrs Owen:** Our depreciation comes in through a different performance centre, where it comes into the District Court, but not into this performance centre, and it is allocated by corporate costs through here. So perhaps if we can hold that and I will have a look when we get into the corporate allocation of the costs.

**Mr G.M. CASTRILLI:** Perhaps we should go through it line item by line item!

**Mrs Owen:** Yes, and it will jump out at me!

**Mr G.M. CASTRILLI:** That is all right!

**Mrs Owen:** Then there are the court overheads. These are our corporate overheads. So in our group here, these are all of the corporate groups that provide at some time services to the department. Here, this is the total actual expenditure for the year, and this is the percentage that is allocated to the courts. That is done from a piece of work that was done for the KPIs. If I come out to my core data—the inputs that I have put in—here is our corporate overheads. You will see the same sort of numbers and the same sort of descriptions. Here are the actual costs for that description for that year—that is a direct report out of our financial system—and here is our percentage allocations. So down here we have got all of the department’s corporate groups, and all across here is the areas of the department that those corporate groups provide work to. So the work makes sure that 100 per cent of the cost of these corporate groups is allocated across the department; and courts is here. So this is where you can see—if I

go up the top here—that for the ministerial liaison unit, which is PC1001, court and tribunal services gets 85.6 per cent allocation of their costs, and that is probably because of the number of ministerials—they have used the number of ministerials as a basis to do their assessment. So each of those groups would look and see what their workload is and they would advise corporate finance. That is how that group is created. If I can come back to here, which is the cost of District Court and the overheads, where I started, you will see here that for the ministerial liaison unit, that is their total yearly expense. We have allocated 85.6 per cent of that. That attributes to \$145 000, so courts need to cover that amount. There is an annual allocation. You can see from just a formulaic equation—this is not hard numbered; this is the formula that Excel does, so this is the calculation component. What that will say is “Go and look at the corporate overheads tab”, and B11—I will not keep on with this; I just want to give you one example—says “Go and look up that number”, and then “Go and find 1001 in this sheet”, and bring that into the year’s cost for that area.

**Hon LJILJANNA RAVLICH:** In terms of your assumptions, it would appear from this document here that every financial year you review your assumptions and they may change from one year to the next.

**Mrs Owen:** Yes, we do.

**Hon LJILJANNA RAVLICH:** I am just wondering: how does it make it comparable then to compare the analysis, if you like, of the financials from one year to the next given that every year you change your assumptions or you change the assumptions underlying the model?

[11.20 am]

**Mrs Owen:** If it does not change very much, it means that variation reporting is small. If it does result in a significant reallocation of workload type between civil and criminal, it means that when we are reporting variation to target over time, we bring to account the reason for that variation.

**Mr Hainsworth:** I think if you actually look in our budget statement from about two years ago, we did a large amount of work on defining what was the difference between criminal and civil, and that was actually reflected in our key performance indicators in our budget statements, and we did get a large variation, and that was because we actually effectively changed our modelling around civil–criminal. We have done it in an open and transparent way.

**Ms Stampalia:** I think the “Report on Government Services” highlights that as well between the civil and criminal sphere.

**Mrs Owen:** The other thing about preparing the work for the “Report on Government Services” is that through the national court bodies—they are always looking at how each of the states actually provides the data and looking at the individual counting rules for each specific category of costs, and they are looking to see whether there is any standardisation that can occur out of that. So, as part of our annual fee review, because we also provide the report on government services data, we are saying, “Is there more of that data that we can actually use as the valid way in which we allocate our costs here?” And because we have done some significant improvements in the way that we provide the ROGS data in the last couple of years, we have been able to build that into this model as well.

**Hon LJILJANNA RAVLICH:** Surely at a federal level when the Attorneys General get together, they would want to compare systems across the nation and the cost of delivering services. Are they working towards some national model which would provide better comparative data, if you like? That must be an objective.

**Mr Hainsworth:** That is, in effect, the “Report on Government Services”, the ROGS. So, that actually allows a jurisdictional comparison of the efficiency of each of the courts of each of the jurisdictions both on a gross expenditure and a net expenditure basis. If you read the fine print, though, of ROGS, what it does say is that you cannot necessarily compare jurisdiction with jurisdiction because the quality of the data between jurisdictions is not necessarily the same. I think Western Australia would actually argue in for our court system, given that we have been best practice with our accounting through the Office of the Auditor General, that our provision of data to ROGS would be one of the better jurisdictions.

**Mr G.M. CASTRILLI:** Thanks very much for the overview. It has really sort of cleared a few things in my mind. Obviously, you re-look at all the assumptions every year and you look at every cost centre. Generally speaking, on population, the activity should not vary from location to location, but if it does, it then gives you the scope to amend, I suppose, or to reflect, if you look at each individual cost centre, that change. So, yes, thanks for that.

**The CHAIR:** Anything further you wanted to show us?

**Mrs Owen:** There is more to show, but I have spoken to most of it, so if you would prefer to just —

**The CHAIR:** We will move on.

**Mrs Owen:** Continue or finish, sorry?

**The CHAIR:** Do you want to wrap it up in the next five minutes?

**Mr Hainsworth:** I think we will just call a close to our demonstration. I think what Ms Owen has presented shows that we do have a robust framework. That robust framework, I would say, stems from our chart of accounts. It also stems from the framework of ROGS. In terms of breaking down our costs, yes, we do rely on assumptions, but we test those on an annual basis. In terms of one of the major components of our cost, which is, basically, judicial time, we do look at their worksheets, so we do have a good indication of whether we are, basically, splitting our criminal versus civil. So, it is not an arbitrary figure. We go away and look at the best available data we have got to make that. In terms of the sort of public servants that are operating within our court system, we have done a little bit of work around that. It works out on a 50–50 basis. The point is, though, as I say, it is a robust model. It is quite complex and quite sophisticated in what it actually does and I think, from our perspective, basically it should give you a degree of comfort that we are basically doing the right thing, and I think that is why you will find that Treasury officers basically came to the conclusion that it was not only consistent with their guidelines, but was basically fit for purpose. The point I would also make—and I would agree with I guess the summation made by the chair—is that for us to try to get it down to a lower level is just not feasible or possible.

**Mr G.M. CASTRILLI:** It is feasible or possible, but the cost of it is extraordinary.

**Mr Hainsworth:** I would argue perhaps not feasible and not possible because the level of assumption that basically you start to apply as you get lower down renders the answer that you get as something having a wide, if you like, variation. So, it would be a cost plus or minus 200 or 300 per cent, which would not give you the level of comfort that we were not over cost recovery.

**The CHAIR:** Thank you very much for your contribution and presentations and answers today. I have not got the formal document in front of me, but you will be forwarded a copy of the Hansard transcript and you will be invited to make any corrections to that. If you do not return it within seven days of receiving it, then it is assumed that you are happy with what is in there. So, once you do get it, if you can make sure you return it with any corrections, that would be very much appreciated. Thank you for your time.

**Hearing concluded at 11.26 am**





**APPENDIX 2**

**TRANSCRIPT OF EVIDENCE WITH DEPARTMENT OF TREASURY**



**APPENDIX 2**  
**TRANSCRIPT OF EVIDENCE WITH DEPARTMENT OF TREASURY**

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**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**

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**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**

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**APPENDIX 3**  
**EXTRACT OF PREMIER'S CIRCULAR 2014/01**



### APPENDIX 3

#### EXTRACT OF PREMIER'S CIRCULAR 2014/01

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The Extract below of *Premier's Circular 2014/01* shows the manner in which the Committee expects fee information to be presented for scrutiny.

Type of fee charged / fee cap imposed	Date last amended (Increase or Decrease)	Old fee / fee cap (\$)	New fee / fee cap (\$)	Increase / Decrease (%)	Increase / decrease (\$)	% of cost recovery achieved	Cross subsidisation (Yes / No)
Grant or renewal of fishing boat licence for							
• A boat less than 6.5 metres long	10.09.11 (decrease)	550.00	85.00	-84.55	465	25	No
• A boat 6.5 metres or longer	10.09.11 (Increase)	550.00	600.00	9.09	50	100	No