Division 27: Attorney General (Including Native Title policy), $373 040 000 —

Mr M.W. Sutherland, Chairman.

Mr C.C. Porter, Attorney General.

Ms C.M. Gwilliam, Director General.

Mr A. Andersson, Director, Business and Financial Services.

Mr W. Hewitt, Executive Director, Corporate Services.

Mr P.D. Evans, State Solicitor.

Ms P.M. Bagdonavicius, Public Advocate.

Mr B. Roche, Public Trustee.

Mr R. Warnes, Executive Director, Court and Tribunal Services.

Mr G. Turnbull, Director, Legal Aid Western Australia.

Ms L. Baker, Manager Finance, Legal Aid Western Australia.

Mr P. Phillips, Principal Adviser, Office of the Attorney General.

Mr P.F. Conran, Director General, Department of the Premier and Cabinet.

Mr J. Catlin, Executive Director, Native Title Unit.

The CHAIRMAN: This estimates committee will be reported by Hansard staff. The daily proof *Hansard* will be published at 9.00 am tomorrow.

It is the intention of the Chair to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point. The estimates committee's consideration of the estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. Questions must be clearly related to a page number, item program or amount in the current division. It will greatly assist Hansard if members can give these details in preface to their question.

The minister may agree to provide supplementary information to the committee, rather than asking that the question be put on notice for the next sitting week. I ask the minister to clearly indicate what supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the minister's cooperation in ensuring that it is delivered to the committee clerk by Friday, 8 June 2012. I caution members that if a minister asks that a matter be put on notice, it is up to the member to lodge the question on notice with the Clerk's office.

I now ask the minister to introduce his advisers to the committee.

[Witnesses introduced.]

The CHAIRMAN: Member for Mindarie.

Mr J.R. QUIGLEY: I do not have a question but perhaps just an observation. The name tags in front of the Attorney General and the adviser are appropriately placed! I take it that the Attorney General really is the director general's adviser and that she runs the show!

The CHAIRMAN: Point taken; thank you, member.

Mr C.C. PORTER: On occasion it feels like that, member!

To commence proceedings Mr Catlin and Mr Conran are obviously with the Department of the Premier and Cabinet. The Department of the Premier and Cabinet has line item budget responsibility for the Office of Native Title, but I have ministerial responsibility. It may be that some members opposite have some questions that can be loosely tied to budget items. If there is no objection, could we deal with the Office of Native Title first so we can relieve Mr Conran and Mr Catlin?

Dr A.D. BUTI: I refer to "Relationship to government goals" under "Outcomes, Services and Key Performance Information" on page 330 of budget paper No 2. It is quite difficult, because as the Attorney General said, there is the responsibility of the Department of the Premier and Cabinet for native title. How does the policy area of native title and the expenditure on native title relate to overall government goals and the relationship with the agency delivery?

Mr C.C. PORTER: There will be a very similar set of government goals and desired outcomes inside DPC, but I have direct ministerial line responsibility for the Office of Native Title as Attorney General and although there

is not a separate ministerial title for native title, I will attend all of the federal–state meetings about native title. How does it relate to government policy goals?

Dr A.D. BUTI: If I could maybe draw in now. What expenditure in regards to legal advice or legal services is quarantined or focused into native title? Basically, how much of the Attorney General's portfolio, as far as time and money is concerned, is spent on native title matters?

Mr C.C. PORTER: There are three layers to the answer of my question. Inside my office, physically between Treasury and the Department of the Attorney General, we might find a rough fifty–fifty split of time devoted by my ministerial staff. Native title takes up a considerable amount of time inside the Attorney General's portfolio. I would not be able to give an estimate, but it would seem to me very broadly that about one-tenth of the thought, effort and dedication of that side of my office that deals with DOTAG is involved in native title matters from time to time. The State Solicitor's Office has a strong role in native title. It has approximately 10 full-time equivalents devoted to native title matters. I might even get Mr Conran or Mr Catlin to just describe the general FTE status of the Office of Native Title and how many people it has.

Mr J. Catlin: Within the Department of the Premier and Cabinet there are 30 FTEs. I should add that we work on a daily basis with the State Solicitor's Office, so the FTEs within the State Solicitor's land claims unit are dedicated full-time to working with us and vice versa. I am not totally clear on the member's question, but in terms of broader government policy, we are taking a whole-of-government approach, so a new interagency reference group on native title and heritage was established last year. The native title unit in DPC works with about 17 other agencies on those issues.

Dr A.D. BUTI: The Attorney General mentioned that his own perception is that a lot of his office's time is spent on native title. Does the Attorney General think there is any reason why this is or are there any particular concerns he has or does he think there are ways we could try to streamline or improve the process?

Mr C.C. PORTER: From our perspective the processes are relatively good. My own view is that it is a fairly cumbersome and complicated act, and perhaps to an extent necessarily so, but my office has been heavily involved in settling the negotiating parameters for the Single Noongar claim. We probably went through four or five drafts of those parameters over the course of 18 months prior to them being presented as a starting point for the negotiations that we announced earlier this year. That took up a lot of man-hours in my office. I could possibly put to the member that my chief of staff, Mr Creedon, is best equipped and most knowledgeable in the areas of native title, so he becomes the first port of call in my office. There is that side of it where, from time to time, issues need to be resolved. Larger matters such as the negotiating parameters need to be devised and settled. We also travel, unfortunately very irregularly now, to native title ministers' meetings. It is interesting to note, and I wrote recently to the commonwealth Attorney-General, that native title ministers meetings of all state native title ministers and the commonwealth minister in charge were instigated by the commonwealth in about 2005, and between 2005 and 2009 there were, I think, four meetings, so they were a very regular events. In 2009 a meeting was held in Adelaide at which the then commonwealth Attorney-General, Robert McClelland, announced the cessation of the 75 per cent compensation agreement with the commonwealth. At that stage it was put on the basis that it was a temporary ceasing of that agreement whilst the global financial crisis effects were at their most acute. We have not had a meeting since 2009. I recently wrote to the commonwealth Attorney-General suggesting that there probably has never been a greater need to have regular meetings because of a range of acute issues going on. We simply have not met since 2009, so that has not been taking up too much time for my office, unfortunately.

Dr A.D. BUTI: The Attorney General mentioned the Single Noongar claim. I am not sure how it is going to develop, but prima facie think I am on the record as saying that I am very supportive of what the government has put on the table, and I hope my party is. Where are we with that at the moment?

[9.10 am]

Mr C.C. PORTER: I think it is a fair summary to say that we are physically about halfway through the expected time for the negotiations. I will hand to Mr Catlin in a moment, because I have not been personally involved in the negotiations, although I have been receiving briefings on them.

As the member will recall, the figure of around $1 billion has been used as a possible compensatory figure, which would be divided between cash payments and, in effect, land transfers. One of the points that I have raised on a number of occasions, which I think is useful to air here in response to the member's question, is that we expect commonwealth contributions to the final settlement amounts. If we talk nominally about a figure of $1 billion split between land transfers and cash payments over a period of 10 years, we would expect around a 75 per cent contribution from the commonwealth. The commonwealth government is a legal respondent to the underlying claimants that are now represented as the Single Noongar claim in the negotiations. Again, we

have written on a number of occasions to the commonwealth government asking it to take a seat at the negotiating table. That matter simply has not been resolved. I think Mr Catlin will confirm that the commonwealth has not responded to the effect that it will sit in on the negotiations—it is not sitting in on the negotiations. I must say, that is a matter of some concern. When the commonwealth is a legal respondent to the underlying claims, it is quite appropriate that it sits in on the negotiations that are seeking to resolve the underlying claims. Some question marks are hanging over the commonwealth government's head about the strength of its potential end-point commitment.

Another conversation I have had with members of the commonwealth government has been about the fact that although the nominal amount of $1 billion is a large amount of money, the cash payments are spread over a 10-year period. If, for argument's sake, we talked about half that amount in cash and bonus—that may be diverted from the result—being paid over 10 years at $50 000 a year with a 75 per cent commonwealth contribution that is a relative speck of dust in a commonwealth budget. I cannot understand the commonwealth's reticence. It is a great loss that it is not sitting at the negotiating table. Mr Catlin may be able to offer the member some sense about how the negotiations are progressing.

Mr J. Catlin: I am in the middle of a two-day meeting with the Nyoongah negotiating group; today is the second day. It has spent the last three months working within the Nyoongah community, following the Kings Park event in February. The state has spent that time doing a lot of drafting. The two-day event is working through the first draft text of an agreement that deals with things such as joint management on national parks, the development of a trust fund and so on. It deals with all the layers in that agreement. From the last discussion we had about when we might get to an end on this, I think we would probably want to go back to cabinet before October with a proposition for a final proposal. All going well, we would hope that the Nyoongah people would look at authorisation meetings in February next year. If everything lines up properly, we will end up with the agreement kicking in in the next financial year.

Dr A.D. BUTI: There has been some disquiet in the overall Nyoongah community and of course we are never going to get complete agreement. Has some of that been smoothed over? Where are we sitting with the various groups in the Nyoongah community?

Mr C.C. PORTER: I will again hand to Mr Catlin. I think the short answer to the member's question is no. The view put by those publicly against the basis and the parameters upon which we are negotiating is still firmly held by them, but I think it might be fair to say that has not infected the level of goodwill that exists among the overwhelming majority of Nyoongah claimants at the negotiating table.

Mr J. Catlin: That is correct. Yesterday some people were removed from the Swan Valley campsite. My view on it is that there will be a group that will not fall in with this; I think everybody expects that now. I cannot guess how disruptive that will be to finalising the agreement.

The CHAIRMAN: Member for Swan Hills, do you have a question on native title?

Mr F.A. ALBAN: It has just been answered.

The CHAIRMAN: I think we are trying to home in on native title now. Are there any other questions on native title? Mr Conran is entitled to be here for only native title. If members are happy, we will excuse Mr Conran and Mr Catlin. We have finished with native title.

Mr F.A. ALBAN: I refer to the third dot point under "Significant Issues Impacting the Agency" on page 331. My question is about the process for people smugglers. Is Western Australia consulted first on decisions or are we just told what to do? How do we fare in the equitable distribution of these people? How are we going with additional resources to address the financial impact on this state?

Mr C.C. PORTER: Perhaps if I work backwards and start with the financial impact. This was probably the central point of contention at what used to be called the Standing Committee of Attorneys-General. The overall budget for the District Court criminal costs in this state is about $32 million a year. We have recently been able to determine that of that $32 million budget, nearly $5 million is dedicated to people smuggling trials. That figure is now being replicated in many of the other states. That is quite an extraordinary figure. In fact, it is $4.822 million of the total budget of the District and Magistrates Courts. It is not necessarily that the number of people smuggling trials represents a large number of the overall trials, but they are complicated trials in excess of nine days in duration, they require interpreters and they cost more a day than any other trial. About half a million dollars is spent on interpreters a year. This is out of the budget of $32-odd million for the District Court criminal costs. It is now taking up a large chunk of the District Court's budget. This point was raised at the recent Standing Committee of Attorneys-General. That situation is being played out in just about every state now. That leads to the second part of the member's question about whether we are told or consulted.

We reached an arrangement with the commonwealth when we realised about two years ago that we were receiving about 95 per cent of all people smugglers and conducting about 95 per cent of all the trials. We had fruitful conversations with the then minister, Brendan O'Connor. We wanted the people smugglers spread around the country. That has now happened. The percentage of people smugglers serving sentences in Western Australia is 51 per cent. The number in remand is about 11 per cent. The total percentage of people-smuggling prisoners in WA is about 35.4 per cent. We now have about 11.9 per cent of all the trials. We had over 90 per cent of all the trials. New South Wales now has 23 per cent of the trials; Victoria, 35 per cent; Queensland, 24 per cent; South Australia, 4.5 per cent; Tasmania, 1.7 per cent; the ACT, 1.1 per cent; and the Northern Territory, 2.3 per cent. Of course, each percentage is a slice of the overall pie and the pie is growing very considerably. All district courts across Australia are now finding that a huge amount of their work is being taken up by people smuggling trials.

We also reached an arrangement with the commonwealth to take a certain number of prisoners in remand each month. Of course, remand prisoners lead to trials. That agreement has been adhered to by the commonwealth government. We get transparent figures in arrears and prospectively every month of the people-smuggling prisoners who will be delivered to WA and come into our system. The rest are being spread out across Australia. The overarching point for a Western Australian Attorney General, as for any other state's, is that people smuggling trials are now the big growth industry for trials in district courts. They are costing an enormous amount of money. Although we are being informed about who will be coming into the system, there is no specific additional compensation to the state courts for running what are, for all intents and purposes and legally, commonwealth trials.

[9.20 am]

Mr J.R. QUIGLEY: I refer to the accounts set out on page 329. I have a question about the efficiency dividend to be achieved in 2012–13. I will pass a copy of this question to the Attorney General, because it is in eight parts. In relation to the two per cent efficiency dividend, one, what existing programs and services will be cut; two, what programs and services will be delayed or wound back, and by how long; three, will there be any cuts to staff numbers, and, if so, in which areas; four, will there be delays in filling the number of full-time equivalents; five, will there be an FTE vacancy rate that is maintained on an ongoing basis; six, what new revenue measures have been introduced; seven, which existing fees and charges have been increased; and, eight, what capital works will be delayed?

The CHAIRMAN: Perhaps when the Attorney General answers those questions he can read the question again and then give the answer to that question.

Mr C.C. PORTER: I will commence by describing generally how the two per cent, and then the one per cent, one per cent and one per cent, efficiency dividend will impact on the budget for the Department of the Attorney General. The member will see at page 330 the efficiency dividend line item, and it reads $4.586 million, $6.950 million, $9.575 million and $12.267 million—those figures are obviously cumulative amounts—and I will describe the way in which that will impact on the decision making of the department, which will be undertaken by the director general and myself. The savings that will be harvested from that efficiency dividend for all agencies, including DOTAG, but except education, will operate such that in 2012–13, a target amount of savings will be set for the agency. That target amount is two per cent of the agency's cash appropriation for services in 2012–13. That does not include cash appropriations delivered as part of the 2012–13 budget. So the $4.586 million figure on page 330 is a target figure of savings that DOTAG will be expected to achieve in 2012–13. That represents two per cent of the 2012–13 budget, excluding additional moneys that came into DOTAG in the 2012–13 budget round—so it is taken off the 2011–12 base.

The amount that will be set as a target in 2013–14 is a further one per cent of the agency's cash appropriation for services; and in 2014–15 and 2015–16, it will again be one per cent of the agency's cash appropriation. What that means ultimately is that, although those figures are cumulative, between now and 1 July 2012, the director general and I will be making determinations on ways to find savings in the 2012–13 budget of $4.586 million. We will repeat that process in the early part of next year for 2013–14, and in that year the one per cent savings that we will be required to find will be in the vicinity of $2.364 million; in 2014–15 we will repeat that process, and the savings that we will be required to find will be in the vicinity of $2.625 million; and in 2015–16, the savings that we will be required to find will be in the vicinity of $2.692 million. So it will be a yearly process of discussion, consultation and decision as between advice coming from the director general to myself. It should also be noted that the calculated targets for those efficiency dividends exclude any budget increments that may be awarded to DOTAG in the course of future budgets; they will remain constant.

I will deal globally with the first three questions that the shadow Attorney General has asked; namely: what existing programs and services will be cut; what programs and services will be delayed or wound back, and by how long; and will there be any cuts to staff numbers, and, if so, in which areas? The answer to those questions

is that final decisions as to the precise areas and nature of the savings have not yet been made. We have started discussing those matters, obviously, just as we did three years ago when I first took on the portfolio with respect to the three per cent efficiency dividend. Those discussions relate to the director general bringing up a wide variety of options to me as the minister, considering those, talking about options that we would be disinclined to adopt, talking about options that we might be inclined to adopt, and talking about options that need further research and work. But, at the moment, that process is not complete, so I do not have an answer yet, but will do closer to the start of the financial year, with respect to questions one, two and three.

The member asked also about what existing programs and services will be cut, what programs and services will be delayed, and what cuts will be made to staff numbers. There will not be any cuts to staff numbers. We have our FTE ceiling, which the director general will find for me in a moment. We have operated somewhat beneath that FTE ceiling for some time. Question four was: will there be delays in filling vacant FTEs? I would suggest that vacancy management would very likely be part of any efficiency dividend savings that we engage in. We engaged in vacancy management fairly effectively in the three per cent efficiency dividend to find savings there. Question five was: will there be an FTE vacancy rate that is maintained on an ongoing basis? If by that the member means will there still be a gulf between our actual FTEs and our FTE cap, I would suggest so—there always is. That is simply because DOTAG has an FTE cap of 1 962. We are operating with about 1 850 people now. Just the churn of people coming and going from the public service means that we have consistently been operating beneath that FTE cap.

Question seven was: which existing fees and charges have been increased? Some fees and charges have been increased as part of this budget, all of those based on the consumer price index. If the question the member is asking is, "Will we be increasing existing fees and charges to meet the efficiency dividend?", the answer is that in 2012–13, there will not be any increases in fees and charges that are already set in the 2012–13 budget papers to achieve the efficiency dividend.

Question eight was: what capital works will be delayed? Shadow Attorney General, these are recurrent expenditure savings, so we cannot save the money from delaying capital works.

Mrs L.M. HARVEY: I refer to page 331, "Significant Issues Affecting the Agency", and the sixth dot point, which makes reference to the Family Court of Western Australia. Some of my constituents have been waiting for over a year to have their Family Court matters heard. What funding is there in the budget to try to address the wait times for Family Court cases?

[9.30 am]

Mr C.C. PORTER: This is an important question, and it may also be a question that opposition members want to touch on at some point. The Family Court of Western Australia is a peculiar court in the sense that Western Australia is the only state that maintains its constitutional role in de facto matters; that is, people who are not formally married under the commonwealth Marriage Act.

However, that fact notwithstanding, the Family Court of Western Australia is overwhelmingly funded by the commonwealth. Depending on what is measured as the funding that comes into the court, the lowest measure of that in terms of the state's contribution is about 1.6 per cent of the total funding. There might be slightly larger measures than that if part of the funding considered is the revenue generated from fees because half of that revenue is state revenue because it is generated from persons who are seeking the court's assistance in a de facto resolution. Overwhelmingly, the Family Court of WA is funded by the commonwealth. Three budgets ago, in 2007–08, $15 million was set aside in the commonwealth budget for de facto court matters across Australia but Western Australia got none of that money. We would argue that the base level of funding for WA has traditionally been less than our 10.4 per cent population share of the overall pie of commonwealth money that goes to the court. That is not shockingly less, but it is notably less. That fact notwithstanding, the Family Court of WA, which has this blended jurisdiction and funding sources, has worked very well, traditionally. If members spoke with the Family Law Practitioners' Association of WA, I think it might echo the view that the Family Court of WA was one of the most effective and efficient courts in Australia until about two or so years ago. The problem that has arisen is that three of the five family court judges have become seriously ill and several months have been lost due to their illness. I will give members a rough description of what that is. Judge Martin has lost 30 weeks and then six weeks and has been unable to fulfil her duties in the court due to quite serious and genuine illness for a period of nine months; Judge Crooks was ill for 10.25 months and Judge Moncrieff for half a month. In a court of five judges, dating back to 2011, we have lost about 20 months' worth of judicial work, and that has had a big impact on the court. What we did as a state government is respond by appointing and paying for replacement judges for the Family Court: acting Judge Jordan, acting Judge Warnick and acting Judge Boland. We funded 100 per cent of those. Of the lost 20 months, about 12 months were made up at a cost of about $600 000. Of course, the constitutional status of a judge's employment is that if a judge becomes ill, conceivably

they could be ill and physically unable to turn up to work for an indefinite time until their retirement at age 70 and they would still be paid a wage, as is constitutionally appropriate and proper. That means that the impost on the taxpayer is that the judge receives the ongoing appointment and wage and either the state or commonwealth government has to appoint and pay for an additional judge. Our position as a state government has been that these five judges are commonwealth judges, for all intents and purposes. If a state Supreme Court judge became ill, within reason and with regard to the backlog or otherwise of the court's matters, we would pay for and fund a replacement acting judge for an appropriate period. If the commonwealth found that a High Court judge became ill, no doubt they would also engage in that quite proper mechanism of appointing and paying for an acting judge or a Federal Court judge. Until the recent commonwealth 2012–13 budget, notwithstanding a variety of requests by letter and in person from me and the government of Western Australia, the commonwealth simply refused to backfill its ill judges. That meant that the backlog in terms of a measure of time to trial has increased.

As I noted to the member, we made up 12 months of lost time by appointing and paying for acting judges. In this state budget we allocated just over $1.2 million to the de facto jurisdiction, which is constitutionally our jurisdiction. We are trying to reduce the time to trial for those matters down from 95 to 87 weeks in 2013–14. That money goes to an additional magistrate and support staff to help de facto couples. Thankfully, the commonwealth government—we are pleased it has done this—has allocated $1.042 million, which was money brought forward into the 2011–12 spend, as a number of moneys were brought forward, which is of some relevance to commonwealth commentators but none to us. That will pay for an acting judge in the Family Court for six months and the continuation of the existing temporary magistrate. That $1.042 million will buy six months of an acting judge and the continuation for one year of a temporary magistrate, which the federal government previously funded. That is helpful and the combination of the ongoing funding of a magistrate in the de facto jurisdiction, the six-month backfilling of a judge by the commonwealth and the ongoing temporary magistrate will eat into the backlog. However, the underlying problem remains that if three out of five judges are sick, we would want the commonwealth to act immediately to replace and pay for the replacement judges, and the federal government simply did not do that. I think that was quite simply wrong. That has meant that the time to trial was 87 weeks in 2009–10, 99 weeks in 2010–11 and 102.5 in the year to date to March 2012. We are estimating that number should come down with these additional resources back to about the 2009–10 level of 87 weeks. It is a far from desirous situation and it is something of a standoff. The consumers of the Family Court's services in Western Australia are left the worse off. However, there comes a limit to the state's willingness and ability to for pay for what are, in effect, commonwealth judges. The commonwealth has not offered a rational explanation for why it did not swiftly replace and pay for replacement judges. I have my own suspicions why that might be, but no rational explanation has been given.

The CHAIRMAN: Why do we not hand back the Family Court to the commonwealth if we are the only state that has a hand in it?

Mr C.C. PORTER: Whilst questions from the Chair are an unusual procedural course, it is a valid question and is one that I raised with members of the Law Society recently. The time to have a debate about that question has come. I will offer one view about that. Prior to these judges becoming ill, on most KPIs the Family Court of WA was a very efficient and highly regarded court. I think that was the prevailing view. That was notwithstanding that the commonwealth's application of funding was less than our population share of the pie. If the final jurisdiction of de facto couples were referred to the commonwealth, the state would step back completely from the Family Court. None of the revenue would nominally be ours and we would never put money into the Family Court of Western Australia to try to help a backlog if one arose. I asked this question, which is the question that I would pose to family law practitioners and the legal profession as a whole once we have the debate about the referral of the de facto jurisdiction: if the state withdrew completely from the jurisdiction, which means that we would never fund anything for the jurisdiction, is the jurisdiction likely to get a better or rawer deal in its overall funding? That question needs to be asked in the context of this debate. What I think the commonwealth is doing is trying to smoke us out on this question by not precipitously replacing and funding its judges. What the commonwealth is saying is, "Trust us; if you hand over the de facto jurisdiction entirely, your court will be better funded than ever before." The mechanism the commonwealth government is using to bring us to the negotiating table is to not replace the commonwealth's own judges and allow a backlog develop. I think it is unwise to go to the negotiation table about that in a time of duress. That is a question I have raised with the Law Society and I am very happy to have that debate over the next 12 months. I would say that the illness of three judges is an unusual circumstance. Had the commonwealth government replaced those three judges, we would not have this problem. If we had no jurisdictional input into the court, no money would flow and we would not have a say in the court's operations in any meaningful sense. If that situation existed two years ago, would the commonwealth have been any swifter to replace its judges? I have my doubts.

[9.40 am]

Mrs L.M. HARVEY: The Attorney General mentioned that we received some additional funding, which is actual funding for the 2012–13 financial year, so it has been brought forward. Is that going to leave us short-funded in 2012–13 by the amount that has been brought forward?

Mr C.C. PORTER: My understanding is that the commonwealth money of just over $1 million will appear to be expended for commonwealth budgetary purposes in 2011–12, but will be physically applied in 2012–13. It is one of a number of bring-forwards, if you like, that enlarged the 2011–12 commonwealth deficit but the token amount of $1 million made a surplus in 2012–13 easier to achieve. The money is therefore flowing, and I think the judge is already operating.

Mr J.R. QUIGLEY: I have a supplementary to the Chair's question, which is an unusual procedure.

The CHAIRMAN: I am entitled to ask the question.

Mr J.R. QUIGLEY: I will respond to ask the supplementary question for you, Mr Chairman.

The CHAIRMAN: Thank you very much.

Mr J.R. QUIGLEY: I was practising in Western Australia under the matrimonial causes act at the time of the proclamation of the Family Court Act of Australia. As I recall, it was on ideological grounds that Western Australia did not go into the national scheme and decided to keep the court within the jurisdiction of Western Australia. It is a bit much now, is it not, to blame the commonwealth for not funding replacement judges? That is a risk we took on when we decided to keep the jurisdiction here, is it not?

Mr C.C. PORTER: I put to the member that it is a risk that exists whether the jurisdiction is kept or referred. The question I ask is: had the referral been given over three or four years ago, would the commonwealth have been any more likely to replace those three ill judges?

Mr J.R. QUIGLEY: We just do not know, do we?

Mr C.C. PORTER: We do not. But I do have at least a little experience in watching the commonwealth's attitude to the outlying federal dominion of Western Australia, and we are not a priority. In the way Legal Aid, the Aboriginal Legal Service and the Family Court of Western Australia are funded, we receive less than our population share of the overall commonwealth funding for all three of those agencies. That is notwithstanding that in Western Australia the imposts on the Family Court, Legal Aid and the ALS are higher on a per capita ratio than they are in other jurisdictions. I do not hold that previously held view that it is a matter of high principle in not referring the jurisdiction.

Mr J.R. QUIGLEY: That is what it was initially.

Mr C.C. PORTER: I think so, yes.

Mr J.R. QUIGLEY: There was a whole argument about no-fault divorce and Lionel Murphy ending marriage.

The CHAIRMAN: Attorney General, can you wrap this up now?

Mr C.C. PORTER: Indeed. I think it is a debate we should have, but it has become an intensely more practical debate. The question is: if the state withdraws completely from the jurisdiction and state money never goes into it, will consumers of family law court products be better off or worse off? I think the answer could easily be put that they would not be better off.

Mr J.R. QUIGLEY: At the moment with the blowout in time that responsibility rests with the Attorney General.

Mr C.C. PORTER: It does not because 98.4 per cent of the funding for the court is commonwealth funding. These five judges are no more and no less commonwealth judges than are Federal Court of Australia judges.

The CHAIRMAN: We will go to the member for Armadale.

Mr J.R. QUIGLEY: They are very good questions, though, Mr Chair.

The CHAIRMAN: Yes; very interesting.

Dr A.D. BUTI: Before I ask my question, Mr Chair, I cannot pass up this opportunity to note that as the Attorney General is a declared very strong state rights advocate, Sir Ronald Wilson will be turning over in his grave now to think that the Attorney General might be contemplating returning the Family Court of Western Australia to the federal jurisdiction.

Mr C.C. PORTER: I am against it, but I think it is appropriate that the profession has the debate.

Dr A.D. BUTI: I refer to the first dot point under "Significant Issues Impacting the Agency" on page 331, which outlines a number of pieces of legislation that the department has been involved in developing. Obviously that

legislation will have a cost implication for the budget. I would therefore be concerned if the department was drafting legislation that may not come before Parliament, as we have a history in that respect with the prostitution laws, although we may get to fully debate them. Also will the Attorney General give a guarantee that the foetal homicide legislation will come before Parliament before the next state election?

Mr C.C. PORTER: I think the point the member raises is a fair one, and I take the point to be that the policy and legal resources of the Department of the Attorney General, the State Solicitor's Office and Parliamentary Counsel's Office are necessarily limited, as are the policy resources in my own office, and that they should be properly devoted to legislative projects that can be accomplished from start to finish in this term of government. I think that is a fair point. I do not think it is an absolute point of principle. There will be matters that start the process of long-term reform. An example I would raise with the member is both legislative and administrative reform in the area of victims. That is something that we have been working on for three years now, but it is unlikely that we will be able to have that manifest in legislation prior to the end of this term of government. But of course that work exists and will exist for any future government of any political stripe. I therefore take the point.

The member raised the question of foetal homicide. We have made some public statements about that. I have just signed off on the legislation—I am informed!—so that will come before cabinet shortly. The structure of the legislation is not without its complications, because it relies on circumstances of aggravation for existing offences. I am therefore not presuming that it will not be a matter of some debate in the house. However, the legislation will go before cabinet shortly, it will be introduced into Parliament and I do not think it will be controversial in the nature that prostitution legislation was in the amount of parliamentary time it will take up. I therefore have some confidence that we can have it in Parliament and passed in this term of government.

Mr A.J. WADDELL: I refer to the sixth line item, "Legal Aid Assistance", on page 331 of budget paper No 2. I note that in 2010–11 the actual spend in Legal Aid was $29.63 million, and for 2011–12 the estimated actual is $35.218 million. The budget for 2012–13 is $35.334 million, which represents a mere $100 000 more than the 2011–12 estimation. Given the size of the leap between the 2010–11 and 2011–12 budgets of $6 million, how are we to anticipate that the existing level of service will be maintained in Legal Aid with such a small increase? Is that explained in the "Outcomes and Key Effectiveness Indicators" on page 332, which shows a drop in the anticipated number of eligible people who receive grants of legal aid? I am referring to the line item at the bottom of page 332, which shows a drop in the 2011–12 budget from 75 per cent to an estimated actual budget of 74 per cent. Are we presuming, therefore, that the availability of legal aid will drop as a result of this budget?

Mr C.C. PORTER: I am not sure I perfectly understand the question, and I will hand over to Mr Turnbull in a moment. The member has noted that the 2011–12 estimated actual is $35.218 million compared with the budget in 2011–12, which is $32.812 million. The member is therefore pointing out the differential between the estimated and the actual for 2011–12.

Mr A.J. WADDELL: Primarily I am pointing out an increase of $6 million between the actual for 2010–11 and the actual for 2011–12; yet the actual for 2011–12 is virtually the same as the budget for 2012–13. I am therefore presuming that there will be virtually no budget growth, yet there was clearly a massive increase in previous years. How are we going to manage that, given that my work on the Joint Standing Committee on Delegated Legislation shows me that considerable cost increases will come through the legal departments operated by the government? Can we presume that there will be a reduction in the overall availability of legal aid?

[9.50 am]

Mr C.C. PORTER: I will hand over to Mr Turnbull in a moment, but I think the answer is that the difference between all those figures is not a shortfall. The government has decided to spend more money in these areas. The difference between the 2011–12 budget and the 2011–12 estimated actual is mainly made up of the legal aid expensive cases funding of $1 million, provision for salary and non-salary cost increases of $1 million and not-for-profit sustainability funding of $0.4 million. It does not represent a shortfall in the budget, although to the extent it may have, it is a shortfall that has been filled by government expenditure. I do not think that detracts from the member's overall question which is that the demands on legal aid funding are increasing. Of course, we are reading there the state component of the overall budget for Legal Aid Western Australia. I am very pleased to go now to Mr Turnbull who might offer some description about the overall demand for services, and where Legal Aid fits in terms of its share of the commonwealth funding pie. If Mr Turnbull wants to correct me on what I noted about the budget, he may.

Mr G. Turnbull: I have no desire to correct the Attorney. We believe that whilst, obviously, it is always a tight situation with legal aid, we will be able to maintain at least our current level of servicing. As the Attorney said, the explanation for the apparent lack of difference is the expensive cases fund. That is something like $2 million, I think, in total. The position, of course, last year was that we received a substantial boost from the state in the

order of eight per cent. That was a very welcome increase. It meant we could engage something like 10 additional duty lawyers. That also partly explains, I think, that whilst we would obviously appreciate some additional assistance from government, we feel we are travelling reasonably well at the moment in all the circumstances. I think that is probably all I wanted to say.

Mr C.C. PORTER: Does the director want to make a comment on Legal Aid Western Australia's share of commonwealth funding?

Mr G. Turnbull: Yes, indeed. As the Attorney pointed out, we are below the national average. In fact, we are the second lowest funded on a per capita basis of commonwealth funding of any state or territory. The total contribution from the commonwealth of government funding is in the order of 35 per cent. The state's contribution is 65 per cent. It is almost double. That position has not been improving over the years; in fact, it has been getting worse. In addition to that, there has been a noticeable lessening of commonwealth-funded services, which has indirectly impacted on the demands on Legal Aid. I am talking specifically about the withdrawal of services from the commonwealth-funded Aboriginal Legal Service whereby it no longer services a number of courts in the metropolitan area and in the regions. That has also added to the burden on state-funded services. Although we operate under a national partnership agreement and the funds are fixed, the reality is that our position is deteriorating and has been for a number of years now insofar as the commonwealth funding side of things is concerned.

Mr C.C. PORTER: I might just add to what Mr Turnbull talked about there in terms of the split between commonwealth and state funding of 65 per cent state and 35 per cent commonwealth. It was not that long ago that the figures were reversed and Legal Aid was funded to the tune of 65 per cent by the commonwealth and 35 per cent by the state. As Mr Turnbull noted—it is a point of contention every time we travel to any of the relevant ministerial meetings—we receive significantly less than our per capita population share of the pie. I suggest the need for legal aid in a place like Western Australia is not dissimilar to the elevated need for legal aid in places such as the Northern Territory. Again, I think the brute reality of this is, with 15 federal seats out of a very large federal Parliament, there is not a huge political incentive to apply appropriate levels of funding from the commonwealth. This has occurred over many years from both sides of politics, federally, to service delivery in Western Australia. A similar question arises as it does with respect to the Family Court, although not necessarily with the same acuteness of jurisdiction issues. If the state were not involved in this area, the question arises: would recipients of legal aid services be better or worse off? I think the answer is that they would be worse off. We have met those demands over the past several years. This is yet another area of a demarcation dispute where the commonwealth stealthily retracts from its funding obligations.

Mr A.J. WADDELL: Given the guarantee the service will continue, can I get some clarification that the number of FTEs within the agency will remain the same and it will not be adversely impacted by the Treasurer's responsible financial management program?

Mr C.C. PORTER: By the responsible financial program, does the member mean the efficiency dividend?

Mr A.J. WADDELL: Yes, the efficiency dividend.

Mr C.C. PORTER: I think Legal Aid's share of the two per cent, being part of the wider DOTAG pie, is about $700 000. That is not to necessarily suggest that it will be applied on that basis. It may be that extra savings can be found inside the general DOTAG budget, which will mitigate an exact two per cent cut being applied to Legal Aid. In the context of the increased funding Legal Aid has, it is a relatively small amount. The other thing I direct the member toward is on page 332 where he will see the KPIs. The most important are noted there. He will see we are holding very steady on KPIs where it shows "Percentage of eligible applicants who receive a grant of legal aid"; "Percentage of persons who are provided with a duty lawyer service"; and "Percentage of callers successfully accessing Infoline services". I think one of the realities, and one of the outcomes Mr Turnbull and his organisation should be commended on is that in a tight budget scenario, they have been particularly innovative. They have engaged in a lot of duty services, for want of a better description, by telephone, particularly in family law matters. They are continually finding ways to deliver higher-quality services to more people on a necessarily restricted budget. They have managed also to expand their reach into the Western Australian regions. I think they are doing very well. Even if the full two per cent cut is applied on a pro rata basis to Legal Aid, I am confident that Legal Aid can meet that. It may be that that mitigates the effect of the director general finding more than the two per cent of the pie inside DOTAG.

Mr A.J. WADDELL: The FTEs?

Mr C.C. PORTER: I will let Mr Turnbull speak, but I do not think there is any plan afoot to decrease the number of FTEs in real terms.

[10.00 am]

Mr G. Turnbull: We think that most of the savings will be derived from services and contracts and overheads. We are determined that no front-line service delivery will be impacted. We will be looking at our overheads, as I say, and at some of the processes that we engage in to determine whether people are eligible for aid. There is scope, inevitably, to improve our systems and we are confident that there will be no lessening of, as I say, front-line service delivery. It will obviously create pressures, but the message I get from government is that there is an expectation that we will refocus on those front-line service deliveries and look at other areas of spending. One cannot give a 100 per cent guarantee, but we have had a good look at it and we are working on a plan that we think will preserve the current numbers of staff, which have gone up, I have to say, in no small part thanks to previous budget injections from this government, and move forward.

[Mr P.B. Watson took the chair.]

Mr C.C. PORTER: Member, I just add that the overwhelming majority of agencies operate under their FTE cap, so they have appropriations applied to them for number X of capped FTEs but operate with number Y where Y is less than X. The departments have freedom for how they may spend the money that is not being spent on that differential between cap and actual FTEs. Therefore, some of the savings in this process, both in terms of the two per cent and the FTE cap, will come from those moneys that are often spent on other things—consultancies, external contracting, a range of other issues. They become the first port of call for examination when we try to find savings.

Mr A. KRSTICEVIC: I refer to the second dot point under "Significant Issues Impacting the Agency" on page 331, which notes that the Mental Health Commission is helping Perth Magistrates Court introduce a mental health diversion and support program to provide alternative sentencing options for mentally ill accused persons. Can the Attorney General tell me how that will work and what outcome he expects from that?

Mr C.C. PORTER: I thank the member for the question. The history of that matter goes back to a Law Reform Commission report on specialist programs inside courts and there were a range of recommendations from that. Like all Law Reform Commission reports, it is never the case that every single recommendation is adopted and undertaken. Often the recommendations involve some costing attached to them. We have applied funding of $412 000 and $636 000 respectively over 2012–13 and 2013–14 for this, so it is a two-year trial which is in excess of $1 million. Over those two years, 2012–13 and 2013–14, that funding will pay for a magistrate, an administrator and coordinator at level 4 and a judicial officer at level 3. Additionally, another $0.3 million is for a legal aid defence lawyer over those two years. What it will look like physically is that the magistrate, the support staff and the defence lawyer will all be applied specifically to a category of persons in the Magistrates Court who are charged with an offence and who, on a definition that will be agreed upon, suffer from a mental illness or mental infirmity of some type. It is meant to replicate the success that we have had with the Drug Court in which people are identified with drug problems, obviously, and are dealt with by that court in a specialised way. We think that about 300 people per year will be accepted into this program. Part of it is that their special circumstances will be recognised by the court in the type of sentences that it applies in the time it takes with them to determine what might be the best type of care for them, and then they will get intensive care at the end of the program. That is how the system will work. The idea is that the system will have the best possible mechanism to identify who are the people who need specialist treatment in the court and that they receive the specialist treatment in the court. The point of that specialist treatment is to identify their needs so that during the process of being sentenced and afterwards they can get the appropriate care in the community.

An additional $1.7 million is allocated in the budget for the Minister for Mental Health, again over two years, for mental health experts to be placed at Perth Children's Court for an early intervention pilot program to support the needs of the court. If you like, the Children's Court will operate as it does, but then there will be a distinctive Magistrates Court, and the mental health minister has been allocated the funds to push experts in that field of mental health into the early identification into the Children's Court. I am not suggesting that this is completely novel; it is something that has been tried in other jurisdictions. However, it is certainly new for Western Australia, and has been talked about for some time. Over the course of 12 months, the mental health minister and I have had this as a goal. I think that it will produce results, but it is a two-year pilot and we will be watching it very carefully. The results we would like to see are lower rates of recidivism for the target population that goes through and receives these services in the Children's Court and the 300-odd people that we expect will go through the Magistrates Court processes.

I might just add here, maybe gratuitously, that we have also allocated $18 million to create declared places. As the member is aware, this debate has gone on for some time. Previously, people who were mentally infirm to the extent that they were found by a court to be unfit to stand trial but had a strong enough brief presented against them that there was a consideration by the judicial officer that they represented a risk to the community if not detained, were either going to be detained in a prison or alternatively in a mental health institution—a hospital—and then the latter only if there was a view that their mental difficulties were capable of betterment. Most people

ended up in prison. The declared place will sit somewhere between those two styles of facility. Again, that is a pretty significant step forward for Western Australia.

I think that the three initiatives together demonstrate that there are some real changes in the way in which persons with mental health difficulties are treated in the courts.

The CHAIRMAN: Minister, I just remind you that this an estimates hearing. We have been advised by the Speaker that answers have to be short and precise. The hearing is to investigate the budget itself, so it is not a showcase for anybody's projects. This is not my opinion, it is the opinion of the Speaker, and I have said this to all ministers. If we can just cut it down a bit and get more questions through, I think everyone will be happy.

Mr J.R. QUIGLEY: I refer to the asset investment program on page 337, and to the Supreme Court of Western Australia's "Annual Review 2011" and the Chief Justice's comments therein that —

> **New Building**
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> In the course of the year under review, government announced plans to accommodate the Supreme Court in the redevelopment of the Old Treasury building on St George's Terrace.
>
> Since then, the Chief Justice has participated in the very early planning for this proposal.
>
> Although the precise nature of the proposal is not known at this stage, it is hoped that the initiative will address the Court's … accommodation issues. The Court will devote significant attention to this proposal during 2012.

I draw the Attorney General's attention to the fact that despite the budget provision to spend $142 million in royalties for regions funding on regional courts, it appears that not one dollar is in the budget to even plan for the Supreme Court, or am I missing a line item?

Mr C.C. PORTER: The line item budget for the Old Treasury Buildings redevelopment, which will encompass the new Supreme Court, is in strategic projects; it is one of 18 projects over $100 million that are dealt with in my portfolio as Treasurer. Therefore, I can assure the member that it is there. In fact, I am happy to hand over to the director general to give the member a brief description of the nature of the project, which will be very impressive.

Mr J.R. QUIGLEY: Where we are up to with the planning of it?

Mr C.C. PORTER: Construction will start soon.

[10.10 am]

Ms C.M. Gwilliam: There is certainly extensive consultation occurring with the judiciary in terms of the fit-out of the new Supreme Court–Civil in the old Treasury building tower. It is a 31-floor tower. The Supreme Court–Civil will have —

Mr J.R. QUIGLEY: I did not hear that last bit.

Ms C.M. Gwilliam: The planning for the Supreme Court–Civil in the old Treasury building office tower—a 31-level office tower—is well advanced. The fit-out cost for the tower, as well as the 11-storey State Administrative Tribunal home in the old Public Trustee building, is $128 million. We have a court-user group that is actively working with the judicial officers of the Supreme Court, and we are also actively working with SAT members in terms of the fit-out for that court. Currently, the land swap arrangements are in negotiation and finalisation; the expectation is that the work on the new tower will commence in July. We are planning a completion date for the fit-out to be 2015-16.

Mr J.R. QUIGLEY: I think at the moment there are 16 Supreme Court judges in General Division; is that right?

Ms C.M. Gwilliam: I do not have the exact number, but approximately 15.

Mr J.R. QUIGLEY: And I think there are about six in the —

The CHAIRMAN: Member, do not go straight to the director general; you have to go through the minister.

Mr J.R. QUIGLEY: I was; I was looking at the Attorney General.

The CHAIRMAN: Were you?

Mr J.R. QUIGLEY: I was! You were off to the side, you just missed that.

I think there are about 16 judges in the General Division. I think the proposal is for the appellant division to remain in the existing building.

Ms C.M. Gwilliam: Yes.

Mr J.R. QUIGLEY: But in terms of chambers, what is being budgeted to allow for the growth of the court, given the population explosion that is happening in Perth? For how many years will this building be of good utility? Will there 20 or 30 chambers?

Mr C.C. PORTER: There are a couple of points there. The $128 million the director general has spoken of is for the fit-out for the judicial building, which is the 31-storey tower, and for our other building that will house SAT. Of course, the buildings themselves are worth more than that, but the value of buildings is paid for by the state in the ongoing lease. The first lease is for 25 years, so there is a 25-year plus 25 years of lease options, so we would envisage that these buildings will be a 50-year home for the Supreme Court, and indeed for SAT. That $128 million, again, appears in the Treasury budget, and, as the director has noted, physical construction will start at the end of the financial year.

Mr J.R. QUIGLEY: The construction of the building?

Mr C.C. PORTER: Yes. That $128 million is a calculated amount per square metre of each tower. I think the per square metre cost for the court building is over $5 000; generally speaking, a government office building would be under $2 000 per square metre. Courts, as the member would know, are expensive to build and fit out, and there were certain complications. There have to be high ceilings for court buildings, which is part of the cost that will come back to us with respect to leasing, but the fit-out will be a very high quality, fit-for-purpose fit-out—much more expensive than any other fit-out. The question about where will judges reside: ultimately, that is something to be determined in consultation with the Chief Justice, but as I understand it the present intention is that General Division judges will all come up to the new 31-storey building and the appellant judges will stay down in the old building.

The next part of the member's question was: how is this future-proofed? It is future-proofed by this useful addition to the building. Being 31 storeys, the Supreme Court is initially going to take up, with all of its judges, the lower runs—I think 15 or 16. They will take up the low rise. We will then have the lease for the high-rise part of the building and we will determine who will go in, but it will be some complementary government agency and full-time equivalents. Eventually, we will be able to move up the building over that 50-year period to accommodate expansion in the number of judges. That is the way in which this project works very, very well.

I have two other very brief comments. The first is that that $128 million fit-out and the amortised lease over 25 years represents a far better option for the taxpayer than building a single, stand-alone building on a non–public-private partnership basis for the court. There are varying estimates of that, but we could expect that that might cost up to $400 million of immediate expenditure.

The second point is that, yes, there will need to be growth in the judicial numbers on the Supreme Court, but I make the point that right here and now the number of judges per capita on the Supreme Court is the highest anywhere in Australia. It is a well man and woman-powered court at the moment. There will need to be room for growth, obviously, but on all its key performance indicators it is doing very well.

Mr J.R. QUIGLEY: I have a supplementary question. The Attorney General mentioned that it is anticipated that judges will relocate to the building. Given the independence of the judiciary, how much control does the government have over that? Because I can recall that at the inauguration of what was the Central Law Courts on the corner of St Georges Terrace and the Irwin Street, courtroom 41 was allocated as a criminal Supreme Court and also as an appellant court. But it was only after a very short period of time that the judges decided that they preferred their accommodation in the old building and just refused to attend there, so court 41 then lapsed as a Supreme Court.

Mr C.C. PORTER: It is a very interesting question, and the actual constitutional question is: what power might the executive arm of government have with respect to a single judge who determined not to move from office A in the existing Supreme Court building to their anticipated home in office B in the OTB tower, somewhere on the tenth floor? I do not have a perfect answer for the member on that question, and no doubt if that were ever something that needed to be the subject of advice there might be different pieces of advice on it. However, there are no indications that we are going to have those types of problems here. Ultimately, my procedural view would be that where the judges wish to reside, amongst the resources provided by the executive arm of government, is a matter for decision ultimately by the Chief Justice after consultation with the executive arm of government. At the moment it appears that the chambers will close down in the AXA building obviously, and there will be chambers available in the better remaining chambers for the Court of Appeal judges in the old Supreme Court building. I would be astonished if, rather than there being less judges wishing to go to the new building, there were not more insofar as the fact that the facilities in the new building, with a $5 000 per square metre fit-out and $128 million being applied to the new building, will be nothing short of spectacular. It will be a state-of-the-art

building with complete up-to-date modern facilities, including those for judicial chambers. It is an interesting constitutional question, but one that I am positive will not arise.

Mr J.R. QUIGLEY: I was astonished at some of Their Honours' reaction back in 1984.

Mr C.C. PORTER: Maybe nothing surprises with respect to the judiciary at times.

Mr J.R. QUIGLEY: But will this building also have the facade of a significant civic building? I am thinking more in terms of the Queensland court rather than that in Macquarie Street or Philip Street in Sydney.

Mr C.C. PORTER: It is not a block-and-stack. One of the very early issues raised by the Chief Justice with me, personally, and with the director was that if the state is determining to go down the path of a PPP and a lease-back of the building, we wanted to have significant control on the design of the building and on the fit-out. The way we have managed that is, in effect, by paying a premium into the future on the lease, which money we save in not building the new building. But in all other situations for a 31-storey building, a developer—in this case the developer is Mirvac—would probably prefer to have a block-and-stack with all ceilings the same. They are not complicated buildings to build—a court is. This court will have higher ceilings and therefore less floors, it will have much enhanced security measures, the lobby of the building will have, as the member suggests, a much higher ceiling and a mezzanine level; it will look like a court, not a normal building.

Mr J.R. QUIGLEY: Not like AXA?

Mr C.C. PORTER: Not at all like AXA. It will also not have any of the Albert Speer connotations of the High Court in Canberra. This will be a beautiful building.

It will also create a legal district, because we will have the Public Trustee, we will have the Director of Public Prosecutions nearby, and we will have the three courts centred together. I would be amazed if it were not the case that when new leases became available down that end of the town they were not snapped up by major law firms because this will become the legal hub for Perth, which we have not had; we have not had that Collins Street–style legal hub.

[10.20 am]

Dr A.D. BUTI: My matter does not relate to constitutional matters, and it is out of the CBD. I refer to the first dot point on page 332 where it states that the department is undertaking an extensive asset investment program and a number of courthouses are mentioned. On page 337 a bit more detail is gone into. Unfortunately, I do not find anywhere any provision in the current budget or forward estimates for the courthouse in Armadale. As the Attorney General knows, we have had extensive correspondence on this matter and I am led to believe he visited the Armadale Courthouse soon after assuming his portfolio responsibility. Based on the correspondence I have received from the Attorney General and also from meetings I have had with his department, I am sure he is aware that there is an urgent need for a new courthouse in Armadale. I am told that it is the highest priority in the metropolitan region, which is very nice to hear, but they are really hollow words when we have nothing, even in the forward estimates, for the new courthouse. The current courthouse is really bursting at the seams. The Attorney General congratulated the work being done by Legal Aid and I can assure the Attorney General that the Legal Aid lawyers who attend the Armadale Courthouse are working under extreme conditions in which they have to advise clients in hallways. I really cannot urge the Attorney General enough that this matter has to go beyond just being a high priority to actually receiving some hard dollars.

Mr C.C. PORTER: I do not disagree with the member, he is obviously right. I have corresponded with the member on this, as I have with the federal member for Armadale, Mr Randall. I might just make a few general comments. The Armadale Courthouse is the number one metropolitan priority and, unashamedly, the government's very large capital spend on courts has been largely attributed or applied to regional areas. I accept what the member says about the Armadale Courthouse in that it is a tired building that is ripe for replacement; there is no doubt about it. The member makes the point that Legal Aid duty lawyers are briefing clients in unsatisfactory circumstances. I do not disagree, but I would make the point that, prior to this government's undertaking of the significant upgrades of regional courthouses, Legal Aid lawyers finding themselves at those courthouses were in a significantly worse situation. The reason there has been an application of funds to regional courthouses is that at the end of the day they were worse than Armadale. Almost invariably, the courthouses we have chosen to prioritise in the regions were dreadful places where there were significant risks associated with the fit-out of court. That having been said, I accept what the member says. I would also note that about $900 000 has been spent on Armadale since 2007–08. There was $480 000 spent in 2007–08, $226 000 in 2008–09, $81 000 in 2009–10, $122 000 in 2010–11 and about $57 000 since then. I would prefer to stop spending that money in the future and have a new courthouse; it is the number one priority. I will be taking it through the process in next year's budget as the number one priority. Of course, the member would be aware that it will be a

joint facility and I think the preliminary budgets are around the $48 million mark, so it is a pretty significant piece of infrastructure. If it were successful in the 2013–14 budget, there would be completion by around 2017, and that is a very rough rule of thumb. It is definitely the next cab off the rank. I accept what the member says. No minister can give an undertaking that their budget submissions will be successful, but I would be surprised if that were not the next major build we committed to. I would just say that it comes in the context of a very large build in court capital infrastructure. There is $128 million to be expended in the metropolitan region for the Supreme Court. The regional courthouses we have upgraded are Kalgoorlie, Kununurra, Carnarvon and Fitzroy Crossing. I have to say that, as bad as Armadale is, Kalgoorlie, Kununurra, Carnarvon and Fitzroy Crossing were worse. I accept what the member says; he is advocating well on behalf of his community. I will give it a red hot go in next year's budget round, and that is when the iron will be hottest.

Dr A.D. BUTI: I would hope that the Attorney General makes a forceful submission to the Treasurer on this aspect!

Mr C.C. PORTER: If only it were that easy! I can say that Treasury pays particular attention to the Attorney General's submissions!

Mr A. KRSTICEVIC: I refer to the fifth dot point on page 331, which is specifically about the State Solicitor's Office and the expansion that is occurring in the commercial section to undertake more legal work associated with the major social and economic infrastructure development projects throughout the state. I notice that the reason for the expansion is to reduce risk and costs to the state. Can the Attorney General advise me of any social or economic infrastructure projects that have exposed the state and by how much?

Mr C.C. PORTER: Mr Paul Evans, the recently appointed State Solicitor, is here and I will hand over to him in a moment. He might wish to comment on two things. The first is the volume of commercial work coming in, and that is requiring some extra resourcing. Mr Evans has a very strong commercial background, which is one of the reasons he stood out amongst other applicants. It is also the case, and this does not specifically relate to the member's question, but I invite Mr Evans to speak about it if he chooses, that as part of last year's savings targets, there was a $300 million savings initiative. One of the projects that has been recommended and that will be adopted from the Department of the Attorney General as part of those savings is a project to draw back into the State Solicitor's Office some portion of the legal officers that are now in departments. We think that in the long run this will buttress the SSO's ability to deliver high quality services in a demand growth area. Through the non-renewal, in the very long term, of contracts for legal officers inside departments, it will also result in line item savings. Just on that point, we think that the efficiencies across the public sector in savings for government might be in the order of $2 million or more per annum, and that is from the draw-in of some portion of lawyers who are presently in departments into the SSO. It is also the case that, sitting alongside that process, the SSO is being provided with an additional six lawyers of commercial experience. My experience as Attorney General has been that one of the growth full-time equivalent sectors in major departments has been legal officers. What invariably happens is that departments, whether it is the Department of Health or Education, go in-house to their legal officers for advice. Either the SSO and the very central executive organs of government do not know that the advice has been given or indeed acted upon; alternatively, they come to know that the advice has been given and acted upon when the advice is not of sufficiently high quality and it turns into a bit of a mess that the SSO ends up dealing with. There will always be a place for in-house legal officers in the departments, but the observation has been that that has grown somewhat out of proportion to the growth in staffing for the SSO, and that the SSO has a very important role as the legal resource for overall government. I make one other point before I get Mr Evans to comment. Last year the SSO oversaw private sector legal briefing in the vicinity of $12 million, and, by expanding the SSO central resources, we hope to mitigate that type of growth. Mr Evans is here and I will get him to make some comment.

Mr P.D. Evans: The Attorney stole my thunder to an extent in terms of the business case, but the short point is that the office, which has around 11.5 FTEs committed to commercial operations, of whom six are specialist project lawyers, cannot sustain the level of, in particular, social and economic infrastructure work that the state is undertaking at the moment, nor has it been able to over the last three years. Over the last three years we have briefed externally more than $20 million worth of work.

In doing so, we do not gain the benefit of sufficiently upskilling the lawyers we have and, obviously, we expend at a significantly higher rate than the cost of government legal services. The objectives in increasing the commercial legal resources are to defray some of that cost on the basis that we can provide the services more cost-effectively than the private sector and to increase the skill base available to government generally in the very broad range of commercial activities that the state undertakes. Not only in relation to the major projects, such as Fiona Stanley Hospital, but also the great number of other mid-ranking commercial transactions that are required to be outsourced. We hope we can reduce that expenditure overall.

[10.30 am]

Mr C.C. PORTER: I think the short answer is that we are —

The CHAIRMAN: Is this the short answer?

Mr C.C. PORTER: Yes, this is the short answer. We are in the process of beefing up the resources of the State Solicitor's Office to try to mitigate long-term growth in costs of briefing out on commercial matters and to have greater central control over the quality of legal advice that is offered on a department-by-department basis.

The CHAIRMAN: Minister, looking at your schedule today, I can see that it is pretty solid. Do you want to have a break now or at eleven o'clock?

Mr C.C. PORTER: You are as wise as you are merciful.

The CHAIRMAN: I agree. What would you like? Would you like to have a 10-minute break now?

Mr C.C. PORTER: Yes, 10 minutes is fine.

Meeting suspended from 10.31 to 10.47 am

The CHAIRMAN: I give the call to the member for Forrestfield.

Mr A.J. WADDELL: I refer to page 333 and the heading "Court and Tribunal Services". There are a number of variations, some rather extreme, in the cost per case in the various courts listed on that page. At page 334, under "Explanation of Significant Movements", there are five notes to explain the five more extreme variations. I note that the Children's Court civil cost per case has had at least an equally, and probably greater, extreme change, because the cost has moved from $466 in 2010–11 to a budget target of $779 in 2012–13. However, there is not a note to explain that variation. Can the Attorney General outline why that jurisdiction seems to have had such a massive increase in cost per case?

Mr C.C. PORTER: I hope I can, if the member can give me one moment. These figures are impacted not merely by increases in global net cost, but because they are measured on a per-case basis. Therefore, if for one reason or other from year to year the court has fewer cases, the cost per case measure will increase. I am informed that the budget target cost per case is higher in 2012–13 for the Children's Court, because there have been lower finalisation numbers—there was the normal increase in cost that we would expect, but lower finalisation numbers. The increased costs, where they have occurred, are for salaries, court security and custodial services, and recording and transcription costs. The lower finalisation numbers are a result of the reduction in the volume of both protection and care orders, and restraining orders, case lodgements. The figure for finalisations in 2011–12 was 1 800. That was the estimate. The actual is likely to be closer to 1 588. That means that we will redefine our target for finalisations in 2012–13 based on the 2011–12 actual. So, in short, there have been increases in costs, which is to be expected, but the units that are flowing through the court have also decreased. I can only guess here as to why the volume of protection and care orders, and restraining orders, case lodgements has decreased—I do not know whether that it is the sort of question that lends itself to a supplementary—but I will undertake to find that out for the member. There might be any number of reasons. But we will have to go back to the court and the department to try to find out why that is the case.

Mr J.R. QUIGLEY: I refer to the second dot point on page 331 and to the line item that refers to the mental health diversion service. Although I applaud this initiative, I have a number of questions about this initiative. I note that in a speech made by the Hon Chief Justice of Western Australia on 1 August last year, he said that there is under-identification, or little recognition, of people with a mental illness at the point of entry to the criminal justice system. The Attorney General was talking about there being a provision for about 300 people initially to come into this diversion program. I note also that in the central court in Melbourne, the Magistrates' Court, every person who applies for bail is assessed. How will the court triage, if I can use that word, accused persons who come before the court, and deal with the problem, as the Chief Justice has said, of limited identification at the point of entry to the system? How will those persons be identified? Will they just put up their hands? Will they be identified by the police? Will there be, as is the case in Melbourne, a window or an office to which everyone who applies for bail will have to go to be assessed?

[10.50 am]

Mr C.C. PORTER: There are two parts to that question. The specifics are that part of the role of the level 4 coordinator that I mentioned who is going to be a full-time funded staff member is to: ensure that daily lists are provided to mental health workers to all metropolitan courts to enable offenders with previous mental health issues to be identified and listed before the magistrate; ensure breach matters identified and listed before the magistrate; liaise with the mental health workers to ensure reports are available for case management meetings; arrange documentation for all participants in case management meetings; and provide support to the program steering committee. There is one FTE whose specific and substantial task is to go over the lists. An assessment

will be made by employees of the Mental Health Commission who are professionally skilled in this area as to whether or not someone is suffering from a mental illness or a mental illness of a type that will make them appropriate for this court. The FTEs will be based at the courts.

Mr J.R. QUIGLEY: If I could interrupt, will they be based at the court on a full-time basis? Would there be a permanent officer at Midland and Joondalup?

Mr C.C. PORTER: My understanding is that Mental Health Commission staff will be based at the courts, keeping in mind that one magistrate is being provided for in this court. It may be that —

Mr J.R. QUIGLEY: I appreciate that, but it is a question of identifying people that are labouring under the burden of some mental infirmity.

Mr C.C. PORTER: The co-location will occur around where the magistrate is located. There is no point in locating professional Mental Health Commission staff who are skilled in the diagnostic area at courts everywhere. A lot of this will be done on paper, I suggest. One of the full-time employees will be devoted to scouring the court lists and sending the documentation to people who can make a preliminary assessment. If a face-to-face assessment is needed, that will occur. I also imagine that lawyers will play a significant role in putting their clients forward as having the type of mental health difficulties that warrant them being considered for the court.

Mr J.R. QUIGLEY: Is it the aim of the mental health diversion program to take people away from the imprisonment regime and put them into a treatment regime?

Mr C.C. PORTER: Ultimately that will be a matter for the magistrate. What we are hoping to achieve is that the magistrate will be dealing on a consistent basis with people who are suffering from mental health problems, which is somehow connected to the person's offending, and that the magistrate will become expert in the services that are made available by and on behalf of government for persons experiencing those difficulties. It may be that in some instances a magistrate determines that there is no possibility other than imprisonment. The member would be aware that the way the Drug Court works is that the people who are identified are those for whom it is less likely rather than more likely that imprisonment will be the ultimate option. I think that the same types of principles will apply to the identification of those persons who are suitable for this court.

Mr J.R. QUIGLEY: Yes, but in the Drug Court there is no regime of mandatory sentencing, whereas we know that under the government's regime of mandatory sentencing for bodily harm on a public officer, for example, the very first person who went before the court was a mental health patient who was under transport.

Mr C.C. PORTER: I do not know the person the member is talking about.

Mr J.R. QUIGLEY: It was a woman. It was widely publicised. She was the very first person affected after the law had been passed.

Mr C.C. PORTER: Simply because it is widely publicised does not mean that the detail about the person's status is correct.

Mr J.R. QUIGLEY: The commissioner said that the charge had to be altered so that the woman would not face the mandatory penalty.

Mr C.C. PORTER: Again, I have not had anything in a factual sense put to me about that.

Mr J.R. QUIGLEY: When a person comes within this mental health diversion program as a mental health patient, will the court be given the capacity to avoid mandatory imprisonment? In other words, will the Attorney General amend the law to allow people who are on the mental health diversion program and who commit an offence as a result of their mental impairment to avoid the rigours or harshness of mandatory imprisonment?

Mr C.C. PORTER: The mandatory imprisonment laws, as they pertain to assault occasioning bodily harm on police, are applied across the board and there is no inclination to change those laws. I note that the laws have been very successful in decreasing the number of assaults on police. I note also that notwithstanding speculation about persons who might have been charged having had a degree or otherwise of mental health problems, I have never had presented to me any hard factual evidence of that, although that is not to say that it could not happen. However, in short answer to the member's question, those laws will remain unchanged. We estimate that roughly 300 persons a year will be identified as being most suitable for this court and who will benefit most from specialist attention that the court has to offer. There are a variety of views about the way in which mental health issues are being raised in the court context. I will read one from Mental Health Council of Australia chief executive Frank Quinlan —

> Mental Health Council of Australia chief executive Frank Quinlan said there were doubts about the diagnosis of some mental illnesses. Distinctions between normal sadness and clinical depression were still widely debated in the mental health profession, he said.
>
> "It seems to me, that on the back of the very poor evidence we have, there is no prima facie case of a link between crime and mental illness."
>
> "Some people who suffer severe psychotic conditions may have an argument about not being able to form intent, but those suffering high-prevalence mood disorders such as acute anxiety and depression have an inability to find motivation and plan, which would obviously impact their ability to commit a crime," he said.

That is a view that has been put by someone who has some knowledge of these matters. The point is that the idea that a person charged with a criminal offence raises in mitigation that they are suffering from some form of mood disorder, such as depression at the lower order of the spectrum, right up to some mental infirmity that makes them unfit to stand trial, and that it allows them to avail themselves of a section 27 defence on criminal responsibility, is a very broad spectrum. The 300 people who we would be looking to target are neither at the top of that spectrum nor are they at the bottom of that spectrum. The targeting process, therefore, is about trying to find those people when there is a reasonable and rational link between whatever disorder it is that they can provide evidence they are suffering from and the offence that is committed.

[11.00 am]

Mr A. KRSTICEVIC: I refer to the eighth dot point under "Significant Issues Impacting the Agency" on page 331. My question is about the disproportionate involvement of Aboriginal people in the justice system and the continuing problem we have there. I know that the Department of the Attorney General is working to reduce that over-representation in both the offending rate and in the rate of incarceration. Can the Attorney General please explain what is actually happening there to achieve that objective?

Mr C.C. PORTER: I can say that it is very slow and difficult work. There has been a slight decrease in the total percentage of Indigenous people in the prison population under this government, but the level is still far too high. There has been an across-government approach to this matter. A deal of work has been done with the Department of Corrective Services and the Minister for Corrective Services, and some very good applications of royalties for regions money have been made. One of the areas that we have been trying to focus on through DOTAG is the very simple nuts-and-bolts processes in what was previously called the Aboriginals Justice Agreement; it has been renamed the Aboriginal Justice Program—AJP. It is a significant expenditure of funds but what we have tried to target ourselves on is licensing matters. There is a tendency for Indigenous people, particularly in regional and remote areas, to drive without a licence. That affects their ability to work and get employment, and puts them at risk of large fines and ultimately imprisonment for paying off those fines. What we have done is try to reorient the Aboriginal Justice Program. It is a very hard-nosed, on-the-ground program with practical outcomes. I will give the member one example. We have been conducting open days. In Halls Creek we have issued 72 learner's permits, conducted three practical driving assessments, reissued a driver's licence and uplifted 13 suspensions. So we have been trying to engage in that process, which helps first of all with employment and, secondly, with lowering in the long run the imprisonment rate. Another thing that we have done at those open days is try to engage with Indigenous people who have outstanding fines to get them into time-to-pay arrangements. In fact, in the Derby–West Kimberley open days there were 230 applications for time-to-pay arrangements or work and development orders, which represented the conversion of about $375 000 worth of fines. Therefore where we have been spending our money, we have been spending it as practically as possible.

Mr J.R. QUIGLEY: I refer to the fifth dot point on page 331 to do with the State Solicitor's Office and its plan to expand the commercial section to undertake work associated with major social and economic infrastructure development projects. What exactly is planned here? Is it intended that the practice of the SSO will expand to take on direct representation of government agencies on the build of infrastructure work? Alternatively, does allowing the SSO to work in partnership with the private sector refer to briefing out to the private sector; in other words, will the SSO be doing more in-house work on infrastructure projects?

Mr C.C. PORTER: There are two things happening and they are happening in parallel with each other, but both will impact on the size and nature of the SSO. The first thing is that in this budget the SSO has been allocated an extra $1.2 million per annum for six additional lawyers in the SSO to focus purely on commercial matters. From 2013–14, as Mr Evans noted, there are 11.5 full-time equivalents working on commercial matters. The growth in demand for commercial work of the SSO is not quite explosive but it is very significant. Therefore, as we work in and around major projects such as James Price Point and so forth, the demand for the commercial services of the SSO is very large. So, in this budget there has been that allocation, which in the context of the SSO's budget

is quite a significant allocation, so that it grows its commercial sphere. The idea is that it will militate against the amount of work that has to be briefed out at significant cost to the commercial legal sector. I would suggest that in raw terms that amount will not decrease. But as Mr Evans noted, there was $6 million worth of brief-out in 2008–09 and $12 million in 2010–11. The brief-out bill for commercial work for government is growing very substantially. We therefore made a decision when Mr Evans came on that we would resource the SSO with that extra $1.2 million per annum. I think that amount will likely still grow but we will militate against the growth that we might otherwise have had —

Mr J.R. QUIGLEY: It is having a 30 per cent growth in brief-outs.

Mr C.C. PORTER: Indeed. The second thing we are doing, which I put to the member is slightly more controversial—if I can put it this way—is as I described to the member. We sat down early with Mr Evans and we simply tracked over time the number of FTEs who are legal officers in departments, particularly major departments such as the Departments of Health, Education, Corrective Services and a range of others. The growth in that area inside departments has been large. Our concern with respect to that is that a range of advice is flowing from departmental lawyers to departmental executives and ministers that neither the Attorney General, the SSO or the director know about. However, sometimes we get to know about it when the advice is not of the quality it should be, as invariably those lawyers go to the SSO and say that a problem has developed. What we have determined to do—I volunteered this up as part of last year's budget's $300 million savings target—is if we set targets for the number of lawyers that should exist in, say, the Department of Health, we will move some portion of those lawyers back into the SSO and restrict growth in future of the number in the department. That will result in savings of about $2 million a year, we think. That is because, to use the example of the SSO and the Department of Health, the overall number of lawyers will decrease slightly over time but the number of lawyers dealing with health matters in the SSO will grow. This process has been undertaken in a range of other jurisdictions. In fact some have gone further than this and have basically slimmed down to a bare skeleton the number of legal officers inside large departments such as Health and Education, and made the SSO the sole repository of legal advice for government.

Mr J.R. QUIGLEY: The wheel has turned full circle.

Mr C.C. PORTER: Yes. I think there is some merit down the track to that idea but this is a slightly more watered-down version of that policy. However, it is a major change for government. What we are trying to do in an area of growth commercial work and growth work across the departments is build the SSO as a larger, more robust agency in its capacity. If the member wishes, I might ask Mr Evans to make a comment. I do not know whether Mr Evans wants to use the Department of Education or the Department of Health as an example to give the member for Mindarie an example of how many the departments have, how many the SSO will get back and how many the departments will end up with.

Mr P.D. Evans: The Department of Education is not a fantastic example, unfortunately, minister because that is actually a very lightly resourced department for legal services but a heavy user of our services as a consequence. The Department of Health, by way of contrast, has more than 15 FTE lawyers internally and is still a heavy user of our resources. Interestingly, we tend to find some correlation between the number of internal lawyers and the number of hours of our services used. The commercial services proposal is a very specific one in effectively replacing the amount of outsourced work with insourced work. The complexity of the infrastructure projects the state has been undertaking in the past few years is exponentially greater than in prior years. Something like Fiona Stanley Hospital is an immensely complex exercise, legally. We supervise that type of activity but, necessarily, have to outsource it due to the very great range of legal issues it poses. Conversely, Acacia Prison, which we have done recently and is a quite significant project, was entirely insourced. As far as possible we want to build our capacity to run that type of project on an insourced basis.

[11.10 am]

Mr J.R. QUIGLEY: In-house?

Mr P.D. Evans: In-house, yes.

Mr J.R. QUIGLEY: Is that the supervising of the build and problems that arise from the contract with the build?

Mr P.D. Evans: Yes.

Mr C.C. PORTER: When we use a PPP model, whether that is build, own, operate or maintain, or other PPP models, they are quite complex contracts that the state does not have huge expertise in. Probably the first foray was the District Court building. Logically, once we have gone through the full process of having one of those contracts drafted, settled, signed and maintained, we gather expertise in it. We do not want the single repository

of that expertise being the private sector. We will invariably have to still go to the private sector, but we want to try to mitigate that into the future. It is a fairly significant reform. If, for instance, using Mr Evans' example of the Department of Health that, in the long run, the Department of Health has perhaps significantly fewer than 15 full-time employed lawyers in that department, there are specialist —

Mr J.R. QUIGLEY: It is a mid-range firm.

Mr C.C. PORTER: It is. It was of some concern to me, I must say, that there were that many lawyers inside the Department of Health; yet as Mr Evans pointed out, the department's reliance on the legal expertise of the SSO was larger than for other agencies, even on a pro rata basis. My concern as Attorney General is that we are better off having fewer lawyers centrally maintained in a central organ of government where the right arm always knows what the left is doing in terms of the provision of advice.

The appropriation was recommended.