

Division 49: Law Reform Commission of Western Australia, \$833 000 —

Mr I.C. Blayney, Chairman.

Dr K.D. Hames, Minister for Health representing the Attorney General.

Mr R.W. Douglas, Chairman.

Ms H. Kay, Executive Officer.

Mr J. Lee, Principal Policy Adviser, Office of the Attorney General.

[Witnesses introduced.]

The CHAIRMAN: Member for Armadale.

Dr A.D. BUTI: I refer to the first dot point under “Significant Issues Impacting the Agency” on page 607, which states —

From 2014–15, the Commission’s administrative functions will be transferred to the Department of the Attorney General.

The minister would be in possession of a letter that was sent to him and also to the members on both sides who are appearing in this estimates hearing. That letter was from Associate Professor Mary Anne Kenny, who, of course, was a former commissioner, and also the head commissioner, of the Law Reform Commission, so she comes to this with great expertise. She outlined in that letter, which no doubt the minister has a copy of, her concerns about the decision of the government to bring the administrative functions of the commission into the Department of the Attorney General. I will not go through all the various points that she makes, which are, in my eyes, very sensible. It is of concern that the government has made this decision. The question is: on what rationale has the government made this decision? Is it a budgetary rationale; and, if so, what are the significant budgetary savings from this move? If the decision was not made for budgetary reasons, what, therefore, is the rush now? Does the minister agree with Associate Professor Kenny that the independence of the Law Reform Commission, which, of course, is supposed to provide recommendations to the government without fear or favour, is compromised?

Dr K.D. HAMES: We will go to Mr Douglas, who is the chairman.

Mr R.W. Douglas: As to the first part of the question, which is what is the rationale for the change, I am unable to assist the member other than to point to the factors identified in the budget papers themselves—that is to say, it is a rationalisation of administrative functions being transferred to the Department of the Attorney General. I am unaware of any other rationale than that which is expressed in the papers. As to the second question about the impact upon the independence of the commission, I suppose I can rely upon three sources of information to answer the member’s question. The first is the budget papers themselves, which do not refer to that question at all. The Attorney General has certainly expressed that it is his intention that the commission remain independent. The precise mechanism by which that independence will be maintained, given the absence of the funding, is not known to me presently.

Dr A.D. BUTI: I know that this is not in the minister’s portfolio, but it might assist if the minister answers this directly, rather than referring it to the chairman, as it is a cabinet decision. What is the rationale for moving the administrative functions of the commission? This is a radical step that the government has engaged in—the minister is privy to cabinet deliberations—because it has given the Attorney General and his department the complete power to decide who works for the commission. Of course, the commissioners remain independent, hopefully—the Attorney General has always had the power to appoint them—but there are also the people who work for the commission, who are the research officers and so forth who do most of the work, obviously, because the commissioners have other employment. By not allowing the commissioners to have the freedom to select and hire whom they wish to research and write about the inquiries that have been given to them by the Attorney General, the government is severely compromising at least the perceived independence of the Law Reform Commission, which the minister would no doubt agree has been a very important independent statutory body in Western Australia. The third dot point on page 607 of budget paper No 2 states that the Law Reform Commission is investigating the current laws on domestic violence. What is the rationale for bringing the administrative functions of the commission into the Department of the Attorney General?

[3.50 pm]

Dr K.D. HAMES: I do not know the answer to that. It is a reasonable question and clearly needs to be answered by the Attorney General. I will provide by way of supplementary information the rationale behind that decision.

[*Supplementary Information No A55.*]

Mr J.R. QUIGLEY: I refer the minister to page 607. Under “Relationship to Government Goals” the desired outcome reads —

The law is reviewed as requested by the Attorney General and stakeholders are kept informed.

The budget papers are misleading on the functions of the commission, which are set out in section 11(1) of the Law Reform Commission Act and which read —

The Commission shall prepare and submit to the Attorney General from time to time proposals for the review of any area of law with a view to reform, and for this purpose may consider any proposals for the reform of the law which may be made to it by any person.

Subsection (2) then states that the commission may receive references from the Attorney General. Does the desired outcome in the budget papers not completely ignore the function of the commission as set out in section 11(1) of the act?

Mr R.W. Douglas: The member’s question reflects certainly that the commission has the power to make references of recommendations on law reform to the Attorney General, but on the proper construction of section 11 of the act, the decision to make the references is vested in the Attorney General.

Mr J.R. QUIGLEY: Therefore, the commission can act or conduct a review only upon the Attorney General’s request.

Mr R.W. Douglas: That is the way I read the intersection of subsections (1) and (2) of section 11.

Mr P. PAPALIA: I refer the minister to the table on page 608, “Publications on Law Reform”, and the line items for net cost of service and full-time equivalent employees. Am I correct in my reading of this that the number of FTEs was halved in the current financial year and that that level of FTE is projected into this financial year as well?

Ms H. Kay: Yes. We were able to have up to four employees, but we had only three. We had a part-time finance officer who was seconded to the Department of Health and then took up a full-time position there. We continued to function with just two bodies, and then, after the recent ceiling on FTEs, because we were maintaining our work with just two people, it remained that way.

Mr P. PAPALIA: Just to confirm and make absolutely clear, there has not been a reduction in the workload, demand or need for four FTEs, which was the original allocation; we have an accident of timing, whereby at the time of this cap on FTEs, the commission happened to be two people down and that has been extended into the future.

Ms H. Kay: We were working as a two-person organisation and we were utilising the Department of the Attorney General’s finance department on certain matters while our part-time finance person was on secondment, so that continued as the ceiling came in.

Mr P. PAPALIA: I make the observation, and Ms Kay seems to have confirmed this anyway, that effectively the budget cuts have halved the staff at the Law Reform Commission into the foreseeable future.

Dr K.D. HAMES: I do not think that is an accurate reflection of what Ms Kay said. Ms Kay said that although it had a nominal allocation of four, it never operated at four.

Mr P. PAPALIA: But —

Dr K.D. HAMES: I am allowed to answer; that is how it works! It was down to two and a half FTEs, and the summation that the member used was that, through an accident of timing, the commission lost that part-time finance person and it had to use the Department of the Attorney General’s finance people. The member is right in that summation, but he is not correct about halving the number of FTEs.

Mr P. PAPALIA: Is it true that in 2011–12 the commission’s FTE number was four, in 2012 the budgeted FTE number was four and today the FTE number is two?

Dr K.D. HAMES: The answer is no.

Mr P. PAPALIA: It is in the budget!

Dr K.D. HAMES: Ms Kay has answered that question for the member.

Mr P. PAPALIA: The minister’s answer is incorrect, unless he is reading a different part of the budget papers from what I am.

Dr K.D. HAMES: It is confusing. The member would have noted that the budget refers to four full-time equivalents. Ms Kay advised that the commission did not have four full-time employees; it had three.

Mr P. PAPALIA: Is it not true that in 2012 there were four FTEs? In the 2012–13 budget there were four and today there are two.

Dr K.D. HAMES: To save continuing this argument, I will get Ms Kay to answer once again so that the member can hear her answer again.

Ms H. Kay: We were budgeting for four FTEs, but we only ever had 2.6 FTEs and then our 0.6 went on secondment, so when the ceiling decision came in we remained with two.

Dr K.D. HAMES: That is not the argument; it was budgeted for four.

Mr P. PAPALIA: It does not matter how the minister spins it!

Dr A.D. BUTI: I refer again to the third dot point on page 607 on the examination of domestic violence laws. When can we expect the commission to hand its report to the Attorney General?

Ms H. Kay: We have a quite tight time frame for this matter. We aim to complete a discussion paper by December of this year. It will be a very quick submissions period because of the contracted time frame, and then we hope to have the final report to the Attorney General by 31 March.

Mr J.R. QUIGLEY: I refer the minister to page 607. The budget for publications on law reform for 2012–13 was \$1 036 000 and the estimated actual expenditure was \$840 000. Does that include the payment for outside consultants utilised in preparing the books?

Ms H. Kay: Yes, that includes everything.

Mr J.R. QUIGLEY: Under the new arrangements in which Ms Kay stated that only the administrative functions would be transferred to the Department of the Attorney General, will the Attorney General have total control over employment of any outside consultants?

Ms H. Kay: I cannot answer that at this stage. I am not sure what the Law Reform Commission will look like from 2014–15.

Mr J.R. QUIGLEY: From 2014–15, there is no provision for the commission to have any funds.

Ms H. Kay: That is correct.

[4.00 pm]

Mr J.R. QUIGLEY: There would not be any capacity, therefore, to engage an outside consultant unless the Attorney General saw fit to engage an outside consultant?

Dr K.D. HAMES: That is a reasonable assumption. I do not know what is happening to those services; the figure will be provided, the Attorney General will make decisions on that, and presumably fund them elsewhere if that is the case.

Dr A.D. BUTI: Does the minister not see it as being absurd that an independent statutory authority has had all of its discretion and power in how it employs people removed and handed to the Attorney General, who has the role of appointing the commissioners and referring matters to the Law Reform Commission? Can it really still be called an independent statutory authority? Is that decision not contrary to the act that set up the Law Reform Commission?

Dr K.D. HAMES: I presume that issues like that will be covered in the rationale that we have agreed to provide as supplementary information.

The CHAIRMAN: Are you satisfied with that, member for Armadale?

Dr A.D. BUTI: We will wait for that supplementary information.

Mr J.R. QUIGLEY: I refer to page 607 and the line item “Total Cost of Services” under the heading “Service Summary”. Given that the commission now has no provision for future funding other than at the discretion from time to time of the Attorney General and what he might provide from his budget of the Department of the Attorney General, is it fair to say that the Law Reform Commission is no longer an independent commission?

Dr K.D. HAMES: I go back to the issue of what the budget represents. The budget represents a fixed amount of expenditure for this current financial year. Further financial years are just estimates and will be provided for in future budgets. The amount of funding for the current financial year is \$833 000, and that will allow the commission to continue as it has. I presume that the Attorney General will make clear what happens to it beyond that time. Who knows? A figure might reappear in next year’s budget in some form or another.

The appropriation was recommended.

Meeting suspended from 4.03 to 4.15 pm