

Division 2: Parliamentary Commissioner for Administrative Investigations, \$8 057 000 —

Ms W.M. Duncan, Chairman.

Mr M.W. Sutherland, Speaker of the Legislative Assembly.

Mr P.J. McHugh, Clerk of the Legislative Assembly.

Mr C.J. Field, Ombudsman.

Ms G.M. White, Principal Assistant Ombudsman, Strategic Services.

[Witnesses introduced.]

The CHAIRMAN: I call the Leader of the Opposition.

Mr M. McGOWAN: Thank you. I refer to the first dot point on page 65 of budget paper No 2 under “Significant Issues Impacting the Agency”. My question relates to the number of complaints that are sustained by the Ombudsman. The Ombudsman’s annual report of last year states that a number of complaints against agencies were sustained. Generally, the number of complaints that are sustained, as opposed to the number of complaints that are made against individual agencies, is very low. I have a copy of the Ombudsman’s annual report and I refer to page 173. Essentially there are very few successful complaints, with one exception—Acacia Prison, where Serco has had 17 sustained complaints against it. That basically is different to the situation in every other agency across the entire public sector.

Last financial year, the total number of sustained complaints in the entire public sector was 20, according to the annual report, of which one is in the Department of Housing, one is in the Department of Corrective Services and one is in the Department for Child Protection and Family Support. However, there were 17 sustained complaints against Serco in Acacia Prison. Can the minister explain that?

[9.30 am]

Mr C.J. Field: I thank the Leader of the Opposition for the question. It may be that the table at the back could be perhaps slightly better set out, based on what is; otherwise, a perfectly sensible question from the Leader of the Opposition. At the head of that table is a tab called “Complaints finalised at investigation”. When complaints come to my office, they are assessed and can be resolved at either that assessment stage or the investigation stage. Within that category, we have the following outcomes: withdrawn, discontinued, not sustained, cannot be determined, sustained, and resolved. Those resolutions are resolved at an investigation stage. It will depend at what stage the investigation is at as to whether a matter is listed as sustained. That will be sustained after an investigation, or a level of investigation. It could also be resolved in the complainant’s favour, and still be a finding that the department—a local government or a university that is in the jurisdiction of the Ombudsman—has done something that was not appropriate administration. Serco is not the only agency in the state—as that particular number might suggest—that is sustaining complaints that are coming into my office; that certainly would not be the case.

Mr M. McGOWAN: Therefore, are some of the complaints that are resolved being resolved in favour of the complainant during that process? I think that is what you are saying.

Mr C.J. Field: Yes.

Mr M. McGOWAN: Then some complaints, when they reach the end of the process, are sustained in favour of the complainant. It still strikes me as an extraordinarily large number of sustained complaints against Serco at Acacia Prison. What is the nature of those complaints, why were they sustained, and why is the number so high?

Mr C.J. Field: For the Leader of the Opposition, it will depend at what stage a complaint comes into our office. For example, when I am on a regional access visit to one of the regions of Western Australia, which we undertake, I may receive a complaint and resolve it within the same day. It may well be that within that resolution a mistake or an error has been made by a department. Similarly, we can find that matters are sustained in the sense that an allegation that was made by a complainant is sustained after a lengthy investigation. A matter could be sustained anywhere along that pathway.

Of the allegations that come to my office, some are not sustained, and some are sustained, and, depending at what stage of the process it is resolved, we will list that. I think that the words “were sustained” effectively give the impression that the only point at which allegations are being sustained, potentially, is only at that stage. In that sense, it is not assisting the Leader of the Opposition’s otherwise perfectly sensible reading of it. That may just need greater clarification in the explanation. We inherited that table many years ago as a way that explained to people how matters were being sustained. Complaints to my office are made on the basis of allegations about maladministration. Complaints can be sustained at any point during that process, potentially, including after an investigation.

I am not aware of anything in particular about the Serco complaints that suggests that is any more difficult than any other complaints that are made to my office or that there is any greater preponderance of those sustained complaint matters that are directed to my office. However, those complaints made at Serco may be sustained more regularly after a longer investigation than in other places. It will often depend on the size of the department. The Department of Education, the Department of Corrective Services and the Department of Child Protection and Family Support have very elaborate internal resolution processes and they do a lot of work on their complaints prior to them coming to my office. Therefore, it will depend on the nature of the department. That would not be expected of very small local governments, for example. How matters are sustained depends on a range of circumstances.

Mr M. McGOWAN: If I could just seek further clarification; once again, 17 complaints seems a very high number. I understand what is being said, but was there a specific issue about which these complaints were made? Rather than the nature of the entire complaints process, I am seeking the detail of the nature of the specific complaints. Considering that 17 complaints were sustained at the end of the process, were they about a specific issue, or was it a broad range of issues? Can any detail be provided about what the issue was?

Mr C.J. Field: I am looking at that table of “Complaints finalised at investigation”. We resolved 337 and 20 were sustained. That obviously puts a context around that number. For the Leader of the Opposition’s assistance, the 20 complaints may potentially relate to a petition. That is an unusual matter that occurs, not frequently, but regularly. It sometimes occurs in environmental complaints to our office, and certainly it can occur in prison complaints. That is when a petition is signed by prisoners, so it may effectively be one issue that 17 people have subscribed to by signing a petition. We do not provide information about particular complaints, but if I can deidentify it—I am sure that is possible—I would be delighted, with the Speaker’s agreement, to provide some further information on a supplementary basis about the nature of those complaints.

The SPEAKER: What exactly does the Leader of the Opposition require by way of further information?

Mr M. McGOWAN: Thank you, Mr Speaker. I seek supplementary information about the complaints resolved and sustained in relation to Serco at Acacia Prison regarding the nature of the complaints and the outcomes that were achieved following the complaint process, without being given the details of the individuals.

Mr C.J. Field: Yes, Mr Speaker. That is in order and, just for absolute clarification, I can absolutely assure the Leader of the Opposition that more than 17 allegations made to my office each year are sustained. Of the multiple thousands of complaints, a lot of allegations would not be sustained. I can assure members that more than 17 complaints a year are sustained. Of the 17 that relate to Serco, that supplementary question is in order and I will provide additional information.

[*Supplementary Information No A2.*]

The CHAIRMAN: The member for Kingsley.

Ms A.R. MITCHELL: Thank you, Madam Chair. I refer to the last dot point on page 65 under “Significant Issues Impacting the Agency”. Given the increase in the number of complaints that the agency is now receiving, how does the agency intend to make sure that the time taken to deal with these complaints is reduced and also meet the conditions with its current staff?

Mr C.J. Field: I thank the member for Kingsley for her question. It is a matter that we are absolutely acutely aware of. We must maintain not only the timeliness, but also the quality and the cost effectiveness of those complaints. When I commenced in the office six years ago, the average age of open complaints was around 173 days and it is now 33 days. When I commenced, there were 35 complaints older than 12 months in my office and now there are none. The oldest complaint in my office was five years old but today it is four months old. We have achieved very significant timeliness improvements during that time. We also have increased the efficiency of complaint handling by 38 per cent. There have been over five consecutive years of efficiency dividends for complaint handling. We will not be complacent about that. We need to continue that process.

The member for Kingsley asked how we can ensure that we do not lose those great gains in efficiency and timeliness. We can do that in two ways. As a management team, we are very vigilant in ensuring complaints are brought into the organisation in a way that cannot compromise what people often consider is the core business of the Ombudsman, which is the resolution of complaints. We do that through very careful management processes and strategies. We do it by looking at the scale and scope economies. Economies of efficiency and scale can be achieved by applying new functions to the Ombudsman’s office that allow it to provide the overall service at a lower cost to the taxpayer. Lastly, before we take on a new function, we ask the government for appropriate funding for that function. I can certainly say that as of today and as I sit before the estimates committee, the appropriation in the bill before members is an appropriation that will allow the office to adequately and appropriately provide other functions that successive governments have asked the office to undertake.

Mrs M.H. ROBERTS: I refer to pages 67 and 69. I have some questions about the criminal penalty infringement notices. At the top of page 67, it states —

The 2013–14 Budget Target is higher than the 2012–13 Estimated Actual and the 2012–13 Estimated Actual is lower than the 2012–13 Budget due to the deferral of the commencement of the Criminal Penalty Infringement Notices function from 2012–13 to 2013–14 and other funding changes as detailed under the Spending Changes table.

At the top of page 68, it states —

The variance between the service appropriations in the 2012–13 Budget, the 2012–13 Estimated Actual and the 2013–14 Budget is primarily due to changes in funding as detailed in the Spending Changes table, including:

- the deferral of commencement of the Criminal Penalty Infringement Notices function ... resulting in a reduction of \$723,000 in the 2012–13 Estimated Actual compared with the 2012–13 Budget ...

What has brought about the deferral of the criminal penalty infringement notices? Legislation for this went through the Parliament some time ago. It was obviously planned this time last year that that money would be spent and that it was not to be deferred, but something in the course of the last year has meant that it has been deferred. I want to know what the driver for that is. Is it a budgetary or other consideration, or is there some other reason that this has been deferred?

Mr C.J. Field: I thank the honourable member for her question. In relation to the deferral of the amount budgeted for CPINs, we had a budget for the delivery of that project, that is, a legislative responsibility that this and the other place asked me to do, over a number of financial years. The simple reason for the deferral is that the CPIN program has not commenced. As I understand, the commencement date is anticipated to be 2014. We will allocate the budget expenditure for the program. As I am sure the honourable member knows, my office largely monitors the execution of that program, particularly in relation to such matters as, for example, the program not being appropriately applied to Indigenous Australians and others. We will undertake these tasks to review the program prior to and during the commencement of it, once it has commenced. However, as I said, I cannot commence that program until the program commences. As I understand it, the starting date, whether or not it is delayed, will not commence until 2014. Hence, we have deferred our budget expenditure accordingly.

[9.45 am]

Mrs M.H. ROBERTS: Has the Speaker been given any reason for why government has deferred that program? The program was supported by the opposition and it should save money in other areas. Alternatively, has the Speaker been given any reason for why government has deferred the criminal penalty infringement notices implementation?

The SPEAKER: I do not think the Ombudsman can really answer that question. I think the member for Midland should refer that to the relevant minister.

Mrs M.H. ROBERTS: Who is the relevant minister?

The SPEAKER: It is the Minister for Police.

Mrs M.H. ROBERTS: I can ask her tomorrow, I suppose.

Mr M. McGOWAN: I refer to page 66 and the first service and key efficiency indicator, “Resolving Complaints about Decision Making of Public Authorities and Improving the Standard of Public Administration”. I refer to the speech given by the Chief Justice of Western Australia, Hon Wayne Martin, called the “Whitmore Lecture 2013”, which was delivered a couple of weeks ago in Sydney. He referred to 12 or 13 agencies in Western Australia, including the Parliamentary Commissioner for Administrative Investigations, otherwise known as the Ombudsman. In his speech he talked about various agencies, including the Corruption and Crime Commission, the Ombudsman, the Commissioner for Children and Young People and the Auditor General, as being what he terms a fourth arm of government, as opposed to the traditional three arms of government that have existed for hundreds of years in Westminster democracies. He says that this fourth arm of government lacks accountability to the Parliament, the executive and often the courts. The gist of his speech is that there should be some greater transparency and greater accountability on the part of these agencies, a greater sense of capacity for Parliament to question and inspect, and a greater capacity for the freedom of information process to apply more closely to these agencies, so that instead of being, if you like, outside of the traditional arms of government, they come within the purview of the first three arms of government. Has the Speaker considered this; and, if so, does he see a need for reform to the way in which these agencies operate? Does the Speaker see a need for some sort of legislative reform to reflect the concerns that the Chief Justice raised in his speech?

The SPEAKER: I am aware of the Chief Justice's speech and I have thought about it long and hard. I know now the thinking is that some of those sorts of institutions are really outside the ambit of the checks and balances, perhaps, that others have. It is something that will be discussed. I can certainly bring that up. I have not come to any further conclusion on what should happen. I do not think that any of us want another investigative body to investigate investigative bodies, because it will be a never-ending circle. We have some of the best investigative bodies in the world. If people are not happy, they can appeal to somebody else. The Leader of the Opposition makes a valid point and I will undertake to bring that up with the powers that be. The Australasian Study of Parliament Group is having a conference in October and this is one of the topics that will be discussed there. The Chief Justice raised a valid point and I will certainly bring it up.

Mr M. McGOWAN: The Speaker referred to there being ways in which people aggrieved by some of these agencies in the fourth branch of government can appeal. I think the Chief Justice was saying that on occasions there was no prospect of appeal and that the lack of transparency was a concern. Of course, we operate in an environment that is as transparent as we can get in many ways, considering I am talking to the Speaker now and journalists are no doubt listening and probably somewhat bored by what is going on. At page 32 of the speech, the Chief Justice refers to the WA Ombudsman and indicates that the way in which this is approached by the Ombudsman and other agencies is just, "Trust me", which the Chief Justice refers to as perhaps not the best way to deal with these issues. Rather than raising it with "the powers that be"—I do not know what that means—does the Speaker of the Parliament have specific concerns? Will there be an examination of this issue by any of the agencies or committees of Parliament; and, if so, where does the Speaker of the Parliament think that this issue should go?

The SPEAKER: At this stage there is no plan for me as the Speaker to investigate these matters, but I have been informed by the Clerk that the Joint Standing Committee on the Corruption and Crime Commission is looking into this. I think that the matter that the Leader of the Opposition has raised must also be at the forefront of the minds of various ministers. There could well be instances when there is no recourse or appeal, and maybe that should be looked at. It is a very live issue. We all read the speech with interest and those of us who have had dealings with one or two agencies that are a little sacrosanct may feel that there should be some check and balance in getting information. I will certainly, as I said, raise this matter with some of the ministers and the Premier, but I have no plans to instigate any investigation as such.

Mr M. McGOWAN: I have a final question: after the Speaker has raised these issues, considering that this is Parliament and he is the Presiding Officer of the most significant house in Parliament, will he report back to the Parliament on his findings or on what he as Speaker believes is the way forward to ensure that the traditional role of Parliament persists into the future?

The SPEAKER: I do not think I will report formally to the Parliament because, as I said, I have not had any mandate to open up a big inquiry, but I will certainly speak to some ministers about it and perhaps discuss it with the Leader of the Opposition again.

Mr D.A. TEMPLEMAN: The Ombudsman is responsible for issues regarding energy complaints. Last year, I asked a question in this division on the number of complaints registered through the Energy Ombudsman by taxpayers and residents about the increased cost of power. Last year, the answer was that there had been a significant increase in the number of complaints to the Energy Ombudsman. Could the Ombudsman provide me with an update on the number of complaints made to the Energy Ombudsman regarding the impact of energy increases on the cost of living and the percentage increase from last year to now?

Mr C.J. Field: I thank the honourable member. I remember his question from last year. In pleasing news for consumers and honourable members, in the past 12 months there has been a decrease in the number of complaints received by the Energy Ombudsman scheme. That is in the order of a six per cent reduction in complaints. The trend is now for a reduction in complaints. We will obviously continue to monitor that trend, as we do, to see how it progresses. Certainly that trend from previous years of an increase in complaints for a range of issues has now stopped and reversed.

Mrs M.H. ROBERTS: I refer to page 67, "Asset Investment Program", and the last few lines on that page. It refers to how in 2012–13 it was funded by "Capital Appropriation", \$276 000; "Drawdowns from the Holding Account", \$190 000; and "Internal Funds and Balances", \$71 000. In the out years there is no capital appropriation. It just refers to "Drawdowns from the Holding Account". I am wondering whether I could have an explanation of why there is no capital appropriation in the out years.

Mr C.J. Field: I thank the honourable member for her question. The capital appropriation to which the honourable member is referring was a one-off expenditure for our finance system. It arose out of the decommissioning process of the Office of Shared Services. I am advised by my Principal Assistant Ombudsman that that was funding transferred from the Department of Finance as part of that Office of Shared Services transition process.

Mr D.A. TEMPLEMAN: I refer to the function of the Ombudsman in reviewing child deaths and domestic violence fatalities as referred to on page 65 and highlighted on page 67. Could the Ombudsman give us an overview of the ongoing responsibilities, if any, of the Ombudsman in child death reviews? How many child deaths did the Ombudsman investigate in the past year? I note that the Ombudsman review function for domestic violence is specific to domestic violence fatalities. Could the Ombudsman give us the number of fatalities of a domestic violence nature that he has investigated in the past two years?

Mr C.J. Field: I thank the honourable member for his question. Both those functions are amongst the most important, if not the most important, tasks my office undertakes, for obvious reasons. If I can take the latter first, I will not be able to provide the member with two years of figures on family and domestic violence fatalities reviews because that function started 12 months ago on 1 July 2012. I can say that there will be very extensive reporting, as there has been in each of the past few years, on both the child death review and family and domestic violence fatality review functions. It is the largest section of my annual report. We continue to undertake the child death review function role, as we have been asked to do, to identify the circumstances in which and why children die; identify patterns and trends that arise out of those deaths; and make recommendations for improvements arising out of those. We have five years of figures on the child death review function, all of which are reported in the annual report. Last year's figures for 2012–13 will be reported in September when we table our annual report. The member will get a five-year set of numbers with significant levels of breakdown and analysis of those numbers for the child death review jurisdiction. For family and domestic violence, it will be one year's worth of figures, as we have been undertaking the function for only one year.

Mr D.A. TEMPLEMAN: I have one final question.

The CHAIRMAN: I do not think we have time. Is it a quick one?

Mr D.A. TEMPLEMAN: I am very interested in the number of investigations the Ombudsman is undertaking with regard to family and domestic violence deaths.

[10.00 am]

Mr C.J. Field: The number of investigations currently?

Mr D.A. TEMPLEMAN: I am happy to take that as supplementary information if necessary.

Mr C.J. Field: I am happy to take that, as I recollect that we have had 20 reviewable family and domestic violence fatalities referred to my office in the previous 12 months. That is my recollection of the number.

The appropriation was recommended.