

Our Ref: 73005

21 May 2014

Mr S.K. L'Estrange, MLA  
Chairman  
Public Accounts Committee  
Parliament House  
PERTH WA 6000

Dear Mr L'Estrange,

**INQUIRY INTO AMENDMENTS TO THE PUBLIC SECTOR MANAGEMENT ACT  
1994 - RESPONSES TO FURTHER QUESTIONS**

On 8 May 2014 you sought additional information to assist the Public Accounts Committee with its deliberations into the above Inquiry.

As requested, attached are the responses to those questions. Should the Committee require further information please contact Ms Fiona Roche

Yours sincerely



M.C. Wauchope  
PUBLIC SECTOR COMMISSIONER

Enc.

## **PUBLIC SECTOR COMMISSION RESPONSE TO PUBLIC ACCOUNTS COMMITTEE QUESTIONS OF 8 MAY 2014**

- 1. *The State of the Sector Statistical Bulletins of 2012 and 2013 show numerous instances where agencies were unable to provide responses to questions asked in the Annual Agency Survey (AAS) (e.g. Department of Education). The Committee is interested in what the Commission does to improve agency reporting in this area.***

The statutory requirement under s22D(1)(a) to report to Parliament on the state of administration and management of the public sector was introduced in the 2010 amendments to the Act. Prior to that, the reporting obligation was limited to the extent of compliance with Standards and ethical codes.

The Annual Agency Survey has been administered by the Public Sector Commission since 2010. The survey process is an evolving one. It is pointed out that the Annual Agency Survey is a long standing sector wide survey first administered by the Public Sector Commission predecessors in the 1990s. Since the survey was first administered each Commissioner has sought to work with agencies to better understand the capacity of their systems to collect and report information and to continuously improve the quality of information applied in monitoring and reporting to Parliament.

The Commission recognises the importance of completeness, consistency and accuracy in the information provided by agencies in the AAS: The need for agencies to improve information collection systems is generally considered self-evident but there is some follow up and ongoing work to facilitate an improvement in agency level monitoring of workforce management issues.

In order to improve the capacity of agencies to collect data and ensure the completeness and accuracy of responses to the AAS, the Commission has undertaken the following.

- An emphasis on the importance of accuracy.
  - The implicit authority of the Commissioner is seen as a significant incentive for agencies to exercise due care and diligence.
  - The Commissioner advises agencies that the information they provide in the AAS may be audited.
  - CEOs are required to personally endorse the survey response to verify that, to the best of their knowledge, the information provided is complete and reflects activities undertaken.
- Processes to maximise data quality.
  - The survey is reviewed and refined with key stakeholders on an annual basis
  - On-line tools are provided to assist agencies to collect and report accurately
  - Annual information sessions are conducted on both the use of the survey tool and processes for collecting and reporting data .
- Processes to verify data.
  - Officers analysing the data consider the reasonableness of information provided and make simple enquiries with agency contact staff where a response appears extraordinary.

- A verification methodology requiring supporting information related to core reporting obligations of the Commissioner was deployed in three agencies as a pilot in 2013.
- The methodology tested the consistency of agency responses over time, the level of confidence in the information provided in the context of processes by which the agency collects, records and reports the information, the size of the agency, the level of centralisation for the process and other such variables.
- The Commission is considering options regarding future application of the methodology.
- Improving data collection capability
  - Where significant data gaps were identified in the 2013 survey (currently underway) the Commission is following up with agencies to identify the causes and discuss options for improving data collection capacity for 2014 and for future surveys. This work is being undertaken currently in parallel with roll out of the 2014 survey instrument.
  - Each year the Commission has sought to increase the lead time for agencies to prepare for the survey data, ensuring any changes are communicated as early as possible

The inability of agencies to provide information about different aspects of administration and management is of assistance in informing the Commissioner about the sophistication of internal monitoring and performance feedback processes operating within public sector agencies.

It should be noted that there are a number of factors which may legitimately impede the capacity of some agencies to provide responses to all survey questions:

- Due to the nature of the annual survey cycle, where a question has not been asked previously, the lead time available to adapt systems to collect the data may be limited.
- In very large organisations where workforce management is decentralised, it can take a considerable period of time to establish internal policies as well as reliable reporting mechanisms for collecting the kind of information sought through the survey.
- Some smaller agencies are reliant on larger agencies (via service level agreements) for the provision of data and are therefore subject to the same limitations as those larger agencies.

***In this respect, what steps has the Commissioner taken regarding the Department of Education's failure to provide data for the 2013 AAS results, examples of which include: proportion of employees that have participated in AEDM training (B8/9); the time taken to complete 161 suspected breach of discipline investigations(C8); the number of current grievance cases (C14); the number of grievance cases that were completed and substantiated (C16) and (C19); the nature of the grievance substantiated (C20); and the action[s] taken in response (C21).***

The Department of Education comprises nearly 800 sites state-wide and workforce management is highly devolved. Changing agency processes and systems to respond to new or amended questions is a complex undertaking in an organisation of this size

and the agency requires a long lead time to implement changes for collecting data from schools around the State. This may result in a legitimate impediment to the agency's capacity to report on all survey items despite the organisation's efforts to ensure system and process capability.

The Public Sector Commission makes every effort to ensure that agency data collection capacity is maximised as outlined in Question 1 above. Additionally, the Commission meets with Department of Education each year to address forthcoming changes to the survey instrument, identify the impact this may have on the agency's capacity to adapt processes and systems to respond and other related issues. Currently, the Commission is working with the Department of Education to identify the factors contributing to data gaps in the 2013 survey and where improvements or amendments may be required to systems and processes, and to discuss options for maximising data collection capacity for the 2014 process and for future surveys.

2. ***Does the failure of an entity to provide information requested as part of the AAS represent a breach of any part of the PSM Act.***

No. There is no express obligation on agencies imposed by the PSM Act to report to the Commissioner in response to the Annual Agency Survey (AAS). That survey is undertaken administratively in exercise of the Commissioner's general functions in s21A and powers under s22G, in order to enable the Commissioner to report to Parliament under s22D. However the Commissioner could, should he think appropriate, exercise his power to issue a Commissioner's Instruction to a particular CEO or to all CEOs, under s22A, to require data to be provided in response to the AAS, should it be considered that agencies are not taking all reasonable steps to comply with the request for information. In that event, a failure to comply would amount to a breach of s30(b) PSM Act. Such an approach has been taken in Commissioner's Instruction 6 – Workforce data reporting obligations.

3. ***What steps does the Commissioner take to ensure the veracity of data provided by agencies to the AAS?***

See the response to Question 1 above.

4. ***Further to Mr Volaric's response to the Committee on 9 April (page 13 of the transcript) can you confirm whether there have been any reviews or investigations conducted since 2010 under ss24B or 24 that have not been either tabled in Parliament or published by the Commission***

Since the 2010 amendments to the PSM Act the Commissioner has exercised his powers under s24B or s24 to undertake the following reviews or investigations, all of which have been tabled in Parliament or published by the Commission.

**Reviews undertaken since 2010 under s24B of the PSM Act**

- Review of how agencies promote integrity in the public sector (2013), promulgated on PSC website

- Review of Performance Management in the public sector (2013), promulgated on PSC website
- Review of the National Trust of Australia (WA) (2011), report provided to the Minister, Minister tabled the Report in Parliament on 29 February 2012
- Examination of the Department of Training and Workforce Development (2012), review report provided to Minister and Director General Department of Training and Workforce Development, tabled in Parliament on 10 September 2013

#### **Investigations undertaken since 2010 under s24 of the PSMA**

- Investigation Report – Matter involving the report titled ‘Orchestrating Lives: an Evaluation of the Early Intervention Conductive Education Trail at Carson Street School’ (2011), Report tabled in Parliament on 9 August 2011

Since 2010, the Commissioner has utilised his powers under s24 of the PSM Act to investigate four public interest disclosures received by the Commission. s24 is used to investigate public interest disclosures because the Public Interest Disclosure Act 2003 (PID Act) does not give proper authorities investigative powers that they do not otherwise have. Reports of investigations of disclosures of public interest information made under the PID Act are not made publicly available.

5. ***Can Mr Volaric please reconfirm his answer to the question at the top of page 12 of the draft transcript from 9 April 2014 [paragraphs 3 and 5]? The question related to 12(b) from the series of questions that were forwarded to the Commission prior to the hearing:***

***Section 21(10)(a)-(c) enables a court to inquire into and determine the validity of a standard or code of ethics and whether it is inconsistent with the Act or unrelated to the powers conferred by it. Does this provision also apply to Commissioner’s Instructions that are not public sector standards or codes of ethics?***

The answer to Question 12(b) “Does this provision [s21(10)(a)-(c)] also apply to Commissioner’s Instructions that are not public sector standards or codes of ethics?” is no.

6. ***In his final report Peel Health Campus: Contract Management and Clinical Outcomes, the appointed special inquirer, Professor Bryant Stokes, restricted the disclosure of the submissions and transcripts of evidence using his prerogative under section 24J(4) of the Act. As a consequence, these documents can only be disclosed ‘in accordance with the written permission of the Commissioner’.***

***(a) Does the documentation referred to by Professor Stokes remain confidential?***

***(b) Have you received any requests for the release of these documents?***

***(a) yes***

***(b) no***

A non-publication direction was also made in the 2001 Special Inquiry into obstetric and gynaecological services at King Edward Memorial Hospital chaired by Mr Neil Douglas.

It should be noted that, unlike the CCC, DPP, Auditor General, Ombudsman, FOI Commissioner, and Inspector of Custodial Services, the Public Sector Commissioner is not an exempt agency under Schedule 2 of the *Freedom of Information Act 1992*. Consequently, and despite any restriction imposed by a special inquirer, all information and records held by the Public Sector Commission are subject to access application under the FOI Act.

7. ***Under the reforms proposed in the Corruption and Crime Amendment (Misconduct) Bill 2014 (the reform bill), will there be continuing capacity for oversight by the Corruption and Crime Commission of allegations of ‘minor’ misconduct made against the Public Sector Commissioner?***
- (a) ***If so, can you please explain how this process will work, including the relevant clauses of the reform bill?***
- (b) ***As a consequence of the proposed new section 45G of the Corruption and Crime Commission Act 2003, who will be able to receive an allegation of minor misconduct against the Public Sector Commissioner?***

The CCC will no longer have oversight of minor misconduct allegations made against the Public Sector Commissioner.

Proposed s45G reflects the current provisions in s27 of the *Corruption and Crime Commission Act 2003*, as modified to reflect transfer of the minor misconduct function to the Public Sector Commissioner.

An allegation of minor misconduct against the Public Sector Commissioner which involved a matter of administration done or omitted in the exercise of any power or function by the Public Sector Commissioner, could be made to and investigated by the Ombudsman. Further, an allegation of minor misconduct could be made to any member of Parliament, noting that the Commissioner may be suspended or removed from office by the Governor on an address from both Houses of Parliament (s18(3) and (5) PSM Act).

**Public Accounts Committee, Question 4 supporting information**

*Further to Mr Volaric's response to the Committee on 9 April (page 13 of the transcript) can you confirm whether there have been any reviews or investigations conducted since 2010 under ss24B or 24 that have not been either tabled in Parliament or published by the Commission*

**Reviews undertaken since 2010 under s24B of the PSMA**

Purpose	Commenced	Concluded	Outcome
Review of how agencies promote integrity in the public sector	17 Jan 2013	30 Aug 2013	Promulgated on PSC website
Review of Performance Management in the public sector	17 Jan 2012	30 Aug 2013	Promulgated on PSC website
Review of the National Trust of Australia (WA)	2 Feb 2011	2 Sept 2011	Report provided to the Minister.  Minister tabled the Report in Parliament on 29 February 2012
Examination of the Department of Training and Workforce Development	April 2011	Aug 2012	Review report provided to Minister and Director General DTWD Tabled in Parliament on 10 September 2013

**Investigations undertaken since 2010 under s24 of the PSMA**

Purpose	Commenced	Concluded	Outcome
Investigation Report – Matter involving the report titled 'Orchestrating Lives: an Evaluation of the Early Intervention Conductive Education Trail at Carson Street School'	23 June 2011	9 August 2011	Report tabled in Parliament on 9 August 2011

**PIDs for which the Commissioner utilised s24 of the PSMA to enable investigation by PSC**

PID No.	Organisation
69627	Department of the Premier and Cabinet
2013/06/0025	Department of Corrective Services
2013/08/0193	Department of Parks and Wildlife
2013/12/0134	Department of Fisheries