REPORT 15
STANDING COMMITTEE ON PUBLIC ADMINISTRATION
OMNIBUS REPORT – ACTIVITY DURING 38TH PARLIAMENT

Presented by Hon Max Trenorden MLC (Chairman)

November 2012
STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Date first appointed:

17 August 2005

Terms of Reference:

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

“3. Public Administration Committee

3.1 A Public Administration Committee is established.

3.2 The Committee consists of 5 members.

3.3 The functions of the Committee are to –

(a) inquire and report on –

(i) the structure, efficiency and effectiveness of the system of public administration;

(ii) the extent to which the principles of procedural fairness are embodied in any practice or procedure applied in decision making;

(iii) the existence, adequacy, or availability, of merit and judicial review of administrative acts or decisions;

(iv) any Bill or other matter relating to the foregoing functions referred by the Council;

and

(b) consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Public Sector Standards Commissioner, the Information Commissioner, the Inspector of Custodial Services, and any similar officer.

3.4 The Committee is not to make inquiry with respect to –

(a) the constitution, functions or operations of the Executive Council;

(b) the Governor’s Establishment;

(c) the constitution and administration of Parliament;
(d) the judiciary;

(e) a decision made by a person acting judicially;

(f) a decision made by a person to exercise, or not exercise, a power of arrest or detention; or

(g) the merits of a particular case or grievance that is not received as a petition.”

Members as at the time of this report:

Hon Max Trenorden MLC (Chairman) Hon Jim Chown MLC
Hon Jon Ford MLC (Deputy Chairman) Hon Ed Dermer MLC
Hon Ken Baston MLC

Staff as at the time of this report:

Dr Colin Huntly (Advisory Officer) Mr Alex Hickman (Advisory Officer (Legal))
Ms Margaret Liveris (Committee Clerk)

Address:
Parliament House, Perth WA 6000, Telephone (08) 9222 7222
lcco@parliament.wa.gov.au
Website: http://www.parliament.wa.gov.au

Government Response

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

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

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

**GOVERNMENT RESPONSE**

**EXECUTIVE SUMMARY AND RECOMMENDATIONS**

<table>
<thead>
<tr>
<th>EXECUTIVE SUMMARY</th>
<th>RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>...................</td>
<td>..................</td>
</tr>
</tbody>
</table>

**REPORT**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>3.</td>
<td>ESTABLISHMENT OF THE COMMITTEE</td>
<td>2</td>
</tr>
<tr>
<td>4.</td>
<td>COMMITTEE MEMBERSHIP</td>
<td>2</td>
</tr>
<tr>
<td>5.</td>
<td>REPORTS</td>
<td>3</td>
</tr>
<tr>
<td>6.</td>
<td>INQUIRY REFERRALS FROM THE LEGISLATIVE COUNCIL</td>
<td>3</td>
</tr>
<tr>
<td>7.</td>
<td>OWN MOTION INQUIRIES</td>
<td>3</td>
</tr>
<tr>
<td>8.</td>
<td>REPORT INTO THE INQUIRY INTO STATUTORY OFFICERS’ GRIEVANCE PROCEDURES</td>
<td>4</td>
</tr>
<tr>
<td>9.</td>
<td>INQUIRY INTO RECREATION ACTIVITIES WITHIN PUBLIC DRINKING WATER SOURCE AREAS</td>
<td>6</td>
</tr>
<tr>
<td>10.</td>
<td>INQUIRY INTO WESTERN AUSTRALIAN STRATA MANAGERS</td>
<td>15</td>
</tr>
<tr>
<td>11.</td>
<td>ELECTRICITY TRANSMISSION AND DISTRIBUTION MANAGEMENT BY WESTERN POWER AND HORIZON POWER</td>
<td>21</td>
</tr>
<tr>
<td>12.</td>
<td>INQUIRY INTO THE ROLE AND FUNCTIONS OF BODIES EQUIVALENT TO THE STATE PUBLIC SECTOR COMMISSION IN OTHER JURISDICTIONS</td>
<td>28</td>
</tr>
</tbody>
</table>
13. OTHER INQUIRY RELATED WORK ................................................................................................. 29
   Proposed inquiry into regional prisons ......................................................................................... 29
   Background ................................................................................................................................... 29
   Committee report ......................................................................................................................... 29
14. CONSULTATIONS WITH STATUTORY OFFICE HOLDERS AND SCRUTINY OF THEIR
   REPORTS ....................................................................................................................................... 30
   Objectives and process in scrutinising statutory office holder reports ....................................... 30
   Hearings ....................................................................................................................................... 31
15. THE OFFICE OF THE AUDITOR GENERAL ................................................................................ 31
   Hearing – 24 July 2009 ............................................................................................................... 32
16. THE OFFICE OF THE INFORMATION COMMISSIONER ............................................................... 32
   Hearing - 24 July 2009 .............................................................................................................. 32
17. THE OFFICE OF THE PUBLIC SECTOR COMMISSIONER ............................................................ 32
   Hearing – 24 July 2009 ............................................................................................................... 32
18. THE OFFICE OF THE INSPECTOR OF CUSTODIAL SERVICES .................................................... 33
   Exit debriefs .................................................................................................................................. 33
   Hearings ....................................................................................................................................... 33
   Reports ........................................................................................................................................ 33
   Report of an Announced Inspection of District Court Custody Centre (Report 55, July 2008) ........ 34
   Report of an Announced Inspection of Bandyup Women’s Prison (Report 73, August 2011) ........ 35
   New approach to scrutiny of reports ......................................................................................... 38
19. OMBUDSMAN WESTERN AUSTRALIA ....................................................................................... 39
   Hearing – 24 July 2009 ............................................................................................................... 39
   Obtaining information from the Ombudsman ............................................................................. 39
20. MATTERS THAT MAY BE PURSUED IN SUBSEQUENT PARLIAMENTS ............................... 40
   Bandyup Women’s Prison .......................................................................................................... 41
   The Integrity Coordinating Group .............................................................................................. 41
21. WATCHING BRIEFS ................................................................................................................... 43
22. OTHER MATTERS ...................................................................................................................... 43
   Follow up on inquiries .............................................................................................................. 43

APPENDIX 1 GOVERNMENT RESPONSE TO REPORT ON THE INQUIRY INTO
STATUTORY OFFICERS’ GRIEVANCE PROCEDURES ................................................. 45

APPENDIX 2 LETTER OF INTENT – COLLABORATIVE APPROACH FOR
RECREATIONAL PLANNING IN PUBLIC DAMS AND CATCHMENTS ............ 51

APPENDIX 3 GOVERNMENT RESPONSE TO REPORT ON INQUIRY INTO
RECREATIONAL ACTIVITIES WITHIN PUBLIC DRINKING WATER
SOURCE AREAS ....................................................................................................................... 59

APPENDIX 4 DRAFT MEMORANDUM OF UNDERSTANDING ................................. 67
APPENDIX 5 DRAFT RECREATION MODEL ............................................................................. 83

APPENDIX 6 GOVERNMENT RESPONSE TO REPORT ON INQUIRY INTO WESTERN AUSTRALIAN STRATA MANAGERS .......................................................... 91

APPENDIX 7 LETTER FROM COMMITTEE TO MINISTER FOR COMMERCE SEEKING UPDATE ON ADDRESSING THE COMMITTEE’S RECOMMENDATIONS ON STRATA MANAGERS .................................................. 103

APPENDIX 8 RESPONSE FROM MINISTER FOR COMMERCE TO COMMITTEE’S REQUEST FOR UPDATE ON ADDRESSING THE RECOMMENDATIONS ON STRATA MANAGERS .................................................. 109

APPENDIX 9 PRESENTATION AT PUBLIC BRIEFING ON COMPLETION OF INQUIRY INTO ELECTRICITY TRANSMISSION AND DISTRIBUTION MANAGEMENT BY WESTERN POWER AND HORIZON POWER .............. 117

APPENDIX 10 GOVERNMENT RESPONSE TO REPORT 14 BY THE LEGISLATIVE COUNCIL STANDING COMMITTEE ON PUBLIC ADMINISTRATION ................................................................................................... 131

APPENDIX 11 RESPONSE FROM THE PREMIER TO THE COMMITTEE’S SPECIAL REPORT – CONDUCT OF WESTERN POWER DURING THE INQUIRY ................................................................................................... 191

APPENDIX 12 RESPONSE FROM THE COMMITTEE TO THE PREMIER’S RESPONSE TO THE COMMITTEE’S SPECIAL REPORT – CONDUCT OF WESTERN POWER DURING THE INQUIRY ................................................................................................... 205

APPENDIX 13 COMMITTEE’S REQUEST AND RESPONSE FROM HON CHRISTIAN PORTER MLA, MINISTER FOR CORRECTIVE SERVICES ...... 209

APPENDIX 14 SUMMONS TO COMMISSIONER OF THE DEPARTMENT OF CORRECTIVE SERVICES ........................................................................................................ 217

APPENDIX 15 EXAMPLE OF RISK ASSESSMENT MATRIX FOR ANALYSIS OF REPORTS OF INSPECTOR OF CUSTODIAL SERVICES .............................................. 221

APPENDIX 16 RISK ASSESSMENT MATRIX OF AN ANNOUNCED INSPECTION OF BROOME REGIONAL PRISON .............................................................................. 225

APPENDIX 17 TRANSCRIPTS OF HEARINGS WITH THE OMBUDSMAN AND INFORMATION COMMISSIONER ON 16 MAY 2012 ........................................................................... 229
EXECUTIVE SUMMARY AND RECOMMENDATIONS FOR THE

REPORT OF THE STANDING COMMITTEE ON PUBLIC ADMINISTRATION

IN RELATION TO THE

OMNIBUS REPORT – ACTIVITY DURING 38TH PARLIAMENT

EXECUTIVE SUMMARY

1 The purpose of this report is to:

- inform the Parliament of the activities of the Standing Committee on Public Administration (Committee) during the period 1 January 2009 to 26 September 2012;

- report to the Parliament on the Committee’s consultation with statutory office holders;

- make recommendations to the Legislative Council about:
  
  a) addressing the adequacy of the time limit placed on debating Committee reports in the Legislative Council; and
  b) how the Committee receives information from the Ombudsman,

- assist the Committee in the next Parliament in undertaking its role by:
  
  a) recording the experiences of the Committee in the 38th Parliament;
  b) suggesting it remove the Ombudsman from the Committee’s terms of reference in light of the restrictions placed on the Committee’s ability to obtain information from the Ombudsman; and
  c) giving an indication of some matters that have not been progressed to completion by the Committee due to time constraints.
Recommendations are grouped as they appear in the text at the page number indicated:

Page 26

Recommendation 1: The Committee recommends that the Legislative Council refer to the Procedure and Privileges Committee, for consideration and report back to the Legislative Council, the question of the adequacy of the 10 minute per member and 60 minute overall maximum time for debating Committee reports.

Page 40

Recommendation 2: The Committee recommends that section 23 of the Parliamentary Commissioner Act 1971 (WA) be amended to restore the ancient privileges of the Parliament and all of its Committees with respect to the Ombudsman.
2. INTRODUCTION

2.1 The purpose of this report is to:

- inform the Parliament of the activities of the Standing Committee on Public Administration (Committee) during the period 1 January 2009 to 26 September (reporting period);

- report to the Parliament on the Committee’s consultation with statutory office holders;

- make recommendations to the Legislative Council about:

  a) addressing the adequacy of the time limit placed on debating Committee reports in the Legislative Council; and

  b) how the Committee receives information from the Ombudsman,

- assist the Committee in the next Parliament in undertaking its role by:

  a) recording the experiences of the Committee in the 38th Parliament;

  b) suggesting it remove the Ombudsman from the Committee’s terms of reference in light of the restrictions placed on the Committee’s ability to obtain information from the Ombudsman; and

  c) giving an indication of some matters that have not been progressed to completion by the Committee due to time constraints.

2.2 The main focus of the Committee’s work during the reporting period has been a number of detailed and significant inquiries which dealt with serious matters of public interest. These have been summarised below. The time devoted by the Committee to these inquiries resulted in numerous recommendations and outcomes.

2.3 The Committee was also able to make enquiries of a number of statutory office holders.

2.4 The processes adopted by the Committee in carrying out its role have included:
• hearings with all statutory office holders for the purposes of obtaining updates on their work and scrutiny of their role;

• inquiry related field trips;

• special reports on matters arising out of inquiries;

• follow up work to monitor the progress made in the implementation of recommendations made by the Committee in its reports; and

• trialling a new method of scrutinising reports of the Inspector of Custodial Services.

2.5 These processes have enabled the Committee to continue to add value to the way in which public administration is conducted in Western Australia on behalf of the Legislative Council and the people of Western Australia.

3. **ESTABLISHMENT OF THE COMMITTEE**

3.1 The Committee was re-established on 17 August 2005.¹

3.2 Subject to the few notable exceptions specified in its terms of reference, the Committee may initiate an inquiry into any aspect of public administration.

4. **COMMITTEE MEMBERSHIP**

4.1 The membership of the Committee during the reporting period was as follows.

a) Hon Barry House MLC (Chairman) – until 4 June 2009.

b) Hon Ljiljanna Ravlich MLC – until 4 June 2009.


d) Hon Nigel Hallett MLC – until 4 June 2009.

e) Hon Max Trenorden MLC (Chairman) – from 4 June 2009.

f) Hon Ed Dermer MLC – Deputy Chairman until 4 June 2009, member from 4 June 2009.

g) Hon Jon Ford MLC (Deputy Chairman) – from 4 June 2009.

h) Hon Ken Baston MLC – from 4 June 2009.

¹ Prior to 2001, the Committee operated as it is currently named. During the 36th Parliament, it operated as the Standing Committee on Public Administration and Finance. It was then re-established as a separate committee under its current name at the beginning of the 37th Parliament.
5. **REPORTS**

5.1 The Committee tabled the following reports in the Legislative Council during the reporting period.

- Report 12: *Proposed Inquiry into Regional Prisons*, tabled on 26 May 2011;
- Report 13: *Report in relation to the Inquiry into Western Australian Strata Managers*, tabled on 1 September 2011;
- Report 14: *Unassisted Failure*, tabled on 20 January 2012;
- *Special Report*, tabled on 3 May 2012; and

6. **INQUIRY REFERRALS FROM THE LEGISLATIVE COUNCIL**

6.1 On 15 September 2009, the Legislative Council referred an inquiry into Recreation Activities within Public Drinking Water Source Areas to the Committee, which is discussed below.

7. **OWN MOTION INQUIRIES**

7.1 The Committee dealt with the following own motion inquiries during the reporting period:

- Inquiry into Western Australian Strata Managers; and
- Electricity Transmission and Distribution Management by Western Power and Horizon Power.

7.2 These are discussed below.
8. REPORT INTO THE INQUIRY INTO STATUTORY OFFICERS’ GRIEVANCE PROCEDURES

Background

8.1 The Legislative Council referred the Statutory Office Holder’s Grievance Procedures Inquiry to the Committee on 18 June 2008, which ceased when Parliament was prorogued on 7 August 2008. The Committee effectively reinstated the inquiry when the Committee passed an own motion to commence an inquiry into the Statutory Office Holders’ Grievance Procedures on 12 November 2008, which was reported to the Legislative Council on 25 November 2008.

8.2 The inquiry raised important issues relating to the processes, procedures and protection applicable to seconded employees, employees who make public interest disclosures and employees working in the offices of the Parliamentary Commissioner for Administrative Investigations (Ombudsman), Public Sector Standards Commissioner and Information Commissioner.

8.3 The terms of reference of the inquiry were:

1. Review of the status of employees seconded for two years or more under Sections 61 and 66 of the Public Sector Management Act 1994.

2. Review of the protection of seconded employees who make a public disclosure under the Public Interest Disclosure Act 2003.

3. Review of the current internal feedback and complaint procedures observed by seconded and substantive employees in the offices of the Parliamentary Commissioner for Administrative Investigations, the Public Sector Standards Commissioner, and the Information Commissioner.

4. The grievances of Mr Chris Read be considered as a case study in the Committee’s inquiry into these matters.

Committee report

8.4 The Committee reported its activities, findings and recommendations in its report tabled in the Legislative Council on 19 May 2009.

8.5 The report contained five recommendations which the Committee considered would further improve the relevant legislation, policies and procedures applicable to public interest disclosures and public sector secondments and grievance procedures. The Committee noted there had been significant improvements in these areas in the ten years preceding the tabling of the report.
8.6 The recommendations were as follows.

- **Recommendation 1**: The Committee recommends that the Legislative Council consider proposed clause 118(4) of the Information Privacy Bill, or any similar clause giving employees at the Office of the Information Commissioner similar rights to employees at other statutory office holder offices, when the bill is tabled in the Council.

- **Recommendation 2**: The Committee recommends that the Commissioner for Public Sector Standards and the Public Sector Commissioner consider:
  
a) incorporating the secondment principles stated in the *Parliamentary Series: Report One* into the OPSSC’s revised standards;

b) implementing standards, policies and procedures requiring a review of secondments of more than six months *at least* once a year. The review should involve the secondee, the home agency and the host agency; and

c) implementing standards, policies and procedures that ensure that the home agency formally advises secondees at the time of entering into a secondment of the legislation, policies and practices (including the right of return provisions) applicable to being seconded. It would be preferable if this advice was confirmed in writing. Secondees should be reminded of this information during any review.

- **Recommendation 3**: The Committee recommends that a higher priority should be given by chief executive officers and their agencies in promoting awareness of the PID Act.

- **Recommendation 4**: The Committee recommends that chief executive officers seek the assistance of the Public Sector Commissioner where or when a grievance dispute is protracted, intractable and characterised by an irretrievable breakdown in the relationship between the parties.

- **Recommendation 5**: The Committee recommends that chief executive officers seek the assistance of the Public Sector Commissioner where a grievance dispute involves a complaint against the chief executive officer and the grievance has not been resolved within a reasonable time frame.

**Response to recommendations**

8.7 The Government tabled its response to the report’s recommendations on 8 September 2009. A copy of the response is attached as Appendix 1.
8.8 The Department of Premier and Cabinet expressed support for all recommendations apart from the first recommendation (due to the Information Privacy Bill 2007 having lapsed as a result of the prorogation of the 37th Parliament).

9. INQUIRY INTO RECREATION ACTIVITIES WITHIN PUBLIC DRINKING WATER SOURCE AREAS

Background

9.1 This inquiry had its genesis in the 2007 policy decision by the then government to close recreation on Logue Brook dam and proclaim it as “constituting a catchment area to be known as the Logue Brook Dam Catchment Area” on 2 May 2008. The objective of this decision was to use water from the Logue Brook dam to supply the Integrated Water Supply Scheme.

9.2 Another impetus for this inquiry was how the Western Australian Government might assist the Water Corporation into the future as it deals with diminishing surface water sources.

9.3 During the debate on the motion the Government sought a recommendation from the Committee whether dual use of public drinking water source areas was reasonably tenable.2

9.4 The Committee noted that the inquiry was the most recent of a series of examinations by parliamentary committees into elements of Western Australia’s water supply.

9.5 Previous examinations include:

- Legislative Assembly, Select Committee report on Metropolitan Development and Groundwater Supplies (1994);
- Legislative Council, Standing Committee on Ecologically Sustainable Development Report in relation to the Quality of Perth’s Water Supply (2000);
- Legislative Council, Standing Committee on Public Administration and Finance, Interim Report into Water Services in Western Australia (2004);
- Legislative Council, Standing Committee on Public Administration, Report into the Water Resources Legislation Amendment Bill 2006 (2007);

---

2 Hon Norman Moore MLC, Leader of the House, Western Australia, Legislative Council, Parliamentary Debates (Hansard), 15 September 2009, pp6867a-6869a.
Legislative Council, Standing Committee on Public Administration, Interim Report in relation to the Inquiry into the Governance of Western Australia’s Water Resources (2007); and

Legislative Council, Standing Committee on Public Administration, Annual Reports 2007 and 2008.  

Terms of reference

9.6 These were as follows.

*That the Standing Committee on Public Administration investigate* —

*The social, economic and environmental values and costs of recreation access, where possible, to Perth Hills and South West drinking water catchments including the costs and benefits to public health, water quality, recreation, indigenous culture and management options.*

*State, interstate and international legislation, policy and practice for recreation within public drinking water source areas including information relating to population health benefits and impacts.*

*The range of community views on the value of water and recreation in public drinking water source areas.*

*The costs and benefits of alternative water quality management strategies and treatment for water catchments containing recreation.*

*Possible recreation sites/opportunities available outside the Perth Hills and South West drinking water catchments.*

*The Committee is to report to the House not later than 1 July 2010.*

Committee report

9.7 The Committee reported its activities, findings and recommendations in its report tabled in the Legislative Council on 23 September 2010 (after having sought and been granted an extension of time to report due to the extensive number of submissions and hearings).  

---


4 Ibid.
Two key principles adopted by the Committee during the inquiry were:

- public drinking water source areas should not be used for both recreation and drinking water supply and are best committed to the single purpose of providing safe drinking water; and
- source protection is the paramount consideration in water planning and overrides any recreational consideration.

The report contained 14 findings and 11 recommendations arising out of a detailed inquiry which involved 13 hearings, the receipt of 193 submissions, a visit by the Committee to the Lake Kununurra Water Reserve as well as two days of visits to other relevant sites.

The recommendations were as follows.

- **Recommendation 1**: The Committee recommends no increase in the amount of current recreational activity in the outer catchments of public drinking water source areas.

- **Recommendation 2**: The Committee recommends that the public drinking water source areas identified by the interagency collaborative partnership described in paragraph 4.37 as appropriate for de-proclamation as public drinking water source areas, be used for irrigation and recreation.

The Committee further recommends that recreational activity be managed by a working group for each such area comprising representatives as appropriate from the Department of Water, Department of Environment and Conservation, Department of Sport and Recreation, Department of Health, the Water Corporation, Tourism WA and the relevant local government authority.

- **Recommendation 3**: The Committee recommends the continuation of the collaborative approach between the Department of Water, Department of Environment and Conservation, Department of Sport and Recreation, Department of Health and the Water Corporation towards identifying appropriate dams and their catchments compatible for irrigation and recreational purposes. The Committee anticipates that this would increase recreational opportunities for the people of Western Australia.

---

Paragraph 4.37 of the report stated: “Towards the close of this Inquiry, the Committee was advised that an interagency collaborative partnership has been formed between the Departments of Water, Environment and Conservation, Sport and Recreation, Health and the Water Corporation to investigate de-proclaiming ten identified source areas and opening them to managed recreation (see paragraph 2.17). The Committee welcomes this collaborative partnership and the intent of participants to “develop a formal agreement between all agencies for recreation planning in public dams and catchments throughout Western Australia by 31 December 2010.”
• **Recommendation 4:** The Committee recommends that the penalties in by-law 31.4 of the Metropolitan Water Supply, Sewerage and Drainage By-laws 1981 be increased to a level comparable to the $5,000 penalty found in the *Local Government Act 1995*. This recommendation reflects the seriousness of the offences contained in by-law 31.4.

• **Recommendation 5:** The Committee recommends an amendment to the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909* to provide for an infringement notice system and modified penalties of $500 to apply to the *Metropolitan Water Supply, Sewerage and Drainage By-laws 1981*.

• **Recommendation 6:** The Committee recommends that the penalties in the *Country Areas Water Supply By-laws 1957* be increased to a level comparable to the $5,000 penalty found in the *Local Government Act 1995*. This recommendation reflects the seriousness of the offences contained in the By-laws.

• **Recommendation 7:** The Committee recommends an amendment to the *Country Areas Water Supply Act 1947* to provide for an infringement notice system and modified penalties of $500 to apply to the *Country Areas Water Supply By-laws 1957*.

• **Recommendation 8:** The Committee recommends that the 1994 Agreement between the Federation of Western Australian Bushwalkers Inc and the Water Corporation as described in paragraph 5.55 be cancelled.

• **Recommendation 9:** The Committee recommends that all future reviews of *Statewide Policy 13* should be based on the imperative of source protection and guided by the precautionary principle.

• **Recommendation 10:** The Committee recommends that a lead agency be nominated to be responsible for decision making in the Priority 1 area of the Kununurra Water Reserve.

• **Recommendation 11:** The Committee recommends that the Government give consideration to relocating the Kununurra bore field to another site to enable the development of the existing Priority 1 area of the Kununurra Water Reserve as a tourist precinct.

9.11 Towards the end of the inquiry the Committee was provided with copies of a *Letter of Intent – Collaborative Approach for Recreational Planning in Public Dams and Catchments (Letter of Intent)*, to which the following government departments and
agencies were party and in which various commitments relating to recreation planning were made.

- The Department of Sport and Recreation.
- The Department of Water.
- The Water Corporation.
- The Department of Environment and Conservation.
- The Department of Health.

9.12 A copy of the Letter of Intent is attached as Appendix 2.

9.13 The Letter of Intent also stated that a formal agreement between all agencies for recreation planning in public dams and catchments throughout Western Australia would be developed by 31 December 2010.

Response to recommendations


9.15 In a letter to the Committee the Minister for Water, Hon Bill Marmion MLA, stated:

*The recommendations and findings of this report will help guide recreation and drinking water source protection for many years to come.*

9.16 The Minister expressed unequivocal support for recommendations 2 to 11 and noted the first. This reflects the importance of these recommendations to guiding government policy for water source protection.

Follow up by the Committee on implementation of the recommendations

9.17 In April 2012 the Committee wrote to the Minister for Water as well as the various government departments seeking an update on progress in the implementation of the report’s recommendations as well as the commitments made in the Letter of Intent.

9.18 The Committee was disappointed to discover, upon receiving written responses, that little progress had been made relating to developing a coordinated approach to recreational water use. For example:

---

7 Letter from Hon Bill Marmion MLA, Minister for Water to Mr Michael Baker, Clerk Assistant (Committees) 10 August 2011, p1.
the formal agreement had yet to be signed, due in part to “a stalemate on how to implement recommendation 1 of the Committee’s report”;\(^8\)

the long and short term outcomes detailed in the agreement, including the recreational planning methodology for de-proclaimed public drinking water source areas, have not been progressed due to a lack of funding (a submission to Royalties for Regions having been unsuccessful);

in areas where multiple government agencies have statutory decision making responsibility, there was a lack of a process to ensure applicants wishing to operate businesses have all the information they need about the requirements of various agencies; and

the amendments to water resource management legislation to increase penalties and provide for an infringement notice system had yet to be introduced in Parliament.

9.19 A key concern of the Committee is the lack of coordinated decision-making that has occurred in Kununurra and the risk of this occurring in other drinking water source areas which have been identified for de-proclamation.

9.20 Accordingly, the Committee held hearings with the following departments.

- The Department of Water.\(^9\)
- The Department of Regional Development and Lands.\(^10\)
- The Department of Planning.\(^11\)
- The Department of Environment and Conservation.\(^12\)

---

\(^8\) Letter from Mr Ron Alexander, Director General, Department of Sport and Recreation, to Hon Max Trenorden MLC, 12 June 2012, Appendix 1, p2.

\(^9\) Mr Gregory Davis, Executive Director, Science and Planning, Mr Nigel Mantle, Manager, Water Source Protection Planning and Mr Stephen Watson, Programme Manager, Department of Water, Session One, Transcript of Evidence, 23 May 2012.

\(^10\) Mr Paul Rosair, Director General and Ms Joyce Gadalon, Office of the Director General, Department of Regional Development and Lands, Session Two, Transcript of Evidence, 23 May 2012.

\(^11\) Mr Eric Lumsden, Director General and Mrs Lisa Bell, Senior Planning Officer, Department of Planning, Session Three, Transcript of Evidence, 23 May 2012.

\(^12\) Mr Keiran McNamara, Director General, Mr James Sharp, Deputy Director General, Parks and Conservation, Mr Peter Sharp, Director, Parks and Visitor Services and Ms Tracy Shea, Assistant Director, Policy and Planning, Department of Environment and Conservation, Session One, Transcript of Evidence, 13 June 2012.
The Department of Sport and Recreation.\textsuperscript{13}

9.21 The Committee also held a hearing with the President of the Shire of Wyndham-East Kimberley (Shire).\textsuperscript{14}

9.22 It became apparent to the Committee during the hearings that:

- there was a general lack of focus on the applicant;
- there were differing views about how applicants can be given all the information they need about requirements to set up a business in areas where multiple agencies have statutory decision-making responsibility; and
- there were differing views amongst agencies about which body has the ultimate responsibility to Parliament for decision-making in the areas covered by the inquiry.

9.23 Subsequent to the Committee’s hearings with the departments, the Department of Sport and Recreation provided the Committee with a draft, unsigned Memorandum of Understanding (MOU) (the formal agreement referred to in paragraph 9.13 above) as well as a ‘Draft Recreation Model’ for considering recreational activities for the proposed de-proclaimed public drinking water source areas. Both documents are attached as Appendices 4 and 5.

\textit{Draft Memorandum of Understanding}

9.24 The Committee has been able to confirm that the MOU records what each agency agreed to in the Letter of Intent.

9.25 What it does not contain is any process to deliver certainty to applicants wishing to set up businesses in de-proclaimed sites where multiple agencies have statutory decision-making responsibility. The Committee regards this as necessary for the successful management of recreational activities.

9.26 As the MOU is still in draft, it is unclear what the final signed version will contain.

\textit{Draft Recreation Model}

9.27 This model is in the form of a flow chart which sets out the steps that will be taken when considering a proposed recreational activity. There is a process whereby a shire will refer applications to the Department of Sport and Recreation for consideration at

\textsuperscript{13} Mr Ron Alexander, Director General, Mr Graham Brimage, Director, Strategic Policy and Regions, Ms Yvette Peterson, Strategic Project Manager and Mrs Julie Rutherford-Cantem, Strategic Project Manager, Department of Sport and Recreation, Session Two, \textit{Transcript of Evidence}, 13 June 2012.

\textsuperscript{14} Councillor John Moulden, President, Shire of Wyndham East Kimberley, \textit{Transcript of Evidence}, 15 August 2012.
FIFTEENTH REPORT

bi-monthly meetings of the Collaborative Working Group (CWG) (referred to in the Letter of Intent), which will assign decision-making to an agency based on statutory responsibility for the land in question.

9.28 The Committee makes the following observations on the Draft Recreation Model.

- There is a general lack of focus on the applicant. They are not mentioned in the flow chart and there is no indication how they will be led through the process. Instead, there is a focus on the relationships within the CWG.

- There is a continued reliance on the shire as the sole point of contact with the applicant, despite the concerns that have been expressed in the hearings about the capacity of local governments to process applications.

- Including the Department of Local Government in the process may be helpful for the support it can provide to local governments.

- The flow chart seems to suggest that an applicant will not need to make separate applications to different agencies, where the land is not vested in the relevant shire, as this will be taken care of by the agency identified by the CWG.

- The CWG should consult with all agencies and obtain any feedback relevant to the application.

- Will multiple agencies be identified by the CWG where the application covers land over which multiple agencies have statutory responsibility?

- It is unclear from the last step in the flow-chart, stating that the proposal (or amended proposal) is supported or rejected, which agency will accept or reject the proposal if there are two or more agencies. This also creates confusion if an applicant wishes to appeal a decision. Which agency decision will they appeal from, or will this be the CWG?

- Will the agency or agencies communicate directly with the applicant, once the decision is made, or will communication be back to the shire?

- When will this flow chart be shared with the shires in each of the de-proclaimed areas?

- How will prospective applicants be made aware of this process?

- The Committee is encouraged the CWG will be making a fresh application to Royalties for Regions for funding.
Overall, the draft model appears to reflect the status quo, which is the existing support expressed by the agencies for decision-making by an agency over the area for which it has statutory responsibility.

For Logue Brook and Lake Kepwari, the Department of Environment and Conservation has sole statutory responsibility. However, in some other areas, such as the Harvey Dam Catchment Area, the Water Corporation, shire and Department of Environment and Conservation all have responsibilities. This highlights the multiple agency issue identified above, where an application covers land over which various agencies have statutory responsibility and the potential uncertainty an applicant faces where they are required to consult multiple agencies for approval.

**Decision-making in Kununurra**

During the hearing with the President of the Shire, the Committee outlined its objective, as follows.

- To ensure that an applicant applying for approval to operate a business in a Public Drinking Water Source Area, such as the P1 area in Kununurra, has all the information they need, at the time of making the application, about what requirements they need to satisfy.

- An applicant requires guidance about what requirements need to be fulfilled and a response in a timely manner.

This will enable the applicant to have the certainty it requires about whether its business proposal, which often involves considerable investment, can proceed. The focus at all times is to be on the applicant, which relies on the feedback they receive in making investment decisions.

The Committee proposed that the Lake Kununurra and Aquatic Use Plan Committee (Aquatic Use Committee) (set up to oversee the implementation of the Lake Kununurra Foreshore and Aquatic Use Plan\(^\text{15}\)) take on the role of ensuring an applicant is guided through the application process. The President of the Shire indicated his support for this proposal and agreed to discuss it with the Shire Council and report back to this Committee.

The Committee also suggested a Memorandum of Understanding be developed that governs this role of the Aquatic Use Committee so that it is clearly understood by all.

Further, the Committee indicated its support for the propositions that:

\(^{15}\) See [www.swek.wa.gov.au](http://www.swek.wa.gov.au). This plan provides parameters for the use and development of land on and adjacent to Lake Kununurra.
there should be a specific response time limit imposed on agencies with statutory decision-making responsibility;

reasons should be given for the decision; and

once a decision has been made, it should be adhered to.

10. **INQUIRY INTO WESTERN AUSTRALIAN STRATA MANAGERS**

**Background**

10.1 After the Committee became aware of concerns amongst strata title lot proprietors in relation to:

- difficulty in establishing how strata levies were being spent;
- difficulties resolving concerns and disputes about the activities of strata managers; and
- lack of regulation of strata managers,

it commenced an own motion inquiry on 17 November 2009 (also notified to the Legislative Council on this date) into the regulation of strata managers.

**Terms of Reference**

10.2 The terms of reference for this inquiry were as follows.

*Noting a series of parliamentary and government inquiries that have touched on the issue of disputes between strata managers and their clients, the Public Administration Committee has resolved to commence an inquiry into the regulation of strata managers and, in particular:*

(a) the functions and responsibilities of strata managers;

(b) the education of strata managers;

(c) whether strata managers should be licensed; and

(d) any other relevant matter.
Committee report

10.3 The Committee reported its activities and recommendations in its report tabled in the Legislative Council on 1 September 2011.16

10.4 The report contained 11 recommendations arising out of a detailed inquiry involving 12 hearings, the receipt of 19 submissions and a visit by the Committee to Victoria to examine the operation of the Victorian Owner’s Corporation Act 2006. This legislation commenced on 31 December 2007 and introduced in Victoria a scheme of registration for owners corporation managers (the equivalent of strata managers in Western Australia).

10.5 The Committee heard evidence during its inquiry of:

- significant payments made by a strata manager without the required authority;
- the failure of some strata managers to account for strata company funds;
- low levels of engagement in the internal governance of the strata company amongst lot proprietors;
- difficulties in finding volunteers to form strata councils; and
- cases where the strata manager is required to take an increasing role in the running of the strata company as treasurer and secretary for a strata council that may not have an appointed chairman.17

10.6 The Committee’s recommendations were as follows.

- **Recommendation 1:** The Committee recommends that strata managers should be regulated by a system of positive licensing. Eligibility requirements for the granting of a license should include at a minimum:
  a) Educational qualifications.
  b) Demonstration that the applicant is a fit and proper person to hold a licence.
  c) An indication the applicant has sufficient financial and material resources available to enable them to meet financial and operational requirements.

---

16 Western Australia, Legislative Council, Standing Committee on Public Administration, Report 13, Report in relation to the Inquiry into Western Australian Strata Managers, 1 September 2011, p5.

17 Ibid, pi.
d) Current professional indemnity insurance.

- **Recommendation 2:** The Committee recommends that a transition period should apply to the implementation of the recommended licensing scheme.

- **Recommendation 3:** The Committee recommends that a new section be introduced into Part IV of the *Strata Titles Act 1985* providing that:
  a) All assets held by strata managers on behalf of strata companies should be deposited in a trust account held by the strata manager at an authorised deposit-taking institution.
  b) Strata managers must open separate trust accounts for each strata company.
  c) Transactions undertaken by the strata manager on behalf of the strata company are to be conducted through the relevant trust accounts.
  d) Trust accounts, held by strata managers, can be subject to audit by the regulatory body on a random basis or following a complaint.

- **Recommendation 4:** The Committee recommends that section 50 of the *Strata Titles Act 1985* be amended to provide as follows:
  a) Appointment of a proxy is to be confined to one meeting.
  b) The person entitled to vote at a general meeting must not appoint a strata manager of the scheme as a proxy.
  c) A strata manager or an associate of the strata manager cannot act as the chairperson of the strata company for the purposes of a general meeting.
  d) Recommendations 4(ii) and (iii) will apply in circumstances where the strata manager is also a lot proprietor of the scheme.
  e) A member of the strata council may not appoint a lot proprietor, or a person representing a corporation which is a lot proprietor, to act in their place at a strata council meeting if the lot proprietor or representative is the strata manager of the scheme.
  f) A proxy is to be appointed using a form prescribed in regulations.
  g) The prescribed form should include provision for the giving of:
i) specific voting instructions;

ii) a general voting power; or

iii) the power to abstain from voting on particular motions.

- **Recommendation 5:** The Committee recommends that Part IV of the *Strata Titles Act 1985* be amended to include a new section requiring a contract appointing a strata manager to be in the prescribed form.

  The prescribed form should include as a minimum:

  a) A comprehensive list of functions that can be delegated to a strata manager by the strata company with the capacity to include or exclude functions as desired.

  b) Termination provisions.

  c) A requirement for the declaration of any commissions, payments or benefits payable to the strata manager other than those payable by the strata company under the terms of the contract.

- **Recommendation 6:** The Committee recommends that Part IV of the *Strata Titles Act 1985* be amended to include a section providing that, on the appointment of a strata manager, the manager shall provide to the lot proprietors a plain English statement containing the following information:

  a) Services they have agreed to provide.

  b) Services provided for an additional fee.

  c) Services they will not provide.

  d) Details of how an individual lot proprietor can raise concerns, seek information, approvals or have matters included on a general meeting agenda.

- **Recommendation 7:** The Committee recommends that Part IV of the *Strata Titles Act 1985* be amended to include a section providing that:

  a) A strata manager must disclose to the strata company all commissions or moneys payable to the strata manager in the course of the strata manager’s term of engagement.

  b) Failure to disclose a commission is an offence.
A strata company at all times retains the discretion to withhold its consent to the strata manager seeking or receiving a commission.

**Recommendation 8:** The Committee recommends that:

- **a)** The Department of Commerce should be the lead agency for strata title matters.
- **b)** The current Act should be divided into two new Acts.
- **c)** Act 1 should provide for all matters in relation to creation, variation, termination and conversion of all strata schemes and be administered by Landgate.
- **d)** Landgate should maintain responsibility for the registration of strata titles.
- **e)** In the interim Landgate should be given power to prosecute offences under the *Strata Title Act 1985* and be funded accordingly.
- **f)** The Department of Commerce should administer Act 2 which should contain the strata manager licensing and conduct provisions along with strata company management provisions.
- **g)** The Department of Commerce should be funded to provide an information, conciliation and initial legal advice service for all strata title queries.
- **h)** The Department of Commerce be responsible for coordinating the provision by Landgate of advice in its area of expertise through the one stop service. This relationship should be formalised either through a memorandum of understanding or in another form.
- **i)** Landgate should be required to do all things necessary to facilitate the provision of its advice through the one stop service.
- **j)** Any legislation developed in relation to strata titles should contain an express power for prosecution of offences by the relevant government department.

**Recommendation 9:** The Committee recommends that:

- **a)** Landgate, in conjunction with Strata Community Australia (WA) Inc and consumer representatives, work with the strata title industry to develop a set of requirements for:
i) Keeping books of account.

ii) The content of financial statements of account including at a minimum:

- a statement of cash flow;
- an income and expenditure statement;
- a balance sheet; and
- copies of the statements provided by the authorised deposit taking institution related to the trust accounts that the strata manager is required to operate in keeping with Recommendation 3.

b) The requirements in (a) above be prescribed in the Strata Titles General Regulations 1996.

- **Recommendation 10**: The Committee recommends that:
  a) Landgate in conjunction with Strata Community Australia (WA) Inc, the strata title industry and consumer representatives, develop a list of operational reports to be presented to lot proprietors, at the annual general meeting and on one other occasion during the course of a year.
  b) The above requirements be prescribed in the Strata Titles General Regulations 1996.

- **Recommendation 11**: The Committee recommends that:
  a) Section 84 of the Strata Titles Act 1985 is amended so the maximum monetary limit that the State Administrative Tribunal can award is equal to the Magistrates Court jurisdiction.
  b) Section 104 (2) of the Strata Titles Act 1985 be amended to allow s79 of the State Administrative Tribunal Act 2004 to apply.

**Response to recommendations**

10.7 The Minister for Commerce responded to the report’s recommendations on 6 March 2012. A copy of the response is attached at Appendix 6.

---

18 Tabled in the Legislative Council on 6 March 2012.
10.8 The Government supported recommendations 2, 7 and 11; gave in-principle support to recommendations 4, 6, 9 and 10; supported in part recommendation 3 and did not support recommendations 5 and 8. Regarding recommendation 1, the Government’s position on whether a regulatory system will be introduced (such as licensing) was expressed to depend upon the finalisation of a Consultation Regulatory Impact Statement.

10.9 The Committee wrote to Hon Simon O’Brien MLC, Minister for Commerce, on 27 June 2012 asking for an update on what action has been taken, or is proposed to be taken, to address the recommendations. The Committee’s request and the Minister’s response dated 1 August 2012 are attached as Appendices 7 and 8.

10.10 The Committee notes the Government is yet to make a decision on whether strata managers will be subject to regulation and hopes its recommendations will be taken up for the reasons set out in the report.

11. **ELECTRICITY TRANSMISSION AND DISTRIBUTION MANAGEMENT BY WESTERN POWER AND HORIZON POWER**

**Background**

11.1 By initiating its inquiry into electricity transmission and distribution management by Western Power and Horizon Power, the Committee resolved to examine:

- the findings of a 2008 Distribution Wood Pole Audit Review of Western Power published by the Department of Commerce’s EnergySafety Directorate (*EnergySafety*), there being an obvious public interest in considering if this review had implications for both Western Power and Horizon Power; and

- what Western Power and Horizon Power and their regulators have been doing about the condition of the wooden power pole asset base since *EnergySafety*’s Western Power’s Wood Pole Management Systems: Regulatory Compliance Assessment Report, published in November 2006;

and thereafter, report its findings to the Legislative Council.

11.2 Attached as Appendix 9 is a copy of a PowerPoint presentation given by the Chairman at a public briefing (which was followed by a press conference) on 20 January 2012 to announce the completion of the inquiry and the tabling of the Committee’s report, which summarises the inquiry.
Committee report

11.3 The Committee reported its activities and recommendations in its report dated 20 January 2012.19

11.4 The report contained three recommendations based on a detailed analysis of evidence gathered from over 25 public and private hearings, the receipt of 36 submissions, thousands of pages of summoned and other documents and visits by the Committee to Queensland and Victoria to inquire into the activities of energy providers and regulators in those jurisdictions.

11.5 The Committee’s recommendations were as follows.

- **Recommendation 1:** The Committee recommends that, as a matter of urgency, the Minister for Energy require Western Power to issue a formal addendum to Western Power’s 2010/2011 Annual Report. This addendum should be sufficient to correct the existing Director’s Report such that Western Power fully complies with the disclosure requirements of the Electricity Corporations Act 2005, Schedule 4, clause 11, as these apply to Western Power’s Proposed Revisions to the Access Arrangement and Access Arrangement Information. 2012-2017, lodged with the Economic Regulation Authority, a submission that was approved by the Board of Western Power on the same date that the Board approved the 2010/2011 Annual Report.

- **Recommendation 2:** The Committee recommends that the Government commission a comprehensive review of the current regulatory framework applicable to electricity network operators in Western Australia. Any such review should consider, but not be in any way restricted to, each of the issues listed at Appendix 4 to this Report.

- **Recommendation 3:** The Committee recommends that, as a matter of urgency, the Government commission a wide-ranging independent inquiry into the structure, culture and operations of Western Power since its disaggregation.

11.6 At the heart of the Committee’s concerns was the substantial risk to the safety of members of the public, together with emergency response and repair personnel, posed by unsafe wooden power poles remaining in service. These risks can arise from falling power poles, electric shocks and bushfires ignited by defective power poles.

---

19 Western Australia, Legislative Council, Standing Committee on Public Administration, Report 14, *Unassisted Failure*, 20 January 2012.
11.7 It became apparent to the Committee from the beginning of the inquiry that there were significant issues with the compliance culture and assessment management systems of Western Power.

11.8 When this is combined with the risks outlined in paragraph 11.6 above, the Committee recognised that the need to ensure that Western Power’s wooden power pole asset management systems appropriately managed those risks became all the more imperative.

11.9 Some of the significant points made in the report are as follows.

- During the inquiry, Western Power continued to attract adverse commentary from its principal regulators about its wooden power pole asset management systems, practices and processes. Despite this growing catalogue of regulatory compliance notices and adverse comment, Western Power’s asset management systems continued to receive positive audits from its own consultant reviewers.

- Western Power has clearly failed to adequately manage its wooden power pole asset base to an acceptable level.

- Western Power appeared to routinely provide inaccurate or misleading information to its regulators, the Auditor General as well as to the Committee during the inquiry.

- No single agency of government had a comprehensive oversight role with respect to the performance of publicly owned energy utilities. Neither did any single agency of government have a comprehensive oversight role with respect to the regulatory framework within which energy utilities operate.

- The Auditor General should have commenced a performance audit of Western Power’s wooden power pole asset management systems, practices and processes in light of the many adverse compliance findings of its principal regulators over a period of five years.

- The conduct of Western Power during the inquiry with respect to the Committee raised important questions about the extent to which senior public sector executives understand, or fail to understand, the nature and importance of Parliamentary accountability.
Response to recommendations

11.10 The Minister for Energy responded to the report’s recommendations on 12 June 2012. A copy of the response is attached at Appendix 10.

11.11 The Committee notes the following positive outcomes referred to in the Government’s response:

- The Board of Western Power appears to accept that the corporation should issue an addendum to the 2010-2011 Annual Report, as recommended by the Committee in its first recommendation.

- The Government appears to have taken the Committee’s second recommendation on board and is pursuing the issue of regulatory review. Importantly, a clear direction appears to have been given to the Public Utilities Office to keep a watching brief on the regulatory framework governing public utilities.

- A review of Western Power of sorts appears to have been taken place and this was in direct response to the report.

11.12 However, the Committee notes with disappointment the following.

- The Government appears to have rejected two out of the three Recommendations in Report 14.

- Despite the Board of Western Power having indicated that it believes an addendum to the 2010-2011 Annual Report is warranted, no such addendum has, in fact, been issued as at the date of this Omnibus Report.

- Instead of seeking an independent review of the regulatory reforms required to facilitate lasting cultural change within Western Power, including some specific suggestions made by the Committee, the Government instead appeared to have largely adopted Western Power’s views on those matters as the Government’s position. A number of serious oversimplifications in this respect were as follows:

  a) Appointing administrators on the basis of managerial and administrative ability. The Government’s response was that Western Power is already doing this. With respect, Report 14, taken as a whole, suggests that it is precisely Western Power’s executive recruitment and retention practices that were, in large part, responsible for the troubling management culture critiqued in Report 14. As of 22 August

---

20 Tabled in the Legislative Council on 12 June 2012.
2012, the Committee had not seen evidence of significant change in Western Power’s recruitment and retention practices.

b) Adopting an equivalent to section 1308 of the Corporations Act 2001 to replace the current false and misleading statements prohibition in the Electricity Corporations Act 2005. By failing to adopt the accepted commercial standard of probity for Western Power, the Government is effectively saying that Western Power should not be held to the same high levels of corporate honesty as private sector corporations. The Committee questions why a lower level of accountability is suitable for a public sector corporation.

c) Introducing a statutory requirement to ensure that component failure due to a failure to meet industry standards is prohibited. The suggested reform would provide Western Power with an absolute incentive to ensure that its network is safe in practice. The Committee questions why the Government response suggests such an incentive is not appropriate.

- Report 14, together with Western Power’s unconditional apology to the Committee for its conduct in the course of the inquiry, provided ample rationale for holding an independent inquiry into Western Power’s management culture and practices over the past five years. A moment was created in which significant cultural change within Western Power could be assured. The Government had the perfect opportunity to obtain some objective assessment of the causal factors which made Western Power the troubled organisation that was critiqued in Report 14. This would have provided the Government with a clear blueprint for change against which Western Power’s subsequent conduct could be measured. This is a golden opportunity and one which is unlikely to present itself again for many years. The Committee is disappointed to note that, instead of grasping this opportunity, the Government instead has asked Western Power to review itself and implement its own change agenda. Time will tell to what extent this decision by Government is in the long-term best interests of the people of Western Australia.

- In paragraph 14 of the Executive Summary to the report, the Committee observed that; “This Committee was disturbed to discover, as a result of its inquiries, that no single agency of Government had a comprehensive oversight role with respect to the performance of publicly owned energy
There is no suggestion in the Government’s Response, that any agency of Government will be given this “comprehensive oversight role”.

- The Committee is left wondering if Western Power, as currently constituted, is capable of ensuring that either the cultural problems or asset management challenges identified in Report 14 are adequately addressed within a realistic time frame and in an affordable way.

11.13 The Committee held hearings on 19 September 2012 with Western Power, EnergySafety and the Economic Regulation Authority. This was for the purpose of monitoring any progress that has been made in improving Western Power’s Network Asset Management systems, processes and procedures and the regulatory oversight of this process since the tabling of Report 14.

11.14 The transcripts of these hearings can be found on the Committee’s webpage.

11.15 In light of the matters of public importance dealt with in Report 14, the Committee is of the view that the Standing Orders of the Legislative Council did not allow sufficient time for members to debate the issues raised. It is important to give all members, not just members of the Committee, an opportunity to contribute to the debate on matters of such importance. The current maximum of 10 minutes per member (Standing Order 21), with a 60 minute maximum (Standing Order 15(3) and 23(1)(b)), does not provide an adequate opportunity for this to occur.

11.16 Accordingly, the Committee makes the following recommendation.

**Recommendation 1:** The Committee recommends that the Legislative Council refer to the Procedure and Privileges Committee, for consideration and report back to the Legislative Council, the question of the adequacy of the 10 minute per member and 60 minute overall maximum time for debating Committee reports.

**Special report – conduct of Western Power during the inquiry**

11.17 This arose out of a determination by the Committee to report to the Legislative Council an apology and undertakings received by the Board of Western Power arising out of aspects of the conduct of Western Power and its duly appointed representatives...
11.18 The Committee made the following recommendations.

- **Recommendation 1:** The Committee recommends that the Legislative Council do refer this Special Report to the Privileges Committee to determine what action might be taken to ensure that Senior Executive Service personnel, and their equivalents throughout the public sector, who are to appear before either a House or Committee of Parliament, understand the nature and consequences of appearance before parliamentary committees.

- **Recommendation 2:** The Committee recommends that the Legislative Council do call upon the Government, to ensure that all Senior Executive Service personnel, and their equivalents throughout the public sector, who are to appear before either a House or Committee of Parliament, have access to a person possessing an appropriate understanding of parliamentary privilege, law and procedure.

11.19 A copy of the response from the Premier to the Special Report is attached at Appendix 11.

11.20 The Committee’s response to the Premier’s letter is attached as Appendix 12.

**Special Report – conduct of Auditor General during the inquiry**

11.21 The Committee’s report indicated that the Auditor General owed the Parliament and the people of Western Australia a plausible explanation about aspects of his conduct regarding Western Power, including the fact he did not see fit to carry out a performance audit on Western Power. The Auditor General took issue with the Committee about some paragraphs of its report which he said contained “inaccuracies and misunderstandings”.

11.22 At a hearing on 20 June 2012, the Committee asked the Auditor General for information that would assist the Committee in clarifying the issues he had raised. He told the Committee he was unable to provide it with this information based on legal advice he had received from the State Solicitor’s Office on the application of the confidentiality provisions of the *Auditor General Act 2006*. The advice was that the Auditor General could only give information to, either, the Public Accounts Committee, the Estimates and Financial Operations Committee or the Joint Standing

---

23 Western Australia, Legislative Council, Standing Committee on Public Administration, *Special Report*, 3 May 2012.

Committee on Audit, the latter which does not exist. This was done on approximately 35 separate occasions.

11.23 The Committee’s Special Report brought this to the attention of the Legislative Council and made the following recommendation.

11.24 **Recommendation 1:** The Committee recommends that the Legislative Council call upon the Government to expeditiously amend section 46(3) of the *Auditor General Act 2006* to restore the ancient privileges of the Parliament and all of its Committees with respect to the Auditor General.\(^\text{25}\)


12. **INQUIRY INTO THE ROLE AND FUNCTIONS OF BODIES EQUIVALENT TO THE STATE PUBLIC SECTOR COMMISSION IN OTHER JURISDICTIONS**

12.1 In November 2011 the Committee initiated this own motion inquiry with the following terms of reference.

> To undertake an inquiry into the role and functions of bodies equivalent to the State Public Sector Commission in other jurisdictions, and in particular:

1. accountability mechanisms applicable to the role, with particular focus on Parliamentary accountability;

2. employment practices and procedures, with particular reference to the recruitment, appointment, and retention of senior executive service personnel equivalents;

3. performance management practices and procedures with particular reference to the recruitment, appointment, and retention of senior executive service personnel equivalents; and,

4. any other relevant matter.

12.2 The Committee will be releasing a discussion paper on the findings and outcomes of this inquiry before the end of the year, which will be available on the Committee’s webpage.

\(^{25}\) Western Australia, Legislative Council, Standing Committee on Public Administration, *Special Report*, 27 June 2012, p1.
13. OTHER INQUIRY RELATED WORK

Proposed Inquiry into Regional Prisons

Background

13.1 In November 2009, as part of its scrutiny of reports of the Inspector of Custodial Services, the Committee visited Broome and Roebourne Regional Prisons to meet with staff and view the prison facilities. The Committee was considering adopting terms of reference drafted on 16 September 2009. These were:

The Committee is to inquire into and report on programs for, and the management of, prisoners in regional prisons provided by the Department of Corrective Services. In particular:

(1) training programs for prisoners;

(2) re-entry programs for prisoners and post-release support;

(3) the impact of parole on participation in treatment programs by prisoners;

(4) the evaluation of programs, including programs for indigenous prisoners who constitute the majority of prisoners in regional prisons;

(5) the impact of the management of prisons on the effectiveness of programs; and

any other relevant matter.

13.2 However, at its meeting on 3 March 2010, the Committee was advised that the Legislative Assembly’s Community Development and Justice Standing Committee (CDJSC) was undertaking an inquiry with similar terms of reference. The Committee then resolved not to undertake an inquiry immediately, but wait until the report was published by the CDJSC and consider the matter then.

Committee report

13.3 Following the publication of the CDJSC’s report as well as reports by the Inspector of Custodial Services on two unannounced visits (Casuarina Prison and Rangeview
Remand Centre), the Committee tabled its report in the Legislative Council on 26 May 2011.\footnote{Western Australia, Legislative Council, Standing Committee on Public Administration, Report 12, \textit{Proposed Inquiry Into Regional Prisons}, 26 May 2011.}

13.4 The Committee reported as follows.

- While the reports on the two unannounced visits to Casuarina Prison and Rangeview Remand Centre did not focus on regional prisons, they considered issues relevant to both regional and metropolitan prisons, including a number of those of concern to the Committee that arose out of its visits to the Broome and Roebourne Regional Prisons.

- A further inquiry by the Committee would be counterproductive given the significant number of findings and recommendations contained in the reports and the need for the Government to take action to address them.

- An issue raised in the CDJSC’s report of particular concern to the Committee which was highlighted in the Committee’s visits to the regional prisons in Broome and Roebourne relates to the high number of prisoners who are incarcerated for offences related to the lack of a driver’s licence. The Committee considered this required the urgent action of Government and that driver training and licensing should form part of the training regime within prisons. This would make a significant contribution to reducing recidivism.

13.5 The Committee made the following recommendation.

- **Recommendation 1**: The Committee recommends that as a matter of urgency the government investigates and implements procedures whereby prisoners in regional prisons who otherwise have limited access to driver training and licence testing receive such training prior to release, and that the Department of Corrective Services works with the Department of Transport to develop a program of driver testing within regional prisons.

14. **CONSULTATIONS WITH STATUTORY OFFICE HOLDERS AND SCRUTINY OF THEIR REPORTS**

Objectives and process in scrutinising statutory office holder reports

14.1 The function of the Committee, its objectives in scrutinising statutory office holders’ reports, the procedure followed by the Committee as well as its practices were outlined in its \textit{Annual Report 2008}.\footnote{Western Australia, Legislative Council, Standing Committee on Public Administration, Report 9, \textit{Annual Report 2008}, 15 January 2009, pp13-14.}
14.2 This report does not outline the considerable number of reports generated by the statutory office holders, which can be found at:


14.3 The Committee considers these reports as part of its scrutiny function. The number of reports the Committee is able to consider is affected by the level of inquiry work undertaken by the Committee, which was extensive during the reporting period.

**Hearings**

14.4 The Committee held a number of private and public hearings with all of the statutory office holders for the purposes of:

- updating the Committee on the structure, role and functions of their office;
- updating the Committee on significant issues in public administration that have come to their attention and are of concern to them;
- formalising how the office holders will interact with the Committee;
- obtaining their feedback on the areas the Committee could inquire into and report to Parliament on; and
- scrutinising reports of the officers received by the Committee.

14.5 Some of these hearings are summarised below.

15. **The Office of the Auditor General**

15.1 The Committee resolved on 12 August 2009 to cease the routine scrutiny of the Auditor General’s compliance audits and performance examination reports to avoid duplication with the Legislative Assembly’s Public Accounts Committee.
15.2 The Committee held a hearing with the Auditor General on 24 July 2009 to obtain an overview of the structure, role and functions of his office and issues that have come to his attention and to obtain feedback on what inquiries to conduct over the reporting period. A précis of the transcript from this meeting covering additional matters is on the Committee’s internet page.\textsuperscript{28}

16. **THE OFFICE OF THE INFORMATION COMMISSIONER**

16.1 During the reporting period, the Committee held three hearings with the Information Commissioner.\textsuperscript{29}

**Hearing - 24 July 2009**

16.2 The purpose of this initial hearing was to:

- introduce the Committee to the Information Commissioner and the way his office functions;
- establish the way the Committee will interact with the Information Commissioner; and
- enable the Information Commissioner to highlight any issues that have been raised with him.

16.3 A précis of the transcript from this meeting covering additional matters is on the Committee’s internet page.\textsuperscript{30}

16.4 The Committee also received updates from the Information Commissioner during hearings on 13 October 2010 and 16 May 2012.\textsuperscript{31}

17. **THE OFFICE OF THE PUBLIC SECTOR COMMISSIONER**

**Hearing – 24 July 2009**

17.1 The Committee held an initial hearing with the Public Sector Commissioner on 24 July 2009 to obtain an overview of the structure, role and functions of his office and issues that have come to his attention and to obtain feedback on what inquiries to

\textsuperscript{28} http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/1404B925374C364448257831003C1203?opendocument

\textsuperscript{29} The Annual Reports of the Information Commissioner, referred to during these hearings, can be found at http://www.foi.wa.gov.au/dnn/Publications/Reports.aspx.


\textsuperscript{31} Mr Sven Bluemmel, Information Commissioner, Session One, Transcript of Evidence, 16 May 2012.
conduct over the reporting period. A précis of the transcript from this meeting covering additional matters is on the Committee’s internet page.32

17.2 Further meetings with the Public Sector Commissioner discussed the nature of the oversight role the Committee could perform over the Public Sector Commission.

17.3 This matter will be the subject of further reports to the Legislative Council.

18. THE OFFICE OF THE INSPECTOR OF CUSTODIAL SERVICES

Exit debriefs

18.1 The Committee reviews the Office of the Inspector of Custodial Service’s (Inspector) confidential ‘Exit Debriefs’, as well as reports tabled in Parliament.

18.2 Exit Debriefs contain the Inspector’s findings and/or provisional recommendations following a prison inspection and are provided to inform the Committee of important issues in a timely manner. The Committee only considers acting on Exit Debriefs if the Inspector advises that an Exit Debrief requires urgent action, though matters raised in Exit Debriefs are raised with the Inspector at subsequent hearings.

Hearings

18.3 Private hearings were held with the Inspector on 24 June 2009, 19 August 2009 and 24 November 2010. These were of valuable assistance to the Committee in enabling it to hear about issues of concern about which it could maintain a watching brief over and follow up if required.

18.4 Some systemic issues that have become apparent to the Committee are that of overcrowding; rehabilitation; the level of releases by parole and the effect of parole on the return to prison rate; health services in prisons, including mental health services; the costs of imprisonment; the condition of women prisoners; public transport to and from prison for visitors and prisoners and exiting prisoners and support services.

Reports

18.5 The Inspector’s reports contain a large number of recommendations. The Committee acts on selected recommendations relating to systemic issues and more critical matters and issues repeatedly raised in reports.

18.6 The Committee considered a number of reports, such as the Report of an Announced Inspection of Albany Regional Prison (Report 60, April 2009)\textsuperscript{33} and resolved to integrate the issues raised into the Proposed Inquiry into Regional Prisons (see section 13 above).

Report of an Announced Inspection of District Court Custody Centre (Report 55, July 2008)\textsuperscript{34}

18.7 The report was commissioned at the request of the Chief Justice to examine the security and amenity of the new District Court Building on the corner of Irwin and Hay Street, in regards to the custody area, before the building became fully operational.

18.8 The District Court was built under a public private partnership arrangement with the Western Liberty Group WLG. The building and operating contract is for 27 years. However, the contract for the management of security services within the building has been subsequently sub-contracted out to G45 (originally called GSL). This is the area of the Court's operation that comes under the ambit of the Inspector.

18.9 In general, the findings of the report were very positive. The design of the security and the amenity of the building exceeds anything that has been achieved in Western Australia previously. The findings relate to minor building design faults that can be easily rectified. Some were already fixed before the report was finalised.

18.10 However, the Inspector noted some concern with contractual arrangements because the Department and the Contractor are not in a direct legal relationship. The contract for the operation of the centre was between the Department and WLG, and WLG, in turn, subcontracted the task of running part of the building and services to G45. Thus the contract model separates operational responsibility from legal responsibility. This same defective departmental contract arrangement was used for Acacia's maintenance contract and has been raised as a concern in a previous report.\textsuperscript{35}

18.11 The Committee wrote to Hon Christian Porter MLA, the then Minister for Corrective Services, requesting information about contractual arrangements with private companies in respect to the Custody Centre and Acacia Prison.

18.12 The Committee’s request and the Minister’s response dated 9 October 2009 are attached at Appendix 13.


\textsuperscript{35} Ibid, p6.
Background

18.13 Bandyup Women’s Prison (Bandyup) was opened in 1970 and is the only female prison in Western Australia that caters for all security classifications. It acts as a receival, remand, assessment and sentenced prisoner facility.36

18.14 The report relates to the most recent announced inspection of the prison between 27 March 2011 and 1 April 2011 and, whilst acknowledging positive steps have been taken and areas of good practice that mark an improvement since previous inspections, sets out a number of concerns and indicates that:

*in many respects the prison has slipped back in terms of its strategic direction and performance.*37

18.15 A summary of the main points made by the report is as follows.

- Aboriginal women were concentrated in the least desirable areas of the prison; there was a lack of indigenous specific offender treatment programs; lack of an Aboriginal health and education worker; barriers to contact with family; lack of culturally appropriate health screening and bush tucker.

- The response to the rise in prison population and shortage of accommodation was delayed and piecemeal.

- There was no treatment program for highly violent and sex offenders.

- The family visitors centre is not fit for purpose.

- The access to legal resources is severely limited.

- The range of goods in the canteen did not reflect women’s needs.

- Health resources are inadequate and the capacity of the health service to deal adequately with current demand was falling well short of a comprehensive response.

- The management of mental health issues is a problem.

---


37 Ibid, iii.
• The abolition of the position of Director of Woman’s Corrective Services and Prison Farms is seen as detrimental.

18.16 The Inspector noted that the neglect of the prison has affected all staff. He reports that the inadequate environment and poor facilities available to them are well below the standard encountered in most prisons.

Staff are aware of this and believe it symbolises a failure to value their contributions and a lack of respect. Fortunately they have remained loyal and committed.\(^3\)

18.17 The Inspector also noted that the Department for Correctional Services is exposed to a significant level of risk in terms of potential actions for discrimination under the Equal Opportunity Act 1984.

18.18 There are two main issues relating to equality and equity.

18.19 The first issue relates to women prisoners as a whole, with one of the most telling shortfalls relating to visits.

• Bandyup is poorly serviced by public transport.

• The Department does not provide a bus from the nearest station so visitors without cars face an expensive and arduous journey.

• The outcare facility where visitors attend on arrival is in a very poor condition.

• The internal visiting facility is the worst in the State and does not cater adequately for children. It was opened when the prison housed around 100 prisoners.

18.20 The main issue in equity concerns Aboriginal women, whose accommodation remains concentrated in the most run-down part of the campus. Aboriginal women comprise 45% of the total number of female prisoners and 43% of prisoners at Bandyup.

18.21 In terms of services, much remains to be done in relation to developing more culturally appropriate rehabilitation programs, better health screening improved access to health services and reducing barriers to family and community contact.\(^3\)

18.22 The report contains 33 recommendations made by the Inspector, who concluded that:

\(^3\) Op. cit, n36, pvi.
action and investment are urgently required to address current deficits and to ensure greater equality.\textsuperscript{40}

Prison Visit

18.23 The Committee, after having considered the report, resolved to visit Bandyup to undertake an on-site assessment of conditions at the prison.

18.24 As a result of its visit on 28 March 2012, the Committee noted the key systemic issues appeared to be infrastructure and its impact on prisoner and staff welfare, prisoner management and the potential adverse impact and risk to the community.

18.25 An acute example observed by the Committee during its visit of the prison and referred to by the Inspector in his report\textsuperscript{41} was the impact of double bunking in cells designed for a single occupant on privacy and dignity. Due to the confined nature of these cells:

- one occupant may need to step over another to use the toilet;
- the other occupant may be in very close proximity to the toilet.

18.26 The Committee wrote to the Commissioner of the Department of Corrective Services to obtain this information. The Committee eventually had to resort to issuing a summons for the requested information due to the Department’s inability to provide the information within the ample timeframe stipulated by the Committee in its original request.

18.27 A copy of the summons is attached as Appendix 14.

18.28 The Committee noted, with concern, the following from the Department’s response.

- Despite the Department having identified the need for a new women’s prison in its Strategic Asset Plan 2007/8 to 2012/13, no plans for one have yet been documented.

- Out of a list of funding proposals for capital investment from the Department from 2007/8 to 2012/12, not one has been approved that is specific to Bandyup. This includes the key Bandyup Facilities Redevelopment Stages 3 and 4, which covers a number of building and services redevelopment, including upgrades to the health centre and a new visits centre.

\textsuperscript{40} Op. cit, n36, pvii.

\textsuperscript{41} Op. cit, n36, p7.
• There has been no recent risk analysis by the Department of the prison. This is despite:
  a) the Inspector identifying a number of risks that expose the Department to a risk of litigation; and
  b) the Department acknowledging that the ageing infrastructure at the prison has resulted in a number of Occupational Health and Safety issues which could lead to possible litigation.

• There has been no funding allocated for a dedicated mental health unit for prisoners and high priority safety expenditure remains significantly unfunded (such as for fire safety and ligature removal programmes).

18.29 Furthermore, it was recently noted at a budget estimates hearing that there was no funding provision in the 2012-2013 budget for Bandyup, despite the evident need for expenditure to address the various matters set out above.\textsuperscript{42}

18.30 Many of the concerns held by the Committee about the state of prisons in Western Australia relate to the current condition of Bandyup’s infrastructure.

Hearing with Commissioner of the Department of Corrective Services

18.31 The Committee held a hearing with the Commissioner on 26 September 2012 to put its concerns arising out of its visit to Bandyup Women’s Prison as well as the Commissioner’s response to the Committee’s summons for documents.

18.32 A copy of the transcript of the hearing is on the Committee’s webpage.\textsuperscript{43}

New approach to scrutiny of reports

18.33 The Committee has considered whether its approach to the scrutiny of reports provided by the Inspector could be made more streamlined and consistent. This could be of assistance to the Committee in the next Parliament.

Past approach

18.34 This has been an assessment by the Committee, on an ad hoc basis, report by report, as time and resources permit.

\textsuperscript{42} Standing Committee on Estimates and Financial Operations, Mr Ian Johnson, Commissioner, Department of Corrective Services, \textit{Transcript of Evidence}, 5 July 2012, p18. See also pages 19-20 and 23 for a discussion about issues with Bandyup Women’s Prison.

**New approach**

18.35 The Committee has resolved to commence applying its own risk-based criteria to the analysis of reports of the Inspector as a method of:

- using a ‘lens’ to determine how to prioritise the focus of follow up work by the Committee, where appropriate; and

- assisting the Inspector in providing feedback to the Committee and to feed into his important work.

18.36 The Committee intends to achieve these objectives by applying a risk assessment matrix. An example of this matrix using a numerical code is attached at Appendix 15.

18.37 The Committee has adopted this new approach to scrutinise the Report of an Announced Inspection of Broome Regional Prison (Report 77, June 2012).

18.38 Attached at Appendix 16 is a completed risk matrix table based on a review of this report.

19. **OMBUDSMAN WESTERN AUSTRALIA**

**Hearing – 24 July 2009**

19.1 The Committee held an initial hearing with the Ombudsman on 24 July 2009 to obtain an overview of the structure, role and functions of his office and issues that have come to his attention and to obtain feedback on what inquiries to conduct over the reporting period. A précis of the transcript from this meeting covering additional matters is on the Committee’s internet page.\(^{44}\)

19.2 The Committee also received an update from the Ombudsman at a hearing on 16 May 2012.\(^{45}\)

**Obtaining information from the Ombudsman**

19.3 As part of its follow up to the inquiry into Recreation Activities in Public Drinking Water Source Areas, the Committee examined the processes by which decisions are made by relevant government departments regarding the management of water use in the Kununurra area.

---


\(^{45}\) Mr Chris Field, Ombudsman, Session Two, *Transcript of Evidence*, 16 May 2012.
19.4 The Committee requested documentation from the Ombudsman in relation to a complaint made by a business owner in Kununurra to assist it with this examination.

19.5 The Ombudsman considered, on advice from the State Solicitor’s Office, that section 23 of the Parliamentary Commissioner Act 1971 (WA) (PCA) prevented him from disclosing information the subject of the Committee’s request on the basis that:

- a request from the Committee is not sufficient to override the PCA; and
- only the exercise of the Committee’s powers under section 4 of the Parliamentary Privileges Act 1891 (WA) by summoning the documents was sufficient to override the PCA.

19.6 The Committee considers that it should not be necessary to resort to its power to summons documents when seeking to obtain the type of documentation requested from the Ombudsman. This is on the basis that:

- the power to summons should only be used as a last resort and not as a standard process to obtain information; and
- a parliamentary committee should not be unnecessarily delayed in carrying out its functions under its terms of reference when parliamentary privilege clearly overrides restrictions on disclosure in other legislation.

19.7 Accordingly, the Committee makes the following recommendation.

**Recommendation 2:** The Committee recommends that section 23 of the Parliamentary Commissioner Act 1971 (WA) be amended to restore the ancient privileges of the Parliament and all of its Committees with respect to the Ombudsman.

19.8 Subject to the implementation of the above recommendation, the Committee suggests the Committee in the next Parliament remove the Ombudsman from the Committee’s terms of reference in light of the restrictions placed on the Committee’s ability to obtain information from the Ombudsman.

20. **MATTERS THAT MAY BE PURSUED IN SUBSEQUENT PARLIAMENTS**

20.1 The Committee has identified, from its work during the reporting period, the following as potential subjects into which the Committee may consider inquiring at a later date.
The Committee has highlighted in this report serious concerns it has about the state of this prison which it has not had the opportunity to comprehensively follow up. This issue is worthy of further investigation in the next Parliament.

The Integrity Coordinating Group

During the course of the reporting period, the Committee has taken an interest in the role of the Integrity Coordinating Group (ICG).

The membership of the ICG comprises:

- The Auditor General;
- The Public Sector Commissioner;
- The Corruption and Crime Commissioner;
- The Western Australian Ombudsman; and
- The Information Commissioner.

The terms of reference of the ICG are:

1. Fostering collaboration between public sector integrity bodies.

2. Encouraging and supporting research, evaluation and policy discussion to monitor the implementation of integrity and accountability mechanisms in Western Australia, and other jurisdictions, nationally and internationally.

3. Inspiring operational cooperation and consistency in communication, education and support in public sector organisations.46

During hearings with the Western Australian Ombudsman and Information Commissioner on 16 May 2012, the following descriptions were given of the role of the ICG.

The ICG itself is a vehicle – an informal administrative arrangement – for communication.47

it is a voluntary administrative arrangement and it is not accountable to a minister and not accountable to the government of the day.\textsuperscript{48}

it is a way of agencies who are in roughly similar spaces – in some cases there are crossovers between the agencies – to be sensibly able to sit down and talk about the fact they do not inefficiently duplicate or get in each other’s way in those spaces.\textsuperscript{49}

What we do, where appropriate and when it does not hinder our independence, is coordinate our activities to ensure that we increase the standard of administration and increase the level of integrity across the sector.\textsuperscript{50}

20.7 The Committee questions whether there is a role for the ICG, and, if so, what this role might be. The following issues are of particular concern to this Committee.

- There is no oversight of the activities of the ICG by either the Parliament, an independent inspector, or a responsible Minister, and there is no clear accountability to Parliament.
- The ICG does not operate under any legislative instrument or administrative Order.
- As independent statutory agencies, the perception of independence for each agency appears to this Committee to be at risk by means of such informal and unstructured interrelations between the agencies.
- The possibility of meetings of the ICG changing the functions of its members without any legislative change.
- The lack of a formal communications agreement.
- The inability of any concerned person to obtain copies of the minutes of the ICG or its senior officers meetings due to the exempt status of the agencies.

20.8 The description by the Ombudsman of the integrity agencies as “the so called fourth branch of government”,\textsuperscript{51} also brings into focus the question of oversight. To whom is the ICG accountable, and how? Can notions of the separation of powers in a modern representative democracy accommodate such a conception?

\textsuperscript{47} Mr Chris Field, Ombudsman, Western Australia, \textit{Transcript of Evidence}, 16 May 2012, p9.
\textsuperscript{48} Ibid, p10.
\textsuperscript{49} Ibid, p11.
\textsuperscript{50} Mr Sven Bluemmel, Information Commissioner, \textit{Transcript of Evidence}, 16 May 2012, p9.
\textsuperscript{51} Mr Chris Field, Ombudsman, Western Australia, \textit{Transcript of Evidence}, 16 May 2012, p2.
20.9 These are very much preliminary concerns, as the Committee has not had the opportunity to consider them in any detail. The Committee did receive helpful feedback from the Ombudsman and the Information Commissioner during the hearings on 16 May 2012, but this feedback did not assuage the Committee’s concerns. The transcripts of these hearings appear at Appendix 17.

20.10 The Committee believes it may be beneficial for the Committee in the next Parliament to consider these issues in greater detail. One question to consider is: should there be a formal mechanism for the reporting to Parliament the activities of the ICG and if so, what should this be? What is the rationale for the ICG and is it compatible with expressed statutory independence of the officers?

20.11 The outcome of any inquiry could have implications for the Committee’s terms of reference.

21. WATCHING BRIEFS

21.1 The Committee establishes a ‘watching brief’ when the Committee decides to monitor an issue raised in a statutory office holder’s report. This involves following up progress on the issue.

22. OTHER MATTERS

Follow up on inquiries

22.1 The Committee commends the practice of following up work to monitor the progress (or lack of it) made in the implementation of recommendations made by the Committee in its reports. It has proven to be a very useful way of:

- determining the level of follow through by government agencies the Committee views as sufficient to give effect to its recommendations; and
- obtaining further information and clarity from the Government on its responses to the Committee’s recommendations.

22.2 The Committee has undertaken this practice for the benefit of the Legislative Council and the people of Western Australia to ensure that focus remains on issues highlighted by inquiries after such inquiries have concluded and timely follow up work is undertaken by government agencies.
Hon Max Trenorden MLC
Chairman

6 November 2012
APPENDIX 1

GOVERNMENT RESPONSE TO REPORT ON THE
INQUIRY INTO STATUTORY OFFICERS’ GRIEVANCE
PROCEDURES
APPENDIX 1

GOVERNMENT RESPONSE TO REPORT ON THE INQUIRY INTO STATUTORY OFFICERS’ GRIEVANCE PROCEDURES

GOVERNMENT RESPONSE TO THE LEGISLATIVE COUNCIL STANDING COMMITTEE ON PUBLIC ADMINISTRATION - REPORT INTO THE INQUIRY INTO STATUTORY OFFICERS’ GRIEVANCE PROCEDURES

SEPTEMBER 2009

Recommendation 2: The Committee recommends that the Commissioner for Public Sector Standards and the Public Sector Commissioner consider:

- incorporating the secondment principles stated in the Parliamentary Series Report One into the OPSSC’s revised standards;
- implementing standards, policies and procedures requiring a review of secondments of more than six months at least once a year. The review should involve the secondee, the home agency and the host agency; and
- implementing standards, policies and procedures that ensure that the home agency formally advises secondees at the time of entering into a secondment of the legislation, policies and practices (including the right of return provision) applicable to being seconded. It would be preferable if this advice was confirmed in writing. Secondees should be reminded of this information during any review.

The Government is supportive of both Commissioners considering the matters outlined by the Committee. It is understood that some work has already been undertaken in this regard.

Parliamentary Series: Report One

The Public Sector Standards Commissioner has advised that the recommendations from Parliamentary Series: Report One have been taken into account as part of the Commissioner’s review of the current Public Sector Standards. The new draft Standards Framework supports agencies to develop and apply policies and procedures that reflect their business requirements, are based on a proper assessment, are fair, and capable of review.

The Public Sector Commissioner supports the notion that lengthy secondments should be the exception rather than the rule and that an assessment of merit should to be undertaken in such cases. The secondment mechanism is a useful and important management tool that benefits both agencies and individuals.
Secondment decisions should be consistent with the general principles of human resource management set out in the Public Sector Management Act 1994 and the Public Sector Standards in Human Resource Management. The Public Sector Commission will be considering issues relating to secondments as part of upcoming public sector reforms.

Secondments of more than 6 months

The Public Sector Standards Commissioner has advised that she is developing a number of written/online products to support the introduction of and encourage compliance with the new Standards. Although these products will not require a formal review of secondments at least once a year, they will discuss the need for secondment arrangements to be clearly communicated to all parties and documented at the outset of the secondment and when secondments are extended.

The Public Sector Commissioner supports the regular review of secondment arrangements which involve the secondee and home and host agencies.

Formal advice regarding secondments

New products being developed by the Office of the Public Sector Standards Commissioner (OPSSC) will cover candidate care, including the provision of relevant information to candidates and communication between home and host agencies at the outset of the secondment. As part of implementing the Standards Framework, OPSSC has advised that it will also be conducting workshops for the purpose of informing public sector agencies of OPSSC’s expectations in relation to compliance with the new Standards.

The Public Sector Commissioner supports moves to ensure that secondees are aware of policies and practices applicable to their secondment, both at the outset of the secondment and whenever secondment arrangements are reviewed.

Recommendation 3: The Committee recommends that a higher priority should be given by chief executive officers and their agencies in promoting awareness of the PID Act.

The Government is supportive of this recommendation.

The Public Sector Standards Commissioner is currently responsible for promoting compliance with the Public Interest Disclosure Act 2003 (PID Act) throughout the sector. However, individual chief executive officers have a responsibility to promote awareness of the PID Act within their agencies.
The Review of the Public Interest Disclosure Act conducted by Mr John Lyons recommended that the PID Act be amended to include a requirement for principal executive officers (chief executive officers) to promote awareness of the PID Act within his or her organisation. The Government is currently considering the recommendations made by Mr Lyon.

Recommendation 4: The Committee recommends that chief executive officers seek the assistance of the Public Sector Commissioner where or when a grievance dispute is protracted, intractable and characterised by an irretrievable breakdown in the relationship between the parties.

The Government supports this recommendation.

It is agreed that chief executive officers can seek advice and guidance from the Public Sector Commissioner where grievance disputes are protracted, intractable or involve an irretrievable breakdown in the relationship between the parties.

However, it should be noted that the Public Sector Commissioner has no legal power to intervene in such cases, nor is it considered appropriate for such powers to be introduced.

Recommendation 5: The Committee recommends that chief executive officers seek the assistance of the Public Sector Commissioner where a grievance dispute involves a complaint against the chief executive officer and the grievance has not been resolved within a reasonable time frame.

The Government supports this recommendation.

As a result of a delegation of power from the Minister for Public Sector Management, the Public Sector Commissioner is currently the employer of chief executive officers. Legislative amendments are being progressed to formally vest that power in the Commissioner. On this basis, it is considered appropriate for the Commissioner to be involved where grievances against chief executive officers are protracted.
APPENDIX 2
LETTER OF INTENT – COLLABORATIVE APPROACH
FOR RECREATIONAL PLANNING IN PUBLIC DAMS
AND CATCHMENTS
APPENDIX 2

LETTER OF INTENT – COLLABORATIVE APPROACH FOR RECREATIONAL PLANNING IN PUBLIC DAMS AND CATCHMENTS

Dear Max,

LETTER OF INTENT – COLLABORATIVE APPROACH FOR RECREATION PLANNING IN PUBLIC DAMS AND CATCHMENTS

Please find attached a letter of intent to be submitted to the Parliamentary Inquiry into recreation activities within public drinking water sources.

The letter is an agreement between the Department of Sport and Recreation, Department of Health, Department of Water, Water Corporation and Department of Environment and Conservation. I support the letter of intent and it is my understanding that each agency will also be submitting the document.

There is currently an undersupply of inland nature-based recreation opportunities for residents of Perth and the Southern Darling Range. This is not because the land and water opportunities do not exist. It is because the resources to investigate, establish, maintain and manage them are limited.

Physical and mental health problems are widespread and on the increase and nature-based activities can significantly improve both conditions.

There are water quality, environment and cultural consideration risks from unmanaged do-it-yourself recreation access and these risks will increase if nothing is done to provide alternative facilities and to direct recreators to appropriate locations.

The Perth community has little understanding of recreation planning and management as well as water resources and catchment management issues. Other jurisdictions have built effective community stewardship through information, education and involvement in planning and management. Effective community stewardship can significantly reduce aberrant behaviour and the need for agency-based surveillance and enforcement.
This is why the Department of Sport and Recreation has committed to facilitating the development of a methodology to undertake recreation planning focussing on the Darling Range from the Perth Hills to Collie.

Over the past couple of months, the abovementioned agencies have been developing the letter of intent, which will set the framework for a formal agreement to be finalised by the 31 December 2010.

Yours sincerely

[Signature]

Ron Alexander
Director General

6 August 2010

[Encl]

Co:  Department of Health,
     Department of Water,
     Water Corporation,
     Department of Environment and Conservation
LETTER OF INTENT – COLLABORATIVE APPROACH FOR RECREATION PLANNING IN PUBLIC DAMS AND CATCHMENTS

A collaborative partnership has been formed between agencies responsible for planning and managing recreation in public dams and catchments throughout Western Australia in accordance with existing legislation.

The agencies will focus on the area in the Darling Range from the Perth Hills to Collie including dams (drinking and non drinking water), lakes, decommissioned mine voids, other water bodies/waterways and catchments. Refer to Figure 1.

Each agency has agreed to:

- work collaboratively to plan and manage nature-based recreation activities;
- commit to an open, accountable and adaptive process to develop an agreed methodology to undertake recreation planning and management to:
  - provide a diversity of recreation opportunities across the region;
  - protect the security of drinking water supplies;
  - protect the water quality of recreational (direct contact) waters;
  - protect the environment;
  - provide information and education toward improving the environmental stewardship of recreators; and
  - establish targets for improved recreation opportunities;
- undertake appropriate monitoring and research to adequately assess the performance of the governance arrangements and recreation outcomes;
- periodically review the process and publicly report on the outcomes; and
- develop a formal agreement between all agencies for recreation planning in public dams and catchments throughout Western Australia by 31 December 2010.

In addition to the above each agency has made the following commitments;

Department of Sport and Recreation (DSR)

Subject to additional funding, DSR will facilitate the development of a methodology to undertake recreation planning in the focus area.

Department of Water (DoW) and the Water Corporation (WCorp)

The Department of Water together with the Water Corporation will review existing public dams and catchments with a view to identifying those that that are no longer required for public drinking water supply, and so could be de-proclaimed. These sources and their catchments could then be available for increased recreation access. Public
Drinking Water Supply Areas’ that have been identified for review include Blinkley Brook Catchment Area (CA), Gooralong Brook Water Reserve (WR), Dirk Brook WR, Murray River WR, Bannell Brook CA, Boddington Dam CA, Harvey Dam CA, Brunswick Dam CA, Wellington Dam CA and Mullalyup WR.

In relation to the availability of water in dams to meet recreation needs, especially over school holiday periods, operational strategies may need to be developed by Department of Water licence holders to address this matter. This is consistent with the approach used by the department to ensure water licensees meet environmental water needs.

Department of Environment and Conservation

The Department of Environment and Conservation will develop recreation master plans for Logue Brook and Lake Kepwari.

Department of Health (DOH)

The Department of Health will continue in its role of providing Health Risk Assessment advice on the adequacy of monitoring programs to characterise the risks to public health and contribute to overall risk management decisions and advice.

DOH will retain its statutory role of acting in the event that it identifies public health risks.

DOH will review available monitoring data for recreational waters and make use of other suitable references or information that can be used as evidence to develop a Statement of Planning Policy to protect the water quality of recreation waters. DOH will work with the agencies mentioned in this letter of intent as well as the Department of Planning to ensure the final document will be suitable for existing land use decision making frameworks.
APPENDIX 3

GOVERNMENT RESPONSE TO REPORT ON INQUIRY INTO RECREATIONAL ACTIVITIES WITHIN PUBLIC DRINKING WATER SOURCE AREAS
APPENDIX 3
GOVERNMENT RESPONSE TO REPORT ON INQUIRY INTO
RECREATIONAL ACTIVITIES WITHIN PUBLIC DRINKING
WATER SOURCE AREAS

Government’s response to the Legislative Council Standing Committee on Public Administration Report 11 - Recreation activities within public drinking water source areas.

Recommendation one:
The Committee recommends no increase in the amount of current recreational activity in the outer catchments of public drinking water source areas.

Government response:
Recommendation 1 is noted.

This recommendation will be considered in a planned review of the Department of Water’s Statewide Policy 13 – Policy and guidelines for recreation within public drinking water source areas on Crown land 2003. The Department of Water will publicly review this policy in 2011.

The demand for recreation opportunities in natural areas will continue to increase into the future and new types of recreation will also arise. These matters will be considered as part of the review process for Policy 13, and as part of the inter-agency collaborative working group’s (see Recommendation 3) consideration of recreation matters.

Recommendation two:
The Committee recommends that the public drinking water source areas identified by the interagency collaborative partnership described in paragraph 4.37 as appropriate for de-proclamation as public drinking water source areas, be used for irrigation and recreation.

The Committee further recommends that recreational activity be managed by a working group for each such area comprising representatives as appropriate from the Department of Water, Department of Environment and Conservation, Department of Sport and Recreation, Department of Health, the Water Corporation, Tourism WA and the relevant local government authority.

Government response:
Recommendation 2 is supported.

The inter-agency collaborative working group described in paragraph 4.37 of the Standing Committee’s report consists of representatives from Department of Sport and Recreation, Department of Environment and Conservation, Department of Water, Department of Health and Water Corporation.

Eleven PDWSAs will be investigated for de-proclamation. These are Bickley Brook Catchment Area (CA), Goolralong Brook Water Reserve (WR), Dirk Brook WR,
Boddington Dam CA, Murray River WR, Bancel Brook CA, Harvey Dam CA, Brunswick CA, Wellington Dam CA, Mullaluy WR and Padbury Reservoir CA. These catchments can support a range of different land and water based recreation opportunities.

Government has already completed a preliminary assessment of these PDWSAs. It is expected that most of them could be deproclaimed within the next 2 years. However, Padbury and Mullaluy are currently used as emergency sources and are expected to be deproclaimed post-2016. De-proclamation of Wellington Dam Catchment Area is also subject to Government decisions on the management of water resources in the Collie area. A staged de-proclamation process is therefore required to allow for efficient water supply and recreational planning to occur.

In de-proclaimed PDWSAs, the areas will continue to be managed in accordance with the underlying tenure of land whether it be private land, shire reserve, State forest or conservation reserve. Since tenure of the proposed de-proclaimed areas is mixed, the areas may be managed by many different individuals and organisations. As such the establishment of a working group for each de-proclaimed area would be difficult. Accordingly, establishment of working groups will be addressed on a case by case basis. Representatives from Tourism WA and the relevant local government authority will be incorporated into area based working groups as appropriate.

It should be noted that it will be important to achieve a balance of recreational opportunities. Different opportunities will be made available in appropriate locations across a region; however, it will not be possible to provide all recreational opportunities at all locations. It is also important to note that other constraints may exist (e.g. mining and plantations) to recreation use. These constraints will also be considered by the inter-agency working group.

Recommendation three:

The Committee recommends the continuation of the collaborative approach between the Department of Water, Department of Environment and Conservation, Department of Sport and Recreation, Department of Health and the Water Corporation towards identifying appropriate dams and their catchments compatible for irrigation and recreational purposes. The Committee anticipates that this would increase recreational opportunities for the people of Western Australia.

Government response:

Recommendation 3 is supported.

The inter-agency collaborative working group will continue to work towards developing a coordinated and regional approach to maximise both recreational opportunities and the protection of public drinking water source areas.

The development of a recreation planning framework and methodology is being considered to help achieve this outcome. This work would be facilitated by the Department of Sport and Recreation.
Recommendation four:

The Committee recommends that the penalties in by-law 31.4 of the Metropolitan Water Supply, Sewerage and Drainage By-laws 1981 be increased to a level comparable to the $5,000 penalty found in the Local Government Act 1995. This recommendation reflects the seriousness of the offences contained in by-law 31.4.

Recommendation five:

The Committee recommends an amendment to the Metropolitan Water Supply, Sewerage and Drainage Act 1909 to provide for an infringement notice system and modified penalties of $500 to apply to the Metropolitan Water Supply, Sewerage and Drainage By-laws 1981.

Recommendation six:

The Committee recommends that the penalties in the Country Areas Water Supply By-laws 1957 be increased to a level comparable to the $5,000 penalty found in the Local Government Act 1995. This recommendation reflects the seriousness of the offences contained in the By-laws.

Recommendation seven:

The Committee recommends an amendment to the Country Areas Water Supply Act 1947 to provide for an infringement notice system and modified penalties of $500 to apply to the Country Areas Water Supply By-laws 1957.

Government response:

Recommendations 4, 5, 6 and 7 are supported.

Water reform, and in particular new water legislation is a current Government priority. The amendments suggested in these recommendations will be considered in proposed new legislation. Additional consideration on the type and amount of penalties will need to occur during the drafting process.

If investigations show that specific changes to by-laws need to be made prior to the proposed water resource management legislation being progressed, government will consider amending existing legislation as an interim measure.

Recommendation eight:

The Committee recommends that the 1994 Agreement between the Federation of Western Australian Bushwalkers Inc and the Water Corporation as described in paragraph 5.55 be cancelled.
Government response:

Recommendation 8 is supported.

The Department of Water will ensure recreation stakeholders are engaged in the review of Policy 13, and that their views and needs for now and the future are considered (see recommendations 1 and 9).

Recommendation nine:

The Committee recommends that all future reviews of Statewide Policy 13 should be based on the imperative of source protection and guided by the precautionary principle.

Government response:

Recommendation 9 is supported.

However, in future water resource planning, and in the proposed review of the Department of Water’s Policy 13, consideration will be given to the increasing demand for recreation that will accompany the significant population increase predicted for the Perth to Bunbury region. The impact of this population growth on the ongoing availability of reliable, safe, good quality drinking water sources will also be considered.

The Department of Water plans to commence a public review of Policy 13 in 2011. That review will consider the Standing Committee’s recommendations and findings.

Recommendation ten:

The Committee recommends that a lead agency be nominated to be responsible for decision making in the Priority 1 area of the Kununurra Water Reserve.

Recommendation eleven:

The Committee recommends that the Government give consideration to relocating the Kununurra bore field to another site to enable the development of the existing Priority 1 area of the Kununurra Water Reserve as a tourist precinct.

Government response:

Recommendations 10 and 11 are supported.

The Department of Planning is the lead agency responsible for planning decisions within the Kununurra Water Reserve. Recreation and tourism issues along a defined area of the foreshore are subject to the agreement of both the Department of Water and Shire of Wyndham East Kimberley as the land is vested in both parties.
The Department of Water will continue to liaise with all parties regarding the ongoing management of the Kununurra Water Reserve, and opportunities for its protection, relocation, development and tourism potential.

Recent advice from the Department of Water on a proposed reduction to the eastern boundary of the existing proclaimed Kununurra Water Reserve (along Lilly Creek Lagoon) would allow for some development to occur, and for new and enhanced recreation and tourism opportunities.

Investigations of alternative water supply sources will be considered in the context of the above proposed boundary change and ongoing discussions with stakeholders.
APPENDIX 4

DRAFT MEMORANDUM OF UNDERSTANDING
APPENDIX 4

DRAFT MEMORANDUM OF UNDERSTANDING

Government of Western Australia
Department of Sport and Recreation

Hon Max Trensman MLC (Chairman)
Standing Committee on Public Administration
Legislative Council Committee Office
18-32 Parliament Place
WEST PERTH WA 6000

Dear Max,

REQUEST FOR COPY OF MOST CURRENT VERSION OF THE DRAFT
MEMORANDUM OF UNDERSTANDING

As requested, please find attached the most current version of the memorandum of
understanding between the Collaborative Working Group.

All agencies have been notified that the document, currently in draft format will be sent
to the Standing Committee.

If you have any queries please contact Yvette Peterson, Strategic Project Manager at
the Department of Sport and Recreation on 9492 9332 or by email
yvette.peterson@dsr.wa.gov.au.

Yours sincerely,

Ron Alexander
Director General
6 July 2012
Memorandum of Understanding
Recreation in Water Catchments

Department of Water
And
Department of Environment and Conservation
And
Department of Health
And
Water Corporation
And
Department of Sport and Recreation
This Memorandum of Understanding (MoU):

is made on behalf of the following parties:

1. Department of Water, acting through its Director General of 168 St Georges Terrace, Perth, Western Australia (DOW)

2. Department of Environment and Conservation, acting through its Director General, of 168 St Georges Terrace, Perth, Western Australia (DEC)

3. Department of Health, acting through its Director General, of 189 Royal Street, East Perth, Western Australia (DhH)

4. Department of Sport and Recreation, acting through its Director General, of 246 Vincent Street, Leederville, Western Australia (DSR)

5. Water Corporation, a statutory body corporate established under the Water Corporation Act 1995, acting through its Chief Executive Officer, of 629 Newcastle Street, Leederville, Western Australia (Water Corp)

collectively referred to as the Participants.

BACKGROUND

A. On 10 August 2011, the State Government released its response (Government Response), attached in Appendix 1, to the Standing Committee on Public Administration's Report 11 on Recreation Activities within Public Drinking Water Source Areas (Committee Report).

B. The Participants have entered into this MoU to evidence their common intention to work together to implement the Government Response.

C. The purpose of this MoU is to set out the Participants' respective roles and responsibilities for implementing the Government Response.
D. The Participants agree there is no intention to create legal relations, and that this MoU does not create a binding legal relationship between the Participants.

E. The Participants have considered the Standing Committee on Public Administration's support for a 'lead agency' model where proponents of recreation proposals can approach a 'lead agency' to assist them to get approval or to approve proposals. Where DEC has statutory responsibility/tenure over an area, DEC already takes a lead agency approach through measures such as the development of a recreation master plan (e.g. Logue Brook Dam).

All Participants support this approach where a participant has statutory responsibility/tenure for an area. The final model to be applied for recreational proposals will consider the different circumstances of each of the 11 PDWSAs proposed to be dep proclaimed. (See attached draft Model).

1. Definitions

In this MoU, unless the contrary intention appears:

Adaptive Management is an approach that involves learning from management actions, and using this learning to improve the next stage of management. (Holling, 1978)

Proactive Management an approach based on an open and engaging style of management gathering and processing information before making decisions. Approach adopted by the ADWG 2011.

Commencement Date means the date on which the last Participant signs the MoU.

Environmental Stewardship is the responsibility for environmental quality shared by all those whose actions affect the environment.

Focus Area means all water catchments within the Darling Range from the Perth Hills to Collie.

Government response means the 10 August 2011 response signed by Hon Bill Marmion MLA, Minister for Environment; Water on behalf of Government.

Irrigation and recreation dams are those used for irrigation and recreational purposes that are not proclaimed as a PDWSA.
Policy 13 is the Department of Water’s Policy and Guidelines for Recreation within Public Drinking Water Source Areas on Crown Land as approved by Government after consideration of the issues raised in submissions on draft Policy 13, which was released for public comment from 3 February to 19 March 2012.

Public dams and catchments include all dams and their catchments that are publicly owned and include both proclaimed public drinking water source area dams as well as unproclaimed recreation and/or irrigation dams.

PDWSA means a public drinking water source area as defined in the Metropolitan Water Supply Sewerage and Drainage Act 1999 or the Country Areas Water Supply Act 1947. In surface catchments the PDWSA is comprised of a reservoir protection zone and outer catchment area.

Reservoir protection zone (RPZ) means a buffer (usually 2 km) within the PDWSA boundary measured from the full supply level of a drinking water reservoir, and inclusive of the reservoir.

Water Catchments include public reservoirs, public lakes and other water bodies associated with dams, waterways, lakes in decommissioned mine voids and their catchments.

Working Group is the representative group consisting of at least one representative from each of the Participants.

2. Term of MoU
This MoU will commence on the Commencement Date and, will continue for 5 years from the Commencement Date.

3. Intent
The Participants have a common intention of implementing the Government Response and Policy 13.

4. Agreed Approach
The Participants agree the following approach should be taken in the Focus Area:

(a) use a whole-of-Government approach to plan and manage recreation within public dams and catchments with approvals guided by state-wide policy, statutory responsibility and tenure;

(b) use of a collaborative and adaptive process to plan and manage recreation within public dams and catchments;
(c) compliance with National and State drinking water quality management guidelines and policies supported by Government; and

(d) implementation of the recommendations in Report 11 of the Standing Committee on Public Administration’s inquiry into recreational activities within PDWSAs, consistent with the Government Response and Policy 13.

The processes and learnings developed from this agreed approach will be made available for use by all Participants with other recreation proposals outside the Focus Area.

5. Working Group

5.1 The Working Group has been formed to be responsible for planning and managing recreation and drinking water source issues in accordance with the Committee Report, consistent with the Government Response, Policy 13 and existing legislation and policy.

5.2 Each of the Participants will have at least one representative in the Working Group.

5.3 The Working Group will initially consult Water Catchments within the Focus Area.

5.4 The Working Group will not seek to provide for every recreation activity at every location but will take a regional approach, where facilities are provided for the full range of recreation activities across the region. Specifically, facilities and programs will be established in areas where they are best situated so as to meet the increasing needs of the recreating public and to protect public drinking water source areas, environmental systems and those engaged in recreation activities.

5.5 The Working Group will use adaptive and proactive management to serve the needs of those engaged in recreation activities and to provide a framework within which to respond to changing circumstances such as population growth, public health, climate change and other drivers.

5.6 The Participants propose that the results of the Working Group’s planning process will guide future Government policy.
6. Staging

The Participants agree on the following stages:

(a) Stage One shall involve the Working Group:

(i) Providing advice on the de-proclamation of the 11 PDWSAs identified in the Government Response and consider these de-proclaimed areas for new or enhanced recreation uses;

(ii) identifying recreation opportunities outside PDWSAs and assisting with the management of recreation within PDWSAs in the Focus Area.

(iii) identifying investment and funding requirements for the implementation of the Government Response;

(iv) Facilitating the development or adoption of a methodology to undertake recreation planning in the Focus Area; and

(v) Facilitating the development of a process to manage recreation in de-proclaimed catchments under different land tenure.

(b) Stage Two shall involve the working group undertaking recreation planning and implementation for the Focus Area.

(c) Stage Three shall involve the working group applying its findings of the recreation planning and implementation from the Focus Area on a State-wide basis.

7. Working Group Outcomes

7.1 The Working Group will aim to achieve the following outcomes within 18 months from the Commencement Date:

a) de-proclamation of at least 2 of the 11 PDWSAs specified within the Government Response, with a view to these areas being used for more recreation;

b) implementation of the Government Response to the Committee Report, consistent with Policy 13;

c) development or adoption of an agreed methodology for recreation planning in the Focus Area;
d) identification or development of new funding opportunities for recreation facility development within the Focus Area; and

e) agreement on, and adoption of, a process for expediting the assessment of applications for special events.

7.2 The Working Group will aim to achieve the following outcomes within 30 months from the Commencement Date:

(a) revise outdated legislation and by-laws in relation to recreation planning in Water Catchment areas; and

(b) deploy educational packages and materials to facilitate improved environmental stewardship by recreation users.

7.3 The Working Group will aim to achieve the following outcome within five years of the Commencement Date:

(a) apply updated recreation planning methodology to other Water Catchments around the State outside the Focus Area.

8. Roles and Responsibilities

8.1 The Participants agree to allocate the roles and responsibilities for implementing the Government Response set out in this clause.

8.2 Each Participant agrees to:

(a) recognise and implement the recommendations of the Committee Report adopted in the Government Response and in Policy 13;

(b) work collaboratively to plan for recreation activities; and

(c) commit to an open, transparent and accountable process to:

(iii) provide a diversity of recreation opportunities across the State;

(vii) protect the water quality and security of PDWSAs;

(viii) protect the water quality of recreational (direct contact) waters using Guidelines for Managing Risks in Recreational Water 2008;

(ix) protect the environment;

(x) provide information and education toward improving the environmental stewardship of recreation users;
(xi) establish targets for improved recreation opportunities;

(xii) consider minimum water levels for recreation dams;

(xiii) undertake appropriate monitoring and research to adequately assess the performance of the governance arrangements and recreation outcomes (subject to the availability of funding);

(xiv) periodically review the process and report on the outcomes to Government; and

(xv) develop a streamlined approach for event applications.

8.3 DSR agrees (subject to budget and resources) to:

(a) assist with identifying key recreation sites;

(b) provide executive support to the Working Group; and

(c) facilitate the development of a methodology (or identify existing methodologies) to undertake recreation planning in the Focus Area.

8.4 DoW and the Water Corporation agree to work together to:

(a) confirm the 11 PDWSAs that are no longer required for public drinking water supply, and so could be de-proclaimed, with a view to these catchments becoming available for increased recreation access. PDWSAs that have been identified are Blechy Brook Catchment Area (CA), Gooralong Brook Water Recharge (WR), Dirk Brook WR, Murray River WR, Banceill Brook CA, Bodallin Dam CA, Harvey Dam CA, Brunswick Dam CA, Wellington Dam CA, Padbury CA, and Mullalup WR. Padbury and Mullalup will need to be delayed for two to five years to allow for the Water Corporation to implement replacement water supplies. The future use of Wellington Dam is subject to decisions by Government;

(b) develop operational strategies for water levels in recreation dams that are subject to irrigation water allocations and DoW allocation licensing, to help maintain and protect recreation needs; and

(c) administer and implement Policy 13.

8.5 DEC agrees to assist with recreation master planning subject to budget and resources. For example, it may assist with planning in relation to Logue Brook Dam and Lake Kepwari.
8.6 DoH agrees to:
(a) provide health risk assessment advice on the adequacy of monitoring programs to characterise the risks to public health and contribute to overall risk management decisions and advice in PDSWAs;
(b) contribute to the health risk management decision process and to provide advice on the safe use of recreational waters;
(c) act in the event that a public health risk has been identified;
(d) review available monitoring data for recreational waters and make use of other suitable references or information that can be used as evidence for the Department of Planning to develop a Statement of Planning Policy to protect the water quality of recreation waters; and
(e) work with the Participants as well as the Department of Planning to ensure the final document will be suitable for existing land use decision-making frameworks.

9. Information Sharing
All information obtained and gathered during the process will be openly shared with each of the Participants.

10. Review
This MoU will be reviewed by the Working Group every 18 months from the commencement date.

11. Limitations
11.1 This MoU is not intended to and does not affect any of the statutory responsibilities of the Participants.

11.2 Nothing in this MoU shall affect the Participants' obligation under or pursuant to any written or other law, or any contract.
12. Dispute Resolution

12.1 If a dispute cannot be resolved at officer level within 3 months (or shorter timeframe agreed by the Participants) the issue will be escalated through normal government processes for resolution.
**Executed** as a Memorandum of Understanding:

Signed for and on behalf of the **Department of Water**

Maree De Lacy, Director General of the Department of Water

Date

Signed for and on behalf of the **Department of Environment and Conservation**

Keiran McNamara, Director General of the Department of Environment and Conservation

Date

Signed for and on behalf of the **Department of Health**

Kim Snowball, Director General of the Department of Health

Date
Signed for and on behalf of
Water Corporation

Sue Murphy, Chief Executive Officer of the
Water Corporation

Date

Signed for and on behalf of
Department of Sport and Recreation

Ron Alexander, Director General of the
Department of Sport and Recreation

Date
APPENDIX 5

DRAFT RECREATION MODEL
Hon Max Tronordan MLC (Chairman)  
Standing Committee on Public Administration  
Legislative Council Committee Office  
18-32 Parliament Place  
WEST PERTH WA 6000

Dear Max

ADDITIONAL INFORMATION - AGREED MODEL

As requested at the Parliamentary Hearing on the 13 June 2012, the Department of Sport and Recreation would like to submit a preferred model for managing the process in the future.

There was strong commitment from all agencies on the Collaborative Working Group to come up with an agreed model. These agencies include the Department of Sport and Recreation, Department of Health, Department of Water, Department of Environment and Conservation and Water Corporation. A flow chart, table and map have been attached in order to illustrate the process.

It is important to highlight that the Collaborative Working Group will be concentrating on the 11 sites to be deprioritised. All agencies can implement the process using existing resources. This however, will cause delays as there will be competition for available resources within each organisation. The Department of Sport and Recreation will coordinate the process within a 0.2 FTE position. Additional dedicated funds are essential to expediting the process and providing for the growing pressure for recreation access throughout the State.

If you have any further inquiries regarding the model, please do not hesitate to contact Yvette Peterson, Strategic Project Manager at the Department on 9492 9832 or by email yvette.peterson@dsr.wa.gov.au.

Yours sincerely

Ron Alexander  
Director General  
6 July 2012
Resourcing is essential for:

a) Process Coordination,
b) Planning, Infrastructure and Site Management (CWG will be applying for Royalties to Regions funding again)

* Subject to funding DSR could provide a more active role at this stage
### Statutory responsibility, tenure and available information for recreation proposals in the Harvey dam catchment

<table>
<thead>
<tr>
<th>Harvey Dam Catchment (Deproclaimed April 2012)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Water Corporation land occurs around the majority of the dam water body. In 2007 a recreation feasibility study was prepared for the Department of Water. The attached figure shows advice on recreation potential around the Harvey dam water body (this work is indicative only).</td>
</tr>
<tr>
<td>2. The day use grassed picnic areas, barbecues, toilets, stage, amphitheatre and gazebo are managed by the Shire of Harvey but the land is owned by the Water Corporation. A similar lease/management arrangement could be implemented around the dam with the Shire of Harvey or other stakeholders for recreational uses.</td>
</tr>
<tr>
<td>3. Away from the dam water body and its banks, ~2/3 of the catchment is comprised of DEC managed State Forest.</td>
</tr>
<tr>
<td>4. Away from the dam water body and its banks, ~1/3 of the catchment is comprised of private freehold land. This land is zoned rural and farm stay accommodation exists in this area.</td>
</tr>
<tr>
<td>5. A number of management plans have been prepared in the past for Harvey dam:</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>6. An updated recreation management plan will need to be prepared for this dam and catchment area.</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>7. The integration of recreation in the Harvey dam catchment, and the other catchments, proposed to be deproclaimed, is subject to a recreation planning process to be developed by the Department of Sport and Recreation (subject to funding).</td>
</tr>
<tr>
<td>8. The Australian Government National Health and Medical Research Council, Guidelines for Managing Risks in Recreational Water, 2006 will be considered for the water quality of Harvey dam.</td>
</tr>
<tr>
<td>9. Current assessments show that at Harvey dam:</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
10. Possible future recreational uses for Harvey dam.
   a. Low key recreation opportunities could be considered around the
dam (e.g. picnic sites with barbecues, booked camping areas for
tents and camper-trailers). Booked overnight camping sites for
tents and trailers would reduce pressures on Waroona and
Logue Brook dam.
   b. Power boating on the dam should not be considered until the
above noted (Note 7) recreation planning process is undertaken.
Power boats can already be used on Logue Brook (~10 km north
of Harvey dam) and Waroona dam (~25 km north of Harvey
dam).
APPENDIX 6

GOVERNMENT RESPONSE TO REPORT ON INQUIRY INTO WESTERN AUSTRALIAN STRATA MANAGERS
APPENDIX 6

GOVERNMENT RESPONSE TO REPORT ON INQUIRY INTO
WESTERN AUSTRALIAN STRATA MANAGERS

LEGISLATIVE COUNCIL STANDING COMMITTEE ON PUBLIC
ADMINISTRATION: REPORT IN RELATION TO THE INQUIRY INTO
WESTERN AUSTRALIAN STRATA MANAGERS

GOVERNMENT RESPONSE
Recommendation 1
The Committee recommends that strata managers should be regulated by a system of positive licensing. Eligibility requirements for the granting of a license should include at a minimum:

- Educational qualifications.
- Demonstration that the applicant is a fit and proper person to hold a licence.
- An indication the applicant has sufficient financial and material resources available to enable them to meet financial and operational requirements.
- Current professional indemnity insurance.

Government response
On 31 October 2011 the Minister for Commerce released a Consultation Regulatory Impact Statement/Discussion Paper (RIS) inviting public comment on whether the State Government should introduce a licensing regime for strata managers. The RIS also invites comment on other options including the viability of regulating only the conduct of strata managers without a licensing regime.

The Government will be informed by the submissions received in response to the RIS and the analysis of the impacts of each option, including the likely cost to business and individual strata proprietors. Government support for licensing will depend on there being a clear demonstration of a net benefit.

Under the Intergovernmental agreement for a National Licensing System for Specified Occupations, the Government is precluded from implementing a stand alone licensing regime for occupations that are within the scope of the National Occupational Licensing Scheme (NOLS). Accordingly, if NOLS is introduced in Western Australia and the Government decides to introduce a licensing scheme for strata managers, they will be licensed in accordance with the NOLS model.

Recommendation 2
The Committee recommends that a transition period should apply to the implementation of the recommended licensing scheme.

Government response
If the Government decides to introduce a licensing scheme for strata managers, a transition period will be provided to give existing strata managers a reasonable opportunity to satisfy licensing requirements before the scheme is implemented. “Grandfathering” of existing strata managers into the new licensing scheme will only be considered if this is provided for in the NOLS model.
Recommendation 3

The Committee recommends that a new section be introduced into Part IV of the Strata Titles Act 1985 providing that:

- All assets held by strata managers on behalf of strata companies should be deposited in a trust account held by the strata manager at an authorised deposit-taking institution.
- Strata managers must open separate trust accounts for each strata company.
- Transactions undertaken by the strata manager on behalf of the strata company are to be conducted through the relevant trust accounts.
- Trust accounts, held by strata managers, can be subject to audit by the regulatory body on a random basis or following a complaint.

Government response

In evidence given to the Committee during the inquiry, Landgate advised that amendments to the Strata Titles Act 1985 were already being drafted. These amendments are currently scheduled to be introduced into Parliament in 2012 and will include defining what a strata manager is, and allowing strata companies to delegate functions to them. The amendments will make it clear that the role of the strata manager is defined in the contract with the strata company, which amongst other things, will allow strata companies to require strata managers to keep accounts and prepare statements of account. The requirements will support the notion of good financial management without being too prescriptive as to how this will be established.

The Government supports the proposed requirement for strata managers to hold monies in trust on behalf of strata companies though not, necessarily, separate trust accounts for each individual strata company.

The appropriate legislative vehicle for imposing trust account requirements will depend on the nature and extent of regulation eventually decided upon by the Government, which is contingent upon the outcome of the RIS and the implementation of the NOLS in Western Australia.

If the Government decides that strata managers should be licensed, the licensing framework is likely to be contained in separate legislation from that of the Strata Titles Act 1985. That legislation will be supported by a scheme of conduct regulation for strata managers and it is likely that those conduct requirements, insofar as they relate to trust accounts (including audit requirements), would be based on those that currently apply to the Real Estate and Settlement Agent Industries.
Recommendation 4

The Committee recommends that section 50 of the Strata Titles Act 1985 be amended to provide as follows:

i) Appointment of a proxy is to be confined to one meeting.

ii) The person entitled to vote at a general meeting must not appoint a strata manager of the scheme as a proxy.

iii) A strata manager or an associate of the strata manager cannot act as the chairperson of the strata company for the purposes of a general meeting.

iv) Recommendations 4(iii) and (iii) will apply in circumstances where the strata manager is also a lot proprietor of the scheme.

v) A member of the strata council may not appoint a lot proprietor, or a person representing a corporation which is a lot proprietor, to act in their place at a strata council meeting if the lot proprietor or representative is the strata manager of the scheme.

vi) A proxy is to be appointed using a form prescribed in regulations.

vii) The prescribed form should include provision for the giving of:

- specific voting instructions;
- a general voting power; or
- the power to abstain from voting on particular motions.

Government response

A mentioned previously in response to Recommendation 3, amendments to the Strata Titles Act 1985 are already being drafted. The proposed amendments will include provision for setting rules in relation to proxies and how they can be managed.

While the Government supports, in principle, proposed amendments to the Strata Titles Act 1985 to prevent the abuse of proxies by strata managers it must be recognised that any significant restriction on the use of proxies may create practical problems and may limit the ability of strata companies to satisfy their obligations under the Strata Titles Act 1985 (for example, limiting the use of proxies may make it difficult to even convene meetings of a strata company).

Recommendation 5

The Committee recommends that Part IV of the Strata Titles Act 1985 be amended to include a new section requiring a contract appointing a strata manager to be in the prescribed form.

The prescribed form should include as a minimum:

- A comprehensive list of functions that can be delegated to a strata manager by the strata company with the capacity to include or exclude functions as desired.
- Termination provisions.
- 4 -

A requirement for the declaration of any commissions, payments or benefits payable to the strata manager other than those payable by the strata company under the terms of the contract.

Government response

The Government does not support the prescription of contracts between strata companies and strata managers per se, as such contracts are commercial in nature. However, the Government would support requiring contracts to address, as a minimum, certain elements such as: the functions of the strata manager; termination; and disclosure of any commission, payment or benefit from a third party.

Although minimum requirements for contracts could be provided for in the Strata Titles Act 1985 or regulations under that Act, the Government believes that the appropriate legislative vehicle will depend on the nature and extent of regulation of strata managers eventually decided upon by the Government.

Recommendation 6

The Committee recommends that Part IV of the Strata Titles Act 1985 be amended to include a section providing that, on the appointment of a strata manager, the manager shall provide to the lot proprietors a plain English statement containing the following information:

- Services they have agreed to provide.
- Services provided for an additional fee.
- Services they will not provide.
- Details of how an individual lot proprietor can raise concerns, seek information, approvals or have matters included on a general meeting agenda.

Government response

The Government supports, in principle, the proposed requirement for strata managers to provide a statement of services they have agreed to provide; those they will not provide; which services will be provided for an additional fee; and details on how lot proprietors can raise concerns, seek information and have matters considered at a meeting.

Although a requirement to provide a statement of services could be provided for in the Strata Titles Act 1985 or regulations under that Act, the Government believes that the appropriate legislative vehicle will depend on the nature and extent of regulation of strata managers eventually decided upon by the Government.
Recommendation 7

The Committee recommends that Part IV of the Strata Titles Act 1985 be amended to include a section providing that:

i) A strata manager must disclose to the strata company all commissions or moneys payable to the strata manager in the course of the strata manager’s term of engagement.

ii) Failure to disclose a commission is an offence.

iii) A strata company at all times retains the discretion to withhold its consent to the strata manager seeking or receiving a commission.

Government response

The Government supports giving strata companies the right to determine a strata manager’s entitlement to commissions and requiring strata managers to disclose any commissions they receive in their capacity as a strata manager. The Government also believes that failure to disclose a commission should be an offence.

Although requirements relating to commissions and the disclosure of commissions could be provided for in the Strata Titles Act 1985, the Government believes that the appropriate legislative vehicle will depend on the nature and extent of regulation of strata managers eventually decided upon by the Government.

Recommendation 8

The Committee recommends that:

- The Department of Commerce should be the lead agency for strata title matters.
- The current Act should be divided into two new Acts.
- Act 1 should provide for all matters in relation to creation, variation, termination and conversion of all strata schemes and be administered by Landgate.
- Landgate should maintain responsibility for the registration of strata titles.
- In the interim Landgate should be given power to prosecute offences under the Strata Title Act 1985 and be funded accordingly.
- The Department of Commerce should administer Act 2 which should contain the strata manager licensing and conduct provisions along with strata company management provisions.
- The Department of Commerce should be funded to provide an information, conciliation and initial legal advice service for all strata title queries.
- The Department of Commerce be responsible for coordinating the provision by Landgate of advice in its area of expertise through the one stop service. This relationship should be formalised either through a memorandum of understanding or in another form.
- Landgate should be required to do all things necessary to facilitate the provision of its advice through the one stop service.
Any legislation developed in relation to strata titles should contain an express power for prosecution of offences by the relevant government department.

**Government response**

The Government believes that Landgate should remain the lead agency for strata title matters in Western Australia. However, if the Government decides to introduce a licensing scheme for strata managers, the Government believes that the Department of Commerce should be the lead agency for the administration of that licensing scheme.

The Government wishes to make WA more attractive for strata titled developments and to encourage investment in innovative, sustainable and affordable strata products. In this regard the Government is considering expanding the range of strata tenure options and allow for strata tenures and land uses to be combined within the same strata scheme.

Landgate is responsible for the administration of the *Strata Titles Act* 1985. The Strata Titles Act, insofar as it relates to the management of strata properties, currently provides a set of rules that govern the relationship between individual proprietors in strata developments. The Act also provides for the incorporation of strata companies, made up of individual strata proprietors, to govern that relationship.

The Government does not support dividing the *Strata Titles Act* 1985 into two Acts to separate the creation, variation, termination and conversion of strata schemes from the management requirements of strata schemes themselves. The Government believes that there is an inextricable link between the conception and creation of new strata schemes and the management needs of those schemes as they evolve. Separating the management function runs the risk of stifling future innovation.

The Government does not support widening the existing role of the Department of Commerce to include the provision of conciliation services or legal advice to strata companies or strata proprietors in their dealings with each other. However, the Government believes that it does have a responsibility to provide a low cost forum to resolve disputes. In this regard the *Strata Titles Act* 1985 already provides for disputes to be heard and settled by the State Administrative Tribunal. Under the *State Administrative Tribunal Act* 2004, the Tribunal is also empowered to mediate disputes.

The core function of the Department of Commerce (Consumer Protection) is to oversee the conduct of traders engaged in trade or commerce, in their dealings with consumers of goods and services. In recognition of the imbalance of bargaining power that often characterises the relationship between consumers and traders, Consumer Protection provides a conciliation service to consumers where required. Consumer Protection does not provide legal advice to consumers.
Strata companies and strata proprietors do not acquire or consume goods or services in their dealings with each other. As the relationship between individual strata proprietors is of a private nature, the Government believes that it would be inappropriate to provide a conciliation service or legal advice to those individuals at public expense.

Private disputes by their very nature can be extremely complex and difficult to resolve through conciliation due to the infinite range of issues that could arise and the myriad of personalities of individuals involved. A conciliation service would likely be very expensive to deliver with little or no prospect of cost recovery from users, therefore leaving the service to be funded by taxpayers.

Disputes of a private nature have historically remained outside the province of government. With associations, for example, the legislation has been framed so as to regulate the affairs of associations but still allow internal disputes within associations to be resolved by the members themselves rather than through Government intervention.

The Government believes that it has a responsibility to provide information to strata companies and strata proprietors about their rights and obligations under the Strata Titles Act 1985. Where strata companies and strata proprietors are properly resourced with relevant information but are still unable to resolve a dispute, it is open to them to seek a resolution through the State Administrative Tribunal as provided for in the Strata Titles Act 1985.

Although the Government believes that Landgate has primary responsibility to provide information about legislation within its portfolio, the Government also recognises that strata companies and strata proprietors may not intuitively seek out information from Landgate in the first instance.

The Government does not support a one stop shop model for the delivery of information to strata companies and strata proprietors. However, to ensure that information is more widely available the Government will instead look to provide a seamless delivery of services by establishing a range of places within Government from which strata companies and strata proprietors may access information. This could include, for example, the recently established Seniors Housing Information Service, within the Department of Commerce, as well as Landgate. The Department of Commerce will be given responsibility to coordinate the establishment of a seamless service delivery model in conjunction with Landgate.

With regard to licensing of strata managers, the Government recognises that strata managers provide services in the course of trade or commerce to strata companies and, by extension, to individual strata proprietors. If the Government decides to introduce a licensing scheme for strata managers, the Government believes that the Department of Commerce would be best placed to administer the scheme given its existing responsibility for licensing of other property occupations.

As with other legislation regulating property occupations, any new licensing regime for strata managers will contain express powers that allow the Department of Commerce to prosecute offences committed by strata managers.
Recommendation 9

The Committee recommends that:

(1) Landgate, in conjunction with Strata Community Australia (WA) Inc and consumer representatives, work with the strata title industry to develop a set of requirements for:

- Keeping books of account.
- The content of financial statements of account including at a minimum:
  i) a statement of cash flow;
  ii) an income and expenditure statement;
  iii) a balance sheet; and
  iv) copies of the statements provided by the authorised deposit taking institution related to the trust accounts that the strata manager is required to operate in keeping with Recommendation 3.

(2) The requirements in (1) above be prescribed in the Strata Titles General Regulations 1996.

Government response

The Government supports, in principle, the need to develop and implement specific requirements for keeping accounts relating to the management of strata complexes.

If the Government decides to introduce a licensing scheme for strata managers, the Department of Commerce will consult with Strata Community Australia (Inc) and other interested stakeholders to develop mandatory requirements.

Recommendation 10

The Committee recommends that:

- Landgate in conjunction with Strata Community Australia (WA) Inc, the strata title industry and consumer representatives, develop a list of operational reports to be presented to lot proprietors, at the annual general meeting and on one other occasion during the course of a year.
- The above requirements be prescribed in the Strata Titles General Regulations 1996.

Government response

The Government supports, in principle, the need to develop standard reporting requirements for strata councils.

If the Government decides to introduce a licensing scheme for strata managers, the Department of Commerce, in consultation with Landgate, will consult with Strata Community Australia (Inc) and other interested stakeholders to develop standard reporting requirements.
Recommendation 11

The Committee recommends that:

- Section 84 of the Strata Titles Act 1985 is amended so the maximum monetary limit that the State Administrative Tribunal can award is equal to the Magistrates Court jurisdiction.
- Section 104(2) of the Strata Titles Act 1985 be amended to allow s79 of the State Administrative Tribunal Act 2004 to apply.

Government response

The Government supports the proposed amendment to the Strata Titles Act 1985 to allow the State Administrative Tribunal to make awards up to the same amount as that of the Magistrates Court. The Government also supports the proposed amendment to section 104(2) of the Strata Titles Act 1985 to align it with the requirements of section 79 of the State Administrative Tribunal Act 2004. Consideration will also be given to allowing the State Administrative Tribunal to issue orders prior to the release of written decisions or transcripts of proceedings.

A2801104
APPENDIX 7

LETTER FROM COMMITTEE TO MINISTER FOR COMMERCe SEEKING UPDATE ON ADDRESSING THE COMMITTEE’S RECOMMENDATIONS ON STRATA MANAGERS
APPENDIX 7

LETTER FROM COMMITTEE TO MINISTER FOR COMMERCE SEEKING UPDATE ON ADDRESSING THE COMMITTEE’S RECOMMENDATIONS ON STRATA MANAGERS

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Hon Simon O’Brien MLC
Minister for Commerce
12th Floor, Dumas House
2 Haymarket Street
WEST PERTH  WA  6005

27 June 2012

Dear Minister

Inquiry Into Western Australian Strata Managers – update on action on recommendations in Committee Report 13

The Public Administration Committee tabled its Report 13 in relation to Western Australian Strata Managers on 1 September 2011. The Committee made a number of recommendations in this report which were responded to on behalf of the Government by you on 6 March 2012.

The Committee is seeking an update on the issues addressed in the Government response and has the following questions.

Consultation Licensing of Strata Managers in Western Australia October 2011

1.1 Please give a summary of the feedback received from the Consultation, Licensing of Strata Managers in Western Australia (Consultation).

1.2 Has the decision Regulatory Impact Statement referred to on page 28 of the Consultation been finalised and if so:

   * what recommendations were presented to the Government on the various options;

   * what was the basis for the recommendation and the dismissal of other options?

1.3 Have any decisions been made by Government arising out of recommendations made and if so, please detail what these decisions are.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Hon Simon O’Brien MLC
Minister for Commerce
12th Floor, Dumas House
2 Haymarket Street
WEST PERTH  WA  6005

27 June 2012

Dear Minister

Inquiry Into Western Australian Strata Managers – update on action on recommendations in Committee Report 13

The Public Administration Committee tabled its Report 13 in relation to Western Australian Strata Managers on 1 September 2011. The Committee made a number of recommendations in this report which were responded to on behalf of the Government by you on 6 March 2012.

The Committee is seeking an update on the issues addressed in the Government response and has the following questions.

Consultation Licensing of Strata Managers in Western Australia October 2011

1.1 Please give a summary of the feedback received from the Consultation, Licensing of Strata Managers in Western Australia (Consultation).

1.2 Has the decision Regulatory Impact Statement referred to on page 28 of the Consultation been finalised and if so:

   * what recommendations were presented to the Government on the various options;

   * what was the basis for the recommendation and the dismissal of other options?

1.3 Have any decisions been made by Government arising out of recommendations made and if so, please detail what these decisions are.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Hon Simon O’Brien MLC
Minister for Commerce
12th Floor, Dumas House
2 Haymarket Street
WEST PERTH  WA  6005

27 June 2012

Dear Minister

Inquiry Into Western Australian Strata Managers – update on action on recommendations in Committee Report 13

The Public Administration Committee tabled its Report 13 in relation to Western Australian Strata Managers on 1 September 2011. The Committee made a number of recommendations in this report which were responded to on behalf of the Government by you on 6 March 2012.

The Committee is seeking an update on the issues addressed in the Government response and has the following questions.

Consultation Licensing of Strata Managers in Western Australia October 2011

1.1 Please give a summary of the feedback received from the Consultation, Licensing of Strata Managers in Western Australia (Consultation).

1.2 Has the decision Regulatory Impact Statement referred to on page 28 of the Consultation been finalised and if so:

   * what recommendations were presented to the Government on the various options;

   * what was the basis for the recommendation and the dismissal of other options?

1.3 Have any decisions been made by Government arising out of recommendations made and if so, please detail what these decisions are.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Hon Simon O’Brien MLC
Minister for Commerce
12th Floor, Dumas House
2 Haymarket Street
WEST PERTH  WA  6005

27 June 2012

Dear Minister

Inquiry Into Western Australian Strata Managers – update on action on recommendations in Committee Report 13

The Public Administration Committee tabled its Report 13 in relation to Western Australian Strata Managers on 1 September 2011. The Committee made a number of recommendations in this report which were responded to on behalf of the Government by you on 6 March 2012.

The Committee is seeking an update on the issues addressed in the Government response and has the following questions.

Consultation Licensing of Strata Managers in Western Australia October 2011

1.1 Please give a summary of the feedback received from the Consultation, Licensing of Strata Managers in Western Australia (Consultation).

1.2 Has the decision Regulatory Impact Statement referred to on page 28 of the Consultation been finalised and if so:

   * what recommendations were presented to the Government on the various options;

   * what was the basis for the recommendation and the dismissal of other options?

1.3 Have any decisions been made by Government arising out of recommendations made and if so, please detail what these decisions are.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Hon Simon O’Brien MLC
Minister for Commerce
12th Floor, Dumas House
2 Haymarket Street
WEST PERTH  WA  6005

27 June 2012

Dear Minister

Inquiry Into Western Australian Strata Managers – update on action on recommendations in Committee Report 13

The Public Administration Committee tabled its Report 13 in relation to Western Australian Strata Managers on 1 September 2011. The Committee made a number of recommendations in this report which were responded to on behalf of the Government by you on 6 March 2012.

The Committee is seeking an update on the issues addressed in the Government response and has the following questions.

Consultation Licensing of Strata Managers in Western Australia October 2011

1.1 Please give a summary of the feedback received from the Consultation, Licensing of Strata Managers in Western Australia (Consultation).

1.2 Has the decision Regulatory Impact Statement referred to on page 28 of the Consultation been finalised and if so:

   * what recommendations were presented to the Government on the various options;

   * what was the basis for the recommendation and the dismissal of other options?

1.3 Have any decisions been made by Government arising out of recommendations made and if so, please detail what these decisions are.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Hon Simon O’Brien MLC
Minister for Commerce
12th Floor, Dumas House
2 Haymarket Street
WEST PERTH  WA  6005

27 June 2012

Dear Minister

Inquiry Into Western Australian Strata Managers – update on action on recommendations in Committee Report 13

The Public Administration Committee tabled its Report 13 in relation to Western Australian Strata Managers on 1 September 2011. The Committee made a number of recommendations in this report which were responded to on behalf of the Government by you on 6 March 2012.

The Committee is seeking an update on the issues addressed in the Government response and has the following questions.

Consultation Licensing of Strata Managers in Western Australia October 2011

1.1 Please give a summary of the feedback received from the Consultation, Licensing of Strata Managers in Western Australia (Consultation).

1.2 Has the decision Regulatory Impact Statement referred to on page 28 of the Consultation been finalised and if so:

   * what recommendations were presented to the Government on the various options;

   * what was the basis for the recommendation and the dismissal of other options?

1.3 Have any decisions been made by Government arising out of recommendations made and if so, please detail what these decisions are.
The National Occupational Licensing Scheme

1.4 When does the Government anticipate the National Occupational Licensing Scheme (NOLS) will be introduced?

1.5 Please explain the extent to which any regulation of strata managers is contingent upon the NOLS and any changes that would need to be made to that scheme should regulation of strata managers be introduced.

1.6 Please explain the reference on page 13 of the Consultation to the inclusion of strata managers as an occupational area under the NOLS.

Amendments to the Strata Titles Act 1985

1.7 Page 2 of the Government’s response to the Committee’s recommendations states:

In evidence given to the Committee during the inquiry, Landgate advised that amendments to the Strata Titles Act 1985 were already being drafted. These amendments are currently scheduled to be introduced into Parliament in 2012 and will include defining what a strata manager is and allowing strata companies to delegate functions to them.

- When are these amendments planned to be introduced in Parliament?
- Please detail those amendments that will be introduced that address the Committee’s recommendations along with any other relevant amendments.

Transition period for implementation of the licensing scheme

1.8 Please describe what grandfathering of existing strata managers into a new licensing system would involve. What provision will be made for existing strata managers to transition into any new licensing system?

1.9 Will grandfathering be provided for in the NOLS?

Questions depending on decisions made by the Government

Positive licensing and conduct regulation

1.10 If the Government has decided to introduce positive licensing and conduct regulation of strata managers, please describe in detail the plans for this, including the provision of a timetable for implementation.

Conduct regulation only

1.11 If the Government has decided to introduce conduct regulation of strata managers, please describe in detail the plans for this, including the provision of a timetable for implementation.
Maintaining the status quo

1.12 If the Government has decided to maintain the status quo:

- What action will the Government take to monitor the issues raised by the Committee in its report regarding strata managers?

- What developments would the Government regard as justifying its intervention in the future to introduce regulation of strata managers and what steps would the Government take to implement this intervention?

Other

1.13 Regarding:

- minimum requirements for contracts and the requirement proposed by the Committee that strata managers provide a statement of services they have agreed to provide, as stated on page 4 of the Government’s response; and

- giving strata companies the right to determine a strata manager’s entitlement to commissions, as stated on page 5 of the Government’s response,

what is the nature and extent of regulation of strata managers that will need to be agreed upon by the Government before these changes could be made and how will this determine the type of legislative vehicle for this to occur?

1.14 On page 2 of the Government’s response to the Committee’s recommendations it states:

The Government supports the proposed requirement for strata managers to hold monies in trust on behalf of strata companies though not, necessarily, separate trust accounts for each individual strata company.

- Please explain the basis for the Government not giving unqualified support to monies being held in separate trust accounts for each individual strata company, given the rationale provided for this in the Committee’s report.

1.15 Please expand upon the following statement on page 3 of the Government’s response to the Committee’s recommendations with respect to “practical problems”.

While the Government supports, in principle, proposed amendments to the Strata Titles Act 1985 to prevent the abuse of proxies by strata managers it must be recognised that any significant restriction on the use of proxies may create practical problems and may limit the ability of strata companies to satisfy their obligations under the Strata Titles Act 1985 (for example, limiting the use of proxies may make it difficult to even convene meetings of a strata company).
1.16 Regarding page 6 of the Government’s response, explain why dividing the Strata Titles Act 1985 into two Acts to separate the creation, variation, termination and conversion of strata schemes from the management requirements of strata schemes would run the risk of stifling future innovation.

1.17 The tenth dot point of Recommendation 8 in the Committee’s report states:

*Any legislation developed in relation to strata titles should contain an express power for prosecution of offences by the relevant government department.*

While the Government seeks to addresses this point at the bottom of page 7 of its response, this is contingent upon the Government introducing a licensing scheme for strata managers. However, the Committee identified an issue that currently exists. If the Government does not introduce such a licensing scheme, how does it plan to address this issue?

1.18 Given the evidence received by the Committee about the fragmentation of advice and information services to strata lot proprietors and the support expressed for a “one stop shop service” or some other form of integrated service delivery, please expand upon and give a detailed rationale for the statement on page 7 of the Government’s response that:

*The Government does not support a one stop shop service model for the delivery of information to strata companies and strata proprietors.*

1.19 Why would a range of places from where strata companies and strata proprietors may access information be better than obtaining this from one place?

Please provide your response by 31 July 2012. If you have any questions please contact the Committee’s Advisory Officer (Legal), Mr Alex Hickman, on 9420 7633 or at shickman@parliament.wa.gov.au.

Thank you for your assistance.

Yours sincerely,

Hoa Jan Ford MLC
Deputy Chairman

pc.all.120627.let.001.Simon O'Brien (A357728)
APPENDIX 8
RESPONSE FROM MINISTER FOR COMMERCE TO COMMITTEE’S REQUEST FOR UPDATE ON ADDRESSING THE RECOMMENDATIONS ON STRATA MANAGERS
APPENDIX 8

RESPONSE FROM MINISTER FOR COMMERCE TO COMMITTEE’S REQUEST FOR UPDATE ON ADDRESSING THE RECOMMENDATIONS ON STRATA MANAGERS

The Hon Simon O’Brien MLC
Minister for Finance; Commerce; Small Business

Hon Jon Ford MLC
Deputy Chairman
Standing Committee on Public Administration
Legislative Council
Parliament House
PERTH WA 6000

Dear Mr Ford,

INQUIRY INTO WESTERN AUSTRALIAN STRATA MANAGERS: UPDATE ON ACTION ON RECOMMENDATIONS IN COMMITTEE REPORT 13

Thank you for your letter dated 27 June 2012 seeking an update in relation to actions taken by the Government.

Please find attached the Government’s response. I will provide you with a further response in respect of questions 1.5, 1.15 and 1.17 when I receive advice on these matters from the Hon. Brendon Grylls, Minister for Lands.

Yours sincerely,

Simon O’Brien MLC
MINISTER FOR COMMERCE

att.

1 AUG 2012
ATTACHMENT 1

Consultation - Licensing of Strata Managers in Western Australia October 2011

1.1 In response to the Consultation Regulatory Impact Statement/Discussion Paper, a clear majority of respondents, particularly industry respondents, supported the introduction of licensing for strata managers although some of this support was provisional.

To get a clearer understanding of the views of strata owners a social research consultant was engaged to survey two focus groups. Both groups of participants owned one or more strata properties in complexes with six or more units. The first focus group consisted of nine non-resident strata owners. The second group consisted of ten resident owners. Both groups consisted of a mix of inner city residents and residents in urban areas, a mix of strata owners of villas, townhouses and flats and a mix of new and old complexes.

Most non-resident owners were in favour of a licensing scheme. Resident owners supported the concept of licensing and further regulation but strongly favoured having a choice whether or not to engage a licensed strata manager.

1.2 The Decision Regulatory Impact Statement (D-RIS) has not yet been finalised. Significant delays in the progression of the National Occupational Licensing System have contributed to the delay in finalising the D-RIS. It is expected that the D-RIS will be completed in time to allow the Government to make a decision in relation to the regulation of strata managers before the end of 2012.

1.3 Not applicable

The National Occupational Licensing Scheme

1.4 In April 2011, the Standing Committee on Uniform Legislation and Statutes Review Committee ("the Standing Committee") reported on the Occupational Licensing National Law (WA) Bill 2010 ("the WA Bill") and recommended that it not be passed. The Standing Committee’s main objection was that the WA Bill provided insufficient detail, with the substance of the regulatory scheme left to regulations – which had not been prepared.

National draft regulations were expected to be released before the end of 2011 however in the first quarter of 2012 it was resolved nationally that the legislative scheme should be amended to include more of the substantive provisions in the Act itself rather than the regulations. This resolution was in response not only to Western Australia’s objections but also to acceptance of a general view that the previous legislation relied too much on the regulations.
It is currently proposed that the model Victorian Occupational Licensing National Law Act (which underpins the National Occupational Licensing System) be amended to include in schedules such important provisions as scope of work, licence categories and exemptions. The national regulations will deal with remaining matters.

The draft Amendment Bill and regulations are still being finalised and are currently expected to be released for consultation in August/September 2012.

1.5 The legislation underpinning the National Occupational Licensing System (NOLS) will define the scope of work undertaken by a range of occupations, including strata managers, which will in turn determine whether or not a person falls within the scope of the legislation. The regulations are expected to provide detail such as the qualification requirements for each occupation.

NOLS will not require strata managers in Western Australia to be licensed. However, if the NOLS is adopted in Western Australia, the Government will not be in a position to make unilateral changes to the scheme and will be unable to implement a different stand alone licensing scheme.

1.6 The COAG Intergovernmental Agreement for a National Licensing System for Specified Occupations provides for NOLS to apply, Inter alia, to property agents. It was subsequently proposed by the Property Occupations Interim Advisory Committee (one of four committees established to provide policy advice to the COAG National Licensing Steering Committee) that “property agents” should include real estate agents, strata managing agents, business agents and auctioneers. The draft legislation and regulations have progressed on this basis.

Amendments to the Strata Titles Act 1985

1.7 I have sought advice on this matter from the Hon Brendon Grylls, Minister for Lands, and will provide you with his response as soon as possible.

Transition period for implementation of the licensing scheme

1.8 If the Government decides that strata managers should be licensed under any new licensing scheme it will seek to “grandfather” existing licensees having regard to their qualifications/experience. If grandfathering into the NOLS is not possible, the Government will provide notice to potential licensees to give them ample opportunity to have their qualifications and experience formally assessed and recognised to satisfy the NOLS requirements.

1.9 The NOLS legislation is expected to include transitional provisions that will allow licensees from existing jurisdictional licensing regimes to transition to the national licensing regime.
Questions depending on decisions made by the Government

1.10 Not applicable.
1.11 Not applicable.
1.12 Not applicable.

Other

1.13 The Government will be informed by the D-RIS about the nature and extent of regulation required. The D-RIS, when finalised, will provide a cost benefit analysis of each option, including how each option may be implemented and the cost of its implementation. The Government will not be in a position to determine the appropriate legislative vehicle until the full extent of regulation necessary has been determined.

1.14 The Government is not in a position to provide unqualified support for the Committee's recommendation in respect of trust accounts at this time. The Government will be informed by the results of a national project currently being undertaken to harmonise the conduct requirements for property occupations. This project was established under the auspices of the Ministerial Council on Consumer Affairs which recognised the potential benefits to business and consumers from increased consistency in policy setting and regulation of the way in which work is performed.

1.15 I have sought advice on this matter from the Hon Brendon Grylls, Minister for Lands, and will provide you with his response as soon as possible.

1.16 The Strata Titles Act 1985 (the Act) regulates the creation of strata lots and the operation and management of strata schemes.

In a recent review of the Act, the Community Titles Advisory Committee, a ministerial advisory committee, proposed a number of changes to improve the operations and management of strata schemes including the recognition of strata managers. In a further review conducted in 2009, the Tenure Legislation Review Committee, comprising industry, Government and community representatives, formulated legislative proposals to expand the range of strata tenure options and allow for different strata tenures and land uses to be combined within the same strata scheme.

The proposed reforms are intended to make WA more attractive for strata title developments and encourage more investment in innovative, sustainable and affordable strata products.
Dividing the Strata Titles Act 1985 into two Acts to separate the creation, variation, termination and conversion of strata schemes from the management requirements of strata schemes would not in itself run the risk of stifling innovation. However, the Government believes that determining management needs that are appropriate to the nature of strata schemes is an integral and inextricable part of the development process for new strata products. Accordingly, it is the Government’s view that creating two separate Acts and separating responsibility for their administration runs the risk of inefficient and fragmented policy making by different agencies which could, inter alia, stifle innovation.

1.17 I have sought advice on this matter from the Hon Brendon Grylls, Minister for Lands, and will provide you with his response as soon as possible.

1.18 & 1.19

The Government has previously indicated that it does not support widening the existing role of the Department of Commerce to include the provision of conciliation services or legal advice to strata companies or strata proprietors in their dealings with each other.

The core function of the Department of Commerce (Consumer Protection) is to oversee the conduct of traders engaged in trade or commerce, in their dealings with consumers of goods and services. Strata companies and strata proprietors are not consumers in that they do not acquire or consume goods or services in their dealings with each other.

As the relationship between individual strata proprietors is of a private nature, the Government believes that it would be inappropriate to provide a conciliation service or legal advice to those individuals at public expense.

The Committee's proposed establishment of a one stop service in Recommendation 8 of its report is one of a package of interrelated recommendations for reform. As the Government does not support many of the proposals in Recommendation 8, for reasons detailed in the Government's tabled response and further explained in this letter, the Government does not believe that a one stop service coordinated by the Department of Commerce is the best model for the delivery of services. However, the Government has noted the Committee's concerns about fragmentation of advice and is taking steps to address these concerns by working towards a seamless service delivery model. This will include Landgate and the Department of Commerce working together to improve access to information; expand the number of distribution points for education material; integrating service messages where appropriate; and developing webpage links to each agency's website.
APPENDIX 9

PRESENTATION AT PUBLIC BRIEFING ON COMPLETION OF INQUIRY INTO ELECTRICITY TRANSMISSION AND DISTRIBUTION MANAGEMENT BY WESTERN POWER AND HORIZON POWER
APPENDIX 9

PRESENTATION AT PUBLIC BRIEFING ON COMPLETION OF INQUIRY INTO ELECTRICITY TRANSMISSION AND DISTRIBUTION MANAGEMENT BY WESTERN POWER AND HORIZON POWER

Standing Committee on Public Administration

Report 14 - “Unassisted Failure”

Hon Max Trenorden MLC (Chair)
Hon Jon Ford MLC (Deputy Chair)
Hon Ken Baston MLC
Hon Jim Chown MLC
Hon Ed Dermer MLC
Introduction

- 2009 - Western Power was subject to numerous adverse regulatory findings (ERA & EnergySafety).
- 3 weeks after this inquiry commenced, EnergySafety issued Western Power with an Inspector’s Order relating to Wooden Power Poles.
- Committee is not a regulator – established to inquire and report.
- Committee determined to re-focus the inquiry on Western Power unless Horizon Power presented a specific point of comparison.
Inquiry Overview

- 2 years; 36 public submissions; 26 Private hearings; 2 public hearings; thousands of pages of evidence – much of it publicly available.

- 3 Recommendations:
  1. Western Power should be required to issue an addendum to its 2010-2011 Annual Report.
  2. Government should commission an urgent review of the regulatory framework applicable to electricity network operators (some suggestions for reform are made).
  3. Government should urgently commission a wide-ranging inquiry into Western Power’s structure, culture and operations since 2006.
Regulatory Concerns

- Lack of clarity about how safety regulation interrelates with operating licence requirements.
- Too much ambiguity between EnergySafety and ERA’s roles (Eg: communication failures; lack of consistency of treatment; and no comprehensive oversight of either public utilities or the regulatory framework).
- Where was the Auditor General? Why has there been no performance audit of Western Power?
- Western Power’s corporate response to regulators is described by both regulators separately as being the most difficult regulated entity each deals with. Current enforcement regime is not effective in dealing with a recalcitrant entity.
Western Power’s Progress since 2006?

• Some improvement re: wooden power pole inspections.
• Difficult to assess how much improvement:
  – 2011 GHD Asset Management Report (29% variance in inspection figures);
  – Unreliable serviceability criteria;
  – Over 4,000 wooden power poles not on the system;
  – Only 22 forensic reports on wooden power pole failures available (Sept-Dec 2010) no equivalent reports before or since. 5 poles failed completely within 1 month of its previous inspection.
• Inspections contracted out since 2008. Internal systems, processes and practices still largely unacceptable to EnergySafety.
• Western Power was “worst-in-class” throughout Australia for unassisted wooden power pole failures in 2006. Western Power is still “worst-in-class” for unassisted failures in 2012.
Paradigm Shift Required

- Past performance indicates future potential.
- Western Power’s past performance has been unacceptable (See p127 of ERA’s 2009 Western Power AA2 Final Decision).
- MD stated that in 2006, incoming management team inherited a run-down asset base. Significant proportion of the incoming management team held similar positions in the previous entity.
- Western Power urgently needs a genuine paradigm shift at the highest levels of management.
- Current leadership group appears to be unable, or unwilling to make the necessary paradigm shift required to fix the problems.
Public Accountability

- In 2009 Western Power’s management and system inefficiencies were assessed by the ERA being sufficient to withhold $261 million in funding.
- This point seems to have been missed by both the Media and the Parliament at the time.
- ERA decision on this matter is almost impossible to read and understand without specialist knowledge.
- ERA need to ensure that its decisions are written in an accessible way.
- Did Western Power disclose this matter adequately in its 2009-2010 Annual Report?
- Western Power’s management has repeatedly told this Committee that they are not directly accountable to the Parliament. Committee rejects this out of hand [Pt 10].
- A later report will deal with this issue separately.
Why is the Committee concerned?

Pole: 338949

Pole: 338950

Pole: 338952
Why is the Committee concerned?

- Forensic Examination Dated 18 January 2011
- Most recent inspections: 13 September 2007

".. Showing an actual increase in ‘Good Wood’ over three years." x 2

"There was no ‘Good Wood’ left in the cross section at ground line and the pole was in a visually poor condition with large cracks on the circumference."

"Poles do not reach this level of degrade in only a few years. In my opinion this pole has been misinterpreted and visual signs of decay ignored."

"There should be no cases of poles gaining ‘Good Wood’ between inspection cycles of four years."

Source: Department of Agriculture and Food “Forensic examination of Failed poles PID# 338949, 398950 & 338952 Stock Rd, Bullsbrook” 18 Jan 2011
Why is the Committee concerned?

- Western Power has more than 130,000 of wooden power poles located in high to extreme fire danger areas within the state.
- Over 4,000 wooden power poles are not even on Western Power’s database.
- Not all unassisted failures result in catastrophic loss – but some can.
- Western Power’s management of this asset continues to be the focus of regulatory criticism.
Standing Committee on Public Administration

Report 14 - “Unassisted Failure”

Questions?

Hon Max Trenorden MLC (Chair)
Hon Jon Ford MLC (Deputy Chair)
Hon Ken Baston MLC
Hon Jim Chown MLC
Hon Ed Dermer MLC
APPENDIX 10

GOVERNMENT RESPONSE TO REPORT 14 BY THE LEGISLATIVE COUNCIL STANDING COMMITTEE ON PUBLIC ADMINISTRATION
Government Response to
Report 14 by the Legislative Council Standing
Committee on Public Administration
Unassisted Failure

May 2012
Table of Contents

1. Introduction
2. Issues Identified and Actions Implemented to Date
   a. Western Power’s Culture Asset and Management
   b. The Regulatory Framework
3. Government Response to the Committee’s Recommendations
   a. Recommendation 1 – Addendum to Annual Report
   b. Recommendation 2 – Review of Regulatory Framework
   c. Recommendation 3 – Review of Structure, Culture and Operations
4. Other Relevant Actions

Attachment: Western Power’s Response
1.

Introduction

In September 2009, the Legislative Council Standing Committee on Public Administration resolved to examine the findings of a 2008 Distribution Wood Pole Audit Review of Western Power published by the Department of Commerce’s EnergySafety Directorate.

Following a number of adverse findings and subsequent regulatory enforcement instruments from both EnergySafety and the Economic Regulation Authority, the Committee focused its attention on the compliance culture and asset management systems of Western Power.

On 20 January 2012, the Committee released its report on its Inquiry (Report 14 - Unassisted Failure).

The Committee considered Western Power’s performance over a number of years, chronologically starting with EnergySafety’s 2008 audit of Western Power’s asset management systems, processes and practices.

The Committee found significant problems with Western Power’s compliance culture and asset management systems, as well as the regulatory framework governing Western Power’s operation.

The Committee’s report is subject to Standing Order 337 which requires Government to provide a response to the report within a period of four months. A one month extension to this date was agreed with the Chair of the Committee.

The Government has given careful consideration to the Committee’s recommendations and is taking appropriate action to address the matters identified.

The Government of Western Australia provides the following response to the Committee’s recommendations.
2. Issues Identified and Actions Implemented to Date

While acknowledging that significant work will be required to address the recommendations of the Committee (as outlined in section 3 of this response), it is important to note that both Government and Western Power have already made significant progress in addressing some of the Committee’s findings, both in relation to Western Power’s asset management and culture and the regulatory framework under which the corporation operates.

2.a. Western Power’s Culture and Asset Management

From the very outset, supply reliability and security, public safety and public confidence have been key areas of focus in the Liberal-National Government’s oversight of the Government-owned electricity corporations.

In the first 18 months of this term of Government, the Minister for Energy transformed the Board of Western Power, with a new Chairman and Deputy Chairman. The Minister provided strong guidance to the then new Chair in terms of the Government’s expectations of Western Power as a Government-owned trading corporation. Specifically, the Minister expressed the importance of Western Power placing a stronger focus on customer service and operational efficiency, while also ensuring continued reliability and security of electricity supply.

Over recent years, Western Power has made significant improvements in relation to its culture and efficiency as an organisation, resulting in improved products and services for its customers.

Customer complaints have decreased by 70% over the last three years. As an example, planned power interruptions previously caused around 1,600 complaints a year. To address this issue, Western Power has been working closely with business customers ahead of planned outages to determine the optimum timing of the outage in order to minimise interruptions to businesses. As a result of improved processes, Western Power is on track to reduce the number of complaints to approximately 700 in 2011-12.
Western Power’s Customer Service Centre has also been recognised independently as a finalist in three categories of the World Contact Centre Awards. This is a significant achievement for a Customer Service Centre that only began its operations three years ago.

These are positive steps in the right direction. However, the findings of the Committee highlight there are still significant changes and improvements to be made to ensure Western Power operates in accordance with Government and community expectations.

Given the seriousness of the issues raised by the inquiry, the Minister for Energy requested Western Power to provide Government with a detailed response to the Committee’s findings and recommendations.

Having received Western Power’s response, which is attached to this response, Government can report that Western Power now recognises the need to clearly understand its stakeholders’ expectations and to accelerate the rate of progress in addressing the state of the wood pole network.

Western Power has acknowledged that the wood pole failure rate in Western Australia exceeds the national average. This issue has been the subject of considerable Board and management attention, with an accelerated program of pole replacement and reinforcement having been put in place in the last two years.

In 2006-07, 5,440 distribution poles were replaced or reinforced. In 2011-12, this will grow to a forecast 39,000 distribution poles, a more than 700% increase on five years ago. The rate of failure of wood power poles, outside of severe or widespread weather events, has steadily declined over this period as a result of the increase in Western Power’s wood pole treatment.

While these are encouraging statistics, more needs to be done in this area. Western Power recognises that listening, learning and working cooperatively with its stakeholders will be critical to its success in improving its wood pole failure rate and in addressing cultural and operating efficiency issues. Further information on Western Power’s plan to address these issues is provided in section 4 of this response.
2.b.

The Regulatory Framework

In addition to addressing matters related to Western Power’s asset management systems and compliance culture, the Committee’s report has made some pointed conclusions as to the regulatory framework governing Western Power’s operation.

The Committee’s recommendations in this regard are wide-ranging and include consideration of issues such as:

- the licensing framework applying to network operators;
- reporting processes on the state and management of network assets;
- criteria and processes for the appointment of executives;
- processes for the making of, and compliance with, orders; and
- obligations, offences and penalties in relation to the safe operation of network assets.

The regulatory framework applying to Western Power has been in place for some time. While Government has no doubt that the safe, reliable and efficient operation of the network was a key guiding principle in developing existing legislation, it is now an opportune time to undertake a review of the regulatory framework governing the operation of its network service providers.

Some of this work has already commenced. For example, the Public Utilities Office has mapped out a process for the review of the Electricity Networks Access Code 2004, the legislative instrument governing third party access to Western Power’s electricity network. The review will commence upon completion of the regulatory process on Western Power’s proposed Third Access Arrangement (AA3), which is currently being progressed.

Further, the Department of Treasury is currently undertaking a review into the governance arrangements of Western Australia’s Government Trading Enterprises, with a view to standardising legislative requirements and strengthening accountability. This was one of the recommendations of the Economic Audit Committee’s Final Report titled Putting the Public First: Partnering with the Community and Business to Deliver Outcomes. Western Power has been identified as one of the agencies that will be reviewed.
3.

Government Response to the Committee’s Recommendations

The Committee has made three recommendations in its report on Unassisted Failure. The Government’s response to each of these recommendations is outlined below.

3.a.

Recommendation 1 – Addendum to Annual Report

On page 146 of its report, the Committee made the following recommendation:

Recommendation 1

The Committee recommends that, as a matter of urgency, the Minister for Energy require Western Power to issue a formal addendum to Western Power’s 2010/2011 Annual Report. This addendum should be sufficient to correct the existing Director’s Report such that Western Power fully complies with the disclosure requirements of the Electricity Corporations Act 2005, Schedule 4, clause 11, as these apply to Western Power’s Proposed Revisions to the Access Arrangement and Access Arrangement Information 2012-2017, lodged with the Economic Regulation Authority, a submission that was approved by the Board of Western Power on the same date that the Board approved the 2010-2011 Annual Report.

The Government is satisfied that the Directors’ Report included in Western Power’s 2010-11 Annual Report met the minimum level of disclosure expected.

Government notes that Western Power has disclosed information on the state of its network on many other occasions, including previous Annual Reports and other documents such as its Statement of Corporate Intent and Annual Planning Reports. The ageing nature of the network has also been the subject of debate in Parliament on numerous occasions.
However, for the purposes of improved transparency and accountability, Western Power’s Board has agreed to issue the requested addendum and to ensure that future Directors’ Reports are prepared in a considerably more informative style.

A copy of the addendum is provided at Appendix B of Western Power’s response.

3.b.

Recommendation 2 – Review of Regulatory Framework

On page 225 of its report, the Committee made the following recommendation:

\[ \text{Recommendation 2} \]

The Committee recommends that the Government commission a comprehensive review of the current regulatory framework applicable to electricity network operators in Western Australia. Any such review should consider, but not be in any way restricted to, each of the issues listed at Appendix 4 to this Report.

The Government has undertaken a review of the 17 recommendations outlined in Appendix 4 to the Committee’s report and concluded that:

- 14 of the recommendations are supported;
- one is not supported at this stage as it requires further consideration; and
- two are not supported as they relate to issues on which Government considers that appropriate corporate procedures and regulations may already be in place.

The Government has requested the Public Utilities Office of the Department of Finance and other relevant Government agencies, including the EnergySafety Division of the Department of Commerce, to immediately commence consultation, as appropriate, on the implementation of the recommendations identified as having merit. A response has been requested by December 2012.
The Government’s position on each of the 17 recommendations is outlined in the table below.

**Response to recommendations in Appendix 4 of the Committee’s report**

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Where energy utilities are required to undergo regulatory and licence-related audits, such audits should be conducted by reviewers that are selected and engaged by the ERA, at the expense of the relevant utility. In the conduct of such audits, there should be absolute clarity that the ERA is the principal for the life of the engagement. This is consistent with current practice relating to the Auditor General.</td>
<td>The Government supports this recommendation. The Public Utilities Office will consult with the Economic Regulation Authority to proceed with its implementation.</td>
</tr>
<tr>
<td>2. It should be expressly required as a component of any energy licences that the licensee must comply with their statutory energy safety obligations. The relevant audit reviewers should be required to seek information about this aspect from the energy safety regulator as part of any such review. EnergySafety should be expressly authorised to make full disclosure to the auditor in such cases.</td>
<td>The Government supports this recommendation. Government will review the licensing framework in relation to this recommendation and undertake appropriate consultation on the disclosure of relevant information. The Minister for Energy has also asked the Public Utilities Office to work with the Economic Regulation Authority to develop arrangements to ensure that licensees have in place an effective regulatory compliance framework and that the appropriate incentives are in place to promote the adoption of that framework.</td>
</tr>
<tr>
<td>Recommendation</td>
<td>Response</td>
</tr>
<tr>
<td>----------------</td>
<td>----------</td>
</tr>
<tr>
<td>3. Public utilities should be required to appoint a statutory officer holding the title of &quot;Chief Engineer&quot;. This person should have the necessary technical qualifications and experience to occupy such a position. The Chief Engineer should report directly to the Board and/or Minister. A Chief Engineer's Report on the &quot;State of the Infrastructure&quot; of the utility should be required in each year's Annual Report. In this &quot;State of the Infrastructure Report&quot;, the Chief Engineer should be required to report specifically on the operational safety performance of the infrastructure over the financial year in question, and be required to certify the infrastructure's capacity for operational safety (with or without qualification) over the prospective financial year.</td>
<td>The Government supports this recommendation. The Board of Western Power has agreed to amend its charter to require the General Manager Networks to provide a report directly to the Board in the terms envisaged by the Committee. This is similar to Western Power's existing requirement for declarations by the Chief Executive Officer and Chief Financial Officer in relation to financial reporting and risk management. The Board has also agreed to enhance its annual report by including a &quot;State of the Infrastructure&quot; report, as envisaged by the Committee.</td>
</tr>
<tr>
<td>Recommendation</td>
<td>Response</td>
</tr>
<tr>
<td>----------------</td>
<td>----------</td>
</tr>
<tr>
<td><strong>4.</strong> Other than the Chief Engineer, executive appointments should be made on the basis of managerial and/or administrative skills, qualifications and ability.</td>
<td>This recommendation is not supported. Western Power has advised(^1) that these criteria already apply to the selection and appointment of its executives. However, Government will request the Public Utilities Office to further investigate this recommendation to determine whether additional improvements can be made in this area.</td>
</tr>
<tr>
<td><strong>5.</strong> There should be a statutory requirement that Executive Directors of any utility be a “fit and proper person” as is currently the case in the corporate sphere generally.</td>
<td>The Government supports this recommendation. Consultation will be undertaken on the Committee’s proposal to make this a statutory requirement.</td>
</tr>
<tr>
<td><strong>6.</strong> The ERA and EnergySafety should have the power to bring an action to have an Executive Director of a utility declared to be a not “fit and proper person”. An application for such a declaration should be to either the State Administrative Tribunal or the District Court at the first instance.</td>
<td>The Government supports this recommendation. However, the Government will require further advice on its implementation in light of Western Power’s comments(^2) in relation to the potential for this recommendation to interfere with existing ministerial powers and the need to have an independent and transparent basis for making such a finding.</td>
</tr>
</tbody>
</table>

\(^1\) Page 21 of Western Power’s Response.  
\(^2\) Page 22 of Western Power’s Response.
### Recommendation 7
The Electricity Corporations Act 2005 should be amended so that a general prohibition on making false and misleading statements, similar to s1308 of the Corporations Act 2001 (Cth) applies to corporations established under that Act. The current provisions are not sufficiently broad in their application.

This recommendation is not supported.

As advised by Western Power, similar provisions already exist under the Electricity Corporations Act 2005 and the Australian Consumer Law (WA).

However, Government will request the Public Utilities Office to further investigate this recommendation to determine whether additional improvements can be made in this area.

### Recommendation 8
Section 18C of the Energy Coordination Act 1994 should be revised to make the “order-making” process more flexible and direct in its application. For example, the existing provision could be amended to allow an Inspector to issue an Order requiring a network operator to inspect a number of components (that is, poles), or replace or repair them (includes reinforce a pole) if these components did not meet the in-service design criteria, or are unsafe.

The Government supports this recommendation.

Consultation on this recommendation will proceed, noting that section 18 of the Energy Coordination Act 1994 should be regarded as a last resort provision.

---

3 Page 22 of Western Power’s Response.
### Recommendation 9.
A provision should be introduced into the Energy Coordination Act 1994 whereby a clear statement of intent by a network operator that they will not comply with a requirement in an Order may be deemed as equivalent to actual failure to comply with the requirement even if the date for compliance has not been reached.

**Response**
The Government supports this recommendation.
Consultation on its implementation will commence, noting Western Power’s view\(^4\) that care will be required in drafting any such provision to ensure that the ability of regulators to establish transitional arrangements is not unduly restricted.

### Recommendation 10.
A provision should be introduced whereby minimum allowable in-service design criteria are required under the Energy Coordination Act 1994, by reference to industry standards, for certain key components in a distribution and transmission system, that is, specification of the minimum safe in-service design parameters before replacement of the component is required. This is currently what happens with respect to accounting standards.

**Response**
The Government supports this recommendation.
However, the Government will require further information on its implementation in light of Western Power’s comment\(^5\) on the difficulty in defining and applying industry standards given the unique nature of transmission and distribution assets in Western Australia. Further, Western Power has noted that design standards are likely to change regularly.

---

\(^4\) Page 23 of Western Power’s Response.
\(^5\) Page 23 of Western Power’s Response.
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>11.</strong> A new offence should be introduced into the Energy Coordination Act 1994 where a component fails and causes injury to a person, or damage to property, as a result of it not being replaced before it reaches its minimum in-service design strength.</td>
<td>This recommendation is not supported at this stage. It requires careful consideration as the many variable factors acting on components of an electricity distribution network could make it counterproductive to stipulate fixed service lives. This could lead to considerable waste of resources as serviceable components are scrapped based on calendar dates or service hours. It is recommended that it would be better to require network operators to inspect their assets periodically, using methods appropriate to discover weaknesses and threats to serviceability. The Public Utilities Office will provide advice to the Minister for Energy in this regard.</td>
</tr>
<tr>
<td><strong>12.</strong> A system should be introduced into the Energy Coordination Act 1994 whereby civil penalties can be imposed for failures relating to safety that require proof only on the civil standard of the balance of probabilities (for example, Division 7 of the Model Work Health and Safety Bill).</td>
<td>The Government supports this recommendation. At present, EnergySafety uses criminal prosecutions as its regulatory tool. Consultation will commence on the potential to impose civil penalties to encourage safety.</td>
</tr>
<tr>
<td>Recommendation</td>
<td>Response</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>13.</strong> A system should be introduced into the Energy Coordination Act 1994 whereby regulators have express powers to seek an injunction; for example, if a company or person does not comply with an Order or provision of the relevant legislation.</td>
<td>The Government supports this recommendation. Consultation on its implementation will proceed. It is noted that, at present, EnergySafety inspectors rely on powers under section 18(2) of the Energy Coordination Act 1994 to prohibit continued use of an unsafe item and to disconnect electricity supply to anything considered unsafe. An injunctive power would provide an additional safeguard.</td>
</tr>
<tr>
<td><strong>14.</strong> A provision should be introduced into the Energy Coordination Act 1994 establishing an obligation for Directors and officers of a network operator to ensure public electrical safety compliance (for example, s27 7 of the Model Work Health and Safety Bill).</td>
<td>The Government supports this recommendation. Consultation will proceed on the implementation of an explicit legal obligation requiring network operators to operate their networks safely, noting Western Power’s view in relation to Directors’ and officers’ ability to mitigate risks to public safety, as opposed to their ability to ensure public safety.</td>
</tr>
</tbody>
</table>

\*Page 24 of Western Power’s Response.
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>15. Penalties under the Energy Coordination Act 1994 should be increased to be comparable to similar corporate penalties in other contexts (for example, Corporations Act 2001 penalties). The current lack of penalty equivalence had undesirable competitive neutrality implications.</strong></td>
<td>The Government supports this recommendation. Consultation will commence on its implementation. Present penalties are $50,000 for individuals and $250,000 for companies, which provide sufficient incentive not to offend for individual tradespersons and most contractors respectively. However, it is likely that network operators would not regard a penalty of $250,000 as a sufficient deterrent.</td>
</tr>
<tr>
<td><strong>16. Network operators should be open and responsible for their public safety performance. Failure to meet acceptable safety and operating standards should be penalised. Simple performance measures, including those listed below, should be reported publicly, on a quarterly and annual basis, with reference to national benchmarks:</strong></td>
<td>The Government supports this recommendation. Government has requested Western Power to include in its Statement of Corporate Intent an overview of its wood pole replacement and reinforcement program for the next twelve months. Western Power will also be required to report against a new key performance indicator that will measure its achievements against an accelerated program of wood pole replacement and reinforcement, as agreed by Government.</td>
</tr>
<tr>
<td>• unassisted wood pole failures;</td>
<td></td>
</tr>
<tr>
<td>• damage or electric shocks;</td>
<td></td>
</tr>
<tr>
<td>• fires where damage occurs to network assets or other property; and</td>
<td></td>
</tr>
<tr>
<td>• unassisted conductor failures.</td>
<td></td>
</tr>
<tr>
<td>Recommendation</td>
<td>Response</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>17. Network operators should report on the basis of transparent definitions of</td>
<td>The Government supports this recommendation.</td>
</tr>
<tr>
<td>terms (for example, unassisted failures), as approved by the Director of</td>
<td>Consultation will commence on its implementation.</td>
</tr>
<tr>
<td>Energy Safety.</td>
<td></td>
</tr>
</tbody>
</table>

In addition to the specific recommendations outlined in Appendix 4 of the Committee’s report, the Minister for Energy has asked the Public Utilities Office to undertake a comprehensive review of the regulatory framework governing Western Power’s operation. The Public Utilities Office is required to report back to the Minister by September 2012.

In addition to undertaking a comprehensive review of the current regulatory framework, there are some immediate deliverables that the Public Utilities Office will be pursuing.

This will include taking responsibility for the oversight of the regulatory framework and ensuring that its day-to-day operation is efficient and effective. As part of this oversight role, the Public Utilities Office will identify any gaps or uncertainties in the roles of the individual regulators and develop appropriate solutions for Government’s consideration.

3.c.

**Recommendation 3 – Review of Structure, Culture and Operations**

On page 226 of its report, the Committee made the following recommendation:

**Recommendation 3**

The Committee recommends that, as a matter of urgency, the Government commission a wide-ranging independent inquiry into the structure, culture and operations of Western Power since its disaggregation.
Government is pleased to report that Western Power is already making significant progress in addressing the concerns raised by the Committee.

Western Power’s executive team has instigated a High Performance Team Development Program to accelerate change in the organisation’s culture. The purpose of this program is to develop a culture that reflects a commitment to the principles of accountability, performance, respectful interaction with external stakeholders (including regulators) and customer service.

The program will initially focus on driving change in leadership and management behaviour. In turn, this will drive behavioural change amongst all employees.

As part of this cultural and operational change process, the Board is currently seeking a new Chief Executive Officer to lead the corporation into a new era of accountability and focused delivery.

Government is in the process of finding a new Chairman to lead the Board and oversee the transformation of Western Power.

The new Chief Executive Officer and the Board will be personally responsible for reporting to the Minister for Energy, on a quarterly basis, on the changes being made to the structure, culture and operations of Western Power to address the findings of the Committee and to turn Western Power into an accountable and delivery focussed organisation.

Government notes that the composition of management within Western Power has undergone deliberate and significant change since disaggregation. The extended management team comprises 58 managers and executives, of whom 36 joined Western Power after disaggregation, and 24 have been with Western Power for less than three years.

This mix of industry experience (necessary to manage a complex electricity network), combined with externally trained and experienced personnel, will be a key ingredient to successfully driving Western Power forward toward a more focussed and accountable culture.

Executive appointments will continue to be based on selecting the best people for the job. These people will exhibit the high standards of conduct and integrity expected by Government and the community. Consideration will be given to implementing new mechanisms to discipline or remove people who fail short of these standards.
4.

Other Relevant Actions

In recognition of the serious nature of the concerns outlined in the inquiry report, Western Power has put in place a detailed action plan to address each of the underlying shortcomings identified by the Committee.

A senior member of Western Power’s executive team has been assigned personal responsibility for delivering each action item within the plan and for reporting to the Board on progress. In turn, the Board will report to the Minister for Energy on a quarterly basis.

The plan will target the following areas:

- Asset management and planning. Some actions in this area will include the:
  - preparation of a plan for the replacement and reinforcement of poles using criteria specified by EnergySafety;
  - establishment of a dedicated asset management team for poles and towers; and
  - improvement of governance arrangements for wood pole management, with quarterly performance reports to the Board and monthly reports to the executive.

- Pole inspection procedures and records, with some of Western Power’s actions focusing on:
  - enhancing its pole inspection methodology and ensuring that inspection processes comply with regulations;
  - updating serviceability assessment criteria in consultation with EnergySafety; and
  - conducting refresher inspector training.

- Accelerated pole replacement and reinforcement.

- Asset records and databases, with Western Power working to:
  - increase the efficiency and accuracy of data collection; and
  - define clear accountabilities for data management.

- Corporate culture and leadership, with Western Power focusing on:
  - improving its relationship with its regulators;
  - increasing focus on compliance; and
  - implementing an executive cultural change program.
The plan (including completion timelines for all action items) is outlined in more detail on pages 10 to 14 of Western Power’s response to the Committee’s report. The Government supports this plan. However, in relation to the plan to update wood pole asset data, the Government is not satisfied with Western Power’s proposed completion date of June 2017 and will engage further with Western Power following completion of the pilot project in July 2012.

In relation to the wood pole replacement and reinforcement programs, the Economic Regulation Authority has found, in its Draft Determination on Western Power’s AA3 submission, that Western Power’s proposal to increase its wood pole replacement and reinforcement program is efficient and should be undertaken as a matter of priority to meet the EnergySafety Order.

However, the Economic Regulation Authority has also acknowledged that the proposed level of investment will still be insufficient, noting that Western Power would need to make an additional investment of $1 billion by 2015 to meet the Order.

In light of the Economic Regulation Authority’s assessment, the Minister for Energy has asked Western Power to examine its capacity to deliver an enhanced wood pole replacement and reinforcement program. As a result of this request, Western Power will allocate an additional $273 million to wood pole replacement and reinforcement over the five-year period 2012-13 to 2016-17. This amount is over and above the proposed $748 million spend in AA3.

This increased level of investment will challenge Western Power over the next five years. Nevertheless, Government has asked Western Power to continue to explore opportunities to further increase its wood pole replacement and reinforcement program.

It is important that further progress be made towards meeting the obligations of the EnergySafety Order and improving Western Power’s asset management systems and compliance culture.
Standing Committee on Public Administration
Report 14 ('Unassisted Failure')
Western Power's response
Contents

Introduction ........................................................................................................................................3

The Standing Committee’s recommendations .............................................................................4

Response overview .........................................................................................................................6

Getting the balance right – the need for accountability and delivery .............................................6

Action to drive cultural change ......................................................................................................6

Recruitment of a new Chief Executive Officer .............................................................................7

Management change – evidence of ‘new blood’ ..........................................................................7

Action linked to reporting requirements .......................................................................................7

Action on the annual report ...........................................................................................................7

Acceleration of wood pole replacement and reinforcement .........................................................8

Actions already taken and more to come .....................................................................................8

Other issues raised in the Report ................................................................................................9

Achieving tangible results ............................................................................................................9

Key management actions ............................................................................................................10

Asset management and planning ...............................................................................................10

Pole inspection procedures and records .....................................................................................11

Pole replacement and reinforcement ...........................................................................................12

Asset records and databases .......................................................................................................13

Corporate culture and leadership .................................................................................................14

Dictionary .....................................................................................................................................15

Appendix A – Graphs highlighting progress to date and projected trends ..................................16

Appendix B - Proposed addendum to Western Power’s 2011 Annual Report .........................19

Appendix C - Western Power’s comments in relation to Report 14 appendix 4 ....................20

Appendix D - Western Power’s compliance with the reporting requirements ......................26

Appendix E – Undertaking given to the Standing Committee ....................................................34
Introduction

Western Power provides this document by way of a response to Report 14 of the Standing Committee on Public Administration published 20 January 2012 (Report).

Western Power accepts that currently it has failed to satisfactorily address the Committee’s concerns and accepts that it does not have the full confidence of its stakeholders and regulators.

The Minister is right to expect demonstrable change.

Western Power acknowledges it must win back the confidence of the Parliament and the community and wishes to place on the record its unambiguous commitment to do whatever is within its capacity to ensure this occurs.

This document contains:

1. Western Power’s response to the three recommendations contained in the Report. This section is an acknowledgement of the Standing Committee’s major findings. Western Power has focused its response on those recommendations directed at its performance.

2. An overview of Western Power’s response to the core themes of the Standing Committee’s Report.

3. Graphs highlighting alternatives for addressing safety-related issues in the wood pole network, as well as progress to date and projected trends (Appendix A).

Western Power is conscious that its future performance will be judged by its actions not by this response. Nevertheless, we believe there is evidence of significant progress already made in relation to a number of the Report’s findings and recommendations:

- Up-scaled wood pole replacement / reinforcement program being fast tracked with more crews on the ground, and further investment in equipment and training
- A marked improvement in customer service satisfaction as measured by annual tracking research
- Search for new CEO to drive a sustained change program within the organisation
- New blood has recently been injected into the senior management ranks and this is expected to drive a cultural paradigm shift

It is acknowledged that Western Power has a long way to go to address the many challenges identified by the Standing Committee in its report and accordingly the Board will hold the Executive accountable.

The contents of this response document have been reviewed and approved by the Board of Western Power*.

Paul Italiano
Acting Chief Executive Officer

Mark Barnaba
Board Chair

Dated: 20 April 2012

---

* See resolution 018/2012/BD dated 16 March 2012.
The Standing Committee’s recommendations

Recommendation 1
(Page 146 of the report)

The Committee recommends that, as a matter of urgency, the Minister for Energy require Western Power to issue a formal addendum to Western Power’s 2010/2011 Annual Report. This addendum should be sufficient to correct the existing Director’s Report such that Western Power fully complies with the disclosure requirements of the Electricity Corporations Act 2002, Schedule 4, clause 11, as these apply to Western Power’s Proposed Revisions to the Access Arrangement and Access Arrangement Information: 2012-2017, lodged with the Economic Regulation Authority, a submission that was approved by the Board of Western Power on the same date that the Board approved the 2010/2011 Annual Report.

Western Power’s response

Accepted.

The Board understands that the view of the Office of Auditor General is that:

(i) There is no standard that governs the level of disclosure required in directors’ reports (the Auditor General does not specifically audit the directors’ report, other than to ensure consistency with disclosures in the financial statements)

(ii) Western Power’s directors’ report met the minimum level of disclosure expected in this report.

The Board agrees that it is appropriate that the directors’ report be expanded in the 2010/11 document and to ensure future directors’ reports are prepared in a considerably more informative style.

The Board further appreciates that there may be options other than amending the annual report that achieve the expectations of the Standing Committee, for example including a clarification in the next quarterly report under section 108 of the Act. However, the Board has approved the content for an addendum to the corporation’s 2010/11 annual report should this be the Minister’s preferred option (see Appendix B).

The Board will be guided by the Minister’s preference in this regard.

Recommendation 2
(Page 255 of the report)

The Committee recommends that the Government commission a comprehensive review of the current regulatory framework applicable to electricity network operators in Western Australia. Any such review should consider, but not be in any way restricted to, each of the issues listed at Appendix four to the Report.

Western Power’s response

Western Power understands and respects that the question of regulatory reform is a matter for Government and affects a number of stakeholders.

Western Power agrees that there are opportunities to improve the current regulatory framework.

The Standing Committee’s report identifies 17 specific issues that should be considered as part of any review of the current regulatory framework (see appendix four to the Report).

Western Power will provide input into any proposed regulatory reform in the relevant forum and at the relevant time, including by way of constructive response to issues papers and the Government’s regulatory impact assessment process.

For the Minister’s assistance, Appendix C to this response provides Western Power’s observations on issues identified by the Standing Committee that relate directly to Western Power.
Recommendation 3
(Page 226 of the report)

The Committee recommends that, as a matter of urgency, the Government commission a wide-ranging independent inquiry into the structure, culture and operations of Western Power since its disaggregation.

Western Power’s response

It is noted and agreed that improvement in Western Power’s performance is required across a range of areas identified by the Standing Committee and more fully described under various themes in the following sections of this report.

Western Power is committed to implementing an action plan that addresses the identified deficiencies in its performance. We are rigorously testing the proposed measures included in the action plan to ensure that they are robust and deliverable within the indicated timeframes. The action plan will be completed and validated in the immediate future and will be provided to the Minister. The final section of this response discusses a sample of Western Power’s specific actions to address areas of concern identified in the Report.

The Board acknowledges that the Government and the people of Western Australia are entitled to seek assurance that the action plan has been implemented and is achieving the stated objectives.

The Board further respects that, ultimately, how this assurance is obtained and its timing is a decision for Government. However the Board suggests that a reasonable period of time be allowed for Western Power to implement the action plan.
Response overview

Western Power acknowledges that improved performance is required if it is to regain the confidence of the Government, regulators and the broader community.

Western Power recognises the need to clearly understand its stakeholders’ expectations, and is cognisant of the need to accelerate the rate of progress in addressing the state of the wood pole network. Western Power acknowledges that the wood pole failure rate in Western Australia exceeds the national average and needs to improve. This issue has been the subject of considerable Board and management attention since Western Power was disaggregated in 2006, with an accelerated program of pole replacement and reinforcement having been put in place in the last two years.

Western Power recognises that to achieve this target it must listen, learn and work cooperatively with its stakeholders.

Getting the balance right – the need for accountability and delivery

Western Power operates one of the largest isolated electricity networks in the world. Operation of any electricity network needs to balance the following competing objectives:

- Safety
- Enabling growth
- Security of supply
- Customer service
- Affordability

Western Power must ensure it delivers these objectives efficiently and effectively and it must work with Government, regulators and stakeholders to optimise the balance of these objectives. The Executive team recognises that it is publicly accountable for Western Power’s performance.

The Executive team accepts that it has failed to communicate in an effective way that builds confidence in Western Power’s stakeholders, especially the electricity safety regulator.

Although it was never the intention, the Executive team also accepts that at times it has responded to stakeholders’ concerns about wood poles issues in a way that has been perceived by the Standing Committee to be arrogant.

The Report is critical of a number of areas including:

- Corporate culture and leadership
- Asset management and planning
- Asset records and databases
- Relationships with regulators
- Operational delivery

The Executive team accepts accountability for this criticism and the tabling of the Report has had a profound impact on them, resulting in careful self-examination and reflection.

In an environment where confidence in the capability and competency of Western Power’s leadership has been the subject of such strong criticism, the Executive team acknowledges it needs to be transparent and accountable.

Action to drive cultural change

The cultural paradigm shift demanded by the Report requires even greater levels of responsiveness to those individuals and corporate bodies charged with providing independent assessment of Western Power’s behaviour and operations and a greater focus on public safety.
The Board has commissioned a full and thorough examination of Executive accountability and proposes to
then move to cascade a comprehensive program of cultural change throughout the business.

The purpose of this program is to:
1. Ensure accountability to deliver on promised commitments
2. Ensure that Western Power has a strong, performance oriented culture that is also respectful of
   external stakeholders, including regulators
3. Emphasise that the core driver of activity at Western Power must be to work in the best interests of its
   customers

Western Power is open to other alternatives at the discretion of the Minister and government.
Western Power is committed to provide the Minister with an outcome that drives public confidence and that
the Executive team is being held to account in an appropriate and rigorous manner.

Recruitment of a new Chief Executive Officer

The Board of Western Power has commenced the process of selecting a new Chief Executive Officer. The
successful candidate will be accountable for driving the desired cultural and organisational change expected
by the Board, government and other key stakeholders.

Management change -- evidence of ‘new blood’

The composition of management within Western Power has undergone deliberate and significant change
since disaggregation. The Extended Management Team comprises 58 managers and executives, of whom
36 joined Western Power after disaggregation and 24 have been with Western Power less than three years.
This mix of industry experience (necessary to manage a complex electricity network), combined with
externally trained and experienced personnel, is a key ingredient to successfully drive Western Power
forward.

Action linked to reporting requirements

A specific issue raised by the Standing Committee is the apparent misalignment of Western Power’s
reporting obligations to Parliament and the role of the Chief Executive Officer in such reporting. Western
Power acknowledges that it is accountable to the Parliament. Appendix D seeks to summarise Western
Power’s compliance with the reporting requirements contained in the Electricity Corporations Act. Western
Power will work with the Minister’s office to ensure that there is no misalignment of these requirements.

Action on the annual report

Western Power accepts the Standing Committee’s view that further disclosure on likely developments on
wood poles could have been included in the 2010/11 Annual Report and has prepared a draft addendum to
that report for the Minister’s consideration. Similarly, Western Power intends to increase the level of detail it
provides on wood pole expenditure as part of its future State budget forecast submissions to provide greater
transparency to the State Government and Parliament.

The Standing Committee also raised a specific query on the insurance of poles and wires. Western Power,
through its insurance broker, Aon Risk Services Limited, annually assesses the economic viability of insuring
its major assets. It will conduct a further economic evaluation in the upcoming 2012 insurance renewal
program and document the Board’s decision by July 2012. The corporation is open to provide further
comprehensive details on this process as required.
Acceleration of wood pole replacement and reinforcement

Members from all political parties have previously publicly acknowledged that the network has suffered from decades of under-investment and that the scale of the repair and replacement required is massive. The numbers as they relate solely to the wood poles issue tell the story starkly: There are more than 200,000 poles that are forty years old or older and according to EnergySafety, based on the Australian standard, these poles have reached the end of their serviceable life.

In developing its AA3 submission to the economic regulator, Western Power consulted openly and extensively to balance the five competing objectives described on page six of this response. In the submission, Western Power proposed to replace approximately 100,000 poles and reinforce a further 63,000 in the next five years. Western Power’s regulatory framework is a propose-respond model. The Economic Regulation Authority will issue a draft decision on the AA3 submission, in response to which Western Power may make adjustments to its proposed investment program.

The Report has caused Western Power to examine its capacity to deliver an enhanced wood pole replacement and reinforcement program. There is now an opportunity for the Executive team to work with the Minister to consider further options that would move Western Power to a position of compliance more rapidly.

Actions already taken and more to come

In 2006/07, 5,440 distribution poles were replaced or reinforced. In 2011/12 this will grow to a forecast 35,000 distribution poles, a more than 700% increase on five years ago. The rate of failure of wooden power poles, outside of severe and/or widespread weather events, has steadily declined over this period as a result of the increase in Western Power’s wooden pole treatment. Western Power has since begun including statistics of fallen poles from severe and/or widespread weather events to align with the definition preferred by EnergySafety.

Based on discussions with EnergySafety, Western Power accepts that an even greater volume of pole reinforcements will help diminish the risk of unassisted failures while Western Power continues to accelerate its pole replacement activity.

Western Power has already taken action to increase pole reinforcements from a budgeted 16,000 to in excess of 24,000 in 2011/12 and currently plans a total of 45,000 in 2012/13. Western Power plans to deliver a minimum of 55,000 poles per annum for 2013/14 onwards to reduce the public safety risk more rapidly.

To deliver these outcomes, Western Power and its delivery partners have made significant investments in more skilled employees and specialised equipment and Western Power is now better placed to deliver an accelerated program.

Consequent upon:

1. Reviewing the Standing Committee’s report, in particular how it highlighted the gap between Western Power’s wood pole management strategy and the position required by EnergySafety; and

2. The examination, in January 2012, of the results of the testing of 55 jarrah poles that had been conducted earlier in 2011 (which included over 300 data items per pole and analysis contained within a 500 page report containing very detailed evidence drawn from that testing),

the Board and Executive team have been scrutinising Western Power’s wood pole management strategy, in particular the volume of pole reinforcements.

EnergySafety’s Order no. 01/2009 requires Western Power, by December 2015, to replace all wooden power poles that are over 40 years old and to reinforce all that are over 25 years old. Chart two in Appendix A depicts the volume of wood pole replacements and reinforcements that would be required in order to fully comply with this requirement. It would require an investment of approximately $1.5 billion more than the proposed investment for wood pole treatments that was included in Western Power’s AA3 submission (see chart one in Appendix A).
Western Power is examining alternative options that would improve the safety performance of the wood pole network to sufficiently meet EnergySafety’s expectations (see charts three and four in Appendix A). However, any of these options would involve a tangible increase in the volume of pole reinforcements above that included in the current AA3 submission and accordingly further funding may be required to achieve acceptable safety outcomes, bearing in mind that the cost of every 10,000 poles reinforced is in excess of $10 million. Further information is available in Appendix A.

Western Power is in discussions with its supplier to examine the possibility of increasing its reinforcement volume and would naturally seek to improve pricing based on an increase in allocated work. A plan is currently being prepared for the Minister’s consideration.

Western Power is open to publicly reporting progress against its planned reinforcement and replacement program to re-establish public confidence. It intends to publish details of its replacement and reinforcement progress on a quarterly basis on its public website.

Other issues raised in the Report

Western Power accepts the urgent need to address the issues raised in the Report regarding pole inspections. Western Power is taking immediate actions to satisfy EnergySafety that Western Power has met the requirements of the Order issued by EnergySafety in mid 2009.

Western Power understands the clear expectation that its wood pole database should be accurate and current. To achieve this objective, Western Power had already instigated a field data project which will involve visiting every pole in the network over a five year period and capturing all pole attributes.

Western Power is working to resolve all outstanding issues regarding its Wood Pole Asset Management Plan and will comply with EnergySafety’s Order requiring the release of an upgraded version of the plan by 30 June 2012.

Western Power acknowledges and accepts that, during the course of the Standing Committee’s inquiry, aspects of its conduct and that of its duly appointed representatives, may have obstructed or impeded the Standing Committee, albeit unintentionally. Western Power has unreservedly apologised to the Standing Committee and provided an undertaking in the terms of Appendix E.

Achieving tangible results

The Board and Executive team wish to re-state their understanding of the need to show respect and earn stakeholder confidence by the achievement of tangible results. The following summarised actions represent a sample of Western Power’s action plan, including actions already underway:

1. Acceleration of the pole reinforcement and replacement program (more than a 700% increase since 2006/07)
2. Ensuring the inspection process complies with regulations
3. Dedicated asset management team for poles and towers
5. Implement Mobile Workforce Solution to increase efficiency and accuracy of data collection
6. Clear Executive accountability for the delivery of outcomes
7. Executive cultural change program
8. Increased focus on compliance led by Board and Executive

Western Power acknowledges that demonstrable accountability is key to the successful execution of the action plan and an Executive has been assigned to each action identified to ensure that they are successfully implemented.
Key management actions

This section discusses Western Power’s specific actions to address key areas of concern identified in the Report. Where specific actions are part of the Western Power Wood Pole Program reference is made to the project number (e.g. Project #14), progress on all actions will be monitored via a central program office with monthly reporting to the Western Power Board. The completion deadline of some actions may be impacted by Western Power’s ability to obtain funding.

Standing Committee finding / observation Western Power actions in way of response

Asset management and planning

Western Power’s existing wood pole asset management strategy and planning is deficient in that:

- Western Power should have focused its pole replacement and reinforcement program on its significantly aged poles, working progressively to reinforce or replace those aged poles in line with industry standards.
- There is no consensus to average standard life for its wooden poles
- There is no overarching coordination of its wood pole asset management system
- There is no evidence of the oversight and review that would be expected from the asset owner of the asset managers activities and performance

Western Power’s management and governance in relation to the understanding and costs of operating and capital activities is insufficient. Additionally it appears Western Power has not had a valid asset management system review since it was disaggregated

Actions currently under way:

1. Prepare a plan for replacing and reinforcing poles that satisfies Energy/Safety and is consistent with the age-based criteria specified in Energy/Safety Order no. 001/2009. This is a fundamental change from Western Power’s previous approach that was condition-based. Completion September 2012.
   Accountable General Manager: Mark de Laster

2. Update Wood Pole Management Plan - incorporate all the refinements to the inspection process and replacement and reinforcement improvements. Completion July 2012
   Accountable General Manager: Mark de Laster

3. Prepare alternative scenarios to the AA3 submission that address wood pole risk through increased reinforcement and replacement. Completion June 2013 (Project #24) Status: complete.
   Accountable General Manager: Mark de Laster

4. Deploying network risk management tool, integrated to the asset management solution. This solution builds a risk profile for each pole and the entire pole population that calculates the consequence and likelihood of a pole failing. This allows Western Power to more effectively target the treatment of the highest risk poles in the network. The solution was prototyped with a small population of wood poles in February 2012. Completion June 2013 (Project #21).
   Accountable General Manager: Mark de Laster
FIFTEENTH REPORT

Report no. 14 by the Standing Committee on Public Administration

Western Power's response

Standing Committee findings / observations

Western Power actions by way of response

5. Establish dedicated asset management team for poles and towers. Completion May 2012. Status: complete
   Accountable General Manager: Mark de Laeter

6. Implement new works program governance framework and management tools to manage the delivery of the work program and monitor performance. Completion August 2012. (Project #53)
   Accountable General Manager: Mark de Laeter

7. Improved governance of wood pole management
   Improve quarterly performance reports to the Board and monthly performance reports to the Executive. Completion July 2012. (Project #54)
   Accountable General Manager: Mark de Laeter

Pole inspection procedures and records

Western Power's inspections, strength assessment procedures and records are not adequate to the point that they are unable to identify an accurate measure pole safety. In May 2010 testing of 56 wooden poles gave strong indication that Western Power's inspection methodology could not be relied upon. Western Power's inspection manual does not meet the requirements of EnergySafety.

Actions currently underway

Western Power is improving its inspection procedures and records by:

1. Enhance pole inspection methodology with findings from failure analysis.
   - Forensic and structural testing on 55 poles at Koppers facility in Grafton. Completion June 2012. (Project #13). Status: complete
   - Evaluate establishing a suitable testing facility in Western Australia and an associated panel of experts. Completion December 2012. (Project #13)
   - Conduct investigation on the failure of poles resulting from the Norham/York storm. Completion May 2012 (Project #6). Status: complete
   Accountable General Manager: Mark de Laeter

2. Conduct serviceability Index (pole strength assessment) desktop study to review current pole population and investigate the impacts on application of several safety factors. Completion July 2012 (Project #20)
   Accountable General Manager: Mark de Laeter
Western Power’s response

Standing Committee finding / observation

Western Power actions by year of response

3. New inspection manual containing improved visual inspection techniques. Completion September 2012
   (Project #5)
   Accountable General Manager: Mark de Laeter

   Accountable General Manager: Ken Brown

5. Update serviceability assessment criteria working with EnergySafety’s technical consultants.
   Completion July 2012
   Accountable General Manager: Mark de Laeter

Pole replacement and reinforcement

Western Power’s pole replacement and reinforcement rates were well below the “credible” range identified by
EnergySafety in 2006. Western Power has failed to request sufficient funding from the Economic Regulation
Authority (ERA) to address the wood pole safety issue.

Actions currently under way:

1. Western Power is delivering to a forecast replacement of more than 15,000 poles for the 2012 financial
   year.
   Accountable General Manager: Ken Brown

2. Western Power forecasts to more than double the number of reinforcements carried out from 11,787 in
   2010/11 to a forecast of 24,000 in 2011/12. This exceeds the lower range of EnergySafety’s “credible
   range”.
   Accountable General Manager: Ken Brown

3. By 30 June 2012, Western Power will have employed at least an additional 30 line workers from within
   Australia and overseas as necessary.
   Accountable General Manager: Ken Brown

4. Western Power has requested $748 million (real) ($814 million nominal) as part of its third access
   arrangement (AAA) submission to fund the replacement of approximately 100,000 poles and to
   reinforce 63,000 poles. Status: complete.
   Accountable General Manager: Mark de Laeter
FIFTEENTH REPORT

Standing Committee finding / observation

Western Power’s actions in reply of response

5. Prepare and implement Western Power’s recruitment plan to match approved activity levels of pole replacement over the next five years.
   Accountable General Manager: Ken Brown

6. Prepare and implement a contractor resources plan, including negotiating efficient contracts with delivery partners, to match approved activity levels of pole reinforcements over the next five years.
   Accountable General Manager: Ken Brown

Asset records and databases

Western Power’s records and databases have not received the appropriate level of investment since disaggregation and contain inadequate information to provide a basis for:
- Asset planning with respect to older wooden poles
- Implementing a targeted pole inspection, reinforcement and replacement
- Preparing and providing information to the ERA which has resulted in Western Power’s inability to mount a persuasive business case for increased expenditure

Western Power did not know the location of approximately 4,000 of its wood poles (0.7% of the network)

Actions currently under way:

1. Replace out-dated asset management and geospatial information systems used to support distribution and transmission wood poles and associated assets.
   This will enable improvements in the end to end management of wood poles, providing far greater visibility and understanding of the condition of the wood pole population and the status of work being undertaken on the wood pole population. The solution for wood poles is being progressively deployed through to completion in January 2013. (Project #34).
   Accountable General Manager: Mark de Laeter

2. Deploy mobile data capture system for wood pole workforce.
   The mobile solution has already been deployed for wood pole inspections and is being progressively deployed to reinforcements and replacements. Completion June 2013. (Project #31)
   Accountable General Manager: Ken Brown

3. Update wood pole asset data.
   Visit every wood pole and capture relevant pole data as it physically exists in the network. A pilot phase will be complete by July 2012 Completion June 2017 (Project #2).
   Accountable General Manager: Mark de Laeter

4. Define clear accountabilities for pole data management. Completion June 2012 (Project #1).
   Accountable General Manager: Mark de Laeter
## Corporate culture and leadership

The failure by Western Power to adequately address, in the following five years, matters raised by Energy Safety in its 2006 wood pole audit suggests that the management and corporate culture of Western Power have been either unable, or unwilling, to make the necessary operational and paradigm changes within a realistic period of time.

Western Power is the single most difficult energy provider to regulate, across the whole spectrum of their regulatory responsibilities.

## Western Power actions by way of response

**Actions currently under way:**

1. **Cultural change program**
   - Western Power’s Board has commenced a program of cultural change with the appointment of an external party, Model. Model has experience working with executive teams, and will draw on lessons and methodologies that have successfully delivered change in organisations such as GE, Lion Nathan, AP Moller-Maersk, BHP Billiton, HSBC Water Corporation and the Department of Treasury and Finance.
   - The program is focussed on Western Power’s executive team with clear deliverables over the next 100 days. It will commence with an examination of the executive team’s leadership behaviours through 360 degree reviews. Feedback from key external stakeholders and the Standing Committee will also be valuable input for this program. Completion: July 2012.
   - Accountable: General Manager: Stewart Hart

2. **Western Power’s Board has commenced the process of selecting a new Chief Executive Officer.** The successful candidate will be accountable for driving the desired cultural and organisational change expected by the Board, government and key stakeholders. Board selection process completion: Estimated mid 2012 (noting that any selection is subject to the Minister’s concurrence).
   - Accountable: Board

3. **Manager Compliance reports compliance performance in the quarterly Executive review meeting.** Allocate single point accountability for actions to close out any required remedial works. Completion: April 2012. Status: complete.
   - Accountable: John Pease

4. **Develop and implement strategy to improve all regulatory relationships.** Establish Executive accountability for each regulator and demonstrate progress on key outstanding issues. Completion: September 2012
   - Accountable: Phil Southwell
### Dictionary

<table>
<thead>
<tr>
<th>Abbreviated term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>AA3</em></td>
<td>Access arrangement three</td>
</tr>
<tr>
<td><em>Act</em></td>
<td><em>Electricity Corporations Act 2006 (WA)</em></td>
</tr>
<tr>
<td><em>AWP</em></td>
<td>Approved works program</td>
</tr>
<tr>
<td><em>DoT</em></td>
<td>Department of Treasury</td>
</tr>
<tr>
<td><em>EBT</em></td>
<td>Earnings before tax</td>
</tr>
<tr>
<td><em>EERC</em></td>
<td>Economic and Expenditure Reform Committee</td>
</tr>
<tr>
<td><em>ERA</em></td>
<td>Economic Regulation Authority</td>
</tr>
<tr>
<td><em>KPI</em></td>
<td>Key performance indicator</td>
</tr>
<tr>
<td><em>NFIT</em></td>
<td>New facilities investment test</td>
</tr>
<tr>
<td><em>SSD</em></td>
<td>Sound, dig and drill</td>
</tr>
<tr>
<td><em>Standing Committee</em></td>
<td>The Standing Committee on Public Administration of the Legislative Council</td>
</tr>
<tr>
<td><em>Western Power</em></td>
<td>Electricity Networks Corporation ABN 18 540 492 881</td>
</tr>
</tbody>
</table>
Appendix A – Graphs highlighting progress to date and projected trends

Chart 1 – Original AA3 proposal plus proposed accelerated reinforcements

This chart depicts the total number of poles that would be replaced and reinforced in accordance with Western Power’s AA3 draft submission.

100,100 replacements and 63,940 reinforcements at an estimated cost of $814.3 million (nominal)

Note: The unit rates used in the original AA3 submission are lower than those used in the following scenarios.

Note: 2006/07 and 2007/08 figures exclude transmission replacement and reinforcement numbers.

Chart 2 – Replacement & reinforcement volumes to meet the EnergySafety Order no. 01/2009

This chart depicts the estimated total number of poles that would need to be replaced and reinforced for Western Power to comply with the EnergySafety Order of 2009.

This would require an estimated 257,000 replacements and 224,000 reinforcements at an estimated cost of $2,375 million (nominal). The cost of this program of replacements and reinforcements is up to $1,580 million more than Western Power sought in its initial AA3 submission.

Note: 2006/07 and 2007/08 figures exclude transmission replacement and reinforcement numbers.
Chart 3 – Alternative option 1 (AA3 proposal with increased reinforcements)

This chart depicts the maximum replacement rate and pole reinforcement capacity that Western Power will have established by June 2012. This represents 100,450 replacements and 162,000 reinforcements at an estimated cost of $1,085 million (nominal).

The cost of this program of replacements and reinforcements is estimated at $272 million more than Western Power sought in its initial AA3 submission.

Note: 2006/07 and 2007/08 figures exclude transmission replacement and reinforcement numbers.

Chart 4 – Alternative option 2 (Maximum deliverable replacement and reinforcement volumes)

This chart depicts Western Power’s assessment of the maximum deliverable volume of pole replacements and reinforcements.

It proposes 100,450 replacements and 347,500 reinforcements at an estimated cost of $1,310 million (nominal).

The cost of this program of replacements and reinforcements is estimated to be $50 million more than Western Power sought in its initial AA3 submission.

Note: 2006/07 and 2007/08 figures exclude transmission replacement and reinforcement numbers.
Report no. 14 by the Standing Committee on Public Administration

Western Power’s response

Chart 5 – State Budget scenario

This chart depicts the total number of poles that would be replaced and reinforced as aligned with the State Budget provision. It proposes 100,450 replacements and 268,000 reinforcements at an estimated cost of $1057 million (nominal).

The cost of this program of replacements and reinforcements is estimated to be up to $273 million more than Western Power sought in its initial AA3 submission.

Note: 2006/07 and 2007/08 figures exclude transmission replacement and reinforcement numbers.

The unit rates for pole reinforcements in Chart 5 are lower than those used in Chart 3 and reflect a reduction that can be achieved as a result of increased volumes of work.

Chart 6 – Pole inspection backlog

Wood pole inspections
Report no. 14 by the Standing Committee on Public Administration

Western Power’s response

Appendix B - Proposed addendum to Western Power’s 2011 Annual Report
Addendum to 2010/11 Annual Report

This is an addendum to the 2011 Annual Report of Western Power.

Page six of the Chairman’s Review discusses Western Power’s commitment to ensuring the safety of the community through steadily increasing the rate of investment to replace certain parts of the network, in particular wood poles. The Managing Director’s Review also alludes to this issue (see page ten).

This addendum is intended to clarify and expand on these statements.

Addendum to the Operational Performance review

The following is by way of addendum to the Managing the Network section of the Operational Performance review.

Western Power recognises the importance of ensuring that the scale of future investment to address the condition of wood pole network is such that it will meet public safety requirements and stakeholder expectations. Specifically, it is currently an imperative for the company to replace or reinforce, as soon as practicable, any pole that no longer has a sufficient safety margin of strength as a result of deterioration. This is evidenced by the material increase in investment in replacing and reinforcing wood poles, particularly since 2008/09 as indicated in the graph below. The company’s plans for investment in replacements and reinforcements in 2011/12 is also as depicted below.

![Wood pole replacement and reinforcement volumes](image)

Note: 06/07 and 07/08 figures exclude transmission replacement and reinforcement numbers

Wood poles have an estimated average service life of approximately 40 years. The Western Power’s Network comprises approximately 630,000ft poles, of which more than 200,000 are over this age. It is clear that most of these poles are approaching the end of their safe and useful life and will require replacement or reinforcement in the near future. This will require a material investment escalation. The above graph shows Western Power has already been acting in earnest in dealing with this deteriorating pole population.
by almost doubling the number of wood poles replaced or reinforced from 12,555 in 2007/08 to 23,838 in 2010/11.

Notwithstanding this increased level of investment, Western Power proposes to further increase its wood pole programme in the forthcoming AA3 submission to reduce the incidence of unassisted pole failures.

Western Power is preparing to lodge its AA3 submission with the Economic Regulation Authority which sets out the Company’s proposed investment plan for the next five years as required under the Electricity Networks Access Code. This submission will propose a total investment of $8.523 billion over the five years commencing 1 July 2012 comprising capital expenditure of $5.810 billion and operating expenditure of $2.714 billion. This includes $1.222 billion relating to safety, comprising:

- $748 million to replace and reinforce 164,000 wood poles across the network, which reflects Western Power’s sense of urgency in addressing the risk of unassisted failure of wood poles.
- $474 million addressing other high risk public safety issues, including power line failures, mitigating bush fires and replacing service lines connecting homes and businesses.

The replacement and maintenance of wood poles is a continuous investment challenge for all network companies. Moreover, as pole audit and inspection standards are improved and refined in conjunction with the respective safety regulators, this challenge may require even greater attention and investment in future years for the Western Power network.

The ERA is expected to provide its draft decision in the first quarter of 2012.

Addendum to the Directors’ Report

The following is by way of addendum to the Likely Developments section of the Directors’ Report (see page 57).

- The Directors note that Western Power’s AA3 submission seeks a substantial increase in investment to support increasing rates of replacement and reinforcement of aging wood poles in use across the network. This is a significant, but necessary investment that reflects Western Power’s sense of urgency in addressing the risk of unassisted failure of wood poles. Further details are provided in the Managing the Network section of the operations performance review contained within this Annual Report.

Electricity Networks Corporation (Western Power)

This addendum was issued on xx May 2012 (see Board resolution xxx/2012/BD)

For further information contact:

Paul Italiano
Acting Chief Executive Officer
Tel: (08) 9326 1047
Email: paul.italiano@westernpower.com.au

Mark Barnaba
Board Chair
Tel: (08) 9326 6358
Email: mark.barnaba@westernpower.com.au

---

Addendum page 2
Appendix C - Western Power's comments in relation to Report 14 appendix 4

Western Power's response

Western Power's comments in relation to Report 14 appendix 4

Report 14 identifies 17 specific issues that should be considered as part of any review of the current regulatory framework in accordance with the Standing Committee’s recommendation two (see page 225 of the report).

The Board of Western Power acknowledges and respects that the question of regulatory reform is a matter for Government taking account of various public policy issues and affects a number of stakeholders. Western Power will provide input into any proposed regulatory reform in the relevant forum and at the relevant time, including by way of response to any issues papers and the Government’s regulatory impact assessment process.

For the Minister’s assistance, the table below summarises observations on issues identified by the Standing Committee that relate directly to Western Power.

<table>
<thead>
<tr>
<th>Standing Committee issue</th>
<th>Western Power observation(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Where energy utilities are required to undergo regulatory and licence-related audits, such audits should be conducted by reviewers that are selected and engaged by the ERA, at the expense of the relevant utility. In the conduct of such audits, there should be absolute clarity that the ERA is the principal for the life of the engagement. This is consistent with current practice relating to the Auditor General.</td>
<td>Western Power agrees that this would enhance the existing regulatory framework. Should the Government proceed along the pathway suggested by the Standing Committee, the ERA will need to have the resources and capability to undertake the selection process to identify suitably qualified and experienced auditors.</td>
</tr>
<tr>
<td>2. It should be expressly required as a component of any energy licence, that the licensee must comply with their statutory energy safety obligations. The relevant audit reviewers should be required to seek information about this aspect from the energy safety regulator as part of any such review. EnergySafety should be expressly authorised to make full disclosure to the auditor in such cases.</td>
<td>Western Power agrees that this would enhance the existing regulatory framework, noting the observations above regarding competing public policy considerations. A more comprehensive approach may be to require licensees to have in place an effective compliance framework generally and not limit the focus only on statutory energy safety obligations.</td>
</tr>
</tbody>
</table>
Standing Committee issue

3. Public utilities should be required to appoint a statutory officer holding the title of "Chief Engineer". This person should have the necessary technical qualifications and experience to occupy such a position. The Chief Engineer should report directly to the Board and/or Minister. A Chief Engineer's Report on the "State of the Infrastructure" of the utility should be required in each year's Annual Report. In this "State of the Infrastructure Report", the Chief Engineer should be required to report specifically on the operational safety performance of the infrastructure over the financial year in question, and be required to certify the infrastructure's capacity for operational safety (with or without qualification) over the prospective financial year.

4. Other than the Chief Engineer, executive appointments should be made on the basis of managerial and/or administrative skills, qualifications and ability.

5. There should be a statutory requirement that Executive Directors of any utility be a "fit and proper person" as is currently the case in the corporate sphere generally.

Western Power observation(s)

The Board of Western Power proposes to:

(i) Amend its charter to require the General Manager Networks to provide a report directly to the Board in terms envisaged by the Standing Committee, similar to Western Power's existing requirement for declarations by the Chief Executive Officer and Chief Financial Officer in relation to financial reporting and risk management.

(ii) Enhance Western Power's annual report by including a "State of the Infrastructure" report as envisaged by the Standing Committee.

The Board also observes that the General Manager Networks would be subject to the prohibition against making false and misleading statements contained in schedule 2, clause 18 of the Electricity Corporations Act (Act).

The Board agrees that all executive appointments should be made on the basis of demonstrated managerial and/or administrative skills, qualifications and ability.

Western Power's current human resources practices currently require all management including executive roles to have defined success criteria and recruitment for vacancies requires candidates to demonstrate that they possess the required qualifications, skills and experience.

The Board agrees that all directors, including an executive director, should be a "fit and proper" person.

The Board further observes that:

(i) There is no general requirement "in the corporate sphere" for a director to be a "fit and proper person", other than in the context of registration as a liquidator. The concept is used in the context of the legal profession, broadcasting services licensees, plumbers, parsons selling gaming machines, second hand goods sellers, motor car traders and liquor licensees.

(ii) The Act vests the power to appoint directors in the Governor, on the nomination of the Minister. The power to remove a director is similarly vested in the Governor and can be exercised without giving any reason.

(iii) This power of removal is wider than the relevant powers vested in ASIC under the Corporations Act 2001 (Cth).
Standing Committee issue

6. The ERA and Energy Safety should have the power to bring an action to have an Executive Director of a utility declared to be a not “fit and proper person”. An application for such a declaration should be to either the State Administrative Tribunal or the District Court at the first instance.

Western Power observation(s)

The Board agrees that any individual and stakeholder, including the referenced regulators should have the ability to advise the Minister that a director is not a “fit and proper’ person and have the capacity to submit evidence in support of this advice.

If such a power was introduced, there would need to be an independent and transparent basis for making such a finding. Issues that would need to be considered include:

- The funding of any such applications
- The consequences of such a finding
- What rights of response would exist.

The Board further observes that care will be required to ensure that any legislative change does not displace or interfere with the Minister’s existing power to recommend to the Governor that a director be removed.

Section 1308 of the Corporations Act creates a specific offence relating to false and misleading statements about a corporation’s capital.

Schedule 2, clause 16 of the Act applies to every director, Chief Executive Officer and every person designated as an executive officer of Western Power. In broad terms, it prohibits the giving of false and misleading information to the Minister, Treasurer, other director or auditor. Breach of this provision is punishable by a fine of up to $10,000 or up to two years’ imprisonment or both. This reflects the accountability framework that Parliament established in the Act.

The Board also observes that Western Power is also subject to section 18 of the Australian Consumer Law (AHL), regulated by the Australian Competition & Consumer Commission. Violations of this Act may result in misleading and deceptive conduct that is misleading and deceptive or likely to mislead and deceive. A breach of this requirement carries civil consequences.

A significant effect of changing the current clause 16 of Schedule 2 to a prohibition in line with section 1308(1) of the Corporations Act is the mental state element. At the moment (under clause 16 of Schedule 2), it is a defence if the director, CEO or executive officer did not know the statement was false or misleading, or at least took reasonable steps to ensure that it was not so. By contrast, liability under section 1308(1) is strict, namely, what directors knew or did is irrelevant. The only question is whether the statement was either false or misleading.

The prohibitions will also apply to information in general, rather than information directed at certain persons.

---

2 See section 36(1) of the Electricity Corporations Act.
Standing Committee issue

8. Section 18C of the Energy Coordination Act 1994 should be revised to make the “order-making” process more flexible and direct in its application. For example, the existing provision could be amended to allow an Inspector to issue an Order requiring a network operator to inspect a number of components (that is, poles), or replace or repair them (includes reinforce a pole) if these components did not meet the in-service design criteria, or are unsafe.

9. A provision should be introduced into the Energy Coordination Act 1994 whereby a clear statement of intent by a network operator that they will not comply with a requirement in an Order may be deemed as equivalent to actual failure to comply with the requirement even if the date for compliance has not been reached.

10. A provision should be introduced whereby minimum allowable in-service design criteria are required under the Energy Coordination Act 1994, by reference to industry standards, for certain key components in a distribution and transmission system, that is, specification of the minimum safe in-service design parameters before replacement of the component is required. This is currently what happens with respect to accounting standards.

Western Power observation(s)

Western Power will provide input into any proposed reform in the relevant forum and at the relevant time, including by way of response to any issues papers and the Government’s regulatory impact assessment process.

The Board agrees that an unequivocal, authorised statement that Western Power will not comply with an order issued under Energy Coordination Act 1994 should be deemed a breach with the consequences that flow.

Whilst acknowledging that the legislative reform is a matter for government, the Board notes that care will be required in drafting any such provision to ensure that the ability of regulators to establish transitional arrangements to achieve regulatory compliance is not unduly restricted.

The suggestion has some merit, noting that this is a matter of public policy for government. The Board observes that the concept of industry standards is difficult in definition and application, given the unique nature of transmission and distribution assets (e.g. Western Power is the only network in Australia facing the challenges presented by jarrah poles).

Whilst acknowledging that the form of legislative and regulatory obligations is a matter for government, the Board notes that contemporary regulatory practice requires network operators to ensure that their assets are safe, rather than imposing specific / prescriptive standards. This approach enables regulators to look to the network operator to demonstrate that they have adequate safety management plans in place, which demonstrate that risks have been identified and assessed and that remediation / maintenance plans and specifications are adequate to maintain risk at an acceptable level. Unlike the position with accounting standards, in the absence of universal acceptance in the electricity networks industry, Parliament should be cautious before legislating for the adoption of ‘industry standards’ for design criteria. Such standards are likely to constantly change and amendments to legislation will not keep up.

---

1 See section 29(1) of the Electricity Corporations Act.
Standing Committee issue

11. A new offence should be introduced into the *Energy Coordination Act 1994* where a component fails and causes injury to a person, or damage to property, as a result of it not being replaced before it reaches its minimum in-service design strength.

12. A system should be introduced into the *Energy Coordination Act 1994* whereby civil penalties can be imposed for failures relating to safety that require proof only on the civil standard of the balance of probabilities (for example, Division 7 of the Model Work Health and Safety Bill).

13. A system should be introduced into the *Energy Coordination Act 1994* whereby regulators have express powers to seek an injunction; for example, if a company or person does not comply with an Order or provision of the relevant legislation.

14. A provision should be introduced into the *Energy Coordination Act 1994* establishing an obligation for Directors and Officers of a network operator to ensure public electrical safety compliance (for example, s27 of the Model Work Health and Safety Bill).

Western Power observation(s)

The Board observes that:

(i) The proposed new offence is likely to duplicate existing offences.

(ii) Should the Government seek to pursue the proposal, care will be required in defining ‘minimum in-service design strength’, for example what are the required design strength criteria, how it is to be assessed and by whom.

The effect of this proposal is to reduce the onus of proof for prosecutions, namely from proof ‘beyond reasonable doubt’ to the ‘balance of probabilities’ test.

Western Power will provide input into any proposed regulatory reform in the relevant forum and at the relevant time, including by way of response to any issues papers and the Government’s regulatory impact assessment process.

The Board agrees that regulators should have appropriate powers to enforce the regulatory obligations under their purview, including the ability to seek injunctive relief in appropriate circumstances.

To the extent that the power to seek injunctive relief is conferred on regulators, it should be subject to the same procedural requirements as any other party seeking an injunction. For example, if an urgent interlocutory injunction is sought, the usual undertaking as to damages should be provided.

The duties imposed by the *Work Health and Safety Act* are imposed in relation to the safety of users of workplaces. They are not duties owed to the public at large. Section 27, in particular, imposes a duty on Directors and officers to exercise due diligence to ensure that an employer complies with a duty or obligation under the legislation.

This proposal would widen Western Power’s responsibility beyond that which applies to other corporations. Employers may take many steps to mitigate risks to users of a workplace including:

- Restricting access
- Compulsory training programs
- Monitoring of facilities
- Restricting activities taking place in and around the workplace.

Western Power is not in the same position so far as its assets are exposed to the general public.

Western Power accepts that it must be accountable for public health and safety. It further observes that the existing legislative mechanisms for enforcing that accountability are adequate.
Standing Committee issue  

15. Penalties under the Energy Coordination Act 1994 should be increased to be comparable to similar corporate penalties in other contexts (for example, Corporations Act 2001 penalties). The current lack of penalty equivalence has undesirable competitive neutrality implications.

Western Power observation(s)  

The Board of Western Power observes that:  

(i) Appropriate penalties for breach of any legislative requirements is a matter of public policy to be determined by Government.  

(ii) Obligations under the Energy Coordination Act apply to Western Power and a range of other entities.  

(iii) Competitive neutrality is an integral component of the Competition Principles Agreement agreed by the Council of Australian Governments in April 1996 as part of the National Competition Policy. Competitive neutrality aims to eliminate resource allocation distortions arising out of the public ownership of entities engaged in significant business activities; Government businesses should not enjoy any net competitive advantage simply as a result of their public sector ownership.  

(iv) The Government’s policy statement on competitive neutrality reflects that it has addressed this principle as it applies to Western Power.

16. Network operators should be open and responsible for their public safety performance. Failure to meet acceptable safety and operating standards should be penalised. Simple performance measures, including those listed below, should be reported publicly, on a quarterly and annual basis, with reference to national benchmarks:  

- Unassisted wood pole failures  
- Damage or electric shocks  
- Fires where damage occurs to network assets or other property  
- Unassisted conductor failures

Western Power observation(s)  

The Board agrees that Western Power should publicly report against key performance measures that include appropriate measures relating to public safety. Such measures include those referenced by the Standing Committee.  

The Board further observes that the existing process for establishing a statement of corporate intent in consultation with the Minister and then quarterly reporting against the performance measures included in it, provide an existing regulatory framework within which to satisfy this expectation.  

This initiative will put Western Power at the forefront of corporate reporting in Australia. The challenge will be in ensuring that clear definitions are in place, together with agreed methodologies.

The Board agrees that Western Power’s reporting should be transparent and clear.  

As noted in relation to issue 11, the challenge lies in the drafting of the definitions and identifying the terms to be defined. The definition-making process will need to be undertaken with some precision.
Appendix D - Western Power's compliance with the reporting requirements contained in the *Electricity Corporations Act*

<table>
<thead>
<tr>
<th>Ref.</th>
<th>To whom &amp; description</th>
<th>Frequency</th>
<th>Compliance status</th>
</tr>
</thead>
<tbody>
<tr>
<td>s21</td>
<td>Public Sector Commissioner</td>
<td>Once (after consultation with the Public Sector Commissioner).</td>
<td>Western Power has prepared and issued a human resources management framework (framework) in consultation with the Public Sector Commissioner. The framework was first approved by the Board on 18 December 2006. In addition to the framework, the Board approved minimum standards for staff management on 8 June 2007.</td>
</tr>
<tr>
<td>s21(6)</td>
<td>Public Sector Commissioner</td>
<td>As required, after consultation with the Public Sector Commissioner</td>
<td>The human resources management framework was amended on the following dates: 8 June 2007 12 July 2010</td>
</tr>
<tr>
<td>s22</td>
<td>Public Sector Commissioner</td>
<td>Whenever requested in writing by the Public Sector Commissioner, but no more often than half-yearly.</td>
<td>No request received to date.</td>
</tr>
</tbody>
</table>

Joint policy on staff transfers

<table>
<thead>
<tr>
<th>Ref.</th>
<th>To whom &amp; description</th>
<th>Frequency</th>
<th>Compliance status</th>
</tr>
</thead>
<tbody>
<tr>
<td>s23</td>
<td>Minister</td>
<td>Western Power must jointly, with other corporations, prepare a draft policy statement on staff transfers and submit it to the Minister. The corporations must consult with members of their staff, and the staff of their subsidiaries, when preparing the statement.</td>
<td>Once (within 2 months of commencement of the Act).</td>
</tr>
</tbody>
</table>
## Ref. | To whom & description | Frequency | Compliance status
---|---|---|---
**s24 & s25** | Minister | As required, after approval by the Minister | Following the cessation dates above, Horizon Power and Western Power agreed to honour the joint policy on staff transfers for an extended period. This period ceased on 31 December 2011. The cessation of the agreement was noted by the Minister on 23 January 2012.

**s24 & s25** | Minister | When directed by the Minister | No direction issued to date

### Code of conduct
**s31** | Public Sector Commissioner | Once (after consultation with the Public Sector Commissioner) | Western Power’s Code of Conduct was originally approved by the Board on 24 March 2006. It is supported by:
- Legislative & Regulatory Compliance Policy
- Conflict of Interest Policy
- Public Interest Disclosure Policy
- Diversity Policy

All of the documents above are available from Western Power’s policies register which is published on the staff intranet.

Annual online training for the code of conduct is undertaken each year for staff and embedded contractors. These results are reported to Western Power’s Finance and Risk Committee.
### Western Power’s response

<table>
<thead>
<tr>
<th>Ref.</th>
<th>To whom &amp; description</th>
<th>Frequency</th>
<th>Compliance status</th>
</tr>
</thead>
</table>
| s31  | Public Sector Commissioner                                                           | As required, after consultation with the Public Sector Commissioner | Amendments to Western Power’s code of conduct were approved on the following dates:  
- 7 August 2007  
- 25 October 2007  
- 17 December 2007  
- 4 August 2008  
- 28 August 2009  
- 2 March 2010  
- 28 July 2010 |
| s32  | Public Sector Commissioner                                                           | When required by the Public Sector Commissioner, but not more often than half-yearly | No request received to date. |
| s33  | Minister & the Public Sector Commissioner                                            | Annually, whenever the corporation delivers to the Minister its annual report under section 107 | Western Power has reported on observance of its Code of Conduct each year since 2006. This report is contained in Western Power’s annual report. |

### Strategic development plan

| s38 & s39 | Minister | The Board must prepare and submit to the Minister for his or her agreement, a draft strategic development plan for the corporation in any subsidiary.  

The Board and the Minister must endeavour to reach agreement on the draft strategic development plan as soon as possible, and in any event not later than the start of the next financial year. | In each year, either by the day fixed by the Minister or otherwise by 1 May each year. | Western Power has prepared and submitted a strategic development plan (SDP) each year since 2006.  
Western Power has endeavoured to reach agreement with the Minister on the draft SDP not later than that the start of the each new financial year.  
In 2006/07, 2007/08 and 2008/09 the Minister approved the SDP before the next financial year.  
In 2009/10 the Treasurer withheld his concurrence until after the ERA had provided its final decision on the Access Arrangement and forward expenditure levels were known. The Minister requested that revised documents be submitted after this information was known. |
FIFTEENTH REPORT

Western Power’s response

<table>
<thead>
<tr>
<th>Ref</th>
<th>To whom &amp; description</th>
<th>Frequency</th>
<th>Circumstances status</th>
</tr>
</thead>
<tbody>
<tr>
<td>s95</td>
<td>Minister</td>
<td>As required, after consultation with the Minister.</td>
<td>The 2010/11 SDP was approved by the Minister in August 2010. In 2010/11 and 2011/12 the Minister approved the SDP before August of the next financial year. The 2012/13 SDP is currently being developed to meet the 1 May 2012 timeline. On 10 December 2010 the Minister requested that Western Power support and provide a financial contribution to the Future Energy Alliance campaign. The SDP was revised to reflect this and on 8 February 2011 Western Power sought agreement from the Minister under sections 95 and 104 of the Act to the modification.</td>
</tr>
</tbody>
</table>

Statement of corporate intent

<table>
<thead>
<tr>
<th>Ref</th>
<th>To whom &amp; description</th>
<th>Frequency</th>
<th>Circumstances status</th>
</tr>
</thead>
<tbody>
<tr>
<td>s97 &amp; s100</td>
<td>Minister</td>
<td>In each year, either by the day fixed by the Minister or otherwise by 1 May each year.</td>
<td>Western Power has prepared and submitted to the Minister, a Statement of Corporate Intent (SCI) each year since 2006. Western Power has endeavoured to reach agreement with the Minister on the draft SCI not later than the start of the next financial year. In 2006/07, 2007/08 and 2008/09 the Minister approved the SCI before the next financial year. In 2009/10 the Treasurer withheld his concurrence until after the ERA had provided its final decision on the access arrangement and forward expenditure levels were known. The Minister requested that revised documents be submitted once this information was known. The 2010/11 SCI was approved by the Minister in August 2010.</td>
</tr>
</tbody>
</table>
### Western Power’s response

<table>
<thead>
<tr>
<th>Ref.</th>
<th>To whom &amp; description</th>
<th>Frequency</th>
<th>Compliance status</th>
</tr>
</thead>
<tbody>
<tr>
<td>s104</td>
<td>Minister</td>
<td>As required, after consultation with the Minister.</td>
<td>In 2010/11 and 2011/12 the Minister Approved the SCI before August of the next financial year. The 2012 SCI is currently being developed to meet the 1 May 2012 timeline.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>s106</td>
<td>Western Power may modify a statement of corporate intent with the agreement of the Minister.</td>
<td>Quarterly, for the first three quarters of a financial year. To be provided within 1 month of the end of the quarter, unless otherwise agreed with the Minister.</td>
<td>Western Power has prepared a quarterly report for the first three quarters of each financial year from Q1 2006/07 to date. Each quarterly report has been delivered to the Minister within the required timeframe.</td>
</tr>
<tr>
<td>s107</td>
<td>Minister</td>
<td>Annually</td>
<td>Western Power has prepared and delivered to the Minister an annual report each year since disaggregation in 2006. Western Power’s annual reports are available from Western Power’s website. Western Power’s 2012 annual report is currently being developed.</td>
</tr>
<tr>
<td>s109</td>
<td>Minister</td>
<td>As required</td>
<td>Requests made as required (e.g. for the Supplementary Information pack sent with Quarterly Reports).</td>
</tr>
</tbody>
</table>

The Board may request the Minister to delete a matter that is of a commercially sensitive nature from the copies of a quarterly or annual report (and accompanying documents) relating to Western Power that are to be made public.
Western Power’s response

Report no. 14 by the Standing Committee on Public Administration

Ref. | To whom & description | Frequency | Compliance status |
--- | --- | --- | --- |
Sch. 4, items 6 & 10 | Minister | Each financial year before 30 September | Western Power has produced a financial report and directors’ report each year since 2006. These reports are contained within Western Power’s annual report each year. Each of Western Power’s financial reports from 2006 has been audited by the Auditor General and an Auditor’s report has been obtained. The Auditor’s report is contained within Western Power’s annual report each year. |
Sch. 4, item 14 | Western Power must have the financial report for a financial year audited by the Auditor General and obtain an Auditor’s report. | Each financial year. | |
Sch. 4, item 2 | Western Power must keep written financial records that: (a) correctly record and explain its transactions and financial position and performance; and (b) would enable true and fair financial statements to be prepared and audited. | Ongoing, and retained for 7 years. | Fully compliant. Western Power retains written financial and other records in accordance with its recordkeeping plan. |

Keeping the Minister informed

Minister

Western Power must:
(a) keep the Minister reasonably informed of the operations, financial performance and financial position of the corporation and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the corporation and its subsidiaries;
(b) give the Minister reports and information that he or she requires for the making of informed assessments of matters mentioned in paragraph (a); and
(c) if matters arise that in the opinion of the Board of the corporation may prevent, or significantly affect, achievement of the corporation’s:
(i) objectives outlined in its statement of corporate intent; or
(ii) targets under its strategic development plan,
promptly inform the Minister of the matters and its opinion in relation to them.

(a) Compliant: Western Power keeps the Minister reasonably informed through a variety of written and verbal communications including:
- Annual reports
- Quarterly reports
- Ministerial briefing notes (as required)
- Audit reports by or for our respective regulators
- Formal monthly meetings with the Minister, also attended by Western Power’s Chairman, Managing Director and Manager, Corporate Affairs
- Annual planning reports
(b) Compliant: This information is provided to the Minister as required.
(c) Not applicable. Occasion has not yet arisen.
<table>
<thead>
<tr>
<th>Ref.</th>
<th>To whom &amp; description</th>
<th>Frequency</th>
<th>Compliance status</th>
</tr>
</thead>
<tbody>
<tr>
<td>s116</td>
<td>Minister</td>
<td>Whenever Western Power provides information to the Minister.</td>
<td>Compliant: Advice whether disclosure of certain information is not appropriate for wider release accompanies the relevant information.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>As required.</td>
<td>The occasion has not arisen to date.</td>
</tr>
<tr>
<td>s119</td>
<td>Minister</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Board must notify the Minister if it forms the opinion that Western Power or a subsidiary is unable to, or be unlikely to be able to, satisfy any financial obligation, of the corporation or the subsidiary from the financial resources available or likely to be available to the corporation or the subsidiary at a time the financial obligation is due.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dividends</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>s126</td>
<td>Minister</td>
<td>As soon as practicable after the end of each financial year.</td>
<td>Western Power has complied with all aspects of section 126 since disaggregation in 2006.</td>
</tr>
<tr>
<td></td>
<td>The Board is to make a recommendation to the Minister as to the amount of the dividend (if any) that the Board recommends as appropriate to be paid by Western Power in respect of that financial year.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commencement of physical works or participation in business transactions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>s60</td>
<td>Minister + the Minister responsible for the Planning and Development Act</td>
<td>Prior to carrying out works for the extension, expansion or enhancement of an electricity distribution system or an electricity transmission system, if those works will not comply with the provisions of an interim development order, a local planning scheme or an improvement scheme in force under the Planning and Development Act.</td>
<td>The occasion has not arisen to date.</td>
</tr>
<tr>
<td></td>
<td>Western Power is to give the Minister and the Minister responsible for the administration of the Planning and Development Act written notice of a proposal to carry out works for the extension, expansion or enhancement of an electricity distribution system or an electricity transmission system.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>s64</td>
<td>Minister</td>
<td>As required.</td>
<td>Not applicable – no subsidiaries formed or acquired to date.</td>
</tr>
<tr>
<td></td>
<td>Western Power must obtain the approval of the Minister before: (a) forming or acquiring a subsidiary; or (b) entering into any transaction that will result in the formation or acquisition of a subsidiary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ref.</td>
<td>To whom &amp; description</td>
<td>Frequency</td>
<td>Compliance status</td>
</tr>
<tr>
<td>------</td>
<td>----------------------</td>
<td>-----------</td>
<td>------------------</td>
</tr>
<tr>
<td>s68</td>
<td>Minister</td>
<td>Before entering into the transaction.</td>
<td>Since 2006 Western Power has obtained Ministerial approval for all transactions that have been subject to s68. Western Power maintains a register transactions requiring ministerial approval under s68.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>s70</td>
<td>Minister</td>
<td>Before entering upon the course of action.</td>
<td>Performed as required (for example, Network Control Services).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>s67</td>
<td>Minister</td>
<td>Before disposing of the 'significant asset'.</td>
<td>No significant assets have been disposed of to date.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Directions from the Minister**

<table>
<thead>
<tr>
<th>Ref.</th>
<th>To whom &amp; description</th>
<th>Frequency</th>
<th>Compliance status</th>
</tr>
</thead>
<tbody>
<tr>
<td>s112</td>
<td>Minister</td>
<td>Within 7 days of the receipt of a direction from the Minister</td>
<td>Not applicable - no ministerial direction has been issued to date.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Western Power's response
Appendix E – Undertaking given to the Standing Committee on Public Administration
Mark Barnaba Chairman

Our ref: JP-L80014
Your ref: pc.wpp.130507.tel.001.WP (A283879)

4 April 2012

Hon Max Trenorden, MLC
Chairman
Standing Committee on Public Administration
Parliament House
PERTH WA 6000

Dear Mr Trenorden,

Parliamentary Committee inquiries

I refer to your letter dated 7 March 2012 and my interim response dated 14 March 2012.

At the outset, please accept the Board’s sincere gratitude for drawing our attention to the Standing Committee’s concerns as detailed in your letter and for giving us an opportunity to address and respond to them.

I confirm that the Board has carefully reviewed the Standing Committee’s report and the contents of your letter. We agree that aspects of Western Power’s conduct and that of its representatives during the course of the Standing Committee’s extensive inquiry were regrettable, albeit that there was never any intention to disrespect the Committee, nor to impede or obstruct its inquiry.

I have enclosed Western Power’s formal apology and undertaking. You will note that the letter is substantially in the terms of the example that you provided.

You have my assurance that the Board has worked closely with Western Power’s executive management team to prepare a raft of proposed initiatives that both recognise and address the failings identified by the Standing Committee in its report. I cannot emphasise strongly enough how seriously the Board and Executive of Western Power have taken this matter and our collective resolve to deliver on the proposed actions.

Yours sincerely

MARK BARNABA
BOARD CHAIR

cc: Hon Peter Collier MLC
Minister for Energy; Training and Workforce Development; Indigenous Affairs

Connecting people with energy

363 Wellington Street Perth WA 6000
T (08) 9226 4651 | F (08) 9225 2642
Electricity Networks Corporation
GPO Box L251 Perth WA 6942
westernpower.com.au
ABN 11 134 492 061

::: DMI#:222883

DMR936011
Standing Committee on Public Administration

Inquiry into Western Power’s electricity transmission and distribution management

Western Power acknowledges and accepts that, during the course of the Standing Committee’s inquiry, aspects of its conduct and that of its duly appointed representatives, may have unintentionally obstructed or impeded the Standing Committee.

Western Power unreservedly apologises to the Standing Committee and further provides the following undertaking:

- Western Power recognises that it is directly accountable to Parliament and the people of Western Australia. It understands this accountability exists through the oversight of the Minister, the statutory reporting obligations imposed on it and its Minister, and in particular, its obligations pursuant to the Parliamentary Privileges Act 1861 to account to and assist inquiries undertaken by Parliamentary committees.

- Consistent with such direct accountability, from now on, and at all times, Western Power’s conduct with respect to Parliamentary committees will be frank, direct, open and in every respect, truthful. All reasonable steps will be taken in the future to ensure that any information provided to Parliamentary committees by, and on behalf of, Western Power is both factually accurate, and complete in all material respects, before it is provided to the committee in question. Further, Western Power will ensure that all its staff clearly understand their responsibility to cooperate fully with Parliamentary inquiries, in a manner that is consistent with standard public sector guidelines.

- In the course of a Parliamentary inquiry, should it emerge that previous evidence provided by Western Power or its duly authorised representatives is incomplete or incorrect, Western Power will promptly apologise and correct the record accordingly.

Dated: 4 April 2012

EXECUTED under seal by ELECTRICITY NETWORKS CORPORATION
ABN 18 540 492 861 in accordance with paragraph 155(2)(a) of the Electricity Corporations Act 2005 (WA) and Board resolution BD/06/2006:

Mark Garneba

Signature of a Board Chair/Deputy Chair

Pau Autiana

Signature of Acting Chief Executive Officer

Full name

Full name

This apology and undertaking approved by the Board on 16 March 2012 (see resolution #016/2012/SQ).

DMR: 9222893

DMR: 8220053
APPENDIX 11
RESPONSE FROM THE PREMIER TO THE COMMITTEE’S
SPECIAL REPORT – CONDUCT OF WESTERN POWER
DURING THE INQUIRY
APPENDIX 11

RESPONSE FROM THE PREMIER TO THE COMMITTEE’S SPECIAL REPORT – CONDUCT OF WESTERN POWER DURING THE INQUIRY

Premier of Western Australia

Our ref: 24-120824/AS

Ms Margaret Liveris
Clerk
Standing Committee on Public Administration
Parliament House
PERTH WA 6000

Dear Ms Liveris

STANDING COMMITTEE SPECIAL REPORT

I acknowledge receipt of the Standing Committee’s Special Report of May 2012.

Recommendation 2 of the Report is substantively addressed by Public Sector Commissioner’s Circular 2010-63, titled Policy for Public Sector Witnesses Appearing Before Parliamentary Committees. This Circular, a copy of which is attached to this letter, goes directly to the concerns of the Committee and is freely available to public sector officers, to government entities and the public through the Public Sector Commission website.

Having regard for the infrequent experience of some government trading enterprises in giving evidence to Parliamentary committees, I have written to all Ministers whose portfolios include government trading enterprises asking them to alert these enterprises to the Circular.

I am confident that this will address the concerns raised by the Committee.

Yours sincerely

Colin Barnett MLA
PREMIER

Att.
5 JUL 2012

197 St Georges Terrace, Perth, Western Australia 6000
Telephone: +61 8 9222 9888 Facsimile: +61 8 9222 1213 Email: WA-Government@dpc.wa.gov.au
www.premier.wa.gov.au
PUBLIC SECTOR COMMISSIONER’S CIRCULAR

Enquiries To: 6562 8550
Office of the Public Sector Commissioner
Public Sector Commission

Number: 2010-03
Issue Date: 29 March 2010
Review Date: 29 March 2012

Supersedes: Public Sector Commissioner’s Circulars 2009-33, 2009-34

TITLE: POLICY FOR PUBLIC SECTOR WITNESSES APPEARING BEFORE PARLIAMENTARY COMMITTEES

POLICY

The attached policy, A Policy for Public Sector Witnesses Appearing before Parliamentary Committees ("the policy") provides a guide to public sector officers appearing before Parliamentary Committees, with particular reference to the powers of such Committees, and the obligations and entitlements of public sector officers dealing with or appearing before Parliamentary Committees.

Public sector officers are reminded to:

- advise their Chief Executive Officer (CEO) of any request to give written or oral evidence or to produce documents to a Parliamentary Committee and keep the CEO fully informed during the proceedings;

- cooperate and comply with the requests of a Parliamentary Committee unless they are excused by the Committee, or in other special circumstances as outlined in the attached policy, and

- seek advice from the Public Sector Commission or State Solicitor’s Office should they have any doubts about their entitlements or obligations or whether information should be released.

BACKGROUND

In 1987, Guidelines for the Provision of Information and Evidence by Western Australian Government Officers and Employees to Western Australian, Commonwealth and other Parliamentary Committees and Other Official Inquiries were issued as Premier’s Circular 1987/07 (now Public Sector Commissioner’s Circular 2009-34).

The attached policy updates the previous circular and provides additional guidance.

M C Wauchope
PUBLIC SECTOR COMMISSIONER

| Other relevant Public Sector Commissioner’s Circulars: | n/a |
A POLICY FOR PUBLIC SECTOR WITNESSES APPEARING BEFORE PARLIAMENTARY COMMITTEES

1. Introduction

1.1 This policy provides a short general guide for members of the public sector appearing before Parliamentary Committees, with particular reference to Committee powers and to the obligations and entitlements of members of the public sector dealing with or appearing before Parliamentary Committees. Specific information regarding a particular Committee can be obtained from the Committee and by reference to the Standing Orders of the relevant House.

1.2 The role and nature of some statutory authorities will require the selective application of this policy in accordance with that statutory authority's enabling legislation. (See paragraph 10).

1.3 It is a fundamental principle of government that Parliament is supreme, in that it has authority over all matters and things within its jurisdiction. Parliament therefore has very broad powers to require members of the public sector to appear before it (or its Committees) and to provide information to it. The scope of the information that Parliament can require is extremely broad and includes any information required to discharge its constitutional duty to legislate for the peace, order and good government of Western Australia.

1.4 Ministers are accountable to Parliament for the actions of their organisation. It is therefore a necessary requirement of government that Ministers are kept fully informed of the activities undertaken by their organisation.

1.5 Documents in the possession of an organisation are generally held on behalf of the Government, and in particular on behalf of the Minister responsible for that organisation. Sometimes legislation governing an organisation might provide otherwise, in which case the provisions of the legislation would override this policy.

1.6 A member of the public sector who appears before a Committee of Parliament does so on behalf of the Minister and provides information and documents on behalf of the Minister. It is important therefore that the Minister is regularly and fully informed of proceedings, except to the extent that the Committee restricts disclosure of evidence.

1.7 So that a Minister can be properly informed, on receipt of a request from a Parliamentary Committee for documents or evidence a member of the public sector must immediately advise their Chief Executive Officer ("CEO") and their Minister (through their CEO), enclosing

---

1. "Members of the public sector" includes public servants, ministerial officers, officers of statutory authorities, statutory office holders and members and staff of boards of statutory authorities.

2. This is the case unless legislation governing an organisation provides otherwise. Where that is the case, the Minister must still be kept informed as required by this policy, subject to any clear statement to the contrary in the organisation's legislation.
details of the request. The member of the public sector must then, at all times after the request for documents or evidence, keep in regular contact with their CEO and their Minister’s office.

1.6 Sometimes a Minister might direct a member of the public sector to not release information or documents to a Committee or to not answer a question asked by a Committee (notwithstanding paragraph 1.3). This policy assists members of the public sector to understand and to meet their obligations in this regard, both to Parliament and to their Minister.

2. What are Parliamentary Committees?

2.1 One of the roles of Parliament is to oversee the conduct and actions of the public sector, which it usually does through its Committee system.

2.2 Both Houses of Parliament establish Committees to look at general matters of administration (Standing Committees) or specific matters of administration (Select Committees). Sometimes Standing Committees have specific terms of reference regarding a particular matter.

2.3 Committees have the same powers as Parliament and therefore enjoy the supremacy of Parliament. Accordingly, they must be treated with the same respect as Parliament.

3. Procedures

3.1 Committees operate pursuant to terms of reference which are set by the House establishing the Committees. Committees must operate within those terms of reference and are limited by them. However, Committees interpret their own terms of reference and can refer back to the House for clarification or expansion if necessary.

3.2 Standing Orders of each House of Parliament govern proceedings of Committees. The Standing Orders also include the terms of reference for some Standing Committees. As part of its standing orders the Legislative Assembly has adopted the Speaker’s Procedural Rules - Committee Evidence (“Speaker’s Rules”).

3.3 The Parliamentary Privileges Act 1891 provides that the rules and procedure of the House of Commons (United Kingdom) apply to Parliament and to Parliamentary Committees in Western Australia as at 1 January 1899.

---

3 If the request is made to a member of a board of a statutory authority, the member must inform their Minister and Chairperson, unless their governing legislation precludes it.

4. Witnesses Required to Attend

4.1 Standing Orders provide that Committees of the Legislative Assembly have the power to "send for persons, papers and records".5

4.2 Standing Committees of the Legislative Council also have that power.8 However, if a Select Committee of the Legislative Council is to take evidence or seek submissions, then a power to call witnesses and to require the production of documents must be contained in its terms of reference.7

4.3 A Committee is therefore entitled to call a member of the public sector to give evidence before it and this will usually be done informally by a telephone call or a letter or both. Sometimes a summons is issued under the Parliamentary Privileges Act 1891, although a summons will be issued by a Committee of the Legislative Assembly only where the Committee decides that the circumstances warrant it.8

4.4 If called to appear before a Committee a member of the public sector must immediately inform their CEO and Minister (through their CEO) and advise their CEO and Minister of any further communications with the Committee as soon as practicable.9

4.5 A member of the public sector should comply with an informal request to attend. If a member of the public sector is legitimately unable to attend (eg sickness or valid absence from Perth) then they should notify this to the Committee as soon as possible and liaise with the Committee to arrange another time or for another appropriate person to attend. If this is not done a summons may be served and this must be complied with. Failure to comply with a summons would generally be contempt under the Parliamentary Privileges Act 1891.10

4.6 Sometimes a Committee will write to an organisation or a member of the public sector requesting documents or information, or asking for a submission. A member of the public sector must immediately inform their CEO of any such request, and provide them with copies of any response to a request in compliance with paragraph 5.3 of this policy.11

4.7 Contact with the Committee will usually be through its committee clerk or advisory officer.

4.8 Sometimes the CEO will need to liaise with the Committee to ensure the appearance of an appropriate person from the organisation.

---

5 Legislative Assembly Standing Order 264.
6 Legislative Council Standing Order 329.
7 Legislative Council Standing Order 555.
8 Speaker's Rules – Part 1, rule 1.
9 If the request is made to a member of a board of a statutory authority, the member must inform their Minister and Chairperson, unless their governing legislation precludes it.
10 It might also be an offence under section 59 of the Criminal Code.
11 If the request is made to a member of a board of a statutory authority, the member must inform their Minister and Chairperson, unless their governing legislation precludes it and seek approval from them for any submission.
4.9 When a Committee requires a member of the public sector to appear before it or to make a written submission, the Committee will usually forward the terms of reference for the Committee and any important information relating to the Committee and giving evidence before it.

4.10 The Speaker’s Rules require that a witness before a Committee of the Legislative Assembly be given a statement of the matters expected to be dealt with during the witness’ appearance. A witness might also be given a transcript of any evidence already taken by the Committee.

4.11 Prior to a hearing, witnesses appearing before a Parliamentary Committee should prepare by making themselves familiar with probable lines of questioning. It would also be appropriate to liaise with other relevant public sector organisations, particularly where another organisation has been requested to give evidence to the Committee.

4.12 When a Committee requires a member of the public sector to appear, the Committee will usually send information regarding entitlements when appearing as a witness. Similar information is available on the parliamentary website at www.parliament.wa.gov.au (under the heading “Committees – About Committees”).

4.13 Subject to any direction by the Minister, organisations and members of the public sector should co-operate with the Committee, so that appropriate and relevant information is made available.

5. Evidence

5.1 A Committee may take evidence in public or in private. It can allow the media to attend and report on proceedings or it can prohibit disclosure of any evidence given. A Committee will usually advise a witness of any rulings in this regard prior to a witness giving evidence or making a written submission. Any ruling by a Committee in this regard must be followed strictly: failure to do so may result in contempt of Parliament. In particular, if a Committee prohibits disclosure of evidence by a witness, then the witness is not permitted to discuss that evidence with anyone outside of the Committee.

5.2 A Committee may require evidence to be given by written submission or by attendance at a hearing, or both. Where appropriate, a witness before a Committee of the Legislative Assembly will be given an opportunity to make a written submission before appearing to give oral evidence. Written evidence may also be requested after a hearing.

12 Speaker’s Rules – Part 1, rule 3.
13 In the Legislative Assembly evidence can be taken in “private” in two ways:
(a) in a closed hearing – evidence is confidential, although a Committee may decide to table or publish any part of the evidence at the completion of its inquiry;
(b) in camera – evidence is also confidential and may only be published or disclosed by a Committee with the written approval of the witness.
5.3 Any written submission to a Committee must be approved by the CEO and a copy sent to the Minister before it is forwarded to the Committee.

5.4 Unless excused by a Committee, an organisation or member of the public sector must release information or documents to a Committee or answer questions in a hearing. An organisation or member of the public sector may be excused by a Committee in the following circumstances:

(a) their Minister directs them otherwise (see paragraph 6 of this policy);

(b) provisions in the organisation’s legislation specifically preclude release of the information or the document or answering the question;

(c) the information, document or answer requested is irrelevant to the Committee’s terms of reference;

(d) the information, document or answer relates to policy, in which case the Committee must direct its request to the Minister; or

(e) the information, document or answer requested is of a private nature and does not affect the subject of the inquiry.

5.5 A member of the public sector should obtain legal advice from the State Solicitor’s Office prior to seeking to be excused from providing information or giving evidence to a Committee for any of the above reasons.

5.6 Issues of legal privilege or public interest immunity (e.g. Cabinet papers or law enforcement issues) may be applicable. A member of the public sector should seek further advice from their CEO or from the State Solicitor’s Office if they think these issues may be relevant.

5.7 Any claim for legal privilege or public interest immunity should be made only with the consent of the Minister, who will consult with the Premier and Attorney General.

5.8 Claims of privilege should preferably be made prior to a hearing or before a written submission is made.

5.9 If, when giving evidence, the witness believes a claim of privilege should be made, the witness should ask the Committee for an adjournment so that the Minister can be consulted.

---

\(^{14}\) It is an offence under section 59 of The Criminal Code for a witness, without lawful excuse, to refuse to attend a Committee pursuant to a summons or to refuse to answer any lawful and relevant question.

\(^{15}\) Section 7 of the Parliamentary Privileges Act 1891.
5.10 An organisation or member of the public sector may request that a Committee treat any evidence, document or information as:

(a) confidential; or

(b) "Commercial in Confidence", on the basis that release could prejudice the State's position in confidential negotiations or litigation.

5.11 A request for confidentiality can be made by asking that the evidence, documents or information be heard or given in private and/or that disclosure or publication be restricted.

5.12 Submissions that evidence, documents or information be treated as confidential can be made:

(a) in writing prior to a hearing;

(b) in writing prior to or at the hearing as part of making a written submission or providing written information; or

(c) by a witness at the hearing by directing a request for confidentiality to the Chair.

5.13 Issues of confidentiality remain a decision for the Committee, which will usually listen to submissions from the organisation or the member of the public sector and then deliberate on the request in private. Subject to any direction by the Minister, a member of the public sector must comply with the decision of the Committee. If, during a hearing, a Committee determines an issue of confidentiality contrary to the submission requesting confidentiality, the witness should seek an adjournment and immediately consult the Minister.

5.14 A Committee may make the decision to release evidence, documents or information or to keep them confidential at the time the request is made or at the time it prepares its report. However, a Committee of the Legislative Assembly will not disclose or publish any evidence (including documents) where that evidence is not taken in public hearing, until the evidence has either been reported to the Assembly or the Committee has otherwise resolved to disclose it. A Committee of the Legislative Council will not disclose evidence taken in private session unless the Committee resolves to disclose it or the Legislative Council gives leave to publish it.

5.15 Evidence, documents or information which are treated as confidential will not be permitted to be reported publicly before the Committee tables its report in Parliament, but may be used by the Committee, at its discretion, in its report. If a Committee of the Legislative Council decides that evidence, documents or information were given to it in private, then it will not refer to them nor publish them. A Committee of the Legislative Assembly will not publish evidence, documents or information given to it "in camera" unless it has the written approval of the witness.
5.16 When giving evidence, a witness may take files or other information to assist them in answering questions before the Committee. If the Committee requests a copy of those files or any information then the witness should provide it, subject to the provisions of this policy.

5.17 In the absence of any clear statutory power, a Committee may enter government premises only with prior approval of the Minister.

6. Ministerial Directions

6.1 Sometimes a Minister might direct a member of the public sector not to release information or documents or answer a question. The member of the public sector must comply with a lawful direction of the Minister. Wherever possible, a direction should be in writing.

6.2 A member of the public sector who has been directed by a Minister not to produce a document or to give evidence to a Parliamentary Committee should appear before the Committee and offer that direction as an excuse for not delivering the papers or not giving the evidence. Alternatively, if the direction relates to a request for written evidence, the member of the public sector must advise the Committee of the direction, in writing, prior to the deadline for provision of the written evidence. Where a Ministerial direction has been issued in writing, a copy should be provided to the Parliamentary Committee.

6.3 Where the Minister has given a direction, it will be for the Committee to take the matter up with the Minister or the Minister representing the Minister in the relevant House.

6.4 A Parliamentary Committee may continue to seek evidence from a member of the public sector despite the existence of a Ministerial direction not to release information or answer a question. A refusal to provide information to a Parliamentary Committee may be treated as contempt of Parliament. A member of the public sector should seek legal advice prior to refusing to provide information to a Committee on the basis of a ministerial direction. Further consultation with the Minister may also be necessary. It may be necessary to request an extension of time from the Committee to enable such advice to be sought.

6.5 As stated in paragraph 1.3, it must be remembered that the supremacy of Parliament is a fundamental principle of government. Members of the public sector, therefore, should be mindful of the extensive powers of Parliamentary Committees.

7. Correction of Evidence

7.1 Hansard records all evidence given to a Parliamentary Committee. After the hearing, the draft evidence is sent to a witness for correction. Witnesses should check their evidence carefully and make any typographical and grammatical corrections.
7.2 If a witness believes evidence has been omitted from the draft transcript, then a witness should seek leave from the Committee to submit a further statement or give further oral evidence.

8. Legal Counsel and Costs

8.1 A witness may ask a Parliamentary Committee if legal counsel can appear with the witness. If permitted to appear, legal counsel is not permitted to speak on behalf of the witness, nor to ask questions of the Committee. Counsel may only advise the witness. It is unusual for members of the public sector to be permitted to appear with legal counsel.

8.2 Payment of legal costs incurred by members of the public sector who attend before Parliamentary Committees will be subject to the "Policy relevant to Ministers and Officers involved in legal proceedings", tabled in the Legislative Council on 16 July 1990.

9. Public Sector Witnesses Appearing in a Personal Capacity

9.1 A member of the public sector who wishes to make a personal submission to a Committee or appear in a personal capacity before a Committee should advise their CEO or Minister prior to doing so.

9.2 When making a submission or appearing in a personal capacity, a member of the public sector must not, except with the consent of their CEO or Minister, disclose information gained in the course of their official duties. Neither may they seek to attribute status to their submission or appearance by virtue of their official position. Any opinions expressed by a member of the public sector when making a personal submission or appearing in a personal capacity must be expressly identified as their own.

10. Statutory Authorities

10.1 Statutory office holders, members of boards of statutory authorities and officers of statutory authorities should follow this policy as far as is relevant, including in particular with respect to keeping their Minister informed and when making claims of legal privilege or public interest immunity (see paragraphs 5.6-5.9 of this policy).

10.2 When dealing with a Committee, statutory office holders, members of boards of statutory authorities and officers of statutory authorities must always first consider the provisions of their governing legislation and seek advice on the application of this policy if necessary.

11. Summary

11.1 On receipt of a request to give written or oral evidence or to produce documents to a Committee, a member of the public sector must immediately advise their Minister (through their CEO) and CEO, and keep them fully informed during proceedings (subject to any restrictions imposed by an organisation's governing legislation or by the Committee regarding disclosure of evidence).
11.2 A member of the public sector must comply with requests of a Committee unless they are directed not to do so by their Minister, are excused by the Committee or they fit within an exemption referred to in paragraph 5.4 of this policy.

11.3 A member of the public sector appearing before a Committee should co-operate with the Committee.

11.4 If an organisation or a member of the public sector has any doubts about their entitlements or obligations before a Committee or whether or not information or documents should be released to a Committee, legal advice should be sought from the State Solicitor's Office.

12. Commonwealth Parliamentary Committees

12.1 Committees of the Parliament of Australia (Commonwealth Parliament) can call for members of the Western Australian public sector to attend as witnesses and for documents to be produced.

12.2 If called to appear before a Committee a member of the public sector must immediately inform their CEO and Minister (through their CEO) and advise their CEO and Minister of any further communications with the Committee as soon as practicable. The Department of the Premier and Cabinet should also be informed.

12.2 The general principles outlined above in relation to giving evidence before Parliamentary Committees of the Parliament of Western Australia apply where a member of the public sector gives evidence before a Commonwealth Parliamentary Committee.

12.3 Information for witnesses appearing before Commonwealth Parliamentary Committees is available on the Parliament of Australia’s website at:


If required, advice may be sought from the State Solicitor's Office.
APPENDIX 12
RESPONSE FROM THE COMMITTEE TO THE PREMIER’S RESPONSE TO THE COMMITTEE’S SPECIAL REPORT – CONDUCT OF WESTERN POWER DURING THE INQUIRY
APPENDIX 12

RESPONSE FROM THE COMMITTEE TO THE PREMIER’S RESPONSE TO THE COMMITTEE’S SPECIAL REPORT – CONDUCT OF WESTERN POWER DURING THE INQUIRY

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Your Ref: 24-120824/AS

Hon Colin Barnett MLA
Premier of Western Australia
24th Floor, Governor Stirling Tower
197 St George’s Terrace
PERTH WA 6000

15 August 2012

Dear Premier

STANDING COMMITTEE SPECIAL REPORT

The Standing Committee on Public Administration would like to thank you for your letter of 5 July 2012 relating to Recommendation 2 of the above Special Report. That Recommendation was expressed in the following terms:

The Committee recommends that the Legislative Council do call upon the Government, to ensure that all Senior Executive Service personnel, and their equivalents throughout the public sector, who are to appear before either a House or Committee of Parliament, have access to a person possessing an appropriate understanding of parliamentary privilege, law and procedure.

The Committee appreciates the thoughtfulness of your decision to draw the attention of all public sector agencies, and trading enterprises, to Public Sector Commissioner’s Circular 2010-03. The Committee further notes, and appreciates, the fact that this action on your part was specifically taken in response to the above recommendation.

It is indeed the case that Public Sector Commissioner’s Circular 2010-03 goes to the heart of the Committee’s concerns in this matter. However, the Committee also acknowledges that in the first instance, written instructions and advice are capable of being misinterpreted or misunderstood. In the second instance, the practical implications of privileges of the Parliament are matters about which opinions vary between the various arms of government. In the third instance, given the right to exclusive cognisance asserted by both Houses of Parliament, the interpretation of parliamentary privilege varies in matters of detail even between the Houses.

__________________________________________________________________________

PARLIAMENT HOUSE PERTH WESTERN AUSTRALIA 6000
TELEPHONE: +61 8 9222 7222   FACSIMILE: HOUSE +61 8 9222 7890   COMMITTEES +61 8 9222 7805
EMAIL (GENERAL OFFICE): council@parliament.wa.gov.au

207
It was on the basis of the above considerations that the Committee was particular to state in its recommendation to the Legislative Council that public sector officials appearing "before either a House or Committee of Parliament, have access to a person possessing an appropriate understanding of parliamentary privilege, law and procedure." This recommendation was intended to provide a complimentary and additional resource for public sector witnesses, over and above that provided by Public Sector Commissioner's Circular 2010-03.

On the basis of these considerations, the Committee respectfully suggests that there is still merit in the above recommendation, taken in its terms, as an additional resource for public sector witnesses appearing before Parliament. The Committee therefore requests that Government give further consideration to the terms of Recommendation 2 of the above Special Report.

Yours sincerely

Hon Max Trenorden MLC
Chairman

Note that this document (including any attachments) is privileged. You should only use, disclose or copy the material if you are authorised by the Committee to do so. Please contact Committee staff if you have any queries.
APPENDIX 13
COMMITTEE’S REQUEST AND RESPONSE FROM HON
CHRISTIAN PORTER MLA, MINISTER FOR
CORRECTIVE SERVICES
APPENDIX 13

COMMITTEE’S REQUEST AND RESPONSE FROM HON CHRISTIAN PORTER MLA, MINISTER FOR CORRECTIVE SERVICES

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Hon Christian Porter MLA
Minister for Corrective Services
29th Floor Allanfair Square
77 St Georges Terrace
PERTH WA 6000

22 September 2009

Dear Minister

Contract Arrangements between the Department of Corrective Services and Private Service Providers


The Committee noted the Inspector’s concerns regarding contractual arrangements between the Department of Corrective Services and private organisations required to carry out maintenance work and provide security services. The Committee shares the concerns raised by the Inspector.

I refer you to the Inspector of Custodial Services Report on Acacia Prison that:

One of the issues that most concerned us during this inspection was the fragile situation with the prison maintenance contract. In our view, there are significant risks with current arrangements and they need to be addressed as a matter of urgency.1

Further:

Both Serco and the contract management branch of the Department of Corrective Services are very well aware that the maintenance contract is

generating complexity and risk. It appears that the contract was originally based on unrealistic costings.²

Recommendation 1 by the Inspector of Custodial Services held that:

Serco, Akins/Sodesho, the Department of Housing and Works and the Department of Corrective Services should negotiate new maintenance contract arrangements. Ideally, this should be achieved by a novation of the existing contract to Serco on terms that represent a reasonable compromise between the present contract sum and realistic projected maintenance costs over the remainder of the contract term.³

In the Report of an Announced Inspection of the District Court Custody Centre, the Inspector commented on similar deficiencies with contractual arrangements.

A source of concern and potential future conflict arises from the fact that the Department and the Contractor are not in a direct legal relationship. The Contract for the operation of the Court Custody Centre is between the Department and WLG, and WLG in turn has sub-contracted the tasks of running part of the building and the services to G4S, ... 

The State seems to have painted itself into the corner of a defective contractual model by separating operational responsibility from legal responsibility. This is bound to cause further stress as the contract runs through its 25 year duration.⁴

The Inspector noted that even though the Department and G4S talk directly to each other about operational matters it "does not obviate the legal and logical awkwardness of this arrangement"⁵.

Given problems associated with these contracts, the Committee requests your response to the following questions:

i) What steps has the Department taken to address current contract deficiencies and how does the Department plan to address the issues raised by the Inspector of Custodial Services?

ii) Given the continuing deficiencies in contract arrangements by the Department, what steps have been taken to construct future contract arrangements in a more appropriate manner?

iii) Are there any other departmental contracts with this arrangement? If so, the Committee seeks the provision of details of the contracts and what steps the Department has taken to manage them.

The Committee requests a response to the above questions by Friday 9 October 2009. Should you have any questions, please contact the Committee’s Research Officer, Peter Axford on 9222 7409.

Yours sincerely

Hon Max Frenorden MLC
Chairman

CC: Office of Inspector of Custodial Services

Note that this document (including any attachments) is privileged. You should only use, disclose or copy the material if you are authorised by the Committee to do so. Please contact Committee staff if you have any queries.
Dear Mr Trenorden

Thank you for your enquiry on the recommendation from the Inspector of Custodial Services concerning the Acacia Prison Maintenance Agreement. As you are aware the recommendation includes two matters and I respond accordingly.

Novation of Acacia Prison Maintenance Agreement
The Acacia Prison Maintenance Agreement was an agreement between the Department of Housing and Works as Principal, and AIMS Corporation of Australia (AIMS). The Agreement is for a 20 year period and is managed by staff of the Department of Corrective Services. Prior to 2006 the Acacia Prison operational needs were provided under contract between DCS and AIMS. The works function of the Department of Housing and Works now forms part of the Department of Treasury and Finance.

In May 2009 Serco Australia Pty. Ltd (Serco) was awarded the contract to operate the prison, which up until that time was operated by AIMS. The contract tender outcome resulted in AIMS remaining responsible for the maintenance agreement. AIMS then moved that responsibility to a nominated sub-contractor, Alyx Multi-Services, and then to Sodexo Australia Pty Ltd (Sodexo). AIMS no longer exists as a company and subsequently the contract has become the responsibility of Sodexo Australia Pty Ltd (Sodexo Remote Sites), which accepted responsibility for the maintenance at Acacia Prison.

Following the inspection of the prison in 2007 and in light of the resultant recommendation, Serco proposed a novation of the maintenance agreement from AIMS to Serco. From a legal viewpoint the novation could only be made under the then current terms and conditions and consequently Serco’s proposal was not acceptable.

Financial Structure of Acacia Prison Maintenance Agreement
The recommendation regarding the restructuring of the financial aspects of the Maintenance Agreement has been thoroughly assessed by DCS.

A review of the “scope of works” for the Maintenance Agreement as they pertain to the Agreement following the split in contractual responsibility has been completed. DCS proposed an interim financial variation to the contract, recognising some additional work requirements and addressing anomalies whereby the responsibility for certain maintenance tasks was not clearly defined in either the prison services or maintenance contracts.
The variation has now been agreed between all parties and it has been noted that the fee increase has provided significant cash flow benefit to the service provider resulting in a continuing improvement in maintenance provision.

It is likely this variation will increase slightly after finalisation of adjunctive work to the scope of works study and also with relation to bed number increases at the prison.

To stabilise the contractual situation Sodexo requested that the maintenance agreement be novated to them (from AIMIS) in order to remove the reference to the now defunct AIMIS Corporation. The proposal has been agreed by all parties and the contract has been novated to Sodexo Remote Sites Australia Pty Ltd – an operational arm of Sodexo Australia.

Discussions are also under way with the Department of Treasury and Finance to evenly spread the funding for each “5 year asset upgrade” across each of the five years, thus providing for more effective and timely management of the required upgrades.

DCS recognises the importance of the maintenance agreement and the potential it has for impacting on the operations of the prison and the risk it may pose to Serco. DCS continues to maintain a close involvement in the management of the Agreement and has recently taken over the process for payment of service invoices. There will be a continuation of a close working partnership between DCS and the contractor representatives of both the service and maintenance agreements. DCS will continue to monitor performance to ensure the best available service is provided.

Contract Management
The Department of the Attorney General (DotAG) has advised that the Western Liberty Group (WLG) has the legal and operational obligations for the delivery of services, including obligations under the Court Security and Custodial Services Act 1999 (WA), under the Public Private Partnership (PPP), how it chooses to implement those obligations is their contractual risk. Notwithstanding the comments made by the Inspector of Custodial Services, DotAG considers the structure of the current contract in the context of a PPP is effective in delivering the contractual obligations for the State for the CBD Courts Contract.

In relation to future contract arrangements the Court Security and Custody Services Contract is due to expire in July 2011. In exploring the potential arrangement for the delivery of the services covered by the current contract after that time the department has undertaken a structured programme of workshops involved representatives from DCS, DotAG, Western Australian Police, the current Contract Manager’s office and KPMG to develop a service delivery and procurement strategy for the new contract. DotAG does not have any other contracts with this arrangement.

Thank you for raising your concerns with me and I trust this information is of assistance to you.

Yours sincerely

Hon C. Christian Porter MLA
ATTORNEY GENERAL; MINISTER FOR CORRECTIVE SERVICES

- 9 OCT 2009
APPENDIX 14

SUMMONS TO COMMISSIONER OF THE DEPARTMENT OF CORRECTIVE SERVICES
APPENDIX 14

SUMMONS TO COMMISSIONER OF THE DEPARTMENT OF CORRECTIVE SERVICES

Parliamentary Privileges Act 1891, ss 4, 5

SUMMONS TO ATTEND TO PRODUCE DOCUMENTS

Take notice that you—

Mr Ian Johnson
Commissioner of Corrective Services
of Level 9, 141 St Georges Terrace, Perth WA 6000

by resolution passed on 13 June 2012 by the Standing Committee on Public Administration, in relation to an inquiry into the structure, efficiency and effectiveness of the system of public administration, are required to give your attendance at the Legislative Council Committees' Office at 12:00 noon on 29 June 2013 at 18 Parliament Place, West Perth WA 6005, and produce the documents listed below—

DOCUMENTS TO BE PRODUCED:

1. Detailed, seriatim responses to each of the questions contained in the Committee's letter addressed to you, dated 9 May 2012 and headed “Bandyup Women’s Prison”.

If originals of any documents requested in the above letter are not within your possession or control, then the production of copies, certified to the satisfaction of the Clerk of the Legislative Council, may be produced in lieu of that document.

Issued by Mr Malcolm Peacock, Clerk of the Legislative Council, under section 5 of the Parliamentary Privileges Act 1891 on 13 June 2012—

Clerk of the Legislative Council

Authorised by Hon Max Trenorden MLC, Chairman of the Standing Committee on Public Administration under section 5 of the Parliamentary Privileges Act 1891 on 13 June 2012—

Hon Max Trenorden MLC (Chairman)
APPENDIX 15

EXAMPLE OF RISK ASSESSMENT MATRIX FOR ANALYSIS OF REPORTS OF INSPECTOR OF CUSTODIAL SERVICES
### APPENDIX 15

**Example of Risk Assessment Matrix for Analysis of Reports of Inspector of Custodial Services**

<table>
<thead>
<tr>
<th>Consequences to prison operations?</th>
<th>Long term Can be addressed within 5 years</th>
<th>Medium term Can be addressed within 3 years</th>
<th>Short term Can be addressed within a year</th>
<th>Immediate Capable of being addressed right away</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Major</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Medium</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Minor</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>6</td>
</tr>
</tbody>
</table>

**Key to the risk rating**

The issue is such that it requires the following Initial Committee responses, following a briefing by the AO:

1 and 2  Immediate committee communication with the Minister for Corrective Services and the Inspector as well as highlighting the issue in a hearing with the Inspector.

3 and 4  Immediate committee communication with the Minister for Corrective Services and the Inspector.

5 and 6  Watching brief to be monitored when next report on the relevant prison is communicated or no follow up action.
APPENDIX 16
RISK ASSESSMENT MATRIX OF AN ANNOUNCED INSPECTION OF BROOME REGIONAL PRISON
# APPENDIX 16

## RISK ASSESSMENT MATRIX OF AN ANNOUNCED INSPECTION OF BROOME REGIONAL PRISON

<table>
<thead>
<tr>
<th></th>
<th>Public</th>
<th>Prison Staff</th>
<th>Prisoners</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Health</strong></td>
<td>1 (Major Issue/Long Term Remedy)</td>
<td>2 (Major Issue/Medium Term Remedy)</td>
<td>2 (Major Issue/Medium Term Remedy)</td>
</tr>
<tr>
<td><strong>Mental Health</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 (Major Issue/Medium Term Remedy)</td>
<td>2 (Major Issue/Medium Term Remedy)</td>
<td>2 (Major Issue/Medium Term Remedy)</td>
</tr>
<tr>
<td><strong>Safety</strong></td>
<td></td>
<td></td>
<td>3 (Major Issue/Immediate Remedy)</td>
</tr>
<tr>
<td><strong>Morale</strong></td>
<td></td>
<td>3 (Major Issue/Short Term Remedy)</td>
<td></td>
</tr>
<tr>
<td><strong>Visitors</strong></td>
<td>4 (Minor Issue/Medium Term Remedy)</td>
<td>4 (Minor Issue/Medium Term Remedy)</td>
<td>4 (Minor Issue/Medium Term Remedy)</td>
</tr>
<tr>
<td><strong>Transport Access</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Infrastructure</strong></td>
<td></td>
<td>4 (Minor Issue/Immediate Remedy)</td>
<td>4 (Minor Issue/Medium Term Remedy)</td>
</tr>
<tr>
<td><strong>Programme</strong></td>
<td></td>
<td>4 (Minor Issue/Medium Term Remedy)</td>
<td>4 (Minor Issue/Medium Term Remedy)</td>
</tr>
<tr>
<td><strong>Recidivism</strong></td>
<td></td>
<td>1 (Major Issue/Long Term Remedy)</td>
<td></td>
</tr>
<tr>
<td><strong>Cultural Sensitivity</strong></td>
<td></td>
<td></td>
<td>6 (Minor Issue/Immediate Remedy)</td>
</tr>
<tr>
<td><strong>Accommodation</strong></td>
<td></td>
<td></td>
<td>2 (Major Issue/Medium Term Remedy)</td>
</tr>
</tbody>
</table>

---

1 This has implications for both staff and the public. Staff directly as they manage serious prisoner welfare issues. Public indirectly as disturbed people put back into the community on release have a higher risk of re-offending. The benefits of addressing mental health issues in prison will take longer to flow through the community.
APPENDIX 17

TRANSCRIPTS OF HEARINGS WITH THE OMBUDSMAN AND INFORMATION COMMISSIONER ON 16 MAY 2012
Hearing commenced at 10.03 am

BLUEMMEL, MR SVEN
Information Commissioner, examined:

The CHAIRMAN: On behalf of the committee, welcome to the hearing. We do not need to go through any formal process, because you are an officer of the Parliament. We have a few time pressures on us today, so, if you do not mind, we will get into our annual event and have a talk to you about how you are going. You have got these questions, anyhow.

Mr Bluemmel: I do, yes.

The CHAIRMAN: But members will ask their own questions as they occur to them. In point 1.1, we talk about your annual report and that your office still has considerable backlog complaints. So that is where we would like to start. My staff have just, quite rightly, pointed out to me that if there is any part of your evidence that you do not want to have on the record, you need to let us know. As we said when we spoke to you several years ago, we want to have a good working relationship with you. So if at some time you feel that you need to tell us something, but you do not want it on the record, we need to approve of that and then make the arrangements for Hansard. This is actually an open meeting, and we put this in the press; so someone could walk through the door and sit in the gallery.

Mr Bluemmel: Thank you very much, Mr Chairman. I am delighted to be here again. I, too, think this is a very important relationship, and of course being an independent officer, it has its limitations in terms of how I can make myself known and share the issues that I do need to share in the public interest, so I think this committee is the ideal forum.

The CHAIRMAN: I am cutting in on you, sorry, but we will be reporting this in our end-of-year process, so we will be reporting what you are saying, in our own language, back to the house.

Mr Bluemmel: Great; thank you. Mr Chairman and members, I will then go straight to the questions you have asked and take you through my answers, and of course I am at your disposal for any further questions. In terms of the backlog, I have gone through some of the figures. The overall size of the backlog is still largely unchanged. But there is good news in that we have managed to crack a lot of the older, more intractable matters. I will give you some highlight figures. At the end of June 2010, we had 85 total disputes on hand, at an average age of 223 days, so they are over six months old on average. We brought that down at the end of last financial year, so still 85 matters on hand, but with an average age of 192 days. I did some unaudited numbers yesterday using our live system. We have had an increase to 96 matters, but the age is again down to 187 days. Most encouraging of all, over those three periods, the percentage of disputes before me that are older than 12 months, at the end of June
2010, it was 20 per cent; at the end of June last year, it was only 14 per cent; and as of yesterday, it is only 13 per cent. So the backlog is still large, but we have made significant inroads in decreasing the age of matters by tackling the difficult ones and getting the old ones out of the way. That is still, in my opinion, unacceptable. I think that someone who comes to me on a dispute should not have to wait anywhere near that long. But the trend is very good, though. The other important change is that in last year’s budget, my office was given some additional funding, which allowed me to recruit two more officers to reduce the backlog further. We have filled those positions and we expect to be able to make inroads into the backlog more quickly now.

The CHAIRMAN: That is a pretty important part of your function, obviously.

Mr Bluemmel: It is crucial.

The CHAIRMAN: Do any other members have any comments on that?

Hon ED DERMER: Only that is encouraging to hear, Mr Chairman.

Hon JIM CHOWN: When you say you have resolved a dispute, does that mean both parties are happy with the advice they have received?

Mr Bluemmel: No, not necessarily. Just over half the disputes before me get conciliated, in which case both sides are, well, hopefully happy, but at the least prepared, to settle on those terms that I have suggested. In the other matters—probably about 40 per cent on average—the parties do not agree to a resolution and I have to determine it by a formal resolution, and in that sense I operate like a court, where I take the evidence and I give the parties procedural fairness, but ultimately I make a binding ruling, and they can obviously appeal to the Supreme Court. So chances are that there is one party in those cases that did not get what it wanted.

The CHAIRMAN: I have just been told that I do need to go through a formal process with you. Have you signed and understood the “Information for Witnesses” form?

Mr Bluemmel: I have.

The CHAIRMAN: You will understand that these proceedings are being recorded by Hansard. You have been through the Hansard process before. That is, that if you refer to any document—which you might—during the conversation, you need to give us the title of the document so that we can track it down. The transcript will become a matter for the public record. If for some reason you wish to make a confidential statement—which I did talk to you about—you should request that the evidence be taken in closed session. Please note that until such time as your transcript is published, it should not be made public. I advise you that publication or disclosure of uncorrected evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. It is important that I read that out, because that actually protects you.

Mr Bluemmel: I understand. Thank you.

Hon JIM CHOWN: Just to bring you back to my question, when you state that disputes are resolved, they are resolved either through conciliation or through law, and there is no other come-back; they are final?

Mr Bluemmel: The only limitation on that is if a party decides to take my formal decision to the Supreme Court, which happens, on average, about once a year. In fact,
there is an example of that at the moment with Apache Energy, which is obviously in dispute about the release of documents. I actually ordered disclosure of a very large number of documents from Apache almost two years ago now. That was appealed to the Supreme Court by Apache, the Supreme Court upheld my decision, and that is now being appealed to the Court of Appeal, which is the first time in Western Australian history that that has been done. I believe it is set down for 7 June.

Hon JON FORD: That is interesting. What happens if someone asks for information from a government agency that will affect a private enterprise? I am not thinking particularly about Apache, but you raised it, and there is an extraordinary set of circumstances around Apache, so I will use that as an example. A member of Parliament or a member of the public may ask you to release information that an agency has, and the company may come back in the first instance and say, “If you release this information, it will damage our business.” That is fairly subjective. What do you do to challenge that assertion by the company? What is the consideration? I am just looking for the process.

Mr Bluemmel: I am glad you have asked that, because there are a lot of misconceptions around that whole area. Firstly, if a person applies to an agency for a document that has in it the private business information of a company or a third-party individual—which is quite frequent—then before the agency discloses that, it has to consult with that party. The misconception is that that party has a right of veto. It does not. All it has is a right to be consulted. The agency has to make its own decision about whether that document is in fact exempt under the FOI act. In terms of what I think is the crux of your question—that is, how is a judgement made as to whether it is exempt?—the realm of exemption in the FOI act is quite prescriptive. I will not read this out in detail, unless you wish me to, but it requires, in order for a matter to be exempt, that the matter is of a certain type of commercial nature, and, more importantly, that disclosure would have a certain negative effect; for example, it would reduce the value of the document in question to the company, because it is about some novel process of manufacture or some such thing, or because it would have an adverse effect on the affairs of that company. In some cases, you also have to go a bit further and you can actually say that even if all those things are met, the document still has to be disclosed where it is in the public interest to do so. So there are quite a number of permutations there. The subjectivity of it is —

Hon ED DERMER: It is like a double test in a sense.

[10.13 am]

Mr Bluemmel: In some cases that is exactly right; yes and sometimes, sadly, frequently, we see agencies apply only part of that test or we see agencies tell an applicant, “We consulted with a third party; they objected, therefore, you can’t have it.” That is incorrect. If the agency decides, notwithstanding the objection, “You can have it because we don’t think it’s exempt”, the agency has to notify that third party and then before it releases the document, the third party can appeal to me, so no harm is done yet. The Apache case was somewhat like that where Apache actually came to me wanting me to suppress disclosure, effectively, because they claimed it was exempt, even though the agency had decided to give it out. Even though there is
arguably some grey area in there, we now have close to 20 years of commissioners’ decisions and a few Supreme Court decisions that give really useful precedent about when something in that category will be exempt.

Hon ED DERMER: You are developing your own version of the common law are you?

Mr Bluemmel: Very much so, yes. In fact, we often reference, not in a binding manner of course, the common law in other Australian jurisdictions that deal with similar issues. Sometimes we choose not to apply it, for a good reason. Other times we will apply because we consider it a useful test, so the grey area shrinks with every decision.

The CHAIRMAN: That is an interesting point. I think it has been a point of hot contention for 20 years. In the case of Apache or any other firm that says, “Our share standing will significantly take a dive”, which I think is probably arguable in the Apache case, against, “The public has a right to know”. If you look at other jurisdictions in the world, particularly America, it is heavily on the public has a right to know side. Are you trying to say that it is evenly balanced or is there more a bent towards “the public has a right to know”?

Mr Bluemmel: That issue really comes up only where there is that public interest question in play and that is in play in certain commercial exemptions but not in all of them. When I come to a situation in which a case is finely balanced—in other words, I have heard the submissions from both parties; they both made good submissions as to why it should or should not be released—one thing I do is go back to the objects of the FOI act, really a first principles issue. The first object of the FOI is to enable the public to participate more effectively in governing the state, in section 3. And the second one is to basically make the state more accountable. Therefore, if a matter is finely balanced, I will look at those objects and decide whether release or non-release will further those objects. Usually, if it is finely balanced, release will favour those objects, but it has to be finely balanced. If it is clearly exempt, then we are not in that situation. But in the Apache case, where it was somewhat balanced, of course—there were good arguments on both sides—ultimately I found that it was not exempt.

The CHAIRMAN: We need to move on because we have only an hour. We will move to 1.3 and come back to 1.2. This is the question about Premier and Cabinet’s provision of shared assistance to ministers who receive applications.

Mr Bluemmel: Yes; I am very pleased to say that that recommendation, which came out of my report to Parliament two years ago, has been taken up by DPC. I spoke at the formal launch of that unit on 13 April this year. It is a unit within DPC, and DPC does have considerable experience in dealing with FOI of course. But I believe the unit has been operational for somewhat longer than that—I think since the start of the year. While it is a bit early to judge the success of it, I think that is a very welcome development because I was seeing decisions coming out of ministers’ offices that were at times lacking. They were not applying the proper process or the proper law, not, in my opinion, due to any desire to deliberately circumvent the act, but due to a lack of knowledge and resources within the relevant offices. I think this will have a really good chance of clearing that up. What is important, though, is that the legal obligation of making the decision remains with the minister, not with DPC.
The CHAIRMAN: The health department?

Mr Bluemmel: Yes, the health department: again, good news; I have been kept informed of what is happening there. An officer has been recruited, I believe, for 12 months, starting in February this year. They have been tasked with developing a project, which, at the end of it, will hopefully result in a better whole-of-health approach to information disclosure generally but particularly under FOI because there is a lot of inconsistency there.

The CHAIRMAN: Moving on again, 1.5. You did have a chat to us when you were newly appointed about heading off to conferences and other matters and we supported that you should do that for all the reasons you were just talking about. Can you give us an update of how that part works? Do you get information from other quarters?

Mr Bluemmel: Very much so. The association has met three times. The first time I actually hosted it here in Perth in April 2011. We met in November 2011 in Canberra and on 30 March in Adelaide. The frequency may drop off, depending on what is on the radar. It has already been a very useful exercise. We have been able to share things like case law and precedents. We have actually developed a network of officers in the commissioners’ office themselves so that, for example, if one of my legal officers is dealing with a particularly difficult legal issue, she can send an email to her equivalent in all the other Australian jurisdictions saying, “Has anyone recently decided a matter on this?” Now, we are not necessarily bound by how they decided that matter, but they can often really make our research a lot more targeted and efficient, so that has already paid dividends. We have also shared approaches to how we deliver training; for example, one thing I am keen to do is deliver online training so that I can particularly help government agencies from outside the metropolitan area, which find it difficult to attend my existing training program. As a result of that, I have a lead from, particularly Queensland, which is already in this space, which will allow me to approach the market for that sort of thing with a lot more knowledge and get a much better result. They are just a couple of examples; it is working very well.

The CHAIRMAN: It is positive. I must admit I did read the papers in my pack about this harmonisation laws and uniform legislation. This is question number 6. It does raise some interesting issues.

Mr Bluemmel: It certainly does. If I may have a few minutes just to put it into context. Unfortunately, this is often misunderstood. It results from a strong drive out of COAG to harmonise certain national laws, particularly regulatory oversight of certain industries, and I think we can all see what the benefits of some such thing might be if it is implemented well. What has, in my opinion, not been sufficiently considered is what that will mean for oversight laws, FOI, privacy, which of course we do not have in Western Australia, Ombudsman legislation, record keeping legislation and so on. Of the, I think some 36, COAG areas of proposed harmonisation, some of which have already proceeded, there are different approaches to how those oversight laws apply. If you imagine, once you have this national harmonisation of a particular area, you are going to have a situation in which state bodies, say the state Department of Transport, will then be applying nationally consistent standards but still as Western Australian public servants. Some of the proposals involve applying the commonwealth
oversight laws to those officers when they apply the national law. One of the potential problems with that is it means that a number of state public servants may perhaps have to learn commonwealth FOI. Some of those public servants may have to learn commonwealth privacy. As I say, we do not have privacy here so that is a fairly new concept. That all comes at a cost. In terms of the actual enforcement mechanism, some areas are proposing that there will be a specific oversight body just for those areas. There will be an education and care services information commissioner and an education and care services privacy commissioner and so on. That can lead to the same laws, say commonwealth laws, being applied by different oversight bodies in the different states leading to great confusion of the creation of common law in noise areas.

The CHAIRMAN: What about the legal issues?

[10.24 am]

Mr Bluemmel: There are certainly legal issues. In terms of constitutional issues, I think those issues have largely been thought about and, I think, covered, because the actual law which applies the federal regime to the state public servant is actually state law, so the state has chosen voluntarily, effectively, to apply that. It is not the commonwealth legislating for the state directly. So I suspect that is covered, although that is not an area that I am a particular expert in, I must confess.

The other problem is that you might then have a situation where a member of the public or an industry, if they believe that a state public servant has information that they want and they apply under FOI, if they then have a dispute with that person, or with that agency, they may not know where to go to escalate that dispute. For some disputes they might escalate an FOI dispute to me. For another dispute under a national law, they might have to escalate it either to the commonwealth Information Commissioner or to the commissioner specifically set up for that one body of law, or even to another state’s commissioner whom we have chosen to be the oversight body for that particular body of national law, and I am just concerned that any benefits from national harmonisation of the subject matter will be partially, or perhaps even fully, eroded by the increasing bureaucracy and complexity of administering the oversight laws.

The CHAIRMAN: I think all of us here would agree that there is some risk of that. Perhaps one of the real ways of dealing with this is the last dot point we have here; that is, you report it in the annual reports while it remains a problem. Do you intend to do that?

Mr Bluemmel: I may do. It depends on how severe I think the problem is or whether it is being taken seriously. As I mentioned in that paper, I have some difficulty in terms of taking any kind of lead role on this. For a start, under my legislation, arguably this is not something that is in my area, where I should confine myself to my key roles, and this is arguably not one of them; and, secondly, I am simply not set up for that. In terms of my office, I have people who resolve disputes, and I have people who provide advice and awareness. I do not have even one policy person, for example, so it is a little bit difficult for me, and this is why I took the step of bringing it to the attention of DPC, who I believe received it constructively, and I believe that that is a more appropriate place for it.
The CHAIRMAN: Well, it may be worthwhile you just looking at the memo you have given us and sending it to the standing committee of the Council. There is a standing committee of the Council that oversees these arrangements—new uniform legislation.

Mr Bluemmel: Yes. I have actually done that late last year; I sent it to the chair of that committee.

The CHAIRMAN: I would say this paper is of interest to us, but, in reality, it is of greater interest to that committee. We could just privately have a chat to members of that committee if we feel like it, just to see if formally those things are a problem. But I think all we can do is receive your report, note it—it is in our consciousness now. We have a role in public administration, obviously, but it is on the periphery of our interests.

Mr Bluemmel: Yes.

The CHAIRMAN: Can we move on then to question 7: investment in advice and awareness will pay dividends in improving your administration.

Mr Bluemmel: Certainly, I am happy to take you through my answers there. The first one is that I report annually on two key performance indicators, as it applies to the advice and awareness function, in my annual report and in the budget statements. The first one deals with agency satisfaction of advice and awareness services, and this is the annual questionnaire that I send out to all government agencies at the end of each financial year, and we have quite a high response rate for that. The satisfaction rating for that over the last two years was 98 per cent, which, obviously, we are very pleased about.

There is another key performance indicator in that area, which is the cost per advice unit, as we call it. This is simply the total cost of the program—the advice and awareness program—divided by the number of advice units we give—the number of people who attend our courses, the number of inquiries we have and so on. In the last financial year, that was $150 per advice unit effectively, which is down on the previous year. I suspect that was quite a good value year, shall I say, because I had the opportunity to attend some large sessions where I was able to give a lot of FOI guidance to government agencies particularly.

They are the two formal indicators. However, we also, in addition to that, use some more management-focused indicators that do not necessarily get published but which we use to constantly refine and improve our advice and awareness program. The most formal of those is that when anyone attends one of our training courses, they are given the opportunity to fill out a questionnaire at the end—it can be anonymous—and they are basically asked two questions. The first one is whether the course met their needs for greater understanding of FOI, and the second one is whether the conduct of the course was satisfactory. In both cases, over the whole year we have received actually a 100 per cent positive rate from those who have responded. The more informal way that I also look at that is that I try to actually get to all of the training courses my office delivers—not for the whole day, but I welcome participants and then usually mingle with them over lunch or afternoon tea. What I try to do there is to hear from them how we can improve things: are there things that you have been wanting to know that this
course is not covering—those sorts of things. So more from just a management and performance perspective, we are constantly gathering those facts and improving.

[10.30 am]

The CHAIRMAN: People like us, members of Parliament, worry about KPIs, particularly in soft areas like yours where it is not a question of dealing with 10 kilometres of road and whether it is built or not. What you have just spoken to us about are the practitioners in the process, but what about the people who are making the inquiries; what do you do about measuring their sense of happiness with your performance?

Mr Bluemmel: Do you mean people who come to me on resolution of disputes?

The CHAIRMAN: No, just making applications for information.

Mr Bluemmel: They go straight to the agency; they do not come to me. They only come to me when the agency effectively does not give them what they want.

The CHAIRMAN: The point I am making, though, is: is that not one of the key KPIs, though?

Mr Bluemmel: In terms of how much —

The CHAIRMAN: The reason the government has put you in place is to allow people to get information.

Mr Bluemmel: Perhaps if I can just put that into some perspective: fewer than one per cent of FOI applications ever get to me, so the other 99 per cent are resolved by agencies, and part of why we have this large annual survey is to get that information from agencies: How often did you disclose? What exemptions did you claim—those sorts of things.

The CHAIRMAN: So that explains why you would have a high importance on the process of agencies.

Mr Bluemmel: Exactly.

The CHAIRMAN: Do you have any other comment about your measuring process? From where we sit, it is very difficult for us to have any sort of questioning role of you because we do not know those people. We do not know the people who have made the applications, seeing if 99 per cent of them get a result or do not get a result and are happy with it, or the one per cent. All we get is to listen to you, and most members of Parliament, all they get is the chance to read your annual report. So you have got some pretty rare oxygen out there. Not many people are putting pressure on you from a government perspective. I agree you get pressure from other areas, but you do not actually get a lot of kickback from members of Parliament about the task you perform.

Mr Bluemmel: I do obviously get subjected to some pretty tight questioning at things like the estimates committee, before which I have appeared on a number of occasions outside the annual estimates process, and, of course, rightly so. I think that is the best place to do that, and of course here today. If that sort of pressure were exerted in the context of an individual dispute between a minister and a non-government MP, of course that would be entirely inappropriate. I am pleased to say that at no stage have I been subject to that sort of pressure; if I were, I would certainly take steps to bring it to Parliament’s attention. However, in terms of where the pressure is as to whether FOI
working, 99 per cent of matters, as I said, that are decided, I never see. It is even fair to say that I do not administer the FOI act; agencies administer the FOI act and I act as a referee in that one per cent of cases where they cannot get a satisfactory outcome for the applicant. I note that you ask the question: is there a way to measure the improvement in administration that comes from training? That is why I am so keen on improving and growing the advice and awareness functions, so that agencies make better decisions in the first place, and that includes ministers.

In terms of the next part of the question about whether training can be linked to a decrease in complaints requiring external review, I would frankly say that it cannot be done meaningfully. I will give you a couple of illustrations as the reason for that. Because only, as I said, one per cent ever comes to me on a dispute, it is hard to see how we can properly have a cause and effect linkage that makes itself known in the stats in a very meaningful way. Let me give you an example. Between the financial years 2007–08 and 2008–09, external reviews before my office went from 102 to 181. I believe it was about the time that that happened that I last appeared before you. So that was an increase of 79 matters, or about 78 per cent. Of those 79 matters, 76 can be attributed to disputes between MPs and ministers, so, therefore, I think that it is not necessarily the quality of the process that determines how many come to me; it is actually what is at stake that determines that. Again, Apache is a good example. Apache was going to come to me no matter what the agency decided because there is too much at stake, and it was always going to appeal to the Supreme Court no matter what I decided because there is too much at stake. So it really comes down more to how much is at stake on any given matter than how well did the agency make the decision. That is not to say that agency decision making should not be improved; I think there is significant room there. But what I mean is that the caseload that comes to me varies so widely from day to day and year to year that I do not think it would be a meaningful measurement, which is a shame because I would like to be able to measure it.

The CHAIRMAN: We will accept that. We would like to move on.

Hon JON FORD: Commissioner, I was very interested in what you were saying. I think you said 99 per cent of cases do not come to you; it is only one per cent. Would you be shocked if I said to you that a lot of people I talk to about FOI applications assume that when they get a rejection from the agency, it is a decision by you?

Mr Bluemmel: I would be shocked by that and very disappointed. The reason for that—apart from the fact that it is clearly inaccurate as it would be an inaccurate perception—is that if an agency is properly discharging its functions under the act, then not only does it have to make the decision, but within the decision it has to tell the applicant the name of the individual person making the decision and it has to tell the applicant their rights of review; and, of course, one of those rights is ultimately to come to me. So, hopefully, that would put the two into contrast that I did not make the decision; I am the person to whom you can go. If that is happening, and obviously in your experience it is, then that is a problem that I need to address by making sure that the agencies write clearer notices of decision. I agree; that would be a problem.
Hon JON FORD: The reason I raise it with you is that I had a particular application which I looked at and it was knocked back by the agency and I decided not to proceed, but I clearly understood it. In discussing that decision with other people, the feedback I got—I have had quite a few constituents come through my door asking me about FOI applications and I have explained to them what the process is. It is just interesting that there is this perception that the reply back from the agency is somehow endorsed by you. That is one aspect. The other one is that, in appealing that, it is very clear when you get it back; I think it says you have got—I cannot even remember now; it is so long ago—60 days to apply. I have told people and they have not understood that because they think there is some legalistic cost with that, so they see that as prohibitive—just writing a letter saying, “I disagree with the agency.” So I have encouraged people to do that. If somebody has missed the boat on the 60 days, is that an impediment for them to put in another FOI application?

Mr Bluemmel: No, it is not. You can put in another FOI application, restart the clock and then come to me. You can also, if you have missed the 60 days but there is a persuasive reason why the 60 days had been missed, apply to me and I can consider it out of time if I think it would be fair to do so. Now, it is pretty rare that I grant that, especially given that I have got so many people in my backlog who have been patiently waiting for my decision and I do not want them to slide down another rung. But there are certainly cases where I have granted that, and it might be because the agency has not properly explained the review rights, it might be because the person was overseas or dealing with a family trauma and those sorts of things. In those cases, I will take that into consideration and sometimes allow an application to be lodged out of time.

[10.40 am]

Hon JON FORD: Okay. I have been a minister. When I was Minister for Local Government, I got presented with this guy called Bob by the agency. Bob arrived in my office, he was given a room—he actually had stress balls—and he sat in the office. He was a very nice man. It was explained to me he was called the “nutter coordinator”. So he was offered up to me by the agency and he dealt with continuous vexatious phone calls. I used to walk past him, “How you going, Bob?” and he would be sitting there squeezing his balls, “Yes, Mr X; it is nice to hear from you again” blah, blah, blah. I assume that you, as the commissioner, are no different. Is there some mechanism that allows you not to be tied up with continuous vexatious complaints?

Mr Bluemmel: That is an interesting topic about which I have thought a lot. I actually do have the power under the FOI act to stop dealing with a complaint if I consider it is frivolous, vexatious or lacking in substance. I have considered exercising that power on a few occasions but I have never actually done so, because, to me, exercising that power completely deprives someone of their rights with arguably no right of review. And that is a big step to take. Sometimes it may well be justified, but I think the case where it is justified has not come to me yet. What I have seen, though, certainly is matters come before me where the person who is after the document would broadly fit the category of conspiracy theorist and so on.

Hon JON FORD: I cannot believe that!
Mr Bluemmel: But I will still take that matter seriously and make inquiries. I think the bigger problem is with agencies. I know for a fact that a number of agencies struggle with repeat vexatious applicants who sometimes request the very same document over and over again. Of course, sometimes they may be struggling with mental health issues and so on. But agencies do not currently have the ability under the FOI act to deem someone vexatious and refuse to deal with them. In a small number of highly problematic cases, that causes a lot of stress and cost.

The CHAIRMAN: I am keen to move on from 2.9. But in that bracket, though, you have got members of Parliament on fishing trips. Having been one and been on a few fishing trips of my own, how do you deal with that?

Mr Bluemmel: When I went back to that explosion in external reviews after the last change of government—of course, this is all on the public record—the entire increase of historical levels could be explained by disputes between MPs and ministers, and there was a small number of non-government MPs responsible for almost all of that. Again, I do not think that would surprise anyone.

Hon JON FORD: It was not me, Max!

Mr Bluemmel: Based on that, I looked at whether it would be appropriate for me to use that power of whether it is frivolous or vexatious when the matter came before me. But I had to look at each matter on its own merits, and even though someone has already lodged a large number of matters before me, as long as the next one that comes along, of its own, potentially has some merit, I will deal with it on its own merits without prejudice as to the history. That made life quite difficult and that is why, of course, our time frames blew out and we are recovering slowly now. But, again, to me, actually declaring something vexatious, especially from an MP where you can argue that the MP represents a constituency, FOI is a tool quite rightly at their disposal. It is not for me to give them quotas; not that I could anyway. But I think it would be a very dangerous thing to consider that. In terms of fishing trips, the FOI act, again, allows you to do that; that is probably what it ultimately comes down to. I will look at each individual matter on its merits.

The CHAIRMAN: I am keen to move on from 2.9. This is a bit of an inquiry of our own, so this is an area we have our own interest in and this is the Integrity Coordinating Group. Are you involved?

Mr Bluemmel: Yes, I am. I have been a member since September 2010.

The CHAIRMAN: So question 2.10 is an important question for us. Is that group established under any act of Parliament, administrative order or any other legislative instrument?

Mr Bluemmel: No, none of those. It is a group that is, effectively, established by the goodwill of the people who participate in it. It has no formal legal status or power as a group; it does not make formal decisions, per se. What we do, where appropriate and when it does not hinder our independence, is coordinate our activities to ensure that we increase the standard of administration and increase the level of integrity across the sector.

The CHAIRMAN: And you do not report to a minister?
Mr Bluemmel: No, we do not.

The CHAIRMAN: Including the Premier? Is there any sort of report that goes to any minister at any time?

Mr Bluemmel: No, not to any minister.

The CHAIRMAN: Is there a memorandum of understanding between the group?

Mr Bluemmel: No, there are terms of reference, which are actually on the web. They are quite brief. Would you like me to share them with the committee?

The CHAIRMAN: Yes.

Mr Bluemmel: The terms of reference are: fostering collaboration between public sector integrity bodies; encouraging and supporting research, evaluation and policy discussion to monitor the implementation of integrity and accountability mechanisms in Western Australia and other jurisdictions nationally and internationally; and inspiring operational cooperation and consistency in communication, education and support in public sector organisations. As I said, it is not a group with any formal standing or existence, as such, and it takes up a very small amount of its members’ time, I would say. We usually meet four times a year. Probably the highlight is once a year when we have our ICG forum and invite all public servants who wish to come to a forum where usually the commissioners and sometimes a guest speaker will be available to give a short talk each and then, most importantly, to take questions and answers from the floor. There is one very good example of how my involvement in that helps the FOI act, and that is that at last year’s forum the theme was integrity in decision making. The other members—the Auditor General, the Corruption and Crime Commissioner, the Ombudsman and the Public Sector Commissioner—all gave a talk about the importance of integrity in decision making. One of the topics was the inappropriate disclosure of government information. Other areas like the Public Sector Commissioner and the CCC, of course, were talking about misconduct in inappropriately disclosing information that a public servant should not be disclosing. I was then able to immediately counterbalance that by reminding the audience that proper disclosure in good faith under the FOI act is not only acceptable, but also a legal requirement. You actually had those two, at some level, differing agendas up on the stage at the same time and public servants actually being able to get answers to difficult questions, such as, “What if I have this sort of issue? Can I do this and can I do that?” The feedback that we got after that forum was extremely positive because we were all there at once. That is the sort of value that it is designed to add.

The CHAIRMAN: Question 2.13 is: do the member agencies of the ICG have communications agreements with each other?

Mr Bluemmel: We do not have a formal agreement, no.

The CHAIRMAN: Are formal minutes and records kept of each meeting?

Mr Bluemmel: Yes, they are. They are kept by whichever organisation is currently chairing the ICG. At the moment that is the Auditor General.

The CHAIRMAN: Is that a continuous record?

Mr Bluemmel: Yes, I believe it is.
The CHAIRMAN: You have answered some of our other questions. Question 2.14 is:
are formal minutes and records kept for all meetings? There is a dot point: which
agency administers the FOI requirements for that? Do you do that yourself?

Mr Bluemmel: The ICG itself, not being an actual organisation, would not meet the
definition of “agency” under the FOI act, so one could not make an FOI application to
the ICG. Of course, one could apply to a member of the ICG and whatever is in their
possession would then have to be considered under that application, but all the
members of the ICG, except, I think, the Public Sector Commissioner, are exempt
agencies from FOI.

The CHAIRMAN: What about the question of relevance? If I wanted to get the
minutes of a past meeting, how would I do that?

Mr Bluemmel: I think it would be a request to the chair, which is currently the
Auditor General. If it were you, it would obviously be a different issue than if it were a
member of the public or the press.

The CHAIRMAN: I am saying me, as chairman of this committee.

Mr Bluemmel: I think that would be directed to the chair currently, which is the
Auditor General. If it were a member of the public or the press, that would be
problematic. I do not think we would be able to give any sort of access because of the
nature of what we talk about. We may talk about upcoming activities that are designed
to clamp down on a certain type of misconduct and so on, and that could be harmful to
disclose in those sorts of circumstances.

The CHAIRMAN: Question 2.15 gets down to some of the tintacks about our
concerns. Is there a potential conflict between the statutory independence of your
office and participation in integrity coordination, because it really occurs without any
governance or guidance of government? By “government” I mean Parliament, not the
administration.

Mr Bluemmel: I think there would only be a conflict if the ICG itself actually had
some sort of power or status. As an organisation—it is not an organisation and it does
not have that status; it is an activity, if you will, which we participate in. If it were a
formal body with decision making powers, I think there would be a conflict, and that
is exactly why it is not run like that.

The CHAIRMAN: But in your own evidence earlier in the day, and my own
experience over many years as a member of Parliament, these sorts of meetings, for
good or bad of the system, actually do make a difference. There is clear evidence that,
over the last two decades in Australia, meetings of Auditors General, for example,
have changed the auditing process without changing a single solitary act, by getting
together and discussing the best way to conduct audits. You have already said yourself
today that the information commission is getting together and has improved the
process by getting together. So even though there is no outcome in terms of the
matters you have just described, there is still an outcome in function.

Mr Bluemmel: Hopefully, yes.

The CHAIRMAN: I will just finish that point. We do have a concern about that. We
are not saying that we have to panic about that at the moment, but the committee does
have some concern about that, because you are getting together, whether you do it rightly or wrongly, but you would certainly be doing it rightly in your own mind, and will gradually change the concept of administration. That is fine but, as a person involved in the Parliament, I would like to have some feedback on that from time to time and I would like to know in my own mind as a parliamentarian that it is going in the right direction. We could all agree that many things that are done with the best intention do not always work out to have the best outcome. That is why we are asking these questions.

We will move on to question 2.16. With the appointment of an integrity coordinating commissioner, such as a retired judge or someone like that—you might think that is a bit of overkill on what I have just stated, but it does reflect a view from where we sit.

**Mr Bluemmel**: I think it would need to be asked—obviously you have done this thinking—what outcome such an appointment would be looking at achieving. I think it would be problematic because, again, if there is going to be an appointment of a commissioner, it would need to be very clear, of course, what his or her roles and powers are, and that might actually result in the formalisation of the ICG, or its equivalent. That would then cause me some concern about the independence of the individual officers because we do have quite different roles, even in how we go about our practice. I operate much more like a court or tribunal, and that model would not at all suit the Ombudsman, for example, because the Ombudsman needs to have a much broader look at improving public administration and resolving complaints, whereas I am there to make legal determinations only.

[10.55 am]

**Hon ED DERMER**: So, item by item rather than in a broader sense?

**Mr Bluemmel**: Precisely. Having the same set of powers for both types of outcomes would not, in my opinion, work at all well. Again, the Public Sector Commissioner’s role is not just about maintaining integrity in the public service; it is a key aspect of the role but it is broader than that. It is about making sure we have the right public service to support he government to go forward in all of those.

**The CHAIRMAN**: Unfortunately, we are quickly running out of time. We will go back to question 15. It is not just a question about you being involved in the ICG. We have had in the past—and there is always the chance of—bodies such as the CCC coming into strong public disrepute. Maybe the office has had difficult issues to deal with relating to the CCC and the police in other matters. That could affect you.

**Mr Bluemmel**: By association you mean?

**The CHAIRMAN**: Yes.

**Mr Bluemmel**: I certainly do understand and appreciate the concern. My suggestion perhaps would, if anything, be less formality around that collaboration in terms of the ICG than more, but of course that would not address all the issues you have raised. In terms of the parliamentary oversight concern, perhaps that is something where a committee like this regularly takes us members of the ICG, as members of the ICG, to task.

**The CHAIRMAN**: That is really what we are talking about. We have just got half an eye on this. When we say we have got half an eye on it, we are warming up to it. If we
put two eyes on it, it would become a bit of an issue. Our concern is that a range of things are happening. Like all meetings, people try to do things in the correct manner but we do not know what it is. We do not have any impact on what it is and we do not have any reporting process on what it is. It is a bit of a secret society. I know that is an extreme view of it but it is a secret grouping. As a member of Parliament I have no idea at this stage what the intent of the grouping is. It is a collection of very senior individuals who have very senior responsibilities, most of them with a responsibility to Parliament. I would say those linkages are not there.

Mr Bluemmel: Can I illustrate another area of cooperation between the agencies that already happens, which is even more informal than this? My agency, together with primarily the Ombudsman but occasionally with one or two other agencies like perhaps the Health and Disability Service Complaints Office, undertake regional awareness programs where we head out to the regions, usually twice a year, and have sessions for community groups, local media and public servants in those areas and so on. It is coordinated because it saves us venue hire and all of that. Ultimately, we each go there with our own message and talk to the group. That is the sort of thing we do. In terms of what the ICG does to try to improve the level of administration and integrity, yes, it is a step removed from that; but ultimately, say, the annual forum that we run, which is really the key product that we put out, is designed so that we can all be out there in one hit and efficiently address a large audience and be able to answer their questions.

The CHAIRMAN: Most people would say that is a good outcome but we are not a part of that, are we?

Mr Bluemmel: Of either one, you mean?

The CHAIRMAN: Yes.

Mr Bluemmel: I would argue that in some ways you are because I do both of those things as Information Commissioner, which I think can help improve the outcomes under FOI, and they are the only outcomes that I am charged with. Therefore, sessions like today’s—speaking with you and speaking with the estimates committee, among others—are things that are part of my operations, if you will, on which I am reporting to you, in the same way as when I go on my next regional outreach visit, which will be to the Pilbara in August, that will obviously be in my annual report and something I can speak to you about.

The CHAIRMAN: Will the participation be in the annual report of the ICG?

Mr Bluemmel: Yes, though I am not sure if it was last year.

The CHAIRMAN: I would suggest it would be, even if it is only a paragraph.

Mr Bluemmel: I agree with that and certainly things like the value of the forum last year and so on is exactly the sort of thing that I think Parliament should know about.

The CHAIRMAN: We have run out of time, but I want to address question 17 because you half addressed it in the last few minutes. Do we need a separate integrity agency and a separate information commissioner and public sector commissioner? Parliament is struggling with those issues at the moment. This committee is struggling. Our current inquiry is looking into the question of how we make all of that work
better. We have an inquiry developing within this committee looking at just that. Should all these functions be streamlined to a single integrity commission to replace the present separate strategy officer you have now? Should there be a further umbrella over the top of the ICG group and we start doing those things you have talked about on a collaborative basis but have a more open process in terms of capacity of Parliament to know? The present coordination and sharing of services suggests that such rationalisation could be achieved with minimal disruption. You half described that a few moments ago. What do you think?

Mr Bluemmel: I would strongly caution against it. I have a couple of suggestions. First, again our jurisdictions intersect at certain parts but the parts where they intersect are not the whole picture. For example, FOI is not just about integrity. FOI may well be about integrity if I believe that an agency or a minister is inappropriately withholding documents under FOI. That could easily be an integrity issue. But in most FOI cases it is not about integrity; it is about people’s right to know. It is about people being able to participate in government, and to be able to do that they need to have information at their disposal. Therefore, I would be concerned that if it were brought under a single umbrella, the integrity part of it would be focused on and the rest may be weakened. Similarly, with the Ombudsman—of course I cannot speak for him—his role is far broader than just increasing integrity. His role is also about ensuring that public administration continues to improve and so on.

The CHAIRMAN: Conversely, the CCC is the opposite. Every issue is about integrity. You have that context. From where we sit as members of Parliament, we view that differently. You view your function; we view the outcome. There will always be that conversation between us.

We have run out of time, sorry, commissioner, but we did want to raise that issue with you because it is concerning the committee. We have got to the stage where we have to decide what we are going to do about it. It is part of this whole question of how you make a public service work, how you make a whole range of issues responsible to Parliament and how you make that performance of officers like yourself and their response to Parliament. I think in some ways yours is much easier and precise under the legislation and pretty clear, as you keep on describing. We would argue that the situation involving the Public Sector Commissioner is a totally different argument. It is a much broader issue with a whole raft of ebbs and tides. The probability is that we are going to start looking at that but we have not decided. Members, we have run out of time.

Hon JON FORD: We should say it has nothing to do with your particular function. We had a recent inquiry and we had an expectation of how different agencies would interact with each other and they clearly did not. I want to make it clear that we are not reflecting on you. It is just about administration.

The CHAIRMAN: That is what I am trying to say. We are looking at the outcome, not the function. Clearly, that is your function but we will always ponder what all those things mean in the greater context.

Mr Bluemmel: If I can just say one thing very briefly. I would just caution against thinking that even though we all have a role to play in ensuring and improving integrity, each of us do not have roles that then go off in different areas that are not
focused on integrity. In fact, it might be a small part of what we do, except for someone like the CCC.

The CHAIRMAN: Thank you for your attendance. I found it very informative. We will report to the house around October, November.

Mr Bluemmel: I look forward to it.

Hearing concluded at 11.05 am
STANDING COMMITTEE ON PUBLIC ADMINISTRATION

STATUTORY OFFICE HOLDERS

TRANSCRIPT OF EVIDENCE TAKEN AT PERTH WEDNESDAY, 16 MAY 2012

SESSION TWO

Members

Hon Max Trenorden (Chairman)
Hon Jon Ford (Deputy Chairman)
Hon Ken Baston
Hon Jim Chown
Hon Ed Dermer
Hearing commenced at 11.10 am

FIELD, MR CHRIS
Ombudsman, examined:

WHITE, MRS MARY
Principal Assistant Ombudsman, Strategic Services, examined:

The CHAIRMAN: Good morning, Mr Field. Welcome. Make yourself comfortable. This is an open meeting; you can see that the public has poured in to see what you have to say!

Mr Field: I am disappointed!

The CHAIRMAN: It is an open meeting, but we need to do a few formalities. We are short of time and we have quite a few questions, so if you do not mind, we will get straight into it. Have you both seen the “Information for Witnesses” form?

The Witnesses: Yes.

The CHAIRMAN: Have you understood it?

The Witnesses: Yes.

The CHAIRMAN: During the course of the hearing, if you refer to any documents, I ask you to give the title of the documents to assist Hansard in making a correct record. You have heard all this before, but I will just go through this process again. The transcript will become a matter of public record, so the point of having you in is that we will report to the Parliament at the end of the year, and this hearing will be part of that. If, for some reason, you wish to make confidential statement—and we do encourage a working relationship between the committee and yourself—if you wish to say something to us that you do not want on the public record, you need to indicate that and we will agree or disagree to do that. Please note that until such time as the transcript becomes public evidence and is finalised, it should not be made public. I advise you that publication or disclosure of an uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. So, with that out of the way, let us move on to the questions. We have supplied you with questions; do you have the questions?

Mr Field: Indeed, yes.

The CHAIRMAN: That is to enable a clear and concise outcome for the day. I now go to question 2.1. The committee notes that the modern focus for the office of the Ombudsman in respect of improving public administration appears to be at the level of
working with agencies. What is less clear, from reading the Ombudsman’s website, is a clear articulation of the following view expressed by the 1996 Commission on Government’s third report. The appointment of the state Ombudsman under the PCA is by the executive, but in 1971 the Premier made it clear that the state Ombudsman was an agent of Parliament. The question is: can you please indicate how, and to what extent, the office of the Ombudsman presently views the position in respect of the Parliament on one hand and the executive on the other? That is a common question for committees like ours. Over the years we have wrestled with this information with the auditor, who is still independent and is still appointed by government, and budgets are still organised by government, so you are in a similar boat.

Mr Field: Being mindful of the time, I will make a sole opening comment that it is a pleasure and a privilege to be here today. As I always say to parliamentary committees, it is a unique opportunity; appropriations hearings are probably the only other time of the year when I get that particular opportunity to appear directly before Parliament. This particular committee, of course, with its interest in public administration is particularly important for us.

In relation to that, yes, that is a very good question and, of course, a longstanding question. I obviously was already aware of the Commission on Government findings and was happy to refresh my memory of those in reading those materials. The way we conceive of ourselves is very strictly—and very much a first principles matter—as independent of the executive government of the day. That is an absolutely clear and strict first principle about that. We see ourselves as having a direct reporting relationship to Parliament and certainly not in the executive of the day and certainly to no minister. So in that sense we see ourselves, really, as an agent and servant of Parliament. Indeed, I noticed the words that were used by the then Premier quoted in the Commission on Government in Hansard about us being an agent of Parliament, and that is the way we see ourselves, unquestionably. We see ourselves as having an evolving relationship with the executive government to keep them to account and in that sense we are an accountability agency. We probably would also see ourselves as having now a broader role of integrity promotion, and that goes to that both broadening and deepening understanding that lots of commentators now have about this idea. Of course we have three branches of government—the executive, judicial, and legislative—and this is the so-called fourth branch of government, which is an integrity branch of government. Notionally you put those agencies within the executive, but there is this idea of the fourth branch of government, the integrity branch of government, where you would have offices like the Auditor General and the Ombudsman. We certainly see ourselves as independent of the executive of the day and, critically, an agent serving the Parliament. In relation to matters of appointment, I am appointed by the Governor but you are quite right: it is ultimately the executive that is involved in that appointment. In relation to appropriations, you are also absolutely right that appropriations are undertaken, ultimately, by Parliament, through the appropriations bill, but in the first instance by government.

What I will say about the independence of the office is that we have continued, particularly during my term, to strengthen those matters. For example, in relation to appropriations matters, most line agencies, executive government agencies and even other accountability agencies will appear in a ministerial portfolio. I do not; I appear
directly and personally before the expenditure review committee and argue my case as if I were the minister, effectively. I do so also in appropriations hearings, where I appear directly before the Assembly each year and, if necessary, the Council, if I am asked to do so. I do have the capacity to speak directly to Parliament, and Parliament directly to me, in relation to matters of appropriation, and I think that is an added fillip to the idea of the independence of the office. We unequivocally have the view that we are independent of the government of the day; absolutely unequivocally so.

**The CHAIRMAN:** Can I say that, in my view, I think that is totally inappropriate. For you to attend the budget process as if you are a minister does remove you from being an officer of the Parliament. And personally, as a person who has wrestled with these issues for 26 years, I find that offensive. I might be in a minority amongst parliamentarians, but I personally do find that offensive. If you look at issues such as the Auditor General, one of the ways that the executive of the day argues that independence is that the auditor does not get an extension of their time; it is rare for an Auditor General to continue on after a seven-year appointment. The Auditor General can then argue that if he makes a government unhappy, he will not get his time extended anyhow, but you are in a different boat again. At your age, you may expect to want to continue. I am not in any way trying to put any claims to you, but we are just talking about the function of your role. So there will always be a cloud hanging over your head that says that you may want to be compliant to those agencies and to the minister, so you get another appointment.

**Mr Field:** The reality is that that will be the case for any officer who does not effectively have a life appointment, so judicial officers will have those sorts of appointments, but for any officer who is not appointed on the judicial term, which is a life term, there will always be a claim that could be made. Whether it is a seven-year term, a five-year term, a 10-year term or whatever that term will be, that claim could always be potentially made. There are a number of protections around that; it is about appointing the right people. Every day I feel completely unbeholden in relation to any government policy or any matter, and certainly would not ever, under any circumstances, change my views based on fear or desire to be reappointed, so it goes to the integrity of the appointee.

[11.20 am]

**The CHAIRMAN:** The question we are putting to you —

**Mr Field:** So it goes to the integrity of the appointee.

**The CHAIRMAN:** — is nothing to do with you personally.

**Mr Field:** No, no, no, I am not defending myself; I am saying it goes to the integrity of the appointee. It goes to the integrity of the government making the appointment, because if you are appointing people who look like they are the sort of people who will be subservient lap-dogs to government, then the government itself will come under a credibility risk in relation to that and they themselves through the normal democratic processes will be held to account in relation to that. So, there are lots of imperatives that play on how independent appointments can be made. But I take your general point: without a life appointment that will always be a potential risk.
The CHAIRMAN: And annually facing for the budget really is the same argument.

Mr Field: I think the model I have got in terms of my budgetary process is the most independent you can imagine, except for one other, which be the Parliament directly appropriates it. That would be the only other way you could imagine it would be more independent—I note the Commission on Government’s recommendations back in 1996—that would be the only way, I think. Look, there could potentially be more. There would still, of course, be involvement of executive government of the day, as it was envisaged in the Commission on Government report that Treasury would have a role in relation to that, and, ultimately of course, it would be appropriated by Parliament. It is critical, though, I think to reinforce that in about three or four weeks’ time I will be at Parliament. I will be directly before parliamentarians and they can say to me, “Have you got the appropriate budget to do the job?”, and I can say no directly to Parliament.

The CHAIRMAN: Correct.

Hon ED DERMER: Have you found that your appropriation varies significantly from year to year?

Mr Field: It has varied considerably from year to year in the time that I have been Ombudsman because of the growth in the functions of the office. We have grown in size in the past five years, both in terms of there has been an increase in complaints to the Ombudsman and there has also been an increase in functions the government has asked us to undertake. So, the budget has increased. All I can say is what I have said each year and repeat again today and what I have said each year to Parliament during appropriations, I am comfortable that I have the level of appropriation that allows me to do the job that the Parliament, I think, expects of me and Western Australians would expect of me.

Hon ED DERMER: So, variation in appropriation has been consistent with variation in demand on your work?

Mr Field: Absolutely, yes, and it gets back to your point, Chairman, about this matter. If I felt that I did not have the appropriate appropriation to undertake the activities that Parliament and Western Australians expect of me, I will on 30 May—the exact date to be set—go down to Parliament and I will say exactly that straight to Parliament, not to the executive government, and they will not be able to stop you from saying it. If I was appearing before a minister, a minister may not allow me to say that because the minister will say, “I’m taking those questions”. But I will be there directly before Parliament, directly accountable to them, and I will speak directly to them and they will speak directly to me. If I thought that was the case, which it is not, but if I felt it was, I would say so and without any hesitation.

The CHAIRMAN: We have got a fair bit we want to get through, so we —

Hon ED DERMER: Mr Chairman, I did not mean to distract you.

The CHAIRMAN: No, Ed, they are all important questions and I asked similar stuff. They are actually, as I say, important to me personally that I think actually should —

Mr Field: I understand your interest, Chairman.
The CHAIRMAN: And should be important to the Parliament as a collective. Now, on to the question 3, which is actually about your annual report. How do the selected case study summaries, as spread through the annual report, help the Parliament to identify the potential systematic issues of concern regarding the administration of the public sector generally or within the individual agencies in particular? How does your way of reporting, in your view, help that image?

Mr Field: What we try to do with the case studies is really take abstract ideas, which is this idea that is simply enunciated out in data, and put it into some way that would resonate with the reader—put it into a more real-life scenario. So, it is really about trying to put the abstract into a kind of readable, resonating format. That is really what the case studies are trying to do. With the case studies, we try to also pick certain issues. They might be ones that are systemic or thematic issues, so we can highlight those in a narrative format—a case study form. We might try to pick good-practice examples of public administration or we might home in on what we think are bad-practice examples of public administration. We will also look at ones where we have been remedial to a complainant, because obviously many people are coming to my office without concerns for a grander design on improved public administration. That is, of course, fundamentally important, but they are really coming to remedy their problem that they have brought to us and so we might highlight remedies for individuals, but similarly we will also highlight ones where we think that was an improvement to either the practice of that particular agency that will benefit others in future, or indeed possibly even more whole-of-government type remedies. So, we really are in those case studies just trying to basically provide a sense of qualitative to the quantitative.

The CHAIRMAN: There is a practice coming into annual reporting for it to be a corporate badge more than an annual report.

Mr Field: Yes.

The CHAIRMAN: We would have some concern, and that is why we asked you that question, because there is not much pressure these days on the content of the annual report but it is for many people “the report”. So, we would not want to take away from you your capacity to sort of put a corporate badge on what you do, but it is still an annual report.

Mr Field: Correct, and it is a balance that we think about every single year in terms of both the fact that we have an annual report but we also have a range of other reports that we put out into the community as well, including, of course, those we table in the Parliament—our own-motion investigations. So in part we are seeing our reporting as a large suite of documentation on various levels, but the annual report we still see as the pre-eminent report.

The CHAIRMAN: It is legally the pre-eminent report.

Mr Field: Absolutely, and there are all sorts of reasons—there is the Financial Management Act, there is our act. But we take the view that we are an officer of the Parliament, we are here to serve Parliament and part of serving Parliament is to provide that report to Parliament.
The CHAIRMAN: What about question 3.2 on the two years?

Mr Field: The trend data issue?

The CHAIRMAN: Yes.

Mr Field: The data is provided not just for two years in various places in the report; there are a number of places we provide over multiple years, and they are particularly in the complaint resolution section of the report. We were looking at complaint trends over years going back to around five, six or seven. So we do not just do it on two years but there was probably a predominance of two-year data in this particular report because of the nature of the child death review jurisdiction, given the fact we had that level of data to actually report. So, I think that might be somewhat of a skewing in terms of the data because next year it will be an additional year, for example.

I think the other thing to say, though, is we probably would see the annual report each year as a report in a series. So, you can look at the 2010–11 report, but equally you can go back and look at sort of the 2009–10 and the 2008–09 and the 2007–08 and look for trends over that period of time as well. So, it probably would be quite difficult, given we have got a 40-year history, to literally put a 40-year trend in every annual report. So in some ways what we try to do is just basically say, “Look, what’s a useful level of trend data, historic data, knowing that this report is part of a series and that trend can also be followed through by looking at previous annual reports.”

The CHAIRMAN: I think that is an argument that has some currency, but the annual report for other people is an annual event.

Mr Field: Yes.

The CHAIRMAN: So the person on the street is not going to be going back but analytical people, I agree, will.

Mr Field: Yes.

The CHAIRMAN: The Commissioner of Police came under some pressure yesterday on the argument that I should give five years if we are going to give a trend line at all. So, they are the points, but we do understand that in terms of the children information, it has only been going that period of time.

Mr Field: Correct.

The CHAIRMAN: So what about question 3.3?

Mr Field: In relation to qualitative data with percentage comparators?

The CHAIRMAN: We are talking about analysis and what I just said about helping the reader to understand what the data is telling you. So, in a lot of ways annual reports are about an individual off the street picking up the report and trying to understand what you have done for a year.

[11.30 am]

Mr Field: In relation to discerning the trends in public administration, my sense is that certainly for some parts of the report you could pick it up from the thread and get trends going back four or five years. Certainly, for the child death review jurisdiction you can get trends going back to when we commenced and a little bit before that because we included a table that actually took trend data back to the former Child
Death Review Committee as well. It was, I think, a helpful addition to take a certain level of information back to connect it up with the former jurisdiction. It is obviously the case that our annual reports are available—they are public documents—and if one was so minded to one could certainly go back to former annual reports, once again, to get that trend information. We would always be open and available. It is not information that is confidential. We would be very happy to assist parliamentary committees, members of Parliament or others with questions, as we regularly do, when they ask for additional information. We are able to say, “Yes, look we can dig down into a little bit more of a trend on that for you. It is not possible to put everything in the annual report, but we can certainly pull some of that out and assist you with that.”

The CHAIRMAN: Mr Field, getting back to the question 3.3.2, the whole point of the annual report is whether people like us, the ones sitting in front of you, can actually measure whether administration is actually improving or whether it is declining. So that information really has to be in the annual report. It is not a matter of getting you in front of us. The difficulty for committees like ours is that if we are going to do an investigation if we are concerned about any issue related to your sphere we need to find the information before we start talking to you. There is no point getting you here and seeking information because that is a process that does not work. If we want to do an investigation of the spheres that you are in, we need the information in the annual report. So do the people in the street. I am not quite sure that you and I are on the same wavelength. I mean, if you take a CEO of a local government, for example, picking up your annual report, being able to work out what is happening to any of the agencies that you control, whether they can get any guidance out of your annual report. I would say that they would get little guidance out of your annual report. That is the point that I am making.

Mr Field: Well it is never a criticism that has been raised before with me, Chairman—about the report—in the five years that I have been undertaking the role, but let me simply say this: that does not necessarily mean anything. The reality is that it simply may be that they have never raised it with me before.

The CHAIRMAN: It is appropriate—I mean, not just spending time with us. But I think, like all things that you do, it is appropriate from time to time to have a fresh look at your annual report.

Mr Field: Yes, and I think that is the most important point. It actually goes to some of the other questions in here. I know what we will do for this year. As I say, it will arise one or two other times in the annual report—in these questions—we will have a very close look at our compilation of our 2011–12 annual report. This is what this committee—a highly relevant committee to what we do, because we are both involved in the critical issue of good public administration in the state—if you would find the report more helpful, more useful, to include better time series of data, then I think that wherever we possibly can we are going to take that on board and think about that for this year’s report.

The CHAIRMAN: We need—I mean, our job is to look at administration of the agencies in the state. A similar job to what you do. So we need to know what you are doing other than talking to you.
Mr Field: Chairman, talking to me will only ever be an adjunct and as you say, quite rightly I think, a secondary mechanism to the annual report. The annual report has to be the primary vehicle. You must be able to get that. There is a range of adjunct mechanisms—other reports that we put out, other publications, the opportunity to speak. But the reality is that it has to be a primary vehicle. I completely agree with that and we will continue to look at it in that way.

The CHAIRMAN: I am a bit nervous about time because we do want to get through our questions and we do not do this too often. We will go to 3.5 which is—really the points we are making there are that these comments are extremely broad and general and do not provide much detail to assist us. These are the points that we are trying to make to you.

Mr Field: And we take those points very much on board. That section of the report, the improvement section, is intended to give a sense of an overview of the way that we undertake, as an ombudsman, definitive improvement. So we undertake it through the individual complaints that we resolve. We undertake it through our own motion investigation work. And we undertake it through other work, say, for example, the production of a guideline—a conflict of interest guideline, how you might handle complaints, helping agencies build their capacity in terms of resolving complaints effectively internally as opposed to them coming to us. So it is intended to give that guideline, that overview, then it is intended to put some more substance to what we have done in each of those areas. But it is not intended to be read alone in the annual report. Obviously, if you are looking for more details about the actual administrative improvements that we have achieved, they are throughout the report as well. It is meant to be read as a whole in relation to those issues. But once again, I take your comments on board and for this year’s annual report we will look as to whether we can do further work in terms of further detail in relation to the administrative improvements section.

The CHAIRMAN: And that is the point that we are making at 3.6. You have gone to Corrective Services and our committee is currently looking at issues to do with Corrective Services. So in making our decisions about the things that we need to look at, one of the places we may want to get information is your annual report, but at the moment it does not give us that concise-type argument. I do not want to carry the argument on now, but we have put to you the difference between, for example, what Victoria does to your own, and maybe —

Mr Field: In fairness, Chairman, it is an important thing for the committee to think about. The Victorian report does not do things that we do. So the reality is—and for example comparisons back to 07–08, there are 160 pages in this annual report and 120 in the 07–08 report. There is more information in this year’s annual report than there was in 07–08. There are matters that are in the Victorian ombudsman’s report that he comments upon that I do not. There are matters that I comment upon that he does not.

The CHAIRMAN: That is not the point, though. We are not here talking about the issue of what you comment on. It is what we are able to—the information that we are able to extract ourselves out of your report.
Mr Field: The only point that I am making is this: it is not going to be possible for me, ultimately, to predict what every single person may want to get out of an ombudsman’s annual report. I would have to do a 1 000-page report.

The CHAIRMAN: Correct, but there are several sections of your report which are of interest and corrections is one of them. Really, it is something like 30 per cent of your activity—I read somewhere—

Mr Field: Yes, it is a significant level.

The CHAIRMAN: So we would not expect you, in the annual report, to cover every issue that you deal with in minute detail, but corrections is an area that is a big slice of your activity. That is why we have highlighted it.

Mr Field: I am glad that you have highlighted that for me, in particular. I will not take that as the only area that you are thinking about in terms of further information—

The CHAIRMAN: It is not.

Mr Field: — but I will take that as one area. Once again, let me make it clear, Chairman, within my capacity to produce an annual report that is obviously of a reasonable length, what I will do is take on board that comment very seriously and see what further information we can give that will be of assistance to the committee.

The CHAIRMAN: If you just take note of what was said in the last portion of that question, this information suggests trends to administrative hotspots. It is those trends that we have an interest in. So we listen to a minister and we listen to an agency explain to us what they do. We turn to you for some oversight of that.

Mr Field: Yes, absolutely; and that particular sentence about trends, administrative hotspots and interesting points of comparison are ones that we will—I mean, make no mistake, Chairman, each one of the questions that you put to us today are ones that we will reflect upon very seriously in terms of the production of the 11–12 annual report.

The CHAIRMAN: We appreciate that. It is our job to be the interface between the Parliament and —

Mr Field: Absolutely.

The CHAIRMAN: Can we just roll along to 4.2? This is to page 68 of your report. This is getting to the supervision of a child aged one to five as a key to preventing accidents. Any comments on that?

[11.40 am]

Mr Field: In relation to —

The CHAIRMAN: Our job is an oversight job.

Mr Field: Yes.

The CHAIRMAN: So how do we get value out of that?

Mr Field: I think the value that comes out of that is probably on a couple of levels. First of all, you have other agencies in the community that are saying supervision is important in relation to children—in some ways it seems like a fairly commonsense or unremarkable thing to say. What happens when we look at our data, a trend that comes
out is that supervision is important. The good thing about that is that it helps policymakers, accountability, agents of accountability, and those who are also making decisions about the allocation of resources in relation to the education of the community or other protective mechanisms. They say, “Look, here is further evidence that supervision is an issue in relation potentially to preventing child deaths.” I think the value is that if you are sitting there saying, “Should I be asking more questions of the department about what they are doing about educating parents in relation to supervision? What are they doing in relation to programs on that?” you can say, “Look, the Ombudsman said that he has reviewed a range of child deaths, and he is saying supervision is a real issue in these cases.” I think it gives you a further evidence base.

The CHAIRMAN: It point there, but the point we want to make—again, not to labour the issue—is that you have a new program and new programs should be tested.

Mr Field: Yes.

The CHAIRMAN: You can have some confidence in a program that has been going for some time, but a new program should be tested.

Mr Field: Yes.

The CHAIRMAN: So, it is not just about those issues you have talked about; it is also about whether your office and our work adding value to a brand-new program.

Mr Field: Absolutely; yes. The whole point of my office undertaking the child death review program is ultimately to reduce or prevent preventable child deaths; that is the value-add, if you talk about it in that language. We have to try to assist the Department for Child Protection and other departments in having the best possible administration of their responsibilities such that those deaths are either reduced or eliminated. There is no more important outcome that you could possibly imagine in the work of an agency, and so all our efforts are directed to exactly that and our reporting is also trying to report on that, and there are other statutory reporting responsibilities under the legislation.

The CHAIRMAN: We will go to 4.4, which is contingent on the same argument. We have a copy of the report on children in care and we are still having a look at that.

Mr Field: Yes.

The CHAIRMAN: The twenty-third report properly addresses the Department for Child Protection, the Department of Health and the Department of Education. Is there a particular reason why no mention is made in this report regarding the role of the Department of Education Services?

Mr Field: The role of the Department of Education Services is in the report at pages 42 and 43. It talks about the role of the Department of Education Services in there; of course, it only talks about it in a very small way because the reality is that that department only has a relatively small role in relation to care planning for children. Certainly the focus of a report looking at the effectiveness of care planning for children was certainly going to be principally—not exclusively, but principally—on the Department for Child Protection, then on the Department of Education and then on the Department of Health. DES, of course, is a very different department to the Department of Education; it has a very different role; its role meant that it was not ever
going to be a principal focus of that report. There would have been perhaps more focus if there had been a significant number of children in care in non-government schools, but there were not. There were virtually none, and that might not be that unremarkable when you think about the cohort of children we are talking about. But the reality is that their role is explained in the report, and I think in the level of context it was appropriate to discuss.

The CHAIRMAN: We will now move on to an interest of our own, which is the Integrity Coordinating Group.

Mr Field: Yes.

The CHAIRMAN: Question 1 is: What is your involvement? Do you have involvement?

Mr Field: Yes, we are a member of the Integrity Coordinating Group.

The CHAIRMAN: Is the group established under an act of Parliament or an order or any other —

Mr Field: No, it is not.

The CHAIRMAN: Are you responsible to a minister?

Mr Field: No, absolutely not.

The CHAIRMAN: Is there an MOU between the members of the group?

Mr Field: Not insofar as the ICG is concerned, no.

The CHAIRMAN: So there is no documentation at all?

Mr Field: There are terms of reference that are available publicly on the ICG website that sets out—but not an MOU.

The CHAIRMAN: We are aware of those terms of reference. Do you have a communications agreement with each other?

Mr Field: I am not sure precisely what was meant by “communications agreement”. Certainly as ICG members we have no communications agreements or any form of communications agreements between us. The ICG itself is a vehicle—an informal administrative arrangement—for communication, so in that sense the ICG, I suppose, itself represents an agreement for communication. But, really, the principal purpose of creating the ICG—mind you, it was created before I started as Ombudsman—as I understand it was so key integrity agencies could, in an informal administrative arrangement, share information between them and have communications between them, in part to remove inefficient duplication or potential duplication, but also to enhance collaborative work and activities, particularly ones that had a focus on whole-of-sector integrity. Certainly I have not signed any formal communication agreements with the ICG.

The CHAIRMAN: Are formal minutes held or records kept?

Mr Field: Yes, there are certainly formal minutes and records kept of the ICG meetings. The ICG meets quarterly, and indeed there is a second group, which is a working group, that also meets quarterly—a senior officers’ group, so the actual commissioners or chairs meet quarterly. Those minutes and records are kept by each
individual agency. There is a chair of the ICG, which rotates annually—the chair at the moment is the Auditor General—but each agency is responsible for keeping its own minutes and records of the meeting. There is a single minutes and records kept separately.

The CHAIRMAN: Is there a contingency in that? Would you have every minutes of every meeting you have attended in your records?

Mr Field: Absolutely. We have obligations to also keep them under our record keeping plan, so under the State Records Act as well.

The CHAIRMAN: In terms of freedom of information?

Mr Field: I cannot speak for the other agencies in the ICG, but we are a schedule 2 agency under the Freedom of Information Act—an exempt agency—so certainly we would be exempt from any FOI request in relation to those.

The CHAIRMAN: Question 7: is there a potential for conflict between the statutory independence of your office and the Integrity Coordinating Group?

Mr Field: Yes. Look, it is an excellent question and it is a question that I really tried to give some good thought. Look, I do not think so. It may even be that there is an argument that in fact it enhances independence as well. I do not think there is a potential conflict. At the end of the day there is a critical thing about the ICG that I think very much goes to this concept of independence; it is a voluntary administrative arrangement and it is not accountable to a minister and not accountable to the government of the day. One or two things would fundamentally impact upon independence; either the ICG was formalised in such a way, for example, as to report to a minister—I think we could not join on that basis, for example. Alternatively, if I went to an ICG meeting and one of the other members said, “Chris, you have to do this”, that would fundamentally impact upon my independence. Of course, neither of those things are the case, so I am able to act independently as an independent officer without any form of direction or other impinging upon that independence from the ICG.

The CHAIRMAN: I think we might see it a little differently than you.

Mr Field: Yes; absolutely.

The CHAIRMAN: What about the public perception of that? We are all here to serve the public.

Mr Field: Yes.

The CHAIRMAN: So what about the public perception of that? There is often quite a bit of criticism of the CCC, which is sitting in there with you.

Mr Field: Correct.

The CHAIRMAN: There is also some criticism of your role in the interface with the CCC and the police force.

Mr Field: Yes.

The CHAIRMAN: It only takes a front page article in The West Australian to create impressions.
Mr Field: I have not heard much about the second criticism in the time I have been in the office, but I know it was a criticism —.

The CHAIRMAN: It has been in the past.

Mr Field: Yes, I was about to say that it has historically been.

The CHAIRMAN: We are not trying to say this is occurring now, we are just talking about—our job is state administration. We are not saying these things are occurring, we are just questioning.

[11.50 am]

Mr Field: Let us be under no misapprehension about this. We are in the business of both actual and perceived issues. At the end of the day the Ombudsman’s office has to be always actually independent and fundamentally, unquestionably perceived to be independent, and we take that incredibly seriously in terms of perception. I have not to this stage seen that membership of the ICG would be perceived as diminishing our independence. I have been of the view that people perceive membership of the ICG as sensible in a different way, which is, it is a way of agencies who are in roughly similar spaces—in some cases there are crossovers between the agencies—to be sensibly able to sit down and talk about the fact they do not inefficiently duplicate or get in each other’s way in those spaces. I have always seen that as something that would be publicly beneficial and that the public would perceive the benefit of that. I have not personally, up until now, taken the view that the public would see that would be a diminishing of our independence. Certainly though, there could be all sorts of things that we could do, which could do that. Say for example, we have taken the view historically that if there was a suggestion that there was a government building here and there is going to be the department of corrections, the Department of Education and about five other government departments, and they said could you please co-locate in the middle of that building, I have always expressed the view and made it quite clear that I would never move into that building, because my view is that could be a public perception issue. People could say, “Hang on, I’ve just been to the department, and you come down to the next floor and it’s the Ombudsman.” I do think that there is clearly a range of things we could potentially do that could impact upon our independence. I have just not seen the ICG as one of them up to now.

The CHAIRMAN: We are not here trying to come up with conspiracy theories—and this is not a conspiracy theory—but I will just put to you that it is actually a good news story that should you look at the last two decades of the operations of the auditors of this nation of Australia, their regular meetings have changed the conduct of audit without any legislative change. So people getting together do change culture; people getting together do change function. That is occurring without our knowledge, maybe. That is our view. We do not know what you do. In fact, I would personally say I would agree that you meet for the common good, but I do not know that.

Mr Field: Look, Chairman, I think the reality is that people getting together will ultimately do exactly what you are saying, although that also happens individually. We ourselves are a very different agency to what we were five years ago, although our legislation has not changed. For example, we now have an incredible focus on
timeliness which, with great respect to my predecessors, was not necessarily in place when I started.

The CHAIRMAN: You look at function; we look at outcome. We are just trying to work out —

Mr Field: Chairman, I do not diminish your comments at all. I think they are very important comments that we will continue to take on board.

The CHAIRMAN: Getting to the integrity commissioner, question 5.8; should it have such a person sitting over it to safeguard public perceptions?

Mr Field: The overall comment I would make about 5.8 and 5.9 is that these will get into areas, ultimately, which of course are going to be matters of government policy if they are ever going to come into place. I will just put that caveat there, because generally speaking, and it does go to the issue of independence, an office like mine has to be very careful not to delve into policy areas, because later on if I am either supervising that policy or have some involvement in it, people can question the fact that I expressed a view over here, but now I have to be independent, particularly if the view went the other way, in actually overseeing that function. So it is an area that I am always very cautious about in terms of possible policy speculation. But I think there are some useful things I can add in response. One is, in terms of an integrity coordinating commissioner, there are certainly models for those sorts of roles. Tasmania would be one, for example. I think on the public record they are having levels of discussion in South Australia about similar models. And of course, Queensland has an integrity commissioner-type model, although quite a different model. I think you know, Chairman, it is more along the parliamentary commissioner-type model. Usually when you have those commission-type models, of course, you are retaining all of the other agencies, so in all of those states and jurisdictions we have spoken about, they still have all those independent agencies. You might, for example, as they do in Tasmania, have the, I think it is the Auditor General, the Ombudsman as ex officio members of the board of the commission, but they of course still have separate agencies—the Ombudsman and the Auditor General’s office. It would really come down to: is there an identified need, an identified gap, in our current model that would see such a sort of new regulatory mechanism required? My personal view at this stage is that I do not necessarily see that gap. I do think that we have—this is certainly something I have expressed publicly on many occasions—a very robust integrity framework in this state. Any criticisms aside, of course, we do have a standing commission against corruption; other states do not necessarily have that. We do have an Ombudsman, we do have an Auditor General and we do have an Information Commissioner. Generally speaking they are—I will not speak for my agency—well-regarded agencies that I think carry out their jobs in the public interest and are generally perceived to be independent in doing so. I do think we have a pretty robust framework. I also think we have a framework that is actually the envy of many places probably around the world. But certainly even in other states our ICG model and our agencies have been studied quite extensively. So I do think we have a model at the moment that is good. Is it perfect? Is it optimal? I would never say that. I would not say that about my own business. I always think you have got to have the view you could do better and then maybe optimise the optimisation—there might be improvements you can undertake. But my general feeling at this stage is it is a pretty
good model and I do not personally at the moment see the compelling need for such an agency. But it would of course be a matter for government policy.

The CHAIRMAN: There are two things, though. There is government and there is Parliament, and we represent Parliament.

Mr Field: My advice to Parliament at this stage—because I feel much more comfortable in that space, Chairman, than making what I might call a policy comment—would be through this committee that I think the integrity framework we have in Western Australia is a very strong framework. I think it is probably a benchmark framework. Even around the world but certainly within first-world countries and within Australia and New Zealand area—the Asia-Pacific area as well—I think it is a very strong framework. I think it is a framework that largely works very effectively and I do not at this stage see the need for a separate integrity commissioner, an umbrella-type commissioner at the top of those agencies.

The CHAIRMAN: You will probably find that the majority of parliamentarians would disagree with you. But what we would say is that if you do not watch it, that can change quickly.

Mr Field: Yes.

The CHAIRMAN: What you have got that is currently good may not be. But the other point that I think we are interested in is that you are living in a very quickly changing world.

Mr Field: Yes.

The CHAIRMAN: And there will be substantial change on you and the CCC in particular in a short period of time.

Mr Field: Yes.

The CHAIRMAN: So looking at functions like the ICG, it is of interest to us and we see it as our responsibility to report that back to Parliament, as all we can really say is, “Well, we don’t know.”

Mr Field: Chairman, it is really important for me to say that it depends what you mean by an integrity commission too. If you mean a Queensland-type integrity commission —

The CHAIRMAN: No, no.

Mr Field: — which is a separate body, which I think I am not willing —

The CHAIRMAN: No. When we are speaking to you, we are speaking to you in terms of, as you already stated, our existing agents of Parliament.

Mr Field: Yes.

The CHAIRMAN: They would not call the CCC that; nevertheless, in general terms we are looking at what we have got. We are not seeking to change; we are just wondering if there needs to be a coordination of activity, if there needs to be a better in-flow of information and if the Parliament needs to know what collectively the people, who are doing the very important function for the people Western Australia,
are doing. Then does there need to be a mechanism so that can be reported to the Parliament?

Mr Field: Yes, some sort of umbrella body that would sit above those agencies to coordinate those sorts of integrity activities. Not taking away those other agencies, which is not the model in other jurisdictions, there are unquestionably arguments for that, Chairman. I presume the very sensible parliamentarians and advisers in Tasmania would not have gone down that pathway if they did not think that there were sensible arguments for it. There will of course be arguments against it as well in terms of regulatory cost and in terms of regulatory impost. There will be other arguments against it and I think ultimately it is a matter for Parliament to sit down and weigh those costs and benefits up; and also, as you quite rightly say, to have a look at this very rapidly changing environment we are in. I would not have envisaged, when I started my Ombudsman role five years ago, the changes that would have occurred just in five years. I started with an organisation of sort of 26, 28 staff and we have sort of 70-odd with new functions and growth. I would not have necessarily envisaged that. So you will see changes over time. And I think it is absolutely correct: Parliament would always want to be mindful of the changing environment we live in.

The CHAIRMAN: That is the end of our questions. We really appreciate getting you in. We only see you rarely—or infrequently is perhaps a better way to say it.

Mr Field: And, Chairman, let me just say two things. I am mindful of the time and I will make both very short. First of all, we sincerely appreciate your time, absolutely so, in being able to come here today. Second of all, I give you my absolute assurance that we will look very carefully at each of the matters you have raised in terms of the qualitative improvements to the annual report, ones that will assist this committee and assist Parliament. My Principal Assistant Ombudsman and I already had this conversation before we came down here. We will be having a very close look at each of those issues to see what we can do.

The CHAIRMAN: We appreciate that. We have found, as we have said at other times today when you have not been present, that we wrestle with those views of what we actually do to improve administration. The important thing for us is the quality of the information we have before we start, not as what we are doing when we are in the process. I have been chair of committees for many, many years and I have been in the position in which halfway or two-thirds through an inquiry you find out you should not be having the inquiry. And I do not want to ever be in that position again. But I am not here to speak for me, so the question for this committee is we need good information to decide the two, three or five inquiries that we have into the course of a Parliament are the right inquiries.

Mr Field: We wrestle with the same issues in many ways as you do of course. We are in that way fellow travellers, but what I say is this: we are not quite a fellow traveller; we are your servant. We are a servant of Parliament and we are here to provide you the best quality information we can provide you to allow you to do your job properly, and we are committed to doing that.

The CHAIRMAN: We appreciate that. Again, thank you for your attendance.

Mr Field: Thank you.

Hearing concluded at 12.03 pm