

40TH PARLIAMENT



Report 29

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Consultation with Statutory Office Holders

Presented by
Hon Adele Farina MLC (Chair)
October 2019

Standing Committee on Public Administration

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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.

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EXECUTIVE SUMMARY

- 1 On 6 May 2019, the Standing Committee on Public Administration (Committee) held public hearings with the:
 - Parliamentary Commissioner for Administrative Investigations (Ombudsman)
 - Public Sector Commissioner
 - Information Commissioner
 - Inspector of Custodial Services,as part of its regular consultation with those statutory office holders under its term of reference 5.3(b).
- 2 Those hearings dealt with matters of interest to the Committee arising from the statutory office holders' Annual Reports for 2017–18.
- 3 A further private hearing was held with the Inspector of Custodial Services regarding a report entitled 'The birth at Bandyup Women's Prison in March 2018', provided to the Committee in December 2018.
- 4 This report briefly outlines the consultation with each statutory office holder.
- 5 The Committee extends its appreciation to the four statutory office holders and their staff for their assistance and cooperation in providing detailed information in response to the Committee's enquiries.

Recommendations

Recommendations are grouped as they appear in the text at the page number indicated:

RECOMMENDATION 1

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The 30 day time period provided by section 35 of the *Inspector of Custodial Services Act 2003*, for the tabling in Parliament of documents under section 33 or 34 of that Act, be reviewed.

RECOMMENDATION 2

Page 11

A clear government policy governing the transfer of pregnant women from Melaleuca Remand and Reintegration Facility to Bandyup Women's Prison, is required.

RECOMMENDATION 3

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Expand the accommodation for mothers and residential children at Bandyup Women's Prison.

RECOMMENDATION 4

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A subacute unit at Bandyup Women's Prison be established.

CHAPTER 1

Introduction

Term of reference

- 1.1 The Standing Committee on Public Administration (Committee) is required by paragraph 5.3(b) of its terms of reference to consult regularly with the following statutory office holders:
- Parliamentary Commissioner for Administrative Investigations (Ombudsman)
 - Public Sector Commissioner
 - Information Commissioner
 - Inspector of Custodial Services
- and any similar officer.

Outline of consultation

- 1.2 On 6 May 2019, the Committee held public hearings with the Ombudsman, the Public Sector Commissioner, the Information Commissioner and the Inspector of Custodial Services.
- 1.3 Those hearings dealt with matters of interest to the Committee arising from those statutory office holders' Annual Reports for 2017–18.
- 1.4 A further private hearing was held with the Inspector of Custodial Services regarding a report entitled 'The birth at Bandyup Women's Prison in March 2018', provided to the Committee in December 2018.
- 1.5 The Committee extends its appreciation to the four statutory office holders and their staff for their assistance and cooperation in providing detailed information in response to the Committee's enquiries.
- 1.6 These annual hearings facilitate a comprehensive understanding by the Committee of the current work of the statutory office holders, and enable the Committee to obtain more detailed information in areas of particular interest to it in relation to its terms of reference.
- 1.7 This report briefly outlines the consultation which occurred with each statutory office holder in 2019, and the specific matters in relation to which the Committee sought and obtained further information.

CHAPTER 2

Inspector of Custodial Services

Introduction

- 2.1 The Inspector of Custodial Services (Inspector) is an independent Parliamentary officer with responsibilities under the *Inspector of Custodial Services Act 2003* to regularly inspect and review custodial services and table reports in Parliament.
- 2.2 During 2017-18, the Office of the Inspector of Custodial Services (OICS) published:
- the 2017–18 Annual Report (OICS Annual Report)¹
 - reports of inspections of prisons and other custodial centres, together with other reports under the *Inspector of Custodial Services Act 2003*.
- 2.3 In December 2018, the OICS provided the Committee with a copy of a report titled ‘The birth at Bandyup Women’s Prison in March 2018’ (Bandyup report), together with a summary of the report which the Inspector intended to release to interested persons under section 24(b) of the *Inspector of Custodial Services Act 2003* (Bandyup summary report).²
- 2.4 The Bandyup report detailed the then Inspector’s investigations into the circumstances surrounding the unattended birth of a baby in a locked cell at Bandyup Women’s Prison (Bandyup) in March 2018.
- 2.5 The Inspector advised the Committee that the full Bandyup Report would not be released publicly as it contained distressing and sensitive information, the release of which would compromise the right to privacy of the woman who gave birth.
- 2.6 At the hearings held on 6 May 2019, the Committee’s questions for the Inspector and other representatives of the OICS were limited to:
- the OICS Annual Report
 - the Bandyup report.
- 2.7 The OICS Annual Report was dealt with by way of public hearing, and the Bandyup report, for the reasons noted in paragraph 2.5, was dealt with in private session.

Annual Report

- 2.8 The OICS Annual Report was tabled in the Legislative Council on 30 October 2018.³ The areas of interest identified by the Committee included:
- 2.8.1 provision of information to the OICS by the Department of Justice (DOJ)
- 2.8.2 whether the ‘scorecard of recommendations’, previously included in OICS reports prior to 2017, should be reinstated
- 2.8.3 the impact of the minimum 32-day embargo period after a report by the OICS is delivered to the Parliament⁴

¹ Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018.

² Office of the Inspector of Custodial Services, *The Birth at Bandyup Women’s Prison in March 2018, Inspector’s Summary*, report prepared by Neil Morgan, Inspector of Custodial Services, 12 December 2018, p 1.

³ Tabled Paper 2079, Legislative Council, 30 October 2018.

⁴ Imposed by section 35 of the *Inspector of Custodial Services Act 2003*.

- 2.8.4 the introduction of an alcohol and other drugs facility at Casuarina Prison (Casuarina) and the repurposing of the Wandoo reintegration facility for young men as an alcohol and other drugs rehabilitation prison for women
- 2.8.5 options for detaining young people in their local region rather than at the single youth justice facility at Banksia Hill Detention Centre (Banksia Hill)
- 2.8.6 involvement of the Department of Education in the provision of education services at Banksia Hill
- 2.8.7 the practice of double-bunking in prison cells
- 2.8.8 inflexible staffing arrangements in prisons, leading to increased prisoner frustration and tension
- 2.8.9 government targets for the reduction of prisoner numbers
- 2.8.10 further increase in the rate of Aboriginal incarceration since 2016–17
- 2.8.11 availability of short-term programs to remand prisoners and proposed changes to the remand accommodation at Casuarina
- 2.8.12 the recommended development of a dedicated remand facility at Hakea Prison (Hakea)
- 2.8.13 effect on the female prison population of the opening of the Melaleuca Remand and Reintegration Facility (Melaleuca) and the Wandoo Rehabilitation Prison (Wandoo)
- 2.8.14 identified problems with the transition to a new re-entry services provider
- 2.8.15 the implementation of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), including:
 - how the OICS has been involved in this process
 - how the obligations of OPCAT will change the scope of the work of the OICS.

Public hearing

- 2.9 On 6 May 2019, the following witnesses from the OICS appeared at a public hearing before the Committee:
 - Eamon Ryan, Inspector⁵
 - Darian Ferguson, Deputy Inspector of Custodial Services (Deputy Inspector)
 - Derek Summers, Manager, Corporate Governance.
- 2.10 The evidence provided to the Committee regarding the issues listed in paragraph 2.8 is summarised in the following paragraphs.⁶

Provision of information to the Office of the Inspector of Custodial Services by the Department of Justice

- 2.11 In 2018, officers from the OICS and the then Acting Inspector advised the Committee that there had in the past been some difficulties in obtaining information from the DOJ but that the situation had improved and that memoranda of understanding between the OICS and the DOJ had been drafted but were not finalised.⁷

⁵ Eamon Ryan commenced his appointment as Inspector of Custodial Services on 6 May 2019.

⁶ Nine questions on notice were taken during the hearing, answers to which were provided on 30 May 2019.

⁷ Andrew Harvey, Acting Inspector of Custodial Services; Natalie Gibson, Director, Operations and Rowena Davis, Director, Reviews; Office of the Inspector of Custodial Services, *Transcript of evidence*, 7 May 2018, pp 3–4.

- 2.12 At the 2019 hearing, the Deputy Inspector advised that the situation in relation to the provision of information by the DOJ has greatly improved since 2017. Whilst the relevant memoranda of understanding were still not finalised, the OICS had a commitment from the DOJ to work with the OICS to progress them.⁸
- 2.13 The Committee notes that the memoranda of understanding have been awaiting finalisation for some time, and encourages the continuation of that process.

Reinstatement of the 'scorecard of recommendations'

- 2.14 In 2018, the then Acting Inspector advised the Committee that the 'scorecard assessment' of implementation of recommendations, which had been included at the end of each OICS report until 2017, had ceased.⁹
- 2.15 At the 2019 hearing, the Committee asked whether consideration had been given to reinstituting the scorecard of recommendations. The Deputy Inspector advised that the scorecard of recommendations had not been reintroduced as it was perceived to be a subjective method of measuring implementation of recommendations.¹⁰ Instead, the Inspector advised that he intends to turn his mind to recommendations made, the follow-up and follow through of these and how this is reported in a clear and transparent way.¹¹

Impact of the 30 day embargo period on OICS reports

- 2.16 Section 35 of the *Inspector of Custodial Services Act 2003* requires that reports of the OICS are to be tabled in Parliament:
- (a) not before 30 days after the document is delivered [to the Speaker of the Legislative Assembly, the President of the Legislative Council and the Minister for Corrective Services]; and
 - (b) as soon as practicable after the expiration of that 30 day period.
- 2.17 The Inspector advised the Committee that this 'minimum 32 day embargo period'¹² delays the public release of OICS reports, and noted:
- In any of this kind of work, time is a bit of the essence, and the sooner and the more contemporary your report is to the time of the work and the review, the more value it is both to yourselves, the Parliament more generally and the general public.¹³
- 2.18 The Manager, Corporate Governance noted that the embargo period assumes that the OICS has not gone through proper legal process:
- If we name or describe things that can identify people, it assumes we are not doing that, and that has already been done prior to the lodgement of the report, so it is effectively a redundant and ineffective process that has already been performed. That one-month delay makes a difference, especially with some of our

⁸ Darian Ferguson, Deputy Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 2.

⁹ Andrew Harvey, Acting Inspector of Custodial Services, Office of the Inspector of Custodial Services, Letter, 18 May 2018, p 2.

¹⁰ Darian Ferguson, Deputy Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 2.

¹¹ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 2.

¹² Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018, p 6.

¹³ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 5.

reports and the pressure to get them out into the public domain. The 30 days makes a bit of difference.¹⁴

- 2.19 The Committee agrees with the Inspector's comment that the 30 day embargo period is too long and does not allow for a timely response by the OICS. The Committee recommends that this time period be reviewed.

RECOMMENDATION 1

The 30 day time period provided by section 35 of the *Inspector of Custodial Services Act 2003*, for the tabling in Parliament of documents under section 33 or 34 of that Act, be reviewed.

Alcohol and Other Drugs facilities at Casuarina Prison and Wandoo Rehabilitation Prison

- 2.20 The OICS Annual Report noted that in 2018:

- Wandoo (which had been achieving good outcomes as a reintegration facility for young men) was repurposed as an alcohol and other drugs rehabilitation prison for women.
- It was announced that a male alcohol and other drugs facility will be accommodated within the Casuarina footprint, instead of the previously announced conversion of Melaleuca into a male 'meth-rehab' facility.¹⁵

- 2.21 In response to the Committee's question as to whether, in the Inspector's opinion, those facilities were sufficient to meet expected needs, the Inspector and the Deputy Inspector advised:

- The OICS will pay particular attention as those facilities come online and as the opportunities for them to make a difference come to fruition.¹⁶
- Wandoo is scheduled for inspection by the OICS in November 2019.¹⁷
- Stage one of the building of the alcohol and other drugs facility for men at Casuarina will be finalised by the end of 2019 and stage two by the middle of 2020. The OICS will inspect the Casuarina facility after a suitable period of time.¹⁸

- 2.22 The Committee notes the change in service provision of these facilities and awaits the Inspector's reviews of the implementation of these changes.

Options for detaining young people in their local region rather than at Banksia Hill Detention Centre

- 2.23 The OICS Annual Report said of the OICS 2017 report on behaviour management at Banksia Hill:¹⁹

¹⁴ Derek Summers, Manager, Corporate Governance, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 4.

¹⁵ Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018, pp 8–9.

¹⁶ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 6.

¹⁷ Darian Ferguson, Deputy Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 6.

¹⁸ *ibid.*, p 7.

¹⁹ Office of the Inspector of Custodial Services, *Behaviour management practices at Banksia Hill Detention Centre*, June 2017, Tabled paper 328, Legislative Council, 15 August 2017.

The report attracted considerable public attention and support, and the Premier announced that the government will examine options for detaining young people from the Pilbara, Kimberley and the Goldfields in their local region rather than Banksia Hill. It will also examine alternatives for young women and girls. These are welcome developments but are yet to be realised.²⁰

2.24 The Committee noted that the same statement was made in the 2016–17 Annual Report.²¹

2.25 The Inspector advised the Committee that the OICS was not aware of any progress in relation to the Premier's announcement.²²

2.26 The Committee supports the Inspector's view that these are welcome announcements and awaits further developments on this issue.

Involvement of the Department of Education in the provision of education services at Banksia Hill Detention Centre

2.27 In 2018, the then Acting Inspector advised the Committee that education services at Banksia Hill were provided by the DOJ without consultation with the Department of Education.²³

2.28 In answer to a question on notice at the 2019 hearing, the Inspector advised the Committee that it was his understanding that the DOJ has a Memorandum of Understanding (MOU) with the Department of Education in relation to the educational support for students in the care of DOJ. The Inspector advised that the MOU was developed following consultation between the two departments and the aim is to ensure the educational needs of children and young people, who are clients of both agencies, are supported.²⁴

2.29 The Inspector also advised that the Principal at Banksia Hill:

- works closely with the Associate Principal of the School of Special Needs: Behaviour and Engagement within the Department of Education to coordinate and improve the transition of young people back to education in the community
- sits on a cross-agency working group to address the issue of violence in schools
- works with the Acting Assistant Executive Director, Teaching and Student Support Services to progress professional development for Banksia Hill teachers. In 2019, Banksia Hill teachers were given access to Department of Education digital resources and professional learning opportunities,

and that Youth Transition Coordinators from the Department of Education visit Banksia Hill on a daily basis to engage with sentenced young people to encourage re-engagement in education and training.²⁵

2.30 The Committee supports the ongoing involvement of the Department of Education in conjunction with the DOJ in the delivery of educational services at Banksia Hill to support the re-engagement of young offenders.

²⁰ Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018, p 9.

²¹ Office of the Inspector of Custodial Services, *Annual Report 2016–17*, 19 October 2017, p 9.

²² Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 7.

²³ Andrew Harvey, Acting Inspector of Custodial Services, Office of the Inspector of Custodial Services, *Transcript of evidence*, 7 May 2018, pp 8–9.

²⁴ Eamon Ryan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, Letter, 30 May 2019, p 1.

²⁵ *ibid.*, pp 1–2.

The practice of double-bunking in prison cells

- 2.31 The OICS Annual Report stated that the majority of cells in the state's prisons are now routinely double-bunked:

In 2010, the Department told us that double-bunking was a temporary measure. That was never a credible position and double-bunking is now routine practice. There are no signs that double-bunking will be reversed.²⁶

- 2.32 The Inspector advised the Committee:

I am pretty sure that double-bunking is standard practice throughout the country now just due to the demands of infrastructure versus a spiralling prison population.²⁷

Inflexible staffing arrangements in prisons, leading to increased prisoner frustration and tension

- 2.33 The OICS Annual Report noted that staffing arrangements in prisons:

are inflexible and further penalise prisoners. This increases prisoner frustration and tension. These are likely to have been factors in the riot that occurred at Greenough Regional Prison in July 2018.²⁸

- 2.34 By way of explanation of this, the Inspector advised the Committee that when prisons are short-staffed, this can lead to the increased use of lock-downs, where prisoners are locked in cells or wings, which in turn can lead to increased frustration in the prisoner population.²⁹

Government targets for the reduction of prisoner numbers

- 2.35 The OICS Annual Report outlines a number of options for reducing prisoner numbers, including a focus on Aboriginal community justice mechanisms.³⁰

- 2.36 In 2018, in response to the Committee's question about plans to build a new metropolitan prison, the Director of Operations indicated that she understood there was a resource within the Attorney General's office being dedicated to reducing prisoner numbers, and that it was expected that the Inspector would be given a briefing.³¹

- 2.37 In response to the Committee's follow-up at the 2019 hearing, the Inspector advised that the former Inspector had not received a formal briefing on this issue.³²

- 2.38 The Committee has sought clarification from the Attorney General as to the status of this resource within his office, and communication on this issue with OICS. The Committee encourages the provision of a full briefing to OICS on this issue by the Attorney General's office, together with ongoing engagement.

²⁶ Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018, p 10.

²⁷ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 8.

²⁸ Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018, p 10.

²⁹ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, pp 8–9.

³⁰ Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018, p 11.

³¹ Natalie Gibson, Director, Operations, Office of the Inspector of Custodial Services, *Transcript of evidence*, 7 May 2018, p 7.

³² Eamon Ryan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, Letter, 30 May 2019, p 2.

Rate of Aboriginal incarceration has further increased since 2016–17

- 2.39 The OICS Annual Report advised that Aboriginal prisoners make up:
- 40% of the total prison population (increased from 38% in the previous year's Annual Report³³)
 - 78% of young people in custody
 - 47% of women in custody.³⁴
- 2.40 In response to the Committee's question regarding strategies to reduce these numbers, including Aboriginal community justice mechanisms as referenced in the OICS Annual Report,³⁵ the Inspector advised:

We are not aware of any community justice recommendations. Certainly there are some prisons which have programs that are specifically designed for Aboriginal people, but there is not a consistent approach across all of the estates. It is difficult to provide a comprehensive response to that question simply because the rates are about the same, I think, looking at the statistics this morning. There are still high numbers of Aboriginal people in prison.³⁶

Availability of short-term programs to remand prisoners and proposed changes to the remand accommodation at Casuarina Prison

- 2.41 In 2018, the then Acting Inspector advised the Committee that short-term programs (for example drug and alcohol rehabilitation) are not available to remand prisoners, some of whom are on remand for over 12 months.³⁷
- 2.42 When questioned on this issue at the 2019 hearing, the Inspector and the Deputy Inspector advised the Committee that they were not aware whether or not remandees currently have access to such programs.³⁸ The Inspector suggested that this would be a question for the DOJ.³⁹
- 2.43 The Committee has sought clarification from the DOJ as to the availability of short-term programs to remand prisoners.

The recommended development of a dedicated remand facility at Hakea Prison

- 2.44 The OICS Annual Report suggested that, in the short term, Hakea should be turned into a dedicated remand facility and sentenced prisoners dispersed throughout the state.⁴⁰
- 2.45 When asked about this issue, the Inspector advised the Committee:
- I think in an ideal world, you would have a single remand facility, but until the infrastructure changes or whatever that are currently being implemented, it physically would not be possible, I do not think.⁴¹

³³ Office of the Inspector of Custodial Services, *Annual Report 2016–17*, 19 October 2017, p 11.

³⁴ Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018, p 11.

³⁵ *ibid.*

³⁶ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, pp 9–10.

³⁷ Andrew Harvey, Acting Inspector of Custodial Services, Office of the Inspector of Custodial Services, *Transcript of evidence*, 7 May 2018, p 9.

³⁸ Eamon Ryan, Inspector and Darian Ferguson, Deputy Inspector; Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 10.

³⁹ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 10.

⁴⁰ Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018, p 11.

⁴¹ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 11.

Effect on the female prison population of the opening of Melaleuca Remand and Reintegration Facility and Wandoo Rehabilitation Prison

2.46 The OICS Annual Report stated that:

- in 2017–18, women made up almost 11% of the prison population (compared with 8% a decade ago)
- pressure on the women's estate reduced when Melaleuca opened, and will be further reduced by the opening of the repurposed 77 bed Wandoo facility.⁴²

2.47 As to the situation at Bandyup following the opening of Melaleuca and Wandoo, the Inspector advised the Committee:

the opening of Melaleuca and the opening of Wandoo has relieved a significant amount of pressure, and there is a less tense and less heightened environment within Bandyup now. But that is largely anecdotal; that is not based on anything other than a brief conversation this morning talking about Bandyup and how it was going. But I think it is worthwhile sharing.⁴³

2.48 The Inspector addressed specific issues regarding conditions at Bandyup in response to the Committee's questions about the Bandyup report.⁴⁴

Problems with the transition to a new re-entry services provider

2.49 The OICS Annual Report outlined some problems in the transition to a new re-entry services contractor, the ReSet consortium, and some reductions in the scope of services.⁴⁵

2.50 At the 2019 hearing, the Inspector advised the Committee:

those issues appear to have resolved themselves and the ReSet consortium appeared to be delivering a reasonably good service across the estates. The issues with the contract transition were specific to a period of time but since then, they have had a chance to bed those services in. The concerns mentioned in the annual report appear to have been largely ameliorated.⁴⁶

Implementation and implications of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

2.51 The OICS Annual Report advised that in December 2017 the Federal Government had ratified OPCAT, requiring all states and territories, and the Commonwealth, to implement systems of independent oversight for all closed places.

2.52 In response to the Committee's questions regarding the implications of the implementation of OPCAT, the Inspector advised that a 'National Preventative Mechanism' is required to commence by December 2020, and:

The Commonwealth Ombudsman will provide oversight for Commonwealth primary places of detention and the States and Territories will have NPM [National Preventative Mechanism] bodies for their respective jurisdictions. The Commonwealth Ombudsman has undertaken an assessment of the extent to which OPCAT compliance is, or is not, currently being achieved in different places

⁴² Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018, p 12.

⁴³ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 11.

⁴⁴ See paragraphs 2.53 – 0.

⁴⁵ Office of the Inspector of Custodial Services, *Annual Report 2017–18*, 30 October 2018, p 12.

⁴⁶ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence*, 6 May 2019, p 12.

of detention, by different inspecting bodies. A public report of their findings will be made available in the second half of the year. ...

Most of the work on OPCAT implementation since ratification has remained at the Commonwealth level. We have participated in the AHRC's [Australian Human Rights Commission's] roundtable consultation and provided information to the Commonwealth Ombudsman as part of its assessment. ...

We continue to participate in discussion on how the OPCAT arrangements are to apply and will monitor the potential impact on the Office.⁴⁷

Report into the birth at Bandyup Prison in March 2018 – private hearing

2.53 The Bandyup report details the former Inspector's investigations regarding the unattended birth of a baby inside a locked cell at Bandyup in March 2018.

2.54 The Bandyup summary report advised:

I wanted to understand how such a distressing, degrading and high risk set of events could have occurred in a 21st Century Australian prison.

I also wanted to know what the Department of Justice was doing to improve its practices, to mitigate the risks to pregnant women and their unborn and newly-born children, and to ensure there was no repeat of what happened ...⁴⁸

2.55 The Committee held a private hearing with the same witnesses listed in paragraph 2.9 to discuss the Bandyup report, including the following specific issues:

- The transfer of pregnant remand prisoners from Melaleuca to Bandyup and the time at which that occurs.
- Status of the additional mother and baby accommodation planned for Bandyup.
- Impact of the practice of double-bunking on the provision of emergency medical care at Bandyup.
- Developments in the government's proposal to build an infirmary at Bandyup.
- Adequacy of the DOJ's responses to the recommendations in the Bandyup Report, including improvements in staff response and communications in relation to medical emergencies, particularly at night; the accurate logging of cell calls; improvement of incident reporting within the DOJ; and the implementation of strategies to ensure prisoners feel safe at Bandyup.

2.56 The evidence provided to the Committee regarding the issues listed in paragraph 2.55 is summarised in the following paragraphs.

Transfer of pregnant remand prisoners from Melaleuca Remand and Reintegration Facility to Bandyup Women's Prison

2.57 The Bandyup summary report indicated that Melaleuca does not have facilities for women in the later stages of pregnancy.⁴⁹

⁴⁷ Eamon Ryan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, Letter, 30 May 2019, p 5.

⁴⁸ Office of the Inspector of Custodial Services, *The Birth at Bandyup Women's Prison in March 2018, Inspector's Summary*, report prepared by Neil Morgan, Inspector of Custodial Services, 12 December 2018, p 1.

⁴⁹ *ibid.*, p 2.

2.58 The Committee questioned the stage at which pregnant women are transferred from Melaleuca to Bandyup. The Inspector advised:

we were advised by the [DOJ] in a letter dated 12 February 2019 that when Melaleuca commenced operations in 2016, agreement between the [DOJ] and Sodexo was that only those pregnant women who had been assessed as being eligible to keep their baby with them would be transferred to Bandyup. This would occur at the commencement of the third trimester. ...

In practice, we now understand there is no set time for such a transfer. Decisions on transfers are made on a case by case basis by the Mothers and Babies Coordinating Committee based at Bandyup. The committee involves a multidisciplinary team which includes health services staff, custodial staff and a family links officer from the Department of Communities.⁵⁰

2.59 The Committee recommends that there should be a clear government policy on the transfer of pregnant women from Melaleuca to Bandyup.

RECOMMENDATION 2

A clear government policy governing the transfer of pregnant women from Melaleuca Remand and Reintegration Facility to Bandyup Women's Prison, is required.

Status of the additional mother and baby accommodation planned for Bandyup

2.60 The Bandyup summary report advised:

The Bandyup Nursery is used by women in the late stages of pregnancy and mothers with young babies. It can hold only eight women and is often full [...]

We have been raising this issue for many years and in 2017 we recommended an expansion of accommodation for mothers and their babies. The Department said it would create additional housing by early 2018. That has not happened.

When we asked for an update during this review, we were told that additional housing was no longer necessary because, at the time, there were vacancies in the nursery. This was a wholly inadequate response: demand fluctuates and provision must be made.⁵¹

2.61 The Bandyup summary report recommended expanding housing at Bandyup for women in the late stages of pregnancy and new mothers.⁵²

2.62 The Department's response to this recommendation was to advise that:

- a scope of work is currently being confirmed to equip a third house for accommodating mothers and residential children at Bandyup, while allowing for fluctuating population demands
- Unit 6 at Bandyup has been designated for accommodation for pregnant women. This is a single story unit with air-conditioned cells and in cell shower facilities.⁵³

⁵⁰ Eamon Ryan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, Letter, 30 May 2019, p 3.

⁵¹ Office of the Inspector of Custodial Services, *The birth at Bandyup Women's Prison in March 2018, Inspector's Summary*, report prepared by Neil Morgan, Inspector of Custodial Services, 12 December 2018, p 2.

⁵² *ibid.*, p 3.

⁵³ Office of the Inspector of Custodial Services, *The birth at Bandyup Women's Prison in March 2018*, November 2018 (confidential report), p 39.

2.63 At the 2019 hearing, the Deputy Inspector advised the Committee:

I think the department's response highlights the issues that they have. There is fluctuating demand. Certainly, at the date of their response, when they said there were three vacancies, obviously they had capacity, but we know that that can be taken up very quickly.

... I understand from the information given to us by the department that that sort of situation would not happen again, and [pregnant women] are accommodated in another unit. Those units are still double-bunked and there is still not a huge amount of space.⁵⁴

2.64 In relation to the adequacy of Unit 6 for pregnant women, the Committee notes the comments of the former Inspector in the Bandyup summary report that the bunks in Unit 6 would hinder the provision of emergency medical care⁵⁵ (see paragraph 2.66).

2.65 The Committee recommends that the accommodation for mothers and residential children at Bandyup be expanded as advised by the DOJ in 2017–18, to support the delivery of services to pregnant women at Bandyup.

RECOMMENDATION 3

Expand the accommodation for mothers and residential children at Bandyup Women's Prison.

Impact of the practice of double-bunking on the provision of emergency medical care at Bandyup Women's Prison

2.66 The Bandyup summary report indicated that double bunks in the cell in question in Unit 2 had hindered the ability to provide emergency medical care. The report found that if the birth had taken place in Unit 6,⁵⁶ staff would have had even more difficulty providing emergency medical care.⁵⁷

2.67 It was noted in the full report that this was not only a problem for pregnant women, but also for providing emergency medical care in other circumstances.⁵⁸

2.68 The Deputy Inspector advised the Committee at the 2019 hearing:

- The nature of the demand on the infrastructure in custodial estates is such that double-bunking is routine
- The DOJ is trying to minimise the risk through a risk mitigation strategy, should people have a medical emergency, given the nature of the cells

⁵⁴ Darian Ferguson, Deputy Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence* (private session), 6 May 2019, p 2.

⁵⁵ Office of the Inspector of Custodial Services, *The birth at Bandyup Women's Prison in March 2018, Inspector's Summary*, report prepared by Neil Morgan, Inspector of Custodial Services, 12 December 2018, p 3.

⁵⁶ Unit 6 is where the Department has advised pregnant women are currently being housed if mother and baby accommodation is unavailable: see paragraph 2.62.

⁵⁷ Office of the Inspector of Custodial Services, *The birth at Bandyup Women's Prison in March 2018, Inspector's Summary*, report prepared by Neil Morgan, Inspector of Custodial Services, 12 December 2018, p 3.

⁵⁸ Office of the Inspector of Custodial Services, *The birth at Bandyup Women's Prison in March 2018*, November 2018 (confidential report), p 11.

- Insofar as the establishment of infrastructure that would be more suitable in the situation of a medical emergency, he was not aware of any changes that have been made to the infrastructure at Bandyup.⁵⁹

2.69 The Committee has sought information from the DOJ as to the risk mitigation strategies currently in place to manage the risks associated with medical emergencies in double-bunked cells.

Developments in the government's proposal to build an infirmary at Bandyup Women's Prison

2.70 The Bandyup report recommended that the DOJ build an infirmary in the women's prison system.⁶⁰ In response, the DOJ advised that it had 'further progressed development of the Custodial Infrastructure Plan and will include options to incorporate an infirmary facility for the female estate in this planning process'.⁶¹

2.71 The Inspector advised in his answers to the Committee's questions on notice at the 2019 hearing that:

- the OICS had not been advised if planning for the establishment of an infirmary at Bandyup had commenced
- the medical centre at Bandyup has two beds which are used as an infirmary on a temporary basis.⁶²

2.72 In April 2019, the Minister for Corrective Services advised the Committee:

A budget submission for a subacute unit at Bandyup is with Cabinet for consideration and the result will be available upon release of the budget in May 2019.⁶³

2.73 The Committee notes that funds for the proposed infirmary are not specified in the Budget Papers for 2019–20 and recommends that an allocation be made.

RECOMMENDATION 4

A subacute unit at Bandyup Women's Prison be established.

Staff response and communication issues

2.74 The Bandyup report made findings and recommendations regarding the speed of response to the imminent birth, staff response and communication issues, and record-keeping and incident-reporting at Bandyup and in the DOJ.⁶⁴

⁵⁹ Darian Ferguson, Deputy Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence* (private session), 6 May 2019, p 2.

⁶⁰ Office of the Inspector of Custodial Services, *The birth at Bandyup Women's Prison in March 2018, Inspector's Summary*, report prepared by Neil Morgan, Inspector of Custodial Services, 12 December 2018, p 3.

⁶¹ Office of the Inspector of Custodial Services, *The birth at Bandyup Women's Prison in March 2018*, November 2018 (confidential report), p 29.

⁶² Eamon Ryan, Inspector of Custodial Services, Office of the Inspector of Custodial Services, Letter, 30 May 2019, p 3.

⁶³ Hon Francis Logan MLA, Minister for Corrective Services, Letter, 11 April 2019, <http://www.parliament.wa.gov.au/Parliament/commit.nsf/5062415c2889e88d48257727000d20c4/a9f1ef8dd1e71fd04825840200308378?OpenDocument>, Attachment p 1.

⁶⁴ Office of the Inspector of Custodial Services, *The birth at Bandyup Women's Prison in March 2018, Inspector's Summary*, report prepared by Neil Morgan, Inspector of Custodial Services, 12 December 2018, p 3.

2.75 The response of the DOJ in relation to the staff response issues was as follows:

Bandyup is providing trauma informed training to all staff. The objectives of this training include assisting staff to promptly identify trauma and support required, and ensure that prisoners feel safe. Bandyup has also provided training sessions to staff regarding professional standards, integrity, working as a team, and communication. Last year, the Department also introduced training for trauma informed approaches into its entry level training package, and will continue to provide this to all new prison officers.⁶⁵

2.76 The Deputy Inspector advised the Committee:

We were pleased to see that following the release of the [Bandyup] report, there were a number of medical issues that arose at Bandyup that were dealt with very quickly and very professionally. As I say, we just hope that the factors that the department has actually put in place are effective.⁶⁶

Department of Justice responses to the Bandyup report

2.77 Generally, as to the DOJ's responses to the recommendations of the Bandyup report, the Inspector advised that the recommendations would continue to be in the focus of the OICS in its ongoing liaison and also in its next inspection.⁶⁷

2.78 The Committee wrote to the Minister for Corrective Services on 14 February 2019 seeking a full and detailed update of the action taken to date by the DOJ to:

- implement the Inspector's recommendations contained in the Bandyup report and all previous reports regarding Bandyup
- action matters of concern raised by the Inspector in his reports on Bandyup that do not form part of a formal recommendation.

2.79 The Committee received detailed responses on those issues from the Minister for Corrective Services on 18 April 2019 and 9 September 2019.⁶⁸

Committee comments

2.80 The Committee awaits with interest the Inspector's reports into the inspections due to take place later in 2019 at Casuarina, Wandoo and other facilities, and the next inspection of Bandyup in light of the matters raised in the Bandyup report.

⁶⁵ Office of the Inspector of Custodial Services, *The birth at Bandyup Women's Prison in March 2018*, November 2018 (confidential report), p 29.

⁶⁶ Darian Ferguson, Deputy Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence* (private session), 6 May 2019, p 6.

⁶⁷ Eamon Ryan, Inspector, Office of the Inspector of Custodial Services, *Transcript of evidence* (private session), 6 May 2019, p 9.

⁶⁸ Hon Francis Logan MLA, Minister for Corrective Services, Letter, 11 April 2019, [available on the Committee's website](#); and Letter, 27 August 2019, regarding the recommendations in Office of the Inspector of Custodial Services, Report 73, 7 October 2011, <https://www.oics.wa.gov.au/reports/73-report-announced-inspection-bandyup-womens-prison/>, Report 57, 20 January 2009, <https://www.oics.wa.gov.au/reports/57-report-announced-inspection-bandyup-womens-prison/>, Report 36, 17 October 2006, <https://www.oics.wa.gov.au/reports/36-report-announced-inspection-bandyup-womens-prison/> and Report 13, 28 March 2003, <https://www.oics.wa.gov.au/reports/13-report-announced-inspection-bandyup-womens-prison/>.

CHAPTER 3

Information Commissioner

Introduction

- 3.1 The Information Commissioner is an independent officer, reporting directly to Parliament, established by the *Freedom of Information Act 1992* (the FOI Act).
- 3.2 The main function of the Information Commissioner is to provide independent external review of decisions made by agencies on access applications and requests to amend personal information under the FOI Act. Other responsibilities include:
- ensuring that agencies are aware of their responsibilities under the FOI Act
 - ensuring that members of the public are aware of the FOI Act and their rights
 - providing assistance to members of the public and agencies on matters relevant to the FOI Act
 - recommending to Parliament legislative or administrative changes that could be made to help the objects of the FOI Act to be achieved.⁶⁹

Annual Report

- 3.3 The 2017–18 Annual Report of the Office of the Information Commissioner (OIC) was tabled in the Legislative Council on 20 September 2018 (OIC Annual Report).⁷⁰ The areas of interest identified by the Committee included:
- 3.3.1 leadership changes and staffing issues, including:
- changes in leadership of the OIC following the resignation of long-term Information Commissioner Sven Bluemmel in September 2017
 - appointment of a permanent Information Commissioner
 - staffing issues within the OIC
- 3.3.2 issues regarding the OIC's external review function, including:
- management of Freedom of Information (FOI) applications across amalgamated departments resulting from the 2017 Machinery of Government (MOG) changes
 - participant satisfaction with the external review process
 - conciliation rate of applications
 - timeliness of resolution of external review matters
 - number of complaints resolved by formal published decision
 - decisions on FOI access applications made by the principal officer of an agency (with the effect that internal review is not available)
 - approach of the OIC in relation to identifying personal information in CCTV and other video recorded footage

⁶⁹ Office of the Information Commissioner, Western Australia. See: <<https://www.oic.wa.gov.au/en-au/H005>>. Viewed 6 August 2019.

⁷⁰ Tabled Paper 1941, Legislative Council, 20 September 2018.

- 3.3.3 legislative changes recommended in the OIC Annual Report
- 3.3.4 issues regarding the FOI awareness function of the OICS, including:
 - briefings offered to agencies affected by the MOG changes
 - decrease in the number of FOI Co-ordinators and Decision Writing workshops provided by the OIC
 - the 2017/18 national 'Dashboard of Metrics'.

Hearing and Questions on Notice

- 3.4 On 6 May 2019, the following witnesses from the OIC appeared before the Committee:
 - Catherine Fletcher, Acting Information Commissioner
 - Michelle Fitzgerald, Executive Officer
 - Catherine Coombs, Principal Legal Officer
 - Antonius Pruyn, Complaints Coordinator.
- 3.5 The Committee notes that Catherine Fletcher was subsequently appointed as the Information Commissioner for a 5-year term commencing on 16 July 2019.
- 3.6 The evidence provided to the Committee regarding the issues listed in paragraph 3.3 is summarised in the following paragraphs.⁷¹

Leadership changes and staffing issues

- 3.7 The Acting Information Commissioner advised:
 - There had been three Acting Information Commissioners (including Catherine Fletcher) since the resignation of Sven Bluemmel in September 2017. The transition between Acting Information Commissioners had been handled very well by the office.⁷²
 - Following a period of instability caused by resignations, retirements and significant staff changes, the OIC had developed some stability in the human resources area and was making some improvements in that regard.⁷³

External review function

- 3.8 Within amalgamated departments resulting from the MOG changes, the Acting Information Commissioner advised that transitions to a unified single point of FOI contact were working reasonably well. The OIC had held meetings with some of the amalgamated departments to monitor progress.⁷⁴
- 3.9 The OIC managed a 33% increase in received external FOI review applications by reviewing and adjusting its processes and instituting a targeted effort in conciliation to deal with matters at a very early stage.⁷⁵

⁷¹ Eight questions on notice were taken during the hearing, answers to which were provided on 31 May 2019.

⁷² Catherine Fletcher, Acting Information Commissioner, Office of the Information Commissioner, *Transcript of evidence*, 6 May 2019, pp 2–3.

⁷³ *ibid.*, pp 12–13.

⁷⁴ *ibid.*, pp 3–4.

⁷⁵ *ibid.*, p 6.

- 3.10 The OIC Annual Report noted that the practice of decisions on access applications being made by the principal officer of an agency was discouraged, as it had the effect that internal review is not available and external review was the only review option.⁷⁶ The Acting Information Commissioner advised that no ongoing statistics are kept on the prevalence of this issue, as it was not identified as a trend that warrants monitoring.⁷⁷

Personal information in CCTV and other video recorded footage

- 3.11 The OIC Annual Report advised that the issue of the identification of personal information in CCTV footage had been considered by the Supreme Court of Western Australia in 2018.⁷⁸
- 3.12 The Acting Information Commissioner and the Principal Legal Officer of the OIC advised the Committee:
- Since then, there has been a dramatic decline in the number of applications for review concerning the identification of personal information in CCTV footage.⁷⁹
 - The use of body-worn cameras, personal recording devices and other technological developments was expected to lead to new subject matters to deal with in a FOI context as to what constitutes a 'document of government' for the purposes of the FOI Act.⁸⁰

Legislative changes recommended in the Annual Report

- 3.13 The OIC Annual Report recommended a number of legislative changes, including the extension of the FOI Act to privately operated health facilities which provide public patient services pursuant to contracts with the Minister for Health. Those facilities are currently not covered by the FOI Act.⁸¹
- 3.14 The Acting Information Commissioner advised the Committee that the issue was becoming more acute as more government services are contracted out. The issue had been raised with the Attorney General but had not been specifically acted on.⁸²

If and when there is a suggestion of a review of the Act, it would be one of the most urgent recommendations that we would suggest be addressed.⁸³

⁷⁶ Office of the Information Commissioner, *Annual Report 2017–18*, 20 September 2018, pp 33–4.

⁷⁷ Catherine Fletcher, Acting Information Commissioner, Office of the Information Commissioner, Letter, 31 May 2019, Attachment p 4.

⁷⁸ Office of the Information Commissioner, *Annual Report 2017–18*, 20 September 2018, pp 29–30. See *Public Transport Authority* [2018] WASC 47.

⁷⁹ Catherine Coombs, Principal Legal Officer, Office of the Information Commissioner, *Transcript of evidence*, 6 May 2019, p 10.

⁸⁰ Catherine Fletcher, Acting Information Commissioner, Office of the Information Commissioner, *Transcript of evidence*, 6 May 2019, p 10.

⁸¹ Office of the Information Commissioner, *Annual Report 2017–18*, 20 September 2018, p 29.

⁸² Catherine Fletcher, Acting Information Commissioner, Office of the Information Commissioner, *Transcript of evidence*, 6 May 2019, pp 11–12.

⁸³ *ibid.*, p 12.

3.15 The Acting Information Commissioner referred the Committee to the former Information Commissioner Sven Bluemmel:

who was questioned quite extensively about this issue. I think he, particularly, made a submission to government—and I am not sure where else his submission went to—at the time, arising out of the Pisano case. In his evidence to this committee back in 2016, he extensively addressed this issue and why it was a problem.⁸⁴

3.16 The Committee supports the comments of the Acting Information Commissioner that the issue should be addressed in legislative reform.

Freedom of Information awareness function

3.17 The Acting Information Commissioner advised:

- In 2017–18, ten new amalgamated departments were offered briefings by the OIC about the responsibilities and opportunities provided by the FOI Act. Eight of those departments had requested FOI briefings for Corporate Executives and staff.⁸⁵
- Staffing issues had affected the delivery of FOI Co-ordinators and Decision-Writing workshops in 2017–18. In 2019, it was decided to provide one workshop per month from February to November (a total of 10 sessions), together with additional workshops as appropriate.⁸⁶
- In the 2019–20 financial year, the OIC will hold the second ‘FOI in WA’ Conference (the first being held in 2017–18). There were no plans for regional visits.⁸⁷
- The ‘dashboard of metrics’⁸⁸ published under the Open Government Partnership and National Action Plan indicates that Western Australia compares favourably to other jurisdictions in relation to FOI, for example having the highest rate of applications made to agencies per capita.⁸⁹

⁸⁴ *ibid.*

⁸⁵ Catherine Fletcher, Acting Information Commissioner, Office of the Information Commissioner, Letter, 31 May 2019, Attachment p 1.

⁸⁶ *ibid.*, Attachment p 2.

⁸⁷ *ibid.*

⁸⁸ Found at:
https://www.ipc.nsw.gov.au/sites/default/files/file_manager/OGP%20metrics%20all%20jurisdictions%20bar%20all%20years%20v1.pdf.

⁸⁹ Catherine Fletcher, Acting Information Commissioner, Office of the Information Commissioner, Letter, 31 May 2019, Attachment p 4.

CHAPTER 4

Public Sector Commissioner

Introduction

- 4.1 The Public Sector Commissioner is an independent statutory officer established under the *Public Sector Management Act 1994* and is supported in her functions under that Act and other legislation by the Public Sector Commission (PSC).
- 4.2 The PSC's stated objective is to bring leadership and expertise to the public sector and support the integrity, effectiveness and efficiency of public administration and management.⁹⁰

Annual Report

- 4.3 The 2017–18 Annual Report of the PSC was tabled in the Legislative Council on 18 September 2018 (PSC Annual Report).⁹¹
- 4.4 The PSC also published and tabled the *State of the Sector Report 2018*⁹² and published the *State of the Sector Statistical Bulletin 2018*.⁹³
- 4.5 The areas of interest arising from those reports identified by the Committee included:
- 4.5.1 change in the core client group of the PSC in 2017–18
 - 4.5.2 implementation of the recommendations of the independent review of the PSC by Carmel McGregor PSM
 - 4.5.3 impact of the MOG changes, including:
 - Chief Executive Officer (CEO) appointments
 - Senior Executive Service (SES) reductions and unintended impact on the diversity profile of the SES cohort
 - proportion of the total Voluntary Targeted Separation Scheme (VTSS) separations that were from agencies impacted by the MOG changes
 - 4.5.4 issues relating to the 'minor misconduct' function, including:
 - the percentage of matters received by the PSC that were referred to the Corruption and Crime Commission (CCC) or another third party was significantly lower than in previous years
 - the percentage of minor misconduct matters relating to CEOs and SES.
 - additional funding following the transfer of the minor misconduct function from the CCC
 - 4.5.5 results of the Employee Perception Survey conducted by the PSC in 2017–18
 - 4.5.6 policy for public sector witnesses appearing before Parliamentary Committees

⁹⁰ Public Sector Commission, *Annual Report 2017–18*, 18 September 2018, p 10.

⁹¹ Tabled Paper 1802, Legislative Council, 18 September 2018.

⁹² Public Sector Commission, *State of the Sector 2018*, 29 November 2018. Tabled Paper 2254, Legislative Council, 29 November 2018.

⁹³ Public Sector Commission, *State of the Sector Statistical Bulletin 2018*, <https://publicsector.wa.gov.au/document/state-sector-statistical-bulletin-2018>, viewed 13 August 2019.

4.5.7 conversion and permanent appointment of fixed term and casual employees.

Hearing and Questions on Notice

4.6 On 6 May 2019, the following witnesses from the PSC appeared before the Committee:

- Sharyn O'Neill, Public Sector Commissioner
- Lindsay Warner, Acting Executive Director, Policy and Data Analytics
- Eamon Ryan, former Executive Director, Integrity and Risk
- Sonja Cox, Executive Director, People, Culture and Diversity
- Shaun McLeod, Manager, Corporate Services.

4.7 The evidence provided to the Committee regarding the issues listed in paragraph 4.5 is summarised in the following paragraphs.⁹⁴

Change in the core client group of the Public Sector Commissioner in 2017–18

4.8 The PSC Annual Report advised that the core client group of the PSC had changed to include local government, public universities and government trading enterprises, and to remove government boards and committees.⁹⁵

4.9 As to the impact of this change, the Public Sector Commissioner advised the Committee:

Certainly, we have had some interaction with some of the universities and local governments now, since then, around the minor misconduct function. ... Local government make up a fair degree of the allegations that we receive, so that certainly has been an impact for us and we have a role and responsibility in regard to that. That is a kind of major impact. Universities less so, although we have had some interaction in terms of dealing with allegations of minor misconduct. The other part of the transfer of that responsibility to us is prevention education. We are involved in running sessions that include those entities that were referred to in the transfer, so we do get involved with them in relation to minor misconduct.⁹⁶

Recommendations of the independent review of the Public Sector Commission

4.10 A review of the PSC was conducted by Carmel McGregor PSM in 2017–18.⁹⁷ The report of the review was tabled in the Legislative Council on 9 October 2018.⁹⁸

4.11 The Public Sector Commissioner advised the Committee:

- Two of the 24 recommendations of the review were not supported by government.⁹⁹
- The remaining recommendations were accepted, and a formal response to the recommendations was being prepared by the PSC.¹⁰⁰

⁹⁴ Seven questions on notice were taken during the hearings, answers to which were provided on 29 May 2019.

⁹⁵ Public Sector Commission, *Annual Report 2017–18*, 18 September 2018, p 17.

⁹⁶ Sharyn O'Neill, Public Sector Commissioner, Public Sector Commission, *Transcript of evidence*, 6 May 2019, p 2.

⁹⁷ See Public Sector Commission, *Annual Report 2017–18*, 18 September 2018, p 19.

⁹⁸ Tabled Paper 1962, Legislative Council, 9 October 2018.

⁹⁹ These concerned the employment relationship with CEOs and the transfer of the PSC's minor misconduct function back to the CCC.

¹⁰⁰ Sharyn O'Neill, Public Sector Commissioner, Public Sector Commission, *Transcript of evidence*, 6 May 2019, p 3.

4.12 In relation to the report generally, the Commissioner advised:

when I came into the commission, I would confirm the depth of feeling that was at the commission was expressed in that report. We have undertaken a range of strategies to give people the opportunity to talk more about that, to have greater input into decisions. There is commentary made around communication in particular and the lack thereof and so all of the things outlined in that McGregor report around the internal culture, but also the way in which the PSC is seen publicly. My observation is that it seems to have been a bit invisible to people across the sector and so we are certainly trying to position the Public Sector Commission to be, while the commissioner is independent, the commission itself needs to be collaborative, not working in isolation, not making decisions in isolation, which goes to the cultural aspects.¹⁰¹

4.13 The Committee will monitor the PSC's response to the recommendations made by the independent review.

Impact of the Machinery of Government changes in relation to Chief Executive Officer appointments

4.14 The PSC Annual Report advised that 'to ensure strong and effective leadership, the Commission undertook a streamlined recruitment and selection process to secure Offices of Directors General for nine of the newly amalgamated departments.'¹⁰²

4.15 By way of explanation of this process, the Public Sector Commissioner advised the Committee:

Following the MOG changes, a quarantined process was put in place so only substantive and acting agency heads whose agencies were significantly and substantively impacted by the MOG reforms were invited to apply for the affected Director General positions.¹⁰³

Senior Executive reductions as part of the Machinery of Government changes — unintended impact on the diversity profile of the Senior Executive cohort

4.16 In the PSC Annual Report and at the Committee's 2018 hearing with the PSC, it was noted that the impact of voluntary severance and the SES reductions as part of the MOG changes had had an unintended consequence on diversity and representation across all the groups, including gender, and in gender particularly at the senior levels.¹⁰⁴

4.17 The Public Sector Commissioner advised the Committee at the 2019 hearing:

there was a one per cent reduction in the number of women in the SES during that MOG period and at the same time, or shortly thereafter, a one per cent increase of men in the SES at that same time. Since then, and I can give figures at February of this year, in fact that has now been reversed, so there are more women, percentage wise, in the SES now than there were at the time of MOG ... We are going to be, in our statewide diversity strategy, looking at obviously women and

¹⁰¹ *ibid.*, pp 4–5.

¹⁰² Public Sector Commission, *Annual Report 2017–18*, 18 September 2018, p 4.

¹⁰³ Sharyn O'Neill, Public Sector Commissioner, Public Sector Commission, Letter of Correction to Transcript of evidence, 17 May 2019.

¹⁰⁴ Public Sector Commission, *Annual Report 2017–18*, 18 September 2018, p 26; Kristabel Rosario, Acting Director, Workforce Performance/Equal Opportunity in Public Employment, Public Sector Commission, *Transcript of evidence*, 7 May 2018, p 13.

including women in the senior executive, representation of Aboriginal people in the workforce, people with disability and LGBTIQ.¹⁰⁵

Proportion of the total separations in the Voluntary Targeted Separation Scheme that were from agencies impacted by the MOG changes

- 4.18 In response to a question on notice from the Committee, the Public Sector Commissioner advised that 65% of the total 2311 VTSS separations in 2017–18 (corrected from the 2,314 referred to in the PSC Annual Report)¹⁰⁶ were from agencies impacted by the MOG changes.¹⁰⁷

Percentage of minor misconduct matters referred to the Corruption and Crime Commission or another third party

- 4.19 The PSC Annual report indicated that the percentage of minor misconduct matters referred to the CCC or another third party was lower than in the previous year.¹⁰⁸ The former Executive Director, Integrity and Risk advised the Committee:

We are not entirely sure of the reason for that but it could well be a result of the revised joint reporting guidelines that were published in August last year by the CCC and the PSC, which gave a degree of greater clarity for agencies, because there was less reporting to the PSC that ought to go to the CCC and vice versa. That could be an explanation for why the numbers are noticeably down this year. There is also a settling of MOG agencies into their integrity functions, and I think that may well have had a result as well.¹⁰⁹

Percentage of minor misconduct matters relating to CEOs and SES

- 4.20 The PSC Annual Report indicated that, in 2017–18, the PSC received 599 minor misconduct matters.¹¹⁰ The Committee requested a further breakdown of this figure in relation to CEOs and SES officers, and was advised:
- 124 of those minor misconduct allegations related to tier 1 officers (CEOs and SES), concerning 42 individual officers
 - of those 124 allegations, 30 (24%) were referred to the CCC.¹¹¹

Results of the Employee Perception Survey conducted by the Public Sector Commission in 2017–18

- 4.21 The PSC administers an annual Employee Perception Survey (EPS) to a sample of public sector agencies on a rotational basis.¹¹²

¹⁰⁵ Sharyn O'Neill, Public Sector Commissioner, Public Sector Commission, *Transcript of evidence*, 6 May 2019, p 7.

¹⁰⁶ Public Sector Commission, *Annual Report 2017–18*, 18 September 2018, p 33.

¹⁰⁷ Sharyn O'Neill, Public Sector Commissioner, Public Sector Commission, Letter, 29 May 2019, p 2.

¹⁰⁸ Public Sector Commission, *Annual Report 2016–17*, 14 September 2017, p 39 and Public Sector Commission, *Annual Report 2017–18*, 18 September 2018, p 43.

¹⁰⁹ Eamon Ryan, former Executive Director, Integrity and Risk, Public Sector Commission, *Transcript of evidence*, 6 May 2019, p 8.

¹¹⁰ Public Sector Commission, *Annual Report 2017–18*, 18 September 2018, p 43.

¹¹¹ Sharyn O'Neill, Public Sector Commissioner, Public Sector Commission, *Transcript of evidence*, 6 May 2019, pp 8–9 and Eamon Ryan, former Executive Director, Integrity and Risk, Public Sector Commission, *Transcript of evidence*, 6 May 2019, p 9.

¹¹² Public Sector Commission, *Annual Report 2017–18*, 18 September 2018, p 48.

- 4.22 The PSC Annual Report indicated that the 2017–18 EPS was conducted at nine departments affected by the MOG changes, covering 21,198 employees, with a response rate of 43%.¹¹³
- 4.23 The Commissioner acknowledged that the response rate for 2017–18 was lower than in previous years.¹¹⁴
- 4.24 The Committee noted that, unlike in previous years, the PSC Annual Report did not include any analysis of the results of the EPS, including an ‘overall engagement index’.¹¹⁵ The Public Sector Commissioner advised that analysed results of the EPS were published on the PSC’s website,¹¹⁶ however the Committee notes that the published results are not summarised in either the *State of the Sector 2018* report or the PSC Annual Report as in previous years, and do not include an ‘overall engagement index’.¹¹⁷
- 4.25 In the answers to the questions on notice, the Commissioner advised that the ‘overall engagement index’ indicated by the EPS for 2017–18 was 59.¹¹⁸ The index was 70 in 2016–17 and 62 in 2015–16.¹¹⁹ The Committee has not received any further information as to how the ‘overall engagement index’ is calculated and interpreted.
- 4.26 The Committee sought the Commissioner’s comments in relation to the following selected results of the EPS:¹²⁰
- 29.2% of respondents were ‘Dissatisfied’ with their organisation as an employer
 - 43.5% of respondents ‘Disagreed’ with the statement ‘I am satisfied with the opportunities to progress my career in my organisation’
 - 41.3% of respondents ‘Disagreed’ with the statement ‘Recruitment and promotion decisions in my organisation are fair’
 - only 59.8% of respondents ‘Agreed’ with the statement ‘Senior leaders in my organisation lead by example in ethical behaviour’¹²¹
 - by comparison, 80.4% of respondents ‘Agreed’ with the statement ‘My immediate supervisor demonstrates honesty and integrity in the workplace’.¹²²

The Commissioner did not think that the selected results suggested a culture of disengagement across the board, but may have indicated some dissatisfaction in agencies impacted by the MOG changes.¹²³

¹¹³ *ibid.*

¹¹⁴ Sharyn O’Neill, Public Sector Commissioner, Public Sector Commission, Letter, 17 May 2019.

¹¹⁵ Public Sector Commission, *Annual Report 2016–17*, 14 September 2017, p 42.

¹¹⁶ Sharyn O’Neill, Public Sector Commissioner, Public Sector Commission, *Transcript of evidence*, 6 May 2019, p 9.

¹¹⁷ Public Sector Commission, *State of the Sector 2018*, 29 November 2018; Public Sector Commission, *State of the Sector Statistical Bulletin 2018*, <https://publicsector.wa.gov.au/document/state-sector-statistical-bulletin-2018>, viewed 13 August 2019.

¹¹⁸ Sharyn O’Neill, Public Sector Commissioner, Public Sector Commission, Letter, 29 May 2019, p 2.

¹¹⁹ Public Sector Commission, *Annual Report 2016–17*, 14 September 2017, p 42.

¹²⁰ Public Sector Commission, *State of the Sector Statistical Bulletin 2018*, <https://publicsector.wa.gov.au/document/state-sector-statistical-bulletin-2018>, viewed 13 August 2019.

¹²¹ In the 2016–17 EPS, the response rate to the same question was 73%: see Public Sector Commission, *State of the sectors 2017*, pp 30–1.

¹²² In the 2016–17 EPS, the response rate to the same question was 85%: see Public Sector Commission, *State of the sectors 2017*, pp 30–1.

¹²³ Sharyn O’Neill, Public Sector Commissioner, Public Sector Commission, *Transcript of evidence*, 6 May 2019, pp 10–11.

- 4.27 The Committee asked the Commissioner whether the drop in positive responses regarding ethical behaviour of senior leaders (from 73% in 2016–17 to 59.8% in 2017–18) was a concern, and whether further analysis had been undertaken to determine what might have caused that result. The Commissioner advised:

Any perception of lack of integrity, I think, is concerning. Once again, those data are the responsibility of the agencies in particular to look at. But from our perspective, the EPS data and any trends and issues that we have taken from it, like you have, have been referred to our prevention education team. We are ongoing in that way. As we come across issues, we are trying to build it into our training. Then just recently—in fact, at the last Public Sector Leadership Council—I asked all directors general if they have not recently undertaken the accountable and ethical decision-making course that they do so as a matter of priority. So it is forefront in my mind that not only do we as a senior leadership group act with great integrity, but that we are perceived to be acting with great integrity.¹²⁴

- 4.28 The Committee is concerned by the results of the 2017–18 EPS but notes that these may have been impacted by the MOG amalgamation processes. The Committee will monitor future EPS results in light of this.

Policy for public sector witnesses appearing before Parliamentary Committees

- 4.29 The PSC Annual Report indicated that the PSC had consulted with the relevant government agencies and external stakeholders to progress a revised *Public Sector Commissioner's Circular 2010–03 Policy for Public Sector Witnesses Appearing Before Parliamentary Committees*.¹²⁵
- 4.30 The Public Sector Commissioner advised the Committee that the review of the policy had commenced in 2015 in response to matters raised by the (then) Speaker of the Legislative Assembly. Internal stakeholders, including the State Solicitor's Office had been consulted, as had the Premier and Attorney General following the change of Government in 2017. The Presiding Officers of both Houses of Parliament had provided comment. At the time of the hearing, the PSC was seeking advice from the Department of the Premier and Cabinet.¹²⁶

Conversion and permanent appointment of fixed term and casual employees.

- 4.31 The Public Sector Commissioner provided the Committee with an update of ongoing compliance with *Commissioner's Instruction No 23: Conversion and appointment of fixed term contract and casual employees to permanency*, issued on 10 August 2018. The Public Sector Commissioner advised that the PSC:
- delivered three information sessions in partnership with the Department of Mines, Industry Regulation and Safety to discuss the procedural requirements of Commissioner's Instruction No 23
 - ran four forums to provide agencies with the opportunity to discuss their implementation of Commissioner's Instruction No 23, progression of their review processes and to share any early learnings with other agencies

¹²⁴ Sharyn O'Neill, Public Sector Commissioner, Public Sector Commission, *Transcript of evidence*, 6 May 2019, pp 11–12.

¹²⁵ Public Sector Commission, *Annual Report 2017–18*, 18 September 2018, p 45.

¹²⁶ Sharyn O'Neill, Public Sector Commissioner, Public Sector Commission, Letter, 29 May 2019, p 3.

- holds regular quarterly meetings with the Department of Mines, Industry Regulation and Safety and key public sector unions to discuss emerging concerns and practical issues related to Commissioner's Instruction No 23, resulting in the review and update of supporting materials
- continues to play a key role in providing advice to public sector agencies on the administration of Commissioner's Instruction No 23
- receives records from agencies regarding conversions and appointments to permanency.¹²⁷

4.32 The Public Sector Commissioner advised:

As at 9 May 2019, agencies reported that between 10 August 2018 and 31 March 2019 -

- (a) 14,712 employment contracts were reviewed - 7,623 fixed term and 7,089 casual arrangements
- (b) 759 permanent appointments were made - 518 (67 per cent) were female and 241 (33 per cent) were male. Of these appointments, 709 were from fixed term contract conversions or appointments and 50 were from casual contract conversions or appointments.

Agencies have reported that a further 16,242 employment contracts are to be reviewed.¹²⁸

¹²⁷ *ibid.*, pp 3–4.

¹²⁸ *ibid.*, p 4.

CHAPTER 5

Parliamentary Commissioner for Administrative Investigations (Ombudsman)

Introduction

- 5.1 The Ombudsman is an independent officer of Parliament established under the *Parliamentary Commissioner Act 1971*. The Ombudsman's principal functions are:
- receiving, investigating and resolving complaints about State Government agencies, local governments and universities
 - undertaking own motion investigations and promoting improvements to public administration
 - reviewing certain child deaths and family and domestic fatalities
 - undertaking a range of additional functions that fit within the broad category of integrity oversight.¹²⁹

Annual Report

- 5.2 The 2017–18 Annual Report of the Ombudsman was tabled in the Legislative Council on 9 October 2018 (Ombudsman Annual Report).¹³⁰
- 5.3 The areas of interest identified by the Committee arising out of the Annual Report included:
- 5.3.1 issues related to the complaints function, including:
- increase in 2016–17 and 2017–18 in the number of complaints about corrective services
 - increase in 2017–18 in the number of complaints by overseas students about public education and training providers
- 5.3.2 issues related to review of child deaths and associated own-motion investigations, including:
- interagency collaboration in the context of prevention of sleep-related infant deaths
 - the Ombudsman's role in relation to the issue of suicide by young people, particularly within Aboriginal communities
- 5.3.3 issues related to review of family and domestic violence fatalities and associated own-motion investigations, including:
- ongoing monitoring of the recommendations of the 2015 report *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*¹³¹

¹²⁹ Ombudsman Western Australia. See: http://www.ombudsman.wa.gov.au/About_Us/Role.htm, viewed 7 August 2019.

¹³⁰ Tabled Paper 1948, Legislative Council, 9 October 2018.

¹³¹ Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, 19 November 2015.

- the Ombudsman's involvement in the proposed 10-year state strategy to reduce family and domestic violence (10-year State Strategy)¹³²
- collection of data about communities over-represented in family and domestic violence
- collation of information on family and domestic violence fatalities where there is no reported history of family and domestic violence
- development of a separate strategy to prevent and reduce Aboriginal family violence
- cultural, logistical and structural barriers to Aboriginal victims seeking a violence restraining order
- the recommendation that data captured by the Family and Domestic Violence Region Team (FDVRT) process should include Aboriginal status of the victim and perpetrator
- the co-occurrence of family and domestic violence with alcohol and other drugs and mental health issues

5.3.4 other issues including aboriginal engagement and regional visits.

Hearing and Questions on Notice

5.4 On 6 May 2019, the following witnesses from the Office of the Ombudsman Western Australia appeared before the Committee:

- Chris Field, Ombudsman
- Mary White, Deputy Ombudsman
- Rebecca Poole, Assistant Ombudsman Strategic Projects National and International Relations.

5.5 The evidence provided to the Committee regarding the issues listed in paragraph 5.3 is summarised in the following paragraphs.¹³³

Issues related to the complaints function

Increase in 2016–17 and 2017–18 in the number of complaints about corrective services

5.6 The Ombudsman Annual Report indicated that the number of complaints regarding corrective services had substantially increased over the past two years.¹³⁴

5.7 The Ombudsman advised:

- In relation to all complaints, changes in numbers and type of complaints are monitored over time to identify patterns or trends.
- At this stage the change in numbers of complaints regarding corrective services is not seen as a pattern or trend.¹³⁵

5.8 The Committee will continue to monitor this issue in the Ombudsman's 2018–19 Annual Report.

¹³² See paragraph 5.19.

¹³³ Twelve questions on notice were taken during the hearings, answers to which were provided by the Ombudsman on 31 May 2019.

¹³⁴ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, p 38.

¹³⁵ Chris Field, Ombudsman, Office of the Ombudsman Western Australia, *Transcript of evidence*, 6 May 2019, p 3.

Increase in 2017–18 in the number of complaints by overseas students about public education and training providers

5.9 The Ombudsman Annual Report indicated that complaints by overseas students about public education and training providers had doubled from 30 in 2016–17 to 61 in 2017–18.¹³⁶

5.10 The Ombudsman advised:

Once again, on the face of it that would be something that would at least give us a cause for concern, when you are seeing what is effectively more than double those numbers in that period of time. I would be very interested in tracking those over the next year or so to see whether that is a trend that continues and is sustained. If it is, can I assure you that we will look at it closely.

... if we see an upward trend, a trend that continues on from there, I think that will be a matter of concern. What you are always looking for, for complaints, is that if they go down over time, you do not want to see them going down and then come back up again.¹³⁷

5.11 The Committee will continue to monitor this issue in the Ombudsman's 2018–19 Annual Report.

Issues related to review of child deaths and associated own-motion investigations

Interagency collaboration

5.12 At last year's hearing before the Committee in May 2018,¹³⁸ interagency collaboration was identified as the major implementation issue in relation to the recommendations of the Ombudsman's 2012 report *Investigation into ways that State Government departments and authorities can prevent or reduce sleep-related infant deaths*.¹³⁹

5.13 At the 2019 hearings, the Ombudsman advised the Committee:

- Interagency collaboration was one of the most significant issues for good and effective public administration, and was a theme of all of the work of the office in the areas of child death and family and domestic violence reviews.
- The office was currently considering the issue of interagency collaboration in the context of a detailed follow-up report on the issue of ways to prevent or reduce youth suicide, expected to be tabled this year (see paragraph 5.15).
- Some of the MOG changes had led to better data and information sharing between relevant departments and local governments.¹⁴⁰

5.14 The Committee will monitor the issue of interagency collaboration, particularly in the context of the upcoming follow-up report by the Ombudsman on the issue of ways to prevent or reduce youth suicide.

¹³⁶ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, p 50.

¹³⁷ Chris Field, Ombudsman, Office of the Ombudsman Western Australia, *Transcript of evidence*, 6 May 2019, p 4.

¹³⁸ Chris Field, Ombudsman, Office of the Ombudsman Western Australia, *Transcript of evidence*, 14 May 2018, p 14.

¹³⁹ Ombudsman Western Australia, *Investigation into ways that State Government departments can prevent or reduce sleep-related infant deaths*, November 2012.

¹⁴⁰ Chris Field, Ombudsman, Office of the Ombudsman Western Australia, *Transcript of evidence*, 6 May 2019, pp 5–6.

The Ombudsman's role in relation to the issue of suicide by young people, particularly within Aboriginal communities

5.15 The Ombudsman Annual Report noted:

- During 2017–18, significant work was undertaken to determine the steps taken to give effect to the recommendations of the Ombudsman's 2014 report *Investigation into ways that State government departments and authorities can prevent or reduce suicide by young people*.¹⁴¹
- A report on the findings of this work would be tabled in Parliament in 2018–19.¹⁴²

5.16 At the 2019 hearing, the Ombudsman advised the Committee that this report would be tabled during 2019.¹⁴³

5.17 The Ombudsman expressed the view that his office can work in the area of youth suicide as an independent source to try to bring agencies together or understand further some of the complaints by families neglected by government agencies.¹⁴⁴

5.18 The Committee raised the issue of the State Coroner's inquest into the deaths of 13 young people in the Kimberley region of Western Australia, published in February 2019.¹⁴⁵ In relation to the interaction between the jurisdiction of the State Coroner and the Ombudsman, the Ombudsman advised:

issues that the coroner has identified may well be issues that we can identify as well or have identified, and then we can use our mechanisms, reporting to Parliament, to amplify those issues, to work very closely with government agencies. One of the things that is different from an Ombudsman jurisdiction to a court or tribunal jurisdiction, and they both have an incredibly important place within our Westminster system and our rule of law, is that the Ombudsman jurisdiction is an ongoing one, it is a proactive one and it can, by its own motion, undertake—we do not have to wait to receive an issue. We can, by our own motion, instigate a full royal commission investigation.¹⁴⁶

Issues related to review of family and domestic violence fatalities and associated own-motion investigations

Ombudsman's involvement in the 10-year State Strategy to reduce family and domestic violence

5.19 The Ombudsman Annual Report advised that the Department of Communities (Communities):

has convened a family and domestic violence policy consortium, comprising representatives from government, community sector services, Aboriginal Community Controlled Organisations and academia, to develop a comprehensive project plan for the development of a 10-year across-government strategy to

¹⁴¹ Ombudsman Western Australia, *Investigation into ways that State Government departments and authorities can prevent or reduce suicide by young people*, 9 April 2014.

¹⁴² Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, p 90.

¹⁴³ Chris Field, Ombudsman, Office of the Ombudsman Western Australia, *Transcript of evidence*, 6 May 2019, p 5.

¹⁴⁴ *ibid.*, p 10.

¹⁴⁵ State Coroner of Western Australia, *Inquest into the deaths of thirteen children and young persons in the Kimberley Region, Western Australia*, 25/2017, 7 February 2019.

¹⁴⁶ Chris Field, Ombudsman, Office of the Ombudsman Western Australia, *Transcript of evidence*, 6 May 2019, p 11.

reduce family and domestic violence. The Office, as an observer, has contributed to this policy consortium.¹⁴⁷

- 5.20 As to his office's involvement in the development of the 10-year State Strategy, the Ombudsman advised the Committee:
- The Deputy Ombudsman has been involved in its development as an observer and in providing expertise where appropriate
 - The other role of the office is to hold government to account for the execution and administration of the strategy.¹⁴⁸

Recommendations of the 2015 report 'Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities'

- 5.21 The Ombudsman Annual Report noted that the 2015 report *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*¹⁴⁹ recommended that the Western Australia Police Force (WAPOL) and (the then) Department of Child Protection and Family Support (DCPFS)¹⁵⁰ ensure all reported family and domestic violence is correctly identified and recorded.¹⁵¹
- 5.22 The 2016 follow-up report *A report on giving effect to the recommendations arising from the 'Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities'*¹⁵² identified a number of proposed 'steps to be taken' by WAPOL and DCPFS to give effect to those recommendations.¹⁵³
- 5.23 The Ombudsman advised the Committee that WAPOL had developed an Information Card, for provision by police officers to victims and suspected perpetrators of family and domestic violence, and that the 2016 follow-up report *A report on giving effect to the recommendations arising from the 'Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities'*,¹⁵⁴ found that the Information Card:
- provides a definition of family and domestic violence, and contact details for police and for support services that can provide information or assistance to people who 'are impacted by or know someone ... who may be involved in an abusive relationship', for example, DOTAG's Family Violence Service, Victim Support Service and Child Witness Service. The Information Card contains a range of key information and advice about VROs that WAPOL should provide to victims of all reported instances of family and domestic violence.¹⁵⁵

¹⁴⁷ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, pp 123–4.

¹⁴⁸ Chris Field, Ombudsman, Office of the Ombudsman Western Australia, *Transcript of evidence*, 6 May 2019, p 12.

¹⁴⁹ Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, 19 November 2015.

¹⁵⁰ Now the Department of Communities.

¹⁵¹ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, p 139.

¹⁵² Ombudsman Western Australia, *A report on giving effect to the recommendations arising from the 'Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities'*, 10 November 2016.

¹⁵³ Ombudsman Western Australia, *Annual Report 2017–18*, pp 139–40.

¹⁵⁴ Ombudsman Western Australia, *A report on giving effect to the recommendations arising from the 'Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities'*, 10 November 2016.

¹⁵⁵ Chris Field, Ombudsman, Ombudsman Western Australia, Letter, 31 May 2019, pp 2–3.

- 5.24 The Ombudsman advised that his office monitors the steps being taken to give effect to the recommendations of the 2015 report,¹⁵⁶ including the proposed 'steps to be taken' by WAPOL and (then) DCPFS, through the undertaking of reviews of family and domestic violence fatalities and the undertaking of major own motion investigations.¹⁵⁷
- 5.25 The Committee acknowledges the initiative of the Information Card developed by WAPOL, and awaits further results of the ongoing monitoring of the 2015 report, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*.

Collation of information on family and domestic violence fatalities where there is no reported history of family and domestic violence

- 5.26 The Ombudsman Annual Report advised:
- Based on the information available to the Ombudsman's office, in 20 (39%) of the 51 intimate partner fatalities involving alleged homicide finalised between 1 July 2012 and 30 June 2018, the fatal incident was the only family and domestic violence between the parties that had been reported to WAPOL and/or other public authorities.
 - The Ombudsman will continue to collate information on family and domestic violence fatalities where there is no reported history of family and domestic violence, to identify patterns and trends and consider improvements that may increase reporting of family and domestic violence and access to supports.¹⁵⁸
- 5.27 The Ombudsman advised the Committee that this monitoring had continued during 2017–18, and that information arising from reviews of family and domestic violence fatalities was discussed with relevant authorities.¹⁵⁹

Development of a separate strategy to prevent and reduce Aboriginal family violence

- 5.28 The Ombudsman Annual Report noted that the 2015 report, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*:¹⁶⁰
- had identified a gap in that there was no strategy solely aimed at addressing family violence experienced by Aboriginal people and in Aboriginal communities¹⁶¹
 - recommended the development of a separate strategy specifically tailored to preventing and reducing Aboriginal family violence, incorporating strategies that recognise and address the co-occurrence of alcohol use and Aboriginal family violence; during which DCPFS actively invite and encourage the involvement of Aboriginal people in a full and active way at each stage and level of the process, and be comprehensively informed by Aboriginal culture.¹⁶²

¹⁵⁶ Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, 19 November 2015.

¹⁵⁷ Chris Field, Ombudsman, Ombudsman Western Australia, Letter, 31 May 2019, p 2.

¹⁵⁸ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, p 144.

¹⁵⁹ Chris Field, Ombudsman, Ombudsman Western Australia, Letter, 31 May 2019, p 3.

¹⁶⁰ Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, 19 November 2015.

¹⁶¹ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, p 146.

¹⁶² *ibid.*, p 148. See Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, 19 November 2015, p 37, recommendations 4, 5 and 6.

- 5.29 As to the progress of a separate strategy to prevent and reduce Aboriginal family violence, the Ombudsman advised the Committee that:
- the 10-year State Strategy will include 'a specific plan for responding to the issue of Aboriginal Family Violence'¹⁶³
 - in 2018-19, the Ombudsman's office has continued to monitor the steps taken to give effect to the recommendations referred to in paragraph 5.28, which indicated that Communities was working to progress development of a dedicated approach to improving Aboriginal family safety, that is co-led and designed by Aboriginal people.¹⁶⁴

Cultural, logistical and structural barriers to Aboriginal victims seeking a violence restraining order

- 5.30 The Ombudsman Annual Report noted that the 2015 report, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*,¹⁶⁵ made the following recommendation:

DOTAG, in collaboration with key stakeholders, considers opportunities to address the cultural, logistical and structural barriers to Aboriginal victims seeking a violence restraining order, and ensures that Aboriginal people are involved in a full and active way at each stage and level of this process, and that this process is comprehensively informed by Aboriginal culture.¹⁶⁶

- 5.31 It was also noted that data examined by the Ombudsman's office indicated that Aboriginal victims are more likely to be protected by a police order than a violence restraining order (VRO).¹⁶⁷

- 5.32 The Ombudsman advised the Committee:

- The steps taken to implement this recommendation are monitored and reported on by the office of the Ombudsman. In the 2016 follow-up report, *A report on giving effect to the recommendations arising from the 'Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities'*,¹⁶⁸ it was reported that:

[the then] DOTAG collaborated with stakeholders in the Kimberley to identify cultural, logistical and structural barriers to adult and child victims seeking a VRO (several of which had been identified in the FDV Investigation Report) with a focus on Aboriginal victims. DOTAG has also sought feedback on how to ensure that Aboriginal people are involved in a full and active way at each stage and level of this process, and ensure that the process is comprehensively informed by Aboriginal culture.¹⁶⁹

¹⁶³ Chris Field, Ombudsman, Ombudsman Western Australia, Letter, 31 May 2019, p 4.

¹⁶⁴ *ibid.*

¹⁶⁵ Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, 19 November 2015.

¹⁶⁶ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, p 149. See Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, 19 November 2015, p 39, recommendation 23.

¹⁶⁷ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, p 149.

¹⁶⁸ Ombudsman Western Australia, *A report on giving effect to the recommendations arising from the 'Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities'*, 10 November 2016.

¹⁶⁹ Chris Field, Ombudsman, Ombudsman Western Australia, Letter, 31 May 2019, p 5.

- The office of the Ombudsman WA will continue to explore the link between police orders and violence restraining orders in the context of the development of the 10-year State Strategy.¹⁷⁰

5.33 As noted in paragraph 5.25, the Committee awaits further results of the ongoing monitoring of the 2015 report, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*.

Recommendation that data capture by the Family and Domestic Violence Region Team should include Aboriginal status of the victim and perpetrator

5.34 The Ombudsman Annual Report indicated that the office's review of a family and domestic violence fatality had identified limitations in data being captured, including Aboriginal status of the victim and perpetrator. The review recommended that:

Communities take steps to ensure data being captured by the ... FDVRT process include Aboriginal status of the victim and the perpetrator, to inform FDVRT and family violence service development and evaluation.¹⁷¹

5.35 The Ombudsman advised the Committee:

- The Ombudsman's office requires Communities to provide it with a report regarding the steps taken to give effect to this recommendation and evidence of those steps.
- Information provided to his office in 2018–19 indicated that steps are being taken to evaluate the FDVRT process.¹⁷²

Co-occurrence of family and domestic violence with alcohol and other drugs and mental health issues

5.36 The Ombudsman Annual Report noted that current strategies, programs and services concerning family and domestic violence do not address the co-occurrence of family and domestic violence with alcohol and other drugs, or mental health issues.¹⁷³

5.37 The Ombudsman advised the Committee:

- Information regarding the co-occurrence of family and domestic violence with alcohol and other drugs is provided by his office to key stakeholders involved in the development of the proposed *Western Australian Alcohol and Drug Interagency Strategy 2018-2022* and the 10-year State Strategy and associated agency policy and action plans.
- Reviews of family and domestic violence fatalities by the office of the Ombudsman had identified the need for strategies for associated support, counselling and rehabilitation programs in the context of the co-occurrence of family and domestic violence with alcohol and other drugs, particularly for people living in regional Western Australia.
- The office would be contributing to, and undertaking monitoring of, the 10-year State Strategy in relation to mental health issues and their relationship with family and domestic violence fatalities.¹⁷⁴

¹⁷⁰ *ibid.*

¹⁷¹ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, p 151.

¹⁷² Chris Field, Ombudsman, Ombudsman Western Australia, Letter, 31 May 2019, p 6.

¹⁷³ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, pp 152–3.

¹⁷⁴ Chris Field, Ombudsman, Ombudsman Western Australia, Letter, 31 May 2019, p 7.

Other issues

Aboriginal engagement and regional visits

5.38 The Ombudsman Annual Report advised that in 2018, a Senior Aboriginal Advisor had been appointed to assist the Principal Aboriginal Liaison Officer appointed in 2016. Their roles are to:

- provide high level advice, assistance and support to the Corporate Executive and to staff conducting reviews and investigations of the deaths of certain Aboriginal children and family and domestic violence fatalities in Western Australia, complaint resolution involving Aboriginal people and own motion investigations
- raise awareness of and accessibility to the Ombudsman's roles and services to Aboriginal communities and support cross cultural communication between Ombudsman staff and Aboriginal people.¹⁷⁵

5.39 The Ombudsman advised the Committee that, as part of the office's broader program of regional visits,¹⁷⁶ the office undertakes liaison with Aboriginal regional communities in relation to the child death review jurisdiction.¹⁷⁷ As to how this liaison occurs, the Deputy Ombudsman advised the Committee:

we have a meeting with Aboriginal community members and we make visits with Aboriginal non-government organisations that support the Aboriginal community.

...

At that time we also cover off our full range of functions, which includes our child death review and family and domestic violence fatality review functions and talk to people about the issues that are important to them—what might be contributing to those very tragic deaths that are occurring for people in that particular region and what are the local things that matter to them and that they think may have an impact.¹⁷⁸

Committee comments

5.40 The Committee looks forward to receiving further information on the issues outlined in Chapter 5 in the Ombudsman's 2018–19 Annual Report and ongoing follow-up reports.



Hon Adele Farina MLC
Chair

¹⁷⁵ Ombudsman Western Australia, *Annual Report 2017–18*, 9 October 2018, pp 120–1.

¹⁷⁶ See *ibid.*, p 182.

¹⁷⁷ Chris Field, Ombudsman, Office of the Ombudsman Western Australia, *Transcript of evidence*, 6 May 2019, p 9.

¹⁷⁸ Mary White, Deputy Ombudsman, Office of the Ombudsman Western Australia, *Transcript of evidence*, 6 May 2019, pp 9–10.

GLOSSARY

Term	Definition
10-year State Strategy	Proposed 10-year state strategy to reduce family and domestic violence
Bandyup	Bandyup Women's Prison
Bandyup report	Report titled 'The birth at Bandyup Women's Prison in March 2018'
Bandyup summary report	Report titled 'The birth at Bandyup Women's Prison in March 2018 – Inspector's summary'
Banksia Hill	Banksia Hill Detention Centre
Casuarina	Casuarina Prison
CCC	Corruption and Crime Commission
CEO	Chief Executive Officer
Committee	Standing Committee on Public Administration
Communities	Department of Communities
DCPFS	Department of Child Protection and Family Support
Deputy Inspector	Deputy Inspector of Custodial Services
DOJ	Department of Justice
DOTAG	Department of the Attorney General
EPS	Employee Perception Survey
FDVRT	Family and Domestic Violence Region Team
FOI	Freedom of Information
FOI Act	<i>Freedom of Information Act 1992</i>
Hakea	Hakea Prison
Inspector	Inspector of Custodial Services
Melaleuca	Melaleuca Remand and Reintegration Facility
MOG	Machinery of Government
MOU	Memorandum of Understanding
OIC	Office of the Information Commissioner
OIC Annual Report	2017–18 Annual Report of the Office of the Information Commissioner
OICS	Office of the Inspector of Custodial Services

Term	Definition
OICS Annual Report	2017–18 Annual Report of the Office of the Inspector of Custodial Services
Ombudsman	Parliamentary Commissioner for Administrative Investigations
Ombudsman Annual Report	2017–18 Annual Report of the Ombudsman
OPCAT	Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PSC	Public Sector Commission
PSC Annual Report	2017–18 Annual Report of the Public Sector Commission
SES	Senior Executive Service
VRO	Violence restraining order
VTSS	Voluntary Targeted Separation Scheme
Wandoo	Wandoo Rehabilitation Prison
WAPOL	Western Australia Police Force

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:

'5. Public Administration Committee

5.1 *A Public Administration Committee* is established.

5.2 The Committee consists of 5 Members.

5.3 The functions of the Committee are to —

- (a) inquire into 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; and
 - (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 Commissioner, the Information Commissioner, the Inspector of Custodial Services, and any similar officer.

5.4 The Committee is not to make inquiry with respect to —

- (a) the constitution, function 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.'



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