

Division 34: Office of the Inspector of Custodial Services, \$3 838 000 —

Mr D.A.E. Scaife, Chair.

Mr W.J. Johnston, Minister for Corrective Services.

Mr E. Ryan, Inspector of Custodial Services.

Mr D. Ferguson, Deputy Inspector.

Mr D. Summers, Manager, Corporate Governance.

Mr R. Sao, Chief of Staff, Minister for Corrective Services.

Mr B. McShanag, Principal Policy Adviser.

Mr J. Stephens, Policy Adviser.

[Witnesses introduced.]

The CHAIR: This estimates committee will be reported by Hansard. The daily proof *Hansard* will be available the following day. It is the intention of the chair to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point. The estimates committee's consideration of the estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. Questions must be clearly related to a page number, item, program or amount in the current division. Members should give these details in preface to their question. If a division or service is the responsibility of more than one minister, a minister shall be examined only in relation to their portfolio responsibilities.

The minister may agree to provide supplementary information to the committee, rather than asking that the question be put on notice for the next sitting week. I ask the minister to clearly indicate what supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the minister's cooperation in ensuring that it is delivered to the principal clerk by close of business Friday, 1 October 2021. I caution members that if a minister asks that a matter be put on notice, it is up to the member to lodge the question on notice through the online questions system.

I give the call to the Leader of the Liberal Party.

Dr D.J. HONEY: I refer to significant issues impacting the agency in budget paper No 2 on page 498. Is the minister able to inform me about how many inspections were carried out by the Inspector of Custodial Services in the last financial year?

Mr W.J. JOHNSTON: I will invite the inspector to comment.

Mr E. Ryan: In the last financial year, we conducted six inspections. They were at Bunbury Regional Prison, Banksia Hill Detention Centre, Melaleuca Women's Prison, Albany Regional Prison, Wooroloo Prison Farm and the Boronia Pre-release Centre for Women.

[4.30 pm]

Dr D.J. HONEY: On Banksia Hill, when the inspection was completed in September 2020, the report said the suitability of the facility had declined since an earlier inspection in 2018. Has there been an improvement in the facilities at Banksia Hill since that September 2020 inspection?

The CHAIR: Is there a line item for this?

Dr D.J. HONEY: Yes, it is the same—paragraph 1 on page 498 and the obligations around inspections.

Mr W.J. JOHNSTON: The member is asking that question in the wrong location. This is the Inspector of Custodial Services. He does the reports. The response to the reports is the obligation of the department. We had the Department of Justice here at the start of my session. The member should have asked it then, not to the inspector. The inspector does not go there every day. He is independent from me. He makes his decisions about when he makes reports. He makes a regular visit to Banksia Hill and he has tabled his report. The member has referred to the report. He will not go back until he is scheduled to go back on whatever date that is.

The member might be interested to know that the inspector and I have been discussing that I would like him to do a specific report into the department's response to coronial inquiries. The department responds to coronial inquiries and the view is that it responds adequately to them but I want to have independent oversight. I have not yet given the direction to the inspector, but he and I have discussed the fact that I am going to issue him a direction to do a report into the department's response to coronial inquiries because I think it would be particularly helpful to us so that we can see that the department is properly responding to that important issue. It is not possible for the inspector to tell the member about the current circumstance at Banksia Hill because that is not his job.

Dr D.J. HONEY: Is the minister able to inform me whether any of the recommendations of that September 2020 report have been completed?

The CHAIR: I think this question might suffer from the same vice, Leader of the Liberal Party, but I will put it to the minister.

Mr W.J. JOHNSTON: It is simply not possible for me to do that because the member is asking in the wrong heading. This is the Office of the Inspector of Custodial Services. He made the report. If the member wanted to ask questions about the quality of the report, I am sure he would be very happy to point out what an excellent report it is and the effort he and his staff put in to make sure it reflected facts and issues. He could even talk about the cooperation of the people at the facility while he did the report. I am happy for him to do all those things but he cannot tell the member the response of the department because the member should have asked the director general when he was here an hour and a half ago.

Dr D.J. HONEY: My assumption was that there would be someone going and reporting, but that is fine. The minister has explained it clearly.

My new question is on paragraph 2 under significant issues impacting the agency on page 498. It is about the ratification of the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Can the minister confirm whether the six institutions the inspector has visited this year comply with that protocol?

Mr W.J. JOHNSTON: No, but I would like to make some comments about the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Obviously, the government of Western Australia is keen and enthusiastic to see the commonwealth government sign the protocol, because we do not want to be involved in torture. I think we are the first state to nominate the agency. The commonwealth government already has, but we are the first subnational Australian jurisdiction to nominate the responsible agency for compliance with OPCAT, and that will be the Inspector of Custodial Services, in conjunction with the state Ombudsman.

It is interesting that the member has raised this issue, because we discussed this with the commonwealth government in July at an online get-together of corrections ministers. Unfortunately, the federal minister was not available for this event, which was scheduled long in advance. Subsequent to that, I wrote to the federal Attorney-General on 2 August 2021 and sent a follow-up letter yesterday, because I am yet to receive a response. I asked five questions, and I would like the public to know about them. Firstly, I informed the Attorney-General that as a subnational jurisdiction, Western Australia is incapable of entering into agreements with the United Nations, and that the commonwealth Constitution completely reserves foreign affairs powers to the commonwealth government. I said that in this regard, Western Australia sought to understand how the commonwealth government plans to exercise its reporting obligations to the United Nations Subcommittee on Prevention of Torture, because we do not know. I also asked, noting that the commonwealth government was creating an obligation to permit United Nations representatives to inspect detention facilities, what procedures the commonwealth government was implementing to permit announced and unannounced visits to commonwealth-controlled detention facilities, such as immigration detention facilities, because we would love to copy its procedures. It has not responded.

I asked what procedures the commonwealth government was developing to respond to the recommendations of the SPT with regard to detention facilities generally in Australia; we still do not know. I asked whether there was a budget allocated to the commonwealth government's obligation to respond to recommendations from the SPT; still no answer. The fifth question was: does the commonwealth government have a plan to respond to recommendations from the SPT where the obligations of OPCAT bind the commonwealth government alone but not subnational jurisdictions, particularly in cases in which a facility may be the property of a subnational jurisdiction? We can see that that would be a really difficult situation for the commonwealth government. If the SPT recommends that changes be made to the physical infrastructure of any state prison, there is no obligation on the state to take action; the obligation is only on the commonwealth government. We want to understand how it will fund those actions and execute them, given that it does not own the facilities.

We are very keen to see OPCAT implemented, but it has to be implemented in a proper and sensible way. We are not criticising the commonwealth government; we are just making it clear that we do not understand what its intentions are. That is why I wrote to Senator the Hon Michaelia Cash, the federal Attorney-General, who is the responsible minister, on 2 August 2021. We have not received a reply, and I sent a follow-up letter yesterday. I look forward to Senator Cash's reply.

Dr D.J. HONEY: Does the minister nevertheless believe that that is an appropriate standard that Western Australian prisons should comply with, whether or not we are a signatory to that standard?

[4.40 pm]

Mr W.J. JOHNSTON: The point is that we have created a system to ensure that when the commonwealth government enters OPCAT, we will be able to meet those obligations—that is, that we have independent oversight.

Extract from *Hansard*

[ASSEMBLY ESTIMATES COMMITTEE A — Thursday, 23 September 2021]

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Chair; Dr David Honey; Mr Bill Johnston; Mr Shane Love

We are the first state in Australia to make clear the procedures we are going to follow to ensure that we have that independent oversight. One of the challenges with OPCAT is that signatories are obliged to allow announced and unannounced visits to prisons. Let me tell the member, if some strange person that the state government does not know turns up to a prison on a Saturday night and asks to get in, they are going to have a problem. We are very happy to have OPCAT in Western Australia—we think it is a great step forward—but we need to understand how it is going to be executed. We cannot have random things happening. We certainly cannot have a situation in which a visit by the OPCAT's SPT leads to a criticism of a Western Australian government-owned facility when we do not have the opportunity to speak at the United Nations. Western Australia is not a member of the United Nations; only the commonwealth is. How does the commonwealth intend to ensure that we will be able to explain what is happening? For example, New Zealand, which has already signed OPCAT, was criticised by the SPT for the quality of the breakfasts provided to prisoners. That may well be a justified criticism, but if that criticism was made of us, surely we would want the government of Western Australia to be able to explain what we are doing to the authority in the United Nations that is making decisions about whether we are meeting our obligations. We do not understand how we will be able to do that at the moment.

Mr R.S. LOVE: Can I confirm that at five o'clock we will have to wind up this session and move on to Synergy?

The CHAIR: That is correct. That is why I gave the warning before the break that we have these divisions to get through by 5.00 pm.

The appropriation was recommended.