Division 50: Commissioner for Equal Opportunity, $3 330 000 —

Mr M.W. Sutherland, Chairman.

Mr C.C. Porter, Attorney General.

Ms Y. Henderson, Commissioner for Equal Opportunity.

The CHAIRMAN: The member for Warnbro.

Mr P. PAPALIA: I refer to the fourth and fifth dot points on page 647 of the *Budget Statements* regarding a significant issue impacting on the agency and the need to train people to look at the impact of new initiatives on diverse groups within the community and the commencement of a pilot program by a few select departments to capture the extent to which new policies and major new initiatives are assessed for their impact on Indigenous and minority ethnic groups. With respect to the fifth dot point, is the Department of Corrective Services one of those departments? More generally, is the commissioner considering the potential impact of the proposed Criminal Investigation Amendment Bill, and has the minister sought some advice from the commissioner about the stop-and-search legislation, noting that in the United Kingdom similar legislation resulted in a 300 per cent increase in the number of minorities who were stopped? On 12 May, *The New York Times* reported that in 2009 blacks and Latinos in New York were nine times more likely than whites to be stopped when this sort of activity was undertaken but that they were no more likely to be arrested.

Mr C.C. PORTER: I thank the member for his question. I cannot comment on the statistics that the member cited regarding other jurisdictions. My understanding about the fourth and fifth dot points is that there is an ongoing process of identifying and examining existing services. Also, new policies and major initiatives are assessed on an ongoing basis. When problems are identified, and before any new major initiatives related to services to the public are implemented—I stress "services to the public"—measures are put in place to remedy systemic racism and prevent future acts of systemic racism from occurring as a result of public policy. I have not sought a particular focus from the Commissioner for Equal Opportunity on the legislation that the member has raised. That is because it is my view that the Criminal Investigation Amendment Bill does not fall into the category of systemic racism. The member might have a different view. I have not sought from the commissioner any specific action to be taken in regard to that legislation. I will get the commissioner to comment on that in a moment.

The fifth dot point is about the commencement of a pilot program with a few select departments to capture the extent to which new policies and major new initiatives are assessed for their impact on Indigenous and minority ethnic groups. The notes that I have been provided with show, and my understanding is, that this is about the duty to provide agencies with vital information to identify issues before a new policy or major initiative is imposed. The aim of the pilot is to develop and identify common processes that can be used by agencies to undertake an assessment of the new policies. Perhaps the crux of the member's question is that he is talking about legislation which he does not agree with and which he thinks will have a certain effect. What the commissioner deals with is the way departments administer legislation. Obviously this legislation has not yet been administered. I do not necessarily agree with the member that the problem that he has identified will arise. Nevertheless, no-one is yet administering this legislation.

Mr J.R. QUIGLEY: It is not legislation; that is the Attorney General's aspiration for the Parliament to pass the Criminal Investigation Amendment Bill.

Mr C.C. PORTER: Quite obviously. Nevertheless, I am pointing out that the commissioner's role is to educate and liaise with the public sector about the way in which the public sector carries out government policy. I understand that the member for Warnbro objects to the policy. I will let the commissioner talk about the specific point that the member raised. My point is that, notwithstanding what the member has asserted to have occurred in other jurisdictions, no legislation has been implemented. It might be a bit precursory. I will let the commissioner answer the member's question.

[11.10 am]

Ms Y. Henderson: When this program commenced, we had a pilot involving four agencies. That included WA Police and the Department of Corrective Services. That was four years ago now. The pilot that is referred to here is a pilot to examine new initiatives. In relation to services provided by the police, one of the issues for us is that there have been a number of decisions around whether, when the police are executing a prosecutory-type role, that is a "service" for the purposes of our act. A matter is currently under consideration by SAT—it was heard in Kalgoorlie—involving some young Aboriginal boys who had requested assistance from the police, but that assistance was not given, and the boys were subsequently further assaulted and ended up injured and in hospital. In looking at the refusal to provide a service at that point, the preliminary question that SAT had to consider was

whether the police were providing a service for the purposes of our act. It is our view that the services that the police provide to the public—that is, whether the police take complaints and investigate matters, and whether the police follow up on claims by people that they have been harassed or victimised or assaulted—are "services" for the purposes of our act. That is why we are pursuing that matter. It would be our view that anything that affects interaction between the police and the public would constitute a service for our purposes. That would include whether the police are searching people.

Mr C.C. PORTER: If I can add to that, I have not yet read the transcript of the case that the commissioner is talking about, but I must say that the commissioner puts a very, very broad interpretation on "services". Whether, for instance, an arrest by the police is a service to the person being arrested or to the public at large is a matter that has yet to be debated. I just put that on the record as my view.

Mr P. PAPALIA: In responding to the Attorney General's previous comments, and in light of the commissioner's contribution, I would have thought that anticipating the impact of potential legislation would be an important role for the Attorney General, regardless of whether he sources advice from the commissioner and from departments like the police, to ensure that the impact is identified prior to that impact being felt in the community, particularly with regard to minority groups and the Indigenous population of Western Australia. But, putting that aside, if we are to have a debate about whether a service is being provided by the police, the manner in which this legislation is being sold to the Western Australian public suggests that a service is being provided by WA Police to ensure that Northbridge is a safe place to enter—somehow suggesting that Northbridge is the only place in which this legislation will be applied—and that, without this legislation, Northbridge would not be a safe place to enter. I suspect that we would not need to broaden the definition too widely to assume that that type of activity by the police is a service that is to be provided to the people of Western Australia, and it is, therefore, appropriately subject to scrutiny by the commissioner in that context. I also question the Attorney General's assertion that there is no need for the commissioner to look at this legislation prior to the legislation being passed. I say that because once this legislation has been passed the police will have these additional powers that they do not actually require, and the impact will be felt by the community. The Attorney General is saying that the only time he is going to be concerned about this is subsequently when Indigenous people or other minority groups are unfairly impacted by this legislation; that is when he will get concerned about it, and that is when the commissioner might hear about it.

Mr C.C. PORTER: If I can take out the statements from the questions, I think there are probably three questions there. The first is with respect to the definition of "services" and the extent to which services are appropriately analysed by the commissioner. I am not debating that "services" should be given a relatively broad meaning and interpretation within the context of the act. What I would say—this is a slight divergence from what the commissioner has said—is that not everything that the police service does can be considered, in my legal view, a "service" within the ambit of the equal opportunity commissioner's empowering legislation. That term cannot be infinitely elastic in terms of what the commissioner can and cannot do. The member might disagree, but —

Mr P. PAPALIA: I am not really concerned about that.

Mr C.C. PORTER: What the member has described in terms of Northbridge may or may not fall within the definition. I have not considered that. My first point is that it is not all-encompassing. It is not infinitely elastic. The second point the member raised was that this is a power that the police do not require. Again, this debate has been had. My view is that very clear statements have been made, particularly in the committee inquiry into this matter, that the police consider that this power is appropriate to fit the purpose and is required. The third point the member raised is: why would I not ask the commissioner to investigate the services that will be provided by WA Police pursuant to this legislation before this legislation has been enacted? My response to that is: what is there to investigate at this stage? What the commissioner does is look at real instances—for instance, the matter that has been raised in Kalgoorlie—and make a determination. It then becomes a question of the opportunity cost of investigating a matter that, at the moment, with respect, is a political issue rather than a practical on-the-ground issue.

Mr P. PAPALIA: That might be true. But the wording of the dot point suggests that this is being done in anticipation of new initiatives by departments to identify potential outcomes before they occur.

Mr C.C. PORTER: I will let the commissioner add to this, but it seems to me that there are a number of ways in which the commissioner might become involved in that anticipatory area of legislative change and the services that would be occurring by virtue of that legislative change. Firstly, we need to be absolutely sure that it is a service. Secondly, the relevant minister might ask the commissioner to become involved. I am not that minister. Thirdly, the commissioner might view it as an area that warrants immediate attention as opposed to all the other matters in the public sector's delivery of services that currently require attention. I have not asked, because I am

not the relevant minister. I do not view this as a matter of immediate and urgent concern. Certainly, from the sorts of figures the member has cited from other jurisdictions—I have heard them before—if that situation did arise in this state to some unreasonable and unexpected extent, that would be something that would warrant looking into; but it has not arisen here. I will let the commissioner answer about whether the fact that this legislation is being considered inside the parliamentary process has been sufficient to warrant her going out in this anticipatory way to cure problems that have not yet arisen pursuant to legislation that has not yet been passed.

Ms Y. Henderson: I have made some comments and I have expressed concerns about what has been found in other jurisdictions in relation to these kinds of powers. In relation to what we are looking at with the police, we have been looking at issues around the frequency with which the police are likely to arrest Indigenous people, particularly young people, rather than charge them by summons, compared with non-Indigenous people. We are also looking at the frequency with which Indigenous people in general are granted bail according to the kind of offence committed, compared with non-Indigenous people. We therefore look at a range of issues where we believe the police and the courts are providing services to people that impact on the proportionality of the way in which those services are provided. If those services are provided in a manner which unintentionally results in greater hardship or less favourable treatment for any particular group, then we try to identify that and we work with the agency to try to find ways around that.

[11.20 am]

Just on a slightly related matter, for example, we have been doing extensive work with the Department of Transport around the issue of lack of licences held by Indigenous people in communities and the reason why many Indigenous people do not hold a current driving licence; and the impact that then has on offences for driving and their imprisonment rate as a result of those offences.

Mr C.C. PORTER: If I could just add to that, it seems to me that the point of the member's question is to assert that there is a high likelihood, or even an inevitability, of systemic racism arising in the way in which services are rendered.

Mr P. PAPALIA: No.

Mr C.C. PORTER: If that is not what the member is suggesting —

Mr P. PAPALIA: Did the Attorney General hear me use the words "systemic racism"?

Mr C.C. PORTER: No. Let me put it this way: what is levied often against the police force —

Mr P. PAPALIA: Not by me.

Mr C.C. PORTER: I hear often in my job that there is some form of indentured or systemic racism in the way in which they —

Mr P. PAPALIA: Not by me.

Mr C.C. PORTER: Okay; I accept that.

Mr P. PAPALIA: I am concerned that the Attorney General does not portray me in that manner, because I do not say that.

Mr C.C. PORTER: I accept that, but often it is raised in the matters that the commissioner has now put on record.

Mrs C.A. MARTIN: I will say it, if the Attorney General likes. There is systemic racism. I will say it; okay?

Mr P. PAPALIA: Carol can say it!

Mr C.C. PORTER: As I say, some people hold that view.

Mrs C.A. MARTIN: I am one of them.

Mr P. PAPALIA: I think the legislation is flawed and likely to have a bad outcome.

Mr C.C. PORTER: I do not share that view but it is raised and then often tested. The commissioner has been testing that view in terms of clear, delineated issues; such as the distinction in levels of Aboriginal arrest versus charge by summons, and the differences between Aboriginal people, particularly young Aboriginal people, getting bail.

Mr P. PAPALIA: I commend that approach, but —

Mr C.C. PORTER: My view is that there is a range of other reasons for that, which I would certainly not describe as systemic racism. The point I raise is: would the problems that the member considers will inevitably

arise from this legislation be properly considered, as these other issues have been? I think that would be the case, but the raising of the issues in itself might mean that those issues are not proven to be indicative of systemic racism. The point I raise is that it seems to me to be well down the track here. We always test the outcomes of legislation; I dispute whether the outcome that the member has suggested is anywhere near an inevitability. But when those claims have been tested with clear, measurable, discrete issues, such as the granting of bail, I am not certain whether or not there has been proof of that kind of systemic racism. I would certainly be happy for the commissioner to make additional comment with respect to charges on summons versus arrest and bail, because it seems to me that there is a multiplicity of reasons why those statistics differ between Indigenous and non-Indigenous people. I do not know whether the commissioner has anything to add to that.

Ms Y. Henderson: I think the clear issue for us is that we are looking for factors that are built into the system that were not intended to be racist but in their outcomes tend to produce disproportionate responses. In relation to, for example, bail, the requirement for a responsible adult is the most frequent reason why Indigenous youngsters do not get bail, so we then looked behind that to see whether there are alternative ways of satisfying bail conditions to reduce that disproportion. The aim of our exercise, therefore, is not to seek out racist individuals but to look at policies that have an unintended impact and disproportionately impact adversely on some groups.

Mr C.C. PORTER: I add to that that I find it difficult, I must say, to accept that unintended outcomes can be adequately described as racism. My view is that racism has always had an element of intent to it. It may be that outcomes of policies —

Mr P. PAPALIA: Not necessarily.

Mr P.T. MILES: It is.

Mr C.C. PORTER: The member for Warnbro might take a different view.

Mr J.R. QUIGLEY: If it was a race issue, you might not intend to do it but you might just.

The CHAIRMAN: Order!

Mrs C.A. MARTIN: The commissioner would not have a job if there was no racism; so, it is something, isn't it? It is not like under a rock, mate!

The CHAIRMAN: Order!

Mr C.C. PORTER: The member might have a different view but that is a view and perhaps it is a strictly legal view that I take.

Mr P. PAPALIA: I am happy to let this go.

Mr P.T. MILES: I want to take the committee to page 648. One of the services and key efficiency items in the box there, "Average Cost per Presentation/Seminar/Workshop", rises from $3 200 to $5 180. Could the Attorney General expand on the increase and the reason why, please?

Mr C.C. PORTER: Is that the difference on page 648 between the 2009–10 figure and the estimated actual for 2009–10?

Mr P.T. MILES: Yes.

Mr C.C. PORTER: I will hand over to the commissioner on that one, but it is obviously a significant increase.

Ms Henderson: I thank the member for the question. The reason for the increase is that previously we offered short courses, such as a half-day course on equal opportunity law and short courses for contact and grievance officers. We now offer longer courses, so that we actually deliver fewer courses. That therefore is really measuring the difference in the cost of each unit. The units we are now measuring are longer courses over a day and a half, as opposed to half a day, and that is why the figure is greater.

Mr P.T. MILES: Further to that, Mr Chair. Is that extra staffing costs or are you hiring more staff to cover those extra course days or course hours?

Ms Y. Henderson: No, we are not hiring more staff. It is the cost per presentation, which is the efficiency indicator. The number of presentations we are dividing into the cost is now fewer. That is why the cost per unit appears to be more.

Mr C.C. PORTER: So, fewer, larger presentations.

Mr J.R. QUIGLEY: May I preface my question with a little statement, Attorney, because it is to do with bullying?

Mr C.C. PORTER: I would expect nothing less!

Mr J.R. QUIGLEY: Then I shall not disappoint the Attorney, if that is all right. With the advent of electronic services such as Twitter and Facebook, we have seen a lot in the media about the explosion of bullying as practised on these electronic mediums, making the lives of children at school, and indeed some teachers, a misery. We have seen some examples in the eastern states of schoolchildren working as casual employees who have even taken their own lives as a result of bullying. Given the Law Reform Commission's paper, which recommended that bullying should be included as prohibited conduct, is it not now time for the government to address this issue, amend the Equal Opportunity Act and, in accordance with the desired outcomes of this agency, legislate to outlaw bullying for the devastation it causes to people's lives both in the workplace and in the education system?

Mr C.C. PORTER: There has been a range of suggestions about amendments to the act, some of which I agree would be appropriate areas for amendment and others with which I personally disagree; but I do not pretend that my views are held on a consensus basis by everyone in my party room. In my view one of the appropriate areas for reform and amendment is in the area of bullying. I would caveat that by saying that the member's statement to outlaw bullying is a statement that reflects an outcome that is harder to achieve than it is said, because there are obviously very finely balanced issues at play here, but I do agree that this is one area for reform. A number of areas have been mentioned and I can conceive of reforms to the act in this term of government, but it is not an absolute priority in this government's legislative agenda. Nevertheless, if reforms do go into the act I would like to see them go through not on a piecemeal basis, but as a consolidated series of reforms. I agree personally that bullying is one that could be appropriately added to the act.

Mr J.R. QUIGLEY: I am concerned that the provisions concerning breastfeeding went through on a piecemeal basis, but bullying is having such an impact on ordinary families and children right now that it could be an exception and offer relief, as it would bring the commission into the mediation process between children. Often it is just the requirement to bring the parties together and have them confront the consequences of their aberrant behaviour that brings about cessation. Could we not bring in a bit of legislation—it would not take us longer than about half an hour in the Assembly—to bring bullying within the ambit of the Equal Opportunity Act?

[11.30 am]

Mr C.C. PORTER: The idea that amendments along the lines of bullying would take half an hour to debate in the Assembly is fantasy. I would imagine that, notwithstanding that in principle it has my support—and I would imagine the support of other members of my government—it would be contentious. An enormous amount of devil would be contained in the detail. Although I do not disagree with the member that the need is emergent and increasing, I would disagree that somehow that is a need that did not exist when the member was in government not more than two years ago. I disagree that this is a matter that can be dealt with somehow in a piecemeal, swift and uncontroversial fashion. I would envisage this would be a matter of some controversy. Getting the detail absolutely right would be the only way that we could guarantee anything resembling a swift passage through our two houses of Parliament. I suggest that this is an area that is ripe for reform but not something that should be done on an urgent or knee-jerk-type basis.

Mr J.R. QUIGLEY: The government pushed through mandatory sentencing in a couple of hours when the Police Union was on the steps of the Parliament!

Mr C.C. PORTER: Mandatory sentencing was a core election promise of this government; indeed, something that we promised to do in a short period of time —

Mr P. PAPALIA: As opposed to prostitution legislation.

Mr C.C. PORTER: The member made an assertion about prostitution and what I said I would do, which has not been proved because it is not correct.

Mr J.R. QUIGLEY: I was not going into the philosophical basis behind pieces of legislation. I was only picking up mandatory sentencing as something that was controversial, as I remember it went through the Assembly in a few hours. Families all over Perth whose children are being subjected to bullying are looking to this Parliament for relief. Can we not offer them some relief urgently?

Mr C.C. PORTER: The distinction to be drawn with the mandatory sentencing legislation is that that was a core election promise and some good deal of thought had been put into the structure of the legislation—although it is not a structure of legislation the member agrees with. I in embryo agree that this is an area which is ripe for reform. Yes, there has been a Law Reform Commission report on it, but, equally, there are variants of legal views on how it would best be done—how the boundaries would best be drawn. It is something I would advance

in the context of other reforms, not in a standalone piece of legislation, but it would need to be done carefully and cautiously. This is one area where less haste would result in more speed.

Mr J.R. QUIGLEY: In this Parliament?

Mr C.C. PORTER: I think the member can consider there will be changes to the Equal Opportunity Act in this term of Parliament. If those changes occur in this term of Parliament, bullying would certainly be prime amongst those.

Mr P.T. MILES: Is there no part of the current Equal Opportunity Act that bullying would come under anyway?

Mr C.C. PORTER: Arguably, there are areas such as discrimination on the ground of sexual preference or other matters in the context of employment and other areas that themselves might be characterised as bullying. I think this goes to the core of the problem—what we have now come to understand as bullying in 2010, through the use of electronic media, is distinct in some respects from other forms of discriminatory behaviour. Defining it, and capturing the serious and objectionable activities but not over-regulating our society in a way that would cause controversy and division, will be a very difficult exercise. To some extent it is covered already, but I agree with the member for Mindarie that there is room for expansion here.

Mr J.R. QUIGLEY: Further on that point: for Western Australian families who are looking for some relief for their children from bullying, can the Attorney General hold out realistic hope that in this term of government they will see bullying outlawed vis-a-vis the equal opportunity legislation?

Mr C.C. PORTER: The member talks in ridiculously simple terms of outlawing bullying and providing relief as if a change to the act will cure overnight some very pervasive problem. That is an unrealistic expectation to build in the minds of people whose children or other siblings might be suffering the ill effects of what we colloquially know as "bullying". On the issue of timing, I will say again what I have previously said: I would anticipate that there will be reforms to the act in this period of government. I would consider that reforms in the area of bullying would be a very important part of those reforms.

Mr P. ABETZ: Attorney General, I refer to "Outcomes and Key Effectiveness Indicators" at the top of page 648 of the *Budget Statements*. The figures for "Community awareness of the Act and belief it is of benefit" seem to indicate that public awareness of the Equal Opportunity Act seems to be consistently around 80 per cent. Is it possible that this figure is consistent because the principles of the act have become embedded in Western Australian society over the 25 years since the act was passed?

Mr C.C. PORTER: I will get the commissioner to give a more detailed answer than this, but it seems to me that we might consider that at some point in time the KPI, which measures awareness of an act of Parliament, will reach a peak. I do not know whether we have reached that peak and I do not know whether we would dive from that peak if the activities that the commission engages in were modified. It looks statistically like we have reached some sort of peak. I do not know whether the commissioner has an alternative view.

Ms Henderson: These figures are based on a community awareness survey conducted around the whole state by a survey company. Although we have distilled high levels of awareness of the act, in fact what the detailed questions reveal is that those behaviours that have been outlawed the longest have the highest levels of recognition—somewhere in the ninetieth percentile—whereas for those that are more recent the recognition is much lower. Over time people have become aware which provisions of the act make certain behaviours unlawful. The community awareness survey consistently shows this. For example, age discrimination is much less well known than sex discrimination or race discrimination.

Mr F.A. ALBAN: My question is based loosely on pages 648 and 649 of the *Budget Statements*. I am cross-referencing some of these figures with data from the commission's annual report, specifically the number of complaints received. The annual report states that the commission received 634 complaints in 2008–09—that is just short of two a day. Going over these papers on pages 648 and 649, the commission has an FTE complement of 30. Is that right; and, if so, my question is: what do these positions do? Thirty FTEs seems like a lot of positions to handle under two complaints a day and to educate a public that likely seems educated already on the merits of the act.

Mr C.C. PORTER: I do not have experience in the way that complaints work at the commissioner's office but often complaints are complicated matters. Maybe the commissioner can give some explanation about what actually is involved in a complaint. It is also the case that there is the issue of unit costs for each number of complaints, which have increased. Again, that might be part and parcel of the answer. Sometimes these things are more complicated than they appear. I will let the commissioner answer that.

Ms Y. Henderson: In addition to formal written complaints that are investigated and conciliated, and, if not resolved, referred to the State Administrative Tribunal, the commission deals with several thousand inquiries

every year. That is detailed in the annual report. In addition to that, the commission conducts education and training sessions around the state. That is also detailed in the annual report. We hold several hundred of those. There are employees employed specifically as trainers who go out and provide customised training to companies and communities on request, for example, and in response to rights-based applications by community groups—for example, for advocates. The commission also has people who work on the program, as we referred to earlier, who look after 29 government agencies. They assist them to monitor their policies and practices, and to look for any unintended consequences that are less favourable for particular minority groups. It is not the case that the bulk of the commission's staff work exclusively on resolving complaints—it is about six or seven people.

The appropriation was recommended.

[11.40 am]