

Division 8: Commissioner for Equal Opportunity, \$3 802 000 —

Mr S.J. Price, Chair.

Mr J.R. Quigley, Attorney General.

Dr J.C. Byrne, Acting Commissioner for Equal Opportunity.

Miss L. Markussen, Ministerial Liaison Officer.

Mr D. Emerson, Senior 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 Attorney General 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 Attorney General 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 Attorney General's cooperation in ensuring that it is delivered to the principal clerk by Friday, 1 June 2018. I caution members that if the Attorney General 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 member for Hillarys.

Mr P.A. KATSAMBANIS: Welcome, acting commissioner. In the service summary on page 99 of the budget papers, it sets out the two services—the provision of information and advice, and the avenue of redress for unlawful discrimination and unreasonable treatment. In relation to the second area of service expense, can the acting commissioner outline to us the number of cases that the Equal Opportunity Commission has dealt with in the past 12 months, and how that compares with the previous 12 months?

Mr J.R. QUIGLEY: I defer to the acting commissioner for those figures.

Dr J.C. Byrne: There are two types of assistance for redress. One is an inquiry function. We generally get about 1 500 inquiries a year. Generally, we give appropriate advice to them in response to that inquiry, which may be that, for a large organisation, it might be better first to go to the human resources department, for example. Then there is the complaint function. There are about 400 complaints a year, although the number has been slightly higher this year than it was last year. However, I do not think that means an upward trend; it simply fluctuates from year to year, as any statistical measure would fluctuate.

Mr P.A. KATSAMBANIS: Of the 400 complaints, how many have been resolved in favour of the complainant or applicant and how many have not been resolved in favour of the complainant or applicant?

Mr J.R. QUIGLEY: I once again defer to the acting commissioner.

Dr J.C. Byrne: We would not resolve in the favour of one or the other; our role really is to try to conciliate the complaints. We do dismiss complaints for various reasons—lacking in substance, for example. Some complainants decide after a while not to proceed with the complaint after thinking it through and seeking advice. Those statistics are reported in the annual report. I would need to get the page of the annual report to do that. But, generally, only a small number are referred by us to the State Administrative Tribunal because we feel that it has not been resolved in conciliation, the parties have not come to an agreement and we think that the complainant is entitled to a court process to have it addressed. Only a small number—maybe four or five a year—fall into that category.

Mr P.A. KATSAMBANIS: In the area of complaints generally, has there been a trend in the nature or type of complaint or is there a consistency over the years that the commission gets similar numbers of human rights complaints, employment complaints and the like? Are there any emerging trends in the nature of the complaints or any changes in that regard that the commission has identified over the last 12 months?

[3.10 pm]

Mr J.R. QUIGLEY: I defer to the commissioner.

Dr J.C. Byrne: We have not identified any change or trends. The most dominant form of complaint is impairment, and the most dominant area is in employment. Again, the statistics are in the annual report. The second most

dominant form of complaint would be victimisation, where the person advises the organisation of the complaint and has been victimised. The next most common complaint is about race, but it is only slightly ahead of sexual harassment complaints. The third most common complaint fluctuates from year to year between sexual harassment and race. We have not identified a particular trend but have been in this situation for quite some years now.

Mr S.A. MILLMAN: The Commissioner for Equal Opportunity has outlined that the number of complaints received by the Equal Opportunity Commission is about 400, and the vast majority of those are resolved by conciliation—that is, a mutual agreement between the parties. In the last year, only a handful of those were referred to the State Administrative Tribunal for adjudication. Can I be advised on whether that handful is higher or lower than in previous years or whether any trends have been identified over the last couple of years?

Mr J.R. QUIGLEY: I defer to the commissioner again.

Dr J.C. Byrne: The number we refer to SAT has declined over the years. The reason for that, perhaps, is the approach of individual commissioners. Some previous commissioners may have taken the view that if a complaint is not conciliated, then rather than dismiss it as lacking in substance, give them a second go at the State Administrative Tribunal, because it holds a mediation process before a hearing. As commissioner, I generally dismiss the complaint unless there is enough substance for me to feel confident in taking it to the State Administrative Tribunal. Mediation is a somewhat problematic process if the parties do not want to resolve the complaint and want to go to court. We really do need to have quite a strong amount of substance. The onus is on the complainant to prove the case. So generally we do not refer a complaint to SAT unless we think the case has sufficient substance to succeed at SAT.

Mr S.A. MILLMAN: A number of other jurisdictional avenues are available to complainants through industrial law or common law proceedings. Has the Equal Opportunity Commission increased its function in assisting parties by referring to other potential avenues that might be available to complainants?

Mr J.R. QUIGLEY: I will defer to the commissioner.

Dr J.C. Byrne: Yes, indeed, we have done that. Since the Equal Opportunity Act came into force 30 years ago in 1984, a number of other similar-type bodies, plus the federal jurisdiction, have geared up. We were the first state to have anti-discrimination legislation for impairment, for example, in 1988. The federal legislation did not come in until 1992. That is an actual fact. Every time people contact us, we initially regard it as an inquiry and we assess it to see whether we are the best jurisdiction to handle it; and, if not, we suggest that the complainant go to the correct and best jurisdiction. It might be the Fair Work Commission or the Australian Human Rights Commission. There are some subtle differences between the legislation. Generally, we assess that and advise the complainant before we accept the complaint. The reason for doing this is that many of those jurisdictions say that if the complaint has been brought to another body, it cannot be brought to them. If a complaint should rightly go to the Australian Human Rights Commission but we accept it and we then say, “You’d better go to the Australian Human Rights Commission”, the Human Rights Commission will refuse to handle it. We are very careful indeed in assessing the complaint initially to make sure that we are the best body to handle it and that the complainant gets the best chance of resolution. If the complainant is not successful in another jurisdiction, they can come to us. Our legislation was one of the earliest in Australia and does not preclude this. A complainant cannot second dip under other jurisdictions but they can with the Equal Opportunity Commission, so we do get some complaints of that kind. They first test their complaint at the Human Rights Commission or the Fair Work Commission, and then they come to us for a second try.

Mr Z.R.F. KIRKUP: I refer to page 100 of budget paper No 2, service 1, “Provision of Information and Advice Regarding Equal Opportunity and Human Rights”. I note that the number of full-time equivalents in the 2018–19 budget target has been reduced from 11 to 10. What impact will that have on the commission?

Mr J.R. QUIGLEY: I will refer to the commissioner for that.

Dr J.C. Byrne: Generally, there may be a slight delay in dealing with complaints—a slight expansion of the time frame—but the time frame is still very good indeed. Generally, we acknowledge a complaint the same day it is received. We put it to a conciliation officer and advise the complainant within one week. Generally, we aim to have all complaints resolved within three months. We are still doing that and are among the best in Australia. The reduction has had a bit of an effect on our main function of conciliation. However, we have focused on some other functions that have less public interface and public effect than that. Generally, we have absorbed that reduction.

Mr Z.R.F. KIRKUP: If that decision has been made, what position or function has been removed as a result of that reduction in the number of FTEs?

Dr J.C. Byrne: The position removed was an administration person not directly involved with handling complaints.

Mr R.S. LOVE: My question almost follows on from that. I refer to the resource agreement on page 99 of budget paper No 2. The agreement was signed by the minister—in this case, it is the Attorney General. Has the government set any targets for budget reductions or staff separations et cetera when dealing with commissions like the Equal Opportunity Commission or are they immune from that type of budget reduction task?

Mr J.R. QUIGLEY: That happens across the agency. The commissions involve about 2 500 staff—I will have to get that figure later—across the agency. The Department of Justice has been absorbing a lot of that with its voluntary targeted separation scheme. Although these small agencies are expected to contribute, we have protected them because of their small numbers and passed that onto the large workforce of the Department of Justice.

Mr R.S. LOVE: My next question follows on from that and it also crosses over with what the member for Dawesville asked about. Who determined that only 10 employees should be working to provide information and advice on equal opportunity and human rights, for instance? Did the Attorney General's agency set that target for the commission or did the commission determine that that was an appropriate reduction?

Mr J.R. QUIGLEY: The department liaises with the commission on what resources are needed to hit the targets. As I have said, there is an overall target for the agency under the VTSS. The agency has tried to protect the smaller commissions from the reductions. For example, it can be seen in one of the later divisions that the Parliamentary Inspector of the Corruption and Crime Commission has two employees. We have to protect the smaller agencies of the commission whilst meeting the target.

[3.20 pm]

Mr C.J. TALLENTIRE: I refer to the first dot point on page 98 of budget paper No 2, which states —

... unlawful discrimination has increased moderately in the 2017–18 year.

I think we would all agree that anything other than a downward trend is unacceptable. Has any attention been given to determine what gives people license to act in a way that provokes these sorts of complaints?

Mr J.R. QUIGLEY: I do not think it is a matter of giving license. I will refer to the commissioner for the factors behind the modest increase.

Dr J.C. Byrne: Two factors tend to drive change in the number of complaints. The legislation has been there for 30 years and the community and employers are increasingly aware of discrimination. Often, the larger employers have very good human resources departments. I note significantly less of the really overt kinds of offensive discrimination occurring, other than employees in the workplace not really following the policies. So, there is really a decrease in the really blatant cases of discrimination, but there is an increase in complaints about the more subtle forms of discrimination. When performance management is occurring and the person may be a woman or a member of a minority, they may feel that they are also being targeted for that, and we get a complaint of discrimination on that basis. They are quite a bit more complex. Generally, I would say that the two effects are roughly in balance, although over recent years it has certainly fluctuated about a mean, one could say.

Mr C.J. TALLENTIRE: I thank the Attorney General and Dr Byrne for that response, but one hears a lot of talk of things being dismissed as political correctness. Has any research been conducted into how that is giving some people, some sectors of the community or perhaps the more right-wing elements of the media license to go forth and attack people, and that then has an impact in the workplace, enabling people to feel that they can act? I come back to my original point that surely anything but a downward trend is unacceptable.

Mr J.R. QUIGLEY: I will defer to the commissioner.

Dr J.C. Byrne: I would agree that a downward trend is very desirable. I can say that is the case if we take out the more subtle complaints. In terms of being dismissed as political correctness, could the member clarify whether it is complaints dismissed by the Equal Opportunity Commission as political correctness?

Mr C.J. TALLENTIRE: To clarify, I think it is the general climate. Some people listen to those extreme elements, perhaps on commercial radio and in the press, and feel entitled, or empowered, to be offensive. We have seen a rise in that activity. Even at an international level, we are seeing that style and manner increasing. I want to be sure that the commission is scanning the horizon to see where that emboldenment is coming from.

Dr J.C. Byrne: I share the member's concerns about that type of thing; for example, people in shopping centres being vilified for wearing a hijab. Yes, I do share the member's concern about that; however, that is not easily dealt with under the Equal Opportunity Act because that is very clearly religious vilification, and that is not a ground under which a person could complain to the Equal Opportunity Commission. The area in which that type of thing is occurring is generally not a ground under our act. In some cases, that type of vilification is a ground under the Human Rights Act. When people contact us with that complaint at the inquiry stage, we refer them to the Human Rights Commission. There are still activities that go on in society that are not a ground under any of

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Mr Peter Katsambanis; Mr John Quigley; Mr Simon Millman; Mr Zak Kirkup; Mr Shane Love; Mr Chris Tallentire

the relevant legislation in Australia. That is really something of concern. It is not specific to Western Australia; it is simply a general concern for me and my colleagues in other states whom I meet with regularly and discuss things like that.

The appropriation was recommended.