

Division 8: Commissioner for Children and Young People, \$3 237 000 —

Ms A.E. Kent, Chair.

Mr J.R. Quigley, Attorney General.

Ms J. McGowan-Jones, Commissioner for Children and Young People.

Ms D. Fitzgerald, Director, Policy, Monitoring and Research.

Mr J. Lee, Principal Policy Adviser.

[Witnesses introduced.]

The CHAIR: The estimates committees will be reported by Hansard and the daily proof will be available online as soon as possible within two business days. The chair will allow as many questions as possible. Questions and answers should be short and to the point. Consideration is restricted to items for which a vote of money is proposed in the consolidated account. Questions must relate to a page number, item or amount related to the current division, and members should preface their questions with those details. Some divisions are the responsibility of more than one minister. Ministers shall be examined only in relation to their portfolio responsibilities.

A minister may agree to provide supplementary information to the committee. I will ask the minister to clearly indicate what information they agree to provide and will then allocate a reference number. Supplementary information should be provided to the principal clerk by noon on Friday, 2 June 2023. If a minister suggests that a matter be put on notice, members should use the online questions on notice system to submit their questions.

Are there any questions? Member for Central Wheatbelt.

Ms M.J. DAVIES: I refer to page 107 of volume 1 of budget paper No 2 and paragraph 1.6, which states —

continuing to advocate for the United Nations Conventions on the Rights of the Child, Rights of Indigenous Peoples, and the Rights of Persons with Disabilities to be enacted into legislation ...

Can the Attorney General provide an overview of the interaction of the Commissioner for Children and Young People specifically in relation to the issues we are facing at Banksia Hill Detention Centre?

Mr J.R. QUIGLEY: Was it in relation to the work of the commissioner in relation to the Work Health and Safety Bill?

Ms M.J. DAVIES: Banksia Hill.

Mr J.R. QUIGLEY: Banksia Hill—I could not hear. I warned the member that I had a bad cold and my ears were blocked. Yes, certainly. The Department of Justice has supported the commissioner's regular visits to Banksia Hill Detention Centre, where the commissioner goes to listen to the views of young people. Since July 2022, the commissioner and her team have visited Banksia Hill on seven occasions, hearing from young people about their experiences of unit 18 and Banksia Hill, taking part in youth leadership meetings and assisting the Office of the Inspector of Custodial Services with its announced inspection of Banksia Hill in February. The commissioner will continue to monitor the progress of the department as it implements Banksia Hill's new operating philosophy and service model of care and addresses staffing issues, infrastructure improvements and the wellbeing of detainees. The commissioner agrees that detention is required for children and young people who have been involved in serious crime, particularly crimes against a person. The commissioner is also supportive of investment in services and programs at Banksia Hill Detention Centre, but notes that staffing impacts the ability to achieve change. The commissioner has had a very active role in going out to Banksia Hill to listen to the views of young detainees.

Ms M.J. DAVIES: Can the Attorney General advise what formal advice the commissioner has provided to government as it has been managing these issues?

Mr J.R. QUIGLEY: No, I cannot, because a lot of the advice goes to the department of corrections, which is responsible for the management of those issues. The commissioner's office sits within my portfolio basket, but the member would have to ask that minister about the advice she gives to the department.

Ms M.J. DAVIES: Within the Attorney General's purview—the courts and how they are dealt with—what kind of advice has been provided to him from the commissioner about children on a pathway to Banksia Hill?

Mr J.R. QUIGLEY: We have to adopt a therapeutic model with these young children.

Ms M.J. DAVIES: How far back has the commissioner been providing that advice to the government?

[4.50 pm]

Mr J.R. QUIGLEY: I cannot recall. We have to work with the Children's Court. We have to develop a therapeutic model, and there are two places for the therapeutic model. One of those areas is within the detention centre itself

and the other is before they go to the detention centre. We have been developing with the President of the Children's Court a proposal—these are not easy to work up—to have a therapeutic court within the Children's Court as a last stop before Banksia Hill. It is intended that some children who warrant detention, who have committed numerous crimes or who have committed fewer crimes but of a serious nature, will be offered placement on a program of a therapeutic nature run by the Children's Court. As part of the program, it is intended that they will be screened for auditory impairment from upper respiratory infections as children or because they did not get their grommets and cannot hear the court, for cognitive impairment, and for general health. These people will be screened to see whether we can keep them on a therapeutic program within the court and divert them from Banksia Hill Detention Centre. We are working this up at the moment. The member might be aware that therapeutic courts are already operating out of the Children's Court, but they are for drug offences. To get on the therapeutic program in the court, one has to plead guilty to the drug offence and agree to go on the program. We are looking at modelling it the same way. It will be available for —

The CHAIR: Sorry, Attorney General, we just want to condense this.

Mr J.R. QUIGLEY: It will be modelled the same way. If young kids plead guilty, they will be able to go on the program to see whether we can keep them out of Banksia Hill on a therapeutic model. This will require extra resources—an extra judge—at the court. I referred to that earlier today when I said that we have 33 and a half judges. Today, we inducted a new judge who will be spending half her time at the Children's Court and half her time at the District Court.

Ms M.J. DAVIES: Thank you, Attorney General. Can the Attorney General advise when this new therapeutic model is likely to be in place?

Mr J.R. QUIGLEY: We hope that there will be a trial or a pilot very soon. First of all, we have to get another judge because the judge is overwhelmed with criminal cases. The wonderful Judge Wendy Hughes, who was sworn in only last week, will be spending 50 per cent of her time doing this and other criminal matters at the Children's Court. We had to have the resources first.

I said there is the court side and the Banksia Hill side of the therapeutic model. I do not want to talk about the Banksia Hill side because that fits within the Department of Corrective Services.

Ms M.J. DAVIES: I understand.

The CHAIR: We are talking about division 8. I just wanted to clarify that, Attorney General.

Mr J.R. QUIGLEY: I note from announcements that Mr Tim Marney will be heading the therapeutic side. The member would have to ask the other minister.

Ms M.J. DAVIES: On that paragraph, has the Commissioner for Children and Young People formally raised concerns with government about government breaches of the United Nations Convention on the Rights of the Child and the Rights of Indigenous Peoples in relation to the young children we are talking about? Has that advice been provided by the commissioner?

The CHAIR: Are you referring to page 107, paragraph 1.6?

Ms M.J. DAVIES: Yes. Has the commissioner provided advice to the Attorney General and government about these breaches?

Mr J.R. QUIGLEY: Those matters are all with the Minister for Corrective Services.

Ms M.J. DAVIES: Has advice not been given to the minister who is in charge of making sure they do not end up in Banksia Hill?

Mr J.R. QUIGLEY: Is the member asking about the breaches at Banksia Hill? That is what I thought the member's initial question was: has the commissioner advised about breaches or alleged breaches of human rights at Banksia Hill? That is for the Minister for Corrective Services.

Ms M.J. DAVIES: Would that then drive the Attorney General's decision-making around therapeutic programs? Okay; let us think of a better way to ask the question.

Mr J.R. QUIGLEY: It is probably my fault, member, but I am trying to do my best.

The CHAIR: I will throw to the member for Bicton, who has a question.

Mrs L.M. O'MALLEY: I refer to page 106 of budget paper No 2, volume 1, and paragraph 1.2 under significant issues impacting the agency. I understand the commissioner has delayed the Speaking Out Survey planned for 2024. What are the reasons for the delay?

Mr J.R. QUIGLEY: The 2021 Speaking Out Survey was very successful. In fact, it was brought forward a year to ask questions about COVID. The commissioner felt that there was a considerable opportunity to review the questions based on the information so far gleaned. This would include potentially adding questions to tease out

information such as the decline in girls' wellbeing. In discussion with three school sectors, it was also felt that the survey could benefit from the inclusion of additional schools to enable intraregional comparisons in the survey topics. The 2021 survey had over 16 500 participants, which was up by more than 10 000 from the inaugural 2019 survey. There will be an extension to include more children and young people by including a greater number of schools. It is believed that the inclusion of additional schools and students will help to provide even greater evidence going forward. The delay was discussed with all school sectors—government, independent and Catholic schools—and they all indicated that they would be keen to continue their participation in the survey, notwithstanding the delay.

Ms M.J. DAVIES: On page 106, under significant issues impacting the agency, paragraph 1 says —

In 2023–24, the Commissioner will primarily focus on the following key areas:

1.1. holding events, forums ...

Would the Attorney General like to provide some feedback on the events and forums that have been held over the last six months, including visits to Banksia Hill on seven occasions, as was previously noted?

Mr J.R. QUIGLEY: The commissioner has done a number of projects and research projects. I could refer, for example, to the Talking about Vaping survey.

Ms M.J. DAVIES: My question was specifically about the events that she has done in the last six months with Banksia Hill.

Mr J.R. QUIGLEY: What has the commissioner done? She has been out there seven times to discuss the concerns of young people. I have not got a report back on that; there is no published report on it.

Ms M.J. DAVIES: Would the Attorney General like to reflect on any advice that has been provided by the commissioner in relation to those visits? Will there be a formal, published report on those visits?

Mr J.R. QUIGLEY: At this stage, it is not envisaged that there will be a formal report. The commissioner has already made her views known, as others in the community have made known, that Banksia Hill needs to focus on a therapeutic model. We are dealing with young, very troubled people.

I also think that some credit should go to the system—I was going to say the government. When we came to office, over 200 kids were in there. At the last count, there was about 87, from memory. They are only the really intransigent cases.

In due course, the commissioner will be reporting orally, giving evidence, before the Joint Standing Committee on the Commissioner for Children and Young People, when she can be examined at length about where we are up to at that point. That will not be too far into the future.

In my portfolio, I am concerned about what can we do in the court system, because a number of agencies are involved. We are trying to come up with a therapeutic model within the court system, and we have a wonderful new judge to supervise that. But then we need Communities for alternative programs and a number of things. We do not want these children to fall out of the system. I mean, they can fall out of the detention system, but we do not want them falling out of those support systems that are available to people in detention or on bail.

[5.00 pm]

Ms L. METTAM: Did the commissioner raise concerns with the Attorney General about the impact of understaffing, which was leading to the unlawful confinement of individuals at Banksia Hill? It was not as a result of their behaviour within detention, but rather as a result of understaffing. Has that matter been raised by the commissioner?

Mr J.R. QUIGLEY: The commissioner has not raised that directly with me personally, because that is a matter before the Supreme Court. Justice Tottle has heard evidence on that. The member says detainees are locked down or confined not because of their behaviour. There are provisions in the legislation to have a lockdown for general safety reasons. One of these lockdowns for general safety reasons was when we very recently saw the children on the roof, throwing rocks and projectiles at staff and stopping fire trucks getting to the scene of the fire. The whole institution was locked down. The question then arises of locking down the institution when an insufficient number of staff turn up to work. These are also issues that might properly be raised with the State Solicitor's Office. The commissioner has attended meetings with the Premier and the Minister for Corrective Services on these issues. I am not privy to those meetings, so I cannot give the member a full run-down of them.

Ms L. METTAM: The Attorney General compared the situation at Banksia Hill Detention Centre with that of prior to 2017. Is he saying that there has been an improvement in the way Banksia Hill is being managed?

Mr J.R. QUIGLEY: There have been difficulties at Banksia Hill for a number of years, as the member knows. Under a previous government, they had to move all the children out of Banksia Hill to Hakea Prison next door. That happened some considerable time before we came to government. When I say there has been an improvement, I mean that of the court trying to manage the children in ways other than detention. However, when it does that, we get media pushback saying that the court is being too lenient by not sending them to Banksia Hill. It is the presence between a rock and a hard place—sometimes. Then there is the incident when the youth stabbed the gentleman, now

deceased, who was trying to be a good Samaritan and retrieve a pushbike. They were sent straight to Banksia Hill for offences against the person. However, the numbers have come down. It is important to keep those numbers low. It is easier to deliver a therapeutic program to 80 or 90 children than 250 children.

Ms L. METTAM: Is that happening? Is a therapeutic program being delivered?

Mr J.R. QUIGLEY: I do not want to dodge all this, but this is within the department of corrections and under Minister Johnston. When I go through the briefing papers, I think, “What is all this about?” Then I see there is CS on them, for corrective services. All I know from the public announcements is that Mr Tim Marney—he was the Under Treasurer and then the Mental Health Commissioner—is going to assist in the design and delivery of the therapeutic program. For the courts—which is cutting it off at the headwaters—what is being contemplated is a therapeutic model in which those who have pleaded guilty and are on their way to Banksia Hill might be dealt with by turning up to court every week or fortnight as they are managed for the offence, like what is done in the Drug Court. That is being looked at now.

The CHAIR: I do not know whether the members have been reminded, but there are five divisions to go in 50 minutes.

Ms M.J. DAVIES: I refer to page 107 of budget paper No 2, volume 1, around how continuing to advocate is one of the primary focus areas for the commissioner. Paragraph 1.6 reads —

continuing to advocate for the United Nations Conventions on the Rights of the Child, Rights of Indigenous Peoples, and the Rights of Persons with Disabilities to be enacted into legislation ...

Can the Attorney General expand on what that would look like, and whether the government has considered that? What are those conversations between the Attorney General, the government and the Commissioner for Children and Young People?

Mr J.R. QUIGLEY: There were four potentially contentious issues identified in last year’s budget estimates—that is, the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, children and young people in residential care, children and young people in Banksia Hill Detention Centre, and the appointment of an Aboriginal children’s commissioner. As I have pointed out, we were very fortunate to get someone with such vast experience in the public service as our commissioner, who herself is Indigenous. There are 15 or 16 FTEs at the commission and a lot of these are part-timers. There has been a substantial turnover of staff, or people leaving, which has given the commissioner the capacity to employ two more Indigenous people. Before the appointment of Ms McGowan-Jones, there was not one Indigenous person at the Office of the Commissioner for Children and Young People. Now there is an Indigenous commissioner and two more Indigenous staff. As the member knows, Indigenous children, who are only a small per cent of our population of young people, tragically make up an inordinately large percentile of young kids who are getting in trouble. It is so sad.

[5.10 pm]

Ms M.J. DAVIES: It is very sad, minister. Sorry, I am not sure quite how that related to the question. The last few words are “to be enacted into legislation”. I am wondering what that means. What kind of legislation are we looking for?

Mr J.R. QUIGLEY: People with disabilities will be covered by the equal opportunities legislation and people who are suffering a disability because their rights are being trammelled will be able to find redress in new legislation. On that point, I defer to the commissioner to expand on what I said.

Ms J. McGowan-Jones: The Australian and New Zealand Children’s Commissioners and Guardians group has been discussing the need, particularly for the rights of Indigenous peoples, to be enacted into legislation, because notwithstanding signing the United Nations conventions, there is not much power in those conventions without appropriate complementary legislation across the country. For next year one of the key priorities of that group is to see some of those various areas enacted into legislation at the commonwealth level, or at the commonwealth, state and territory level. The importance of this is in ensuring that it is about not just justice, but all the rights of the child, of which there are 54 articles in the convention. They include freedom from sexual slavery, freedom from slavery, a right to education and a right to health et cetera. It is about making sure that when those particular articles in the convention are not enacted in legislation such as the Equal Opportunity Commission Act, the Racial Discrimination Act, that we can protect the rights we have for education et cetera in Australia by having them in legislation in the right place.

The appropriation was recommended.