

*Standing Committee on Estimates and Financial Operations — Eighty-sixth Report —
Consideration of the 2020–21 annual reports*

Resumed from 14 June.

Motion

Hon PETER COLLIER: I move —

That the report be noted.

I would like to make a few introductory comments on this report and leave it to members of the chamber to give their response. The Standing Committee on Estimates and Financial Operations is, without a shadow of a doubt, the hardest working committee in the Legislative Council. It is a very effective committee that performs its role in overseeing expected and actual spending from the consolidated account at both the estimates hearings and the annual report hearings. To start, I would like to recognise and thank most sincerely the other members of the committee: Hon Samantha Rowe, the deputy chair; Hon Jackie Jarvis; Hon Dr Brad Pettitt; and Hon Nick Goiran. We work very harmoniously together for a common good, and that is to ensure that the scrutiny of the budget papers and the annual reports is done forensically, openly, transparently and comprehensively. We are coming to the end of our two years and I think we have done a fairly good job. I would also like to acknowledge the hardworking staff who assist us in the process: Andrew Hawkes, Denise Wong and Margaret Liveris. They do an outstanding job.

This report deals with the annual reports of the various agencies. Due to the fact we had a late budget last year, in September, we had limited opportunity to assess the annual reports. We used as much time as we possibly could. We interacted with six agencies: the Department of Education; the Department of Health; the Department of Planning, Lands and Heritage; the North Metropolitan Health Services; the Auditor General; and the State Coroner. In most instances, they were most cooperative and effective. We had four hearings over six hours. Some non-committee members came to those hearings, which is relatively unusual in my time in this place, but it was good. We encourage that. We had some hearings today for the current round of annual reports and three non-committee members attended, so it is becoming more prevalent. I do not mind that at all. They are meant to be an avenue for scrutiny and all members are openly encouraged and welcome. There were 51 questions on notice. Some additional questions were provided so there was an avenue for every member of this chamber to be part of that scrutiny process. As I said, the annual report hearings are seen as an addition to the estimates hearings and provide an additional opportunity for scrutiny. Members might like to look at appendix 2, which shows all the topics that were covered in those various hearings. Members can see that it is quite comprehensive for each of the agencies. I will take members to the recommendations and the findings, most of which were the committee's suggestions on ways Treasury and the various agencies could not necessarily improve but perhaps streamline their processes. In each instance, the response has been positive.

One response was, dare I say it, a little disappointing. Members can find that in finding 1 —

The State Coroner's decision not to provide evidence directly to the Committee delayed the Committee's examination of the Government's provision and delivery of coronial services.

We tried to be as accommodating as possible to the State Coroner in this instance and to provide a number of opportunities for the State Coroner to appear and to provide answers to the committee. That was not forthcoming.

I will take members to page 10 of the report, which states —

Non-provision of information by a judicial officer

- 5.2 The Committee sought to meet with the State Coroner, as part of its consideration of the 2020–21 annual reports. The State Coroner produces a separate annual report under the *Coroners Act 1996*, with certain aspects of performance contained within the Department of Justice annual report. The Committee last met with a State Coroner in March 2012.

There was a precedent for it. It continues —

- 5.3 The State Coroner declined to attend a hearing and then provide answers to the Committee's written questions, citing a desire to preserve judicial independence. The Committee sought to reassure the State Coroner that its questions would not relate to judicial decision-making and would focus on the operations of the agency, such as staffing numbers and waiting times. The Committee was surprised and disappointed by the State Coroner's decisions. A copy of the correspondence between the Committee and the State Coroner is contained in Appendix 3.

I will take members to appendix 3 to point out that I do not think that we were being unreasonable in our requests to the State Coroner. Originally, the State Coroner agreed to appear before the committee. That was on 6 December 2021. On 10 March 2022, Margaret Liveris received a letter from the State Coroner, which stated —

Dear Ms Liveris

I refer to your email of 6 December 2021 advising that the Standing Committee on Estimates and Financial Operations resolved to invite the Office of the State Coroner for Western Australia in for the 2020–2021 Annual Report Hearings.

I have reflected upon my acceptance of the Committee’s invitation and determined to respectfully withdraw that acceptance, in order to preserve my judicial independence.

...

R V C Fogliani

State Coroner

That was on 10 March 2022. It came as a bit of a surprise because the coroner had previously agreed to attend. As a committee, we then decided to write to the coroner to ask whether she would be willing to provide some written responses. I will read part of my response as chair on behalf of the committee to the coroner. Members will find this on page 21 of the report —

Thank you for your letter dated 10 March 2022.

The Standing Committee on Estimates and Financial Operations is disappointed that you will not be attending a hearing to discuss the activities and resourcing of the Coroners Court. As the Committee’s staff endeavoured to assure your staff, the Committee is cognisant that you are a judicial officer and the importance of judicial independence from the Executive and the Parliament.

The Committee understands that your Office is funded by the Department of Justice. However, as the head of this Office, the Committee believes your input would be useful in relation to issues such as staffing numbers and waiting times for coronial investigations. Accordingly, I attach a list of questions that are indicative of the types of questions you would have been asked at the hearing. I invite you to reconsider appearing before the Committee.

Our letter then concludes with a few administrative details. The coroner responded to that letter on 31 March 2022, stating —

Thank you for your letter dated 24 March 2022.

For the same reason as outlined in my letter dated 10 March 2022, I respectfully decline to provide a written answer to the questions under cover of your letter dated 24 March 2022. The reason is to preserve my judicial independence.

I note some of the written questions under cover of your letter may be answered by other agencies and I also note that a copy of your letter has been sent to Hon John Quigley MLA, Attorney General.

While it is not open for me to refer these questions to the Attorney General, the Committee may wish to raise the matters with the Attorney General direct.

The report goes on. Members will find the committee’s letter to the Attorney General and another letter from the State Coroner contained within the report. We wrote to the Attorney General to see whether we could obtain some answers that we were going to provide to the coroner.

I will take members back to page 10, after we had written to the State Coroner and then to the Attorney General, which states —

5.4 Instead, the Committee sought the answers to its questions from the Attorney General. The Attorney General advised:

In accordance with section 27(1) of the *Coroners Act 1996* the State Coroner’s Annual Report on the operation of the Office of the State Coroner is independent of the Department of Justice and the contents of the State Coroner’s report is a matter for her consideration. The Department has however responded to all questions that relate to the administrative support that the Department provides to the State Coroner.

Basically, we did not get our answers. It continues —

5.5 The Attorney General was able to answer a majority of the questions that the Committee asked, but was not able to provide information on:

- whether the court typically experiences delays in the investigations of external parties or whether the electronic receipt of documents from external parties has improved efficiency (Question 1c) & d))
- how COVID-19 contributed to the reduction in the number of inquests finalised (Question 9)
- how many times the Office prioritised matters in public health or safety (Question 10)

Members can go and look at the other areas for which we were not able to get information, because of a lack of information from either the coroner or the Attorney General.

Chair, I have about another minute. If members would not mind, could I finish my contribution? I am about to finish up, and then I will sit down. Is that okay?

The CHAIR: You still have time.

Hon PETER COLLIER: I mean after 10 minutes. All I am saying is that I am about to finish.

The CHAIR: You will have to seek the call again.

Hon PETER COLLIER: Thank you, chair, and thank you, members, for the indulgence.

Hon Jackie Jarvis: I am sure the same courtesy will be extended to us.

Hon PETER COLLIER: I am not sure about that.

For the benefit of completeness, we could not ascertain a few other areas —

- whether the Office is involved in the preparation of biannual Department of Health progress reports for health-related coronial recommendations ...
- whether there has been any effort to ensure local Aboriginal community members are involved in cases that affect Aboriginal people ...
- how many of the of 122 notifications to the Therapeutic Goods Administration were associated with COVID 19 vaccines ...
- the 27 unnatural death of babies born alive after a failed abortion procedure ...
- the cost per case key efficiency indicator target ...

The Attorney General's answers may be accessed from the Committee website.

- 5.6 The Committee intends to pursue these matters at the upcoming 2022–23 Budget estimates hearings, when it will meet with the Department of Justice and the Office of the State Coroner.

That was not possible because, again, the coroner was not available. We basically got the hand, and that was a little disappointing. As chair, I found that disappointing, and I know it was disappointing for the committee. I am not casting aspersions about the State Coroner. We think that in this instance we made quite clear the information we wanted to access. It was not going to impede on the impartiality of the coroner, and we felt that it would have been worthwhile. The questions we were asking are most definitely of interest to not only the committee, but also the public, I would have thought.

That was an explanation for members of finding 1 of the committee, which is —

The State Coroner's decision not to provide evidence directly to the Committee delayed the Committee's examination of the Government's provision and delivery of coronial services.

That is why we put that finding in. We would like to think that at some stage we will get the opportunity to have the coroner come in and be asked some questions. It is certainly not political at all. The whole point of the exercise is to dig down into some issues that are interesting and relevant to members of the committee. After all, the State Coroner provides an annual report.

Having said that, I will conclude my comments by once again thanking all members for contributing to the annual report procedures. We are right in the middle of the current round of annual reports and we will have more annual report hearings in February. If members have any interest in those annual report hearings, I strongly recommend that they let committee members or me know which agency hearing they would like to attend. We will certainly consider them as a committee. Members should use the opportunity to scrutinise government. Whether they are on the government or opposition benches, this is a unique opportunity for them to be actively involved in the scrutiny of government procedures.

Once again, I would like to thank the committee, the committee staff and all members for supporting the annual report hearings.

Hon JACKIE JARVIS: I thank Hon Peter Collier for his comments on the consideration of the eighty-sixth report of the Standing Committee on Estimates and Financial Operations. His one minute more turned into four minutes

more, which does not bode well for someone in charge of an estimates committees that looks at numbers a lot! However, it reflects the collegial and professional nature of the members of the committee. I also want to speak on the eighty-sixth report of the Standing Committee on Estimates and Financial Operations. Even though we do not have much time today to go into this report, the notice paper makes significant time available for consideration of this report.

I want to take this opportunity to reflect on some of the recommendations in the report. As Hon Peter Collier said, this report reflects last year's annual report hearings. That was obviously my first year in the Parliament and my first year of involvement in this process. There was significant consultation with members, specifically members of the opposition and the crossbench, about which agencies should be called to attend those annual report hearings. Three of those agencies were the Department of Education, the Department of Health and the Department of Planning, Lands and Heritage. The North Metropolitan Health Service was also called. It is important to note that each individual health entity has its own annual report; therefore, a particular health service is called according to the accountable authority that releases the annual report. The Office of the Auditor General and the Office of the State Coroner were also called. It is worth noting that the Office of the State Coroner is separate from the State Coroner, who is a judicial officer. I will not dwell on that now. As I said, I want to go through the recommendations in order and provide a bit of explanation for those people who do not follow the proceedings of the estimates committee on a weekly basis, although why would they not!

The committee held hearings with each of those five agencies. We basically hold our annual report hearings on a week-by-week basis as part of our normal Wednesday morning committee meetings. Recommendation 1 relates to special purpose accounts. I think it is worth explaining to people what a special purpose account is, because I am not sure that everyone clearly understands the purpose of these accounts. A special purpose account is essentially a savings account that holds money for a particular special purpose. Special purpose accounts are established under section 10A of the Financial Management Act. They are transparent and reported on publicly, and have been used for many years by successive governments of all colours. If members are not sure of what I mean, there is a special purpose account for the new women's and babies' hospital that this government has announced. There are also special purpose accounts for the social housing investment fund, the digital capability fund, the climate action fund and the National Redress Scheme. These are examples of the types of special purpose accounts that have been established. They allow money for specific investments to be allocated by governments from their operating cash surpluses.

Yesterday, when some members of this place were out of the chamber on urgent parliamentary business while Hon Dr Steve Thomas was regaling us with stories about land tax, I mentioned that prior to having children, I worked in the finance industry for a couple of the big four banks. It was very common at that time that people's pay would go into one account and their savings would go into another account. That is certainly a practice that my parents instilled in me and it is also a practice that I have instilled in my children—we have our everyday money and we have our savings money. A special purpose account is essentially savings that have been set aside. They exist for that reason. I guess that the government's special purpose accounts are akin to not having to use a credit card or borrow money to fund things like hospitals, the National Redress Scheme or digital capability. That is the dummies guide to special purpose accounts.

Recommendation 1 of the committee in this report was —

The Treasurer direct the Department of Treasury to advise accountable authorities that the Treasurer's prior approval is required to overdraw any agency special purpose account.

Members might say, "My God! What happened there?" The explanation was quite simple. The Minister for Education and Training appeared at the annual report hearings on behalf of the Department of Education. From memory, the reason this recommendation had to be made is that funding had been provided by the commonwealth for capital improvements to Moora Residential College. However, because that funding had not arrived by 30 June, money had to be paid out of the special purpose account to enable that work to be done. I believe the account was overdrawn by only a couple of days. Under normal circumstances, the Treasurer's approval would be required in order for that to happen, but in this case that was overlooked simply because the commonwealth's money had not yet hit the government's bank account. Anyone in this place who has ever run a small business, as I have for many, many years, or a farm business—any type of business at all—would know that almost all small businesses operate with an overdraft. The reason is that sometimes people do not pay when they say they will, even if they are the commonwealth government.

I will read the explanation that was provided by Minister Ellery to a question from the committee that had been taken on notice. I am quoting from paragraph 4.3 at page 9 of the report —

At the time, it had been anticipated that these funds would be received prior to the end of the financial year, —

The minister is referring to the \$3.5 million of commonwealth funding for capital improvements to Moora Residential College. I am not fully across who was doing that work. I assume that a lot of regional subcontractors were involved, and obviously we want to make sure that people get paid. Minister Ellery went on to say —

but the payment of the invoice was unexpectedly delayed. As a result, there was insufficient time for the Department of Education to seek prior approval from the Treasurer.

As I said, I do not remember the exact time, but it was a matter of days. The minister continued —

The Department of Education continued to liaise with the Commonwealth agency throughout the process and the invoice was paid in July 2020.

Consideration of report adjourned, pursuant to standing orders.

Progress reported and leave granted to sit again, pursuant to standing orders.