

2024 review of annual and other reports of oversight bodies – NSW Ombudsman
Response to Supplementary Questions

Question

- 1. Do you have any comments on the process of applying for additional ongoing funding during the 2023-24 budget process? (Annual Report 2023-24, p 17)**

Answer

During the 2023-24 budget process we made four specific funding proposals, in each case responding to new or enhanced legislative functions or operational focus areas. These related to:

- Oversight functions under the *Public Interest Disclosures Act 2022*, which commenced on 1 October 2023
- Monitoring and reporting functions under the *Mandatory Disease Testing Act 2021*, which commenced on 28 July 2022
- The function of reviewing the complaints-handling systems of public authorities, which was conferred on us by the *Ombudsman Legislation Amendment Act 2022*, which commenced on 19 August 2022
- Increased capacity to take more action under our statutory functions of handling complaints (including public interest disclosures) relating to the public health administration sector.

The process of applying for this additional funding was largely consistent with the process that is now articulated in the Treasurer's Direction (TD24-12 *Charter of Independence for NSW integrity agencies*) and related legislative amendments made in the *Government Sector Finance Amendment (Integrity Agencies) Act 2024*.

Last year we were consulted on that draft Treasurer's Direction and draft bill. We wrote to The Cabinet Office noting that what was proposed was a significant improvement on previous processes and, for that reason, we supported the model. However, we also noted our ongoing support for the further reform recommendations that had been made by the Public Accountability Committee and the Auditor-General concerning funding arrangements for integrity agencies, which have not been implemented.

Question

- 2. What actions are being taken to improve stakeholder perceptions of fairness and service delivery? (Transcript, p 47)**

Answer

This question references p47 of the Transcript, where Mr Miller was responding to a question concerning complaints processes for inmates of correctional centres. That being the case, we have taken the opportunity to provide the following additional information specifically to that context, as well as responding to the question more generally across all of our functions, below.

Complaints from inmates

Last year we finalised 3,575 actionable complaints about adult correctional centres in NSW. In most complaints where we make preliminary inquiries, this involves my staff making contact with the

relevant centre governors or other senior correctional centre staff, providing details of the matter and (with their consent) the inmate's name. This is often the quickest way to resolve routine matters and seek information to inform our assessment of whether (and if so, what) further action to take.

During the hearing Mr Miller noted that we do not communicate complaints back to the centre from which they originate. This answer was being given in the context of a reference to complaints alleging serious officer misconduct, such as those raised in the Astill inquiry, and Mr Miller's response should be understood in that context.

Rather, our inquiries on a complaint of that nature, particularly if it raises questions of serious officer misconduct, would generally be directed to the Professional Standards and Investigation Branch of Corrective Services NSW (CSNSW) (which now sits within the Department of Communities and Justice) or other appropriate agencies including the professional standards branch of the relevant private prison provider, NSW Police Force (NSWPF) and NSW Independent Commission Against Corruption (ICAC).

Section 12(3) of the Ombudsman Act contains specific provisions relating to detained persons. In particular, this provides:

- (3) If a person detained by, or in the custody of, a public authority (a **detained person**) requests to make a complaint to the Ombudsman, the public authority or other person superintending the detained person must—
- (a) take all steps necessary to facilitate the making of the complaint by the detained person, and
 - (b) if the complaint is made orally—make reasonable arrangements for the detained person to make the complaint in a way that is not recorded or monitored, and
 - (c) if the complaint is made in writing—send to the Ombudsman, as soon as practicable, the written matter addressed to the Ombudsman, unopened.

Complaints can be made by inmates directly to our office by post, phone or in person during a visit.

The following information may assist the Committee to understand how those contacts are managed:

- Letters between this office and inmates are not opened by centre staff. When we write to an inmate the letter is placed in an envelope addressed to the inmate. This envelope is enclosed in another envelope addressed to the custodial centre governor, together with a letter informing the centre governor that the inner envelope/mail is to be given to the inmate without being opened, inspected or read by any person other than the inmate. There is a space on the letter for the inmate to sign, acknowledging they have received the inner envelope unopened. We have arranged with CSNSW that this acknowledgement form is placed by staff on the inmate's file.
- When inmates phone us, they hear a message advising them that CSNSW does not monitor or record calls to our office.
- Inmates who have been issued a tablet can now call us from their tablet in their cell, which provides more privacy for the conversation compared to calling from a general access correctional centre phone (such as in the recreation yard). As noted in our last Annual Report, our office provided CSNSW with information to be uploaded to inmate tablets outlining our role and providing reassurance that we treat complaints confidentially.

If an inmate raises concerns with us about possible reprisal action for making a complaint to our office, we:

- reassure them it is a criminal offence for detrimental action to be taken in response to complaining to or assisting us; and we advise they could make a complaint to us if this does occur
- explain the volume of complaints we receive about custodial matters to reassure them that it would be practically difficult for officers to keep track of who has complained and/or what people complain about
- explain that calls to us are not monitored and letters are not opened
- explain that we can (in some circumstances) make inquiries without identifying who has made a complaint
- explain that we do not refer matters about serious officer misconduct to local centre staff
- explain that if they make a complaint to us, we will discuss with them whether they consent to us making inquiries and the inmate being identified.

Inmates often express concern that reprisal action might be taken against them for making a complaint but we do not commonly receive complaints that reprisal action has been taken. If an inmate complains to us about reprisal action for making a complaint to us, as with all matters, we first undertake an assessment. An assessment requires information from the inmate about what has happened, and how they see a connection between their experience and their making of a complaint. We would usually then make preliminary inquiries with CSNSW or the relevant agency.

At times, it can be difficult to distinguish between action taken in reprisal, and action that is part of the ordinary course of life in custody. That said, we take complaints from inmates about reprisal action seriously and all matters are considered on a case-by-case basis.

Where we receive allegations of reprisal action being taken in response to an inmate making a complaint to us, and it appears from our assessment of the matter, that there is substance to the allegations, we could commence an investigation under the Ombudsman Act, refer the matter to CSNSW for investigation under s12A of the Ombudsman Act and report back to us, or make a referral to bodies such as ICAC.

Increasing perceptions of fairness and service delivery more generally

More generally across all of our functions, some of the actions we are taking to improve stakeholder perceptions of fairness and service delivery include:

- We upgraded our website in October 2024 to be more accessible and manage expectations about what we can and cannot do.
- We are working on a streamlined online complaint form and website-based portal which will, once operationalised (expected this financial year) allow complainants to directly track progress of their complaints online.
- In 2024, we provided complaint handling staff with training in trauma-informed practice. We prioritised training for staff who deal with complaints about detention and custody and community services. Similar training will be rolled out to additional complaint handling staff to enhance service delivery most likely in Q1 of FY 2025-26.
- In July 2024, we reorganised the Complaints and Resolution Branch into 5 sector specific-groups to build sector specific knowledge and support more tailored complaint handling.

- In September 2024 we launched a digital toolkit focused on young people in out of home care to raise awareness and understanding of our role for those both young people and intermediary bodies that may support them (eg community legal centres).
- Our complainant and stakeholder surveys also drive initiatives to inform service awareness, focus and improvement.

Question

- 3. Do you have any comments on the [Government's response](#) to the Committee's recommendation about the implementation of OPCAT?**

Answer

The Optional Protocol to the Convention Against Torture (OPCAT) was required to commence across Australia, including in New South Wales, by 20 January 2023.

We are disappointed the funding issue that the NSW Government says stand in the way of implementation is still unresolved, and that the Government's response does not indicate a path forward for resolving that issue.

Subject to the provision of appropriate funding, we remain willing and able to take on a role as a National Preventative Mechanism (NPM) under OPCAT in NSW.

Question

- 4. How are the clarified functions under part 3B of the Ombudsman Act operating? Are you adequately resourced in accordance with the broader remit of Aboriginal programs?**

Answer

The amendment made to Part 3B of the Ombudsman Act in 2024 allows the Ombudsman to monitor and assess any programs primarily directed to the health, or cultural, economic, educational or other wellbeing, of Aboriginal persons or communities. This is in addition to the duty of the Ombudsman to monitor and assess the OCHRE (Opportunity, Choice, Healing, Responsibility, Empowerment) program.

The primary purpose of this amendment was to ensure the continuation of our monitoring and assessment function over the Government's Aboriginal Affairs portfolio of activities, even in circumstances where these may have ceased to be overtly 'branded' under the 'OCHRE' framework. The core focus of our work in this functions remains overseeing the OCHRE programs and its associated initiatives.

Our report on OCHRE was published in January 2025, and provides recommendations to Government including a re-commitment to that program. We are expecting the Government's response in coming months.

In relation to our discretion to now also review other Aboriginal programs, including those that are not (and perhaps never have been) within the scope of OCHRE, we are currently identifying whether and where our monitoring activities should be applied.

In doing so we our intention will be, in addition to remaining focused on OCHRE and associated programs, to prioritise our resources to monitoring, assessing and reporting on those programs that

have significant impact on communities and/or use substantial public resources. The extent of current oversight, and in particular whether there are any gaps in oversight, will also be a consideration.

We have the necessary resourcing to continue our program of work monitoring and assessing OCHRE and OCHRE-related initiatives. We will assess the adequacy of team resources to ensure we can effectively deliver our expanded functions in respect of other Aboriginal programs following our further examination of those other programs.

Question

5. How are you managing the significant increase in staff numbers? Are you planning any further major recruitments?

Answer

As noted in our last Annual Report, the last 2 years of funding growth has meant that we have given much focus to the recruitment, onboarding and development of staff. In the space of two years, we have doubled our workforce (from 121 FTE at the end of 2022 to 234 FTE at the end of 2024), restoring our office to the size it was around a decade ago.¹

This growth in staff has been welcome and necessary, but as with any major organisational change there have been challenges. In particular, at the same time as growing our staff numbers, we have also been delivering projects to replace legacy infrastructure and implement new or enhanced statutory functions. These challenges are resolving and we are seeing the benefits of the increase in staff – through for example, greater capacity to act on complaints; and to identify and respond to significant systems issue in public administration.

We do not anticipate further major recruitment of a similar kind in the coming year. A key priority now and going forward is supporting our staff with the right systems, processes and capabilities needed to deliver our functions most efficiently and effectively.

Question

6. What is behind the increase in investigatory actions taken on actionable complaints? (Annual Report 2023-24, p 30)

Answer

Our increased baseline funding in recent years has enabled us to recruit additional staff to complaint resolution roles. As a result of that growth, we are able to take investigatory action on more complaints.

Investigatory action includes the making of ‘preliminary inquiries’ of the subject agency, which can aid resolution of a complaint.

Increased investigatory action by our office does not of itself necessarily indicate any increase in maladministration (or even complaints about maladministration) in any sector. Increased investigatory action means is more reflective of our increased ability to respond to more complaints in a more comprehensive way.

¹ Annual report 2023-24 [Annual Report 2023-2024](#) p 8

That said, and by way of additional context, the number of actionable complaints to our office has been increasing (we received 14,770 actionable complaints in 2023-24, compared to 12,997 actionable complaints received in the previous year). Complaints about specific sectors such as custodial matters have particularly increased. This is at least in part due to our increased activity and visibility, including through our program of in-person centre visits.

Question

- 7. In your annual report, you note that three suggestions made to agencies were not accepted or implemented. Why does this happen? (Annual Report 2023-24, p 36) Do you have any concerns about this?**

Answer

This reference in the annual report relates to our making of comments to agencies under s31AC of the *Ombudsman Act 1974*.

We make comments, which can include suggestions about what an agency should do, to assist the resolution of a complaint. Suggestions might include that the agency issue an apology to a complainant, or review a particular policy or procedure. Making comments and suggestions in this way is different from making formal recommendations following an investigation in which we have found wrong conduct under the Act.

In the vast majority of cases, suggestions we make are accepted by agencies. On rare occasions agencies may tell us that they are not following a suggestion we have made. This may be because, for example, they hold to a different version of events to what we have been told by the complainant.

Whenever we make a suggestion, we request a written response from the agency. We assess all responses and can decide to take further action (such as commencing a formal maladministration investigation or meeting with the agency) if the conduct may reach the threshold required.

In the case of the few matters referred above where our suggestions to agencies were not accepted, these were considered by senior staff and it was determined that no further action was required.

Question

- 8. How has the Deputy Ombudsman, Health Administration been operating? What progress has been made in managing health administration complaints? How will you report on the work of this unit?**

Answer

The role of Health Administration Deputy Ombudsman was jointly assigned to the Deputy Ombudsman, Complaints and Resolution in September 2024. At the same time, the decision was made that, rather than maintaining a stand-alone Health Administration Unit, we would stand up a program of work, with dedicated resourcing, to deliver and co-ordinate work and projects in the health administration sector across existing functional branches (such as the Complaints and Resolution branch, and the Investigations branch).

The key role of the Deputy has been to build our office's capability in responding to health-related complaints and systemic issues, and to coordinate the various functions we have that touch on health matters (including complaints, Public Interest Disclosure oversight, Aboriginal Programs and child death reviews)

We have allocated additional resources targeting health matters particularly in our complaints and investigations branches.

In relation to complaints, we have seen an increase in both complaints about health administration and also an increase in our investigative action – mainly inquiries: There has been an increase of around 30% in complaints since 2023, and also an increase in the proportion of complaints on which we are taking further investigatory action, such as preliminary inquiries (we are now doing so in around a third of those matters).

In relation to investigations, we currently have 3 formal investigations on foot that relate to administrative conduct in the Health sector.

The Deputy has undertaken a number of engagement activities including with the Ministry and other senior health personnel in metropolitan Sydney and in late-2024 and early-2025 has undertaken three regional visits to the New England, Western NSW and Far West NSW areas, meeting with government and community health providers and presenting alongside other integrity bodies at general community forums, to emphasise the role of the office in complaints about health administration, and in identifying and pursuing potential systemic wrongdoing across the NSW public health system.

The Deputy has also met with senior personnel from both the NSW Mental Health Commission and the Health Care Complaints Commission to begin discussion regarding potential joint initiatives, including ways to increase community awareness of our respective roles.

The intention throughout 2025 is to develop a suite of communication materials in a range of formats, aimed at health consumers and advocacy bodies. Another initiative under consideration includes targeted measures to actively support senior personnel in the health sector to develop and foster a speak-up culture, to encourage potential whistleblowers.

We will report on our work in health administration through our annual reporting, as well as through our regular casebook (investigations and complaints). Performance indicators we are monitoring include any increase in volumes of complaints received from or on behalf of health consumers and from health sector workers, as proxy measure for both increased awareness of our role and increased confidence in bringing forward concerns. Another indicator is an increase in the number of investigations and other systemic reports aimed at highlighting shortcomings in and improving the administration of the health sector.

Question

9. How are you addressing issues identified in the PMES results, such as declines in teamwork and action on survey results?

Answer

Our 2024 survey results highlighted areas where we are performing well, as well as opportunities for improvement.

We have held workshops with staff and have developed a PMES Action plan to focus on particular areas for improvement, including in these areas.

While the particular results highlighted in this question ('teamwork' and 'action on results') showed a decline for our office from the previous year's results, the teamwork and collaboration result was on par with the sector average at 61%, and our action on survey result (57%) remains higher than the sector average (42%).