



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2022-2023

Mr James Milligan MLA (Chair), Mr Andrew Braddock MLA (Deputy Chair),
Dr Marisa Paterson MLA

ANSWER TO QUESTION TAKEN ON NOTICE DURING PUBLIC HEARINGS

Asked by Elizabeth Lee MLA on 30 August 2022: Ms Kathy Leigh took on notice the following question(s):

In relation to: Public Sector Management Act section 9 - Public Disclosures.

MS LEE: Thank you. Ms Leigh, I am going to move to a new topic. I refer to section 9 of the ACT Public Sector Management Act, which of course obliges public servants to disclose any maladministration, fraud or conduct. In your time as head of service, how many times have there been disclosures made under that section to you?

Ms Leigh: I would need to take that on notice, Ms Lee. Which particular piece of legislation were you referring to?

MS LEE: Section 9 of the ACT—

Ms Leigh: Disclosure in the Public Sector Management Act. I would need to take that on notice. Did you ask for it for the entire time I have been in my role?

MS LEE: Yes, since 2014, as I understand it.

Ms Leigh: Yes, that is correct. That will take some checking to make sure that I was able to give you accurate advice on that.

MS LEE: Sure. I understand. In terms of over the last year—just the last year—have there been disclosures made?

Ms Leigh: Under the Public Sector Management Act? I will check whether Mr Wright is able to provide the current data.

Mr Wright: I acknowledge the privilege statement provided. I do not have that detail in front of me, Ms Lee, but I am happy to take it on notice.

MS LEE: Thank you. Ms Leigh, yesterday the head of Major Projects Canberra was not able to recall whether he had made a disclosure to you under this section. In particular, I think he referenced the Campbell Primary School procurement. Are you able to shed any light on whether that indeed was disclosed to you?

Ms Leigh: Ms Lee, if I could just start by very respectfully saying that I would not want to be seen to endorse the statement that Mr Edghill said he could not recall. I will leave it to the Hansard as to exactly what he said.

MS LEE: He took it on notice, though.

Ms Leigh: My understanding was that he took it on notice, which might suggest a different—

MS LEE: Okay—so he took it on notice. Do you recall? Have you received a notice of disclosure?

Ms Leigh: In relation—could you—

MS LEE: To the Campbell Primary School modernisation procurement.

Ms Leigh: The difficulty I find myself in here, Ms Lee, is that, under the Integrity Commission legislation and under the notifiable instrument that goes with that, you are prohibited from disclosing any notifications you make to the Integrity Commission. So I find myself in quite a difficult position with any of these questions because, once I start—obviously, if I receive a notification, then I go through certain steps to decide what to do with it. The moment I start answering your question, I end up in a difficult place.

MS LEE: All right. Can you provide the committee with an instance where a notice of disclosure, a disclosure has been made to you and there have been code of conduct investigations?

Ms Leigh: Back under the Public Sector Management Act again?

MS LEE: Yes.

Ms Leigh: I will have to check exactly what I could provide to you on that. As I think you are rightly identifying, there are considerable overlaps between all of these procedures. They often get referred backwards and forwards, and sometimes something could settle in one place that might have arisen somewhere else. So I would need to check that. It is not a straightforward question.

MS LEE: I understand. As head of service, who do you report any maladministration, fraud or corruption to?

Ms Leigh: Do I?

MS LEE: Yes.

Ms Leigh: In any given case, I need to assess what the nature of the complaint is, whether it is something that perhaps is completely frivolous and has no content, whether it goes more to something that I would refer to Public Sector Standards Commissioner, something that is so obvious I would refer it to the Integrity Commissioner, something that is unclear but is not frivolous I might refer to the Public Sector Standards Commissioner to ask for some further assessment so that that can be clear. As I said, there are overlaps and there are arrangements where the Public Sector Standards Commissioner might then either come back to me or make a decision to refer it on to another body. It depends in each case—the nature of it and then the outcome of those steps that I would go through.

THE CHAIR: Dr Paterson, a supplementary?

DR PATERSON: Sure. Depending on the nature of the complaint, do you feel that you do have the right and appropriate avenues for advice on the different types of complaints?

Ms Leigh: Yes. The arrangements have been refined over time. The Integrity Commissioner has endeavoured to streamline arrangements. There are a number of different bodies—the Public Sector Standards Commissioner being one of them. There are overlaps as to what might be maladministration or misconduct and what might be serious corruption. The arrangements have gradually been streamlined to make it more straightforward.

MS LEE: I have a further supplementary. Given that the Integrity Commission is a relatively new body, how has that changed the thinking and engagement with compliance and notifications that you do receive?

Ms Leigh: The new policy developments of course over that period were to endeavour to make the process more streamlined. There were changes to the PID arrangements so that we had a clearer pathway. That has assisted. And there are the practical, on-the-ground arrangements that people have started to develop as experience has grown.

MS LEE: Thank you. A supplementary, Chair.

THE CHAIR: A final supplementary and then we will go to the next substantive.

MS LEE: Ms Leigh, I know that you explained the various ways in which you deal with it, but that seems like when it is reported to you. This question is: have you observed and subsequently made those referrals, depending on what it is, on any maladministration, corruption or fraud?

Ms Leigh: I think that takes me back to the comment I made earlier, that, under the Integrity Commission legislation and notifiable instruments, one is not allowed to discuss publicly anything that one has referred, so, the moment I start answering your question, I find myself in a difficult position. It becomes clear pretty quickly that either I say no, in which case, the next time you ask me and I refuse to answer, I must be saying yes, or I simply explain the difficult position now.

MS LEE: Sorry, Chair, can I have one on notice?

THE CHAIR: On notice.

MS LEE: You are taking on notice the number of times that reports of disclosure have been made to you. Whilst you are taking that question on notice, can I ask you to also provide, without going into any confidences or specifics, just the different breakdowns of where they have gone to—to the Public Sector Commissioner to the Integrity Commission—that type of breakdown?

Ms Leigh: I will take that on notice. Thank you.

Andrew Barr MLA: The answer to the Member's question is as follows: –

1. In relation to: Public Sector Management Act section 9 - Public Disclosures.

Within your time in Head of Service, how many times have you had a Public Disclosure made to you?

The current complaints recording system was implemented in 2020 to facilitate enhancements in record keeping. Since that time I have received 13 matters that have been referred to the Public Sector Standards Commissioner for consideration.

2. Over the last year have there been disclosures made to the HoS?

Yes.

3. Can you provide the committee with an instance when a notice of discourse has been made to you and there has been code of conduct investigations?

I cannot provide the committee a specific example as this may identify, or risk identifying, an individual, therefore I advise generally my process for managing notices made to me. When I receive a disclosure, I assess the nature of the complaint against various legislative instruments and their respective reporting requirements – including the reportable conduct scheme. In relation to breaches of the code of conduct, if I determine that investigation is required, I refer the disclosure to the Public Sector Standards Commissioner to undertake a misconduct investigation in accordance with the provisions of the relevant ACT Public Sector Enterprise Agreement and the *Public Sector Management Act 1994*.

4. Can you please give me the different breakdown of where they went to?

All matters that are referred directly to myself, or my delegates, that require further investigation by a relevant entity are recorded within the relevant directorate's Annual Reports and the State of the Service Annual Reports.

Approved for circulation to the Select Committee on Estimates 2022-2023

Signature: 

Date: **13.9.22**

By the Chief Minister, Andrew Barr MLA