

13 February 2024

Public examination: Operation KULLEN

Opening Address by Counsel Assisting, Ms Kirsten Nelson

The Corruption and Crime Commission's purpose is to improve the integrity of the public sector; and to reduce the incidence of misconduct in the public sector.

The Commission may fulfil this purpose by investigating matters related to serious misconduct.

Serious misconduct is defined in the Corruption, Crime and Misconduct Act 2003 s 4 to include conduct that takes advantage of the public officer's office or employment to obtain a benefit for themselves or for another.

From late August 2023, the Commission received multiple notifications of suspected serious misconduct from various sources. The notifications concerned the conduct of Mr Christopher Field PSM. An investigation was commenced into allegations that Mr Field had corruptly used his position as Parliamentary Commissioner for Administrative Investigations to benefit himself and his Chief of Staff.

The Parliamentary Commissioner for Administrative Investigations in this State is more usually known as the Western Australian Ombudsman. Under the powers assigned to that Office by the Parliamentary Commissioner Act 1971, the Ombudsman oversees how a public sector administrative decision or process in this State may have affected an individual.

The Ombudsman has a broad mandate across many public services provided by the government of the day, to:

- Receive, investigate and resolve complaints of maladministration about State Government agencies, local governments and universities;
- Review child deaths and family and domestic violence fatalities;
- Improve public administration for the benefit of all Western Australians through education and liaison with public authorities; and
- Undertake some statutory monitoring and inspection functions.

It has been said that a statutory office holder may do nothing but that which is expressly authorised by law; while an individual may do anything but that which is forbidden by law.

The Ombudsman's mandate is dictated by the purpose of the Act that creates his Office and limited only by the terms of his appointment by the Governor of Western Australia.

He has been appointed to serve Parliament and the people of Western Australia.

The Ombudsman is one of a number of statutory offices that have been referred to as comprising 'the integrity arm of government'. Other similar offices that may report directly to Parliament or to a committee of Parliament are the Office of the Auditor General, the Parliamentary Inspector for the Corruption and Crime Commission, the Corruption and Crime Commissioner, the Information Commissioner and the Public Sector Commissioner. Each is a creation of Parliament and is given distinct functions by legislation but enjoy some level of independent decision making from the government of the day.

Mr Field's duties as Ombudsman are geographically constrained by his jurisdiction. For example, if the Ombudsman is absent from Western Australia the Parliamentary Commissioner Act 1971 provides that the Deputy Ombudsman is to perform the Ombudsman's powers, duties and functions. Generally, the Ombudsman has no authority under the Parliamentary Commissioner Act 1971 to resolve complaints of maladministration by a citizen of another State made against a decision of a government agency or officer that is outside Western Australian jurisdiction.

The function of the Ombudsman is to conduct investigations in accordance with the Parliamentary Commissioner Act 1971 to ensure that public authorities in this State make lawful, fair and accountable decisions, using rigorous decision-making processes.

How the Ombudsman performs this function is a matter for him to determine, but it must be within the confines of the Parliamentary Commissioner Act 1971. He performs those functions independently as an officer of the Parliament of Western Australia.

Mr Field is an experienced Ombudsman having held that position in Western Australia since 2006 (for 17 years). He was previously a lawyer.

The Ombudsman is responsible for seeking an adequate financial allocation from Consolidated Revenue to perform the functions Parliament has given the office. Like all agency heads, the Ombudsman is subject

to obligations as to how State money is spent, as an 'accountable authority' under the Financial Management Act.

He is given financial resources to reach all the citizens of Western Australia and manages, as Chief Executive Officer, an office with staff to assist him discharge his functions.

The Office of the Ombudsman Western Australia (OWA) has a comprehensive organisational framework with policies and guidelines covering governance, conduct, communications, finance and human resources. The OWA is staffed by approximately 80 officers who are experienced in what they do as public officers.

This is not an inquiry into whether an Ombudsman should be independently exercising the powers available to him.

It is accepted this is the role of the Ombudsman and his office, the OWA.

Rather, this is an inquiry into whether Mr Field's commitment of the financial and other resources of the OWA to advance the international activities in which he was involved, was an improper use of the power of the Office of Ombudsman.

It is an inquiry into whether Mr Field corruptly took advantage of his appointment as Ombudsman to obtain a benefit for himself, for a colleague and for the International Ombudsman Institute (IOI) and its members.

The Commission's inquiry will focus on the decision by Mr Field to use public resources to undertake extensive international travel over the last few years. The inquiry will also focus on the decision by Mr Field to spend public resources on activities for the benefit of the IOI.

Mr Field PSM views the independence of his appointment as essential to the performance of his role as Ombudsman. He may report to Parliament on mechanisms that would promote better governance within the administration of this State whenever he considers it necessary to do so.

Ensuring you act independently in performing any undertaking means acting impartially and without bias; being fair and responsible in exercising the decision-making process that is undertaken before acting.

Usually, a claim of independence is accompanied by an expectation that decisions made will be transparent and accountable, reasonable and proportionate.

The Ombudsman independently makes decisions as to how he exercises the statutory functions for which he is responsible. The Ombudsman decides if and how he will investigate, review, inspect or monitor the matters within his jurisdiction.

The Office of the Parliamentary Commissioner for Administrative Affairs and the Parliamentary Commissioner Act are gazetted as under the Premier's administration. However, the Ombudsman reports directly to Parliament, and therefore to the people of Western Australia. Mr Field must make decisions independently but also responsibly, impartially and transparently.

Independence does not mean impunity.

Independent decisions are still accountable decisions. Mr Field is accountable for how he uses the resources of the State. As an employer Mr Field is still bound by the Work Health and Safety Act, the Financial Management Act and the Procurement Act, to name a few.

The Ombudsman should apply to his Office the same overarching principles of governance and rigorous administrative decision-making that he expects of other Western Australian government agencies.

When spending public money it is expected any Chief Executive of a public sector agency will do so for a purpose aligned with the agency's functions, purpose and for the benefit of Western Australians.

Finally, independence does not mean isolation. As would be expected of a senior officer of this State, the Ombudsman and the OWA work collaboratively with other local, national and international integrity and accountability bodies. However, any collaboration should not be to the detriment of Western Australia.

Mr Field will be examined about a number of matters including:

- His responsibilities within the OWA for prudent spending and managing finances;
- His approval of expenditure for travel and related matters;
- The procurement practice within the OWA;
- Recruitment practices; and
- Other matters concerning the governance of the OWA.

The Ombudsman and other leaders in Government departments have an important role to play in providing services for the benefit of the Western Australian community. They help set and maintain the culture of the agencies they lead. They are stewards of public funds. They are ultimately responsible for integrity and governance frameworks in this State.

Having carefully weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, the Commissioner has determined that it is in the public interest to open this examination to the public.

The Corruption, Crime and Misconduct Act recognises that the decision to open an examination to the public is multifaceted. It is based on balancing considerations as to prejudice and public interest informed by the circumstances. Circumstances may change. The Corruption, Crime and Misconduct Act allows the Commissioner to close an examination to the public at any time during the examination.

This examination is part of the Commission's ongoing investigation that commenced in early September 2023. Since then, the Commission has received evidence from several witnesses in private examinations and has issued many notices to produce records on persons and entities.

During this public examination the actions of other public officers may form part of the evidence. Some of those officers may not have had an opportunity to respond to allegations concerning their conduct. The Commission is cautious about forming a view on the evidence without giving a person a proper opportunity to respond. Accordingly, any evidence about the actions of others should be treated with circumspection until the Commission's investigation is complete.