

**JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION**

SESSION TWO

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 19 OCTOBER 2005**

Members

**Mr John Hyde (Chairman)
Hon Ray Halligan (Deputy Chairman)
Ms Margaret Quirk
Hon Margaret Rowe**

Hearing commenced at 11.20 am**McCUSKER, MR MALCOLM JAMES****Parliamentary Inspector of the Corruption and Crime Commission,****45 St Georges Tce,****Perth 6000, examined:**

The CHAIRMAN: I thank the parliamentary inspector for giving the committee the courtesy of tabling his report with the committee before it is tabled at 12 noon in the Parliament.

Mr McCusker: In that regard, it has come to my attention that the copy that was sent to the committee was not the final copy. I will have to get the final copy. There was a problem with the production of it within the department that was dealing with it. It sent the committee a copy that was not the full version. Also, because of staffing reasons there was a problem with the Auditor General producing his report; therefore, that will not be included in the report that is tabled. As a result, I am not sure whether we will be in a position to table the final report at 12.00 noon today.

The CHAIRMAN: That is fine. Are you happy with the committee being able to address the issues to which you have alluded?

Mr McCusker: Certainly. The final report contains more material. I note that it just does not contain some material.

The CHAIRMAN: Excellent. Would you like to make an opening statement? This is your first full calendar year in the role.

Mr McCusker: Yes. As the committee will appreciate, this is the first full calendar year in which I am reporting the period up to 30 June 2005, which means that events after that date are not strictly relevant to the report. I have found during that period that a degree of change has taken place within the commission. One of the significant changes is that the commission moved to its present headquarters in May this year and a settling in period followed. The new premises of the commission are far more satisfactory than the previous premises from every viewpoint.

In my dealings with the commission, from the commissioner level down, I have had nothing but the utmost cooperation from it. Whenever a complaint has been made against the commission or an officer of the commission - I hasten to say that that has happened only rarely - the complaints have been immediately referred to me by the commissioner himself and have been accompanied by all the relevant material with an invitation to question any officer of the commission on the subject matter of the complaints. With one exception, the nature of the complaints referred to me have been either that the commission has not fully investigated a complaint or has not accepted that the complaint comes within the jurisdiction of the commission. In some cases it takes a great amount of time to deal with the complainant because although the primary task of the inspector is to determine whether the commission is performing its job correctly, which means looking at each allegation that it has not done so, nevertheless it is often necessary for that purpose to delve into the entire subject matter of the complaint. One complaint of which the committee is aware - I sent some information to the committee about this just yesterday - is a kind of bouncing ball. Each time I would say that the matter had been concluded, the complainant would come back to me with something further. As a result, it is impossible to say - I notice there has been a request in accordance with standard public service procedure - to try to estimate the average length of time it takes to deal with a referral. It is impossible to do that because some matters take a long time and others take just a couple of hours. However, as I said at the outset of my opening statement, I have

received nothing but cooperation from the commission and I am satisfied - as I have said in my report - that the commission is performing its functions properly.

The CHAIRMAN: This committee is very determined to ensure the closure of matters of serial complainants. Your appointment, through legislation of the Parliament and through the work of the committee, has been established to provide closure for those types of cases. Each time there is a change of government, which involves new members of Parliament and a bureaucratic reshuffle, the same complaint from a dedicated complainant is referred to the Ombudsman, the Commissioner for Public Sector Standards and the Leader of the Opposition when a new Leader of the Opposition is appointed. The committee must praise you, parliamentary inspector, regarding a complainant whose complaint has no substance and who has attempted to seek help from the Queen, Gough Whitlam, Bob Hawke, Kofi Annan, probably U Thant in his time. For the first time the head of a public body has told him that the case is finished and that if he continues with it, he will become a serial complainant and that there are ways of dealing with serial complainants.

Mr McCusker: Yes. That is true. There must be closure on these matters. Some complainants have a very genuine grievance, but it cannot be addressed by the Corruption and Crime Commission. The grievance may stem from a court action in which the complainant has failed and which has nothing to do with the commission. As I mentioned in the report, the public must be educated more about the true functions of the commission and the role of the parliamentary inspector. As I said in the report also, I want to make it clear that I am not an appellate court for the Corruption and Crime Commission. If somebody is not satisfied with the commission's handling of a matter or complaint, on occasion people come to me thinking that they can appeal to me on the decision. To some extent I must deal with that because I must determine whether the commission has handled the matter correctly. On no occasion so far that I have had a referral direct from the commission or from a complainant have I come to the conclusion that the commission has not dealt with it in terms of procedures in a proper manner.

[11.30 am]

The CHAIRMAN: I want to address the issue. We just went into a closed hearing. We thank you and the commissioner for both agreeing to appear on the same day. Clearly, the committee uses you and your position as our conduit into what operational matters we should be entitled to know in a broad sense. The clear question we asked the commissioner is related to the time of you making your report to the committee in August, that there were no existing complaints regarding Ms Rayner or matters that had not been brought to you or the committee at that point in time.

Mr McCusker: I was here, of course, when I heard the commissioner deal with that issue. What he said was perfectly correct. After the publicity that arose from the issue concerning Ms Rayner, there was a further matter that was raised that goes back a long way. It was pre the CCC's time. It was raised in relation to something to do with the ACC, of which she was previously an acting commissioner. Because of the statutory structure of the Corruption and Crime Commission - we have legal advice on the subject, too - it meant that this was something that had to be dealt with by the commission, which in turn, of course, because it was an allegation against a former acting commissioner, was referred to me. That had nothing to do with Ms Rayner's position as the Acting Commissioner of the Corruption and Crime Commission. The only matter that I am aware of was, as the commissioner said, in relation to one operation that the acting commissioner was dealing with - that was called Operation Rustle - where there was some difference of opinion between her and some of the investigators of the commission. But that was merely a difference of opinion and it was not something that could possibly be said to be the subject of a complaint against her as such. It was a difference of viewpoint really.

The CHAIRMAN: Do other members have a question at this point or would they like me to keep going?

Ms M.M. QUIRK: I have a general question; it is not in the other context.

I have a couple of matters, inspector. Firstly, in the course of the previous year in undertaking your task, are there any themes arising or any systemic issues that you have some concerns about?

Mr McCusker: No. I do not think that there are any systemic problems within the commission whatsoever. In terms of operational matters there was some slight problem in getting responses from the police, as I understand it from the commission, but that is as far as it went. I was made privy to the problem there. But that was resolved; I saw the steps that were taken to resolve that particular matter.

Ms M.M. QUIRK: My other question that I just quickly wanted to ask was that you note in your report that there might be a need for more, if you like, proactive work in the sense of looking at specific administrative procedures and so forth.

Mr McCusker: Yes.

Ms M.M. QUIRK: Would it be true to say that you have been pretty fully occupied with reacting to particular allegations?

Mr McCusker: I have so far. But what I have in mind doing, probably early in the new year - I will talk to the committee further about this - is possibly to engage a person, maybe on a part-time basis, to conduct some of that kind of investigation because the reaction to referrals is taking a lot of time. There is always a danger that you are going to, as it were, redo what someone else is doing. It is not the function of the inspector to look over the shoulder of the commissioner all the time and check. It is impossible. It is a very large organisation for one person on a part-time basis. The important thing is for the inspector to ensure that proper procedures are in place and that those procedures appear to be carried out correctly.

The CHAIRMAN: Are you satisfied at this point in time with the Police Service's response time to the CCC?

Mr McCusker: It has improved quite a lot since the issue was taken up by the commissioner at the highest level.

The CHAIRMAN: Is it acceptable now? Is it best practice?

Mr McCusker: Right at this moment I am not able to answer that. I think it probably would be but I would need to talk to the commissioner and get some further information.

The CHAIRMAN: The commissioner has not raised any issues with current or outstanding issues that the Police Service is eight months, 10 months or whatever overdue?

Mr McCusker: The commissioner did discuss with me some months ago that problem but he also showed me the steps that were taken to resolve it and responses from the Commissioner of Police. I think the matter has been resolved. Part of the problem with the WA Police Service appears to have been that an officer who would have been handling a matter had been shifted to another place. So you get the difficulty of finding who should now respond.

The CHAIRMAN: Hopefully he found Dumbleyung.

Hon RAY HALLIGAN: Inspector, you have already made mention of the fact that some of the excess workload that you have may well be due to the lack of knowledge in the community as to the workings of the CCC and the parliamentary inspector. In your 2003-04 annual report, you refer to preparing a brochure about the role of the parliamentary inspector.

Mr McCusker: Yes.

Hon RAY HALLIGAN: Has this been done?

Mr McCusker: The role of the parliamentary inspector is referred to in the Corruption and Crime Commission's booklet that they have produced. It is very clear there. Anyone who goes to the Corruption and Crime Commission is immediately informed by looking at the brochure that the

parliamentary inspector is available if they are not satisfied with the Corruption and Crime Commission's handling of a matter.

Hon RAY HALLIGAN: Again, in the annual report, you stated that you would adopt a proactive role in conducting periodic inquiries to assess the effectiveness and appropriateness of the CCC's procedures. What have you done in that regard?

Mr McCusker: I have to a limited extent in that I have attended upon the commissioner from time to time. As I said earlier, I intend to engage, if I can, some person who is perhaps more familiar with administration and can more adequately deal with the administrative side of things and, in that way, become more proactive than at present.

The CHAIRMAN: At page 11, referring to the operation of the commission, you assert that 2 410 complaints or allegations of misconduct were reported, of which 582 were from individuals and 1 828 from public sector agencies. I presume that the 1 828 is from CEOs under their statutory requirement.

Mr McCusker: That is so, yes.

The CHAIRMAN: Is there any analysis of the 1 828 in terms of any of them being vexatious?

Mr McCusker: I do not know of any analysis that has been undertaken by the commission. I have certainly not undertaken that. I have little doubt that there would be a small percentage - I hope a small percentage - which could be said to be vexatious because that is always the way.

The CHAIRMAN: All right. Unfortunately, because the Assembly will meet promptly at 12.00 we will have to finish dead on seven minutes to 12.00.

Ms M.M. QUIRK: I do not have any other questions. I would like to thank the inspector - certainly for the short time I have been on the committee - for assisting us in our work. I think the role he plays is very valuable. We are certainly grateful for the level of assistance we have had from him.

Mr McCusker: Thank you.

Hon RAY HALLIGAN: I would like to echo those remarks as well but also ask a question, if I may.

Mr McCusker: Certainly.

Hon RAY HALLIGAN: Do you have any recommendations you would like to make to the committee regarding the CCC?

Mr McCusker: The CCC as such?

Hon RAY HALLIGAN: Yes, its operations.

Mr McCusker: No, I do not want to sound complacent but I am very happy with the organisation of the CCC. The commissioner is not here so I can say that he is an excellent head who, I have observed, keeps fully in touch with what is happening and does keep me informed, which is very important. There is no element of keeping things close to the chest there; they are very forthright. Of course, he has an excellent CEO. I notice in the report - and in my final annual report I have referred to it - that the commission does suggest some amendments to the act, one in particular being the definition of "misconduct". I agree with that. The definition of "misconduct" as it stands in the act is very difficult for someone who has a statutory responsibility of making a notification to the commission to understand apart from the question of whether a person's conduct has been fraudulent or dishonest, which is fairly easily recognisable. The definition then goes on to say what might constitute an offence under various legislation. At that point, I think some persons' eyes might start to glaze and they might say, "How do I know whether that constitutes an offence?" I think a clearer definition would be helpful, if it is possible.

[11.41 am]

Ms M.M. QUIRK: You are going to make a liar of me now because I am going to ask you another question because of that. Do you think the education function of the Corruption and Crime Commission would be easier if that issue were clarified?

Mr McCusker: Yes, I do.

The CHAIRMAN: One of the issues in the CCC report is in terms of giving case studies of particular cases which illustrates, one hopes, in real terms to public servants correct conduct as distinct from misconduct. In global terms, you are saying, and we are saying it, that the CCC is motoring along well. We need to be able to summarise in an empirical way why. Having been in the building and having been in the old Anti-Corruption Commission environment, clearly we know that there is an entirely different morale and different process. We know that it is functioning well. What empirical evidence can you provide to the committee to back up -

Mr McCusker: One empirical observation I make is the very small number of referrals that are made to me comprising complaints about the CCC. It is very small indeed, which is good, and, of those, so far, I have not found any cause ultimately for complaint against the CCC's operations or procedures as such. They are really directed to a complaint that the CCC does not consider that a matter falls within its jurisdiction and the person aggrieved thinks that it should fall within its jurisdiction, or the CCC has come to a conclusion with which the complainant does not agree. However, that is no reflection on the CCC as such. The small number of complaints received directly from the public or referred to me by the CCC itself is very indicative of the situation.

The CHAIRMAN: In comparison with Western Australia, the number in Queensland is huge; that is the one empirical figure we have. The number here is minor. I have a final question. Obviously, we know you have access to anything in the CCC. Does the CCC have a monthly meeting, an operational meeting or something that you are invited to drop in on or that you regularly get involved with?

Mr McCusker: It has a weekly meeting. I have open access to that meeting at any time. I have attended a weekly meeting to see just what goes on. A lot of it is entirely operational. I have been provided with reports of the weekly meetings, which are pretty massive, and the agenda and so forth. What impresses me about it is that the operational people are there, where it is relevant, and the commissioner, of course, is kept apprised of everything that is going on.

The CHAIRMAN: We are in the process of looking at an acting parliamentary inspector. In terms of the budget, will his or her salary costs come out of your budget, or will that be separate from government?

Mr McCusker: I am not sure about that. An acting parliamentary inspector would, of course, be required only either when I am away and there is an urgent need for a parliamentary inspector or when I have a conflict. So far, the conflict has not arisen, but it may. So, it is important that someone is available. My understanding is that the acting parliamentary inspector would be called upon only on an ad hoc basis, but it would need to be someone, whether man or woman, who is reasonably close to the Perth metropolitan area.

The CHAIRMAN: Are there any further questions, members? I declare this meeting and hearing finished. Thank you very much, inspector.

Hearing concluded at 11.46 am
