

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

**PROCEEDINGS OF ALLEGATIONS AND NOTIFICATIONS  
OF POLICE MISCONDUCT BY THE CCC**

**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
FRIDAY, 9 NOVEMBER 2012**

**Members**

**Hon Nick Goiran (Chairman)  
Mr John Hyde (Deputy Chairman)  
Mr Frank Alban  
Hon Matt Benson-Lidholm**

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**Hearing commenced at 12.31 pm**

**MACKNAY, QC, MR ROGER**

**Corruption and Crime Commissioner, examined:**

**HERRON, MR MARK**

**Acting Commissioner, Corruption and Crime Commission, examined:**

**WATSON, MR ROGER**

**Director, Corruption Prevention, Corruption and Crime Commission, examined:**

**SILVERSTONE, MR MICHAEL JOSEPH WILLIAM**

**Executive Director, Corruption and Crime Commission, examined:**

**HARRIES, MS MICHELLE**

**General Counsel, Corruption and Crime Commission, examined:**

**The CHAIRMAN:** On behalf of the Joint Standing Committee on the Corruption and Crime Commission, I would like to thank you for your appearance before us today. The purpose of this hearing is for the committee to hear final evidence from the Commissioner of the Corruption and Crime Commission, the Honourable Roger Macknay, QC, in aid of the committee's inquiry into how the Corruption and Crime Commission handles allegations and notifications of police misconduct. Also joining us today is the acting commissioner, Mr Mark Herron; Mr Mike Silverstone, the Executive Director of the CCC; Mr Roger Watson, the CCC's Director of Corruption Prevention; and Ms Michelle Harries, who is the CCC's general counsel.

I take this opportunity to introduce myself as the chair of the committee; to my left is the Deputy Chair, Mr John Hyde, MLA, the member for Perth; to his left is Hon Matt Benson-Lidholm, MLC, member for the Agricultural Region; and to my right is Mr Frank Alban, MLA, the member for Swan Hills.

The Joint Standing Committee on the Corruption and Crime Commission is a committee of the Parliament of Western Australia. This hearing is a formal proceeding of the Parliament and therefore commands the same respect given to proceedings in the houses themselves. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard will be making a transcript of the proceedings. If you refer to any documents during your evidence, it would assist Hansard if you could provide the full title for the record.

Before we proceed to the questions we have for you today, I need to ask you a series of preliminary questions. Have you completed the "Details of Witness" form?

**The Witnesses:** Yes, we have.

**The CHAIRMAN:** Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

**The Witnesses:** Yes.

**The CHAIRMAN:** Did you receive and read the information for witnesses briefing sheet provided in advance of today's hearing?

**The Witnesses:** Yes.

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**The CHAIRMAN:** Do you have any questions in relation to being a witness at today's hearing?

**The Witnesses:** No.

**The CHAIRMAN:** Would you please state your full name and the capacity in which you appear before the committee today?

**Ms Harries:** Michelle Susan Harries, General Counsel.

**Mr Watson:** Roger Conrad Watson, Director of Corruption Prevention at the Corruption and Crime Commission.

**Mr Herron:** Mark Herron, acting commissioner, Corruption and Crime Commission.

**Mr Macknay:** Roger Macknay, commissioner.

**Mr Silverstone:** Michael Joseph William Silverstone, executive director.

**The CHAIRMAN:** Thank you. Commissioner, we do have a series of questions for you today. How I propose that we will handle this morning's hearing is to move through each of the evidence of the four witnesses or groups that have provided evidence to the committee, one after the other, starting with Associate Professor Lampard and ending with WA Police. Before I do that, I will dismiss the media with the cameras at this time.

Commissioner, I would like to start with the evidence that has been provided by Associate Professor Murray Lampard. That was provided to the committee on 12 September 2012. Can you confirm that you have received and read the transcript of that evidence?

**Mr Macknay:** I have, thank you, Mr Chairman, and given the opportunity I would like to speak briefly to it.

**The CHAIRMAN:** Yes. I have a couple of questions that I want to put first.

**Mr Macknay:** Yes, of course.

**The CHAIRMAN:** I note, Commissioner, that in the evidence provided by the associate professor, he made a series of points. There are a few that I would like to highlight and seek some response from you. Firstly, he mentioned that the core business of the CCC should be as a regulatory watchdog. Secondly, he mentioned that the regular use of section 42 notices by the CCC in relation to internal investigations being carried out by WA Police is a significant source of frustration for the WA Police internal affairs unit. Thirdly, he mentioned that the CCC's practice of serving notices to appear before the commission and then directing officers that they must not communicate with any person is highly undesirable for senior management, especially from a leadership, management, health and welfare perspective. I will just ask for your response in relation to those three points at this stage.

**Mr Macknay:** Yes. Can you repeat the first one please, Mr Chairman?

**The CHAIRMAN:** The core business of the CCC should be as a regulatory watchdog.

**Mr Macknay:** I think that to a considerable extent is one of the core businesses of the Corruption and Crime Commission as it stands. If Mr Lampard, who I think, just for the record, is no longer an associate professor, is making a comment about the desirability of the commission receiving an additional capacity in relation to the investigation of organised crime, then I think my own views in relation to that are on the record, this committee's views in relation to that are on the record, and I am not sure, unless you really want me to reiterate anything—the matter is a bill, which I assume perhaps is no longer before the house, but just to reiterate in a sentence, in my view the commission could usefully undertake a further role in that area. However, I recognise that there are those in our community, including those in this room, who hold a different view.

**The CHAIRMAN:** The second point is that the regular use of section 42 notices by the CCC is a significant source of frustration to the WA Police internal affairs unit.

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**Mr Macknay:** That is not a fact known to the commission, Mr Chairman. So far as I am aware, no complaint has been made via the internal affairs unit to the commission about it. Mr Watson?

**Mr Watson:** If there is one, I am not aware of it.

**Mr Macknay:** No. I should say Mr Lampard, with respect, specifically said his evidence was based on personal experiences, and I note that he ceased to be a police officer four years ago. A number of criticisms have been made of the section 42 notice, I think particularly by those who represented the WA Police Union of Workers, which we would say are not accurate in terms of the effect that a section 42 notice has. So there does seem to be a degree of misapprehension in relation to what a section 42 notice does.

I think the third matter, Mr Chairman, that you asked was in relation to the imposition of a direction on police officers who are served with a summons to appear before the commission. What we would say is that although those things would probably—I would say usually—be part of a direction, there is always a preparedness to provide further direction that if somebody needs to talk to somebody in relation to that, then clearly they would ordinarily be directed that they could do so.

**The CHAIRMAN:** Okay. So perhaps if we can take those in two parts, Commissioner. With regard to the allegation by Mr Lampard that the CCC regularly uses section 42 notices, is that a position that is disputed by the commission—that it regularly uses the notices?

**Mr Macknay:** We provided the statistic, I think; if we have not, my recollection is that we have issued 15 section 42 notices in the last two years, so approximately seven per annum. That is set against a backdrop of, in the last financial year, notifications of 3 000 odd, I think —

**Mr Watson:** It is 1 500.

**Mr Macknay:** Yes, 1 500 in relation to WA Police.

[12.40 pm]

**The CHAIRMAN:** Of course you do not. No; that is right, so as a proportion of the matters that you would investigate, would you say that the commission does regularly use the notices?

**Mr Macknay:** We would use a notice ordinarily when we decided to investigate something ourselves, so it is really the process—do you agree, Mr Watson?

**Mr Watson:** Commissioner, I think the issue of section 42 notices is a case-by-case basis. It would not be uncommon for us to issue a section 42 notice when investigating a police matter, but I do not know that it is a procedure or necessarily something that would occur in every case.

**The CHAIRMAN:** The commissioner would say that it is not uncommon but Mr Lampard would use the word regular, perhaps?

**Mr Macknay:** Yes; I think Mr Herron probably has something to contribute.

**Mr Herron:** I think in my experience last year—I am trying to test my memory—I may have authorised perhaps two, if not three, section 42 notices. One of those, I think, was in relation to the investigation into the English language testing centre at Curtin University. When we first got involved I think we issued a section 42 notice to Curtin, for IELTS to cease their involvement because it was going to overlap what we were doing and might well have interfered with our investigation. At that stage our investigation was covert and our investigation did not become public until quite some time into it, so we issued a section 42 notice, particularly when it is a covert operation and we do not want any other people interfering with it. My experience is, no, we do not issue them that often.

**The CHAIRMAN:** So, Commissioner, the evidence stated that the commission is not aware that this is a cause of frustration to the WA Police internal affairs unit, other than the proposition reported by Mr Lampard?

**Mr Macknay:** Yes, can I just say, Mr Chairman, with respect, that we would, I think, expect that if there is a problem of that kind, that would be communicated to us. I said on Wednesday that the head of our police oversight unit and the superintendent in charge of internal affairs are in communication several times per week and enjoy a very cordial relationship. If that was a difficulty, it would seem astonishing that it was not communicated.

**The CHAIRMAN:** Let us imagine for a moment that it is astonishing; is it something that the commission intends to raise with WA Police?

**Mr Macknay:** With great respect to Mr Lampard, he has not been in the police force for four years, Mr Chairman. Other statements that he has made I consider to be quite erroneous and I hope I have the opportunity to point to them in terms of his perception as to the commission. I would not regard his propositions as something that concern me as being likely to be correct.

**The CHAIRMAN:** But you do not want to check?

**Mr Macknay:** Well, certainly if the committee asked me to, then of course I would. Having read Mr Lampard's evidence, I did not feel any level of concern about the matters raised by him for the reasons mentioned. I mean, four years is a long time to be away from any organisation.

**The CHAIRMAN:** Of course it is not to say that Mr Lampard is not in communication with people who might still be involved in the organisation.

**Mr Macknay:** Mr Chairman, as I mentioned earlier, I take you back to the first part of his evidence where he specifically said that his evidence was based on personal experience, so he confined himself to that, in fact, so I would simply rely on his own statement as to his source of knowledge. I think Ms Harries was anxious to say something.

**Ms Harries:** Thank you, Mr Chairman. I just draw your attention on that point to Mr Staltari's evidence before this committee on 24 October 2012, and in relation to a section 42 notice he said it is not so much of a problem with a section 42 notice because, quite frankly, you cannot have two authorities investigating the same matter. I think in relation to that there is clearly the issue, as I understood it on Mr Staltari's evidence, was not the issue of the commission per se issuing the section 42 notices, but his understanding of what use could be made of material that the commission obtained in its investigation by the police subsequently.

**The CHAIRMAN:** Okay, very good.

Commissioner, in relation to the final point I raised, and that was the serving of notices, if I understood the response correctly, you indicated that if there was a need articulated that somebody might need to communicate something with a further individual, that would be something that the commission would consider at the relevant time.

**Mr Macknay:** In every case, Mr Chairman. If people need to get advice or to seek information it would be quite wrong —

It would be a decision for me because I signed the notice. I could not envisage the circumstances in which I would decline any reasonable request to obtain advice or information. It is not intended to be oppressive.

**The CHAIRMAN:** Is that up to the person receiving the notice to understand that they actually have that opportunity to come to you and indicate, "I would like to speak to my superior about this", or is that something the commission actually draws to the person's attention to say that, "You're free to have a dialogue with us on this matter"?

**Mr Macknay:** We simply operate according to the act. The act provides for certain restrictions, and the summons and the notice are drawn in accordance with the act. There is nothing in the act that provides for us to give information of that kind. We are today, of course, speaking of police officers, who are people who are legally trained and the notice is also served ordinarily personally

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by a commission officer, so there is a relationship, if you like, created and the person would know that they were able to contact the officer in the event that there was a difficulty.

**The CHAIRMAN:** If there is any level of misunderstanding within WA Police about that, is it the commissioner's position that it is a matter for education within WA Police?

**Mr Macknay:** It is a matter I will take on board if you have a concern about it, Mr Chairman. To be honest, as I endeavour to be at all times here, I do not feel a concern but if have you a concern, if you think that perhaps we ought give consideration to putting a note on the bottom of the notice saying, "In the event that this causes you a difficulty then you ought contact Bill Smith at the commission to raise it", or something like that. If you feel there is a concern in relation to that, obviously, I would give consideration to seeing —

**The CHAIRMAN:** Perhaps I would put it this way: before we got to that level of detail, I imagine that the committee would be satisfied just knowing that you might be speaking with Police Commissioner O'Callaghan about this proposition put forward by Mr Lampard just to ascertain to what extent it is an issue within WA Police. If it is, then you might, with him, brainstorm a number of options.

**Mr Macknay:** All right.

**The CHAIRMAN:** But it has been brought to the committee's attention. I think it would be negligent for nothing to happen.

**Mr Macknay:** Yes. I am told by Mr Silverstone that the investigators, when they serve the summons, are directed to provide a briefing, if you like, to the person on whom the summons is served, that if they have any concerns about anything; they ought contact that investigator and that investigator's number is provided. I think that probably would satisfy the matter but, as I say, if this committee thinks that is insufficient, then obviously, I would have another look at it and in the new year when I anticipate the Commissioner of Police and I would meet—it is getting rather late—then that is certainly a matter that I can take up with the commissioner then.

**The CHAIRMAN:** Yes, I think that would be excellent.

[12.50 pm]

**Mr Macknay:** As I pointed out, Mr Chairman, Mr Lampard specifically said his evidence was based on personal experience, and he has been retired for four years. I accept, of course, that his views are sincerely held, but in many cases there is no factual basis for them, which makes it difficult to test their reliability. Some of his assertions, in my submission, can be seen to be demonstrably inaccurate. For example, he said his experience was that the culture of the commission was that it distrusted police and it had little or no experience in partnering police in investigations. At the time Mr Lampard retired, the commission's director of investigations—that is, the commission's chief investigator—had left the commission and he now holds the position of assistant commissioner, crime, in WA Police; in other words, he is the state's senior detective. He was the commission's chief investigator when Mr Lampard left the police force and Mr Lampard's assertion that the culture of the commission was that it distrusted police and had little or no experience in partnering police in investigations has to be looked at in that light.

Further in relation to that, Mr Chairman, 75 per cent of commission investigators are former police officers, with the balance being experienced investigators from other specialist law enforcement agencies. The conviction rate that the commission has achieved over the years, I think, is self-evident in relation to the competence of those investigators. Both the acting director of operations and the director of corruption prevention, Mr Watson, are former police officers, and the acting director has experience that goes back many years to Tasmania and New South Wales, as well as Western Australia, in relation to royal commissions. Mr Lampard made a point of saying that the police commissioner's executive group have all passed intensive integrity screening carried out by this commission. Now, that has not occurred for several years. He said we carry out secret

investigations into minor misconduct or reviewable police action. That has occurred very rarely and usually only in relation to a systemic concern, and it is serious misconduct that is generally looked at. He says we are so focused on police, we ignore other areas. He makes no basis or justification for that. A year ago, of course, this committee criticised the commission for not being as focused as it should be on police. Contrary, I think, to what he suggests, and other witnesses, the experience of former police officers who are with the commission and have regular contact with police officers who are still serving is that those officers have no particular issues with the commission and are quite supportive. It is interesting that when we advertise positions as investigators or forensic positions, there are always a significant number of applications from serving Western Australian police officers. We routinely share information and intelligence with the WA Police. Mr Lampard also asserts, Mr Chairman, that the commission is not to be trusted, but he provides no basis for that assertion.

**The CHAIRMAN:** Can I perhaps just indicate, Commissioner, that what you will find is that throughout the evidence of various witnesses, there may be statements that have been made that I have absolutely no doubt the commission can challenge, and probably in a number of instances quite rightly so. But whether someone makes a statement that is actually relevant to the inquiry before the committee is quite something different.

**Mr Macknay:** Certainly, Mr Chairman, but of course I am not to know that. My concern is that if I do not challenge things which are either demonstrably not supported or, alternatively, in our view, demonstrably inaccurate or simply wrong, I am not to know whether or not this committee might consider that that is something that it ought rely on. I must say I did intend with your leave to say something about the process at the end of this discussion, because it seems to me that it is all rather nebulous, of course, is it not? I think the commonwealth Parliament might have a more defined set of rules in relation to hearings of parliamentary committees, because, at the end of the day, of course, there are rules as to how evidence ought be treated, but there is nothing that one can find in the standing orders, for example.

**The CHAIRMAN:** No; in fact, to the contrary, the default position for parliamentary committees in this state is that they be public hearings unless there has been a resolution of the committee to the contrary.

**Mr Macknay:** Yes. Ms Harries has brought to my attention, for example, that there was a proposed draft standing order which would invoke a section 86 process for committees that the Speaker obviously considered a year or two ago where persons adversely affected would have an opportunity to see a draft. But it would seem that has not become part of the standing orders. As a lawyer, I suppose I like rules and regulations and I can see fertile ground in the standing orders for the creation of a greater structure in terms of the activities of a committee so that everyone knows where they stand.

**The CHAIRMAN:** Yes; understood.

**Mr Macknay:** Can I take it, then, if I may ask, Mr Chairman, that I need not say anything more about Mr Lampard's concern in relation to trust?

**The CHAIRMAN:** I think it has been a very useful dialogue and there is, in my view, a couple of matters that the commission is taking on board as a result of that and might clarify with Commissioner O'Callaghan. Obviously, it is not for me to pre-empt what the committee might put in its final report, but I do not think there is anything more useful that could be done.

**Mr Macknay:** No; very well. Thank you.

**The CHAIRMAN:** Perhaps if I can then move, Commissioner, to the evidence provided on that same day by Mr Ron Davies, QC. In particular, I note his evidence included the following. When he cannot get out of it, he has appeared for individuals before the CCC and he vows every time he will never go back because the procedures are oppressive and are not conducive to a fair go for

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individuals who are called before the CCC owing to the CCC's investigative methods. He goes on to say that there is a very poor culture and attitude within the CCC and says that the time taken by the CCC in completing its investigations is "extraordinary" and then concludes by saying that legislation is now the only thing that will change the culture of the current CCC. I guess, Commissioner, I would just indicate at this point that the reason Mr Davies was called before the committee was actually pursuant to a recommendation by the former parliamentary inspector, Hon Chris Steytler, QC, whom, naturally, the committee has always held in the highest regard. The committee has had no reason to disagree with the recommendation of the former parliamentary inspector to call Mr Davies as a witness. I would be interested to hear from you as to what might have motivated Mr Davies to offer these opinions regarding the CCC to the committee.

**Mr Macknay:** With respect, that is not something that I or anyone else is able to do to divine what passes in Mr Davies' mind. I am only able to comment on the things that he has said. I must say, as a general proposition, what Mr Davies said was really a series of broad expressions of his own opinion unhampered by the giving of any detail, which, again, makes testing of the propositions that he put impossible beyond querying whether or not they do represent his opinions—that it is really bar talk, if I could put it that way. He said that he was here because he was "dropped in it by Chris Steytler; he would, I think, talk to you if requested." I do not know the circumstances in which Mr Steytler suggested to this committee that it hear from Mr Davies, but certainly if Mr Davies is asserting that he was asked or urged by Mr Steytler to give evidence, I would challenge that. I would also challenge any implicit suggestion that Mr Steytler would in any way support the opinions of Mr Davies. It would be quite improper or unfair of me to speak to you of Mr Steytler's views, but I would say Mr Davies' only recent contact with the commission, as far as I am aware, has been in relation to the investigation in relation to the Commissioner of Police, and Mr Steytler was then the parliamentary inspector and I kept Mr Steytler informed throughout that investigation. I had a number of conversations with him in relation to it. And I stand by what I said—that I would challenge any implicit suggestion, if Mr Davies was making one, and he appeared to be, I thought, that Mr Steytler would somehow support him.

[1.00 pm]

**The CHAIRMAN:** I do not think any of us can draw that conclusion.

**Mr Macknay:** Mr Davies said to this committee that in the course of the Mallard inquiry, he provided Acting Commissioner Dunford with a letter making submissions. The commission has turned itself upside down trying to find that letter. We cannot find one. We wrote to Mr Davies saying, "Have you got a copy of the letter? If you have, we're trying to find one for the committee." Mr Davis did not deign to reply to our letter.

**The CHAIRMAN:** Where does that matter currently sit?

**Mr Macknay:** There is no letter that we are able to produce. Mr Davies certainly will not give it to us if he has one. We are not able to take the matter any further. Mr Davies made reference to the O'Callaghan investigation. That is currently being looked at by the acting parliamentary inspector. I do not want to go into it.

Can I just say this, as I think I have previously said, in deference to the seniority of the person under investigation, we initially engaged Peter Hastings, QC, a very senior Sydney Queens Counsel who, in fact, was senior counsel assisting the Kennedy royal commission. He has recently been appointed the New South Wales Crime Commissioner. Mr Hastings became unavailable as he was taking part in a long trial. That cost us four weeks or so in terms of the investigation. We then engaged Peter Quinlan, SC, who is a well-known Perth senior counsel with a background both at the State Solicitor's Office and in public inquiries, who has a high reputation for personal integrity and fairness. At all times I sought the advice and assistance of those senior counsel during the investigation. Had I been given formal advice to proceed in some different way, it would be extremely likely that I would have taken it. The information required very extensive checking.

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**The CHAIRMAN:** Are we still talking about the O'Callaghan matter?

**Mr Macknay:** Yes.

**The CHAIRMAN:** I would prefer that we did not.

**Mr Macknay:** Can I just say one further thing in relation to it? As the WA Police Union of Workers' written submission asserted, 37 months have taken place since the investigation. The Commissioner of Police became aware of the investigation about the third week in January of this year. By the last week in May of this year he had been served with senior counsel's written submissions in relation to each of the two matters in which it was said by senior counsel that no finding of misconduct ought be made, and then the reports came out a month or so later. We are talking of a period of four to five months in terms of the commissioner's awareness that he was being investigated. I would just like to make that point. Can I just say in relation to Mr Davies —

**The CHAIRMAN:** I trust, Commissioner, that is the end of us discussing the O'Callaghan matter because it is quite specifically something that the committee has elected not to consider in this current inquiry because of the fact that —

**Mr Macknay:** I understand that, Mr Chairman. I only mentioned it because it was mentioned. So far as I can ascertain, Mr Davies has appeared before the commission on the Mallard matter, this matter and the Spratt matter. They are the only matters that I can ascertain that he has appeared before the commission.

**The CHAIRMAN:** One could say all fairly high profile cases.

**Mr Macknay:** Yes. I do not want to make pejorative remarks about Mr Davies.

**The CHAIRMAN:** I would prefer that you did not.

**Mr Macknay:** I will leave that sort of thing to Mr Davies. He felt able to make them in relation to commission officers, including me, I would note. I just point out that Mr Davies said that for 45 years he had a close relationship with police. I say this because my submission is that Mr Davies is not in any way representative of the legal profession in this state. He is a person who has worked as a prosecutor, he has represented police officers and he has done some work with the trotting stewards. That is my understanding of the extent of his practice. Mr Herron, who is a barrister in active full-time private practice when he is not dragged into the commission, I would ask him to tell you what his understanding of the commission status is in the legal community and I would absolutely challenge the proposition that Mr Davies speaks for the legal community or is in a position to speak for the legal community in Perth. He is, as he says, very close to police officers. I would suggest that if the police were a football team and Mr Davies was a supporter, Collingwood would be the team that would come to mind.

**The CHAIRMAN:** Perhaps I can just indicate at this time before the acting commissioner engages on this matter, I do want us to try to confine our comments today to the inquiry before us, which is how the Corruption and Crime Commission handles complaints of misconduct in WA Police. What people might think in regards to certain witnesses is not something of interest to this committee. As is always the case, commissioner, at the conclusion of today's hearing, there will be an opportunity for the commission to put in a supplementary submission if it thinks it necessary. I am hearing from you usefully this afternoon that the witness, Mr Davies, as we understand it, has appeared before the commission on three matters—Mallard, Spratt and O'Callaghan—and also usefully the letter that he says he provided in the Mallard matter before Mr Dunford cannot be found. Other than that, I do not know that we need to go into any greater detail.

**Mr Macknay:** Yes. Very well.

**Mr Herron:** Can I just say one thing? This is in direct response to a question of Mr Alban. Mr Alban said —

Mr Davies, how would you say the CCC is perceived by the legal community of Western Australia?

Mr Davies' response was —

I am trying to avoid pejorative terminology. Not highly. Would that help?

Mr Alban stated —

It is a start.

I am not sure why the question was asked. I do not know whether that goes anywhere.

**The CHAIRMAN:** Can I just say, on the basis that the question was posed by the committee, I am happy for you to respond.

**Mr Herron:** My experience within the legal profession is quite to the contrary, both at the bar and in the wider legal profession. It is generally regarded very highly by the legal profession. Clearly, views will change. It will differ between certain people and different people have different views. My general experience is that the legal community regards the commission very highly.

**The CHAIRMAN:** Do you have anything further in relation to Mr Davies?

**Mr Macknay:** I did not answer a question you asked, Mr Chairman, which was: why would Mr Davies say that he does not want to come to the commission? Mr Davies said a number of things after that. With respect, they really amounted to a criticism of the nature of the commission as created by the act of Parliament that governs it rather than the commission itself. He says, "You are not given the full picture." As this committee well knows, the commission conducts investigations, not trials. The commission has certain obligations under the act; it has certain procedural fairness obligations. There is no obligation, and nor could there be any obligation, for the commission to provide all of the information that it had to a person who was appearing as a witness. What the commission does of course in terms of that information depends on the individual witness.

This commission recommended some time ago that there ought be changes to the act in relation to procedural fairness. You will recall that the change that was proposed was proposed to be subject to the discretion of the commissioner. That, of course, is to prevent giving information to a witness who will tailor his or her evidence because of the information given. So Mr Davies' proposition must be looked at in that light. Mr Davies, I think, would really like to control the process and obviously becomes frustrated when he is not able to do that. I challenge that assertion on three grounds: firstly, on the fact that he is not a person who is truly experienced there. Just returning to the Commissioner of Police matter, I said to you on Wednesday that closing submissions were provided, which were not required to be provided, with the transcript of that witness's evidence. In part, his complaint is just about the act of Parliament and about a body like the commission. Thirdly, he overlooks the need of the commission to ensure that it does not hamper its search for truth, which is the purpose of the investigation.

[1.10 pm]

**The CHAIRMAN:** Yes; thank you, Commissioner.

We might now move to the next group of witnesses, which was the WA Police Union of Workers, who appeared before the committee on 26 September 2012. I want to note two particular points provided by the police union witnesses. Firstly, the observation that an independent oversight body is unquestionably required, but its roles and responsibilities need to be clearly defined; and, secondly, that the CCC takes too long to complete its investigations. I will just ask for any response from you, Commissioner, in relation to those two points.

**Mr Macknay:** In relation to the length of time—I am not sure whether I said this on Wednesday or not —

**The CHAIRMAN:** If I could perhaps indicate what I recall from Wednesday with particular emphasis, which was that you had noted from a different jurisdiction that a 15-month period of time was a useful guideline in terms of case management. I think the other thing you mentioned in particular on Wednesday was that you have helpfully picked up, from your time in the judiciary, case management-type guidelines and milestones that you have brought into the commission in recent times.

**Mr Macknay:** I said it was my desire to, not—well, two further things, Mr Chairman. Firstly, the annual report discloses the average time for investigations—they being corruption prevention investigations; preliminary investigations under section 32; investigations under section 33—across that area is 88 days. Secondly, speaking from my own personal knowledge, and as this committee knows, when I commenced I sought a greater role of the commission in itself investigating allegations of use of force by police officers. There have been, as I recall, nine such investigations since I began—all completed. My estimate of the average time taken would be three to four months in relation to those investigations. All of them, of course, resulted in no finding of misconduct against a police officer, and that is the reality, Mr Chairman, I am able to say.

**The CHAIRMAN:** Perhaps, Commissioner, I could also just get you to confirm that that 88-day average, which is obviously approximately three months and consistent with the use-of-force investigations, you would say is not too long a time to complete an investigation; to the contrary, you would say it is a reasonable period of time?

**Mr Macknay:** It very much depends on what is involved, Mr Chairman. Again, as I think we might have discussed on Wednesday—it is all becoming a bit of a blur—we have been talking about this within the commission for some days now. One has to distinguish between the two kinds of investigation. There is the police investigation: we have a person of interest and we have an allegation; is there a prima facie case or is there a finding of misconduct? Very straightforward, and, barring accidents, one can do it quickly. If it is more complex, as Mr Staltari, I think, said, we do not have a guideline for IAU investigations because they are more complex. But the commission investigation can be very different to that, of course; the commission investigation cannot be simply into the issue of whether or not a person of interest is guilty of misconduct. It can involve a whole raft of other considerations in terms of prevention and so on. Then, of course, it becomes significantly more protracted, and there is then, of course, a report to write, which IAU investigators do not have to do except in a short form. We have both an investigation report written by the investigation team, and then, of course, if there is to be a parliamentary or ministerial report, a report written that goes out under the commissioner's hand. Those things can take considerably more time.

Part of the difficulty, I think, that has confronted the commission over the years—this is just my own personal opinion; it is not something I have discussed with people—is that the discontinuity in commissioner has resulted in delays from time to time because reports or judgements are not easy things to write. You need a run at them. A lot of judges, you will find, write their judgements during their holidays. I certainly used to try to get mine out of the way so I could enjoy the rest of the holiday. If you are in court or doing things every day, you cannot get a run at it, and that is when you have actually heard the evidence yourself. If you come to something when most of it has been done before you are there, you might have a draft report but you have to find out what the evidence is and that makes the task much more difficult. Why there is that discontinuity in commissioners is not for me to say; it is a serious question, and I think it has had an effect —

**The CHAIRMAN:** Perhaps yet another reason there should be a deputy commissioner?

**Mr Macknay:** I was about to say, with respect, Mr Chairman, that I think that would greatly ease it. When I first spoke to people about this particular position I spoke to a very senior retired Supreme Court judge and said, “Well, had you given it some thought”—I assumed he might have

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been approached—and he said, “I think, under the act, too much has to go through the commissioner.” That is a problem, I think, really.

**The CHAIRMAN:** Is there anything further you wish to raise in relation to the evidence of the WA Police Union of Workers that you feel is particularly pertinent to the terms of reference of this inquiry?

**Mr Macknay:** In relation to the survey, Mr Chairman, and the attitudes that are said to be revealed, we do have a fairly substantial level of concern about most of the material in that survey, which I see is in fact shared by the Commissioner of Police, Dr O’Callaghan, who suggested that it was not really to be relied on. But apart from issues of methodology and the like, which just do not appear because this committee was not actually favoured with the material—indeed, it was not favoured with the responses but only given selected material—it is said in the written submission that except where indicated the number of people who answered a particular question does not appear. So when we are told that 70 per cent of people think this or 25 per cent think that, we have no idea how many people that is, and that really falsifies most of the assertions in the survey. I will just give you the paragraph, if you will bear with me for one moment.

**The CHAIRMAN:** I note that the committee, commissioner, has since obtained from the union an indication that of the 449 respondents, 386 chose to skip the question, which was: “Would you ever report any police misconduct to the CCC?”

**Mr Macknay:** All right.

**The CHAIRMAN:** Sixty-three answered that question out of 449, and of those 38 said no and 25 said yes.

**Mr Macknay:** Yes. Can I just say, Mr Chairman, without getting excited, that that makes the proposition in the outline in the written submission that some high percentage would not report it, which was obviously of concern to this committee—I saw the transcript —

**The CHAIRMAN:** Yes, which you could understand.

**Mr Macknay:** It makes that assertion quite outrageous when we hear that hardly anyone answered it. Can I just say, while we are on that particular topic, that I would not expect police officers to ordinarily report police misconduct to the commission; I am sure they are not trained to.

**The CHAIRMAN:** It did say: “Would you ever report any police misconduct?”

**Mr Macknay:** All right; yes. The chain of command, of course, for a police officer is to report police misconduct to a superior police officer. I am sure they are trained in that regard at the police academy, and I would be equally certain, without knowing, that they would not be trained to tell us, and nor would I expect them to be trained to tell us.

[1.20 pm]

**The CHAIRMAN:** I might contrast that, Commissioner, with the further response we received with regard to the question: “Would you ever report any police misconduct to Police Internal Investigations?” In stark contrast, 364 people answered that question, only 85 skipped it and 287 said “yes”, and 77 said “no”. I would nevertheless be interested in your view with regard to the fact that 77 of those respondents, which was 21 per cent of people who responded to that question, have said no to the question: “Would you ever report any police misconduct to Police Internal Investigations?”

**Mr Macknay:** I suppose, in the first place, that is a matter for the Commissioner of Police, but it is a matter of clear, significant concern. It is really at odds with what one would hope is the current position. I think the police union written submission, in fact, goes to great lengths to talk about modern attitudes with police and so on and the thin blue line having gone, perhaps. It might just reveal, as the Commissioner of Police suggested, that the survey generally is unreliable ,

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Mr Chairman, because we do not know who the people are; it is a small sample out of 5 000 or 6 000 police officers, and we do not know who the people are who are providing those answers.

**The CHAIRMAN:** One thing we do know, Commissioner, which you may not be aware, is that 15 respondents actually responded “no” to both questions; so they would not report to internal affairs or to you. I would have thought that 15 police officers in the state would be a matter of concern, and one would hope that it would be zero.

**Mr Macknay:** Absolutely.

**The CHAIRMAN:** Perhaps that is idealistic; I do not know, but that number of 15 is maybe something you may want to raise with the police commissioner.

**Mr Macknay:** Yes; and perhaps it also suggested, Mr Chairman, that I think it appears from the evidence that the police officers who were given the survey were asked to provide a quick turnaround. It is an online survey. It would be on an anonymous basis; nothing turns on it and it is a matter of putting a finger on the computer or clicking a mouse.

**The CHAIRMAN:** It is not qualitative.

**Mr Macknay:** And it is not necessarily reliable for that reason; sheep stations are not turning on the accuracy or honesty of the answer.

**The CHAIRMAN:** I am not sure I would agree with “accuracy”, because it does concern me that 15 sworn police officers are saying that they do not want to report any police misconduct to anybody—they would rather keep it to themselves; given that it is anonymous.

**Mr Macknay:** Or are they stirring to some extent, Mr Chairman. It is remarkably candid. I think, if I were a police officer who thought that, in this day and age of computers, I would think long and hard before I said it, even if I thought the answer was anonymous.

**The CHAIRMAN:** I will not ask you to disclose your investigation and covert operations.

**Mr Macknay:** Yes; all right. Just going through the survey, 37 per cent of 37 officers were to some degree unhappy about our inquiries, as we said, which would be fewer than 14 people. In fact, when one came to compare unhappiness between those who had been involved with internal investigations, both witnesses and persons of interest and commission investigations—the two lumped together—it was two-thirds of people were to some degree happy with police investigations and 70 per cent of people were happy with commission investigations. So when one analyses the figures, in fact, those people who actually had experience, there was less unhappiness with commission investigations than otherwise. Mr Chairman, in relation to the figures given for people who had not had experience, then in my submission that is not something that is of any consequence at all because we all have a fear of the unknown. If you have never had anything to do with the Corruption and Crime Commission then you are not in a position to know how you would be treated and your fear or otherwise is not something that at the end of the day is of significance, particular when we do not know how many people that was. What we do know is that although the union submission has been prepared to provide these headline figures that look, on the face of it, alarming, as the committee has now done when the numbers are asked for, they turn out to be very small groups of people. Simply with the time taken for investigations, 14.6 months as against 10.6 months, in my submission, that is utterly without reliability. There is nothing to indicate the respondents in any case had reference to any record or document; it is simply an immediate response. It specifically said that the outliers are discarded in relation to the police internal investigations to arrive at 10.6 months. That statement is not made in relation to commission investigations, so there is nothing in that survey to indicate that that was the case; hence, on its face, it is statistically misleading. In any event, it is simply, in my submission, not a figure that one could take any notice of because we do not know how reliable the individual figures were. There are other things that are said, Mr Chairman. It is said that we have got a history of proceeding with criminal prosecutions following which the accused is cleared through lack of evidence. Well, our conviction

rate is contrary evidence to that. It says that commission investigations are conducted without appropriate skills and are guided by lawyers. Well, I referred to the numbers of investigators in the investigations unit. It says that the commission should either hire investigators or train their lawyers. This is a police union submission. That is consistent with the belief that it is lawyers and not trained investigators who conduct investigations. It says that we could investigate organised crime, but we prefer to follow soft targets. Well, plainly, that reflects a total lack of understanding of the act.

**The CHAIRMAN:** Perhaps that is an example of something, Commissioner, that clearly does not really need a response from the commission; it speaks for itself.

**Mr Macknay:** Yes, very well. I am not sure whether you are going to deal with the evidence of Messrs Tilbury and Shortland, and Fordham and Roast, separately, or whether you want me to —

**The CHAIRMAN:** Not separately.

**Mr Macknay:** Yes; all right.

**The CHAIRMAN:** If something needs to be said now is the time to do so.

**Mr Macknay:** Yes, thank you. Mr Tilbury complained of our CCTV review of the Perth CBD in Northbridge as an unwarranted self-generated inquiry designed to justify our existence. I would hope the committee would not share that view. I should say that was not an investigation; that was part of an ongoing research project into the unreported use of force, in any event. But we do regard proactive targeting as an important strategy, and I think any oversight body would. The police themselves I think perhaps have recommenced integrity testing—perhaps not yet.

**Mr Watson:** Commissioner, insofar as I know, within the limits of their legislation.

**Mr Macknay:** Yes, which is a proactive strategy. Mr Tilbury asserted, Mr Chairman, that the IAU feels compelled to take a heavy-handed approach as a result of commission pressure. Again, nothing was put forward by him to support that. He referred to a use of force form change. The change in that is unrelated to our activities; in fact, part of our research project on unreported use of force includes a question whether the police take an overly bureaucratic approach to reports of use of force. So, far from spurring on that change, we actually do have some concern about it. He says that union members could not work jointly with the commission and be effective, particularly when there were clearly issues of trust and reluctance to share information. I have previously spoken to this committee about cooperative investigations in a recent investigation involving a PathWest employee in the Pilbara region that this committee, I am sure, is aware of and there is currently another operation underway. Both of those operations came about after WA Police approached the commission and asked the commission to become involved in a cooperative operation, members of the committee, as has happened in the past. They were the matters to raise in relation to that evidence; thank you.

[1.30 pm]

**The CHAIRMAN:** Thank you, commissioner. Last but certainly not least, I would like to take us to the evidence provided by WA Police on 24 October 2012. A number of things were provided and said by the WA Police at that time. Perhaps if I could start with the Kevin Spratt matter, as it is commonly referred to. The comment made by the police on that day was that the handling of the Kevin Spratt matter by the CCC was a significant source of disappointment and frustration for the WA Police and the 18 months taken for the CCC inquiry did nothing to progress that matter towards a resolution at all. Perhaps rather than commenting on other areas at this point, I just seek your response in relation to that matter.

**Mr Macknay:** Certainly. Can I say that I agree that the police were undoubtedly disappointed with certainly one aspect of the commission's activities in relation to Mr Spratt.

**The CHAIRMAN:** Is that the issue of the distinction between the draft report and the final report?

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**Mr Macknay:** That was the decision to make the video of the tasing of Mr Spratt public following the tabling of the first report. I am told the police were very unhappy about that and my submission would be that that perhaps imbues their attitude to this matter generally. Looking at the evidence from Mr Staltari and the commissioner, the submission that they made, with respect, is a clever one because it asks, “At the end of the day was the matter further advanced?” But, with respect, that is not the right question. The question to be asked is: when Commissioner Roberts-Smith decided to investigate that matter, was that a valid decision to make on the information that was then known to him? Very often with the benefit of hindsight we can query it, but that is not the way that one ought to go about it. It is suggested that the inquiry was simply one into two police officers—the investigation of the commission—and that with those two police officers, their position was known. Eighteen months later nothing had changed; their position was known, and so the whole thing occupied time without benefit. The commission would reject that, with respect. Among several other things, what that evidence entirely overlooked is that Mr Spratt had been charged with an offence, which he ought not to have been charged with, of obstructing a public officer, a false set of material facts had been created and he had then been convicted of it. As a direct result of the second investigation, the one conducted by latterly Acting Commissioner Herron, that state of affairs came to light. There was an appeal against that, which was conceded by the state. The plea of guilty made by Mr Spratt was set aside, the conviction was set aside and he was permitted to enter a plea of not guilty. That would not have occurred had the second investigation not taken place. So, it is true that the two police officers who were found to be guilty of misconduct in tasing him had to wait, but Mr Spratt, the unfortunate person who was tasered actually gained a benefit from the investigation.

What I do hope, members of the committee, without wanting to burden you with unnecessary additional information—I have a document listing a chronology of key events regarding the Spratt taser investigation, which has a time line and has some of the brief excerpts of some of the material from the Spratt report and which sets out, in particular, the remarks made by Commissioner Roberts-Smith when he commenced the public examinations. Those remarks set out, to some extent, his reasons for having decided to conduct an investigation. With respect, that is how one ought to look at the matter. The events, of course, that preceded that were that the general taser report was tabled. In it there was a recommendation that WA Police ought to change their policy so that a taser is only used when there is a risk of serious injury. When the draft report was given to the police, they said, “No, we disagree with that. We will not accept that.” That was made a footnote to the taser report. The video then came into the public domain. The police commissioner then held a press conference, as you might be aware, in which he produced a record of contacts between Mr Spratt and the police, involving other taser incidents. He produced Mr Spratt’s record of convictions and the matter became one of very considerable public controversy.

**The CHAIRMAN:** Commissioner, I think it was controversial before that happened.

**Mr Macknay:** Yes, certainly. There was a concern that the statements made by the commissioner in the public domain were not accurate. That was one of the matters investigated by the commission. At one point, the DPP wrote to the commission asking the commission if it would take up the investigation of Mr Spratt, which the commission at that point in fact declined to do. But it was after further events transpired that the commission then decided that it had to return to the investigation. So, with your leave, Mr Chairman, I would hand out copies of this document. I apologise for producing it late, but I think —

**The CHAIRMAN:** It is welcome, Commissioner, so if you leave it at the conclusion of today’s hearing, it would be much appreciated. I indicate at this time that the Deputy Chair, Mr John Hyde, has had to leave on urgent parliamentary business and he gives his apologies.

**Mr Macknay:** Thank you. I need to correct the record in one respect, Mr Chairman.

**The CHAIRMAN:** In relation to the Spratt matter?

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**Mr Macknay:** In relation to the Spratt matter. It appears from correspondence between the then parliamentary inspector and the commissioner, that the commissioner was aware of the statement regarding the adequacy of the police investigation in the draft report. So it would therefore not be correct to call the inclusion of that in the draft report a mistake or an oversight, which I think I might have suggested in the letter that was provided that it apparently was. It appears from that correspondence that it went forward, although not necessarily agreed with. It was then deleted and Commissioner Roberts-Smith said to the parliamentary inspector, on being asked about it, that in his view it was not necessary to advise the police that it was being deleted prior to the tabling of the final report because the deletion of it did not change the tenor of the report in the sense that no adverse comment was being made about the report. What was happening was that a positive comment was being deleted, and therefore section 86 did not have application. That was the gist of the correspondence between the parliamentary inspector and Commissioner Roberts-Smith, I think, probably towards the end of 2010, not long after the report was —

**The CHAIRMAN:** It is certainly fair to say, Commissioner, that I believe the position of the WA Police expressed to this committee is somewhat robustly different to that.

**Mr Macknay:** I think you might have asked the commissioner whether he thought that he should have been told, and he said he thought he should have been told. This is a statutory function. In my submission it is clear that there was no obligation on the commission to tell him pursuant to section 86. It was not a matter where a further draft had to be brought to his attention. Whether in the ordinary course of events an informal notification might have been made is not something I comment on, because I was not there at the time and I do not know all of the circumstances. But certainly there was no obligation, in my submission, on the commission to make any notification to the commissioner at that time.

**The CHAIRMAN:** What about the issue, Commissioner, of the length of time it took for the commission to “take over the investigation itself”? You have indicated today some of the benefits that have arisen as a direct result of the commission taking it over, but do you have any comments to make about the length of time before that actually occurred?

[1.40 pm]

**Mr Macknay:** Can I say, I will speak until the time of Mr Herron’s appointment and then Mr Herron, obviously, was the acting commissioner for that period; I will ask him to comment on it.

**The CHAIRMAN:** Perhaps I can just indicate my understanding is that the decision for the commission to take over the investigation took place prior to Mr Herron’s arrival.

**Mr Macknay:** Yes.

**The CHAIRMAN:** It is that period preceding that that I am calling into question.

**Mr Macknay:** According to the chronology that will be made available, the commission decided to investigate the Spratt matter on 12 November 2010.

**The CHAIRMAN:** And the matter was, as I understand it, senior members of the CCC were apprised of the seriousness of the Spratt incident on 24 September 2008.

**Mr Macknay:** There was a conversation. Mr Dawson, the deputy commissioner of the WA Police, briefed Commissioner Roberts-Smith, as I understand it, on it. The position, as I am led to believe, is that Deputy Commissioner Dawson was plainly extremely concerned about it and was very anxious that the police conduct a full and proper investigation in relation to it.

**The CHAIRMAN:** As one would expect.

**Mr Macknay:** Yes. Of course, with that assurance the commission was content for WA Police to conduct the matter.

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**The CHAIRMAN:** It is easy with the benefit of hindsight, Commissioner, for me to ask this question, but since your time on the commission, it has been noted by the committee, as you have outlined before, that there has been an increase of priority put by the commission in terms of matters dealing with excessive use of force or at least alleged excessive use of force. With the benefit of hindsight, is it fair for the committee to presume that under the new regime the investigation might have been taken over by the commission earlier?

**Mr Macknay:** Can I say this: I certainly would not like to say anything from which an inference could be drawn that Commissioner Roberts-Smith was in any way not acting perfectly properly in leaving it with the police.

**The CHAIRMAN:** That is understood by the committee, Commissioner, in the sense that if every single matter was left with WA Police and the commission decided to take over no matters of itself statutorily, that would not be wrong in terms of a decision. But whether it would be the best approach is another thing altogether.

**Mr Macknay:** Whether it was the best, again, is something that is only known with hindsight. The internal affairs unit, based on my understanding, are a very professional, well-led unit who do very good work, so one ought to be hesitant to say that, in any case, they would not do a completely thorough and adequate job. If I can answer your question this way, Mr Chairman, given the view that I formed that it was necessary to maintain public confidence, really, as much as anything else, that we investigate a certain number of these matters ourselves so that police knew we were active in the area and that in any case we may come in and take it over. So, that is a salutary reason—public confidence reason—all those sorts of things. I suppose one would say that this would be the sort of thing that would certainly interest us. Put it that way.

**The CHAIRMAN:** I guess the committee would want to be satisfied at the end of this exercise in this particular inquiry that there has been some lessons learnt by the commission. It would be somewhat distressing to me as the chair of the committee if I was to leave here today under the assumption that were that video to be placed before you today, you would not make a decision to take that matter on.

**Mr Macknay:** We would be interested in it, Mr Chairman. I think you have been told that, as with most organisations, there is a T&CG group, which decides which matters are to be investigated. There is a subcommittee, if you like, of that, which looks at every use of force matter. The members of it, if they do not agree, make individual recommendations and it then comes to me, and I look at every matter, give consideration to every matter, ask further questions and so on.

**The CHAIRMAN:** This would fall in that category.

**Mr Macknay:** Yes. As I say, we would be interested.

**The CHAIRMAN:** Commissioner, I just indicate that at this point we are going to lose quorum of the committee in about 10 minute's time. I just ask for any further remarks you may have in relation to the evidence of the WA Police on 24 October 2012, noting of course that you are free to provide supplementary submission after today.

**Mr Macknay:** Yes. Perhaps if you would just permit me to peruse my notes? Can I just say this without necessarily taking time. I would be mortified if at the end of this exercise there was any public view that the commission held the police other than in very high regard. The commission believes that WAPOL takes its responsibilities preventing misconduct seriously and it does generally hold its officers to account. There is a lack of evidence of any widespread corruption or any widespread culture of violence in the police force in this state, unlike, perhaps, problems still experienced in some other police forces. Serving officers and those who direct them, including the Deputy Commissioner Mr Dawson and the commissioner, deserve credit for that state of affairs. It does not follow, of course, that those things do not exist or they might exist in the future, and the commission's view is that the necessary way to preserve that state of affairs is to be eternally

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vigilant, which the commission tries to do, and, of course, it is our role. Necessarily our approach can cause discomfort. We would not expect to be fully approved by those we oversee.

**The CHAIRMAN:** I know how you feel, Commissioner.

**Mr Macknay:** It is inevitable, yes. So sometimes of course the most uncomfortable are those with something to hide. There are conflicts of interest. There was a bookmaker on the ABC last Sunday talking about the way that horses are put into the Melbourne Cup. Local people were complaining about it and he said that stakeholders are always conflicted, and I think that really says it all. We are stakeholders in the police and they are stakeholders in us and, I suppose, with respect, this committee has a stake in the commission as well. So, there is that element to it.

**The CHAIRMAN:** I just indicate, Commissioner, that the most recent submission from the WA Police includes the following conclusion —

WA Police values the role of the commission in its oversight of investigations. Vigorous review of completed investigations is a useful tool to ensure completeness and accuracy.

It then goes on to say —

The WA Police's view is that timely advice from the commission to identify concerns upon which action can be taken is of far greater value than research or other reports produced to criticise or make adverse comments about the WA Police at a later date.

Whether the commission necessarily whole-heartedly agrees with that, can I just indicate that that is certainly the articulated view of the WA Police and that as a minimum I would have thought that would be something that would attract a dialogue between you and commissioner in the new year.

[1.50 pm]

**Mr Macknay:** Can I say, Mr Chairman, I found WAPOL's submission of July last comprehensive and useful in many respects. There were two things which I intended to raise in any event. I think, as a generalisation, there was merit in the comment about closed hearings and the notification to the commissioner, paragraph 7.1. I intend to amend the commission's standard operating procedures so that formal consideration be given to notifying the commissioner when a closed hearing is to take place. Obviously there will be times when that would not be appropriate. There are issues of security, if it was a covert investigation. The police force is a large organisation. There would be necessarily a concern. Sometimes an officer might be more reluctant to speak if there was a police officer in the rear of the hearing room. Those things would not make it always appropriate. In order that it not be lost, my intention is to include a requirement that formal consideration be given to it. Secondly, there is, with respect, in my view a merit in which, if the commission perceives a difficulty emerging in the police, that it ought immediately inform the police of that. It might be some trend. For example, if there be an increase in the use of batons without apparent explanation. It would be of benefit, I think, for the commission to advise the commissioner and other officers of that and also perhaps in the appropriate case just to send a shot across the bows to the force generally, that the commission has seen this, has a concern about this, and if it continues will take a more active role. It is something that I think in Queensland the CMC apparently make a practice of doing. It was something I learnt when I visited that agency, as you are aware, Mr Chairman, and it was something that was on my to-do list and I wholeheartedly endorse the proposition.

In relation to guidelines, there was some sniping perhaps in the evidence, but can I just say the issues identified some months ago, there has been a joint working group and a set of new guidelines is nearing completion, so that is not in fact a difficulty. Critical incidents—the commission has an investigator on call at all times. That is known to the police and they know how to contact that person. The commission does not consider that active oversight at a critical incident scene following the event would aid its role. Again, in Queensland, I think, where they have a much greater police involvement within the ranks of the commission, they will send somebody out to an accident scene, for example, to check that the measurements are being done properly and that sort

of thing. This commission does not have expert police officers. Nothing would be gained by simply standing there at the scene. What the commission does do is involve itself at a very early stage. The IAU is being very good in terms of providing notifications of critical incidents. We become involved at an early stage and we then look at it, very often in consultation, usually in consultation with me as to the level of oversight, the need to be kept in the loop, if I could use that expression, for briefings and so on. Examples include the May 2011 police shooting incident. The shot fired at a vehicle, September last year, incident. The June 2012 incident when somebody was impersonating a police officer to gain access to the Perth watch-house. They are examples of things where we have become involved and seek to be, not involved in a cooperative investigation or to be at the scene, but to be closely involved in terms of following what is going on so we know exactly what is going on.

We would say, Mr Chairman, as I think we said on Wednesday, that IAU practices have been changed as a result of our oversight. We talked—in particular, Mr Watson did—about quality assurance changes. That was a direct result of our interventions. The Quartermaine inquiry was complained of. That is an old story, with respect. We investigated that after the parliamentary inspector insisted that we do. Really it was a very old matter. It was not investigated at long remove for any reason other than at the parliamentary inspector's urging. Necessarily, practices had changed after 20 years. We were aware of that. There was complaint made of audit type reports, Mr Chairman. We would not accept the proposition that we had organised things in a way which should have caused the police frustration. We endeavoured to be as cooperative as we could. We did it in a completely open way to ensure that there was no belief in ambush. The proposition that we issue a section 42 notice and then send it back without explanation or advice—we simply reject that, Mr Chairman. The result of an investigation is always the subject of advice. If there is to be a further inquiry, it is our practice to disclose all relevant material.

In relation to joint investigations, the act does not provide for joint; it provides for cooperative investigations. They do occur. They occur when we consider it appropriate. We have not really been approached in recent times. We have not refused any. There have been two in the last three years. We have not refused any in relation to the IAU. As I have said, there are several other recent cooperative investigations with other branches. At an operational level, there is close cooperation between the commission and WAPOL. There are regular director-assisted, commissioner-level meetings. The commissioner-level meetings were previously held, but without wanting to point the bone, my advice is the attendance of the Commissioner of Police became rather sporadic and they simply fell away. They have a useful role, but in terms of the proper functioning of the commission and its relationship on an operational level with the police, I am not sure they are of great importance. Inspector Young spoke of strategic meetings. I am not sure that we need to develop a strategy with the police. I also note that the commissioner candidly told this committee that he does not read commission reports unless he is directly involved in them.

The section 86 process, Mr Chairman—clearly if we underlined the things that we thought were adverse, and later on, a court disagreed that that was the case, then we would be in trouble. Royal commissions do not say, these are the six things. We give every part of a draft report which we think a person might think is adverse to them so that they have the best possible opportunity of seeing what we are saying. We could not accept a proposition that we need to spell out the things that we think. If one said about a person in a report, that this person is a clown, some people would find that an adverse comment; others might welcome it. We are all inclusive. We do not put on a black hat. The reference to the three audit reports and whether that was an investigation under section 17, it was plainly an education and betterment strategy. We are obliged to send a section 86 notice if there is an adverse comment. It does not turn it into a misconduct investigation.

**The CHAIRMAN:** Commissioner, noting the time, are there any further burning matter that you need to bring to the attention of the committee that cannot otherwise be put in writing?

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**Mr Macknay:** Can I just say this in one minute: this of course is an inquiry where the rules of natural justice have effect, which means, if the committee is to make findings on the evidence, the evidence must be logically probative; that is, it must have sufficient detail and be based on identified facts so that it is capable of being accepted. The onus of proving something is on the proponent. There is no formal examination of witnesses of course here to investigate frailties in the evidence. Generally speaking, it would be my submission, if a witness appears before the commission and asserts something, and another witness appears and denies that that is the case, absent something else, this committee would not be in a position to accept the first proposition. The onus would not have been discharged. That is a fundamental part of any inquiry, be it in Parliament or be it elsewhere. There would seem to be no doubt that, as I say, the rules of natural justice do apply in a hearing such as this. It would be astonishing if that was not the case. It is a forensic exercise that the committee must carry out. Of course it is a difficult one where there are contradictory pieces of evidence given, but in my submission—I make no apology for pointing this out; I think it is always useful, be it in a court or be it in a committee of inquiry or anywhere else—it is a technical task to some extent and it must be gone through in that way, according to those rules so as to provide an outcome that accords with them. Thank you for your time this morning.

[2.00 pm]

**The CHAIRMAN:** Thank you. On that basis, Commissioner, I thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and a transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. I will add that it would on this occasion be very much appreciated by the committee if any requested amendments could be received by midday this coming Wednesday, 14 November 2012. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence.

**Mr Macknay:** Did I understand you, Mr Chairman? I am not sure that we would need to put in anything. I just need to review my notes to see that you would entertain some brief written submission from us if required.

**The CHAIRMAN:** Yes, if required. It is not required by the committee, but if the commission wants to put something forward to the committee. Preferably, if that could be received on Monday.

**Mr Macknay:** Yes, of course; I understand that. We do have copies of the chronology. We have sufficient copies of the chronology for the members of the committee, together with Mr King and Mr Burton.

**The CHAIRMAN:** Thank you.

**Mr Macknay:** Yes; thank you.

**Hearing concluded at 2.02 pm**

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