JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

THE USE OF PUBLIC HEARINGS BY THE CORRUPTION AND CRIME COMMISSION

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 18 MAY 2011

SESSION TWO

Members

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

Hearing commenced at 11.00 am

HERRON, MR MARK
Acting Commissioner, Corruption and Crime Commission, examined:

SILVERSTONE, MR MICHAEL JOSEPH WILLIAM
Executive Director, 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 speak with the Acting Commissioner of the Corruption and Crime Commission, Mr Mark Herron, and the commission's executive director, Mr Mike Silverstone, for the purpose of gathering evidence for the committee's inquiry into the use of public examinations by the Corruption and Crime Commission. I would like to thank these two gentlemen for their appearance before us today. I note that the acting commissioner, despite only recently taking on the role, has already presided over two series of public investigations and, as such, I am sure that the opportunity to speak with him today will give the committee a unique and profound insight into the public examination process.

I will take this opportunity to introduce myself as Chair of the committee and the other members of the committee who are present today. To my left is John Hyde and to his left is Matt Benson. To my right is Frank Alban.

The Joint Standing Committee on the Corruption and Crime Commission is a committee of the Parliament of Western Australia. This hearing is a formal procedure 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 understanding that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard will make a transcript of the proceedings. If you refer to any documents during your evidence it will assist Hansard if you can 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, but before I do that I might just dismiss the cameras.

Have you completed the "Details of Witness" form?

The Witnesses: Yes.

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.

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

The Witnesses: No.

The CHAIRMAN: Please state the capacity in which you appear before the committee today.

Mr Herron: I appear as Acting Commissioner of the Corruption and Crime Commission.

Mr Silverstone: I am the executive director of the Corruption and Crime Commission.

The CHAIRMAN: We have a series of questions to ask you today but before we do that I take this opportunity to note that today's hearing is the first in what will be a series of hearings in aid of this inquiry. At this stage I can announce that the committee will hear from Parliamentary Inspector Hon Chris Steytler, QC, on 15 June 2011 and from the previous Parliamentary Inspector, Mr Malcolm McCusker, QC, on 22 June 2011. Both these hearings will be public hearings. I should imagine there will be further hearings as the inquiry progresses and these will be announced in due course.

The inquiry that was announced in the Legislative Assembly on Tuesday, 15 February 2011 has the following terms of reference —

> That the Committee inquire into and report on:
>
> - what factors the Commissioner of the Corruption and Crime Commission takes into account when deciding whether or not to conduct a public hearing;
> - how the Corruption and Crime Commission preserves procedural fairness in conducting public hearings;
> - how the Corruption and Crime Commission's practices in this regard compare to other jurisdictions;
> - whether the Corruption and Crime Commission should maintain a statutory discretion to conduct public hearings in the exercise of its misconduct function; and
> - if so, what statutory criteria should apply.

The inquiry is somewhat similar in scope to an inquiry embarked upon in 2007 by the previous iteration of the committee. Unfortunately, that inquiry was halted when the previous committee ceased to exist upon the prorogation and dissolution of Parliament in August 2008. After the resumption of Parliament, following the election on 6 November 2008, the committee was re-established on 25 November 2008. This current committee, however, was not bound in any way to or by the work of the previous committee and as such the inquiry into Corruption and Crime Commission public hearings was not resumed.

On being appointed Chair of the committee in June 2009, I held the view that a pressing inquiry was needed into how the Corruption and Crime Commission and the WA Police could work together when investigating organised crime. Furthermore, I held the view that the committee needed to advise Parliament on the statutory review conducted by Gail Archer, SC. In the process of concluding this work the committee has also reported to Parliament on a number of unforeseen issues associated with its important oversight function. With these matters now complete, the committee is in a position to inquire specifically into the use of public examinations by the commission.

Acting commissioner, perhaps before I start with the questions the committee has for you today I might ask if you would care to outline the commission's position regarding the use of public examinations.

Mr Herron: Thank you, Mr Chairman. As you say, my experience is relatively recent. I have been involved in two public hearings in recent times. The commission's powers to conduct hearings are set out in part 7 of division 1 of its act. The two provisions which are most relevant are sections 139 and 140. The starting position is that by section 139, hearings or examinations should be in private, so in the commission's point of view, section 139 is the default position. In other words, generally, hearings should be in private. However, by section 140 the commission is empowered to hold an examination in public, but by subsection (2) it sets out the criteria which must be addressed—the factors that must be taken into account—in deciding whether to hold a public hearing. That is a balancing exercise. It is a weighing up process. The subsection is very specific. I as acting

commissioner am required to weigh the benefits of public exposure and public awareness against the potential for prejudice or privacy infringement. In deciding whether to hold a public hearing as distinct from a private hearing it is necessary to weigh up all of those factors. The prejudice that is referred to is not just prejudice to individuals, it can be prejudice to reputations, prejudice to safety of people; it can be prejudice perhaps to a fair trial, but it can also be prejudice to the commission's investigation. It might not be appropriate in some circumstances to hold a public hearing because it might cause prejudice to the commission's investigations. But it is important to reiterate that the overriding consideration is whether it is in the public interest to hold a public hearing. That is the important factor, so in the weighing up and balancing of these various factors, the overriding consideration is whether it is considered to be in the public interest to hold a public hearing as distinct from a private hearing.

When I commenced the two public examinations, I explained in opening remarks some of the factors that I took into account and, of course, those opening remarks are on the commission website. I go into some detail about the various factors that are taken into account. I will not go through each of those now. There are general factors that more often than not are relevant in the decision to hold most public hearings. But there are also specific considerations addressed to the particular matter when you are considering whether or not to go to a public hearing. But there are some fairly standard matters you take into account in weighing up that process.

Once you make a decision whether or not to hold a public hearing—and if the decision is to hold a public hearing—you do so by reference to what is called a "general scope and purpose". We define what the issues are that we are investigating and what we are trying to get to the bottom of by reference to a general scope and purpose. When you go through this weighing-up exercise, it is very much by reference to a general scope and purpose and what you are seeking to achieve. Once I form a view that it is appropriate to hold a public hearing, it remains quite important that that weighing-up process is a continual one. It remains important to consider the position of each witness who is going to be called to a public hearing. Circumstances may arise where, even though I reach a view that it is in the public interest to have a public hearing, for some witnesses it may be preferable to go to a private hearing rather than to be examined in public, or it may be better to examine some aspects of what they can say in a private hearing. That is permitted by section 140. It is specifically referred to in subsection (3): once a decision is made to open a hearing to the public, you can then revert to a private hearing. The sort of issues that very much weigh on my mind in deciding whether to hold a public hearing is to what extent there is mere suspicion about various matters, and therefore you are not certain where it might go—there are just suspicions about particular activities. If those suspicions might come to nought with the consequence that people's reputations are affected—people's privacy is invaded where there are only suspicions—that might heavily weigh in favour of sticking to a private hearing rather than going to a public hearing.

I suppose the more certain you are of your grounds and that you have got reasonable grounds for the facts to be found, that would lean in favour of a decision to hold a public hearing. Also a very important factor—one of our overriding principles—is to improve continuously the integrity within the public sector. Part of that is to increase public awareness, to educate the public sector about what is and is not an acceptable standard of behaviour and conduct. In deciding whether to hold a public hearing it is a question of increasing public awareness by people within the public sector about what sort of conduct we are investigating—what sort of conduct, as I said earlier, is or is not acceptable. It is also to encourage other people to come forward if they have issues or complaints about behaviour that may lead to misconduct. In my short experience it has been the case that the commission does receive information during the course of public hearings which assists as a part of the ongoing investigation.

I think it is important for me also to reiterate that a public hearing by the commission is part of an investigative process. It is unlike a trial in a court in an adversarial situation where a trial is the culmination of a long course of preparation. A hearing is one aspect of an investigation. It may be

that you make a decision to hold a public hearing at a fairly early stage of an investigation if you want to bring out certain information. It may set off other avenues of investigation, so a public hearing is not necessarily at the end of an investigation; it is often at a fairly early stage. It is also a way of eliciting information that is important rather than in a private hearing. It is not uncommon that as part of the investigation process some hearings will be in private and some will be in public. Again, this is an ongoing assessment you make.

I am speaking probably longer than you might wish but I have been provided with some information that I would like to bring to the committee's attention. Since its inception, I think, in 2000—I cannot quite remember when the commission commenced; Mr Silverstone may be able to tell you that—until May this year, the commission has conducted private examinations in respect of 49 matters and conducted public examinations in respect of 15 matters.

[11.15 am]

That shows the balance, and again it reiterates that the default position under the act is that generally speaking hearings should be in private rather than public. As I said earlier, when you decide to hold a public hearing there is this ongoing balancing and weighing up the process. There are certain considerations to take into account. It has also been the experience of the commission that during the course of public hearings there is a much heightened interest in the activities of the commission. Statistics are kept showing the number of hits on its website and inquiries about the business of the commission. Again, in terms of increasing public awareness of the commission's business, public hearings are a very useful tool in that regard.

In the letter asking me to come here you have referred to earlier submissions made by the former commissioner; whether those considerations are still relevant—they certainly are, but the commission is in the process of revising those submissions. We would seek permission to file further submissions in due course which update and expand upon those submissions. We are in the process of revising those submissions. But very much the matters that the former commissioner referred to in that paper remain relevant. We seek to reiterate that by more recent experience.

This is perhaps an issue I can address later: you asked whether we think any amendments need to be made to the legislation. In our view the legislation as it is currently worded is sufficiently flexible. It gives us a proper and sound basis for exercising discretion whether to hold public hearings. It has worked well. It is in date. We think there is no need, we respectfully suggest, to make any amendments. We think as it is presently structured it works well.

You have also sought advice from us as to experiences in other jurisdictions. Given my recent time in the commission I do not have the intimate knowledge and background of those things, but again, as part of the submissions we seek to provide to the committee, we will address all of that. Some analysis has been done, and if need be Mr Silverstone is over those details and is better able to speak about them than me, if you seek more information from him.

That leaves the final issue about procedural fairness. That is an issue you have asked us to address. In addressing issues of procedural fairness, my personal view is that the act is sufficient in addressing all of those issues. Again, in weighing up the process involved in procedural fairness, we need to be conscious of privacy infringements and prejudice to reputation. That is a constant thing we are looking at on a daily basis during the course of a hearing. We are very conscious that no personal information is provided. If it is on documents which are brought up during the hearing, we issue suppression orders to make sure private and personal information is not published. It is very much a discretionary thing we make on an ongoing basis. In my short experience, all of the officers and counsel assisting have a very good understanding of what information should be suppressed or not be permitted to be released because it affects reputations and it affects privacy.

In terms of how the hearings are conducted, it is important to understand that it is not an adversarial process, it is a part of an investigative process. You do not have a right to cross-examine witnesses.

The witnesses are called by the commission and are compelled to answer questions. The commission conducts the examination of a particular witness. The witness has a right to be represented by a lawyer who needs to seek leave to appear. That lawyer is permitted, upon application, to ask their witness questions when counsel assisting has finished asking questions. It is constrained to certain issues because, as we often warn people, they often do not know all the information the commission has. Sometimes if you are acting for a person, it is better not to ask any questions because you are not quite sure what that might lead to.

There is also a very limited right to cross-examine other witnesses. That is nothing we exercise very often. We are quite strict about that. But you would be aware, members of the committee, that there is a process by which if there is going to be an adverse opinion reached about somebody, that person is given the opportunity to respond, and respond to any evidence which may be given. If it is thought that further questions should be asked of a witness, we have practice directions about that. Lawyers write to us to say, "These are the things we thought should have been pursued. We would have wanted to cross-examine a witness about that." Those questions are given to counsel assisting, who takes them on board and decides whether to ask those questions. In all of those ways, we say procedural fairness is properly accorded to everybody and is properly addressed by the current provisions in the act.

The CHAIRMAN: I want to take up your point about the timing of holding a public hearing. You mentioned this morning that from the commission's perspective public hearings are part of an investigative process and they ought to come on in circumstances where there is not just "mere suspicion". At the same time you have indicated that it is not necessarily the case that a public hearing will happen at the end of the investigative process. What concerns me is public hearings held at the beginning of an investigative process. If it is at the beginning, is it fair to say that because it is the beginning there is only mere suspicion?

Mr Herron: No. It is hard to talk generally and each case would be different; no. I would be surprised if a decision to hold a public hearing would ever be made if there is no more than mere suspicion. You would have to be reasonably sure of your facts. In a situation like that, it would be to try to bring public awareness out. It happened I think to some extent in the Taser public hearings. Those public hearings—I have explained it in the opening remarks I made—the initial tranche of public headings, which was held in December last year before the former commissioner, was held at a relatively early stage of the investigation into the incident specifically involving Mr Spratt. That arose out of a report that our corruption prevention directorate issued in relation to Tasering. Mr Silverstone can talk about it more precisely than me because he was involved at the time, but arising from that report which was prepared, issues arose in relation to Mr Spratt and therefore a decision was made to investigate the circumstances specifically in relation to him rather than generally in relation to Tasering. My understanding is that a decision was made to hold the first lot of public hearings at a fairly early point in time. We already had some information, but it was to increase public awareness and to receive some information. Again, the former commissioner addressed the issues as to why he felt it was appropriate to hold a public hearing at that time. I readdressed those when holding the second lot of public hearings. I was satisfied they remained pertinent and relevant to a decision to hold the first set of hearings in public. Since then there were further matters which reinforced in my view that it was important to hold a public hearing given there was some further publicity and there had been the acquittal of Mr Spratt by the Supreme Court. All of those matters persuaded me that it remained very important to hold further hearings in public.

The CHAIRMAN: You mentioned, acting commissioner, that you would not imagine a hearing would be held based upon mere suspicion, you would want to be somewhat certain of the facts. How certain? I guess that is the issue. If we are saying it is not mere suspicion, presumably no-one is advocating that the commission needs to be so certain of matters that it needs to be beyond all reasonable doubt. That would probably be the other end of the spectrum. Where on that spectrum?

Mr Herron: Again, it is that weighing up process and assessing a fair bit of information. Even at an early stage of the proceedings you get a fair bit of information. You rely upon advice from various people within the commission. The commission has a variety of skills from different backgrounds. A number of different people are involved in the investigation. There are people at the commission who have been involved in inquiries like this over a long period of time and their experience is absolutely invaluable as to tactically how you proceed. Ultimately what we are trying to do is find out what actually happened; what is the truth. We are not trying to push the barrow one way or the other, we are trying to find out what has happened. Sometimes a public hearing at an early stage is a good way to bring out the information; conscious, though, if you have only got suspicions, you do not want to damage reputations. Where you have got information, you are not quite sure where it might lead, you are not quite sure what the explanation is—you have a pretty good understanding of what the explanation is but you are not quite sure—again, it comes to that balancing.

The CHAIRMAN: If the goal is to find the truth, you indicated there were some 40-odd hearings in a closed capacity and I think —

Mr Herron: Forty-nine private hearings.

The CHAIRMAN: — fifteen-ish in public.

Mr Herron: That is right.

The CHAIRMAN: Presumably those hearings in the closed session also found out the truth just as much as the ones in public session did?

Mr Herron: I am not able to talk about each of those because I do not have the knowledge of it. Again, in my short experience of the commission, no, not necessarily will you ever find the truth. You will have suspicions. We have to form opinions; we do not make actual findings. We form opinions about what we think is the cause of corruption, ultimately designed to try to stop it happening again, to educate people, to put in place systems to prevent it happening. So, establish what the cause of it is. We are not so much concerned with pursuing individuals, we are more concerned with establishing causes of corruption, putting in place recommendations to stop it happening again, and then constantly reappraising that and making those recommendations. People seem to have this misconception that we are about bringing criminal proceedings against people and getting criminal convictions. That is, in terms of priorities, right down the bottom. That is not what our business is about. Any criminal prosecution which may come out of our investigations is a by-product. Quite frankly, it is not something we ever seek out to address. It is not something we are concerned about. If it happens, it is a by-product. We want to stop corruption occurring.

Mr J.N. HYDE: Further to that: one of the major criticisms from people regarding public hearings is that if it were to be conducted in the normal court system, or the Supreme Court, there would be procedural fairness. In terms of what you are saying now, if you had enough suspicion or evidence that you would anticipate either the police could charge, or the CCC has its own powers to charge, have you made decisions to delay charging somebody because the benefits of a public hearing and exposing activities, even when that evidence is in inadmissible, has more benefit to the general community?

[11.30 am]

Mr Herron: I can only talk about my experience and, no, there has been no decision to postpone consideration of possible criminal charges pending the finalisation of an investigation. I reiterate we are concerned about that but it is not a priority as to whether criminal offences have been committed and to prosecute those. That is a matter for other people to deal with, if need be, but we will not shirk from it if we need to bring those charges. But, no, we want to try to find out what happens. And given we have these coercive powers to compel people to come and answer questions under compulsion, even if the answers to the questions might incriminate them, that is why we want to pursue those matters so that we can try to get to the truth of the matter. The answers they give under

compulsion cannot be used against them in any subsequent criminal proceedings. Mr Hyde, you say in terms of procedural fairness in a court, that is a different thing because there are confined issues there and you have got that adversarial situation. So, procedural fairness applies differently. Procedural fairness applies in our proceedings and they are rigorously enforced; but it is a different content of procedural fairness.

Mr J.N. HYDE: There is not the same ability to cross-examine in the CCC as there is in the Supreme Court?

Mr Herron: Because you are not seeking to establish a particular cause, you are not seeking to establish a particular finding; you are just trying to find out what happened, which is quite different to a court where, in a criminal proceeding, as the prosecution you are trying to establish the elements of the offence. If you are defending, you are trying to cast doubt upon that. In a civil proceeding you are trying to prove a cause of action. That is not what we are about. We are not trying to prove anything. We are just trying to find out what happened.

Mr J.N. HYDE: Yes, but if what you are finding out has happened is that somebody is as guilty as sin, should you not then immediately abort the public hearing and allow the process to go to the courts?

Mr Herron: Again I can only talk about my experience, and that may be a matter that you weigh up. But, again, we are required under our act to try to identify the causes of corruption and prevent it happening again. And if in investigating that, criminal activity has occurred, that is not for us to judge whether that is criminal activity or not; that is for the courts to make a judgement about. We are prohibited under our act from making any opinions about whether criminal activity has occurred. And given, as I say, the answers to questions under compulsion cannot be used against them, that is why it is there in the act so that we can find out what has happened. If there is also criminal activity, so be it, but that is not what we are concerned about.

The CHAIRMAN: But, Acting Commissioner, just to pick up on that, I understand what you are saying and obviously from the technical reading of the act it is absolutely correct. Notwithstanding that, the public perception is that convictions and criminal charges count. You and I can sit here all morning and have a philosophical discussion about that.

Mr Herron: Yes.

The CHAIRMAN: But that is what the public thinks, and what the media reports is that what counts is if someone gets charged and convicted. Even though that may be wrong technically, the integrity of the commission is incredibly important to its sustainability. So, knowing that, ought the commission not take a greater interest in whether or not a matter is going to be sustainable in a criminal context, even though it does not have to? And technically it should not be a priority, but given the environment it operates in, ought it re-prioritise it?

Mr Herron: I am not sure how to answer that question. But in part of this balancing process, which I have spoken about and keep coming back to, is one of the factors I have taken into account if we think there might be some criminal activity which might give rise to criminal charges subsequently. That is a matter we take into account in terms of: is that going to prejudice the fair trial of a person if they are subsequently charged in criminal proceedings? And that is very much an important consideration. How it is often worked, though, is if a person is charged with an offence either during the course of or after our public hearings, a trial would not normally happen for a long time after that, and you still have to consider it afresh in each case. But the way I have approached it is because of the trial being so far into the distance, any publicity which comes out of the public hearings we hold would not unfairly prejudice the fair trial of a person. There still may be prejudice and the act does not say, "Just because there is prejudice, do not hold a public hearing". It is a matter you have got to weigh up, and there may be prejudice and we take that into account. The

overriding consideration is: what is in the public interest? It seems to me that what is in the public interest is to get to the truth of the matter and identify what gives rise to corruption.

Mr Silverstone says to me, I think in answer to your question, Mr Chairman, that in relation to those matters that we do decide to prosecute, we have a high rate of success in the outcome. I mean, we do not lightly bring prosecutions against people. That is something we consider long and hard about, and on occasions we will seek the advice of the DPP before making any decision.

Mr J.N. HYDE: Acting Commissioner, much of the criticism of the commission's public hearing practice, both in the media and in reports by the previous parliamentary inspector, appears to have arisen following the Smiths Beach hearing and lobbying and alleged public sector misconduct inquiries in late 2006–early 2007. Have any changes been made to the commission's hearing practice as a consequence of—I do not want to use the word "fallout"—the hindsight or review of the Smiths Beach hearings?

Mr Herron: My understanding, and I acknowledge there have been a number of criticisms in a number of different areas—and again Mr Silverstone may be in a better position to speak about some of these matters than me because he was more personally involved—is that a lot of the criticisms do not necessarily arise out of the way in which the hearings were conducted and necessarily out of the fact that they were public hearings. A lot of the criticisms arise out of the reports which have subsequently been issued and the way in which the reports have been drafted. But in specific response, Mr Hyde, to your question, I cannot say specific changes have been made, but our processes are constantly under review both in relation to how the hearing is conducted and the processes that we abide by. The procedures we abide by, yes, if there are criticisms of us we certainly address those and make sure that whatever gave rise to the criticism, assuming it is one that we think is justified and merited, we prevent that from happening again or we seek to prevent that from happening again.

Mr J.N. HYDE: But the problems in the reports are based on public hearings; because the issue is if they had been private hearings, you would not be using as much direct source material or public comments made in a public hearing that had been made in a private haring. So, I guess it does get back to this core issue of what we are looking at in this inquiry of private versus public hearings. So that is why, I guess, we are keen to find that out. You are saying the right things, that the commission takes on board criticism, but is there any strong evidence in terms of practice changes since the Smiths Beach inquiry?

Mr Herron: Given my relatively recent experience, I am not sure I can specifically address specific changes, but I just do know, yes, that it is a constant matter that is always under review.

Mr J.N. HYDE: Would it be perhaps possible to ask to have that as an issue on notice and that the commission may wish to make a written report to us on those changes or differences that are now operating in terms of public hearings?

Mr Herron: Certainly, and it might help us if there are specific issues that the committee is concerned about that they can be identified so that we can more specifically respond to them.

The CHAIRMAN: We will perhaps leave that issue on the basis that the committee will write to the commission to follow-up on that.

Mr Herron: Right; thank you.

Mr F.A. ALBAN: Mr Herron, are there technical differences undertaken in a public hearing from a private hearing? Is a different approach taken? Are the questions framed in a different way at all or is it exactly the same procedure?

Mr Herron: It is the same procedure in a general sense, yes. But witnesses have explained to them in some detail the purposes of a private hearing and the penalties that apply if there is a breach of the sections, because you are required not to disclose the evidence you give at a private hearing; you

are required not to disclose the fact that you have been to a private hearing; and there are quite strict penalties that apply to people if they are in breach of all of that. So, that is explained to the witnesses in some detail so that they are aware of the penalties which apply if they breach the provisions of the act. But in terms of the process, it is explained that they have got to answer questions. They do not have a choice about that. They are compelled to answer those questions. In terms of how we conduct a hearing, they are entitled to be represented by a lawyer. A lawyer has the same right to apply to ask questions of the witness as in a public hearing. They have got the same rights to write to us afterwards if there are further issues they think should have been explored that they wanted explored. So those processes are exactly the same.

Hon MATT BENSON-LIDHOLM: Acting Commissioner, can I return to the Smiths Beach issue? I just want to make comments about a CCC submission to this particular committee of the thirty-seventh Parliament in August 2007. One of the comments made was that there are sufficient safeguards to protect individual reputations. I gather you can probably see the link to the Smiths Beach issue here. Does the commission consider that sufficient safeguards are in place to protect individual reputations from unfair damage due to prejudice of privacy infringements resulting from public examinations, given what was said back in 2007?

Mr Herron: I am not specifically aware of the comment that you have just referred me to, Mr Benson. But as a general comment, yes, I am satisfied that there are sufficient powers in place to protect reputations from being damaged, and the protections are afforded under section 86, which affords people the right to respond to adverse findings; and the commission takes its obligations under that section very seriously. It provides parties, who may be the subject of an adverse comment or adverse opinion, the opportunity to respond in writing. I am advised that there is quite some vigour in that at times, and that is very much taken on board. Certainly I have no doubt that the former commissioner was very conscious of the impact upon reputations.

Hon MATT BENSON-LIDHOLM: Would it be fair to say, though, that since that particular submission to the thirty-seventh Parliament back in August 2007 there have been attempts made to rectify any shortcomings in that particular area of concern? Have there been any that you may well be aware of or that the Executive Director might be able to inform us of?

Mr Herron: I cannot specifically address that. I think it is the sort of matter that we would seek the opportunity to respond in writing. As I said earlier, they are the matters that, if there are specific concerns and specific matters that you would like to raise, it would be better for us to address specifically rather than talk generally.

Hon MATT BENSON-LIDHOLM: Okay.

The CHAIRMAN: I think, Acting Commissioner, it would be fair to say then that the commission's position and evidence to the committee this morning is that the commission should maintain a statutory discretion to conduct public hearings; that the current statutory criteria as set out in the act is adequate; that the commission does recognise there are issues around the holding of public hearings but it does take that very seriously; and that ultimately the best the system can get in this situation is to have confidence in the commissioner to exercise the discretion appropriately.

Mr Herron: Yes; with respect, Mr Chairman, that is a very fair summary.

The CHAIRMAN: Just in concluding the hearing this morning, Acting Commissioner, I want to take the opportunity to publicly recognise your role at the present time in difficult circumstances. They are circumstances that the committee are very aware of. They are not dissimilar to circumstances that have previously been experienced during a time of changeover between commissioners. On the evidence that this committee has taken previously from former acting commissioners, the difficulty in being an acting commissioner in these circumstances was made abundantly clear. On behalf of the committee, I want to acknowledge that and thank you for your public service at this time.

Mr Herron: Thank you, Mr Chairman, I am grateful for those comments and that support.

The CHAIRMAN: Thank you for your evidence before the committee today. A transcript of the hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the 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. 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. Thank you.

Hearing concluded at 11.46 am