

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

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
WEDNESDAY, 21 MARCH 2007**

## **OPEN SESSION**

### **Members**

**Mr John Hyde (Chairman)**  
**Hon Ray Halligan (Deputy Chairman)**  
**Mrs Judy Hughes**  
**Hon Margaret Rowe**

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**Hearing commenced at 10.30 am**

**HAMMOND, MR KEVIN JAMES**

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

**SILVERSTONE, MR MICHAEL JOSEPH WILLIAM**

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

**ANTICICH, MR NICHOLAS ANDREW**

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

**CASHMAN, MR MICHAEL ANTHONY**

**Director, Legal Services, Corruption and Crime Commission, examined:**

**FROYLAND, DR IRENE DAGMAR**

**Director of Corruption Prevention, Education and Research,  
Corruption and Crime Commission, examined:**

**GRANT, MS VANESSA ROBIN**

**Director, Business Services, Corruption and Crime Commission, examined:**

**The CHAIRMAN:** The committee hearing is a proceeding of Parliament and warrants the same respect that proceedings in the house itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as contempt of Parliament. Have you completed the "Details of Witness" form.

**Mr Hammond:** Yes, I have. Kevin James Hammond has completed the details and understands the conditions.

**Mr Silverstone:** Michael Silverstone - the same regard.

**Mr Anticich:** Nicholas Anticich, and I have.

**Mr Cashman:** Michael Anthony Cashman, yes.

**Dr Froyland:** Irene Dagmar Froyland, yes.

**Ms Grant:** Vanessa Robin Grant, yes, I do.

**The CHAIRMAN:** You have stated your full names, could you state your addresses and capacity in which you appear before the committee?

**Mr Hammond:** My personal address is Box 7667, Cloisters Square, Perth, or, alternatively, 186 St Georges Terrace, Perth. I appear as Commissioner of the Corruption and Crime Commission of Western Australia.

**Mr Silverstone:** I have the same address. I am the Executive Director of the Corruption and Crime Commission.

**Mr Anticich:** I am the Director, Operations of the Corruption and Crime Commission at the same address.

**Mr Cashman:** I am at the same address and am the Director, Legal Services, Corruption and Crime Commission.

**Dr Froyland:** I am the Director of Corruption Prevention, Education and Research of the Corruption and Crime Commission.

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**Ms Grant:** I am the Director, Business Services at the same address.

**The CHAIRMAN:** I thank the members of the commission for attending. This has been a prearranged meeting and has been in our diaries for a couple of months. The committee has resolved that a pool camera be in attendance for the first 20 minutes or so.

Obviously, we have corresponded on a number of issues that we did intend to raise today. A couple of things may have happened yesterday that the commissioner may wish to comment upon. We will give him that opportunity. The committee members are mindful that they are privy to some issues of last year that are of an operational matter. Although that has nothing to do with yesterday or any of the public hearings currently being undertaken, there will be a need for the committee to go into closed session at about 11.30 am. Clearly, we are mindful that we may have been privy to other confidential documents. If you wish to pursue an issue or we are pursuing an issue that would be better considered behind closed doors, we are happy to consider resolving it in such a way.

Commissioner, would you like to make an opening statement on possibly your very last appearance in Parliament?

**Mr Hammond:** Yes, thank you very much, Mr Hyde. Mr Chairman and members of the committee, I would like to make an opening statement in two separate parts. It will not be particularly long, but the matters I do wish to cover are of significance. The first discrete part is this: following an announcement in the Legislative Council yesterday, the commission issued a media release which stated that -

... the President of the Council, the Hon Nick Griffiths, had informed the Commission that information requested by the Commission to further its investigation would not be provided as to do so would involve an infringement of the privilege of Parliament.

That advice was incorrect. The President had, in fact, brought the matter to the attention of the house. Once aware of this error, the commission immediately issued a clarifying media statement directly quoting the President of the Council's written response to the commission and acknowledging that the issue of the provision of documents is still before the Legislative Council. Additionally, the commission phoned the major newsagencies - *The West Australian*, *The Australian*, the ABC and the AAP in order to bring the clarification to the attention of respective journalists. The commission regrets its error and apologises to the Legislative Council for misrepresenting its position.

The commission, in analysing the situation with regard to this matter conflated the advice of the chair of the affected committee who was, on 12 February 2007, not prepared to respond at that time to the commission's questions in relation to this matter due to issues of parliamentary privilege and conflated that with the President of the Council's advice to this commission by letter of 13 March 2007 that he intended bringing the commission's questions to the attention of the Council, noting his final observation in that letter that it is not open to the house by its own resolution to waive its privileges or immunities so as to enable the commission or any other authority to deal with material inconsistently with article 9 of the Bill of Rights.

With regard to its own investigation into whether any public officers engaged in misconduct in relation to a Legislative Council parliamentary committee's inquiry into the state's iron ore industry, the commission has suspended its investigation and is seeking separate legal advice on what aspects of the investigation are affected by parliamentary privilege. The conduct by the commission of investigations of matters that may touch on parliamentary privilege is a complex one. The commission notes that section 27A of the act is very clear in respect of dealing with simple misconduct matters affected by parliamentary privilege. It is silent with respect to serious misconduct. I observe that section 3(2) of the Corruption and Crime Commission Act provides that -

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Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable exclusively by a House of Parliament, unless that House so resolves.

Essentially, this provision preserves parliamentary privilege and at this stage poses an apparent impediment to further progress in those commissions of serious misconduct investigations touched on by parliamentary privilege. Resolution of these difficult issues may take some time.

With regard to the commission's review of the Petrelis matter, the commission is concluding its report and is in the process of advising individuals who may be adversely affected by it. This may take a few more weeks. The commission notes the committee's desire for this report to be tabled in Parliament in connection with a meeting of this committee, and it will coordinate with your committee once the report is printed. That is the specific first part of the opening statement that deals with the issues of yesterday.

I will deal briefly, if I may, with some matters that have arisen in recent times. You will appreciate that we are not in a position to comment specifically on matters that were raised in recent public hearings, because those opinions and findings will be made public when the reports are tabled. The report on Smiths Beach is well advanced and will be tabled some time in the next couple of months. My retirement will not delay the completion of these reports, which ultimately will be the result of the efforts of a number of people.

The issue of public interest has been raised in recent times by not only this committee but also commentators and the like. "The public interest" has been defined as something being of concern to the public at large or to a significant portion of the public, which may or may not involve the personal proprietary rights of individual people. I believe it is generally accepted that the public interest is a fluid concept and that what constitutes the public interest at any time will depend upon the particular context and perspective involved. Having been alerted to this matter and having thought about it overnight and whatever, I believe that when I look at the context of public interest, I am particularly impressed or influenced by the number of people who can be potentially involved. I live in a strata-titled block of units, and we have very concerning issues with some of the other unit holders, but they concern only us; they are not of public interest to anybody else. If, however, something came up about the overall rights of unit holders in strata titles across the state of Western Australia, it would obviously be a different matter. That sounds a bit flippant, but I am trying to say that a number of people are involved. There is some public interest in broader issues such as freedom of expression, privacy and the like. I note that the Surveillance Devices Act contains a rare attempt at actually defining "public interest," which includes the interests of national security, public safety, the economic wellbeing of Australia, the protection of public health and morals, and the protection of the rights and freedoms of citizens.

When it comes to public hearings, as you are well aware, the act places the responsibility on the commissioner to weigh the benefits of public exposure and public awareness against the potential for prejudice or privacy arrangements, and to hold a public hearing if he comes to the conclusion that it is in the public interest to do so. Each case has to be separately addressed. Three main benefits arise from public hearings. Firstly, they let the public see what the commission is doing. Secondly, they enable the public to be aware of the range of issues that the commission does address. Experience has very clearly shown that the number of matters or reports of suspected misconduct that are brought to the commission's attention increases during and immediately after public hearings. Thirdly, of course, there is an educative benefit for public officers to see, by way of example, how serious misconduct can occur, and hopefully the publicity from the last set of hearings will enable chief executive officers to take early remedial action.

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In terms of the importance of openness, it is worth remembering that our predecessor was forced to act in secrecy, which eroded the public's confidence in that commission. With regard to prejudice, privacy arrangements and the like, we acknowledge that public hearings can come at a cost to individuals and their families. It is not the commission's desire to cause this stress and discomfort, but there has been an overwhelming need to address the public interest in identifying the matters raised at those hearings that go to the heart of governance in this state.

On another small issue, there has been some media and other comment by lawyers and the like that their clients do not get a fair go and that the defence is not presented with all the available evidence prior to the commencement of hearings. I believe that those issues are very well addressed in our hearing procedures, as appear on the website. It is not part of the overall, main administration of justice; it is an investigative process. We allow people the chance to come back to us. We accept submissions, and we apply procedural fairness to persons affected by our hearings. I would like to say that the hearing room procedures are not unique to our commission; they are basically the same as those of similar commissions across Australia.

Suppression orders are used for a number of purposes. I, as commissioner, have been concerned to avoid the publication of what can be sometimes gratuitous and derogatory references to persons who are only marginally or collaterally involved, if at all. During the last two public hearings I made 17 suppression orders, of which 15 were made on my own initiative without waiting for an application. Many of these were to prevent the publication outside the hearing room of salacious and derogatory comments about others. You are aware, Mr Chairman, that telecommunications interception, surveillance devices and the use of those devices by the commission are subject to strict regulation and to applications to courts and the like. This is a matter that might come up later on, so I will say no more about it. I point out that both of those acts of Parliament - the commonwealth act for telephone interception and the state act for surveillance devices - place significant constraints on the commission's use of those measures. We do not have the power to use those devices as and when we feel they may be useful or to provide interesting information. Of the material that is gathered, we are particularly conscious of ensuring that only material that is relevant to the hearing's scope and purpose is used. The commission sees no benefit to the public interest or indeed to its own reputation in disclosing matters that are not relevant, particularly if it involves only gossip or matters that are outside the scope of the investigation, or if it could result in unfair damage to the reputation of the individuals or organisations concerned. However, for all that, the recent revelations at the public hearings of the commission would have been impossible without our telephone interception and surveillance device powers. Thank you, Mr Chairman.

**The CHAIRMAN:** Thank you very much, commissioner. Could we briefly touch on a couple of issues? I note your comment that there may be an impediment to the current inquiry as a result of yesterday's events. Has any attempt been made by the commission or the Parliament, either previously or currently, to establish a protocol on this issue?

**Mr Hammond:** Going back into history, the issue did cause great concern at the time of the WA Inc royal commission. There is a reference in volume 2, part 2 of the report of that commission to the difficulties that were caused. The difficulties were not resolved at that time. I think I am correct in saying that there has yet been no conscious attempt to establish a protocol, but I think we might be heading that way.

[10.50 am]

**The CHAIRMAN:** I did note your comment that this could take some time. I will query that a bit further. Are there two issues here and - perhaps playing devil's advocate - is there an issue of perhaps being engaged in a fishing expedition if there are requests for particular documents or a particular statement from a particular member? Are there two issues here?

**Mr Hammond:** I think there probably are, but you will remember that we are essentially being governed by the Glorious Revolution of 1688, and the Bill of Rights contained therein. It has been

subsequently examined, and I am grateful to the officers of the Parliament for the information that they sent to us concerning the history of this and the current adoption of that Bill of Rights. They present a formidable hurdle. There is also an issue of whether Parliament can waive its privileges in that respect. I think I have seen two different opinions on that.

**The CHAIRMAN:** An awful lot of lawyers will become very rich giving alternating opinions.

**Mr Hammond:** I suppose it is an ill wind.

**Hon RAY HALLIGAN:** On that same subject, sections 27(a) and 27(b) have no doubt been reviewed by many over the past few days and the past few hours. I know you have intimated this, but is it your belief that going down that path of 27(a) and 27(b), knowing full well that your inquiry of the Parliament has gone to the Procedure and Privileges Committee and that committee has agreed that investigation should take place, 27(b) must place it back in your hands for investigation? Is that still an impediment?

**Mr Hammond:** I think the impediment is there - I might ask for assistance here - because of the fact that there is a strong view that neither section 27(a) nor 27(b) deals with issues of serious misconduct. If you look at the parliamentary debates at the time - remember they went on for some time in the standing committee - we believe that it was intended that it cover serious misconduct, but we do not think it does.

**Mr Silverstone:** The commissioner's opening statement indicated that it is clear with regard to simple misconduct, which is a level below serious misconduct. When you get into the realm of serious misconduct, the act appears to be silent in that regard, and this is one of the issues that, while having a real problem now, we are working through with the Parliament.

**Hon RAY HALLIGAN:** Is the suggestion, then, that serious misconduct is totally excluded? If you identify something as serious, does 27(a) not cover it?

**Mr Silverstone:** Our understanding is that 27(a) is silent in that regard, so therefore it is a matter for the Parliament. Our assumption is that it is a matter for the Parliament to resolve how it will deal with these matters. We would argue that the nature of the matters we are looking at fall on the side of serious misconduct, therefore it would appear that 27(a) is not available as a recourse in dealing with the matter. Therefore, the question is how this should matter be resolved.

**The CHAIRMAN:** In the same vein, can I raise the issue that we seem to have had no problem or hesitation in respecting the conventions or the privileges of the Coroner's Court or other courts, if we look at the Petrelis issue with the ACC, and the Mallard issue; there has been a deliberate intention to wait until other issues are being addressed. Again, playing the devil's advocate, there seems to be a healthy respect for the longevity of some legal court practices, but the issue of parliamentary privilege is being addressed in a more urgent way.

**Mr Silverstone:** The issue for us is that, because it is so unclear in the first instance as to what the process is, we are seeking to resolve a way forward in terms of the process, but also our concern is that we have not had the opportunity of a forum to raise our view on the issues before us about serious misconduct to the level of the Parliament at this stage. I might observe that we have not been consulted about the nature of the Legislative Assembly's Procedure and Privileges Committee inquiry, nor have we yet had the opportunity to identify to the Assembly those issues that we believe may be considered by a proper investigation. As of today we are contemplating how to bring that matter to the attention of the Legislative Assembly.

**The CHAIRMAN:** Particularly in that you have not handed down any findings.

**Mr Silverstone:** Equally, if we form the view that misconduct by public officers may have been assessed as being potentially serious misconduct, it is not clear how that matter might be handled. We are currently having discussions within the commission to provide advice to the commissioner on how best to bring that to the attention of the Assembly.

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**The CHAIRMAN:** Without pushing it too far, are we heading towards the Assembly being too presumptuous in undertaking such an inquiry before?

**Mr Hammond:** Let us not fight the Glorious Revolution again. There are difficult issues here; they will take some time to resolve. With goodwill on all sides, I think they can eventually be resolved. Because of the antiquity and importance of the issues it is just not easy.

**The CHAIRMAN:** Okay, can we move on? You addressed the issue of material from telecommunications intercepts under the commonwealth legislation, and surveillance devices under the state legislation. Again, we do not want to refer specifically to any current inquiry or hearing, but one of the issues the committee has been concerned with and on which we will be doing a separate report later on, is that the Ombudsman is required to report on TIs. One of the public reports from the ACC time said that none of the intercept material had been destroyed, and that there was a predisposition towards the police not destroying the material as is required under law. There is a catch-out for the police and you in that you may believe an investigation is ongoing, but for no material to have been destroyed -

**Mr Hammond:** Is this in ACC time?

**The CHAIRMAN:** Yes, I am deliberately trying not to refer to any CCC information that you might have.

**Mr Hammond:** Firstly, we are not the ACC, nor would I have the presumption to speak for the Western Australian police force - heaven forbid. Our director of legal services is happy to address this issue.

**Mr Cashman:** I think, Mr Chairman, your question is in relation to record keeping time frames. The Surveillance Devices Act appropriately provides for destruction of records, in section 41(b), but, practically speaking, an appropriate time frame cannot be specified. Section 41 (b) in particular indicates that the agency must destroy any record or report coming out of the use of surveillance devices if satisfied that it is not likely to be required in connection with the investigation, the making of a decision on whether to prosecute or in relation to the actual prosecution of offences. The time frame, practically speaking, cannot be specified. Really it is dependent on the circumstances of each investigation.

[11.00 am]

**Mr J.N. HYDE:** The CCC has been established for at least three years now. Has any material been destroyed?

**Ms Grant:** Telephone intercept material is under the guidance of the Ombudsman's office. They come in with our own senior staff in that area when we have received authorisation from the operations area to destroy it, meaning that all the legal processes are gone through. That would be destroyed under the guidance of the Ombudsman.

**Mr J.N. HYDE:** I know it would be, but the question is whether anything has been destroyed. Public information regarding the ACC material was not destroyed. The committee is interested in the fact that the onus of the legislation is that material must be destroyed unless it is required or needed for an ongoing investigation. It seems the codicil has taken precedence over the requirement to destroy.

**Ms Grant:** I will take that on notice. While I am sure that we have, I would like to be certain. I will go back and get the exact details.

**Mr J.N. HYDE:** Thanks very much.

**Mr Hammond:** The telephone intercept is subject to a different regime. We are inspected. I think we have received positive reports from the commonwealth Ombudsman in recent times. I can assure you that inspection is rigorous.

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**Mr Cashman:** On that aspect, we should take into account that the State Records Act provides that government organisations, which include the commission, are required to have a record-keeping plan, which would include aspects of retention and disposal of those records. That record-keeping plan is to be approved by the State Records Commission. Those records would include records and reports obtained by the use of surveillance devices. In that respect the commission does have a retention and disposal schedule, and that is covered. The policy there, so to speak, is that those surveillance devices records are to be destroyed upon authorisations by the operations division of the commission after conclusion of case and appeal and after all authorisations to destroy have been obtained. So, in that respect, time frames are specified, but it is difficult practically speaking, as I said, to be prescriptive about those. We interpret “likely to be required or not” to mean having a degree of probability greater than merely possible. It is a bit rubbery, but those prescriptions are in place.

**Mr J.N. HYDE:** I want to refer to public hearings. You have made some excellent comments. The statement has been made before, and it is something I endorse, that in Western Australia we do not have a justice system, we have a legal system, and public hearings give us the opportunity to perhaps explore justice more fully. The public can see that justice is under way. You made a comment regarding public interest and your suppression orders. I think the committee is very supportive and very mindful of the difficulty there. One important issue has been raised. Without referring to a specific hearing, I refer to the use of prejudicial and derogatory language towards an ethnic group. There was a quote that was played and played again regarding people of Italian descent. Can you give us a bit of insight into why comments of a racist nature or other derogatory nature might be allowed?

**Mr Hammond:** I suppose with all of one’s efforts to, as you say, do the right thing in this connection, occasionally we will not satisfy every concern or complaint. During the course of those hearings I was particularly alive to the issues when off-the-cuff derogatory comments are made about people, and sometimes they are really quite off. I take the point. I did not see the particular comment, not that we are talking about any particular comment. I did not see that particular comment to be one that would have alerted me to cut it out. If I am wrong in that respect, I am sorry about it. It did not ring a bell, and it may have had some relevance to what was being talked about.

**Mrs J. HUGHES:** There has been some discussion about getting a public interest monitor to come in and assist through the processes of TIs and those types of things in order to create a situation where conditions may be placed on some of them, and then to look after the public interest. Can you comment on that?

**Mr Hammond:** It has been the view of this commission from the start - I think I am correct in this; it has always been the view and I know it will come up for review in the course of this year - that while we have a parliamentary inspector and while we have this committee and while we have the necessity for these applications to go to judicial bodies, we do not see that there is a pressing necessity for a public interest monitor. We believe the procedures already in place are sufficient. Again, we do not get these telephone intercepts easily, nor do we get the surveillance device mechanism easily. They have to be justified before appropriate judicial officers, and, of course, the parliamentary inspector can come at any time. I think reasonable minds could differ on this but that has been certainly my feeling to date.

**Mrs J. HUGHES:** In regard to the CCC, we know we have the parliamentary inspector in place, but there are other organisations that are able to get TIs, such as the Western Australia Police and those types of people. Do you believe there could be some application in that regard?

**Mr Hammond:** I want to make my point before answering that, Mrs Hughes, and that is that the intercept powers we have are no greater than those possessed by WA Police. We read sometimes of the extraordinary powers possessed by the commission as if there was something unique about that.

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It is not unique. The powers we possess under a telephone intercept are the same as every other police force in Australia and also those commonwealth-designated organisations like us, the ACC, CMC etc. It is difficult speaking about how other people operate and how much work they put into their applications, but even when looking at these other bodies I really do not see the necessity, beyond going through the judicial process.

**Mrs J. HUGHES:** There was some discussion about people who have been under a TI, a warrant of some sort, and whether after the intercepts have taken place people should be notified after the fact that they have actually been of interest. Is there any thought, once an investigation has taken place, of informing people that they were of interest?

[11.10 am]

**Mr Hammond:** Of interest or not of interest?

**Mrs J. HUGHES:** Not of interest and even of interest, I suppose, to let people know that a surveillance had taken place after the fact. Of course, we would not want to limit the commission's capacity to conduct a decent investigation. Does the commission have a responsibility to let people know that they have been placed under surveillance or a TI?

**Mr Hammond:** I assume it goes on from that, Ms Hughes, and to be found not wanting. If a matter proceeds to the prosecution stage, that is a different issue. Are you asking: if a person has been through the mill and has been cleared, is there a responsibility to let that person know?

**Mrs J. HUGHES:** I do not even think necessarily that they have been cleared. Rather than a person turning up somewhere and finding that his name appears in all these transcripts, should the commission pay that person the courtesy of letting him know that he has been under surveillance, whether he is found to be innocent or whether charges are laid? I am not saying that the commission should alert the person to the fact beforehand.

**Mr Hammond:** Do you mean before the hearing?

**Mrs J. HUGHES:** Yes.

**Mr Hammond:** I do not think that that would be in our scope. I know what you mean. I understand the concerns that you and others express.

**Mrs J. HUGHES:** It is something to think about.

**Mr Hammond:** I will think about that. Yesterday when I gave a talk, a well-known public sector person approached me about letting people know that they are off the hook. I said to him - mind you, I have not conveyed this down the road here yet - that I believe that the commission should look at a process of letting somebody know that although he mentioned in the hearings on so and so, the commission has no interest in that person and there have been no adverse findings. We must develop a process in that respect.

**The CHAIRMAN:** I am glad you raised that, because a number of people - some members of Parliament - have waved around a piece of paper and stated that the commission has cleared them. I would be very interested to know about the lovely letter that the commission is sending to witnesses or non-witnesses allegedly clearing their names. It sounds very much, without being vulgar, like someone who has been to a hospital clinic and who tells his or her partner of the night that they are clear of something.

**Mr Hammond:** I will not go down that track! In one of the matters that we dealt with before Christmas, we undertook that we would let people know whether there was any prospect of adverse findings. Letters were sent to a number of people advising them that "the Commissioner announced on such and such a day in December that you would be advised as to whether there had been any adverse findings. We wish to advise you that you have not been told so because we are not contemplating any adverse findings". I might not have that exactly correct.

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**Mr Silverstone:** The gist of that is correct.

**Mr Hammond:** That is, I think, the letter that might have been shown around. I go back to what I said to Ms Hughes, that I think that the commission must develop - it has been highlighted by the most recent hearings - a process in that respect that is cleaner and clearer than the present one.

**Mr Silverstone:** The letters that were sent before Christmas were sent to those persons who may have had misconduct opinions formed about them to give them the opportunity to respond. I refer to misconduct in the particular meaning of the act. Other persons received letters saying that we were unlikely to find misconduct opinions against them.

**The CHAIRMAN:** But you could find criminal conduct.

**Mr Silverstone:** Yes, or indeed we could make adverse mention; that is, we could criticise the actions of individuals without finding that they engaged in misconduct. In terms of advancing the procedural fairness for public officers who may have been subject to misconduct findings, we made a rod for our own back. Some people have suggested that they received some sort of letter saying that they are in the clear when, in fact, the only letter they may have received advised them that they were unlikely to be subject to misconduct findings.

**The CHAIRMAN:** My original reading of the letter was that although a misconduct finding was not made, a criminal charge could be laid.

**Mr Silverstone:** I suggest that if we were likely to charge a public officer with a criminal charge, we would have almost certainly have determined that that person had been engaged in serious misconduct. You are correct, in that just because there is no adverse opinion with regard to misconduct, it does not mean that a person will not be adversely mentioned. Indeed, as we move through the process of preparing the report on Smiths Beach, one of the things that we are conscious of is identifying those people about whom we will make adverse comment - that is, being critical of some action they took - even if there is no opinion with regard to misconduct or no recommendation with regard to disciplinary action or criminal action. Although the actions of some people have not met the threshold for misconduct, their conduct could still be criticised. They are yet to be advised.

**Mr Hammond:** You could have a finding that the actions of X, Y and Z in doing so and so on that occasion were an error of judgment. That sort of comment could be made, which is short of misconduct and far short of criminal conduct. Those people have the opportunity to comment.

We are also prepared to look at specific complaints when they are raised about a concatenation of factors that have led to extra publicity that was not warranted. I do say that we are looking to develop a more sophisticated - I can say it safely here - way of dealing with that situation, which has really only become prominent during the recent public hearings.

**The CHAIRMAN:** Could I then extrapolate a bit further, because this is your last meeting. In three years we have had a few public hearings. Has the Minniti issue been finalised?

**Mr Hammond:** Operation Caroline? No, the final report has not been completed. A number of prosecutions have already taken place.

**The CHAIRMAN:** At the end of Operation Caroline, will other people have received a copy of your new-fangled clearance letter or a letter saying that criminal charges will not be laid?

**Mr Silverstone:** I think that that is a matter that the commission will have to take on in looking at the report as it is developed.

**Mr Hammond:** It is a bit hard to answer that one.

**Hon RAY HALLIGAN:** The committee is considering recommending the widening of the witness protection program to include serving prisoners. Currently, serving prisoners in Western Australia are excluded. They are included in the program in Victoria and, as a consequence, there have been

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major breakthroughs in organised-crime charges and convictions. Does the commission have a view on the reliability of such witnesses?

**Mr Anticich:** I will start by putting a caveat on these comments. We do believe that this is very much the province of the state police who have control and experience in these areas. Having regard for that, certainly we can make some comment. We do believe that serving prisoners can and do provide a valuable source of information as potential witnesses, especially as this relates to the nature of organised crime. By its very nature it often involves multiple offenders who operate across a range of criminal activities. It would appear likely that there are potential witnesses incarcerated in our prison system who would and could very well contribute to the solving of very serious crimes. That cooperation of witnesses could depend very much on their safety and personal security, which the witness protection program would offer them. It is our view that the broadening of that definition would be positive. Again, I caution that statement by saying it is a question best addressed to the Western Australia police.

[11.20 am]

**The CHAIRMAN:** As you are aware, the committee visited Melbourne two weeks ago and discussed this issue. Although I will not disclose any of the private discussions of the committee, clearly there was a huge media awareness of some of the big figures in organised crime who were confessing to committing crimes. In one case, a figure confessed to committing four murders. Finally a wedge was driven into organised crime because of the change in philosophy to allow prisoners to be subject to the joys, protections and other benefits of witness protection. Although the committee will produce a big report on that issue very soon, I am not asking you to comment on the police issue but on the issue of being able to get leverage over organised crime figures. The committee is looking at making amendments to that area. What is your opinion of that as a tool regarding organised crime?

**Mr Anticich:** Prisoners offer immeasurable information. I sense that the additional power would only enhance getting information on organised crime from that area.

**Mr Hammond:** The committee will appreciate the CCC's disappointment with regard to the organised crime function, which has been virtually untouched.

**The CHAIRMAN:** We are very aware of that. When the legislation is finally changed, we will invite you back for a celebration!

**Hon RAY HALLIGAN:** Under the national witness protection program, there is only a right of appeal to the Ombudsman on matters of administration. In the event that the committee determines that a recommendation should be made for an external and determinative right of appeal, would the CCC be the appropriate agency to assume that role?

**Mr Anticich:** The commission's position on this matter is that its province concerns matters of investigating serious misconduct. If a right of appeal were to touch on those aspects, it would be proper for the commission to consider it. With regard to a review of a quasi-judicial process, it is the commission's position that those matters should remain with a body such as the Ombudsman.

**Mrs J. HUGHES:** On 22 November 2006 the committee briefly discussed the issue of departments informing ministers of CCC inquiries.

**The CHAIRMAN:** Although that was a closed hearing, the committee has resolved to make public some issues from the hearing.

**Mrs J. HUGHES:** Has any work been done on that matter? Has there been any advancement on the issue?

**Mr Silverstone:** I met with the Director General of the Department of the Premier and Cabinet and with the senior directors general of government departments to reiterate the commission's view that the relationship between CEOs and ministers is very important and that the flow of information

from CEOs to ministers is an important function that should continue. We have noted that in certain limited exceptional circumstances there may be reasons why a CEO would be unable to advise a minister of a matter to do with an issue that the commission was looking at. It was noted that that is a possibility. We suggested to CEOs that in most cases if they had a concern, they should contact the commission first and talk to us about it to resolve the matter. I note that that advice, which was made to the Corruption and Crime Commission, is in the form of disclosure and misconduct reports. The document was issued in May last year and was sent to ministers and CEOs. We have again drawn the attention of CEOs to that document, and that document is on our website.

**Mrs J. HUGHES:** Therefore, depending on the individual circumstances of the investigation, is it a matter of checking with the CCC?

**Mr Silverstone:** Yes. Our advice to directors general is to not hesitate to call us. We are happy to provide advice on any misconduct matter to help them deal with their responsibilities.

**The CHAIRMAN:** Committee members thank the commissioner for his frankness and appearances before the committee, and for his disclosure to the committee of a lot of sensitive and confidential information that has made our oversight role easier and which has sometimes made the process uncomfortable for Mr Hammond. His commitment to transparency should be lauded. We have obviously become addicted to that transparency and cooperation. When the commissioner steps down from the position and the CCC is in an interim phase, has one of the assistant commissioners been designated to oversee the administrative role of the CCC and the oversight of Mr Silverstone and the excellent team?

**Mr Silverstone:** As you are aware, Mr Chairman, the CCC has two acting commissioners whose chambers are side by side. They have come to an arrangement whereby they have identified the periods when they will be available, given that they have other commitments with regard to their practices. There will be broad periods when either one or the other will be the acting commissioner. It is useful to know that their chambers are together. They will facilitate in sharing information should a question arise about one having handled a matter in a particular way. That information will flow through to the other acting commissioner in that person's period as acting commissioner. The nature of their practice precludes one acting commissioner from taking up a matter for the whole time. Essentially, they will split the time that they spend working together. There will always be communication between the two.

**The CHAIRMAN:** The next time we hold a hearing, will both acting commissioners attend, or will it be the duty of one assistant commissioner to appear?

**Mr Hammond:** It will depend on the powers regarding when the new commissioner is appointed.

**The CHAIRMAN:** Or on whether we get a third assistant commissioner before the full commissioner.

**Mr Silverstone:** On one hand, that is a practical approach. However, we may find that from a legal point of view there will be an acting commissioner who is the commissioner for all intents and purposes of the act. Therefore, the commissioner of the day will certainly attend. From a legal point of view, it might not be appropriate to have both of them attend the committee's hearings, because there would be questions about who has authority to speak as the commissioner.

**The CHAIRMAN:** I was getting to the administrative powers such as who is the voice of the commission and who deals with staff matters. Legally, will whoever clocks on at 8.00 am be the commissioner for that day?

**Mr Silverstone:** The periods during which they will clock on will be longer than just a day. We are looking to ensure continuity. We have been conducting briefings for the acting commissioners across a range of matters. They are reasonably current, although they are not totally up to date. The

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interchange between the two acting commissioners includes formal discussions to hand over matters between the two.

**Mr Hammond:** They have been coming into the commission to be briefed and advised and so forth.

**The CHAIRMAN:** We must go into closed session to discuss a couple of issues that do not pertain to the events of yesterday or any current public hearings.

**Mr Hammond:** I will say one final thing.

**The CHAIRMAN:** I will give you the last word.

**Mr Hammond:** I have been very honoured to serve the commission as the inaugural commissioner. I publicly acknowledge all the work done by the commission staff, who come to us from academia, the armed forces and from the police services from all over Australia and overseas. They have combined to form a very effective organisation. Finally, I wish to thank the committee and members of this committee, both past and present, for the support given to the commission during my time as commissioner. As an aside, it has always been good to know that sooner or later I might end up answering questions here. It is similar to sentencing people; if I made a blue, someone in an appeal court would catch me out. It may seem strange to say this, but in some way that was a comfort. I thank the Chairman and members past and present for their courtesy and assistance.

**[The committee took evidence in closed session]**

**Hearing concluded at 11.47 am**

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