

**SELECT COMMITTEE
INTO THE POLICE RAID ON THE *SUNDAY TIMES***

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
MONDAY, 30 JUNE 2008**

SESSION TWO

Members

**Hon George Cash (Chairman)
Hon Adele Farina
Hon Giz Watson**

Hearing commenced at 11.07 am

ANTICICH, MR NICHOLAS

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

WYNN, MR TREVOR

**Manager, Investigations, Corruption and Crime Commission,
sworn and examined:**

The CHAIRMAN: On behalf of the committee, I would like to welcome you to today's meeting. Before we begin, I must ask you to either take the oath or the affirmation.

[Witnesses took the oath.]

The CHAIRMAN: You will have signed a document entitled "Information for Witnesses". Have you read and understood the document?

Mr Anticich: Yes, I have.

Mr Wynn: I have as well.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you in due course, but to assist the committee and Hansard, could you please quote the full title of any document you refer to during the course of this hearing for the record, and please be aware of the microphones in front of you. If you can, try and talk into them and not cover them with papers or make noises near them. If you both intend to address a question, by way of answer, if you can, just indicate your name so that Hansard is clear on who is speaking. That will not be necessary, obviously, if you speak in turn.

I remind you that your transcript will become a matter of public record. If, for some reason, you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it is not to be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament, and may mean that the material published or disclosed is not subject to parliamentary privilege.

Before I invite both of you to make an opening statement, if that is your wish, could just indicate the documents that you have tabled?

Mr Anticich: Certainly, Mr Chair. I have two documents. The first is entitled "Corruption and Crime Commission of Western Australia, Submission to the Select Committee into the Police Raid on the Sunday Times, Touching upon Matters Contained in the Evidence of the WA Police, Given to the Select Committee on 9 June 2008".

The CHAIRMAN: Thank you.

Mr Anticich: The second is entitled "Opening Address to the Select Committee into the Police Raid on the Sunday Times, Nick Anticich", dated 30 June 2008.

The CHAIRMAN: The third document?

Mr Wynn: Yes, Mr Chair, that is a copy of the *Hansard* of the police evidence of 9 June. The tags on that document, you will note, refer to the tag numbers on our table document that we have handed up.

The CHAIRMAN: In respect to the first document, the submission, that will be exhibit 3O, the opening address is now 3P, and the transcript of evidence as marked up is now 3Q.

Would either gentleman, or both, care to make an opening statement? I should just, before you do that, indicate that at the previous hearing you indicated that it was the commission's wish that you give your evidence in public—correct me if I am wrong—and I have assumed that the commission's position has not changed, and that today you are prepared to give your evidence in public.

Mr Anticich: That is correct, Mr Chair.

The CHAIRMAN: Thank you, Mr Anticich.

Mr Anticich: I will refer to the opening address to the select committee into the police raid, the document tendered, if I could read from that. I would firstly like to thank the committee for giving us the opportunity to clarify several issues that have arisen at the hearings conducted to date. I have read a transcript of the evidence given by myself and Mr Wynn on 9 June, and while it covered the key areas, there are several issues that may not be clear.

The commission has only been in existence for a short period, and as its act is complex, it takes some time and effort to become familiar with the powers and limitations on those powers. I have tendered a commission analysis of the evidence given by police to the committee which the committee can examine. However, I would now like to address several broad areas of the commission's operations which I believe may not be clear. One, referring notifications to police and other agencies: as mentioned at the previous hearings, the commission receives something like 3 000 notifications and complaints each year. It is physically impossible for the commission to investigate each one. Most are referred to the agency involved for investigation, with the commission monitoring that the investigation is being conducted in a timely manner and that the conclusion is consistent with the evidence gathered. Notifications are also referred to other external agencies, such as the Ombudsman, Auditor General, Commissioner for Public Sector Standards or police, for investigation.

The expertise of police is investigating allegations of criminality, so it is logical to refer such allegations to them. The case of the leak reported in the *Sunday Times* involved an allegation of criminality, and the Department of the Premier and Cabinet had also referred the allegation to the police as well as the commission. In referring allegations to agencies, the commission has to consider the capacity of the agency to conduct the investigation and the workload of the commission at the time. Since the commission started in 2004, it has referred 395 allegations involving criminal allegations against public officers to the police for investigation. In that time the police have been able to handle them all. It is interesting to note that it is only in this case—which drew considerable controversy—that police contend that such cases should not be referred to them.

Two, the commission taking over referred investigations: there are a number of circumstances in which the commission can take back an investigation it has referred to an agency. Typical reasons would be, firstly, if the agency lacks the investigative capacity. This occurs with some small agencies but could not be said about this situation with the police. Secondly, new information comes to light that changes the nature of the investigation. This occurred recently when a department investigation of an allegation referred by the commission had discovered evidence that widened the scope of the original inquiry. In this case the commission took over the investigation. However, again, this circumstance does not appear to apply to the *Sunday Times* leak. Thirdly, the investigation can only be advanced by using the commission's coercive powers after the usual investigative techniques have been exhausted. Again, the commission does not believe that this was

the case in the *Sunday Times* case as no evidence has been presented that police made inquiries into the identity of the individuals who had access to the documents in question, interviewed those people as to their dealings with the document and to ascertain the movement of the document electronically through the government email system.

The commission's referral of an allegation to an agency for investigation is a formal process in writing. The commission would not take a referred investigation back from an agency on the basis of a telephone conversation between officers of the commission and the respective agency. A meeting would be arranged between the two agencies and a formal arrangement put in place, with the decision confirmed in writing. In this respect, the telephone request by police for the commission to take back the investigation is an inadequate way for the police to address their concerns.

Three, the commission's coercive powers: the commission officers who took the calls from the police on the day of the raid were disturbed that the police officers had such little understanding of the commission's coercive powers. Police seem to believe that the commission's coercive powers—namely those to seize documents and other evidence and to summons witnesses to answer questions at public hearings—can be used as a shortcut substitute for thorough investigative techniques. This is not the case.

On the day of the raid, Inspector Albrecht told Mr Wynn from the commission that the commission should use its coercive powers to hold a private hearing to interview Mr Lampathakis to avoid a media circus. Firstly, the commission does not consider that the Parliament gave it coercive or enhanced investigation powers that the police do not have for the predominant reason of manufacturing a situation where the media can be gagged from reporting matters they consider to be in the public interest. In any case, the commission has found the most useful function of hearings is to put evidence already gathered to witnesses. Secondly, a commission notice to produce documents or other evidence would not achieve the same result as a search warrant as the notice depends on the cooperation of the person involved. Finally, use of the commission's coercive powers in this situation should not be confused with the organised crime powers under the CCC act. In those circumstances, the police can apply to the CCC commissioner to be granted so-called extraordinary powers to investigate organised crime. The commission then monitors the police use of those powers. Clearly, the *Sunday Times* leak is not a case of organised crime so this provision of the act does not apply.

Four, the way forward: the current situation of the commission referring investigations to agencies for investigation is effective and allows a far larger number of matters to be investigated than the commission could do by itself alone. In terms of police, there is a strong case for referring cases involving criminality to them for investigation: that is their area of expertise and the type of allegation they deal with day in and day out.

[11.20 am]

The commission does not favour the suggestion to make the unauthorised disclosure information by public servants a separate type of criminal offence with the suggestion that it is not investigated by police. This could create problems of jurisdiction where the unauthorised disclosure involved other potential criminal matters.

The commission notes that the controversy surrounding the *Sunday Times* leak investigation has occurred since the disbandment of the specialist section of the police that investigated allegations of criminality against public servants; namely, the public sector investigation unit. That disbandment occurred last year. The advantage of this unit was that it built up a body of expertise in: the legislation affecting the public sector and how those various pieces of legislation interact; the non-legislative code to guide behaviour in the public sector; the administrative procedures in the public sector; and the culture of the public sector. Diffusing this expertise across the major fraud squad

may have made it more difficult for police to investigate allegations of criminal activity against public servants.

The commission believes the unauthorised release of information is serious and allegations of breaches of the Criminal Code or other legislation should be investigated. There will be circumstances where police are in a better position to conduct such investigations, and others where the commission is best equipped. These issues need to be determined on a case-by-case basis. The commission favours the status quo which allows the commission to focus on investigating allegations where its powers are required and allows for flexibility so that the agency best equipped to conduct the investigation ends up doing so.

Thank you, Mr Chair. That opening address is a broad overview of the more detailed submission that we have provided to the committee.

The CHAIRMAN: Thank you. The committee appreciates the comments you have made. In the second paragraph on page 3, you said —

Secondly, a Commission notice to produce documents or other evidence would not achieve the same result as a search warrant as the notice depends on the cooperation of the person involved.

Can you explain that a little further?

Mr Anticich: Certainly. By and large, notices to produce are used most effectively in relation to agencies or government departments where, rather than a warrant, we actually ask or compel them to provide information. It is most unusual that you would actually put one of those notices to a person subject to the inquiry, and certainly one that was non-compliant or perhaps was resistant to the particular investigation.

The CHAIRMAN: In respect of those exhibits that I said were numbered 3O, P and Q, on checking the records, the first document will in fact be 3R, the second 3S, and the third 3T. You can amend your records in that regard. Have you got that, Mr Wynn, or are you happy with that?

Mr Wynn: Yes.

The CHAIRMAN: Mr Anticich and Mr Wynn, the committee had some preliminary discussions earlier and has asked Hon Adele Farina if she will handle the majority of the questions on this particular matter. I will hand over to Hon Adele Farina.

Hon ADELE FARINA: Thank you, Mr Chairman. Some of the questions have been covered in your opening address so we might just run through them quickly. In relation to section 33 of the CCC act, that is where you determine what action you are going to take after you have had made an assessment, who exercises the decision-making authority within the commission in relation to section 33?

Mr Wynn: The decision-making power under that section is made by a number of people. A lot of allegations that come into the commission, come into our investigation review section, and a number of people in that section have a delegation from the commissioner to make a decision under section 33 as to whether or not it is a matter that will be investigated by the commission. Those people make that decision with reference to the manager of that section. Following from there, there may be some matters that they consider may be appropriate for the commission to investigate. What happens on those occasions is that they will come down to the investigations unit, which is the main investigative section of the commission. The tactical and coordination group has a look at the matter that has been referred. That is made up of the two managers, the deputy director and the coordinator of intelligence. At the current time, the deputy director, Mr Robert Sutton, and myself, hold a delegation from the commissioner to make a decision under section 33. In respect to an investigation that the tactical and coordination group decides does seem to fit the criteria, as a general principle we then refer the matter to the commissioner for him to have a look at what we are

intending to take on. In other cases, there are matters that perhaps have not quite come up to the bar of an investigation and we feel there needs to be some more work done on them. We exercise our delegation and have a preliminary investigation commence within the unit. There are various sections and various people who use that delegation.

Hon ADELE FARINA: Is it exercised by a single person on a case-by-case basis, or is it a joint decision by a number of people who have that delegated authority?

Mr Wynn: Ultimately, it is exercised by an individual who has the delegation from the commissioner. In respect to the tactical and coordination group, which I am part of, obviously the views of other people on that committee are important and may be persuasive or otherwise with respect to whether we would investigate it or not.

Hon ADELE FARINA: Is the commissioner ever involved in making a section 33 decision?

Mr Wynn: I have to say that most of the time he is. In terms of making a decision for a new investigation that we take on, he would become involved and he would have a look at certainly the recommendation coming forward from the tactical and coordination group.

Mr Anticich: It is very much the case that once we go to an investigation, it must be under the authority of the commissioner. In other words, when we go to a full-blown investigation, that is an authority that then triggers the ability to use the coercive powers along the way.

Hon ADELE FARINA: In relation to the decisions made under section 33, is there anything in the act that prevents a review of that decision?

Mr Wynn: No, there is not. In fact, section 37 of the act, I think from memory, is the section that allows us to make a further decision pursuant to section 33. Mr Anticich referred to a matter just recently with a certain department where the initial decision had been made to refer the matter off. Further information became available and, in that instance, we have made a further decision under section 33, this time to take the matter on ourselves. The machinery section that allows us to do that I think is—sorry, I have given you the wrong section there. Section 39 is the section that allows us to make a further decision, pursuant to section 33

Hon ADELE FARINA: Is there an established procedure for doing that review?

Mr Wynn: In terms of making a further decision? Established procedure inasmuch as it is not something that happens time and time again. If a further decision were to be made and we were to take a further investigation on, we would then make a recommendation that we do it under section 33, for whatever reason, and we would commence that investigation. That could be signed off by the delegate or it could go down to the commissioner.

Hon ADELE FARINA: In relation to the *Sunday Times* leak, commission officers formed an opinion that serious misconduct had or may have occurred; is that correct?

Mr Anticich: That is correct.

Hon ADELE FARINA: Further, having regard to the information that the police were investigating the matter and in the absence of any compelling reason why the commission should stop the investigation and, in turn, investigate the matter itself, the commission made the decision not to take on the investigation in its own right; is that correct?

Mr Anticich: It made the decision for the police to continue with their investigation. It would have taken an active role on our part to direct them to stop, desist, and forward it back to us.

Hon ADELE FARINA: Did the commission consider whether it would be appropriate to undertake a joint investigation with WA Police pursuant to section 33(1)(b); and why did it reject the option?

Mr Wynn: I suppose that comes down to the phone call that I would have had with Inspector Albrecht on the day. In relation to that phone call, as we went through the various exceptional powers the commission has in relation to the notices, the use of the private hearing process —

Hon ADELE FARINA: I am actually suggesting earlier than that, when you first made the section 33 decision.

Mr Wynn: You would be talking there of the decision that was originally made by our investigation review section, so that was not a decision that was made by the investigation section. I would have to have a look at the original determination on that, to answer that with clarity for you.

[11.30 am]

Hon ADELE FARINA: That is at the time when you appreciated that the police had already started the investigation and you had made the decision.

Mr Wynn: It was basically when it came in the front door of the commission, yes, that original decision. I am looking at a letter dated 27 February from the commission to the Director General of the Department of the Premier and Cabinet, and a similar letter to Detective Senior Sergeant Dom Blackshaw. The assessor on that occasion was Mr Tony Wood, and he made the decision that in accordance with sections 33(1)(c) and 37(3) of the act that the matter had been referred to that agency, so I have to say that in coming to that conclusion—I cannot speak for him—he obviously considered as part of normal business practice the various options available, based on the advice that was available at the time. I have to suggest that one of the compelling matters would have been that the matter had already been referred to the police, and that in the inquiries he made with the police it became evident that they had commenced that investigation and that he ultimately came to the view that it was a matter that should be referred to the police for investigation.

Hon ADELE FARINA: In terms of the assessment that was undertaken and the decision to refer to the police, there are four options under section 33 that the commission can take. Would it have been an option for the commission to note that the police had already started investigating the matter and take no action rather than refer to the police?

Mr Anticich: In actual fact, that is what we did, but by virtue of the fact that we had also received the letter from the Department of the Premier and Cabinet, we were obliged to treat it in such a way that we would take no action on the basis that—I do not know that that section literally applies, because in actual fact, the police had already undertaken or commenced that particular aspect of it. I think that that particular part would apply in relation to matters that are outside jurisdiction, or perhaps not misconduct or that particular type of thing.

Hon ADELE FARINA: I thought it would also equally apply where the police had already started the investigation, so there would be no point referring it to them because they were already on the job.

Mr Anticich: In a way, yes, but in actual fact I think that contemplates where we might receive a matter that is outside the definition.

The CHAIRMAN: Were the two letters you referred to tendered last time, Mr Wynn?

Mr Wynn: I believe they were, Mr Chair.

The CHAIRMAN: They are in the file. Thank you.

Hon ADELE FARINA: To be clear, the commission determined, pursuant to section 33, to refer the matter to the police for investigation of any criminal matter, and to the Department of the Premier and Cabinet for investigation or any procedural matter. Is that correct?

Mr Wynn: That is my understanding, yes.

Hon ADELE FARINA: I am struggling to understand why the commission determined it appropriate to refer the matter to the Department of the Premier and Cabinet to investigate for procedural purposes. What does the commission mean when it talks about investigating procedural matters?

Mr Wynn: I suppose in respect of that question, ultimately if the allegation is taken at face value, there has been a leak from the Department of the Premier and Cabinet, so it may well be the case that there could have been procedures in place at DPC that may need to be reviewed. It may need, for example, to have a look at the extent to which those documents are sent to various individuals. It really, I suppose, was an indicator to the department that it needed to have another look at this matter and find out whether existing procedures could be improved and whether anything else could be done to prevent a recurrence.

Hon ADELE FARINA: My understanding is that it is possible that the leak could have originated from a DPC officer or a Department of Treasury and Finance officer at the very least; there may be other agencies involved. It raises in my mind the question of why the commission would refer the matter only to the DPC for investigation of procedural matters.

Mr Anticich: My recollection is that it might have been a question of timing, because I think the information in relation to the DTF officers may well have come after we had taken that particular action. I would have to go back and check the chronology, but I suspect that might be one of the reasons, if not the reason.

Hon ADELE FARINA: It is not a suggestion by the commission that the DPC has jurisdiction over the Department of Treasury and Finance and could undertake an investigation into procedural matters in relation to another department.

Mr Anticich: No, not at all. My recollection is that it was about the timing.

Hon ADELE FARINA: If the commission had known that the matter involved the two agencies, would the commission then have perhaps given more consideration to conducting the investigation itself, given that it would now be looking at two agencies and maybe more?

Mr Wynn: I do not think that would have been a compelling reason. At the end of the day, a leak is a leak. At the end of the day, an investigation needed to be conducted to determine where that leak came from. The question for us is, I suppose, predominantly, whether or not it was something that the commission could add to in terms of the powers that we have that the police do not have, because we certainly take the view that the police are well equipped to conduct a criminal investigation into any type of alleged criminal behaviour, so I do not think it is the case that the fact that another department may or may not have been involved would have been compelling in this instance.

Hon ADELE FARINA: I refer now to the CCC report into an earlier investigation of a leak by the Department of Treasury and Finance; it is a June 2005 report. The commission concluded that there was no adequate legislative base for the prosecution of persons involved in unauthorised access and disclosure of official information. The commission determined that there was little point in investigating such matters. Is that why the commission did not investigate this particular matter? Would that have been a factor?

Mr Anticich: No, not at all. It is certainly the case that that report made those findings, and that that is certainly a recommendation, but no; it was not an issue. Mr Wynn answered that phone call; I do not know whether it was on his mind.

Mr Wynn: To be perfectly frank, that report was not in my mind at all. I also make the point that the commission has not wiped its hands of the *Sunday Times* investigation. As part of the review process with the police, we will have a look at what the police have and have not done. If it is the case that we think that the police have taken this as far as they possibly can, and at the end of the day we hold the view that there are some matters we could perhaps add to it, we would look at it from the point of view of assisting, if we can, but that report was certainly not in my mind at all when I had that phone call.

Hon ADELE FARINA: It begs the question, as there is no legislative base for a successful prosecution, whether there is any point in undertaking the investigation in the first place.

Mr Anticich: I think we need to be cautious about that recommendation. Each case is on a case-by-case basis, and it turns very much on the evidence in terms of a criminal charge. It might be a broad finding of that particular investigation, but that is not to say that in these particular circumstances there is compelling evidence that someone may well be charged with that criminal offence.

Hon ADELE FARINA: Is it possible that an act of unauthorised disclosure of confidential information may be misconduct but not a criminal offence?

Mr Anticich: It is possible, although one would need to be careful about the terminology. Could there be an act done by a person that was not the subject of a criminal charge but could be misconduct? Yes, that is a possibility.

Hon ADELE FARINA: In respect of the unauthorised disclosure of confidential information?

Mr Wynn: I suppose, when one looks at the Public Sector Management Act, it has a lot to say about the proper behaviour of public servants, and *prima facie*, if documents marked “confidential” that are cabinet submissions are released, one would have to say that such behaviour would be inappropriate. I think that is stating the obvious. That then turns on the question of whether they have involved themselves in misconduct; arguably, they probably have, but it is of course subject to investigation. The starting point for something like this would be the question of whether there has been any breach of the Criminal Code—in this case, section 81—or anything else, to see whether a charge can be laid.

[11.40 am]

Hon ADELE FARINA: Is it within the jurisdiction of the police to investigate matters of misconduct, or is that solely within the jurisdiction of the CCC?

Mr Anticich: Misconduct is not criminal conduct, and it falls within the CCC act. The police, other than their own internal investigations, by and large will not deal with anything unless it comes under the Criminal Code or is legislated in another act in this state.

Hon ADELE FARINA: We have possibly gone through this, but I will ask the question again. In view of the fact that at least two departments were involved, and that the misconduct in question could be just misconduct and maybe not get to the point of achieving all the elements of a section 81 criminal offence, because that requires a much higher burden of proof, could an argument not be made that it is more appropriate for the CCC to investigate these matters?

Mr Wynn: I think if we were to follow that argument, the reality of it would be that the commission would be required to investigate 3 000 matters every year, because I mean arguably most things that come in the front door, if we take them at face value, are an allegation of misconduct. It would just be totally impractical for us to do it. We could not do it. We would take the view that certainly if a criminal act has been committed, that is something that requires attention.

Hon ADELE FARINA: Are there procedures or guidelines to assist the commission in determining or assessing what action to take in terms of the application of section 33, other than what is prescribed in the legislation itself?

Mr Anticich: Certainly we have procedures in terms of the actual process. I guess your question goes to what turns in the mind of the assessor in making that decision. In terms of written guidance, I do not believe that is the case. I think it is the interpretation of the act, based on experience. The people who actually predominantly do that front-end processing in terms of that assessment do that day in, day out, and have done for many years, so we rely very much on that experience in terms of their thoughts on that matter.

The CHAIRMAN: Would the documents relating to procedure also include criteria? It seems to me that you would need to have some recognised uniform criteria so that a consistent decision was made in respect to section 33.

Mr Anticich: I think there are other relevant sections within the act, Mr Chair, that —

The CHAIRMAN: Yes, but in respect to section 33, which seems to be a primary issue—that is, the making of an assessment—you have talked about the commission having procedures or general process. I am asking whether or not you would have specific criteria that would have to be met in determining whether it will be a section 33(1)(a), (b), (c) or (d) issue.

Mr Wynn: I suppose there are two parts to that as well. The first part would be the assessment of the allegations as they come into our investigation review section—the primary assessment, I suppose—and in terms of what those assessors are having reference to in making that decision. The second part of that is if there is a view being formed that it may be a matter that falls within the commission's remit—the investigations unit—as to whether or not it is something that we will take on. Am I correct in making that distinction?

The CHAIRMAN: It depends on how you understood my question, but surely there must be some criteria established within the commission so that officers—experienced officers as you have described them—would be able to make consistent decisions in respect to section 33(1)(a), (b) (c) and (d). I would have thought there would have to be some criteria that they measure against. It cannot be just experience, surely?

Mr Anticich: Thank you, Mr Chair. That actually makes it quite clear. There are criteria, and there are a number of factors that impact on that. We have within the commission a case categorisation and prioritisation model, which helps guide us. It is based on an Australian and New Zealand standard, and effectively there are a number of criteria. By way of example, it may be the case that the commission has a particular interest in a type of misconduct or a particular department, and the commissioner formulates a view that it is important for the commission to investigate matters that come within that definition. So it is very much on the basis of that type of guidance that we may well take on matters. Quite rightly, Mr Chair, you might look at a matter and think, “Gee, this is not particularly heinous; it is not particularly serious matter”, but for quite deliberate and specific reasons, the commission will take that matter on. It may be that there is a much broader problem that we are looking to address. We are very much about improvement within the public sector. It may well be guided by our intelligence or our understanding of what is actually going on within the sector. There is a process around that.

The CHAIRMAN: Thank you.

Hon ADELE FARINA: I would now like to turn to the transcript of your evidence to the committee on 9 June. Do you have that in front of you so that you can refer to it? That is probably not critical, but it might be helpful. I am looking at the top of page 9, of the transcript of session three, where Mr Anticich is reading from case note 000009. In the second paragraph, he says, “after discussing the matter with another one of our officers, Trevor Wynn”. However, looking at the case note itself, the words actually read, “after discussing the matter with Tony Warwick and then with Trevor Wynn”. Who is Tony Warwick?

Mr Anticich: Tony Warwick at that time was one of the acting managers of the team, and he was the acting manager of the team that Mr White was on.

Hon ADELE FARINA: Okay. Still looking at that case note, Mr White states, “I also informed Arno that we are unable to work with them jointly and assist using our hearing powers as it is not a matter relating to organised crime”. Is it the case that the CCC can work jointly with the WA Police only on matters of organised crime?

Mr Anticich: No. That is actually incorrect. That advice from that officer was incorrect. I think we have previously conceded that at our appearance before the committee, either in documents or in evidence we have given.

Mr Wynn: We have addressed that actually in the submission that we are making to you today. I am trying to quickly turn to that, but it is not standing out to me. I will try to find it.

Hon ADELE FARINA: If it is in there, we can look at that later, so I would not worry too much about that now. Is it the case that the CCC can use its hearing powers only in relation to organised crime matters?

Mr Wynn: Definitely not, no. I have found that point. It is on page 14 of our submission. Would it help if I read out our response at this point?

Hon ADELE FARINA: Yes.

Mr Wynn: Mr Gregson in his evidence states that Mr Albrecht's advice in relation to organised crime is correct. He asserts there that the information given by the commission was wrong. Our comment in relation to that is —

As stated, the matter of a joint investigation did not form part of the discussions between Wynn and Albrecht, but rather White and Albrecht.

The Commission does concede that the advice provided by White, that being "we are unable to work with them jointly and assist using our hearing powers as it is not a matter relating to organised crime" is incorrect. However, on this point it should be recognised that White is a certified practicing accountant (CPA) employed by the Commission to deal specifically with matters relating to financial transactions. He is generally not a point of contact for agencies seeking the intervention of the Commission.

Section 339(1)(b) of the CCC Act does allow the Commission to investigate or take action in cooperation with another agency. However, in the circumstances of this particular matter, nothing the police said in discussions provided sufficient grounds for the Commission to make a new decision under Section 33, noting that our original decision was to refer the matter to the police for investigation.

The Commission is not reluctant to, and does in appropriate circumstances make new decisions pursuant to Section 33 when the circumstances are appropriate . . .

Hon ADELE FARINA: Thank you. Still looking at that case note, Mr White states that Arno advised that they intend executing a search warrant on the *Sunday Times* this afternoon. Looking at the transcript again on page 9, about midway down, you state that Mr Albrecht told you that the WA Police were intending to execute a search warrant on the *Sunday Times*, but then on page 10 you say that you did not know that the police were intending to execute a search warrant that afternoon, and that did not form any part of your discussions with Mr Albrecht. Do you stand by that statement?

[11.50 am]

Mr Wynn: I do stand by that statement, yes. I certainly knew they were going to be conducting a search warrant, but as to timing, I have absolutely no recollection of him telling me that it was going to be that afternoon.

Hon ADELE FARINA: I suspect that you have already dealt with this in your submission that you have tabled today —

Mr Wynn: We have, yes.

Hon ADELE FARINA: — but what would you say if I were to tell you that the committee has heard evidence that you were aware that the police intended to execute the search warrant on the *Sunday Times* that afternoon?

Mr Wynn: I would simply say that, with respect to Mr Albrecht, I think he has simply confused the conversations that he had with Mr White and me. Our submission deals with a couple of other matters along the same sorts of lines. I think that is what it comes down to. I should say that I do not think, at the end of the day, it would have made any difference whatsoever to the decision that I made. The question that arises in my mind is why it was necessary for that warrant to be conducted

at two o'clock on a working weekday at a working newspaper, and we address that in our submission as well.

Hon ADELE FARINA: I think you might have answered my next question, which is: would your advice to Mr Albrecht or your actions have been different if you had known the WA police were going to execute a search warrant on the *Sunday Times* that afternoon?

Mr Wynn: I do not think the timing really had any bearing at all on my decision. Nothing turned on it to my mind. As we spoke about the use of notices and hearings, I came to a view that neither of those was appropriate in the circumstances.

Hon ADELE FARINA: Yet it was your evidence that brought that to the attention of the committee. There was nothing in your mind at the time that you were giving that evidence that that caused some distinction?

Mr Wynn: I was somewhat surprised, I suppose, at the timing of that search warrant. However, had our conversation included him telling me that they were going to be doing it at 2.00 pm that afternoon, I do not think I could have offered any assistance other than what I had said in the phone call anyway.

The CHAIRMAN: Did you detect any urgency in Mr Albrecht's call to you?

Mr Wynn: Not urgency, Mr Chair.

The CHAIRMAN: Can I substitute "urgency" and ask: did you detect any desperation in his call to you?

Mr Wynn: No, certainly not desperation. I certainly detected that he was not particularly happy with the context of our phone call, but certainly not desperation.

The CHAIRMAN: Desperation was perhaps taking it to a higher plane than it needed to.

Mr Wynn: I did not detect that he was pleading with me.

The CHAIRMAN: No, but no doubt expressing concern.

Mr Wynn: It was frustration, I think, more than anything else that we would not do what he wanted us to do. That is probably what I detected more than anything else. I think, from memory, I said in that case note that it was a slightly aggressive tone.

Hon ADELE FARINA: Again, going back to the transcript of evidence, at the bottom of page 9 you explain in relation to the issue of a media circus that if the commission were executing a search warrant, there was nothing the commission could do to prevent the reporting of that execution of the search warrant. You also explain the difference between a search warrant and a notice to produce documents. Is it the case that the commission has power under section 96 of the CCC act to summons a person to attend before the commission to give evidence or to produce any record or thing in a person's custody or control?

Mr Wynn: That is correct.

Hon ADELE FARINA: Is it the case that, pursuant to section 159 of the CCC act, failure to produce any document or thing as required or to give evidence is a contempt of the commission?

Mr Wynn: It is certainly in contempt if they fail to answer questions or produce what is required, yes.

Hon ADELE FARINA: This being established, do you agree that a summons to produce documents in some circumstances has a greater likelihood of producing results than a search warrant?

Mr Wynn: To be honest with you, I would say that the circumstance is different, but, as a general principle, I would probably say that the search warrant is one of the most useful tools that any law enforcement agency has. What it has more than anything else is the element of surprise. People

cannot prepare themselves for the execution of a search warrant, so you find things, shall I say, in situ. A summons is also a useful tool to come before the commission, but, of course, there is obviously the preparation time. It is one thing if the commission knows for sure that a person has a particular document in his possession; it is another set of circumstances entirely if the commission does not really know what the person has or does not have. We really have no way of testing the honesty of that person. I certainly would not like it to be read that we think a summons to give evidence before the commission is more powerful than a search warrant. I think they both have their place in certain circumstances, but in my 21 years in law enforcement I would have to say that a search warrant is probably one of the most powerful tools that any investigative agency has.

Hon ADELE FARINA: In view of the fact that the CCC knew that the information came from an ERC submission, would it not have been appropriate in those circumstances in which you could actually identify the document to look at the option of issuing a summons rather than a search warrant?

Mr Wynn: I suppose it goes to the question: who has committed the offence and what are the circumstances of it? There is no suggestion in any of this that that journalist at the *Sunday Times* has committed a criminal offence; in fact, the police concede in their evidence to this committee that he is a witness. The wrongdoing, if any wrongdoing occurred here, was by a public officer.

Hon ADELE FARINA: Agreed.

Mr Wynn: What we would say as a general principle—it is not evident in the evidence that the police gave to this committee—is: what inquiries did they conduct with those officers who had access to that document to see what they did with their copies? In our mind at least that would have been a logical way to progress the investigation, rather than, at the end of the day, turning it around and putting it on this journalist, who in this case was nothing more than a witness, and trying to get him to produce a document that he may or may not have had. He might have been told something in a park for all we know. The commission has no way of testing his honesty. If he did not produce the document to us and said that he had never had the document, we would not have known whether he was lying. In the circumstances with the raid on the *Sunday Times*, certainly if they thought that he had the document, I suppose a search warrant might have been one way to find that. However, the bigger question in our mind was what had been done to track down each copy of that document coming from the other angle, and that was not evident to us.

Hon ADELE FARINA: With the power of hindsight, which is all great, do you think that Mr Albrecht's request for the CCC to become involved in the investigation or use its coercive powers ought to have been referred to the commissioner for advice or determination?

Mr Wynn: No, I do not. The reason I say that is that the commission had already made the decision under section 33. I hold a delegation to make those decisions. At the time, I was the deputy director of operations immediately reporting to Mr Anticich, so in terms of seniority in the commission, there is the commissioner, the directors and then the deputy director. It was not a matter, in my mind, for which I could not exercise a delegation to make those decisions. The phone call was one of many phone calls we receive and provide advice on from departments on basically a day-to-day basis about different things. No, I do not.

Hon ADELE FARINA: Again looking at your transcript, at the top of page 10 you say that circumstances would have to be very serious and grave for the CCC to use its powers to require a journalist to reveal his or her source. At the bottom of page 10, the Chairman asks what you would regard to be serious and grave, and the question is put a number of other times over the next page or so, with the Chairman being unsuccessful in extracting an answer on what the CCC considers to be serious and grave, so I will try again —

Mr Wynn: We will give you an example today.

Hon ADELE FARINA: — and see whether you can help us out a bit more on this occasion.

[12 noon]

Mr Wynn: In relation to that, the evidence that I gave last time was, I think, essentially along the lines that each case would be considered individually and the situation would have to be serious and grave. I suppose the best way to answer that is to look back at the history of this commission. We have been running about four years. We recognise that for a journalist to be summonsed and to be forced to name their source is something that journalists would find very difficult to do, because of their code of ethics and the rest of it. We would have some regard to that, of course. History shows that we have not done that very much at all. One case that does come to mind, which perhaps I could indicate to the committee as an instance in which the commission has done that, is in relation to our well-known inquiry in relation to the Andrew Mallard matter. You may recall that there was the unfortunate death of that gentleman in the Albany prison that involved matters connected to a listening device.

There was an occasion when the commission, having a look at all those matters, considered that the circumstances were such that a journalist could provide us with information that may be of assistance to inquiries that were being undertaken in relation of the death of that gentlemen. With the cooperation of that journalist, that journalist was called before the commission and did, subsequently, provide some evidence. That would be one example, I suppose, of perhaps what we consider to be grave and serious circumstances—the death of a person—in which the commission has exercised its power to do so. It was not something in which the summons was cold served at seven o'clock and the journalist was brought up to give evidence at 7.30. It was something that was done insofar as it was reasonably practical.

The CHAIRMAN: In respect of the words “in cooperation”, was it by invitation or was it, in fact, by summons that the journalist appeared?

Mr Anticich: It was by summons, Mr Chair. I think the point being made there is that there were some discussions and negotiations leading to the actual execution of that summons.

Mr Wynn: There was another matter that I have had some involvement in, when again you seek the cooperation of the journalist to see whether there is any possible way to distinguish any actual or perceived obligations they may feel towards the person that they are protecting. Again, we are very conscious that it is a difficult thing for a journalist to do. I think that in the original case note we were also cognisant of the fact that whistleblowers are an important source of information in society. Sometimes they bring things to the public's attention that perhaps should be brought to the public's attention, and they do that sometimes by going to the media. We do not want to be seen as putting a big boot on top of that either. I hope that assists.

Hon ADELE FARINA: Yes, it certainly does.

Does the commission have any guidelines or policy for determining what is serious and grave?

Mr Anticich: This is in terms of matters of investigation as opposed to serious misconduct?

Hon ADELE FARINA: Yes.

Mr Anticich: There are certainly criteria that we find within our case categorisation and prioritisation model. Seriousness is but one factor that is considered. In terms of whether we take matters on, I guess it goes to those decisions around section 33 but it is not limited to it. As I said previously, often it is influenced by the fact that we may take matters on that are less serious in terms of the actual matter itself, but in terms of its much broader importance to the commission and the public sector, we will take those matters on. There is somewhat of a complex formula that sits around that.

Hon ADELE FARINA: In relation to page 11 of the transcript, Mr Anticich stated —

The use of the coercive powers are under the authority of the commissioner . . .

I ask, again, Mr Wynn, whether, in view of that comment, and perhaps with hindsight, you should have referred Mr Albrecht's phone call to the commissioner, given that it was asking for the use of those coercive powers?

Mr Wynn: No, not at all. Mr Anticich is here and, obviously, can answer what that actually means. What we are talking about there, in my view, is actually the machinery of using those coercive powers. It is not the case that I can decide myself to summons someone before the commission. I can certainly make recommendations to the commissioner, and there is a formal authority that we go through, and, ultimately, it results in him assigning the summons. It is exactly the same in relation to the notices and any of the other matters. Before we get to any of that, of course, a decision has to be made on whether any of those coercive powers could be used; could I reasonably put forward a recommendation to the commissioner for the use of those; and my decision in respect of that is, basically, using the delegation that I have and saying that the matters that have been put to me in no way sort of trigger the use of those coercive powers, and I stand by that to this day.

Hon ADELE FARINA: Again, looking at the transcript two-thirds down page 11, you say that there was nothing that was brought to your attention on that day as part of that phone call with Mr Albrecht to suggest that there was any reason for the commission to become involved in the investigation. Can you give me an indication of what would have triggered you to think that maybe you should get involved?

Mr Wynn: I suppose, at the end of the day, with something like that the police would conclude their investigation and supply the commission with a report on their actual investigation, which indeed they would do in this case. We would then look at the inquiries that the police have conducted, make a determination as to, firstly, the adequacy of those inquiries and, secondly, reflecting on what they have done and what the results of those are. We would then have a look at whether any of our coercive powers could be used to bring about, perhaps, a further result or provide some additional information. It was quite clear to me from that phone call that the police investigation was ongoing, there was still a range of investigative techniques that were available to them and, again, there was nothing he said there in which I could see any use of our commission powers. With respect to Mr Albrecht, I think he confused what the intent of some of those powers were. I talked then about the use of notices and other things.

Hon ADELE FARINA: Again further down on the same page, you made the comment that the powers for the execution of search warrants is the same power that both the police and the commission have, so you do not see what difference it would make if the commission were performing that role as opposed to the police. Would you agree that Mr Albrecht was actually not asking the commission to exercise the power of executing the search warrant, but actually asking the commission to use other powers that he felt the police did not have?

Mr Wynn: The conversation, I think, was in general terms about this "media circus", and avoiding the media circus. There were certainly discussions about the use of search warrants. As part of those discussions, I think, I went to explain that fact that if we did a search warrant, we could no more restrict the media from reporting on our search warrant as we could with theirs. I do not recall him exactly asking for the commission to execute a search warrant. I think it came up in general conversation on whether our search warrant had any restrictive provisions, if I can coin it like that, that would perhaps avoid that media circus.

Hon ADELE FARINA: Looking at page 20 of the transcript Mr Anticich said —

If you are genuine in what you desire, then take this on formally for it to actually be considered, bring it forward, you know, at a higher level or do something that actually brings it as a conscious action to be considered by the commission.

Is it the commission's opinion that if WA Police wanted a joint investigation and wanted the commissioner to exercise his powers under section 96, that the police should have done something

more formal to bring the matter to the commission's attention for the commission to properly consider it?

Mr Anticich: I think that if WA Police were unhappy with Mr Wynn's assessment and genuinely of the belief that we should get involved, it was open for them to take that to a higher level. I think in our submission we touch on that. Mr Gregson, a counterpart within WA Police, is in regular contact with me. It was open to them to have elevated that to a higher level and for that more direct contact to have been made.

[12.10 pm]

Hon ADELE FARINA: Are there protocols in place for the communications of this nature between the CCC and WA Police, particularly when an operation is ongoing?

Mr Anticich: Not so much protocols as I think commonsense. I would speak to the WA police on a daily basis—most of their assistant commissioners and their deputy commissioners. It varies, obviously, on the context. We have a fairly good working relationship and I would have thought it was open to just adhere to the current protocols. On top of that, we actually have two formal mechanisms—one is the operational liaison group, which I attend with the two deputy commissioners and a number of assistant commissioners, and also the joint agency steering committee group of which both our commissioners, I, the executive director and the two deputies attend, as well. There are formal mechanisms, but, more importantly, an informal relationship that I think could have been called on.

Hon ADELE FARINA: My last question was what more should the WA Police have done, but I think you have already addressed that by saying Mr Gregson could have contacted you directly.

Mr Anticich: That is correct.

Mr Wynn: It is also apparent from the police evidence that Mr Gregson received a briefing note on this matter; that is their evidence to the committee. It would strike us that if Mr Gregson felt either on reading that briefing note that this was clearly something that the commission should be doing, or in the alternative, on Mr Albrecht briefing him, after he had had the discussions with me, it was open to him to take that matter up if they genuinely disagreed.

Hon ADELE FARINA: What is not clear is whether Mr Gregson actually got to read the briefing note before the execution of the search warrant and I suspect that that was not the case.

Mr Wynn: It is a question we ask in this paper that we have prepared for the committee.

Hon ADELE FARINA: That is it for me.

The CHAIRMAN: I have a question generally in respect of the execution of the search warrant. What you say, and what Mr Anticich has said this morning in his opening statement—I will not quote you—has indicated the view that there was obviously more the police could have done in interviewing nominated persons and other persons who later became known to have had access to the document before they took the step of making an application for the search warrant, which, as it turned out, involved 27 police officers raiding the *Sunday Times* on the busiest afternoon of the week. Do you think that that was something that should have been raised with the police? Is it within the CCC's remit to raise these operational matters?

Mr Anticich: It is certainly the case, and Mr Wynn referred to it, that at the conclusion of their investigation, we will have the opportunity of reviewing its adequacy and it may be having regard to the totality and the facts surrounding it that it may be subject to some comment by —

The CHAIRMAN: Yes, I was more thinking at the time when Mr Albrecht was talking to Mr Wynn, although you were not given a time of day as to when the search warrant was to be executed. However, because of—I called it “urgency”, he called it something else—Mr Albrecht's comments to you, an inquiry might have been made as to why they needed to go in and raid at this stage of their inquiry; or was it just the fact that you did not know the status of their inquiry at that stage?

Mr Wynn: I think it would be dangerous ground for us to start second-guessing their operational decisions. Right up front we probably would not. Our role was more in reviewing. If something was put to us and we were asked our view on it, perhaps we would offer some advice on it, but we would certainly take the view that the major fraud squad—I think that is where they came from—should know how to investigate fraud and it probably would not be appropriate for us to comment on. Perhaps just on that, Mr Chair, I could just read some comments that we have put in our submission that starts at page 17 —

The CHAIRMAN: Of your submission?

Mr Wynn: Of our submission and this turns to the issue of their execution of the search warrant. The issue that we raise here is that the officer in charge of the search warrant had no knowledge at all of the investigation until only approximately two hours beforehand—this is officer Jane—and we ask the question as to whether sufficient thought was given to the planning. In fact, their evidence was that —

... Jane was ... called into his office and briefed on the matter, and he was then given the authority ... to continue with the operation, to establish the methodologies to be utilised, the number of resources ...

This is two hours before the warrant. Our comments in relation to that is —

Given the concerns that police had about possible media fallout (Albrect page 13 3rd final para) it seems on the face of it a little unusual that an officer who had had no prior involvement in the investigation was called in at such short notice to make all of the arrangements for a police operation that was to commence only 2 hours later.

It is not apparent to the Commission why it was that the search warrant had to be executed on the afternoon of 30APR, as opposed to a later time. On this point, the Commission cannot understand why the execution of the search warrant did not occur at a time when less staff were likely to be on the premises. Why the warrant couldn't be executed either early in the morning or late at night when less staff were ... present is unknown to the Commission. On the face of it, it seems to have been executed at a time when it was likely to cause the most disruption to the most number of people.

On Jane taking charge of the operation on 30APR he does not appear to have considered that a line of investigation that should have been followed was to identify the public officers that had access to the document in question, and for those officers to be interviewed.

The Commission will be interested to know whether a document is in existence (commonly referred to an Operation Order) which covers off on methodologies to be —

Used in that search warrant —

... the roles of various officers, what plans were in place in case resistance was encountered and similar matters.

On a related matter, we will also be interested to know whether there was an operational need for so many officers to be called in after that warrant was executed. Was there a genuine operational need or was it for other reasons when resistance was encountered at the *Sunday Times* that that number increased from 5 to 27?

The CHAIRMAN: Could you just explain what you mean in respect of “resistance was encountered”?

Mr Wynn: It would appear from the evidence that the police gave to the committee that the *Sunday Times*’ senior officers were not, shall we say, compliant, or were not willing to assist at the time that warrant was executed. That is the evidence of the police. Now, the increasing number from five to 27 is a quantum leap. What was the operational need for that, we would be interested to know, or in the alternative, were the police—I am not suggesting they were but one thing we will look at is

whether or not they were—being vindictive or otherwise because they received, I suppose, treatment at the hands of the *Sunday Times* they were not happy about? We are not suggesting they were, but it is something that we will turn our mind to.

The CHAIRMAN: I understand why you are not suggesting that they were because on the basis that you are not privy to any evidence that shows whether the *Sunday Times* did or did not resist in a particular manner. When I say “resist”, “cooperate” would probably be the better word. I think that that is a question that the committee needs to look at, also. Luckily or fortunately, there is a videotape of what was occurring and I am sure the videotape will indicate to the committee whether the *Sunday Times* could be said to be cooperating or not.

Mr Wynn: The question of searching people is an interesting one. When they first turned up, there were five people. Now, presumably if anyone wanted to exit the building rather quickly, they would have done so when, perhaps, exits were not so-called manned. Why would they wait for an hour or so until every exit was manned before trying to race out the door with documents, so to speak? These are all questions that the commission will look at as part of its review.

The CHAIRMAN: Its section 41 review in due course?

Mr Wynn: Correct.

The CHAIRMAN: Thank you.

Hon GIZ WATSON: I wanted to return to the questions around interaction between the CCC and journalists in general. My initial question was: over the past two years, how many journalists have been called before the commission?

Mr Wynn: Two journalists have been called before the commission in the history of the commission.

Hon GIZ WATSON: Is a distinction being made there between a formal hearing and any other meeting or interview?

Mr Wynn: Yes, I guess —

Hon GIZ WATSON: So, two in a formal hearing?

Mr Wynn: Two in a hearing before the commission, using section 96. We would, as part of our general business, speak to journalists just as a conversation about various matters about different things, but certainly in terms of giving formal evidence before the commission, twice.

Hon GIZ WATSON: Could I just ask about other interactions with journalists and CCC officers, if there was a meeting, could that meeting provide evidence that could be used, even though it was not a formal hearing?

[12.20 pm]

Mr Wynn: I suppose it would be evidence if we were asking the journalist to provide us with a formal statement that could later be given in court. The commission makes inquiries with a whole range of people. Indeed, we make inquiries of politicians from time to time about different things, and very infrequently, I suppose, do they actually turn into formal statements of evidence. It is really part of following lines of inquiries, gathering information, more than anything else. Maybe that person will give us something that will take us down a different path that we could follow in the investigation, but I do not think there are too many examples that I can recall where we have actually proceeded to take formal statements, and journalists have been called to give evidence. I do not recall one.

Hon GIZ WATSON: In reference to those two cases that you referred to, in what capacity had the journalist been called before the commission?

Mr Wynn: In relation to the one that I gave before. They were called to give evidence before the commission by a summons being issued pursuant to section 96. That journalist was required to appear before the commission and answer questions that the commission had of that journalist.

Hon GIZ WATSON: Would that in effect be as a witness? Would that be a correct description?

Mr Wynn: Yes, I suppose because we are not a decider of guilt or anything—we are not a court—anyone who comes before us is a witness coming before the commission.

Hon GIZ WATSON: In those cases were those journalists under instruction from the CCC not to disclose that they had given evidence or was that evidence given in public?

Mr Anticich: Certainly, in the case that Mr Wynn refers to, it was initially given in private but has subsequently been released publicly at other public hearings.

The CHAIRMAN: We are referring to the Mallard case?

Mr Anticich: That is correct.

The CHAIRMAN: And the other one?

Hon GIZ WATSON: If you want to take it on notice.

Mr Anticich: If you do not mind, only because I am just cautious that we are not bringing it to the public arena.

Hon ADELE FARINA: From that point of view, I think there is a distinction in the question that Hon Giz Watson is asking. She is not asking, I think, solely about whether there is a private or public hearing, but whether it was subject to an order not to discuss the fact that they had been summonsed before the commission to give evidence.

Hon GIZ WATSON: I guess if it was a public hearing, it would go without saying.

Mr Anticich: In almost all instances at this time, I cannot think of a private examination that we have not generally given the witness that order.

The CHAIRMAN: I am sorry?

Mr Anticich: That they have been before a private examination and that they are not to disclose that.

The CHAIRMAN: Where does that appear in the act? Where is the authority to issue that order not to speak when they have been called under section 96?

Mr Anticich: If you turn, Mr Chair, to section 151, “**restricted matter**”, section 151(1)(a) firstly relates to “any evidence given before the Commission” and then at (e) “the fact that any person has been or may be about to be examined before the Commission”.

Hon ADELE FARINA: Can I just clarify? Did you say that you normally give that order with a private hearing or that you do not?

Mr Wynn: We normally do, and it is on the summons that accompanies the requirement for that person to attend.

The CHAIRMAN: Section 151(3) qualifies the ability to disclose evidence in respect of a public hearing.

Mr Anticich: I think also, Mr Chair, section 99 is a specific section that relates to notations on notices and summons.

The CHAIRMAN: I think that is the power I was looking for. You can issue an order, under the power granted in section 99, to prevent someone disclosing matters that are raised in a private hearing with the commission, can you?

Mr Anticich: That is correct.

The CHAIRMAN: How is that different then from section 151?

Mr Anticich: I believe section 151 goes to how you might then lift that restriction or deal with such matters.

The CHAIRMAN: Yes, thank you. The suggestion being made is that section 99 orders are made in respect of journalists from time to time. When I say “the suggestion”, the suggestion that is informally brought to the committee by journalists is that section 99 orders are made, and your evidence is that you do not believe that to be the case apart from, not the Mallard case, but the other case that you have referred to, Mallard having been taken in public.

Mr Anticich: Section 99 deals with notations on a notice or summons, so it must be in relation to a notice or summons. We cannot just issue a notation in its own right, no.

The CHAIRMAN: In respect of other matters, you said you spoke to journalists from time to time on various issues, no doubt some relevant to inquiries, but where there was no formal appearance by that journalist, no notice, so to speak, was issued and the journalist was in a position to disclose.

Mr Anticich: That is correct.

Hon GIZ WATSON: Could I just ask then how you might respond to the following statement: “Over the past two years to our certain knowledge six journalists have been called before the Corruption and Crime Commission to be pressured to reveal the source of their stories.” That is in correspondence from the Media Entertainment and Arts Alliance.

Mr Anticich: If I can assist the committee, I think there is probably a bit of confusion perhaps in respect of another organisation that has a similar name to ours; it is the Parliamentary Inspector of the Corruption and Crime Commission, and indeed he has published a report in this Parliament. It may be the case that, from time to time, he may possibly call journalists as well. I think sometimes they all get wrapped up together.

The CHAIRMAN: Mr Wynn, can we for the sake of today’s hearing, assume that it is not the parliamentary inspector; but that that is referring to the CCC, as we know it, the organisation to which you belong?

Mr Anticich: We would then say, Mr Chair, that we think that would be inaccurate.

Mr Wynn: It may well be the case, of course, when we speak to people we ask people, “Look, we would appreciate it if you could just keep this to yourself.” That is certainly not restricted to journalists. Quite often we say that not only for our own benefit but also for the benefit of the person we might be speaking to, because it would probably come as no surprise that some people would probably prefer it not to be known that they have spoken to us in any manner of speaking. I think it would be true to say that, from time to time, we certainly ask people, “Look, we would appreciate your discretion here” or something like that, but certainly we do not treat a journalist any differently than any other witness we may take evidence from.

The CHAIRMAN: Can we take it from what you said that, when the commission does not issue any formal order against a journalist—because we are referring to journalists in particular at this stage—the journalist is at liberty to disclose their discussions with the CCC?

Mr Wynn: If they so wish, they can.

Hon GIZ WATSON: Are you aware that the Media Entertainment and Arts Alliance claimed there is “a systemic campaign of harassment and intimidation against the media in Western Australia”? Do you have a response to that?

Mr Anticich: If that is the case, the CCC is no party to it.

The CHAIRMAN: What it might be pointing out, Mr Anticich, is that there is an opportunity for relations to improve between the two organisations, because if there is confusion, the sooner that is sorted out the better. Equally, if something is being published that is not accurate, you are entitled to

be aware of that. Perhaps there is an opportunity for the CCC in that regard to discuss it so that the general principles of disclosure and nondisclosure are better understood.

Mr Anticich: Yes.

The CHAIRMAN: Mr Anticich and Mr Wynn, thank you once again for attending this morning. The committee appreciates the evidence that you have given. Your transcript will be available within a short time. Should there be any other matters that come to your attention that you believe are relevant to the committee, we would be pleased to hear from you. I mentioned last time that if you had any recommendations or advice in respect of the matter generally, the committee would appreciate it. I think that, in fact, your submission forms part of that information and advice, because it further assists the committee in its general inquiries, and we recognise that you will have the opportunity in due course with your section 41 report no doubt. Can you tell me whether the report from the section 41 inquiry becomes a public document?

Mr Anticich: Generally, no, Mr Chair. That will go back to the agency. It will either be a tick off or, if there are deficiencies or issues, then we will raise it with the department.

The CHAIRMAN: That is the way it is handled?

Mr Anticich: That is correct.

The CHAIRMAN: Thank you, Mr Anticich, and thank you, Mr Wynn.

Hearing concluded at 12.29 pm