

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

HEARING WITH THE PUBLIC SECTOR COMMISSIONER



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 13 SEPTEMBER 2017**

Members

**Ms M.M. Quirk, MLA (Chair)
Hon Jim Chown, MLC (Deputy Chair)
Mr M. Hughes, MLA
Hon Alison Xamon, MLC**

Hearing commenced at 10.18 am

Mr MALCOLM WAUCHOPE

Public Sector Commissioner, examined:

Ms REBECCA HARRIS

Acting Executive Director, Strategic Engagement and Co-ordination, Public Sector Commission, examined:

Mr LINDSAY WARNER

Acting Executive Director, Workforce Performance and Renewal, Public Sector Commission, examined:

The CHAIR: On behalf of the committee, I would like to thank you for agreeing to appear today. My name is Margaret Quirk and I am the chair of the committee. I will introduce the other members of the committee. On my right is Hon Alison Xamon, MLC; on my left is Mr Matthew Hughes, MLA; and on his left is Hon Jim Chown, MLC. It is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything you might say outside of today's proceedings. I am not singling out you lot, but there is a tendency to use acronyms, so for the purposes of Hansard, if you use an acronym, can you at least say what it means.

Before we begin with our questions today, do you have any questions about your attendance here today?

Mr WAUCHOPE: No, chair.

The CHAIR: Would you like to make an introductory statement, Mr Wauchope, about maybe the role of the commission?

Mr WAUCHOPE: Yes, chair, just a brief one. We have had this function of oversight of minor misconduct and the prevention and education function since 1 July 2015, so just over two years' experience. After the conclusion of our second year, I was reasonably comfortable with where we are at. I think we have been working well with the CCC. I know that Commissioner McKechnie has been going through changes in his organisation that are kind of complementary to what we have been doing in our own organisation. We, as two commissioners, meet at least quarterly and are on the phone more often than that. Our senior officers are in contact pretty well weekly, if not daily on some occasions. That side of the equation has worked well. We have been focusing a lot on our prevention and education function and, in particular, endeavouring to get out into those areas that were a few years ago relatively new to us, such as local government and the public universities. I think in particular in relation to local government, we have had a fairly substantial penetration, which I think is starting to show in some of the stats that we were getting. As I said, most of our effort in terms of prevention and education is built around our products, so we put a lot of effort into capability building. We provide an assistance function, so we try to help agencies through their issues. We monitor and report. We now have two years' worth of data, so we are doing more work around data. From time to time, we will undertake investigations ourselves, but mostly in the same way the CCC has operated for 13 or 14 years, most of the matters get referred back to agencies to deal with and they will then come back with a final result. As I said, that is a sort of a bit of a snapshot.

We have just handed out a handout that has data that will be in our annual report. Our annual report will be tabled tomorrow. We did not wish to pre-empt Parliament, so we have done a truncated version for the committee today that might just help you a bit.

The CHAIR: Thank you.

Mr WAUCHOPE: For the last 12 months, we have had an increase in the number of notifications. My take out on that is that I think it reflects the additional effort we have put into getting out there and talking about misconduct, particularly into the communities. We have had a big lift in the local government space. I do not suggest that is suddenly local government gone crazy and engaging in more misconduct, but I think there is a greater awareness now and the notifications are starting to come through.

The CHAIR: Not to mention some elections coming up! I am still having a bit of trouble with the process. If a complaint comes in from, say, a member of the public, would an agency head tend to go to you, or would they go straight to the CCC on occasions?

Mr WAUCHOPE: Chair, the split between minor and serious misconduct is reasonably clear but with some grey areas. Before we started out on this, John McKechnie and I and our agencies developed a joint notification resource, which was to try to steer agencies and the public into the right space. What we both said was, “Do not notify both agencies. Have a look at our resource, take a pick, and notify one or the other. If you do not get it right, we will move it on and we will let you know why we have done that.” Most of it is reasonably clear. If it is serious, obviously it will go to the CCC. If it is minor, it comes to us. Some stuff gets notified that falls below the threshold of minor—that is, stuff that would not result in termination of employment—and we say to the agency just get on and deal with it. We are finding some material that we think meets the definition of “serious” and have moved it to the CCC. Some of it has come back to us; the CCC’s point of view was that it was not serious and they wanted us to deal with it. Most of the time, I think it is reasonably clear, but there are some grey areas and the CCC and ourselves are working through that.

The CHAIR: So the person who is filling out the form, if you like, is effectively making a preliminary judgement about where it should go?

Mr WAUCHOPE: That is correct.

The CHAIR: Are they all apprised of the difference between “serious misconduct” and “minor misconduct”?

Mr WAUCHOPE: We have put a fair bit of material out, chair, in relation to that. Again, when we have our people going out talking to agencies and talking to local authorities and the like, we try to make that distinction clear. As I said, most of the time, people are making the right choice. They actually refer it to the right agency. Some of it does go to the CCC that should come to us, and vice versa. But, as I said, we triage our material on a daily basis and I think the CCC does much the same. We are in constant contact on the phone or by email and make sure the transfer is made.

The CHAIR: We were a bit surprised that the quantum might be quite a large amount of money involved, nevertheless it might be a matter for you of minor misconduct. For example, I think there was a case involving a computer contract of millions of dollars, and that was in fact handled by you and not by the CCC.

Mr WAUCHOPE: I do not recall.

Hon JIM CHOWN: The health department.

Mr WAUCHOPE: Sorry, chair; there was an aspect that we dealt with. The actual matter of that contract was notified to the CCC by the acting director general of health at the time, Bryant Stokes.

I think he also brought in the Auditor General. We came in on the tail end of that, I think, to help the director general deal with some matters that flowed from that.

The CHAIR: What I am asking about is the fact that a large amount of money was involved did not mean that the commissioner would be handling it. I am saying that is not a criterion for where it goes?

Mr WAUCHOPE: No; there are tests that perhaps Mr Warner can run through, being the instructing officer.

Mr WARNER: I think the issue comes down to the definition of what is serious. It generally relates in simple terms to corrupt or similar sorts of behaviours by individuals. If someone has maladministered a contract or not acted in that more sinister way, it would not necessarily be serious misconduct under the definition of the act and be dealt with by the CCC, notwithstanding that there is a significant potential risk to government around the costs.

Mr M. HUGHES: Maladministration, with no clear indication that it is anything other than ineptitude or something of that kind, rather than the person then receiving a benefit as a consequence of not applying the procedures correctly. Is that right or am I being too simplistic?

Mr WARNER: If someone has performed their duties in a way that is less than satisfactory, it does not necessarily translate to being serious misconduct. It might just be poor performance and be dealt with in a different way.

Hon ALISON XAMON: Presumably you are talking about the issue of intent and being able to determine that. How do you get to the point of intent when you are trying to distinguish between serious and minor misconduct?

Ms HARRIS: The easiest trail of that is: was there a benefit to self or to somebody else? That is the bottom line that we are able to follow: did the officer receive something or have the potential for receiving something, or did the officer act with the intent for others, which they may or may not know, to receive a benefit?

Hon ALISON XAMON: Okay, so that is the simple test?

Ms HARRIS: Yes.

Mr WARNER: I think the notification guidelines try to explain some of those nuances, as the commissioner explained—the grey areas. At the end of the day, the CCC will make an assessment as to whether or not they believe it is serious in the hierarchy of things. If they do not believe it is serious, they might refer it to us on the basis that minor misconduct is believed to have occurred, and we will assess it on the basis of: is it minor?

The CHAIR: Perhaps if I can approach this in a different way, because I have the same problem as Ms Xamon here. What powers does the Public Sector Commission have to investigate? What resources have you got at your disposal?

Mr WAUCHOPE: We have a number of people who have investigation skills. What we did with some of the money that was transferred to us with the function was to promote and fund a program around investigations training. My belief is that if we were to follow the same pattern—that is, refer matters back to agencies to deal with—we would want to be satisfied they have the capability to do it, so we have invested in training people in agencies to actually undertake these functions. We also have put our own people through the same training. We can use people ourselves. Sometimes particularly smaller agencies do not have that capacity and we might assist them to do the investigation, but it is their investigation. Occasionally, we will undertake investigations using the powers of the CCM, or sometimes it might be the PID act, or sometimes it might be just the Public

Sector Management Act. They all have different powers. If an issue is lodged with us as a public interest disclosure, we would follow that pattern through that particular legislation.

[10.30 am]

The CHAIR: Do you have access to things like financial records or banking records?

Hon ALISON XAMON: What is the scope of your powers?

Mr WAUCHOPE: Our powers are not the exceptional powers that the CCC has, and that gets back to that demarcation between serious and minor.

The CHAIR: I suspect what we are both getting at is: how do you determine motive if you do not have a range of objective evidence before you?

Mr WAUCHOPE: I guess it is getting to that same distinction between serious and minor. If it is minor, most of it is going to be the type of issues that you would not need those exceptional powers. We do have some exceptional powers, such as the special inquiry powers under the Public Sector Management Act, that could be used.

The CHAIR: Which is bringing someone in and being able to question them?

Mr WAUCHOPE: We can compel people to give evidence. We can require them to produce records. We use that sparingly. Most of the things that we are dealing with by definition do not fall into that sort of status. If a matter had elements of minor and serious misconduct in the same kind of set of allegations, we would be notifying it to the CCC.

Hon ALISON XAMON: Would you refer the entire matter to the CCC?

Mr WAUCHOPE: Yes, and it may then say, "You take a step back." I think the issue is if they are connected, you would not want one party doing —

Mr M. HUGHES: I am interested in what happens when you make a determination that, on the face of it, the matter constitutes serious misconduct. You refer it to the CCC and then hand it back. How does that happen if you are singing from the same song sheet, so to speak, knowing what you mean by serious misconduct?

Mr WAUCHOPE: It is a good point. That is perhaps a question that you could put to the CCC. We use what we believe are the tests for serious crime.

Mr M. HUGHES: Can I just say that these are agreed benchmarks or reference points. Your officers make a judgement that, based on the prima facie evidence, this is serious misconduct. It gets to the CCC and they say, "Well, actually, your assessment is wrong. Have it back."

Mr WAUCHOPE: Essentially, that will happen. That can also happen after we have discussed it with the CCC. When they do their collective triaging and they assess it, they may then take the view that, no, on reflection, having looked at everything else, it does not meet what they believe to be the test of serious.

The CHAIR: You mentioned, commissioner, the idea that it was corrupt conduct if the public officer benefited. But in terms of minor misconduct, that is not essential. For example, it can cause detriment to others if his manner of performing his duties is not honest or impartial. That threshold test of whether or not someone benefited may not be relevant to whether it is minor misconduct.

Mr WAUCHOPE: Minor misconduct essentially becomes section 4(d) of the CCC act. Again, it relates to various kinds of behaviour, namely behaviour adversely affecting the honest or impartial performance of functions; performing functions in a manner that is not honest; behaviour involving a breach of trust placed in an officer; or behaviour involving the misuse of information or material in connection with the functions of an officer. Again, if someone is accessing a database that is

password protected, that could put it into serious misconduct because it carries a penalty of two years or more imprisonment and could constitute a disciplinary offence providing reasonable grounds for termination of a person's office or employment. That is the test that has to be used in minor misconduct. That becomes an issue that is then applied not just within the public sector, because it also applies to local government. As I understand it, we apply the test that we apply to the public sector to local government, universities et cetera. Things that do not constitute misconduct would be the lower HR matters that basically could be grievances, minor infractions of policies and procedures et cetera that we would say would not result in termination of unemployment and agencies should deal with that as a normal process under their policy.

Hon ALISON XAMON: I know that you have that intersection with the Equal Opportunity Commission as well. Where would that fall within the scope of things when you talk about bullying, sexual harassment and racial vilification?

Mr WAUCHOPE: It is part 9 of the Equal Opportunity Act. I have the director of equal opportunity and public employment here.

Ms HARRIS: You are right, member. Most of that falls into the category that we have called personal behaviour—bullying, sexual harassment and racism. That is by far and away the majority of complaints that we get under the minor misconduct banner. Once upon a time, that was handled by traditional HR and able to be resolved within the agency level, but it is escalating upwards. When it comes to bullying, the commissioner noted over the last two years that there is a 10 per cent indicator from our employees that they have either experienced or witnessed bullying in the workplace. That was enough for us to say, "Okay, that is a bit of an issue", and we were picking that up from other watchdog agencies as well. So the commissioner determined to do an own-motion and examine more fully the practices that we are having in agencies to either prevent and then, therefore, manage bullying once it has occurred. We do keep very open lines of communication, whether it be with the Auditor General, the Equal Opportunity Commission or the CCC.

Hon ALISON XAMON: Having worked myself in and around the public sector, and also as a union official, I do not doubt that there are issues around bullying and these sorts of things. I am also aware that there is a component of vexatious complaining, often because people simply do not like being fairly subject to disciplinary proceedings or because they do not like the fact that they are subject to changes within the workplace that they may not like. How are you managing that? Part of the balancing act you have, I would expect, is that you have an obligation as well to provide procedural fairness to people who are subject to complaints. I am also aware that even people who are executive directors or commissioners themselves can also be the subject of vexatious complaints. Are you able to elaborate on how you ensure that people are also protected in that space?

Mr WAUCHOPE: The difficulty is that we are required to assess every notification that comes in.

Hon ALISON XAMON: Of course.

Mr WAUCHOPE: We run through our processes, which will often require us to go back to the agency to ascertain what the facts are, who is involved, what was the event, and when did it take place—those basic bits of information. At the end of the day, they have to be tested in some way or another, unless it is very apparent right up-front that it is totally vexatious and there are no grounds for it. We are obliged to go down the path to satisfy ourselves about whether or not it constitutes misconduct or is something else that falls below that line. In relation to bullying, we were finding a few years back that just about anything anyone was unhappy with —

Hon ALISON XAMON: Constitutes bullying, which it does not.

Mr WAUCHOPE: We said, “Okay, what is happening here?” We went back and talked to WorkSafe and they said, “You have a legal responsibility around bullying. How do you define that?” We went with their definition and found that the actual number dropped back as a consequence of defining what behaviours constitute bullying.

Hon ALISON XAMON: I have just one more question.

The CHAIR: It is not relevant to what we are looking at.

Hon ALISON XAMON: I just want to be clear. When you have a vexatious complainant, there are no penalties that they are subject to, are there?

Mr WAUCHOPE: There is no provision in the act. The difficulty that you have is that at times you cannot tell whether it is vexatious until you have started to look at it.

The CHAIR: Just getting back onto the CCC area, there is an MOU. The commissioner has also told us that it is a matter of commonsense, sometimes, when a complaint is on. What sort of factors are relevant in those discussions? Can you maybe describe one of the things that would tip it one way rather than the other?

[10.40 am]

Mr WAUCHOPE: It goes back to intent and the seriousness of the behaviour, the seniority of the people involved, and the nature of the conflicts of interest that might be there. As I said, if there is a suggestion that there is an element of serious misconduct to it, both the commissioner and myself may agree that it will make sense to treat it as a package that the CCC would deal with. I am mindful of the fact that the CCC could be looking at things that we do not know that they are looking at. At times the commissioner will have a conversation with me around things that might be relevant to what we are doing, and likewise with him. If there are systemic issues, we make sure that we are not treading over one another’s paths, so to speak.

The CHAIR: I know that the CCC uses some integrity testing in their investigations. Is that something you do maybe to decide one way or the other in terms of the motives of someone before you decide once and for all where the complaint is going?

Mr WAUCHOPE: I do not think we play it that way. Rebecca might have a different view. As I have said, we deal with the matters that have come to us by way of the facts around the events and follow that through to a logical conclusion, and we reach a point whereby we think there is no issue, or, if it is an issue, how it should be handled. At an early stage of that process, hopefully, we would identify whether it was serious and we should look at it.

Ms HARRIS: One of the things we do is categorise our complaints into seven different areas. Past reports have shown that, and our report out tomorrow will show that as well.

The CHAIR: That is personal behaviour, fraudulent or corrupt, public resources, conflicts of interest?

Ms HARRIS: That is right.

The CHAIR: In terms of your CCC-type matters or the minor misconduct, that would be fraudulent or corrupt, use of public resources, conflicts of interest, possibly information, and maybe provision of gifts?

Ms HARRIS: You have kind of got it. In all those elements, probably other than fraud and corrupt, we clearly send it to the CCC. In each of those other elements—take, for example, use of public resources—people might think that is an easy one, someone borrowed a laptop or took a mobile phone or whatever it may have been. But if it is becoming a systemic issue across the agency and we have more than one notification, we will talk to the CCC about that. In all the matters that we

have, even right down to this baseline of bullying that the member asked about before, when it is a one-off isolated incident, we will look at it under minor misconduct. When we are getting notifications that it may be trending in an organisation, even at the lower level, we will have those discussions with the CCC.

Hon JIM CHOWN: If I may, in your report you state that 67 referrals were made by your agency, and the CCC one was a local government matter and was referred back to local government. The 66 others were taken on by the CCC and the PSC. Due to a difference of opinion in the assessment of the matter, there was no referral back to you. What is the difference of opinion? My second question is: in regard to matters referred to the CCC from your agency, what feedback do you get in the progress of those matters?

Mr WAUCHOPE: The first question is one that I think would be better asked of the CCC because they will form a view —

Hon JIM CHOWN: I am asking you at this stage.

Mr WAUCHOPE: Member, I do not know.

Hon JIM CHOWN: So you would get no feedback at all from the CCC once you made these referrals?

Mr WAUCHOPE: I am not sure if that is the case.

Ms HARRIS: When the investigation and the report from the CCC is tabled in Parliament, we will often see where some of that information has led to, but not on an ongoing basis if they are going in and doing it.

Hon JIM CHOWN: Do you find that satisfactory? When you make these referrals, do you wash your hands of the issue or do you have an interest? As the prime agency that refers these to the CCC, surely you have some responsibility to say, “Where are we up to on this matter?”

Ms HARRIS: When they move into what is theirs under “serious”, and we know that our information that may have been through a little trend in minor misconduct has led them to do an examination or a deep dive investigation, and we have seen the reports that it has led to, we know what the outcome has been. When we say that we are not notified on each individual matter, we know that it has been picked up more systemically. For us, that has happened most recently with our observations around local government and how the commissioner works with Commissioner McKechnie on looking at those systemic issues, both in local government and state government.

Hon JIM CHOWN: So you get some feedback?

Ms HARRIS: Not an ongoing running course on their investigation, but broadly speaking.

Hon JIM CHOWN: I find it a little disappointing because obviously you have done your internal investigations and you felt that they were worthy of pushing forward to the CCC. I would have made an assumption that even though the CCC is undergoing their investigation, at some stage in that reporting process or the process of the investigation it would be worthwhile to get some feedback. Obviously these people are still operating within the environment where the allegations have been made.

Mr WAUCHOPE: We do get some feedback. I am thinking of the Dowerin review that the CCC did. At the appropriate time, we got dealt in by the commission in relation to some of those issues. I think it is very difficult. Again, I cannot speak for the commission but I imagine if they are using exceptional powers—covert powers—they are not in a position to divulge that sort of information at that point in time anyway.

Ms HARRIS: What we do know, member, is because of the openness in us sharing the minor matters with the agency that does the serious matters, we have set up a process by which they can see at the very highest level allegations that come in. For the CCC, that is very useful if they happen to be looking at a specific organisation. We have our own testing, when there are very big spikes of them coming in, of having a look at where allegations are coming from. Again, because of the relationship between the two commissioners and the CEO and ourselves, we know that they are looking quite specifically into those matters.

Hon JIM CHOWN: Out of the 477 allegations, how do you approve of them being worthy of action?

Ms HARRIS: We are on this year's, so we can talk to you about this year's. You will find that it has gone up, because that was last year's work. It is in that little booklet that you might like to see.

Mr WAUCHOPE: If you look at the second page —

Hon JIM CHOWN: If we can put it on Hansard, that would be great rather than refer to diagrams.

Mr WAUCHOPE: I was about to say that out of those matters in the most recent year—these are rough figures—about 37 per cent resulted in training and counsel for improvement actions; 40 per cent resulted in termination; in about 21 per cent, other sanctions applied, which could be reprimand, declassification, a fine et cetera, which are types of actions available under the Public Sector Management Act; and, in a small percentage, no sanction was applied. This could well be because people have left the system and it was not in the public interest to continue to pursue the matter.

The CHAIR: I want to talk briefly about your educative function. Are there particular areas that you are focused on?

Mr WAUCHOPE: My approach generally around prevention and education is to look at four key factors that I think contribute to performance or conduct. That is capability, which is the skill sets that agencies and people have; the governance systems or arrangements they have in place; cultures, which I think are underestimated at times; and the decision-making processes that they have in place. We try to do our training around those four pillars. We have had a product in place since 2007. It was put in place in response to the Smiths Beach inquiry of the CCC at that time. It is called accountable and ethical decision-making. That was run out for the public sector at the time. We have developed that over the years. If you look at what we have in place now and compare it with 2007, you will at least see that it is kept contemporary. The high-level approach has been able to be applied, and we have a product that we put out to local government, and we are working with one of the universities to try to get something that might work in that environment as well. It is addressing those seven areas of conduct—personal behaviour, record keeping, use of information et cetera—as the target areas that we direct our effort at. I think we have run through —

[10.50 am]

Ms HARRIS: Nearly 95 000.

Mr WAUCHOPE: That is our fundamental tool.

The CHAIR: If I can give an example, is procurement something that is an issue?

Ms HARRIS: That we pick up in our —

The CHAIR: Maybe not an issue, but has that been identified as a particular vulnerability?

Ms HARRIS: Yes.

The CHAIR: Are there any other areas?

Ms HARRIS: The commissioner mentioned our accountable and ethical decision-making course. One of the things we have done to address that is that where we have spent the majority of our funds is looking at what we now call the C suite in each agency—the CEO, the chief financial officer, the chief HR officer, and the chief information officer.

Hon ALISON XAMON: So, the C suite?

Ms HARRIS: They all start with “C”. That is how it has all moved on. I should add the chief investigation officer. We started with the CEOs and we moved to HR, as you would in an organisation. Last year, we worked together with Treasury and Finance to look at how we could better equip our CFOs and those in the pipeline to be CFOs, to look at all those financial implications, procurement being one of those. We were quite fortunate to release with our colleagues what we call a capability framework for our CFOs. They meet quarterly. Part of those meetings and briefings with them is about putting those ethical scenarios to them. We find there is a rich fodder in other states. We have learnt a lot from our colleagues in Queensland, particularly on procurement matters, and more recently in Victoria. We use those case studies as good learning tools for our own officers. Whether it is employment for the HR, procurement and finance for the financial officers, and really in a very deep way on the investigation end, those who are responsible for investigating matters within our agencies is where we have really focused our attention.

The CHAIR: Where do you perceive the greatest risk of corruption within the public sector?

Mr WAUCHOPE: That is a good question. What we try to do is use our data to identify issues that we need to examine. We do a number of evaluations or reviews each year, like a motion kind of process. Some of the data informed us, for example, that there was a risk around public authority employees—I am talking in the broader sense—accessing government facilities or public authority facilities for their own purpose or for the purpose of friends and family. We went out and did an evaluation around the processes and systems that our users might have to protect themselves from that kind of risk and came out with some recommended courses of action at a higher level for agencies to undertake. We have done the same thing around secondary employment.

The CHAIR: Can you give an example?

Mr WAUCHOPE: It is not exclusively in local government but it does tend to come from local government because of the nature of the services they provide. You might have a recreation centre manager deciding that he is going to grant his family and friends free access to the pool and gym et cetera. We had some examples whereby, in fact, not only were they doing that but they were also running a business using their employer’s time and facilities. When we had a few notifications coming on that, we thought, “Hang on, there may well be an issue here that we may need to go and look at.” There are similar issues around secondary employment. We did one, which I think Rebecca mentioned, around bullying.

Ms HARRIS: Our more recent data, which is not available to you just yet, is probably pointing to the unauthorised access of information. I guess with public servants now moving far more into the digital world and the social media world, how they are accessing information and sharing that information is becoming an issue for us. We will look at how we now go through and address that or do a further examination into it.

The CHAIR: What about unauthorised use of credit cards?

Mr WARNER: That can be prima facie fraud or theft. Often that would bounce up to the CCC because of that, but we have had examples whereby the misuse of the corporate card was not recognised as misconduct because the person repaid the money. This was an issue that we had to follow up

with the authority, saying that it might be a mitigating factor, but misconduct has occurred by misuse of the corporate card.

Mr M. HUGHES: Are you talking about local government owing?

Mr WAUCHOPE: In that case, yes. We do not have a large number of allegations around misuse of corporate cards but it may well be the CCC does because it may well be seen by the people making the notifications as being serious.

The CHAIR: I heard of an example recently—it might not be correct—of one of those cases involving about \$400 000 that was handled by the commission. Is that one?

Mr WAUCHOPE: It is not ringing a bell but I would be happy to —

The CHAIR: That is alright.

This report says that 43 public authorities were involved in your integrity evaluations. Can you explain what an integrity evaluation is?

Ms HARRIS: Absolutely. The latest one—we are currently finalising this at the moment—is we are looking at how public authorities, including local government, the GTEs and the unis, as well as the sector, are screening their employees. We were very aware that —

The CHAIR: GTEs is government trading enterprises?

Ms HARRIS: Yes. We were very aware that particularly in the public sector, we are always under the scrutiny of recruitment and we have to do it quicker and faster, and we certainly want to remove the bureaucratic red tape around some of those processes. One of the things we are concerned about is that although we can do recruitment very quickly, we did not want it to be jeopardised by what was happening at the end of the recruitment process, which is actually screening people and testing whether what they have said they have done or who they are is true. Often corners were cut in terms of screening for those recruitment processes. For us, we learnt some very strong lessons that had emerged out of Queensland with some very high-profile cases of individuals who had been employed without any screening and then resulted in some very significant fraud activities and beyond. We have done a very thorough investigation across a number of organisations to determine what practices exist and therefore what we might need to do to help them go forward in the future.

The CHAIR: I have one question before I let my colleagues get a word in. Commissioner, you might be aware that when there was this change of legislation and you took over the role of looking at minor misconduct, effectively this committee did not have an oversight role of your activities. Are you aware of that?

Mr WAUCHOPE: Yes.

The CHAIR: Are you aware that there have been recommendations that the standing orders be changed to enable us to have some oversight view or role? Have you been involved in discussions with government about your views on that?

Mr WAUCHOPE: I do not think I have in recent times. I think there is some suggestion that they do want to talk to me about it, but I have not done that at this point. I did give evidence to the previous committee, which I guess if I had to summarise was basically along the lines of I did not believe it was necessary but I had no great objection to it either. That is probably still my position.

The CHAIR: If someone is aggrieved by the manner in which investigations are conducted by the Public Sector Commission, do they have a grievance process? What do people do in relation to complaints?

Mr WAUCHOPE: If they are unhappy with the way we have dealt with them, there is a grievance process. We have a customer service approach. If it was a matter of administration, the Ombudsman could look at it. If it was a matter of financial maladministration, the Auditor General would look at it.

Mr WARNER: Ultimately, someone could make a complaint around the way in which the matter was dealt with to a member of Parliament and it could be referred to a committee.

The CHAIR: What committee, though?

Mr WARNER: The public administration committee has a certain oversight role of the Public Sector Commission. That might be the most relevant.

The CHAIR: Can you see that there might be some argument that an investigation of all misconduct should come under one committee and we develop in time some expertise on it all?

[11.00 am]

Mr WAUCHOPE: I could accept that argument. As I said, because we do appear before parliamentary committees as requested at any time, and because we do not have the same exceptional powers that the CCC has, my personal view is that I did not believe it was necessary. But, as I said, I do not have any objection to it either.

The CHAIR: I have one final question. How many FTEs are in the Public Sector Commission and how many of those are involved in investigating or dealing with minor misconduct?

Ms HARRIS: It is just under 130.

Mr WAUCHOPE: It is closer to 120.

Ms HARRIS: It is a little difficult to separate our full range of functions. If you are looking purely at the investigation or the examination end of it, we have about 15 designated FTE who look after that. As I said, the capability, the prevention and the educative process that really is part of that extends beyond that. The majority of our FTE sit towards that.

Mr WAUCHOPE: The number in the conduct area, which includes the area that assesses notifications but also includes the integrity, promotion and evaluation, is about 27. We have a data unit that services the whole of the commission, so we produce data for Parliament more broadly. It appears in our annual report and in our "state of the sectors" report in October. That also feeds into this function. We do not have a separate data unit; we have the one that does both. There are substantial parts of other parts of the agency that are very much involved. A very significant part of my own time is taken up. For example, I do a lot of presentations in agencies and government boards and committees and local government. Ms Harris is also involved in that. Other people who sit outside this unit will be part of the strategic engagement.

Hon JIM CHOWN: Commissioner, I would just like to go back to the chair's question with regard to corporate credit cards. I have never been a public servant so I cannot understand some of the culture in place within the public service. Is there an overarching protocol for the usage of credit cards within the public service of Western Australia?

Mr WAUCHOPE: No. I can sum that up by saying it should only be used for authorised official purposes. It cannot be used for any other purpose. Using that card in that way and then repaying is —

Hon JIM CHOWN: Is not good enough.

Mr WAUCHOPE: No. It sits outside the rules.

Hon JIM CHOWN: You only pay when it looks like you are going to get caught out or somebody has tapped you on the shoulder. There was a culture of overuse of these cards, especially within the health department and the education department.

Mr WAUCHOPE: The corporate card is, on the one hand, the most efficient and probably accountable form of expenditure because it would indicate that there is an audit trail, but with that goes this responsibility. There is a Treasurer's Instruction that actually sets out what the cards are supposed to be used for. I do not think there is any grey area myself but obviously some people do. To be fair to some people, at one stage the corporate card and the personal card that people have were the same colour, and I think there was some genuine pulling out of the wrong card to do the shopping on a Saturday morning, and people had to repay it. But if we get a notification of that, we have to treat it as misconduct.

Hon JIM CHOWN: Under your remit with regard to misconduct functions, do you actually investigate any of these things yourself or do you rely purely on somebody highlighting it to yourselves?

Mr WAUCHOPE: As I said, our modus operandi is not dissimilar to the CCC, whereby most people go back to authorities. But there will be some that we take on ourselves, certainly if it was the CEO.

Hon JIM CHOWN: Without an allegation being made by a third party?

Mr WAUCHOPE: We would be responding to minor misconduct. I take your point. If we had a suspicion that there was an issue, we could go and have a look at some.

Mr M. HUGHES: I just want to go back to the MOU, which is the document that mediates the relationship between yourself and the CCC commissioner. It was written up in 2015. There is a minor addition to that—an annexure by way of correspondence between you and the commissioner. Is that right? Has the document been reviewed?

Mr WAUCHOPE: Since that time?

Mr M. HUGHES: Yes.

Mr WAUCHOPE: I do not believe so.

Ms HARRIS: Both the CEO of the CCC and myself have a conversation about the document at the 12-month period, and we touch base quite regularly, and we have had no reason to amend it.

Mr M. HUGHES: There is a reference to, for example, "The parties agree that arrangements by which the CCC is to support the PSC in performing its function, which may include consultation, cooperation and exchange of information, requires further development." Is that the case or not the case? Is it ongoing?

Ms HARRIS: It is absolutely ongoing. One of those key things we talked about was how we develop capability collectively—that is ongoing and continuing—and how we share data and information.

Mr M. HUGHES: The quarterly meetings between the commissioners, are those happening?

Mr WAUCHOPE: Yes. This year has been a bit different with elections.

Mr M. HUGHES: So this year it has not happened?

Mr WAUCHOPE: There has been a meeting, but I would not say that they have been quarterly. I might add that Ms Harris and the CEO of the CCC meet every week.

Mr M. HUGHES: On an as-needs basis?

Mr WAUCHOPE: We have had several phone calls. I am very comfortable with that relationship.

Hon ALISON XAMON: You talked about the types of matters that you have coming through. Can you give an indication of whether there are particular areas or particular departments where you are

starting to see increasing concern around minor misconduct? I am thinking of local government, because it is rife for possibility. I am also wondering, if you could be fairly candid, whether we have particular problems in particular government departments and if you could say who they are, bearing in mind it is a closed meeting?

The CHAIR: It is not.

Hon ALISON XAMON: It is not. Sorry.

Mr WAUCHOPE: I have some issues about a low level of notifications as much as I do about a high level of notifications. There are a couple of areas, one within state government and one outside of state government, in which the notifications per 1 000 employees just seemed too low given the nature of the business and the size of their workforce.

Hon ALISON XAMON: And they would be?

Mr WAUCHOPE: The university sector is one and the TAFE sector is the other. I am proposing to go in and have a bit of a look at that.

Hon JIM CHOWN: What does that mean?

Mr WAUCHOPE: I will be speculating at this point. It could mean that they are not recognising misconduct in the same way as it is being recognised in —

Hon JIM CHOWN: So it is a matter of interpretation?

Mr WAUCHOPE: It could be.

Mr M. HUGHES: It is not notifications of a particular type; it is just notifications?

Mr WAUCHOPE: Sorry; low notifications.

Ms HARRIS: The commissioner has been very active for a number of years, even before he took over this part of the function, in promoting whistleblowing, if I could use that as a broad term, and encouraging CEOs to have a culture of openness and transparency in the organisation and to view complaints in a way that helps you build your organisation and culture. Therefore, in these two sectors, if we are not seeing that the complaints are coming in, the message around employees being open or able to report is something that we will look at in more of a detailed way.

Hon ALISON XAMON: I wanted to know whether you have other areas whereby you can identify that there is a clear problem. You have speculated that there may be some cultural problems around universities and TAFE, but where have you identified that there are clear problems?

Mr WAUCHOPE: I guess you have mentioned one of them. Local government obviously has that, and some of that obviously has had the profile raised with the Dowerin and Exmouth reviews that the CCC did. In agencies like health and education you will get high levels of notification.

Hon ALISON XAMON: Because of the sheer size?

[11.10 am]

Mr WAUCHOPE: It is the sheer size and distributed workforce in the case of education. Corrective services, again, is one where you tend to get high levels of notifications. I am trying to think of what else—the rest is just a grab bag of agencies, basically.

The CHAIR: How do you evaluate whether your education has been effective? Unlike Jim, I was a public sector employee at various stages of my career.

Hon JIM CHOWN: You are all the better for it, too.

The CHAIR: People go, “Urgh, it’s occupational health and safety training today”, or “Urgh, it’s sexual harassment training today”, or it is such and such. How is that elevated to something that penetrates and people actually act appropriately?

Mr WAUCHOPE: I will probably get Rebecca to talk mostly about this, but I think we try to keep our products contemporary. The AEDM program that we have been running for about 10 years, we largely do on scenarios, because our basic proposition is that we cannot give you the answers for everything you are going to encounter, but these are the judgement issues you might need to be able to make. When we first started out, we were actually having people write scenarios. But then we recognised that there were just so many real-life situations right across Australia and we could actually use those contemporary things, because people have read about it in the paper, it has registered with them and they can relate to it. They know it is real rather than something that has come out of some public service department. I think it is keeping it contemporary and keeping it real—in the sense that people know that it is not just something that has come out of a textbook—and getting out into their space. I make a point of going out and doing it in their territory as much as possible rather than bringing them in. Commissioner McKechnie and I will do a couple of major group sessions together a year, but most of ours are going out into agencies and, indeed, into the regions. Commissioner McKechnie and I are going to Kalgoorlie in two weeks’ time. We have been to Albany. We have been to Geraldton. When I do those particular places, I will take the opportunity to hire a car to travel and pick up the local authorities on the way back.

The CHAIR: But how do you know that it is effective?

Ms HARRIS: We do. We keep quantitative data. Every time we go out and do these things, we ask people to rate their understanding before and after, and we keep track of that. One of the big things that we have seen in the course of the last year is our notifications have gone up. We have put that down to the fact that we have gone out further and wider and the message is getting out there: do not be afraid of reporting wrongdoing. I have to say that one of the elements that we have not tested quantitatively—like we do when we work with public officers everywhere—is when we go out to the community, and the commissioner has spent a significant amount of time in community sessions personally, and myself and our other staff members, to make the community aware of how to make notifications directly to ourselves, the CCC and others. But, yes, we have quantitative data, and we review that weekly. Of course, we have seen a spike in our notifications.

Mr WAUCHOPE: Can I just add a point on that one. We have had a sharp lift in notifications coming from the local government sector, and a lot of those are coming from the community. I think that is partly this community stuff that we have been doing.

The CHAIR: Nepotism—that crosses over a bit. Technically, that could detriment someone else—for example, another applicant for a job or something. Does that rear its ugly head within your deliberations?

Mr WAUCHOPE: Yes, we do get notifications regarding nepotism around the way appointments are made in the public sector, and local government in particular. We treat that as *prima facie* minor misconduct and then deal with it.

Hon JIM CHOWN: I wonder whether we can stop Hansard for a minute. Would that be possible or not?

The CHAIR: We can close the hearing. I will ask one general question and then we will close the hearing. Can you tell us quickly what the integrity coordinating group is about? Are there themes that come out of that group?

Ms HARRIS: Absolutely. The commissioner, along with his counterpart at the CCC, the Ombudsman, the FOI commissioner and the Auditor General, meet twice a year. We have a working group that at officer level of the CEOs and perhaps deputy DG-type roles meets frequently. The key issue that emerges from that group constantly is how to manage conflicts of interest. You will see that through the history of the integrity coordinating group. A subset of that has been the management of gifts and benefits. The member who was asking the questions about local government will know that a fair bit of that has come out of the local government arena. It is also how to make good decisions. Three very strong pieces of work have come out of the integrity coordinating group. We all use it as foundational and base material for our presentations.

The CHAIR: What are those three areas?

Ms HARRIS: Conflict of interest, making good decisions, and the receipt of gifts and benefits.

Where possible, the members try to get out into regional areas together. Taking five members is difficult. We have done it from time to time. It is difficult to coordinate five schedules. But, more often than not, two, three, or four of them can get out and about and talk about integrity as a collective, not just as individuals.

[The committee took evidence in closed session]
