



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

**PUBLIC HEARING WITH THE
CORRUPTION AND CRIME COMMISSION
ON 30 AUGUST 2006**

**Report No. 14
in the 37th Parliament**

2006

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Joint Standing Committee on the Corruption and Crime Commission

Public Hearing with the Corruption and Crime Commission on 30 August 2006

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ON 30 AUGUST 2006**

Report No. 14

Presented by:

Mr John Hyde, MLA and Hon. Ray Halligan, MLC

Laid on the Tables of the Legislative Assembly and the Legislative Council
on 18 October 2006

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Member for Perth

Deputy Chairman

Hon Ray Halligan, MLC
Member for North Metropolitan

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Member for Kingsley

Hon Margaret Rowe, MLC
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TABLE OF CONTENTS

COMMITTEE MEMBERS.....	i
COMMITTEE STAFF.....	i
COMMITTEE ADDRESS	i
COMMITTEE’S FUNCTIONS AND POWERS	v
CHAIRMAN’S FOREWORD.....	vii
ABBREVIATIONS AND ACRONYMS.....	ix
CHAPTER 1 INTRODUCTION.....	1
1.1 BACKGROUND.....	1
APPENDIX One	3
WITNESSES TO PUBLIC HEARINGS	3
APPENDIX Two	5
TRANSCRIPT OF PUBLIC HEARING WITH THE CORRUPTION AND CRIME COMMISSION ON 30 AUGUST 2006.....	5

COMMITTEE'S FUNCTIONS AND POWERS

On 31 May 2005 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

CHAIRMAN'S FOREWORD

The Corruption and Crime Commission continues to meet regularly with the Joint Standing Committee on the Corruption and Crime Commission. Now into its second full year of operation, the CCC is forming an accepted and needed role in transparent corruption and crime detection and prevention.

In the past financial year, the CCC assessed more than 2,300 allegations and notifications of misconduct, monitored almost 1,900 misconduct investigations undertaken by public sector agencies, and reviewed more than 2,000 public sector agencies' completed misconduct investigations.

This shows a 33 per cent increase in activity from the 2004-05 financial year. Embracing its educational role, the CCC delivered 96 seminars to a variety of public sector agency staff across the State and tabled five major reports in Parliament.

MR JOHN HYDE, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

Act	<i>Corruption and Crime Commission Act, 2003</i>
CCC	Corruption and Crime Commission of Western Australia
Committee	Joint Standing Committee on the Corruption and Crime Commission

CHAPTER 1 INTRODUCTION

1.1 Background

The Joint Standing Committee on the Corruption and Crime Commission held its regular quarterly public hearing with the Corruption and Crime Commission on 30 August 2006.

The Commissioner, Hon. Kevin Hammond; Executive Director, Mike Silverstone, and divisional directors gave evidence to the Committee about the CCC's operations since the last public hearing held on 3 May 2006. The transcript from the most recent public hearing is attached as Appendix Two. All transcripts from public hearings are also available electronically on the Parliament's website, details of which appear at the front of the report.

This report is brief, as most of the matters raised by Committee members and CCC witnesses are also addressed in the CCC's Annual Report 2005-2006. The Committee has scheduled its next quarterly public hearing with the CCC to take place on 22 November 2006, the focus of which will be an examination of issues raised in the Annual Report. The Committee will table a comprehensive report in Parliament following that public hearing.

APPENDIX ONE

WITNESSES TO PUBLIC HEARINGS

Date	Name	Position	Organisation
30 August 2006	Kevin Hammond	Commissioner	Corruption and Crime Commission
30 August 2006	Mike Silverstone	Executive Director	Corruption and Crime Commission
30 August 2006	Irene Froyland	Director, Corruption Prevention, Education and Research	Corruption and Crime Commission
30 August 2006	Michael Cashman	Director, Legal Services	Corruption and Crime Commission
30 August 2006	Vanessa Grant	Director, Business Services	Corruption and Crime Commission
30 August 2006	Robert Sutton	Acting Director, Operations	Corruption and Crime Commission

APPENDIX TWO

***TRANSCRIPT OF PUBLIC HEARING WITH THE CORRUPTION
AND CRIME COMMISSION ON 30 AUGUST 2006***

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 30 AUGUST 2006**

Members

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

Hearing commenced at 10.30 am

HAMMOND, COMMISSIONER KEVIN JAMES
Commissioner, Corruption and Crime Commission,
PO Box 7667, Cloisters Square,
Perth 6850, examined:

SILVERSTONE, MR MICHAEL JOSEPH WILLIAM
Executive Director, Corruption and Crime Commission,
PO Box 7667, Cloisters Square,
Perth 6850, examined:

CASHMAN, MR MICHAEL ANTHONY
Director Legal Services, Corruption and Crime Commission,
PO Box 7667, Cloisters Square,
Perth 6850, examined:

SUTTON, MR ROBERT
Acting Director Operations, Corruption and Crime Commission,
PO Box 7667, Cloisters Square,
Perth 6850, examined:

FROYLAND, DR IRENE
Director of Corruption Prevention, Education and Research, Corruption and Crime
Commission,
PO Box 7667, Cloisters Square,
Perth 6850, examined:

GRANT, MS VANESSA
Director Business Services, Corruption and Crime Commission,
PO Box 7667, Cloisters Square,
Perth 6850, examined:

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

Mr Hammond: Yes, I have read and understood it.

The CHAIRMAN: Did you receive and read an information for witnesses briefing sheet regarding giving evidence before parliamentary committees?

Mr Hammond: Yes, I have and I understand the same.

The CHAIRMAN: I ask the same questions of Mr Silverstone.

Mr Silverstone: Yes to all the above.

The CHAIRMAN: Mr Cashman, have you completed the "Details of Witness" form and did you understand it?

Mr Cashman: Yes, I have.

The CHAIRMAN: Mr Sutton?

Mr Sutton: The answer is yes to the above questions.

The CHAIRMAN: Dr Froyland?

Dr Froyland: Yes to the above questions.

The CHAIRMAN: Ms Grant?

Ms Grant: Yes, I have completed the form and I understood it absolutely.

The CHAIRMAN: Commissioner, thank you for your written submission to the committee. The committee has a number of questions about the submission and other matters related to the operation of the commission since our last meeting. Do you propose to make an amendment to the submission, or would you like to make an opening statement?

Mr Hammond: I seek leave to make a short opening statement.

The CHAIRMAN: You have our leave.

Mr Hammond: Thank you for the opportunity to appear before the committee this morning. You have received a submission from the commission that has highlighted a range of issues currently affecting the commission. I want to briefly highlight a few specific matters. Last year was one of continued consolidation, with the commission staff stabilising and its operational and administrative processes now well established. In a range of activities, the commission made use of most of the considerable powers available to it under the act. It received and assessed more than 2 300 allegations and notifications of misconduct, monitored almost 1 900 misconduct investigations undertaken by public sector agencies, and reviewed more than 2 000 public sector agencies' completed misconduct investigations. This activity represented a 33 per cent increase on the 2004-05 financial year. The commission delivered 96 seminars to a variety of public sector agency staff across the state and tabled five major reports last financial year. It has also recently tabled its report on the first two years of the Western Australia Police reform program. In the last financial year, the commission was well resourced and operated well within budget. As foreshadowed in previous discussions, the commission anticipates an overspend in its 2006-07 budget as a result of the need to engage external counsel to deal with a number of high-profile matters for a protracted period, in particular the engagement of Mr Jeremy Gormly, SC, and Mr Peter Quinlan as counsel assisting in the inquiry by the commission as to whether any public officer has engaged in misconduct in relation to the investigation, prosecutions, appeals and subsequent imprisonment of Mr Andrew Mallard in connection with the murder of Ms Pamela

Lawrence in 1993. The commission is not yet able to determine how much this is likely to be, as it is not yet able to determine when public hearings for the Mallard matter will start. Currently, the commission awaits the Western Australia Police completion of its cold case review of the Lawrence murder inquiry. Although the police have indicated their intention to complete their review in early September, this will be a complex issue. Although the commission has received some periodic briefings from the reviewers, it will likely take the commission some time to review and analyse the conclusions of the cold case review before it is able to announce when any public hearings into this matter might start.

Our report notes that proposals for amendment to the CCC act are delayed and currently subject to resubmission to cabinet. Further, I note that the Western Australian police service made no application for the use of the commission's organised crime exceptional powers in the past financial year. As reported previously, it is the commission's opinion that the expressed intent of Parliament with regard to organised crime, as represented by section 7A of the CCC act, cannot be achieved under the current legislative arrangements. It also tabled a report on the matter in December 2005. The commission reported this in its last annual report and in submissions to this committee. Similarly, the commission has sought clarification and enhancement of its contempt powers under the CCC act. The Attorney General's review of legislation withdrew consideration of the organised crime function and the contempt difficulties on the basis that these were the subject of an inquiry by your committee. The commission stands ready to assist the committee in its inquiry into organised crime and the commission's contempt powers. I acknowledge your advice that your committee will be making these matters the focus of your final report, which you expect to table next May.

With regard to dealings with other public sector areas, the commission is working closely with a number of departments; namely, Local Government and Regional Development, Community Development and Corrective Services. In particular, the commission is involved in addressing its concerns associated with a complex mix of matters with regard to the Department of Education and Training. These include the preparation of a report on sexual contact with children by persons in authority in the department, the inappropriate use of force in schools and the perceived need to establish more rapidly an appropriate misconduct prevention mechanism and, associated with that, the need for major improvements in the manner in which the department conducts investigations.

With regard to the matter of witness protection, the commission is not aware of any matters that would result in loss of confidence in the WA Police witness protection arrangements. In saying this, I note that we have had only very limited contact with the police witness protection unit, and this matter is already being addressed by you and we have provided you with a submission.

With regard to the commission's much publicised hearings last week in connection with Mr Minniti and certain police officers, I merely note that this is a continuing investigation and the commission is therefore unable to discuss details of this investigation at this time. Once the investigation is complete, the commission intends tabling a report in Parliament.

I am approaching the completion of my third year as commissioner and my mind turns to the statutory review that is to take place next year. Having observed the application of the act in various attempts to identify and appoint acting commissioners, I wish to make a number of observations. First, I note that advertising for expressions of interest for a second acting commissioner closed on 13 April last. No appointment has yet been made. Secondly, experience interstate shows that it is difficult to find appropriately qualified persons prepared to accept the

appointment as head of anticorruption agencies. This is due primarily to the attendant controversies attached to the judgments required of commissioners of standing inquisitorial bodies. It is not the easiest job in town and it is not attractive to many people. Thirdly, although the act's requirement to recommend for all appointments, acting or otherwise, a person on a list of three eligible persons appears on the face of it to be admirable, the fact is that many persons who are appropriately qualified for appointment will not readily accept being part of some formal nomination process to which they are required to proactively nominate into a pool of nominees. As I understand it, there may still be difficulties between this committee and others in the interpretation of this process, but I wish to make an earnest plea for legislative consideration of the issues of appointments of acting commissioners and the other concept of assistant commissioners referred to in our briefing paper. The extensive non-delegable functions of the commissioner are indeed onerous in their totality, but I thank this committee for its support of the concept of assistant commissioners. Finally, I believe the commission is continuing to deliver very effective results and is achieving the attention of Parliament with regard to addressing misconduct in the public sector. Unfortunately, the same cannot be said for the area of organised crime, and this remains a matter for the Parliament to consider. Thank you, Chairman, for the opportunity.

The CHAIRMAN: Thank you, Commissioner, for that opening statement. We will deal with a couple of the mechanical issues first. I mention in the public hearing that under the legislation, this committee does not have access to operational material. The parliamentary inspector has full access to operational material, as long as such access does not interfere with a current operation. I believe that is a summary of that power. As a parliamentary committee, we have the right to ask questions. We are very conscious of the fact that on some occasions, once findings have been handed down and matters have proceeded through the courts to a case of natural justice, you have briefed us confidentially on operational matters, which, under the act, a strident commissioner who dots his i's and crosses his t's may not do. However, committee members may have a number of questions on other areas.

I turn quickly to the appointment of the acting positions. The committee has tabled in Parliament a report expressing its full support for the delegation powers. The committee is still hopeful that the Parliament of Western Australia can get those amendments through, hopefully by the end of this year. We are also very much aware that there was an advertisement for an acting commissioner in the classifieds of *The West Australian*, but clearly people who could be a commissioner can earn more money laying bricks or driving a truck in the Pilbara. Maybe we are not paying enough. We have informally had a discussion about this process and we know, as you have expressed, that perhaps the best possible candidates are not coming forward. The legislation, although it has good intentions, means that you have absolutely no input to this selection process. The committee has no input to the selection process. The Premier of the day has to take three names on a piece of paper from the Chief Justice. The Chief Justice and two others -

Mr Hammond: Yes, the Chief Judge and a community representative.

The CHAIRMAN: - put three names forward. You have rightly alerted us to some problems and whether this is the best situation. We have contacted and liaised on a regular basis with the administrative side of government and we have been told that the government is urging a quick resolution to receiving three suitable names. If the anointing committee is not able to find three

top people, it could not fulfil its legislative requirement to forward three names. There is a whole issue there.

Mr Hammond: There is a whole issue.

The CHAIRMAN: We will have to look at that closely.

I turn to the Mallard issue. Clearly, in terms of resources and priorities, the Mallard issue is a huge undertaking for the commission this year. I understand the reasons for wanting to hold on until the cold case review has been done. The cold case review is being done by the police service. Presumably the police service is the agency that would be the main focus of the Mallard investigation. As an oversight committee, I have to ask: are you confident that any delays are genuine? Are you meeting any resistance within the police service in being able to fulfil your role in that matter?

[10.45 am]

Mr Hammond: No. As we understand it, the issues are complex. We are not part of the cold case review, but we have received regular or periodic briefings from them. We understand there are forensic issues. We are assured that the report of the cold case will be handed down in early September. However, we have no control over that.

Mr Silverstone: Clearly the cold case review in its consideration of the Lawrence murder may well make findings that go to the guilt of individuals. Because that is in train already, and because any major critical findings about individuals would have a considerable effect on how we conduct our inquiry, the commission has, I believe correctly, chosen to wait for that review to be completed. That review will form the foundation document for our own inquiry into the Mallard matter, noting that the purpose of our inquiry is to inquire into whether any misconduct has occurred by a public officer in connection with Mallard. This is not a re-examination of the Lawrence murder.

The CHAIRMAN: You did announce originally that it was your intention to hold public hearings. I think they were originally slated for July. Is there still a commitment to public hearings, or will that depend on the cold case review?

Mr Hammond: I would think without doubt there would be public hearings.

The CHAIRMAN: If you get the report of the cold case review in September, is there any potential timeframe for public hearings on that matter?

Mr Hammond: I cannot give you one. An awful lot depends upon the conclusions that are reached by the cold case review. I really cannot add any more to that.

Mrs J. HUGHES: Just to get that clear, the cold case review is about the crime that was committed, and your review is about how that investigation was conducted. Is that right?

Mr Hammond: No. Our review is as to the conduct of the public officers concerned in the investigation and arrest of Andrew Mallard, the charging, the trial, the appeals and the imprisonment, and the subsequent actions leading up to his acquittal and the High Court proceedings.

Mrs J. HUGHES: Thank you.

Mr Hammond: It is focused on Mallard and the public officers who dealt with Mallard.

The CHAIRMAN: Clearly in the interim there has been a death in prison in Albany. I am not sure about the timetable for a coroner's report on that matter. Would that incident have any bearing or any focus on your inquiry?

Mr Hammond: We would have to wait for the cold case review before we could form a view on that, but it is a factor.

Hon RAY HALLIGAN: You have mentioned that your investigations reviews and complaints assessment unit has been, if I can use the word, deprived of staff to look into this particular area at given points in time. How long are those people likely to have to work on the Mallard issue?

Mr Hammond: It has been completed. They are all back now. That was in connection with the processing of 76 000 pages of documentation. The documentation in Re: Mallard would fill half this room. There were 76 000 pages to be scanned, processed and itemised etc. That has been completed. The IRCA people were seconded upstairs to investigations to help with that task.

The CHAIRMAN: What is IRCA?

Mr Silverstone: That is the investigations reviews and complaints assessment unit. That is the acronym that describes the element of the commission that is responsible for assessing allegations when they come in, monitoring investigations by the agency, and reviewing those investigations.

The CHAIRMAN: I will try to frame this in terms of public hearings in a generic sense and see how I go. You have made a lot of use of communications intercepts. I think I have asked both you and your predecessor body about this matter. There are very strict controls on the use of TIs, and they must be authorised by a judge. My non-legal understanding of TIs is that their secondary use is normally restricted. Is there any prohibition on the commission re-broadcasting on television, or giving to the media, the contents of a TI, or on putting a transcript of a TI on a website or giving it to other people? Do you need to go back to the original authorising judge for a secondary use or a publishing of a TI?

Mr Hammond: I will refer that question to the director of legal services.

Mr Cashman: To answer the last question first, no, it is not necessary to go back to the issuing authority to seek a warrant to get permission, as it were, to use or have a secondary disclosure of the material. The commission is able to give TI product in evidence in its proceedings. That is clearly provided for in the legislation. As you can see, that is done on a regular basis. The commission's policy in terms of the secondary disclosure of that material is that as part of the commission's investigations that material can be made available to the media, on a fairly restricted basis, for the purpose of fair and accurate reporting of the commission's proceedings.

The CHAIRMAN: How can it be on a restricted basis if it is put on the Internet or broadcast on television?

Mr Cashman: We take the view that that is fair and accurate reporting of the evidence that is given in the commission's proceedings.

Mr Hammond: Can I emphasise one point. It is only that material that has actually appeared in public as evidence that is then disseminated.

The CHAIRMAN: Is that the legal limitation under the TI act? Is that the threshold? In a private hearing investigation into a person, even if a finding has not been made, would you be able

to release TI intercepts or film to the media or the public without first having gone through a public hearing?

Mr Cashman: We are empowered to play the TI product in a private hearing. However, given the nature of the private hearing, we would not be releasing or further disseminating it. It then becomes part of restricted matter and is not to be disclosed. A different situation obtains in terms of public hearings, of course.

The CHAIRMAN: The CCC has enormous power and freedom. You used the words you “would not” be releasing it if it were obtained in a private hearing. Under the TI act, would you be able to release it?

Mr Cashman: I think the answer to that is no. It becomes part of restricted matter for the purpose of the commission’s proceedings.

Mrs J. HUGHES: Just to play devil’s advocate for a moment, if material were released by you through a public hearing and so forth, would the CCC then monitor how that was used and whether it was used in context? Is there any responsibility on the part of the CCC for how that material is sent out?

Mr Cashman: Yes, there is. We monitor how it is used, and, if appropriate, if there has been abuse or misuse of that, steps will be taken.

Mrs J. HUGHES: Steps will be taken by the CCC?

Mr Cashman: Yes.

The CHAIRMAN: Can I go a bit further along those lines. I will try to make this a generic question. In generic hearings of the commission, a person who gives evidence, particularly a police officer who clearly under evidence has been shown to have done something illegal, is given protection by being referred to as B1 or B2, or something like that. However, someone else who might be a witness might find that, through collateral damage - I do not know if those are the appropriate words, but that is the sort of language I would use - his or her name is revealed. If a bent police officer, or someone else, is code-named B1 or B2, I guess a layman or parliamentarian would assume that person is either under witness protection or has agreed to cough, which I think is the language that is used. Do you have any comments on the generic example that I have offered?

Mr Hammond: Suppression orders, or orders suppressing the names, identities and addresses of a particular witness, are made upon application. Some people do not apply. Some people do apply. If an application is made, it has to be considered. There are a number of issues that are relevant. They are set out in our hearing room rules. I can, of course, provide you with that information. They are taken into account, and, if accepted, it is directed that so and so be referred to as C1, C2 or C3 as the case may be. It is also possible, particularly in public hearings, that if there is that sort of collateral minor mention of people’s names and addresses, the commissioner can make his own suppression order, and he has done so.

[11.00 am]

Hon RAY HALLIGAN: You state in your briefing notes that a number of complaints have been received by the investigations reviews and complaints assessment unit in 2005-06. Of the 2 361 allegations and notifications received, I note that 1 132 were from Western Australian police. Have you any indication of to whom those allegations are directed?

Mr Hammond: At whom?

Hon RAY HALLIGAN: At whom, yes. You have given us the figures indicating where they came from. There were 472 from individuals, 757 were from public sector agencies, and 1 132 were from Western Australian police. Are you in a position to say -

Mr Silverstone: I think the 1 132 from the Western Australian police were to do with notifications concerning the police.

Hon RAY HALLIGAN: Internal?

Mr Silverstone: Yes. That is at whom they are directed. With regard to the others, we do not have the figures to hand, but in the annual report we will be reflecting a break-up of the various agencies and sectors that have been the subject of allegations.

Mr Hammond: Yes, the annual report is a much longer document and will contain a break-up of all those figures.

Hon RAY HALLIGAN: I was just interested in the 1 132, and you have answered my question.

Mr Hammond: Of course, there is a very low threshold for those reportable police matters.

Mrs J. HUGHES: Within that complaints range, was there any particular area in which there seemed to be systemic misconduct?

Mr Silverstone: Those figures for this year will once again be covered in our annual report. I will refer to last year's annual report. I note that 16.9 per cent of allegations are for assault and excessive force, whereas 14.2 per cent are for inadequate investigations, lack of attendance and failure to respond, clearly aligned to the police; 11.8 per cent are for demeanour, language and treatment; and then it drops off into the sub-10 per cent areas across a range of issues. That is at page 19 of last year's annual report.

Mr Hammond: It is only a draft. The draft is advanced but not yet complete. However, you will find that all these matters are canvassed, and with percentages applicable to last year as well. They will be fully detailed. We anticipate the annual report to be tabled -

Mr Silverstone: By 30 September.

Mr Hammond: - in September.

Mrs J. HUGHES: Has there been any change in trends from last year to this year?

Mr Silverstone: There has been some change, and we provide an analysis of that in the report. Our report is still subject to audit in terms of our performance indicators, as well as our financial performance, so I would be reticent to deal with those issues at this stage, noting that we have a subsequent public inquiry in seven months to examine the report in some detail.

The CHAIRMAN: I will just go a little further on public hearings, in a generic sense. I imagine that the Mallard hearing will be a pretty important public hearing. In looking at improving our act, and knowing full well the history of corruption bodies in Australia, Hong Kong and a lot of the successful parts of the world, I note that Queensland has cut back on its number of public hearings, New South Wales has gone cold turkey on the idea, and I think Victoria has indicated that it will not even consider them for its body.

Mr Hammond: No, it has started. It has conducted at least one.

The CHAIRMAN: Okay. Against all the advice of other people, public hearings in WA seem to have worked. We can look at the royal commission that preceded the establishment of the CCC. Anecdotally, there is a tremendous deterrence value in terms of public hearings. There may be the issue of damage to other people named, which of course was the reason that New South Wales went back to, I guess, a Stalinist regime and doing everything behind closed doors. Clearly, the committee has been keen - obviously, this is behind the original legislation - to encourage this body to remain the most transparent anti-corruption body in the world. Have you any comments in a generic sense on public hearings and the continued policy of having public hearings?

Mr Hammond: I have been looking at statutes for a long time. To answer that question, I go right back to section 140(2) of the act, which states -

The Commission may open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so.

That places the responsibility entirely upon the commission, and those are the guidelines that we must accept. I can assure you, chairman and members, that when a decision is made to hold a public hearing, it is not made lightly. It is made by me, and I will announce as we go out that I have considered this proposed hearing, and I make the decision that it is necessary because it is in the public interest to do so. It is just a value judgment that has to be made at the time.

The CHAIRMAN: Do we have any empirical evidence in terms of research regarding the deterrence value? I notice in your report that you refer to the international anti-corruption conference in Sydney next year. We seem to be gathering more and more information on anti-corruption. Do we yet have anything other than anecdotal evidence on its deterrence value?

Dr Froyland: Perhaps I can answer that. There is no evidence that I am aware of that really is objective and looks at that one very carefully. Can I just point to the fact that when we have open hearings - for instance, if it is an open hearing that relates to police - the agency sends senior staff who immediately act on the themes that have come out of that hearing, and there have been some examples of that already. Therefore, just a little anecdotal report would indicate that changing a public hearing from just listening to what someone has done to an educational experience seems to be happening in WA. However, at that conference next year, one of the answers I will be looking for is the answer to your question.

The CHAIRMAN: I will go a bit further on that, though. There was the issue in Colorado of the bloke who has now escaped his just punishment in Thailand and has flown business-class back to America for a very soft cop. When you have public hearings, do you get a spike in spurious allegations or real allegations? Is there any data on that?

Mr Sutton: While I do not have the exact figures, during any public hearing we do experience a spike. I would not say that they are spurious allegations, but we do experience an increased number of either complaints or inquiries about the ongoing matter.

Mr Silverstone: I think there are perhaps some misconceptions about the nature of public hearings. Public hearings are conducted as part of a decision by the commission about the matter being in the public interest. However, they are not like the criminal courts in the sense that they are conducted for a specific purpose to explore a theme, to expose misconduct and to further an investigation in a specific fashion. Quite often - it is perhaps normal - following public hearings, our investigations continue, and we follow a number of lines of inquiry before finalising an

investigation. Unlike a court of law in which a guilty or not guilty finding represents the culmination of an investigation, a public hearing quite often is part of the investigation process. When the commission tables its report in Parliament, that represents the culmination of the commission's investigation, and a review of the commission with regard to that matter is fully represented. It is in the report to Parliament that the commission assesses the evidence that is available to it. It forms opinions about whether misconduct has occurred or not, and it makes recommendations as to whether systemic issues need to be addressed and, indeed, whether persons should be criminally charged or dealt with in a disciplinary fashion. Therefore, the public hearing process is part of the investigation, and it should not be regarded as being the culmination of our efforts. I think we just need to understand that a bit more clearly.

The CHAIRMAN: In the opposite sense, the opponents of public hearings argue that sometimes they can lead to a guilty person perhaps not being able to be tried successfully in the courts. Clearly, I would imagine that is an issue that you do weigh up. Have we had any evidence yet in the short run of the commission that a public hearing has prejudiced a subsequent trial?

Mr Hammond: That would occur only if somebody made application in the criminal court for a stay on the ground that there had been irreparable prejudice caused by a public hearing. I have no knowledge of such an application having been made. Bear in mind also that the commission cannot find guilt of any party. Does that answer your question? I have no knowledge of any application, successful or otherwise, having been made in that manner, and sitting here thinking, that is the only way it could be tested.

The CHAIRMAN: There was publicity about a certain CCC activity last week. Also last week, I noticed that there was a conviction of a public officer from a CCC investigation - totally different from the main focus.

Mr Hammond: Yes.

The CHAIRMAN: I have seen only a couple of paragraphs on that. We do not classify them as successes or try to benchmark the CCC on the number of convictions it gets, but it is getting a few. Do you have any comments on the one from last week now that it has finished, or is it still too soon to comment?

Mr Hammond: A suppression order was made by the magistrate in that one suppressing certain details of the accused person, and that suppression order is still in existence. What was published were some details of the offences.

Mr Sutton: That was quite a complex investigation. As it was reported in the paper, it was in relation to a number of drug charges mainly. Due to the background of the person involved, there was an application, not by us but by that person's legal representative, to have certain details suppressed. That application was actually made. That is about as far as I can take it.

The CHAIRMAN: So even after a conviction, the CCC is bound by a suppression order made by the judge or magistrate?

Mr Hammond: Magistrate.

Mr Sutton: In this case, the particular circumstances continue, so the magistrate has ruled that the suppression will continue.

The CHAIRMAN: Was a penalty handed down; and, if so, what was it?

[11.15 am]

Mr Hammond: It was 20 months' imprisonment, in total, and a \$1 000 fine. There were a number of charges and a number of different penalties imposed and, as is usual, some were made concurrent and some cumulative. I want to note, however, that the commission's lawyers opposed the suppression order but were overruled.

The CHAIRMAN: Thank you. That was to be my next question. So somebody has a suppression order on his name, but is in prison for 20 months -

Mrs J. HUGHES: And a \$1 000 fine.

The CHAIRMAN: I think that is the least of his worries. If there are good reasons for his name being suppressed, I would imagine that a prison is the last place he would want to be. For a variety of reasons, the committee is extremely interested in that issue, and the fact that you opposed that suppression. In coming months, maybe we will be able to report to you on that issue.

Mrs J. HUGHES: Under your heading of organised crime function, no exceptional powers were used, or the police did not confer with you in any way. Can you give us some indication of why you believe you have not been privy to some of that work, or just elaborate on that issue?

Mr Hammond: We have these powers; we are here. We cannot initiate an application. It is entirely for the Western Australian police service to initiate and make the application, and they have not done so.

Mrs J. HUGHES: Do you have any indication as to whether the police believe that they have it fully in hand?

Mr Hammond: It is fair to say that we have had continuing discussions with them, but nothing has happened.

Mr Silverstone: It is fair to say that, at various levels there are various amounts of enthusiasm for doing it, and there are periodic discussions about bringing one matter or another forward, but it does not come to fruition. One of the issues has been the nature of the definition of organised crime, and I remember that as being accepted as part of the Attorney General's package of proposed amendments yet to be considered by cabinet. That may clear up issues to a degree, but it comes back to the police needing to engage. We meet with them regularly, we speak to them frequently about the powers we have available and we encourage them to engage with us on it, but when the test comes to actually seeking to use them, we have not got that far yet.

Mrs J. HUGHES: Just on that point, do you believe there would be benefit to the public in you being brought into those investigations?

Mr Silverstone: It is our position that there is benefit to the public in the commission having investigative crime function. We are able to bring a different set of skills, plus the powers of the commission to bear more readily. We are accustomed to and understand how best to apply the commission's powers. Part of the problem for the police force's access to and use of them is that they are not familiar with that function, and from an organisational and cultural point of view, because they are not familiar, they are not prepared to engage and use them. Through our understanding and our capacity to apply them in an investigative sense, instead of just controlling their use, I think if we were able to work in a far better arrangement with the police, we would be more successful in addressing organised crime.

Mrs J. HUGHES: If the police were investigating an incident and a member of the police force were in some way involved in those investigations, would they in any way be obligated to come in and talk to the CCC, or could they operate independently from the CCC, if one of their officers were involved?

Mr Sutton: They are bound by our act to report the misconduct to us. Under our act, we can, if we so desire, order them to cease any investigation in relation to the public officer, but in practical circumstances, we would probably discuss the formation of a joint operation, if it were appropriate in those circumstances.

Mrs J. HUGHES: Has that happened at all?

Mr Sutton: Not in relation to organised crime, no.

The CHAIRMAN: Can I try my luck on this one? Are you able to tell us when the Manniti issue may reach a conclusion, or when the commission would be able to give a finding or a report for the committee in Parliament? Are you able to comment on that?

Mr Hammond: I emphasise that the investigation is still continuing. I just do not know when it will be concluded, and I really cannot answer that.

Hon RAY HALLIGAN: Commissioner, in your briefing note, under structural reform, you make mention of the fact that you have formed two multidisciplinary investigative teams within the investigation unit, and the majority of positions have been filled. Would you like to elaborate on that, particularly regarding the last page of the briefing note, which says that you are having problems in finding the “right” people for these positions?

Mr Sutton: That is right. We have formed two multidisciplinary teams. Each team is run by the position of manager of investigations. We have recently gone through a recruitment process for investigators, which has now been finalised. We find with our applications that, whilst we normally receive a reasonable number of applications, the standards of those applicants vary to a great degree. A reasonable percentage of applications are shown to be unsuitable on first viewing. I do not know whether that is a geographical thing - Western Australia, being so far away from the eastern states - but certainly from my experience people from the eastern states are reluctant to travel to the west for permanent employment.

Hon RAY HALLIGAN: The briefing note also mentions that the majority of staff contracts approach their end in 2009. What have you done to try to resolve that issue, and to stop the situation from continuing in which the majority of staff have to be negotiated with every five years?

Ms Grant: We are currently putting in place a series of policies and procedures that allow our managers and directors to guide us about the current contracts for the 2009 expiry. We will roll those contracts over, so that we will maintain some corporate knowledge and the skills of those staff. That process also allows directors and managers to examine the current structure and levels and skill sets within each of those directorates, as required by the commissioner. Along with that comes some work force planning, which is a key term at the moment. The employment market out there is tightening. There is a project within the business services directorate, in its formative stages at the moment, that will allow the commission to develop and plan its work force in 2009 and beyond, given that we have a review some time next year that allows us to change that around.

Hon RAY HALLIGAN: Have you, at this point in time, spoken to any of the staff about their thoughts on the matter?

Ms Grant: A commission consultative group was formed earlier in the year, representative across the commission. It is chaired by the finance manager. That is one of the forums for going out and consulting and it will be used in that manner.

Hon MARGARET ROWE: I have just one quick question on the case management system. You say that you are putting in processes for acquiring a case management system for the control of information and intelligence for matters and investigations associated with the misconduct function. Is that in place?

Mr Sutton: We are in the throes at the moment of testing the case management system. We envisage that it will be introduced in mid-October. It will be introduced on a stepped basis, and will commence in our investigations review and complaints assessment area first. It will then move on and be used in the investigations unit as new operations come on from that date.

Mr Hammond: The devil is in section 179 of the act, which states that a member of staff is not to be appointed for a term exceeding five years, but is eligible for reappointment. That is why all the contracts expire in 2009. It is covered by section 179(2).

Hon RAY HALLIGAN: Everything depends on when they start. If they all start at the same time, they all conclude at the same time. That was my issue really. What can be done to try to overcome that? Do you stagger the appointments? If someone is employed for less than five years, and is comfortable with that, it is possible to stagger some of those appointments.

Mr Hammond: We are conscious of that and, as Ms Grant has said, we are looking closely at that whole structure area so that we do not fall into a hole on 1 January 2009.

The CHAIRMAN: It has been a general observation that, with the sort of people who work in this anticorruption area, a turnover every five or six years is actually quite healthy, not only for the organisation, but for people moving to another state, and so on. Are you finding that, or are those wonderful staffrooms and your benevolence in your leadership totally overturning the history of anticorruption staff in the world?

Mr Hammond: I have come relatively recently to this particular phase of one's employment, but what has interested me is that - I am not speaking with figures available at the moment - there appears to be a great fluidity in movement between investigators and people involved in this area. We have quite a number of Tasmanians - that is an island to the south! We have quite a number of people from other corruption bodies and, similarly, we have lost people to other corruption bodies. I think we have certainly been enriched by the people we have from interstate.

Mr Silverstone: We have different classes of people within the organisation. We have investigators, and people with very specialist skills, and they tend to be fluid in their movement, but equally a high proportion of our staff perform similar sorts of functions to those performed elsewhere in the public sector, be they in the clerical area, records management and so on. Some people find the uncertainty of a five-year contract quite challenging, when they are seeking certainty around mortgages, families and such like. There is some tension within the organisation in terms of managing the expectations and needs of people. I take your point and agree that it is not good to have people sitting still and not having any changeover of personnel at all. That is particularly true at the edge, if you like, of our anticorruption activities. However, behind that is a nest of people who are equally employable across the public sector, so we are having internal

discussions about how best to manage their expectations and requirements, so that we can attract and retain high quality people.

The CHAIRMAN: I give credit to the federal government because it has massively increased the numbers in the Australian Federal Police. I know a number of very excellent Western Australians are working already for the AFP, particularly in South East Asia, and are doing a tremendous job. I imagine that a big increase in the number of investigators in the AFP would put on pressure in terms of salaries and attracting good operators.

Mr Silverstone: That is a reasonable comment. There is a lot of competition, not only for investigators, but also, for example, people working in the intelligence analysis area - a similar sort of thing. We benchmark where we are sitting with like agencies in terms of salaries and conditions that are offered to ensure that we are remaining competitive. I must say that our judgment to date is that we are sitting in about the mid-rank of those things and trying to pitch to people, not only on the basis of conditions of employment, but also in terms of the quality of work and the quality of the working environment.

The CHAIRMAN: Does the Salaries and Allowances Tribunal do you, or do you get a fair body? I am not sure I phrased that correctly!

Mr Silverstone: I do not understand the question.

The CHAIRMAN: Are you free to offer somebody double his salary to keep the best person in terms of forensic investigation?

Ms Grant: We align ourselves with the state public sector. However, the commissioner has the right to change that. At the present time we are aligned with the state public sector award. Hence, the commission makes a decree if there is an increase, like recently, and we pass that on to our staff in line with our industrial agreement.

Mr Silverstone: That being said, there have been some members of our staff who have special skills who we have been keen to keep and we have looked at paying a special allowance to them. Equally, in terms of the projects and studies that we are doing at the moment in terms of our longer term relationship with our staff, we have visited other agencies that have similar provisions in their acts, to look at how they work in that environment. We all face the same issue: how do we attract and retain quality staff? We are thinking through that issue at the moment.

The CHAIRMAN: At both your levels, is your appointment by the Salaries and Allowances Tribunal similar to judicial remuneration?

Mr Hammond: As far as I am concerned, my situation is that the act provides that the commissioner receive the same salary and allowances as a Supreme Court judge. However, if the said commissioner - that is, me - is in receipt of a judicial pension, the salary reduces by the amount of the pension. At the end of the day, my employment at the commission nets me about \$140 000, give or take \$5 000. That is what I am earning at the commission.

The CHAIRMAN: The ones in the eastern states double dip and they keep the pension and their bus card and -

Mr Hammond: So I understand. I am not complaining. That is what I receive and that is what I signed up for.

The CHAIRMAN: I know you are not. However, in terms of our attracting acting commissioners - we have given thought to having three commissioners and so on. We all understand that we will not attract the guns in their 40s because once they have been on the same pedestal-chopping block that you were on, they could find it difficult to take another position.

Mr Hammond: It is another generation, Mr Chairman. That is a generation beyond me.

The CHAIRMAN: Do you think that is a real issue?

Mr Silverstone: Yes, I do, for the commission to attract people. I have spoken to the commissioner before about my concern for our capacity in a number of years' time to attract a suitable replacement for him, given the conditions that apply under the act.

The CHAIRMAN: Maybe it is something that the committee should get the Parliamentary Inspector to chase up. That provision that was put in recently relating to the pension would not be attractive to anybody with huge judicial and anticorruption experience from the eastern states. They would not consider it.

Do members have anything further to add? Does anyone from the commission have anything to add?

Mr Hammond: No.

The CHAIRMAN: Last year I gave the commission the option of tabling the annual report with the committee rather than putting it in the mailbox to Parliament. I again make that same offer.

Mr Hammond: Yes, we are happy to comply again this year.

The CHAIRMAN: That is due on 30 September.

Mr Hammond: Yes. I think it will be out well and truly by then.

The CHAIRMAN: Thank you. Thank you all for your attendance.

Hearing concluded at 11.40 am
