

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

**INQUIRY INTO HOW THE CORRUPTION AND CRIME COMMISSION
CAN BEST WORK TOGETHER WITH THE WESTERN AUSTRALIAN
POLICE FORCE TO COMBAT ORGANISED CRIME**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 5 MAY 2010**

Members

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

Hearing commenced at 10.08 am**ARCHER, MS GAIL****Acting Commissioner, Corruption and Crime Commission,
examined:****SHANAHAN, MR CHRISTOPHER PATRICK, SC****Acting Commissioner, Corruption and Crime Commission,
examined:****SILVERSTONE, MR MICHAEL JOSEPH WILLIAM****Executive Director, Corruption and Crime Commission,
examined:**

The CHAIRMAN: On behalf of the Joint Standing Committee on the Corruption and Crime Commission, I would like to thank you for your appearance before us today. The purpose of this hearing is for the committee to meet with the acting commissioners of the Corruption and Crime Commission, Mr Chris Shanahan, senior counsel, and Ms Gail Archer, senior counsel, and to discuss a range of issues pertinent to the work of the commission with them in accordance with the committee's broad oversight role. I would also like to note that Mr Mike Silverstone, the commission's executive director, is also with us this morning. At this stage I would like to introduce myself as the chair of the committee. To my left is the deputy chair, Mr John Hyde, MLA, the member for Perth. To his left is Hon Matt Benson-Lidholm, MLC, member for Agricultural Region. To my right is Mr Frank Alban, MLA, the member for Swan Hills.

The Joint Standing Committee on the Corruption and Crime Commission is a committee of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings in the houses themselves. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard will be making a transcript of the proceedings for the public record. If you refer to any documents during your evidence, it would assist Hansard if you could provide the full title for the record.

Before we proceed to the questions we have for you today, I need to ask you a series of preliminary questions. Have you completed the "Details of Witness" form?

The Witnesses: Yes.

The CHAIRMAN: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

The Witnesses: Yes.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet provided in advance of today's hearing?

The Witnesses: Yes.

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

The Witnesses: No.

The CHAIRMAN: The committee has resolved that at some point this morning we will move into closed hearing to address some other matters. That may be in approximately 30 minutes. We are not pressed in that sense. We will see how we go. I will ask a question, firstly, to the acting commissioners. Part of the rationale for the committee taking this opportunity to meet with you is that it is not often that the commissioner is on leave, so in some respects this was a unique opportunity to meet with both of you. I understand that your terms of engagement in attending as acting commissioners have overlapped in the past few weeks and past couple of months and this seemed an appropriate time for the committee to meet with you. As an introductory question, could you identify some of the duties that you have undertaken in your role as acting commissioners?

Ms Archer: A lot of my time is spent dealing with correspondence from the parliamentary inspector's office, signing of notices to produce documents or witness summonses to attend private hearings, attending activity review committee meetings that occur regularly, dealing with management issues within the commission and liaising with other agencies as appropriate in relation to particular matters that may be discussed later this morning.

Mr Shanahan: Since I was first appointed in 2005, I have possibly had a broader exposure to the operations of the commission. I would echo everything that Acting Commissioner Archer has just said, in particular dealing with issues raised by the parliamentary inspector's office. During my time we have had more than one parliamentary inspector and those matters stretch back some time. I have prepared a service chronology that gives this committee details of everything that I have done whilst I have been at the commission. I am happy to provide that to the committee when we go into closed session because it includes some references to operational names and material that should not be made public.

The primary types of activities that I have been involved in have included the ones that have been mentioned but also private hearings in respect of various inquiries and managing inquiries where there has been a declaration by the substantive commissioner under section 14 of a conflict of interest. They have included such things as considering the public release of excerpts of the Simon Rochford videotapes and also some more well-known matters such as the sequelae from the Pasquale Minitti matter, Mr D'Orazio and sundry others. They appear in the service chronology that I have prepared. They show that over the past five years I have acted in the position of commissioner in terms of replacing the substantive commissioner, not just performing duties of an acting commissioner, which I do on top of these dates, on some 230 days over five years, which is approximately some 30-odd seven-day weeks. Whilst the commissioner has not been on holidays that often, he has been on holidays or required my attendance at the commission for some considerable period. During 2007, when there was a changeover in the position of substantive commissioner, there were 94 days on which I served as an acting commissioner. When there is a changeover of substantive commissioner, that would put a significant burden on the acting commissioners in being asked to perform our function.

The CHAIRMAN: That brings me to my next question. Given that that is the case, how does one manage to keep abreast of CCC matters whilst running practices as independent barristers? I would think that would be difficult.

Mr Shanahan: Perhaps I should answer first because I asked Gail to answer the last question first. I personally rely on the professional capacity of the staff at the commission—in particular, the executive director to my right. We have been very lucky to have him over the period that I have served at the commission. Without him, it would have been difficult to manage the work that I have been asked to do. The simple answer to your question is it creates an enormous amount of pressure. The commission is a high-profile body and the responsibility that we are often asked to take at short notice under some considerable pressure and in the glare of the public spotlight means that, for me, success as an acting commissioner is to avoid publicity. I think I have been reasonably successful at that over the past five years, given the expressions of some people when they find out that I am an

acting commissioner. The challenge of balancing it with a practice is quite significant. It has been the subject of some discussion this morning. I am just coming to the end of my second term. I must say that I think it is wearying at some level and one wonders from time to time whether one is going to be able to deal with it. The acting commissioners, including ex-acting commissioners such as Acting Commissioner McKerracher, who is now a Federal Court judge, have done the job very well.

The CHAIRMAN: Do you have any additional comments?

Ms Archer: My response is a little more pessimistic than that. It is against a background of my having been an acting commissioner for only two years. I did not have to suffer through the period that Mr Shanahan did when there was no substantive commissioner. I do not know how he and Mr McKerracher did that, frankly. It is becoming apparent to me that it is not practicable to be an acting commissioner while conducting what is of itself a very, very busy practice as a barrister. I do not think that the current framework is workable. I made a recommendation some time ago that the commission should have the capacity to appoint a deputy commissioner and assistant commissioners and also that the commissioner should have the capacity to appoint people to conduct private examinations. I did not mention private examinations earlier, but I have conducted a number of those. In 2008 in particular I did three, one of which went for three days. They usually arise when the commissioner finds that he has a conflict or it happens urgently and the commissioner simply cannot do it. You are asking the barrister to make him or herself available to give up three days, perhaps in a week's time. You are then delivered four or five boxes of materials to read and try to absorb and then you have briefings with counsel assisting and the investigator before the hearing itself and then you are doing the hearing, which involves exercising exceptional powers in a sense. You are compelling people to come and answer questions. It can have very serious consequences for the individual. The responsibility is significant. It is not something that you can take lightly. You have to prepare for it properly. You have to make sure that you are across all the issues so that it works as it should. That is very onerous. I think the current system of just having two acting commissioners, both of whom are practising barristers, is not workable. That may have an effect on how long I decide to keep doing it. If I do reach a view that it is not possible for me to do it properly, I will feel obliged to stop. I would hope that I would do that at a time that it would not inconvenience or leave other people out on a limb. That is the situation.

[10:19:48 AM](#)

[10.20 am]

Mr J.N. HYDE: Further to that, having been involved in the appointment of both of you—often those appointments are brought on because of a work pressure—have you had any indication from the government about that recommendation for a change to the appointment, going more towards the Queensland model of a full-time deputy or assistants? Is that a viable amendment to the CCC act?

Ms Archer: Since putting my report forward and putting a different hat on, I have not been involved in the proposed amendments to the act. My answer is that I do not know.

Mr Shanahan: I think part of the underlying issue we have here is that the government's decision making around the Corruption and Crime Commission has been the subject of public statements about the prospect of an organised crime function. Once you say that, you really open up the whole structure of the commission in terms of change, particularly at the executive level. At the moment we have a substantive commissioner supported by two acting commissioners. Are we going to have an organised crime function and what will that be? I realise that this is a public hearing and I do not intend to go into detail about that, but you can imagine that as soon as you have a question mark over that, you have a question mark over the whole way in which the commission currently operates. For us going forward, that raises questions about what the role of an acting commissioner

would be. Speaking for myself, my commission comes to an end on 22 August this year. I am about to complete my second stint as acting commissioner. My position will be advertised shortly.

All of these questions that we are talking about today are real and immediate questions. There is some prospect, for example, that we might end up with two new acting commissioners at the same time. Perhaps that is another question that this committee would like to consider the merits of. It seems to me that with a body like the commission, one of the real strengths that it has is continuity. You cannot maintain continuity without sharing information. One of the problems we have as acting commissioners is that we have piecemeal access to information because we come in and out of the process. The commission has an annual budget of \$28 million and about 155 staff. I can assure you that as a senior counsel in my practice, I do not organise 155 people every day and I do not operate a budget of \$28 million. It is a different skill set that takes time to develop.

Mr J.N. HYDE: Further to that issue, you are both in the role of acting commissioner at the moment. Perhaps you might like to deflect this question to the CEO. Let us forget about the organised crime function and talk about the ongoing role of the CCC. Is there a strong corporate view about that amendment to go either towards the Queensland model or to appoint a full-time deputy commissioner or more acting commissioners? Is that the claim that is being put to the government for the amendments to the CCC act?

Mr Shanahan: One of the important parts of being an acting commissioner is that we do not trespass on the ground of the substantive commissioner. We cannot serve our function and trespass on the systemic policy and other aspects that are the responsibility of Commissioner Len Roberts-Smith. I think we would be doing him a disservice if we were to answer that question. He is the leader within the commission. Clearly, there is a corporate view about those things but I am not sure that I would want to comment on them.

Mr J.N. HYDE: Mr Chairman, are you going to ask the CEO for a succinct response?

The CHAIRMAN: I am happy for Mr Silverstone to provide a response if he wants to.

Mr Silverstone: It is fair to say that the commission's position is that it supports the legislative review's recommendations to enable the appointment of deputy assistant commissioners who will be able to perform the functions that are currently delegable under section 185(2) of the CCC act.

Ms Archer: The committee would be aware that when those recommendations were originally made, they were made with the support of the current commissioner.

Mr Silverstone: The commission's view of how that might practically occur has evolved and has been refined over time. The commission does have a position on that.

The CHAIRMAN: It is not lost on the committee that those recommendations were made quite some time ago, yet we still find ourselves in the current situation.

Without going into whether the commission's jurisdiction to be involved in organised crime investigation is expanding, as you know, the committee has an ongoing inquiry into that and the committee will provide a report in the fullness of time. Can I at least make the following observation and get any comment from you on it? If the commission's jurisdiction were to be expanded in that regard, do I take it from your comments today that that would exacerbate the problem for acting commissioners in terms of, firstly, workload and, secondly, that issue of coming in and out in a piecemeal fashion in maybe even more complex and controversial cases?

Ms Archer: Yes.

Mr Shanahan: Acting Commissioner Archer is very succinct and I would entirely agree with her. With organised crime, imagine some sort of enhanced investigative role for the commission. That requires leadership on an investigation-by-investigation basis. That is antithetical to the role of an acting commissioner. It also raises questions about the balance between organised crime and our misconduct function and how the two would marry together. That raises questions about the whole

structure of the commission. I do not think there is a shorter answer than the one you have had and I do not think there is a better one.

Mr J.N. HYDE: Commissioner Archer, your other role relates to the report and review of the CCC act. One of your excellent recommendations—this committee produced a report earlier recommending the same thing—relates to the public interest monitor. I notice media reports in Victoria today regarding the police member involved in the OPI reports, claiming that the telecommunication interception warrants were not justifiably obtained. We are all aware that the police union president was done over in that report and so on. A serving police officer has highlighted the fact that a warrant perhaps was not justifiably obtained. I think your report, our report and our experience in Queensland is that by having a public interest monitor, as is the case in Queensland, the police, the CCC and everybody involved is actually protected because there are further steps to go through to obtain a telecommunication interception warrant. My other predication to this is that all of us involved in this area over several years have the right to change our views as we gain more knowledge. Can you bring us up to date on your view regarding a public interest monitor and whether that is still seen as a priority in amendments to the CCC act?

[10:29:02 AM](#)

[10.30 am]

Ms Archer: I had no notice of that topic but I will do the best that I can, bearing in mind what Mr Shanahan said about acting commissioners not expressing views contrary to the views of the substantive commissioner. I do not feel quite so constrained but I would identify that my views are different from the substantive commissioners. I understand that the substantive commissioner considers that there is no purpose in a public interest monitor and that the existing safeguards are sufficient because of the role that the parliamentary inspector can play in that. That was originally my view also and I was only persuaded to the contrary having gone over to the other states. That was not because I did not think the existing mechanisms were adequate to safeguard civil liberties; it was because of the other benefits that come from a public interest monitor that perhaps are not immediately obvious. One of those that I found most compelling was the experience of the judicial officers who were required to decide whether or not to approve a warrant. Under a system without a public interest monitor, these people are presented with an ex parte application by a particular agency supported by an affidavit by a police officer. They have to try to analyse whether or not there is sufficient material there and whether or not they have been given the full story. Often they are being asked to do this out of hours and at short notice in an already busy workload. In the jurisdictions where they did have a monitor, the judicial officers said they found it hugely comforting to know that somebody else had asked those questions for them so by the time it got before the judicial officer, those sorts of issues had already been sorted out. The PIM in, I think, Queensland said to me that in a vast majority of cases, the PIM did not appear and it was all fine—everything had been worked out and it did not require any adversarial process at all. It just meant that when the judicial officer got the application, he or she knew that all of that work had already been done. I have not been focusing on that issue over the intervening two years but I have not become aware of anything that has caused me to change my mind, if that answers your question.

Mr J.N. HYDE: Our experience in oversight has always been that the CCC has been at the highest level in terms of warrants for TIs. We did know that the police were knocked back on a TI, which is almost unheard of in WA's experience, which would have given further justification for having a PIM in WA. In terms of perception, we look at some of the Burke and Grill trial issues at the moment, where they are trying to put the perception that a warrant for a TI and a SD are not warranted. By having a PIM and you just cannot get away with making unfounded allegations about the propriety of getting a TI.

Ms Archer: I cannot comment on any matter that is currently before the court.

Mr J.N. HYDE: I was not referring to a particular case.

Ms Archer: I repeat my earlier observation about the parliamentary inspector and the Ombudsman. There are already sufficient safeguards in place to ensure that those matters can be checked and verified—and when they have been, the commission has always demonstrated that it has been done properly, as I understand it.

Mr Shanahan: In many ways, if you think about it, it begs the question about a PIM and where they operate in the process and where a parliamentary inspector operates after something has happened. Perhaps that is another dimension to that process that is important, particularly given some suggestions I have seen for changes to section 195 of the Corruption and Crime Commission Act. That might be something that should be considered.

Mr J.N. HYDE: The current situation is that the PI does not have a role in the process when the CCC is requesting a TI from a judge.

Mr Shanahan: But were there a complaint, as I think there may have been, that would be a different situation.

Mr F.A. ALBAN: Do you feel that the public perception of the commission is misguided in any way? Do you feel this needs to be addressed or do you feel that the public's perception of the job the commission is doing is irrelevant?

Mr Shanahan: There is a poor understanding of the commission's role. That is largely because of the nuances associated with an investigative standing body such as the commission as against the operation of courts. There is always a lot of confusion around what the commission does. From a very early point in my time at the commission we were talking about the language that is used in the act, opinions and assessments. That is what the commission produces. It does not produce findings of guilt and it does not conduct criminal proceedings, and I think that is poorly understood. That has been further obscured by some of the issues that have arisen out of differences between the commission and the parliamentary inspector. With great respect to the fourth estate, I do not think they have always been reported in a way that allows a more sophisticated understanding of what the issues are. That is not the fault of the press; it is simply because they can be quite complicated. Trying to explain to someone the difference between administrative review by an ombudsman, merits review, where somebody decides whether a decision is good or bad, and judicial review, where a judge decides whether or not it has been made legally, can be a difficult thing. It sounds pretty straightforward to me but in a lot of the issues around the commission, I find those types of review are poorly understood. I also find the idea of a standing royal commission, which is effectively what the Corruption and Crime Commission is, having an investigative role—it runs inquisitorial proceedings, not adversarial proceedings—is also poorly understood. We could spend a lot of time talking about those things, but they are the primary elements where the commission's role is misunderstood.

Ms Archer: I would add to that that I think it is vital that the public understand the commission's functions and it is vital that the public has confidence in the commission in order to enable the commission to carry out its educative function in particular. In my experience, the two areas in which the public appear to perhaps be not as well informed as it ought is in relation to organised crime. There is a perception in the community that the commission should spend more of its time investigating organised time.

Mr Shanahan: Even amongst members of the profession.

Ms Archer: Even though, as the committee knows, we do not have that capacity. The other area is in relation to the percentage of convictions that the commission obtains as a result of prosecutions. The percentage of convictions is not necessarily a good measure of how effectively a body is carrying out its task. That having been said, there is a public perception that the commission constantly loses. That was a matter that the attorney addressed recently and corrected the record in that respect. I do think it is important that the Parliament stand behind its body and support its body

where it is appropriate so that the community is properly informed about what the CCC is doing in order to allow the CCC to carry out its function of education and preventative measures.

Mr Shanahan: The other body whose role is poorly understood is the DPP. The Director of Public Prosecutions prosecutes matters that are prosecuted in superior courts. If there is a matter in the District or Supreme Court, it has been prosecuted by the DPP. It has been prosecuted on the basis of an indictment prepared by the DPP. It may be that the DPP has had a report from the commission with a recommendation the prosecution occur in a particular way but ultimately the form and the way in which the prosecution is conducted is a matter for the Office of the Director of Public Prosecutions. Again, with great respect to the fourth estate, I do not think that is often understood. I would entirely endorse what Acting Commissioner Archer has said about the press around the prosecutorial success of the commission.

Mr F.A. ALBAN: I believe that the CCC has a huge deterrent role. Do you have any figures to prove some of that? I imagine that without the CCC being in process, there would be far worse corruption going on and I believe that is a big proportion of what the commission does.

Mr Shanahan: One of the things the commission does, which is also poorly understood—I have highlighted it—is that it has whole-of-public-department-style reports where it might look, for example, at the Department of Health. It might look at another place. I think it has done some very good work in terms of systemic examination of some of the processes around line departments. I think the commission would say, and I would agree, that that has changed the culture in some of these departments in a very striking way. To the extent that that is a deterrent effect, I agree with your proposition. At a higher, more public level, where we are talking perhaps about activities not related to a line department but perhaps to parliamentarians or lobbyists or other issues, people would have to judge for themselves because it is clearly a political and multifaceted issue as to whether the commission has been successful in that way.

[10.40 am]

But certainly in a recent letter that I wrote to *The Canberra Times* in response to a poorly informed letter that was published there, I made the point that the aim of the commission, like the Corruption and Crime Commission, is to change the culture. I think that the focus on the issues that I have just identified has been raised enormously since the commission was created in 2003.

Mr F.A. ALBAN: I have an amount of local government background. I know that when the CCC first started there was huge relief, I would imagine, amongst local government councillors that there in fact was a body. At that stage it was open slather—we did not know the good people from the bad. The fact that there was an overseeing body and all that was a real positive. I think the deterrent aspect of the commission is terribly under-rated.

Mr Shanahan: Local government departments always had an investigative element but I think it would be fair to say that since the commission has been created the deterrents in that area have been significantly enhanced.

Hon MATT BENSON-LIDHOLM: Can I focus on some issues that you have already talked about? I am particularly keen to look at what the commission sees as being some of the significant issues that you face. You mentioned prosecutorial figures and the educative deficiencies that exist around the place. We have talked about perhaps directional focus or changes that might be required if the commission goes down an extended pathway. For the record, do you have any other operational issues or resourcing issues that you would like to draw to our attention as the joint standing committee?

Ms Archer: I think that there is a difficulty within the commission in attracting and retaining appropriately qualified and skilled staff. That was one of the issues that was addressed in the recommendations for amendments. The commissioner cannot make people permanent, as I understand it. Also, if they take people from public service positions and then the person is

promoted within the commission, those public servants have no guaranteed return at the level they have achieved in the commission, so that can make it difficult. From my observations I think that there is a shortage of human resources in some areas that have arisen perhaps because of that, but other reasons as well, that does make it more difficult for the commission to carry out its functions.

Mr Shanahan: Two comments—one is I would endorse what has just been said particularly in relation to the legal support for acting commissioners in the commission. We rely on the legal services division in the commission significantly—we have to. It is important we get high quality services provided there. That raises the systemic issues that have just been referred to. The second comment I would make would be that we have just heard about the deterrent effect of the Corruption and Crime Commission. One of the ways in which the Corruption and Crime Commission needs to be able to communicate with public servants or people who fall within its jurisdiction is to identify behaviour that might be dangerous, that might be a stop on the pathway towards some sort of misconduct; in other words, to say, “Don’t do this because that might take you into some difficult waters.” Using words like “inappropriate” or words that are less than misconduct to describe conduct by people the subject of an inquiry by the commission is actually adding to the deterrent effect that the commission can have because it identifies dangerous conduct.

I appreciate that there has been a discussion about findings. I think the word “findings” is used—“findings of less than misconduct”. The commission does not make findings, so that is probably a bad place to begin, but it should be able, in some way, by some mechanism, to say: in respect of conduct in this particular bureaucratic space or political space, that type of conduct really is dangerous because it takes you towards or puts you in danger of crossing the line. That is part of our preventive and educative function as a commission. Some mechanism for that should be provided for in the act.

Hon MATT BENSON-LIDHOLM: On a slightly different matter, notwithstanding the tight budgetary constraints that obviously exist right now, do you have any comments in respect to financial resourcing? Particularly in light of what you said about retaining staff, are there any issues that you would like to draw our attention to in respect of those sorts of budgetary constraints?

Ms Archer: I think every agency would like more money. I am not aware that that is one of the primary needs of the commission. It is more the difficulty in attracting appropriate staff to the organisation rather than not being able to pay them enough.

Mr Shanahan: You cannot answer the question that you have asked without knowing what the commission is going to do in the future. We could say that currently —

Hon MATT BENSON-LIDHOLM: That is true. I understand that.

Mr Shanahan: I understand your question is based on the current circumstances but I think it is important, given that we might be in a transitional process, to note that if the functions of the commission change, then that will have resource consequences. Any answer that we gave today to that question might change tomorrow if the Parliament were to change things.

Hon MATT BENSON-LIDHOLM: That is understandable.

The CHAIRMAN: Unless there are any other questions, I want to ask one more before we move into closed session. I want to pick up on something I think I heard earlier in relation to the conduct of hearings. Do you think there is any scope for non-legal practitioners to be able to conduct hearings? Given that it is quasi judicial, does it really therefore exclude non-practitioners?

Ms Archer: I think it excludes non-legal practitioners. While it is an investigation and it is an examination, the person doing it is still performing a judicial function in the sense that the witness is required to answer questions. The person conducting the examination has to be able to determine whether what is being asked is going to assist in the furtherance of the investigation; they have to be able to deal with questions of legal professional privilege in relation to documents, if that should arise; and, if the witness refuses to answer, they have to deal with questions of contempt and

whether it is appropriate to deal with a person for contempt. Experience has shown that even legal practitioners struggle with those issues. I think it would be unworkable to have a layperson in that role.

Mr Shanahan: I would endorse that. I would also say that if someone was in difficulty because they could not afford to retain a legal practitioner, then that is something that this committee might wish to look at and make a provision for them to get assistance if that were necessary; if they could not get Legal Aid for some reason. As I understand it, Legal Aid has always made provision for people who are required to appear before the commission. In any event the commission might allow someone to appear as a McKenzie friend, which is a particular type of appearance in a particular circumstance. That has never occurred whilst I have been running a private hearing. I would certainly endorse Acting Commissioner Archer's comments about the level of skill that is required to appear before a body like this when it is poorly understood, as I have earlier commented on.

Mr J.N. HYDE: Can I come in quickly there? This was the one area of your report that I did disagree with and continue to. The original act excludes anybody who is not at the level of having being appointed a Supreme Court judge for five years from being a commissioner or an acting commissioner, whereas in best practice, around some anticorruption bodies where you may have a former police commissioner or somebody who would not meet that level is heading up a corruption body or acting as a commissioner, I would still maintain that the CCC is not a judicial body and is inquisitorial rather than judicial. By maintaining that it has to be a judge-like person, we are reinforcing that bad stereotype. I appreciate that this is a philosophical issue and I am in the minority on this.

Ms Archer: I sympathise with your view in relation to what it is that the commissioner actually does. There are certainly some functions of the commissioner that would not require someone with legal qualifications. You could structure an organisation in such a way that the person who was the nominal head was not a lawyer. But, in my respectful opinion, that person could not do things like sit on examinations, sit on private hearings and sit on public hearings. In my most recent experience that person would not be capable of responding to the parliamentary inspector in relation to the vast majority of the sorts of issues that come up. I think those things need to go out under the commissioner's hand, or the acting commissioner's hand.

[10.50 am]

Mr Shanahan: I agree with that. I would also say that we have a police misconduct function and, where you would have an ex-police commissioner running the commission, that would raise other issues.

Mr J.N. HYDE: I have one final question. You may want to put this into closed hearing. In your experiences serving as acting commissioners, have you ever granted or denied an application by the WA Police for the use of extraordinary powers to aid a police investigation?

Ms Archer: I would prefer to respond to that in private session, if I may.

Mr Shanahan: I would endorse that.

The CHAIRMAN: On that basis we will now move into closed hearing. Other than witnesses and Hansard, the rest of those in attendance are excused.

[The committee took evidence in closed session]