STANDING COMMITTEE ON LEGISLATION

CORRUPTION AND CRIME COMMISSION BILL 2003 AND CORRUPTION AND CRIME COMMISSION AMENDMENT BILL 2003

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON FRIDAY, 11 JULY 2003

Hon Jon Ford (Chairman)
Hon Giz Watson (Deputy Chairman)
Hon Kate Doust
Hon Peter Foss
Hon Bill Stretch (substituted by Hon Derrick Tomlinson)

Committee met at 10.39 am.

HASTINGS, MR PETER, QC
Senior Counsel assisting the Police Royal Commission,
examined:

TASEFF, MRS JUDITH
Senior Assistant Crown Solicitor,
Crown Solicitor's Office,
examined:

BYRNE, MR MATTHEW
General Counsel and Director of Operations,
Police Royal Commission,
examined:

The CHAIRMAN: Good morning and welcome. You have all signed a document entitled "Information for Witnesses". Have you read and understood that document?

Mrs Taseff: Yes.

Mr Hastings: Yes.

Mr Byrne: Yes.

The CHAIRMAN: These proceedings are being reported by Hansard, and a transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document to which you refer during this hearing. Please be aware of the microphones and try to talk into them. Also, ensure that you do not make any noise near them and avoid covering them with papers.

I remind you that your transcript will be a matter for the public record. If for some reason you want to make a confidential statement during today's proceedings, you should request that the evidence be taken in a closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament, and may mean that the material published or disclosed is not subject to parliamentary privilege. Also, I have a number of formal questions that committee staff have prepared, following which any committee member may ask questions. We try to make proceedings as informal as possible. Would anyone like to make an opening statement?

Mr Hastings: I was going to make a short statement. As indicated, I am the senior counsel assisting the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. The Corruption and Crime Commission Bill is largely based on the interim report recommendations we published just before Christmas last year. I will not go into its detail; the report sets out the reasons for the recommendations. As I previously may have said to individual committee members, the report in general considered the New South Wales model to be the most desirable model for corruption prevention and investigation. That State has three bodies; namely, the Police Integrity Commission, the Independent Commission Against Corruption and the New South Wales Crime Commission, which investigates organised crime - we saw that this had a link to corruption and was relevant. However, the resources involved in sustaining three organisations was considered to be perhaps beyond the capacity of Western Australia, and Queensland was seen as the better precedent to adopt. Therefore, we have

recommended essentially a duplication of the Queensland Crime and Misconduct Commission, which has three divisions that separately investigate police corruption, public sector corruption and organised crime. The most significant departure in the Bill from our recommendations relates to organised crime; that is, the Bill envisaged that the Corruption and Crime Commission would have an organised crime function by means of the incorporation of the provisions in the Criminal Investigation (Exceptional Powers) and Fortification Removal Act. It appears to be a mixed blessing. There may be some advantages in that the Corruption and Crime Commission will not have a permanent police presence. Presumably, it will work on an ad hoc basis: when an authority is given under the provisions for the use of powers, presumably, a group of police will work in conjunction with the Corruption and Crime Commission to utilise its powers and facilities. That has fewer security implication than otherwise might have been the case if a permanent presence of police were involved in investigating organised crime.

The major concern with those provision is the extent of the jurisdiction available under the legislation. I have expressed reservations to various committee members. My concern, in particular, relates to the definition of "organised crime" in clauses 3 and 5 of the Bill that essentially requires there to be an investigation into two or more persons agreeing to have committed two or more crimes. This will limit the availability of the powers to the extent that they may be used only quite rarely. As I have indicated to various committee members, the best use in New South Wales of similar powers was the investigation into the shooting of the member of Parliament John Newman. This was investigated initially by the New South Wales Police, without success, using conventional powers. However, it later became a referral to the New South Wales Crime Commission, which used powers similar to those to be available to the Corruption and Crime Commission to successfully obtain witnesses. This ultimately led to the prosecution and conviction of a person for Mr Newman's murder. Without the use of those powers, it seems the murder would have gone unsolved and no conviction would have resulted. Nevertheless, the new WA body would not have the capacity to investigate in those circumstances because there would probably not be sufficient indication of an organised crime in that case, as defined by clause 3 of the Corruption and Crime Bill, for the powers to apply.

I take the opportunity now to refer briefly to some hearings of the royal commission since the interim report was released to provide a further illustration of the manner in which the powers vested in the royal commission - those essentially repeated in the Bill - can be used in a successful manner. We conducted one operation this year involving witnesses codenamed T1, T2 and T3. This was the subject of a public hearing on 7 April, at the commencement of which I made an opening statement from which I will reproduce some information. It is found on page 9302 of the royal commission transcript. I mention it because it seems to be a very good model of contemporary corruption investigations available only because of the powers in the Royal Commission (Police) Act. The essence of the segment was that T2, who was a serving detective sergeant in the Western Australia Police Service, was revealed to be a person who had previously stolen a large amount of money. During the royal commission operation, he stole a further substantial sum of money. A number of features of this case are worthy of note because they demonstrate how the powers can be used in a responsible manner.

The first significant feature is that the selection of T2 as a target was an appropriate and discerning choice, rather than an indiscriminate selection of someone who may be worthy of further examination. He had a history of complaints in the Western Australia Police Service, and was the subject of a recent allegation of the theft of money. It looked as though this person was worthy of investigation - that is, to whom resources should be usefully devoted. Secondly, the commission was able to conduct a private hearing at which a criminal who had been involved with T2 was called to give evidence, as a result of which further information was obtained. This led to the identification of a person known as T3, who was then recruited and used in an operational role by the royal commission.

[10.45 am]

That involved the strategic use of listening devices pursuant to warrants issued under the Surveillance Devices Act. It also involved the use of telephone interceptions carried out pursuant to warrants issued under the Telecommunications (Interception) Western Australia Act. That in turn led to evidence of T2, a police officer, being involved in more crime than we had previously thought. That led in turn to the deployment of even more listening devices, also pursuant to warrants issued under the Surveillance Devices Act. In the end, an integrity test was formulated based on the information gathered, subject to approval under section 30 of the Royal Commission (Police) Act. In addition, the test may have involved some illegal action such as trespassing to gain access to premises to set up a test, so a controlled operation was approved under section 29 of the Act. Both the integrity test and the controlled operation were authorised by the commissioner. The end result was that it all went exceptionally well. T2 fell for the bait and stole the money that had been placed in premises pursuant to the integrity test. When he was later approached he made admissions and provided evidence of other criminal activity of which the commission was unaware. In addition, the operations were underpinned by the use of assumed identities, also authorised pursuant to part 6 of the Royal Commission (Police) Act, specifically in relation to what otherwise might be illegal activities connected with the lease of the storage unit. In the end, a public hearing was held, which I think is also worthy of note. Not only did it expose a current corrupt police officer but also it sent a message to other police officers in the nature of a deterrent that procedures exist that may be capable of exposing corruption. It also had the benefit of attracting further evidence. An officer who had previously worked with T2 but who was unaware of his activities until the commission exposed them, brought to our attention another aspect of T2's conduct as a result of what he had heard in the public hearings. At the same time, the public hearings were tempered with provisions for the preservation of T2's anonymity because it was likely that he would be subject to prosecution proceedings in due course. He was given a code name to endeavour to minimise the prejudice that would flow.

We think all those things are significant in that they will be largely available under the Corruption and Crime Commission Bill and will demonstrate how those powers can be successfully and responsibly used. The added benefit under the Corruption and Crime Commission Bill will be the role of the parliamentary inspector. When similar powers are used by the Corruption and Crime Commission - unlike the royal commission, which has a fair degree of independence and autonomy and which lacks a great deal of supervision - the parliamentary inspector will actively supervise activities to ensure compliance with the various statutory provisions that are utilised.

I make the general observation that T2 was a person of interest within the Western Australia Police Service for a number of years as someone who attracted complaints and remained in the Police Service until the proactive investigation carried out by the royal commission. That demonstrates how a body such as the Corruption and Crime Commission can select an appropriate target and use the powers available to it to obtain a result not otherwise available pursuant to the conventional methods available to the Police Service.

The other observation I make by way of pacifying fears that these powers could be used in a widespread manner is that the operation to expose one officer was very resource intensive and involved substantial commitment of resources from the royal commission, similar to those that would be required from the Corruption and Crime Commission. There need be little fear that operations of this nature would be conducted indiscriminately because to do so would utilise all the resources of the commission and produce little result.

Given the argument about whether it is desirable to hear proceedings in public or in private, I take the view that some of the other royal commission hearings on matters of some standing, such as the controversy over the circumstances of the deaths of Stephen Wardle and Andrew Petrelis and the Argyle Diamonds investigation, have been successfully aired in public for a number of reasons,

which differ on each occasion. The Wardle death segment run by the royal commission seemed to be successful. Those who had been agitating for a long time for a thorough and public investigation, particularly young Wardle's parents, seemed to be comfortable at the end of the hearing process that, finally, an extensive and public investigation had been held into the circumstances and the investigation of Stephen Wardle's death. There seems to be a real benefit in running public hearings, even though in the end - I do not question what view the commissioner will take about the facts of the matter - there may not be a finding of corruption, nor may there have been any corruption. The mere fact that a public inquiry was held seems to provide substantial benefit. Similarly, concerning the Argyle Diamonds segment, which is currently under way - again I have no idea what the commissioner's view will be - it seems significant that, even to date, witnesses who have been called have expressed to the royal commission subsequently, their satisfaction that, finally, they have been able to answer some of the allegations which have been in the public arena for a long time, and which I think have been the subject of some publicity. Some of the senior officers have been dissatisfied with the fact that over a number of years their reputation had been harmed by the perpetuation of allegations which, if they had been investigated thoroughly and publicly more than 10 years ago, would not have gained the momentum they had. We think that the public hearings on those matters - even if they do not result in a finding of corruption or indeed if they demonstrate that there was no corruption - have a significant benefit to not only the public at large who may have an interest but also the participants, who finally get an opportunity to clear their name.

We see those subsequent events to the interim report as further justification for the nature of the powers that are to be vested in the Corruption and Crime Commission.

Hon PETER FOSS: Do you see the public disgrace of a policeman, when the evidence is insufficient to justify a criminal prosecution, a desirable or an undesirable outcome?

Mr Hastings: I find it difficult to generalise about that. In some circumstances the public exposure of corrupt activity may be appropriate because it may entitle the Commissioner of Police to take action to terminate the career of an officer, even though the evidence is insufficient to warrant prosecution.

Hon PETER FOSS: You can see why I asked the question. Under the current private system, unless evidence is heard of corruption that leads to prosecution, it is unlikely that a person will be disgraced by evidence that falls short of the criminal standard of proof but which leaves the public in little doubt about the real events. For example, I recall that some of the responses from policemen were that they could not remember what happened.

[11.00 am]

There was a degree of scepticism among the public about the incapacity of some policemen to remember certain events. It would not be sufficient to prosecute but it could well be sufficient for the public to come to the conclusion that a person was a corrupt policeman. That is referring to particular cases in the commission. Looking back on it, do you see it as a desirable or undesirable outcome? I am not expressing my own view as to whether it is desirable or undesirable but I am asking what you think.

Mr Hastings: I think it is a desirable outcome in that the facts are being revealed publicly and there is the ability for the public to judge and the capacity for findings to be made. One of the problems in the past has been that the reliance upon disciplinary proceedings or prosecutions to deal with corruption in the Police Service has been inadequate. Corrupt officers have clearly continued in the Police Service because they could not be shown by disciplinary proceedings or prosecutions to be corrupt. They could still be exposed by the processes of a commission.

Hon PETER FOSS: You have adopted the Queensland model, but you have not adopted it completely in that you have not picked up the concept of other commissioners with a power to

oversee the operations of the principal commissioner. In particular, you referred to the parliamentary inspector as having powers to ensure that things are observed properly, but he does not have any power other than to inquire, does he?

Mr Hastings: To inquire and report.

Hon PETER FOSS: He does not have any power as such to stop anything, does he, whereas the other commissioners in Queensland do have some actual power? Why did you not follow that particular model?

Mr Hastings: I suppose Mr Byrne and I were very much influenced because of our direct knowledge of the operations of the Police Integrity Commission system. In this instance we have gone towards the Police Integrity Commission model in which the inspector is the person who oversees the agency. Our observation is that it has been a very usable system in that people in the Police Integrity Commission are genuinely concerned that their conduct is being monitored by the parliamentary inspector.

Hon PETER FOSS: Your role will be a lot wider than that, will it not, because you will be looking at not only policemen but also the whole range of the public service?

Mr Hastings: That is right, but I understand the Independent Commission Against Corruption is seeking to have a similar appointment of a parliamentary inspector in New South Wales. The end result will simply be a combination of the same functions within the one body but under the same supervision.

Mr Byrne: In addition to that, in the course of any operation people sit down at the beginning and plan what they hope will be the strategic outcome for a particular investigation. If that is not being met during the course of the investigation, decisions are made within the commission's staff to terminate a particular investigation rather than simply carry it on.

Hon PETER FOSS: If I may give an example, one of the concerns you have is that we have civil rights because they are the way in which people are protected from not only corruption but also excessive individual power. Everybody can start out with the best of intentions and for various reasons go wrong, whether a person gets on the wrong side of somebody and he pursues that person out of a sense of malice or somebody happens to be wrong headed because he forms the view that a person is guilty and he pursues that person to the ends of the earth. Whatever it may be, it is always possible for one human being to make wrong decisions; it is harder for two human beings; it is even harder for three human beings to go off on the same strange tack. If you have one person as the decider, what check is there that that person is not following a matter wrong-headedly?

Mr Byrne: Although there might be some powers that are conferred by the commissioner himself or herself, there are other powers that an investigative agency needs to use. It must go to the Supreme Court or the Administrative Appeals Tribunal to obtain telephone taps, surveillance devices and so forth. If the evidence is not there to support the application in the affidavit of the deponent, those powers will simply not be granted. The job will not be able to continue. In addition to that, the inspector is always there at any time to look at any aspect of the investigation.

Hon PETER FOSS: I do not know if you read the report of this committee on the exceptional powers Bill, but one of the ultimate decisions of the committee when dealing with that Bill was that if all these powers are to be conferred, ultimately the protection is the quality of the person who is given the power of decision. The person the power was given to in that instance was a quasi judicial person, a retired judge, a person quite out of the day-to-day happenings of chasing the baddies. This Bill departs from that in that it now gives that power to the super chaser, the chaser of the chasers, the commissioner. It seems to me that we have lost the protection that was given by the exceptional powers Act in that we have conferred those powers on a single person who is engaged in chasing not only corrupt people, but also crime. Therefore, the check and balance that the committee saw there, is no longer there. What is the answer to that?

Mr Hastings: What is added, I suppose, is the parliamentary inspector, so that there is more oversight in the process than there would have been under the previous arrangement in which the special commissioner would have acted.

Hon PETER FOSS: When you say "oversight", in what way do you mean?

Mr Hastings: In the sense that the parliamentary inspector has the capacity to ensure compliance.

Hon PETER FOSS: He cannot ensure anything. He can look.

Mr Hastings: And report.

Hon PETER FOSS: Yes, but the difference is that under the old system the special commissioner either granted or did not grant. It has just been said that investigators must go to court to get approval and they will not get it without evidence. Under the exceptional powers Act they had to go to a special commissioner. Now they do not have to go to anybody. They might have to allow somebody to come in, look around and snoop, but he cannot do anything other than report.

Mr Hastings: Even that was not available under the previous process. Once they went to the special commissioner and he granted approval for the use of the powers, the process was unsupervised.

Hon PETER FOSS: No, he could vary it, call it back or do anything.

Mr Hastings: Yes, but without any supervision. The corruption and crime commissioner still needs to vet the application and make a decision on the grant of the powers, but he or she will do so under the supervision of the parliamentary inspector, which is a form of oversight that did not exist previously.

Mr Byrne: He or she can at any time come in and inspect all the records of the commission, including the operational records. From practical experience in New South Wales, the inspector of the PIC does exactly that; he comes in and has a look. He can range across the entire holdings of the commission. From running investigations at the PIC, one is always conscious of the fact that there is that oversight and the inspector is there to make sure that people are doing the right thing in the right way.

Hon PETER FOSS: You mentioned how the powers were used in New South Wales to detect the murder of the New South Wales member of Parliament, which might appeal to our self-interest. I am sure that these powers can be used to solve any crime more effectively than the powers that the police currently have. I do not think that is the answer. Does the answer not have to be that if we hold civil rights to be important, we either throw that view over and decide that in future what we thought were civil rights are not civil rights any more, or else we argue for a particular mischief that justifies in this particular case the use of those special powers? I can certainly understand the problem with corrupt police because obviously the people who are meant to be doing the job are not doing it. That is the whole reason for getting involved. We could see the reason for it to some extent for organised crime, because those people are corrupting the system by their organisation of crime. However, what justification is there for taking it any further than organised crime? The definition of organised crime is in fact the definition of organised crime. To deal with the sort of case that you mentioned, basically from what you have told me so far, it would mean defining organised crime to mean something that is not organised crime - horse means cow. We had an example of that in the exceptional powers Bill when it came to us.

Mr Hastings: Our recommendation was to use the term "serious crime" rather than "organised crime". I suppose it is a value judgment. An example which readily crystallises the argument is the situation involving the Claremont murders. I would have thought from a community perspective when several murders were apparently attributable to one person, it would be of sufficient gravity to the community that it would condone overriding the normal civil rights in an investigation.

Hon PETER FOSS: Why?

Mr Hastings: To have in the community a person capable of murdering three people is unacceptable from a community point of view and warrants exceptional powers. In New South Wales the crime commission does not normally investigate single murders. The other examples which come to mind - I do not know all of them - involve several murders and a related bashing. I suppose it requires a value judgment of what is of sufficient concern to the community to warrant the use of exceptional powers.

Hon PETER FOSS: It is pretty hard to get the appropriate definition for that in an Act, is it not?

Mr Hastings: Yes.

The CHAIRMAN: Would you see the Queensland model of two other commissioners being in a supervisory role over the chief commission as an impediment to this proposed commission?

Mr Hastings: A considered recommendation in the report was that the body be structured around a commissioner rather than a commission. Primarily for reasons of efficiency and accountability, it seemed to us that the most desirable process was to have an operation run by a person who drove the organisation from a personal point of view and who was accountable for its operations. Our experience was that a commission is an unwieldy and inefficient structure. It is true that it carries with it some safeguards, because the presence of three people for example might mean that if the commissioner became aberrant in some way, there would be some check on his or her activities. With the inclusion of a parliamentary inspector, it seemed to us that the risk of the commissioner acting irrationally was substantially reduced because there would be continual oversight by the parliamentary inspector. One of the other aspects of running one of these corruption investigations that needs to be significantly noted is the need for the operational processes to be quite dynamic and fluent. The imposition of a commission-type structure is undesirable. It would mean that current operational activities, integrity tests, controlled operations and assumed identities, need to be approved at the highest level through a commission, when we need the capacity to act quickly and to approve matters quickly. We saw the much more desirable structure to be one that was led by a commissioner who was in turn accountable to and under the supervision of an inspector.

The CHAIRMAN: You have explained your preference for the current proposed structure. If you did not have the option of the current proposed structure and you had an option of a number of commissioners or an inspector with powers of veto, which would be your preference?

Mr Hastings: The inspector I would think.

The CHAIRMAN: You talked the need for intensive resources to enable particular investigations to be carried out. You gave the example of T2. Can you give a general indication of the sort of resources that were involved in that?
[11.15 am]

Mr Byrne: I do not want to go into exact details about the numbers involved in the covert services arm of the royal commission. However, I can say that many months of investigations were conducted prior to the actual integrity test taking place, which I think was in late January. Those investigations involved at least one operational team of 16 people, including investigators and analysts. Much lead-up work must be done on the principal target - the police officer of interest - and the range of associates of that person. All the intelligence held by the royal commission and other agencies in relation to that person and his associates required one team of 16 people to work flat-out for six months. In addition, with regard to the electronics and surveillance used in the integrity test - I do not want to go into the details - a number of people used equipment that cost a substantial amount of money. That operation also involved telephone intercepts. Monitoring staff and staff from the Anti-Corruption Commission were involved in that aspect of the operation. Telephone or interception capabilities were used. A considerable number of people are involved for a fair amount of time on integrity investigations. Quite a bit of money is spent to achieve a result that may go for only a couple of days in the hearing room. Of course, the most important aspect is

the strategic result from the operation. To answer the member's question, quite a few people were involved in the operation for a considerable period.

Hon DERRICK TOMLINSON: All the powers that have been referred to so far, including integrity testing, controlled operations, assumed identities and telephone interceptions, are used in covert operations. Nobody will know about them except, we hope, the investigators. The public will not know about them until such time as action is taken; that is, criminal prosecution if it is a criminal matter or some other action by an appropriate authority. The exercise of those powers - I think they are absolutely essential to any corruption investigator - will not cause damage if the commission, the commissioner or the inspector properly oversight them. However, the position changes somewhat with regard to hearings, whether they are private or public hearings, because even a private hearing has a degree of publicity about it, as the Miller and Tannin investigations in Western Australia have shown. As much as one might like to protect the integrity of those investigations, they were aired in the Supreme Court. Even if one likes to pretend they are private, in fact, there is a public element about them. That has caused a great deal of embarrassment to the Anti-Corruption Commission. People are named and shamed at public hearings, which is a very serious step to take.

Mr Hastings, I listened to you say that the parliamentary inspector will have a role in the oversight of that. Yes, the parliamentary inspector can audit any investigation, call for any records and command evidence from people. However, having done that, the parliamentary inspector "may refer matters relating to the Commission or officers to other agencies", or he or she "may recommend that consideration be given to . . . ". Mr Hastings, I want you to think about that. That is all. I just want you to think about it. There are two aspects to that. Firstly, although the parliamentary commissioner has powers of oversight, it is retrospective. If a public hearing is held, the naming and shaming will have already happened by the time the parliamentary inspector - or whatever his name is - comes to hear about it. Although we assume the integrity of the commissioner, there have been examples, including the Independent Commission Against Corruption in New South Wales and the Criminal Justice Commission in Queensland, where persons who were quite innocent of anything have been named and shamed. One Premier even resigned. Can you not see that before the commissioner makes a decision on whether to conduct an open hearing, there is a need for referral for a second opinion, as in the case of Queensland's Crime and Misconduct Commission?

Mr Hastings: No. At the end of the day, there has to be a degree of reliance upon the commissioner. One would hope that by selecting the commissioner from, hopefully, judicial ranks, a person of integrity and responsibility will occupy that job. One should not have to dilute that responsibility or reliance by saying to the commissioner that in effect although he is a judge, we do not trust him to make this decision alone and that we must burden him with a second opinion. One of the sanctions available is public opinion. At the end of the day, this organisation has to earn the trust of the public. It will be conducted under intense media and other public scrutiny. If it misbehaves in the sense of naming and shaming in a way that is perceived to be not fair, the word will quickly spread and its reputation will be substantially diminished and its effectiveness will be diminished. I see this as a whole package. I hope the royal commission meets some of these criteria. If it behaves responsibly and with integrity, it will gain a public reputation as an organisation that can be trusted and relied upon. Again, that comes down to very much the leadership of it. Without wanting to personalise our position, I think it is a good example how having the right person in the commissioner's job will ensure that this very responsible role will be discharged in a way that wins public confidence.

Hon DERRICK TOMLINSON: There is a difference between a royal commission and a corruption investigator, in that a royal commission is a very public inquisition. The CCC will have the responsibility for assembling evidence of corruption, criminal misconduct or serious improper conduct. Much of its work will be done in private and much of it will be subject to very strict rules

of confidentiality. I accept your point about the integrity and quality of leadership. I accept that if the commission were to abuse its powers, it would lose the confidence of the public. I would have thought we had learnt something from the ACC about failing to win public confidence. It seems to me that we, as legislators, have a different sort of responsibility not to let the commission fail by one mistake or another, but rather to make sure that fail-safe mechanisms are in place. The fail-safe mechanism in this instance might be a referral to a second opinion before certain of its powers are exercised - certainly the power for open hearings. As far as relying upon the integrity of the officers involved is concerned, we know very well about the Kalgoorlie sting case. I am not quite sure whether he was a detective sergeant or still a senior constable. Detective Sergeant Reilly, in part of the previous investigation, ostensibly by the ACC but in fact by the internal affairs, stepped down and resigned as a result of the investigation. Subsequently, after the case failed, the Western Australian Police Union took an action in the Industrial Relations Commission for the reinstatement of Detective Sergeant Reilly. Commissioner Gregor was rather scathing in his comments about the integrity of the body that was set up to maintain integrity. Although society's ethics tell us to rely upon those in power, a watchdog agency has said there is a limit to the faith and trust we can put in that integrity. We have had examples of that - I will not go into New South Wales and Queensland, but there is an example in Western Australia with the Kalgoorlie sting. I suggest that it is not good enough to say that if the commission fails, it will suffer public opprobrium. As a legislator, my responsibility is to ensure a fail-safe measure is in place. In other jurisdictions the fail-safe measure is a referral. In ICAC, the fail-safe measure is to refer to the Operations Review Committee or in the case of the CMC, it is the four part-time commissioners.

Mr Hastings: I will deal with a couple of issues. Firstly, with respect, I do not think there is a great deal of difference between police corruption royal commissions and standing bodies. In a similar way, the royal commission engages in investigations and operations and gathers evidence in a contemporary sense and then prepares and disseminates that material to other agencies for prosecution. I do not know how the royal commission differs greatly from a standing body. Secondly, although the ACC has suffered embarrassment in the past, it seems to me - we have canvassed this in the interim report - that that was due in large part to the fact that it had no opportunity to demonstrate the good work it was doing by having public hearings. The only publicity it ever received was negative publicity whenever it was caught out preparing a report or making a recommendation that was not available to it. Thirdly, with regard to the Kalgoorlie sting, with respect, I would say that that case demonstrates the effectiveness of the commission concept. That sting came to an unhappy end through no-one's fault in the sense that for reasons which do not matter, the job was not successful in luring Detective Sergeant Reilly into the critical meeting. However, what happened thereafter was somewhat farcical in the light of what was revealed by the royal commission. The whole process that went through the Industrial Relations Commission of him seeking reinstatement and then being dismissed and then appealing would never have happened if there had been a contemporaneous commission hearing in which the facts that we exposed were subsequently exposed at the time and in the face of which he resigned without any form of appeal. In a way, we consider the Kalgoorlie history as something that justifies the body rather than acting against it.

[11.30 am]

Hon DERRICK TOMLINSON: I am not arguing against public hearings. I think there is great value in naming and shaming. However, there is also great danger in naming and shaming. Therefore, I suggest that it might be wise to build into the procedure an approval mechanism that is activated before that action is taken.

Mr Byrne: I give a practical example of how the Police Integrity Commission's public hearings work. First, the commissioner - a single commissioner - must be satisfied that it is in the public interest for a hearing to be held wholly or partly in public. A lot of work is required before the investigators reach the stage of asking the commissioner to approve a public hearing. Notices are

then placed in newspapers. It is publicised that a public hearing will take place. In the background to all this is the inspector, who is aware of these developments and holds regular meetings - it was the case when I was there - with the commissioner. He is aware of the submissions to the commissioner seeking a public hearing. A safeguard mechanism is in place. Someone looks over the shoulder of the commission when it decides to conduct a public hearing. I anticipate that that is what would occur if an inspector were to look over the shoulder of the Western Australian Corruption and Crime Commissioner.

Hon DERRICK TOMLINSON: To your knowledge, has the inspector in New South Wales ever advised the Police Integrity Commissioner to not proceed to an open hearing?

Mr Byrne: Not to my knowledge. However, I can say that some proposals for public hearings put forward by investigative staff did not proceed because the commissioner was not satisfied that it would be in the public interest for those investigations to go public in that way. A number of checks and balances are followed before a public hearing is held.

Hon PETER FOSS: I do not think you have answered Hon Derrick Tomlinson's question. He made a number of points. The first was that there is a difference between a standing commission and a royal commission. As we have seen with the Anti-Corruption Commission, the public tends to measure the success of a standing commission by the number of scalps on its belt. That lack of scalps has certainly been a criticism of the ACC. Therefore, there is a degree of expectation that the commission's performance will be matched by its success in nailing people. I believe that is a difference. The second, and important, difference is that this royal commission is guaranteed to be overseen by a judicial figure. I heard Mr Hastings say that the head of the standing commission will be "hopefully a judicial figure". It does not have to be hopeful. This committee can recommend that the Bill be amended to prescribe that the commissioner must be a judicial figure; that is, either a retired judge or a judge who leaves his judicial position to take the job on. Is there any reason that that provision is not in the legislation?

Mr Hastings: None that I can explain. We recommended in the interim report that a judicial figure would be appropriate, but not an absolute requirement. We may have said that such a figure would be necessary for certainly the first term.

I deal with Hon Peter Foss's earlier point about public perception. I do not disagree that the public looks for scalps. No doubt there will be some criticism of our royal commission. At the end of the day someone will ask about the number of persons who have been prosecuted and convicted. In my submission, it is an inappropriate assessment of the value of not only the royal commission but also the standing commission. It is a bit like giving the Police Service a bad time over clear-up rates. That is a political favourite but it is completely inappropriate because clear-up rates are totally outside the control of the Police Service. That has the negative effect of putting undue pressure on the service to respond to what are perceived to be deficiencies when the rates are the result of circumstances entirely outside its control. This is the same. This organisation will be multifunctional. I keep saying this to various people but it gets overlooked. One of the commission's important functions will be education and research. The educational and research unit will have a large part to play in assisting the Police Service to deal with issues peculiar to it and in assisting other public sector organisations with education and to identify and implement corruption-resistant practices. It would be a completely erroneous assessment of the value of the organisation to hold its success to a number of scalps.

Hon PETER FOSS: With respect, both of you are not responding to the point. You have not answered the questions asked by me or Hon Derrick Tomlinson. You may or may not like the idea or think that the legislative intent of a standing commission has nothing to do with scalps on a belt. However, we are talking about how the public will perceive it. There is no doubt that the ACC is criticised - probably unfairly - because it does not have scalps on its belt. There are a number of reasons it does not. I am sure that most of the things the royal commission has investigated had

already been investigated by the ACC. I understand that the new evidence gained by the royal commission was to some extent the result of its using the resources of the ACC. The difficulty the ACC has had is that, firstly, prosecutions often do not come out the other end. That is a reality of royal and standing commissions. Secondly, it was hamstrung by a number of Supreme Court decisions that limited the ACC's capacity to make any findings and the capacity of the Commissioner of Police to act on things found by the ACC. In the end, it was hamstrung. I am trying to take you back to the political reality. To succeed, an organisation must not only do the job but also be seen to do the job properly. My concern is that any standing commission will be judged on that basis and that people in positions within the CCC may very well respond to that. A judicial person might not; however, somebody who is more involved in the operational superpolice-type of role may feel the necessity to respond to it. I know your procedures. You have told us to trust your procedures as they work very well. As legislators, it is not our role to trust procedures. Our role is to ensure that a mechanism is in place to ensure some sort of check. That is our concern, and I think you should address that instead of telling us that everything is nice and hunky-dory in New South Wales. The CCC will be a different type of commission. Its role will have multiple factors. It will be involved in following up crime as well as dealing with police, public service and political corruption. It will have a very wide range of tasks. The legislation does not appear to contain any real check or balance on the exercise of any of the commission's powers, significant or otherwise.

Mr Hastings: I can be only repetitive and say that the presence of the parliamentary inspector deals with many of your concerns. Further, a joint parliamentary committee will oversight that person's activities. If the public perception is incorrect, the public needs to be educated that it is not the function of this body to count scalps. Presumably members of Parliament will assist in that process of public education and refrain from scoring points at the expense of the commission and the Police Service.

Hon PETER FOSS: We have been urged to pass this legislation with some speediness as it was necessary to assist with certain things. It appeared to me that one of the logical alternatives was to extend the term of the royal commission, but I was given to understand that that was an impossibility. That seems to have changed from an impossibility to a reality. Could you give a bit of insight into how that occurred?

Mr Hastings: It occurred because the commissioner and I had a meeting with the Attorney General on Monday and brought to his attention the fact that two segments of the hearings had gotten behind schedule. The schedule had been for us to finish hearings today to prepare and submit a report to Parliament by 31 August. We indicated the time that has been and still needs to be spent finalising some evidence from the L witnesses about corrupt activities at Cottesloe, Scarborough and other places and evidence about the Argyle Diamonds segment. We said that we would need another five to six weeks of hearings, which would bring us close to the end of August. That would have meant that we would not have the opportunity to produce a report. As a result of the discussion with the Attorney General, it was decided that we would be allowed an extra period of three months to enable us to prepare the report.

Hon PETER FOSS: Given the urgings made to our House to pass this Bill and in view of the fact that we raised the matter of a possible extension, it seems strange that such an extension was not considered earlier. It seems to be rather last minute. I would have thought that you would have considered the matter when I raised it during your briefing to me.

Mr Hastings: We discussed it, and I conceded that it was a possibility. We had been optimistic that we would be able to catch up to our schedule, which, as I said, was to finish the public hearings this week. It since became increasingly clear that we could not. We held off as long as we could. In the end, we felt that we needed to bring the matter to a head. Accordingly, the commissioner made an appointment to see the Attorney General on Monday of this week.

Hon PETER FOSS: Can you see my point? The Parliament has been asked to deal with this legislation with somewhat less than usual care. It was suggested to you that an alternative would be to extend the term of the royal commission. I would have hoped that for that purpose, and if only for that purpose, more serious consideration might have been given to an extension at an earlier stage.

Mr Hastings: It has always been my specific aim to finish in time and under budget, to use the words that Ian Temby, QC now disseminates regularly to refer to his triumph.

Hon PETER FOSS: That sounds like a scalp on a belt!

Mr Hastings: That is right. I personally was very reluctant to forgo the opportunity to finish the commission in the time allowed, which was before 31 August. It was only in the past two weeks that it became clear that we simply could not finish the hearings in the time frame.

Hon PETER FOSS: From my perspective, it seems strange that it was impossible to accommodate Parliament but that it was possible to accommodate witnesses. Can you understand our concerns that we did not get quite the same consideration that your attempt to finish by a particular date received?

Mr Hastings: Well, I can only tell you the history of my dealings with the Attorney General, which is as I have described.

Hon PETER FOSS: Did you not consider extending the term to accommodate Parliament?

Mr Hastings: No. The basis on which we approached the Attorney General for an extension of time was that it would enable us to finish the business of the commission.

Hon PETER FOSS: Were you not asked beforehand whether that could be done?

Mr Hastings: No.

Hon PETER FOSS: Did nobody ask you beforehand whether it was possible to extend the commission's term to accommodate us without excessive expenditure?

Mr Hastings: I suppose the more pertinent question is whether it would have been necessary to extend the term of the royal commission earlier. We were certainly not asked that; nor did we have a firm view prior to last week about whether it was necessary to extend it.

Hon PETER FOSS: Did nobody ask you whether it would be practical to do so?

Mr Hastings: In terms such as that and that I can recall, no.

Hon PETER FOSS: Thank you.

Hon DERRICK TOMLINSON: I refer to clause 4 of the original Bill and the definition of misconduct. A substantial part of the corruption and serious and improper conduct provisions are taken from section 13 of the Anti-Corruption Commission Act. The provisions in the ACC Act regarding criminal conduct are restricted to sections 552, 553 and 558 of the Criminal Code.
[11.45 am]

You have expanded it somewhat in clause 4(c) of the Bill, which provides -

> a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment;

That wide brief will be available to the Corruption and Crime Commission. Not only will the body have a very broad canvas of public officers for whom it is responsible, but also it will be responsible for an even broader canvas of offences than those for which the Anti-Corruption Commission was responsible. Did you give any thought to limiting the responsibility of the CCC to matters of serious conduct which, under the Bill, the commission must take into account before deciding when and who will take further action? Did you consider limiting the responsibilities of the CCC?

Mr Byrne: The answer is yes, but the reason the provision goes to two or more years imprisonment is that corrupt or criminal conduct can occur over a vast range of activities. If you want to properly investigate corruption and make recommendations about how an organisation can become corruption resistant, it is absolutely imperative that you are able to investigate across all levels of activity. A person who commits offences or corrupt conduct at the higher level may also be doing so at a lower level, which might be punishable by, say, two years imprisonment. The idea is that if you are to address the corrupt or criminal conduct of a person or group of people, you need to be able to look at all that person's or group's activity. The other point is that it is not just about getting the big fish. If you are trying to spread a message of corruption resistance and prevention within, say, the public sector, it may be appropriate to go for a minor offence, because the investigation of that minor offence and the result of the investigation might deliver a better strategic bang at the end of the investigation by having a deterrent effect on persons engaged in lower level corruption.

Hon PETER FOSS: It distorts the idea of corruption. What if a public servant accidentally killed somebody when driving a vehicle in the course of his or her government employment? Would that not be caught?

Mr Byrne: If the driver of the vehicle were in his or her official capacity -

Hon PETER FOSS: Dangerous driving causing death and manslaughter are offences that are punishable by two years imprisonment. They appear to be among the offences that would be caught by the definition if they occurred during the course of a person acting as a public officer.

Mr Byrne: The Corruption and Crime Commission will not have to investigate every matter. It could refer such a matter to the Police Service. That would be the appropriate body to investigate a matter such as that.

Hon PETER FOSS: I am asking about the definition. Is it covered? The question Hon Derrick Tomlinson tried to ask was whether you should try to limit it to something that in ordinary parlance is considered to be corrupt conduct.

Mr Byrne: It is a matter of deciding which matters you will investigate so that a strategic result can be delivered for the commission at the end of the day, so that it fulfils its functions.

Hon PETER FOSS: We are a Parliament; we write laws. Those laws set the boundaries. We could say, "You are a corruption commission so you can investigate anything you like, as long as you think it will help your outcome, which is to find corruption." However, we do not say that; we define what the CCC can do. Although this is a nice, broad definition, is there not a problem with it? Did you think to limit it in some way to what a normal person would regard as being corrupt?

Mr Byrne: The question we were asked was whether we gave consideration to that, and the answer was yes.

Hon DERRICK TOMLINSON: I will explain my concern. This is the ACC structure that you have retained in the Bill. Sections 14 and 16 of the Anti-Corruption Commission Act cover mandatory and voluntary complaints, of which there have been 600 a year. The process is one of evaluation, preliminary inquiry and investigation. While you have, thank God, avoided that prescription in the legislation, it will be part of the process, because the CCC will have to make a decision about further action. It will go through that process. The CCC will cover the full range of public officers from the Executive Government to the janitor at the Shire of Wiluna. Hence, I anticipate that the CCC will get 600 complaints a year, which is the number the ACC received. That is time consuming, resource demanding, not very efficient and duplicative, because we also have the Ombudsman, the Commissioner for Public Sector Standards and the public sector investigations unit of the Police Service. All those agencies can deal with improper conduct, serious improper conduct and complaints about conduct. I agree that what might seem to be the most insignificant misdemeanour might uncover festering or endemic corruption, if the

investigation were any good. There is provision for that. Clause 34 covers the matters to be taken into consideration. It is not just the authority of the public officer or the seriousness of the conduct, but also the need for an independent investigation to be undertaken. If a police officer crashed his vehicle and left the scene without reporting the accident, that could be considered to be just a minor traffic offence and he would avoid being breathalised. Therefore, he could not be charged for driving under the influence of alcohol. The CCC will have the capacity to investigate what would seem to be even the most minor misdemeanour. I am concerned that you will be exposing this new body, which must establish its credibility very quickly in the light of previous history. It will have a greater range of responsibilities than the ACC, because the nature of criminal involvement has been changed. That was the reason for my question. Did you seriously consider making this body a truly specialist corruption and organised crime body rather than a postbox from which complaints could be sifted and sorted, some of which would be seriously investigated by the commission itself?

Mr Hastings: That was quite deliberate. I see the CCC as an external oversight agency. It will have a strategic function of overseeing not only the Police Service but also the public sector. It needs to know about and have come into it as much information as possible about complaints about the conduct of the public sector. It will have the capacity to distil that information so that it keeps to itself investigations that it regards as significant and sends off other matters to other authorities for further investigation. Unless it has that broad view of what is happening in the public sector, it cannot effectively discharge its function, which I keep harping on, of education and research. That, of course, is one of the reasons we have suggested that the function currently exercised by the Ombudsman of overseeing police internal investigations be moved into the Corruption and Crime Commission, because we think the external oversight agency should have an overview of all the relevant activities so that it can form strategic policies and assist those public sector organisations to implement them. I am comfortable with the idea that the CCC will attract 600 complaints a year - the more the merrier, as far as I am concerned.

Hon DERRICK TOMLINSON: God bless the commissioner.

Mr Hastings: Others might not share that view later.

The CHAIRMAN: Clause 9 provides that, before the commissioner is appointed, the Premier must consult with the parliamentary leader of each party in the Parliament. This is also a requirement under clause 189 in relation to the appointment of the parliamentary inspector. The term "party" is not defined in the Bill. What is the term "party" intended to cover, as the Bill does not define who will determine what is covered by that term?

Mrs Taseff: This part of the Bill was included on specific instructions from the Attorney General. As I understand it, it is not a novel clause; a section in another statute mirrors this section. From memory it is the Electoral Act.

Hon PETER FOSS: It is defined in that Act.

Mrs Taseff: Perhaps that question is best addressed to parliamentary counsel. Given that the term is not defined in this Bill, it would take its ordinary and natural meaning. It would be left to the Premier to determine what that was at the time of consultation. There was no particular reason for not defining the term in this Bill, as far as I am aware.

Hon GIZ WATSON: That could pose an interesting question for a party that does not have parliamentary status and does not have a leader, such as mine.

Mrs Taseff: It was not an instruction of mine to parliamentary counsel that the definition ought to be excluded.

Hon PETER FOSS: We have an interesting situation in that the Greens (WA) is a party under the Electoral Act, under which the term is defined, but it is not a parliamentary party under the Electoral Act because it does not meet the number of members required in the lower House for it to constitute a party, but it has the right number in the upper House.

The CHAIRMAN: Clause 10(2) relates to the qualifications for appointment as commissioner. Does this clause enable practitioners or judicial officers from other jurisdictions within Australia to be eligible for appointment if they are not practising barristers of the High Court of Australia, as required in clause 10(2)(b)? For example, would a Senior Counsel from Queensland or a Supreme Court judge from Victoria be eligible?

Mrs Taseff: So far as my instructions to parliamentary counsel were concerned, that was the intent. I note that the phrase "legal practitioner" is defined in the Bill by reference to the Legal Practitioners Act. I do not have a copy of that Act with me. Not knowing the specific definition, I cannot say whether such a person would fall within clause 10(2)(a).

Hon PETER FOSS: A person would have to be admitted in Western Australia.

Mrs Taseff: Right. As the Bill is presently drafted, such a person would not be eligible unless he was admitted here. That certainly was not the intent.

The CHAIRMAN: Clause 10 provides that the requisite legal experience for appointment as a commissioner includes judicial service. In relation to the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill 2001, the committee recommended that serving judges be excluded from acting as a special commissioner on the basis that to do so would give rise to the possibility that the legislation might be subject to constitutional challenge. Can a serving judicial officer be appointed as the commissioner?

Mrs Taseff: There is nothing to prevent a serving judicial officer from being appointed as the commissioner, provided that he or she no longer continued to serve as a judicial officer. I refer to schedule 2, clause 4 of the Bill, which envisages the commissioner as being somebody who, immediately before his or her appointment to the office of commissioner, was a judge of the Supreme or District Court. You will note that the Bill is drafted on the assumption that that person would have ceased to be a judge at the time of appointment to overcome constitutional problems that would face a serving judge appointed to that position.

Hon PETER FOSS: It envisages it, but does it actually require it?
[12 noon]

Mrs Taseff: No, it does not.

Hon PETER FOSS: If they resign, the problem is solved. Does anything stop them from saying, "I'm going to be a judge and a commissioner"?

Mrs Taseff: Well, it would certainly call into question the validity of the appointment as commissioner.

Hon PETER FOSS: How?

Mrs Taseff: I would have thought constitutional problems would be created.

Hon PETER FOSS: Do you mean against the state Constitution?

Mrs Taseff: It was certainly the intent that a serving judge would resign.

Hon PETER FOSS: You could be right.

Hon DERRICK TOMLINSON: Can a judge who steps down from the bench to become a commissioner return to the bench?

Mrs Taseff: That right is preserved in the Bill.

Hon PETER FOSS: Does that have any constitutional problems?

Mrs Taseff: Not as far as I am aware, but perhaps I should take advice from the Solicitor General on that matter.

Hon DERRICK TOMLINSON: When Judge Barry O'Keefe was appointed as ICAC Commissioner, the NSW Parliament made a special provision to enable him to return to the bench. Is that covered?

Mrs Taseff: I refer to clause 4(4) and (5) of schedule 2, which purports to give a right of reappointment. I can certainly undertake to take advice from the Solicitor General on that question, and draw it to the attention of the committee if the Solicitor General's view is that it would cause a constitutional problem.

Hon PETER FOSS: Can that be both ways - why they have to cease to be a judge and why they can go back to being a judge?

Mrs Taseff: Yes.

Hon PETER FOSS: Thank you. What happens if in the meantime the maximum number of judges set in the Supreme Court Act has been reached? I suppose this overrules it.

The CHAIRMAN: Clause 35 relates to notifying a person who has made an allegation if the commission decides to take no action on the allegation. The committee notes that section 26 of the Anti-Corruption Commission Act 1988 provides that a person investigated can be advised of the outcome of the investigation. Is there provision for a person against whom an allegation has been made to be notified that the commission has decided to take no action or otherwise advised of the outcome of the investigation? I refer to question 4.

Mrs Taseff: No, there is not.

Hon PETER FOSS: Is there any particular reason for that? Is that an oversight or an intended result?

Mrs Taseff: It was intended that the communication of such matters be within the discretion of the commissioner. If the commissioner considers it to be in the public interest to disclose that information, there is no impediment to the information being disclosed; however, it will remain at the discretion of the commissioner. That was done for operational reasons. Basically, it will give the commissioner the right to disclose that information if he or she is convinced it is in the public interest to do so. If there is a reason known to the commissioner for the information not to be disclosed, and that reason would best serve the public interest, there is no obligation to disclose.

Hon PETER FOSS: I can understand the reasons for that position. It may be decided not to take action because insufficient information is available to take action, and a note is taken to think about it later. This Bill differs from other measures in that a person can make it public that an allegation has been made. That was not the case with the ACC legislation. Under those circumstances, the subject of a public allegation should have some right to know whether the matter will be proceeded with.

Mrs Taseff: The fact that it was made public that an allegation has been made is a factor that will weigh on the commissioner in deciding whether to disclose the information.

Hon PETER FOSS: The Government did not take up my suggestion that it could be said that an allegation has been made, but it had the capacity to carry with it the imputation that there were grounds for that complaint; that is, rather than the usual rule that people immediately assume that everybody is innocent, perhaps they assume there is some basis for the complaint. That was not taken up. Why not? Perhaps Mr Hastings could respond.

Mr Hastings: No. I am not able to assist.

Mrs Taseff: I had specific instructions from the Attorney General on this matter.

Hon PETER FOSS: Was that to not put that suggestion in the Bill?

Mrs Taseff: It was not specifically the matter you raised, but just that it should be as it is.

Hon PETER FOSS: Was it considered?

Mrs Taseff: I am trying to remember whether it was even a suggestion I was aware of.

Hon PETER FOSS: I raised it at a briefing - I think you were at that briefing.

Mrs Taseff: There was a briefing I did not attend that you attended. I am afraid I do not recall you raising the suggestion.

Hon PETER FOSS: I raise it again. I do not have a problem with the public statement that a complaint has been made. I only suggest that it carries with it an imputation that there are grounds for making the complaint. If you did not have grounds for the complaint, you could be sued for defamation rather than just saying, "Well, I just said I made a complaint." Do you understand?

Mrs Taseff: Yes. You raised that particular clause at one of the briefings, but you did not make that suggestion at the briefing I attended. Mr Hastings might have made the point that the very fact of stating that you have made an allegation could possibly carry a defamatory -

Hon PETER FOSS: Problems arise with it. The ordinary person would think the allegation would carry defamatory imputations at least, but case law does not always work that way. Have we made it clear that as a matter of defamation law, it has the capacity to carry a negative imputation? Therefore, His Honour would be satisfied. You can make the complaint if you want, but if you are sued, you must be able to show you had basis for making the complaint.

Mrs Taseff: It is not a suggestion that I have taken to the Attorney General. I could do that, if you like.

Mr Hastings: The issue with question 4 relating to an investigation, particularly a matter that goes public, is that the commission has an obligation to reach a conclusion on the investigation and to abide by clause 22, which provides for assessments and opinions. In the normal course of the processes of the hearing, draft conclusions would be reached and copies provided to officers. An opportunity is provided to respond, and a final opinion and conclusion are reached. By that process to bring the investigation to an end, there would be a form of notification for those involved.

Hon PETER FOSS: You talk always in terms of officers, but it goes further than only officers. I am reminded of Mr Greiner's situation in New South Wales - it is not a bad example. By the time he got his vindication, it was a bit late. The capacity in public life, for instance, to go to an election with an allegation that had not been dealt with hanging over the head could be negative.

Mr Hastings: Yes. I agree.

Hon PETER FOSS: Would it be possible to put it the other way around; that is, people should be advised unless there are public policy reasons for not doing so?

Mr Hastings: I am sorry; I had gone back to the earlier issue of the notification of the outcome of taking no action or otherwise.

Hon PETER FOSS: I am, too. I can see reasons sometimes for not telling a person against whom a complaint was made of the outcome of the private investigation - mainly, because you intend to keep an eye on that person. On the other hand, there seems to be a public policy benefit in telling people about the allegation, unless a public policy detriment is involved. Do you see a problem with that being expressed in the Bill?

Mr Hastings: Not for me, no.

The CHAIRMAN: Clause 58 appears to replicate section 55 of the Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002. Why has the time frame for the report on the use of the exceptional powers been increased to five days from the three days set out in section 55 of the Criminal Investigation (Exceptional Powers) and Fortification Removal Act?

Mrs Taseff: The time frame was increased in response to feedback from, I think, the Police Union and definitely the Police Service. It was drawn to my attention that it may be difficult to comply with the three-day requirement in physically remote areas, over the weekend or in other situations. It was for those considerations that the time frame was increased.

The CHAIRMAN: Clause 65 provides that a police officer responsible for a controlled operation or integrity testing - where an exceptional powers finding has been made - must give a report to the Commissioner of Police at least once every six months setting out particular matters. Clauses 121 and 123 provide that an authority to conduct a controlled operation or integrity testing must specify a period not exceeding six months for which it is to be in force. Given that an authority may be in force for six months or less, how is the reporting requirement in clause 65 activated? Please advise the reasons for the reporting requirement being set at six months?

Mr Byrne: Perhaps I can answer the second part while Judy looks at the first part. Harking back to the T2 operation, corruption and organised crime investigations often take a long time. On occasions, the exceptional powers may be used a number of times in the investigation. It was set at six months by both the service and the royal commission - maybe the ACC; I do not know. This was to ensure that the course of the investigation proceeds without having to go back too often to file reports in relation to the use of the powers. As it takes a long time to do investigations properly, if earlier reporting conditions were required, there may not be much to report for the expenditure of resources in filing the report. A better picture of how the powers are used - the purpose of report - is formed when waiting six months to file the report. It is for operational reasons.

Mrs Taseff: I am not able to answer the question at this stage. I will look at the clauses in more detail. I can inform the committee that the portion of the Bill relating to controlled operations and integrity testing was based on model provisions developed by a multijurisdictional working party; namely, the Standing Committee of Attorneys-General and Australasian Police Ministers Council Joint Working Group on National Investigation Powers. The task force has worked on model provisions for some time trying to tie together some provisions to apply in all state jurisdictions of Australia. Then, when multijurisdictional investigations of crime take place, standard provisions would apply to controlled operations and integrity testing. Those provisions were drawn upon. I would like an opportunity to have a closer look at them before I answer that question.

Hon PETER FOSS: The question refers to cancelling, but it may just expire. There appears to be a third possibility in clause 65(1); that is, the authority expires.

The CHAIRMAN: Clause 89 provides that the commission may choose to provide certain reports to the minister or another minister or a standing committee instead of it being laid before each House of Parliament. Why is this clause required?

Mrs Taseff: That clause is based on -

Hon DERRICK TOMLINSON: The ACC Act, section 29.

[12.15 pm]

Mrs Taseff: Yes. It is an existing provision in the Anti-Corruption Commission Act, and was carried over. I cannot take that matter any further.

Hon DERRICK TOMLINSON: This is an anomalous provision because there is no minister. This body is accountable to the Parliament. In that sense there was no minister for the ACC. The Attorney General is certainly not the minister and yet the reference is to "the minister". The minister is not defined in the Act.

Mrs Taseff: Surely the Interpretation Act defines the minister to whom the administration of the Act is committed. I do not have my copy of the Interpretation Act with me.

Hon PETER FOSS: He would have nothing to administer. It seems strange to have to report to a minister. Why report to a minister? Notwithstanding that it is in the current Act, do you see a commissioner ever using this power? I can see the need to report to a standing committee.

Mr Hastings: It could fit in with the capacity to form assessments and opinions if there was a particular problem within a minister's department.

Hon PETER FOSS: That would be instead of being tabled in the House.

Mr Hastings: Yes, if it was of an administrative or strategic nature it may be useful to submit a report on the efficiency of bus timetables or whatever other administrative matters could be dealt with, which would fall short of calling for a report to Parliament on corruption.

Hon PETER FOSS: I cannot see a problem with the Corruption and Crime Commission having the power to report to a minister. However, it seems rather strange to require that rather than the tabling of a report in the House. The standing committee should know everything that the commission is doing. It would be difficult to supervise the commission, even if it is only from an administrative aspect, if we did not know what it was up to.

Mr Hastings: I am sorry, but I cannot assist much more than that.

Hon DERRICK TOMLINSON: Given that it is looking at serious improper conduct, it saves duplication in some respects of the responsibility of the Ombudsman. The Ombudsman certainly may report to a head of department and, if dissatisfied, may then report to the minister. I can anticipate some of the matters that might come under the notice of the commissioner. It would be appropriate for the CCC to report to the minister if the commissioner were dissatisfied with the department's action on his or her advice.

Mrs Taseff: Section 12 of the Interpretation Act covers the matter.

The CHAIRMAN: The combined effect of clauses 94 and 157 appears to be that a person may not use the privilege of self-incrimination as a basis for failing to comply with a notice under section 94 to provide a statement of information. However, clause 94(6) appears to provide immunity against use in criminal or civil proceedings except for the circumstances set out in the clause. It appears that there is direct use of immunity but not derivative use of immunity. Can you please advise the committee of the justification for the removal of the privilege of self-incrimination? Please also advise the committee why derivative use of immunity has not been provided?

Mr Hastings: I am reminded that the interim report recommended the inclusion of clause 94(6)(c) and (d) based on the experience in New South Wales during the Wood royal commission hearings and the difficulty of taking consequential action against officers who were the subject of evidence of corruption. In the end, it was resolved by statute with the inclusion of what was originally section 181B of the Police Act and it has been perpetuated in permanent form in section 181D.

Hon PETER FOSS: I can understand why it has been given wide direct use. I think the question was, why did you permit derivative use.

Mr Hastings: I think that was a deliberate decision. Unless derivative use is permitted, part of the value of using compulsory powers is lost. One of the functions of using compulsory powers to call people in to produce information is the ability to further the information in order to go to other sources because that information in itself is not admissible. That investigative technique was very much part of the success of the Wood royal commission and other organisations. It would be removed if there was a bar on derivative use.

Hon PETER FOSS: It would probably also result in endless litigation.

Mr Hastings: Yes. It is very difficult to police.

Proceedings suspended from 12.25 to 12.35 pm

The CHAIRMAN: The committee has had a bit of a discussion. We thought that we could send you most of the remaining questions because they probably require some research. We have one question we wish to ask you now, and that is question No 20. If you are happy to proceed in that way, perhaps you will send us the answers to the remaining questions which we will send to you in the form of a letter.

Mr Hastings: Yes, of course.

Mrs Taseff: The committee may get better answers.

The CHAIRMAN: We are quite happy with the answers so far, but you would probably like to answer those questions in a little more detail. Clause 2(1) of schedule 3 permits the parliamentary inspector to be appointed on a full-time or part-time basis. It appears that it is envisaged that it may be a part-time position. Why is this the case?

Mr Hastings: It is because of the nature of the role which does not justify a full-time position basically. It is important that there be an inspector to carry out the oversight of compliance with various procedures. It is simply not a job that requires in any sense a full-time commitment. Mr Byrne could probably tell you more specifically what happens in the Police Integrity Commission, in which the inspector is part-time.

Mr Byrne: There were occasions when the inspector was very busy and there were occasions when he was not. Essentially, in practical terms, the reason it happened is that around reporting time the inspector was obviously in most days of the week. He - I say "he" because it was a male on both occasions and there have been only two inspectors at the PIC since it came into existence - had a separate office in the city and also offices within the body of the PIC. The inspector came in and had full computer access right across the board. There were occasions when the inspector would just come in at any time as he saw fit. On other occasions, he would come in on a weekly basis and have perhaps a one or two hour meeting with the commissioner on Wednesday. In his office outside the PIC he would receive complaints or some correspondence from members of the public about the operations and the functions of the PIC. I do not know how much time the inspector spent at that other office, but certainly the number of complaints against PIC officers was very low. The inspector did the auditing of the functions on a part-time basis. There was just not enough work to justify a full-time position. There were occasions, particularly around annual report time, when he was in every day.

Hon PETER FOSS: The concern I have is that we seem to be speaking all along as if we are talking about a police integrity commission, when we are not.

Mr Byrne: I use that just as an example.

Hon PETER FOSS: I understand that, but we are not talking about that; we are talking about a much bigger body. As a result, I think, of the understanding of Mr Hastings's answer, if it is to have a general oversight over the entire public service, receiving and sifting complaints in order to feel the water, as it were, it will be doing an immense amount of intelligence gathering. I am not sure how on earth it will do it. I am starting to work out what the budget might have to be. Presumably, if the inspector is to be this person who ensures the integrity of the commissioner and is aware of everything that the commissioner is doing, it starts to become a massive job just to sort the way through the detail. Part of the problem with this modern age is not absorbing the information but absorbing the vast quantity of data. You will have one enormous quantity of data, as I think we have heard in evidence today. I am just wondering how this person will supervise such a massive operation.

Mr Hastings: The priority of course is the use of the exceptional - with a small "e" - powers or unusual powers which are obviously a cause for concern because they interfere with the normal exercise of human rights. It seems to me that the most important function that the inspector has is to ensure that the way in which those powers are exercised is in compliance with the legislation.

Those functions are not exercised frequently. There are a very small number of controlled operations, integrity tests, warrants under the Act and so forth. That task does not take a lengthy period of time. How many public hearings there will be is, of course, a matter of conjecture, but in any event, the role of the inspector in monitoring decisions about going public and so forth is unlikely to be particularly burdensome either. I do not think that those critical functions would take a lot of time. There would a discretional function as to the extent to which the inspector became embroiled in general operations and research work.

Mr Byrne: If the inspector wanted to be proactive and wanted to look into the intricate details of every operation, it could warrant a full-time position, but in the reactive sense, I do not imagine it would.

Hon PETER FOSS: What was the relative status of the person appointed commissioner of the PIC and the person appointed inspector of the PIC?

Mr Byrne: The first commissioner of the PIC was a District Court judge and the first inspector of the PIC was a retired Supreme Court judge. The second commissioner of the PIC was a lawyer who had not been a judge, and the second inspector of the PIC was once again a retired Supreme Court judge.

Hon PETER FOSS: It seems to me that there is a sort of innate respect for the position, quite apart from the position that the person is holding as a parliamentary inspector, if the person happens to be a retired judge. I could see a difficulty if the commissioner was a Supreme Court judge on assignment and the inspector was a person who had never held a judicial position. I realise it has to do with appointment, but it seems to me that the roles might need to have the inspector slightly further up the ladder of qualification.

Mr Hastings: I would agree in principle, yes. It has certainly worked well in New South Wales. The person who has been the inspector has been a person of eminence who attracted respect. It seems that on a working level that person was given that respect. Any criticisms or comments were taken very seriously.

Mr Byrne: The other inspector position is the Inspector-General of Intelligence and Security in the commonwealth who oversights the activities of the Australian Security Intelligence Organisation. I do not know of the background of that person. It is a different type of environment. It may be something that we can have a look at by way of comparison.

Hon PETER FOSS: Before the matter came to us, the qualifications for the parliamentary inspector were almost non-existent, were they not? Did you give any thought to specifying a more senior appointment?

Mr Hastings: I think in the interim report we had contemplated it being someone who was qualified for judicial office, but when the Bill was drafted it did not include that provision.

Hon DERRICK TOMLINSON: I would like to go back to the comparison with the PIC inspector, because New South Wales has the PIC and PIC inspector, who is part-time. In my discussions with both the incumbent and the previous inspector, it was said that part-time was all that was required.

[12.45 pm]

I am reinforcing what Mr Byrne said. There are times when it is busy and there are times when it is not so busy. However, in addition to the Police Integrity Commission, there is also the Independent Commission Against Corruption with its operational review committee. The ORC is a separate body with a separate oversight group. The crimes commission has a separate oversight group, I think it consists of the Commissioner of Police and a couple of other people of that standing. There are three bodies with three different forms of oversight mechanisms, but each has an oversight mechanism. New South Wales has a larger population and much more crime than we have in

Western Australia. You said that when the commission started - and reference was made in the interim report of the royal commission - Queensland's Crime and Misconduct Commission would be used as the model. However, we now have in the Corruption and Crime Commission Bill, the equivalent of the ICAC and PIC models, and the crimes commissioner going again from the Executive Government right through the full range of public officers within its purview. I think the Queensland CMC parliamentary inspector is a full-time appointment appointed by the Clerk of the Assembly. I am not quite sure, so I will check that. Given the breadth and the workload that the CCC will have, even though Western Australia is a small State, I anticipate that the parliamentary inspector might be a much busier person than the PIC inspector in New South Wales.

Mr Hastings: It is very difficult to make a comparison because the PIC must look after 14 000 police in the New South Wales Police Service, and the WA Police Service has only 6 000 employees. Another aspect is the special powers provision for the organised crime function. That legislation has not been used yet in its current format. I query how often it will be used in the future, which would call for supervision by the inspector.

Hon PETER FOSS: It has been a matter of comment.

Mr Hastings: It is very difficult to predict what burden will fall upon the inspector.

Hon DERRICK TOMLINSON: I am mindful of the chairman of the ACC's comment that when he was invited or persuaded to do the job by the outgoing official corruption commissioner, he was assured it was only a two day a week job that he could quite comfortably handle from Eagle Bay. I think Mr O'Connor would tell us different.

Hon PETER FOSS: The reason the exceptional powers have not been used is there is no special commissioner. It is pretty hard to use those powers when there is not one.

Mr Hastings: It is a question of which comes first. There may not be a special commissioner because there is no work.

Hon PETER FOSS: Who knows?

Hon DERRICK TOMLINSON: I think we should have a look at the CMC model because it is quite different from the PIC model.

The CHAIRMAN: Thank you very much for coming here today and sharing your knowledge with us. You will each get a letter from the committee with the remaining questions. Thanks very much for your candour and honesty.

Committee adjourned at 12.48 pm