

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

ANNUAL REPORT REVIEW

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 17 OCTOBER 2012**

Members

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

Hearing commenced at 10.18 am**COLVIN, MR CRAIG****Acting Parliamentary Inspector of the Corruption and Crime Commission, examined:****ALDER, MR MURRAY****Assistant to the Parliamentary Inspector of the 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 speak with the Acting Parliamentary Inspector of the Corruption and Crime Commission, Mr Craig Colvin, SC, and to the Assistant to the Parliamentary Inspector, Mr Murray Alder, about the annual report of the Office of the Parliamentary Inspector for 2011–12 which was tabled in Parliament on 25 September 2012. This is an annual public meeting convened by the committee and it is also the first time that Mr Colvin has formally attended before the committee since being appointed acting parliamentary inspector earlier this year.

I would like to take this opportunity to introduce myself as the Chair of the committee. To my left is the Deputy Chairman, Mr John Hyde, MLA, the member for Perth. To his left is Hon Matt Benson-Lidholm, MLC, the member for the Agricultural Region. To my right is Mr Frank Alban, MLA, the member for Swan Hills.

The Joint Standing Committee of 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 you 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. 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. First, 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: Mr Colvin, just for your awareness, the normal process for the committee is that we would direct questions through you and then you would utilise the assistance of Mr Alder completely at your discretion. I commence by turning to the annual report that was tabled in

Parliament last month. In particular, I understand that a total of 43 matters were undertaken by the parliamentary inspector's office during the reporting period. The office concluded 40 matters during the reporting period, some of which originated prior to the beginning of the reporting period. It would be helpful for the committee to understand how many of the 43 matters that were undertaken in the period were brought to a conclusion.

Mr Colvin: There were 35. Of the 40, 35 relate to the reporting period and five were from an earlier period.

The CHAIRMAN: As at today's date, is it possible to know how many matters are currently active?

Mr Colvin: There are eight separate files at present.

The CHAIRMAN: Are those eight the difference between the 35 and the 43 or is that just a coincidence?

Mr Colvin: I think that is just a coincidence because some have arisen since.

The CHAIRMAN: It may be the case as far as the committee understands that the Office of the Parliamentary Inspector receives more than the 43 allegations of complaints that have been referred to in the annual report. For example, the recent annual report of the Corruption and Crime Commission stated that the CCC assessed 3 047 complaints and notifications concerning 5 912 allegations during the same reporting period. Are you in a position to indicate approximately how many total complaints and/or allegations were received by the Office of the Parliamentary Inspector during the reporting period?

Mr Colvin: Records are not kept that relate to those. What is reported on are those that involve the exercise of statutory functions and satisfy that requirement. My advice is that there are about as many that proceed as do not, so there are about as many again as those that are reported on that are the subject of some inquiry but do not move to the stage of the exercise of statutory functions.

The CHAIRMAN: The 43 matters that were undertaken in 2011–12 are 43 matters received that are considered to fall within the office's jurisdiction but in addition to that, the office receives complaints in a generic sense, some of which do not fall within the jurisdiction and records are not kept as to how many there might be.

Mr Colvin: That is right. In some instances they might simply be an inquiry—somebody asking about what should happen in relation to something. Records are not kept of those.

The CHAIRMAN: I wanted to then turn to the office's audit function. I note that the 43 matters undertaken were nine less than in the previous reporting period and, similarly, 40 matters were brought to a conclusion; that is, five less than in the previous reporting period. This reduction in investigative work resulted in what appears to have been a corresponding increase in discharge of the audit function of the Office of the Parliamentary Inspector. Is this a fair appraisal of why the key efficiency indicator cost of the audit function as a percentage of total cost of operation increased from 39 per cent to 52 per cent year on year?

Mr Colvin: Yes.

The CHAIRMAN: Does this dilution in the investigative work indicate an increased general level of satisfaction with the CCC by citizens of Western Australia?

Mr Colvin: It would be difficult for me to answer that question. It does reflect the fact that the previous full-time parliamentary inspector, Chris Steytler, was able to deal with a lot of matters that had been there for some time. With those matters being dealt with, there is now time to attend to the audit functions and that is where the focus is as a result of those matters having been dealt with.

The CHAIRMAN: Nevertheless, it is fair to say that the reduction in numbers is a positive trend and therefore there is the capacity to further engage in audit.

Mr Colvin: Yes, that is definitely a positive trend. The report reported on cooperation of the commission at paragraph 5.5 in relation to both acting commissioner Mark Herron and commissioner Roger Macknay, QC, dealing with matters of complaint, which means that those procedures are able to be undertaken much more efficiently.

Mr F.A. ALBAN: Still with reference to the audit function, is it preferable for the Office of the Parliamentary Inspector to devote in the vicinity of 50 per cent of its total resources to the audit function? How important is the audit function, and can you give us some examples of its benefit?

Mr Colvin: I answer these questions having been in this role for a matter of months. With that caveat, the audit function is very important and it would be a concern from my point of view if the number of complaints got to a level where we were not able to commit the time that is currently being committed to the audit function. Having regard to the nature of the powers that are entrusted to the Corruption and Crime Commission, the amount of time that is available now needs to be maintained. I am sorry; I missed the last part of your very last question.

Mr F.A. ALBAN: Can you give us an example of its benefit?

Mr Colvin: In relation to telephone intercepts, which has been the subject of a report, it enables the public to know the nature of the powers that are being exercised and, where necessary, to raise issues concerning the exercise of those powers. In relation to the telephone intercept function, the audit function identifies that issue and it still remains an issue in that instance to effectively undertake full audit and scrutiny. That is clearly an example of something that has come through that function. Another is the process of review that has been undertaken by the new commissioner as a result of reports concerning the processes followed by the commission by the previous inspector. That is a process of review which comes through the fact that oversight is provided by the parliamentary inspector's position.

Mr J.N. HYDE: Mr Colvin, we appreciate that you are new to the position, and thank you for it. Is it fair to say that the acting parliamentary inspector can only perform the investigative function and that the government's failure to appoint a substantive parliamentary inspector—I guess it is now seven months since Mr Steytler announced his retirement—means that the audit function of the Office of the Parliamentary Inspector cannot be properly discharged?

Mr Colvin: There are two instances in which the acting parliamentary inspector function might be taken over. That is in a circumstance in which there is a conflict relating to a particular matter that would not be in relation to audit. Historically, where you have a full-time parliamentary inspector, that is the most likely position where that role is undertaken. In circumstances in which there is not a full-time parliamentary inspector, the acting parliamentary inspector takes over all of that role. Having said that, the nature of the acting parliamentary inspectors is that they are not appointed on the basis that they are available full time to undertake all of those responsibilities. There remains through Mr Alder importantly a continuing role where the collection of information and the undertaking of the process that has been established for regular audit is still being undertaken through that office. That is to provide an assurance that that is still being undertaken, but ideally you would have a full-time inspector in that role.

[10.30 am]

Mr J.N. HYDE: As an acting inspector, do you have the same powers just to turn up unannounced at the CCC and have access to anything in the building, any computer, any information, exactly the same as a full-time inspector?

Mr Colvin: I do when I am carrying out the responsibilities of the full-time parliamentary inspector. I have been given access. I have secured access to do that at any time. Since I have been appointed and been and undertaken inspection I have been through that process as part of my time as acting parliamentary inspector.

The CHAIRMAN: Does that then also apply to Mr Zelestis at the moment?

Mr Colvin: No, there is only one person who holds those responsibilities at any point in time.

Hon MATT BENSON-LIDHOLM: Mr Colvin, there are two particularly pressing questions that I want to ask. For one of them, can I just take you back to the introductory remarks that were made and when we were talking about matters undertaken in the reporting period that were brought to a conclusion? I am particularly interested in matters that the Office of the Parliamentary Inspector has said that there is no case to answer. In this particular committee we often get complaints from people in relation to the behaviour of public servants at the various offices that are held. Frequently our response and the Office of the Parliamentary Inspector's response is that there is no case to answer. I just want to know, (a) what are the various procedures? I know that is a very generalised sort of question, simply because no two cases are the same. But what sorts of procedures does the parliamentary inspector's office go through to ascertain whether there is a case to be answered? And then when something is dismissed, what sort of feedback is provided to the person who feels aggrieved at a particular situation that they believe needs to be addressed? Because quite often these people, they then come back to us and say, "Look, we could not get anywhere with the CCC" or "The parliamentary inspector's office said there is no case to answer. We do not know why. We do not believe that." Can you address those two issues for me?

Mr Colvin: Can I just check one thing before I do? All of the matters that are the subject of the report, so the 43 matters and historically before that, the process always involves the communication of the outcome of investigations by the parliamentary inspector to the person concerned who has raised the issue. There may be occasions where an inquiry which really should be directed to the commission for some reason comes to the parliamentary inspector's office, in which case that matter would be referred to the commission, and then of course the person, having been pointed in the direction, can raise and communicate those issues with the commission and there would be a separate reporting about those matters so far as the commission is concerned. My understanding is that the commission provides a response to parties when there has been a matter directed to them as well. There should not be an instance where a party feels that there has not been the response. Whether the party is satisfied with the response is a separate matter.

Hon MATT BENSON-LIDHOLM: If I can interrupt you, I think that is more the point: these people who get back to us are not happy with the response. I want to know particularly then what generally is the nature of the response that might come from the parliamentary inspector's office. Is it a detailed response or is it brief or is there not necessarily any particular typical response that is provided, that it just depends upon the case?

Mr Colvin: It is the latter; it depends upon the case. There are instances where of course there may be operational issues in relation to ongoing investigation by the Corruption and Crime Commission which curtails the nature of what can be communicated in a response. There are issues of identification of individuals and the circumstances in which they have provided information to the commission which will curtail the nature of the response. Within those constraints, every effort is made to provide as much of a substantive response as is possible so far as the parliamentary inspector responses are concerned. But at times that will mean that not absolutely everything is able to be stated. That is the nature of the process.

Hon MATT BENSON-LIDHOLM: I understand. I just want to continue with the general theme that we were undertaking until I went back to that first issue regarding the audit function and particularly a comment in relation to financial information. Just bear with me a second while I give you a little bit of a quote here. I am saying that there was one significant increase—this is in relation to the annual report. There was one significant increase in the total cost of services rendered by the Office of the Parliamentary Inspector during the reporting period, being an increase in the resources received free of charge from the Department of the Attorney General from \$21 651 in 2010–11 to \$71 053 in 2011–12. To my way of thinking, that particular increase, even though monetary-wise is not a huge amount, it is a significant percentage increase. I would like your comments about that.

This particular comment that I want to focus on says that this is explained in the annual report with the statement that the increase in resources free of charge is largely due to a more accurate method of calculating administrative resources provided by the Department of the Attorney General, and indeed the report of 2011–12 of the Department of the Attorney General also reflects this change. My question then is: are you able to give the committee something of a breakdown of what was included in \$71 053 of resources provided free of charge, because, to me, an extra \$50 000 of resources free of charge does warrant some sort of attention. I would like to get your comments there.

Mr Colvin: Yes, you are right, Mr Benson, to identify that as the significant difference between reporting last year and this year. That charge relates to management services provided for facilities that are provided by the Attorney General's department for use by the parliamentary inspector. It is a charge which applies not just to those services received by the parliamentary inspector but those provided by the Attorney General for a number of premises and facilities that are managed by it. That charge is an allocation that is undertaken on a pro rata basis, principally by reference to the area occupied, I think, by the parties. It is a charge, of course, over which the parliamentary inspector does not have any control other than perhaps to make arrangements for other premises, if that was thought appropriate. That is how the charge arises. It is an allocation made by the Department of the Attorney General of its management costs associated with managing the premises and facilities provided to various entities.

The CHAIRMAN: So that I can understand that better, Mr Colvin, is that, for example, things like this negotiation of the lease, that type of thing, which I presume you do not handle yourself personally and perhaps Mr Alder does not. Maybe that is the type of thing you are referring to?

Mr Colvin: That is right. Even issues down to any issues associated with the premises are all managed by the Attorney General.

The CHAIRMAN: And presumably the pay —

Mr Colvin: Yes.

The CHAIRMAN: — that is provided to the two of you. Someone needs to administer that, and that is somewhat reflected in this cost.

Mr Colvin: I am not sure whether it extends to that. If I just might have a moment. It does; it includes those services as well.

The CHAIRMAN: In some respects it sounds like the calculation method is a little barbaric in the sense that in recent times the Department of the Attorney General may have been a little bit more active in the sense that it had to be involved in an appointment process for yourself but in a reporting period there may be no need for it to be engaged in an appointment process and so to just do it across the entity by way of square metreage is a method but perhaps not a precise method.

Mr Colvin: I think it would be difficult to conceive of an entirely appropriate method other than in bearing lots of costs in terms of trying to track where all of the costs went. I think this charge can be affected obviously by how many premises are managed at any particular time and what the size of them are, but that is the nature of the charge.

The CHAIRMAN: So they have not got to the point of deciding to time charge by six-minute units or anything like that?

Mr Colvin: I will just let that one —

Hon MATT BENSON-LIDHOLM: I think I know where you are coming from, Mr Chair.

Mr J.N. HYDE: Mr Colvin, page 8 of the annual report states —

... the absence of a general power on the office's part or on the part of any State or Commonwealth agency to examine supporting affidavits in warrant applications made by

the Commission under the *Telecommunications (Interception and Access) Act 1979 (Com)* is a serious deficiency in the oversight of the Commission's operations and its appropriate use of its powers. —

[10.45 am]

As the annual report further mentions, this is in contrast to the power of the parliamentary inspector with respect to warrants obtained by the CCC under the Surveillance Devices Act, which is an act, of course, of the state Parliament rather than the commonwealth. The parliamentary inspector is able to examine supporting affidavits for all warrants obtained under that act. Could you confirm that the Office of the Parliamentary Inspector is able to access supporting affidavits used to obtain warrants under the TI act if the parliamentary inspector is in the process of conducting an inquiry into alleged misconduct on the part of the CCC officers?

Mr Colvin: I do not think that can be done. I think that is the—sorry, yes; I misunderstood the question. I can confirm that, yes; and in relation to misconduct, yes.

Mr J.N. HYDE: Okay. How onerous, though, is the process of discharging the PI's audit function of examining the supporting affidavits used to obtain surveillance device warrants?

Mr Colvin: If the question is, is it a substantial burden on the Office of the Parliamentary Inspector, it is not, because that process of review can be undertaken without a large amount of resources. If there was a particular issue in a particular case, then that would be of the character of one of the 43-odd matters that have been formally investigated here. But the actual review process would not require substantial additional resources. It is an issue about simply not being able to do it, rather than having the resources to be able to do it.

Mr J.N. HYDE: Okay. Then how might the ability to examine supporting affidavits lodged in support of TI warrants applications enhance the discharge of the PI's audit function?

Mr Colvin: At present it is a field of activity by the Corruption and Crime Commission in the exercise of a power that is a substantial interference with otherwise the rights of individuals, and there is no ability by the parliamentary inspector to see the nature of the connection between the character of the investigations being undertaken by the Corruption and Crime Commission and the connection with the circumstances in which there have been telephone intercepts. It is one thing, of course, for those applications to be made to those who are not familiar with the process and the nature of investigations being undertaken by the Corruption and Crime Commission, which is the current position, but there ought to be someone who is able to know that and then review the affidavit material and the nature of the interceptions that are being undertaken connected with those investigations. That is the scrutiny that is not available at present.

The CHAIRMAN: So it is the one gap in the oversight umbrella?

Mr Colvin: Yes.

Mr J.N. HYDE: The CCC's recent annual report revealed that the CCC received 32 warrants under the TI act in the most recent reporting period, as well as just three warrants under the SD act. If your office were empowered to examine supporting affidavits to use to obtain warrants under the TI act, would it be envisaged that every one of the affidavits lodged in relation to those 32 warrants would be examined?

Mr Colvin: Yes.

The CHAIRMAN: Again, you would confirm that that would not be unduly onerous on the office of the —

Mr Colvin: No.

The CHAIRMAN: Any further questions, members? What I might do at this point, then, Mr Colvin, is indicate that we will close this particular portion of the hearing with respect to it

being a public hearing, and the committee proposes to now move into closed session for the purposes of discussing with you some more sensitive matters, particularly around perhaps the eight active complaints you have before you at the moment.

Mr Colvin: Yes.

[The committee took evidence in closed session]
