JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

PUBLIC HEARING WITH THE COMMISSIONER OF THE CORRUPTION AND CRIME COMMISSION AND THE PARLIAMENTARY INSPECTOR

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 25 NOVEMBER 2009

Members

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

Hearing commenced at 10.01 am

ROBERTS-SMITH, HON LEONARD WILLIAM
Commissioner, Corruption and Crime Commission,
examined:

SILVERSTONE, MR MICHAEL JOSEPH WILLIAM
Executive Director, Corruption and Crime Commission,
examined:

STEYTLER, MR CHRISTOPHER DAVID
Parliamentary Inspector, Corruption and Crime Commission,
examined:

ALDER, MR MURRAY COLIN
Assistant to Parliamentary Inspector, Corruption and Crime Commission,
examined:

The CHAIRMAN: I indicate that I am happy to open today's hearing. After my introductory comments I ask the cameramen to go behind the appropriate location.

Welcome, one and all. 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 to examine the annual reports of the Corruption and Crime Commission and the Parliamentary Inspector.

The Joint Standing Committee on the Corruption and Crime Commission is a committee of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings in the houses themselves. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard will be making a transcript of the proceedings for the public record. If you refer to any documents during your evidence, it would assist Hansard if you would 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 and as there are four of you appearing before the committee, I ask that you answer in turn. 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 with the "Details of Witness" form today?

The Witnesses: Yes.

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

The Witnesses: No.

The CHAIRMAN: Commissioner, I would like to start with your report, if I may. I indicate at the outset, inspector, and likewise commissioner, that when we are referring to each other's reports the committee has no issue if you wish to provide any comments at any stage, if you feel that it is appropriate.

Commissioner, I ask you to turn to page 33 of your annual report, specifically to the section dealing with prosecutions and disciplinary action. Commissioner, I note that there are some percentages set out for conviction rates. It has been a matter of public interest in recent times as to whether the CCC should have as some sort of key performance indicator a reference to the level of conviction for any charges that are laid, investigations and what not. Commissioner, for example, it says that there has been an 80 per cent conviction rates by persons charged or 81 per cent by charges in the past financial year. Is it the case that where the 20 per cent has not been convicted, that that indicates some kind of poor performance on behalf of the commission?

Mr Roberts-Smith: Certainly not. One could never anticipate in any jurisdiction a conviction rate of 100 per cent, be it the Director of Public Prosecutions or any other prosecuting authority. Indeed, a conviction rate of 80 per cent or more in any jurisdiction by any agency, I would suggest, is an extremely high conviction rate. I think I said on another occasion that any DPP in the country would be delighted to have a conviction rate of 80 per cent or more.

The CHAIRMAN: Commissioner, that being the case, where a conviction has not been obtained, what does that say in relation to the investigation that is being undertaken by the CCC, which presumably would have recommended that charges be laid?

Mr Roberts-Smith: It does not say anything about the investigation. For example, I do not know what the actual conviction rates of the DPP in Western Australia are, but my understanding is that they are probably around 56 per cent or something of that order.

Convictions can fail. People can be acquitted or charges can be withdrawn for a whole range of reasons. Probably the most important one is that a jury or the tribunal of fact is simply not satisfied beyond reasonable doubt that one or all of the elements of the particular charge have been made out. That does not say anything necessarily about the quality of the investigation and one could not draw any conclusion from that bare statistic.

The CHAIRMAN: Commissioner, it is the case then that any findings made by the commission is done on the basis of a standard that is different from that in criminal proceedings?

Mr Roberts-Smith: That is true, but also it is important to bear in mind that we are talking about two completely different things. The commission is not a court; the commission does not determine guilt or innocence. Indeed, its act expressly prohibits it from saying or expressing a view on the guilt of any person in terms of a criminal charge or a disciplinary offence. What the commission is concerned about to the extent of conducting investigations, is conducting investigations into misconduct and "misconduct" may or may not include criminal offences.

[10.10 am]

But even when it does, that is not something which the commission deals with in the sense of making any determination about that. The commission conducts a misconduct investigation for the purpose of determining in the first instance whether or not misconduct, as defined in section 4 of the act, has been provide or is established. It is an investigation; it is not a trial. So in one sense it does not matter what the outcome of that is as to whether the commission reaches a conclusion—as you call it, a finding; the act talks in terms of opinions. Whether or not the commission reaches an opinion on misconduct, either way that is an outcome of the investigation, and there is as much public interest involved in the commission looking at an allegation of misconduct, assessing the evidence and forming the opinion that the conduct does not constitute misconduct as there is a public interest in the commission concluding that it does constitute misconduct; but in either event it does not say anything about criminal charges or criminal offences. We may pick up possible

criminal offences on the way through in a misconduct investigation, and it is necessary obviously for the commission to deal with that where it occurs, but they are picked up really in two ways. One is if it is the sort of matter which the commission ought properly to charge in respect of and deal with in the sense of putting the matter before the court to determine in the ordinary way, or whether it is a matter which is more appropriately dealt with by way of recommending to the DPP or some other agency that they give consideration to a prosecution. Either of those courses can be undertaken, but the commission does not determine the issue whether or not there was an offence in either of those situations, and cannot do. So that is the broad context.

The other aspect, of course, is that a misconduct investigation by the commission is a very much wider thing than a criminal investigation. A criminal investigation is only concerned with whether or not there is evidence that an offence has been committed. A commission misconduct investigation is concerned, as I have indicated, primarily with the question of whether or not misconduct has been engaged in by a public officer. Incidentally to that—not simply incidentally but importantly, I suppose, to that—having regard to the commission's corruption and misconduct prevention role under the legislation, the commission is required also to examine the systems and procedures and processes which may have led to or which may constitute misconduct risks within the public sector; so our misconduct investigations can range over a very much wider area, and generally do, than the sort of investigation which would be conducted into a criminal offence. We are concerned also with systems, procedures and processes with a view to identifying how the misconduct occurred, why it occurred and what can be done to prevent misconduct of that kind in the future; and that involves a lot more investigative work than merely looking at the possibility of a criminal offence.

The CHAIRMAN: Commissioner, can I just summarise then by putting this proposition to you and just asking for your comment? Your report at page 33 says that there has been an 80 per cent conviction rate, and that is to be understood in the context of other prosecutions to be a very high level and it is also to be understood on the basis that there is a distinction between the commission's primary role on misconduct as compared to a criminal investigation which looks at an offence, which are two different things which may be not necessarily mutually exclusive but they could be. The other issue is that when the commission undertakes its work, it does so with the test of the balance of probabilities, which is a lesser standard than that required when obtaining a conviction, which is beyond reasonable doubt.

Mr Roberts-Smith: And of course the other thing, which is common to the CCC as with any other commission of inquiry, in conducting our misconduct investigations we are not bound by the rules of evidence. The point of the exercise before a commission of inquiry like the CCC is to ascertain the facts and expose the facts for consideration or for subsequent action, usually by other appropriate authorities. I hesitate but I think it is a fair thing to say that trials before courts are not necessarily conducted for the purpose of ascertaining the truth. They are in a criminal context, for example, to determine whether or not the prosecution has proved its case in respect of a particular offence or offences beyond reasonable doubt. That is the question. In civil trials, again where the rules of evidence apply, the question is whether or not one party or the other in an adversarial sense has proved the case that it is mounting on the balance of probability. Now, again, I say that the purpose of an inquiry by the commission is to identify and expose the facts and make recommendations and so forth in respect of those, make opinions as to misconduct where that issue arises and so on. And as you point out, Mr Chair, correctly, the standard of proof is on the balance of probabilities, and we do so on material and evidence and information which would not necessarily be, and quite often would never be, admissible according to the rules of evidence in a court of law.

The CHAIRMAN: Commissioner, I have another question and then I will open up to my colleagues. Having established that conviction rates are not an appropriate measure of the

commission's performance, can I ask what yardstick you would suggest would be an appropriate measure for the commission's performance?

Mr Roberts-Smith: Can I do that perhaps against the background again of what the commission is actually about? As you know, misconduct, which I have been talking about, is defined in section 4 of the CCC act, and that includes corruption certainly, but also covers a range of other breaches of public duty which may involve criminal offences but may not; and I am taking the question, Mr Chair, as directed to the suggested yardstick of criminal convictions. As I have said already, the commission is not bound by the rules of evidence, like any other commission of inquiry, and it may express an opinion in relation to misconduct by a public officer on evidence that would not be admissible in a criminal trial in a court; so that there would be no prospect of laying a criminal charge, even if the conduct might potentially otherwise fall within the scope of a possible criminal offence; so, that is perhaps the starting point. Can I say that Western Australians expect a high level of ethics in their public service. They do not expect that their personal details stored on government computers will be accessed and given to other people. They do not expect a police detective sergeant to be looking at police databases to get information on women he has seen around town for his own sexual gratification; or a judge's associate with a drug habit and close association with serious criminals to be accessing confidential information about them. They do not expect public servants to be engaging in fraud or stealing. They do not expect the people on councils having their expenses met by developers and then voting in favour of the developer's projects without declaring a conflict of interest. They do not expect individuals to be given special or secret access to cabinet decisions. They do expect allegations of sexual contact between staff and students in our schools to be properly investigated. All these integrity issues are some actual cases of misconduct which have been dealt with by the commission. Under the Corruption and Crime Commission Act the primary purpose of the commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so, while retaining power to itself to investigate misconduct, particularly serious misconduct.

[10.20 am]

The two most important ways in which we do that are through our misconduct prevention and education function and through our misconduct investigation function. They are inter-related. I would suggest that the number of convictions that flow from the commission's investigation should not be the yardstick, or indeed even a yardstick, by which its performance is measured because the conduct of criminal investigations resulting in criminal prosecutions and convictions is not the commission's purpose. They are certainly important but they are incidental.

I have already pointed out that CCC misconduct investigations are not criminal investigations and that they may turn up evidence of criminal offences, in which case charges or recommendations will be made to an appropriate authority for consideration of criminal prosecution. But that is not the point of the exercise. It is incidental to a misconduct investigation in which the point, as I said, is to investigate not only whether misconduct has occurred but also why it has occurred, how it was able to occur and what systems, procedures or processes may be put in place to prevent it in future. As I have already observed, that is a much more extensive inquiry than a mere criminal investigation, which would not be concerned with issues of that kind. That said, as the committee has noted, the commission's conviction rate for charges that have incidentally resulted or fallen out of commission misconduct investigations has consistently been over 80 per cent, which is an excellent statistic so far as it goes. Indeed, it puts the lie to the myth that prosecutions coming out of the Corruption and Crime Commission rarely succeed, which is an assertion that has been made.

I have already pointed out that the Corruption and Crime Commission is not a court. It does not determine guilt or innocence. Its purpose is to expose the conduct of public officers and those dealing with them to the light of public scrutiny, what United States Supreme Court Justice Brandeis called "the disinfectant of sunlight". If what they have done amounts to misconduct, the

commission may express that opinion. Any further action to be taken about that is ordinarily a matter for others.

I refer the committee to a quotation from Hon Jerrold Cripps, QC, who retired last week as commissioner of the New South Wales Independent Commission Against Corruption. He was talking about the ICAC's corruption investigation function and made this observation —

> The Commission is not a criminal law enforcement agency. Nor can it be regarded as a management consulting firm. When corrupt conduct is identified after investigation and exposure, the obligation to address corruption rests squarely on the agency responsible for the corrupt conduct. If the organisation cannot or will not address the issue it should be dealt with by government. If government cannot or will not address the issue it becomes a matter for the Parliament.

Against that necessary background, Mr Chair, I come to your question about how the commission's performance should be measured. I suggest that should be the extent to which departments and agencies have introduced or strengthened their systems and processes for preventing, identifying and dealing with misconduct, including corruption, as a result of the commission's work. It should be the extent to which attitudes of public officers to misconduct and their obligation to act always in the public interest have changed in a positive way. It should be the extent to which there is an increased awareness by public officers and members of the community of the risks of misconduct in public office and the role of the commission in relation to misconduct and corruption prevention.

The CHAIRMAN: I will follow that up later. I hand over to my colleagues at this point.

Mr J.N. HYDE: I move to the oversight of police. If we look at the history of the commission, about 60 per cent of your workload, including complaints and the oversight, has been involved with police. They are probably one of your major stakeholders. If we look at the success of the commission, you have been ahead of the game and you have obviously exposed issues of police seeking sexual gratification through access to databases and police involvement in parking and speeding fines. You have uncovered, revealed and contributed greatly to preventing police misconduct and corruption. The Legislative Assembly has just passed stop-and-search powers for police. They will be passed by the Legislative Council. Clearly, your organisation has been ahead of the game. Would you agree that giving the police the ability to stop and search will lead to an increase in complaints or will this be an area that the commission as a body involved in oversight of police will have to look at? Have you envisaged stepping up or giving advice to the police on corruption prevention so they are educating officers about their misuse of these new powers?

Mr Roberts-Smith: We have not had any specific discussions with police about the exercise of the powers of which you speak. We do have ongoing dialogue with the police at a range of levels in which we do work with them in their misconduct and corruption prevention processes and procedures. We have a very active role in the monitoring of police complaints and the monitoring of investigations, which police internal affairs conduct, and other internal processes within the police dealing with complaints. We provide feedback to the police on how we consider those processes are working, whether they are efficient, effective, appropriate and so on. As I said, we have not had any particular dialogue on these proposed laws. The commission has no particular view about that. That is a matter entirely for Parliament.

In response to the question as to whether there is an increased risk of misconduct or corruption, I suppose one could make a general observation that, to the extent that any police agency is given more powers to deal at a physical level with individual members of the community, one might well anticipate that there will be more complaints than if those powers were not there. Whether or not there would be substance to those from time to time would depend on the circumstances of the particular case.

Mr J.N. HYDE: If we look at best practice and the history of police oversight, is there not a clear correlation between increasing unfettered police powers and the increase in justified complaints? If a police officer does not have to justify to somebody, say, why he or she is producing a warrant or why that person is being stopped or asked to blow into a breathalyser, the potential for harassment or misuse has increased if we look at best practice around the world.

Mr Roberts-Smith: I do not know what the research shows on that. As a matter of commonsense, one could presume that there is an increased risk of that. I do not know that one could take it further without empirical research, which I am not familiar with.

[10.30 am]

The CHAIRMAN: Inspector, can I ask you a question in relation to the commission's organised crime function. At page 17 of the commission's report it says that during this financial year the commission received five exceptional powers applications from the Commissioner of Police. One of the pertinent issues at the moment is to what extent can the commission be involved in organised crime and to what extent should it be involved in organised crime. At the moment it is restricted under the legislation to the granting of exceptional powers. The report says that there have been five exceptional powers applications received and that all of those were granted. Inspector, have you had an opportunity during the course of the year to conduct an audit or review into that exceptional powers application process?

Mr Steytler: Yes, we have, Mr Chair. Since the suggestion was made from the committee that that would be an appropriate addition to our usual functions, we have carried out audits of those arrangements, the applications used for exceptional powers.

The CHAIRMAN: Inspector, of those exceptional powers applications, I note that no fortification warning notices were applied for by the police. Was there a pattern in terms of the exceptional powers that were applied? Perhaps the commissioner might be able to answer that rather than me asking the inspector. Was there a theme or a pattern in terms of the types of powers that can be applied for? Are some being used more than others?

Mr Roberts-Smith: I can answer that without going into operational details, obviously. I will not say in respect of whom the applications were made, but certainly there is concentration on a particular type of power; that is, the coercive hearing power of the commission. That in fact is probably the most useful power under our legislation for police to have access to. There have been some exercises of other powers, such as stop, search and detain, but they are very few. In fact under the exceptional powers findings that have been made, almost all of the actual exercise of power has been confined to using the commission's hearing powers to bring people before us to answer questions.

The CHAIRMAN: Commissioner, that being the case, is there any ongoing discussion between yourself and the Commissioner of Police or his representative as to how these extraordinary powers might be used more effectively or applied for more effectively?

Mr Roberts-Smith: Of course it is not for the commission to advise the police on how or what powers, under its act, should be used by them or could be used by them in the conduct of a police organised crime investigation. First of all, we are not part of the investigation. It is important to realise that it is, and always remains, a police organised crime investigation. What follows from that, in part, is that the commission would not necessarily know everything that the police know certainly about the issues involved in the investigation—the leads that are being followed, the people involved, possible offences that they are looking at and so on, other than those in respect of which they actually approach us for the exercise of one or more of the exceptional powers.

That said, we have of course had ongoing dialogue with the police again to assist them in properly casting the applications that they make to us in the sense of identifying for them those criteria and other matters which they are required to put before the commission if an exceptional powers finding

is to be made. We have also of course engaged with them in the exercise of the hearing power. They remain commission hearings; it is just that the Commissioner of Police has a representative who effectively conducts the hearing before the commission, although I do have counsel assisting the commission as such always there anyway because it is a commission hearing. There are forensic and other techniques which are pertinent to the proper conduct of an investigative hearing of that kind before the commission, which are very different to the way court proceedings are conducted, for example. We have engaged with the police in how to use the hearing process before the commission, but, again, that is in relation to the particular applications that they put before us for consideration.

The CHAIRMAN: Commissioner, your report at page 17 refers to a review of the act by Gail Archer, SC, and notes that one of the principal recommendations was that the commission be granted an enhanced organised crime function and a new serious crime function. I appreciate that that is subject to cabinet submission at the moment. Is it the case that at the moment the CCC is restricted in its ability to enter the organised crime foray to the granting of the exceptional powers to police when and if they apply, and, in the last financial year, that occurred on five occasions?

Mr Roberts-Smith: That is very much the case, Mr Chair. It is true that section 7A(a) of the act says that one of the two main purposes of the act is to combat and reduce the incidence of organised crime. The following section, 7B, says how the act's purposes are to be achieved. In relation to that function, subsection (2) states —

> The Commission is to be able to authorise the use of investigative powers not ordinarily available to the police service to effectively investigate particular cases of organised crime.

That is the limit of the commission's organised crime function. We can only authorise the use of the exceptional powers by the police in accordance of course with the criteria and constraints imposed by the act in relation to those exceptional powers. To put it the other way, the commission simply has no legal authority to itself investigate organised crime.

The CHAIRMAN: Even if the commission wanted to get more involved in organised crime, pursuant to the legislation at the moment it simply cannot other than the granting of those exceptional powers?

Mr Roberts-Smith: That is correct. The only way in which it might arise would be where there was a public officer engaged with organised crime. But it is important to appreciate that even in that situation our investigation would be confined to dealing with the allegation of misconduct by the public officer in his or her association with organised crime. That might take us a little way into the people he or she is dealing with and what they are doing but it would never become an investigation into the organised crime component.

Mr J.N. HYDE: Commissioner, I go back to the oversight of police. We had the extraordinary situation two weeks ago where police officially released their running sheets in Northbridge of incidents. Those running sheets contained addresses. They were the sorts of incidents that were happening including the exact times. A fair amount of your workload, as we have discussed, relates to police access and disclosure of official information, information on databases, without approval. As an MP, I continually get complaints from people who cannot get information from police when we have liquor licensing applications and the nexus between alcohol, corruption and organised crime is pretty well established.

[10.40 am]

Police can go in with information relating to vetoing a liquor licensing application and that can be kept secret; it can never be disclosed to the applicants or in a public arena. In light of that, do you have a view about the police suddenly releasing, or being transparent about, actual running sheets for one weekend only? Should the police be up-front about all this information, or is there a danger

in the police releasing information, particularly when it relates to some licensed venues that in the preceding week may have professed views in opposition to police activity?

Mr Roberts-Smith: The short answer to the question is no, the commission does not have a view about that. I assume that the information that was released was released with the authority of the Commissioner of Police or some other appropriate senior police officer, so there would be no question of unauthorised disclosure. As far as I am aware, there is no suggestion of any misconduct by any police officer involved—that is, misconduct as defined in section 4 of the act—in relation to the release or disclosure of that information, which means that the commission would have no jurisdiction to do anything about it or express any view about it.

Mr J.N. HYDE: But we look at the situation and it is not illegal for somebody to leak information from a cabinet meeting, but the whole history of the CCC is that the use of information has been used in ways to benefit some people and not to benefit others. Surely you would have to have a view on the police suddenly changing a practice and releasing a whole swag of information.

Mr Roberts-Smith: First of all, in relation to the disclosure of cabinet information, the answer I think must start with the proposition that it can well be illegal to disclose confidential cabinet information without authority, and whether it is illegal or not in a particular case, it would still constitute misconduct under our act. Secondly, in relation to the release of the information about the police running sheets at Northbridge, again, it seems to me that that is a matter of police policy and, in the absence of any suggestion that there is misconduct as defined in section 4 of our act involved, or that the conduct of releasing that information might give rise to some particular risk of police misconduct, then it is a policy matter on which the commission has no jurisdiction to express a view.

Mr F.A. ALBAN: Commissioner, I have a question. I have been concerned for some time and I have heard some criticism from my colleagues about the "you are guilty until proved innocent" aspect of having been referred to the CCC, especially on the smaller matters. There is a belief that there is sort of financial and personal damage possible from the mere fact that they have been referred to the CCC, which also takes some time. Therefore, in the time that it is sorted out or a decision has been made, they feel that there is some serious damage. Also, there has been a concern that there is a capacity for mischief in referring someone to the CCC on very trivial matters that will have an effect irrespective of what the outcome is. Do you have any advice on something like that?

Mr Roberts-Smith: I will deal with the second point first. There is, of course, always potential for people to abuse any system. If somebody wants to make a complaint to the commission, say, for political purposes and then go to the media or somewhere else about that, they can do that within limits, but of course it is an offence under the Corruption and Crime Commission Act to make a false or vexatious complaint knowingly and maliciously or recklessly. The elements of that offence are not necessarily always easy to prove, but it is nonetheless an offence under the act. Where the complaint is not one that does raise a reasonable suspicion of misconduct, then the commission would reject it in any event and in appropriate circumstances would tell the person involved.

To come to the first part of the question, I know that is said quite often by some people who have appeared before the commission or perhaps have an apprehension that one day they might, but it is not a proposition with which I would agree, with respect. Simply being called before a commission of inquiry, such as the CCC, does not say anything about the individual concerned or about their reputation. Most witnesses, in fact, who are called before the Corruption and Crime Commission are called simply as witnesses and their own conduct is not impugned. They are called as witnesses to talk about systems, processes or the conduct of others in respect of whom perhaps allegations of misconduct have been made. But, again, if the person to whom the member is referring is a person in respect of whom an allegation of misconduct has been made, then certainly the airing of the allegation made by people who give evidence in support of that allegation presumably, particularly in a public hearing if it is a public hearing, will obviously have ramifications, but that is the process

of any commission of inquiry—any inquisitorial investigation. The other aspect of that, of course, is that—and we have had experience of this—people against whom allegations of misconduct are made quite often want to have it aired and have the opportunity to respond to it in a public forum. Therefore, circumstances vary enormously, but I do think that to the extent that complaint is made, it is more anecdotal, if you like, than of substance, which is not to say that people's reputations cannot be harmed by appearing before such a commission of inquiry. Of course they can, and we accept and acknowledge that, and that is why in fact most of the inquiries, most of the examinations, the commission conducts are in fact held in private rather than in public. Even when they are held in public, as the committee is aware, the commission is very conscious of the need to safeguard the privacy and reputational rights of individuals, and we do that by assigning code names or making suppression orders or whatever else the case may be. There are other measures to reduce the impact of that, but there is always the possibility of reputational damage in some circumstances. I think that, though, is a consequence that governments and Parliaments generally accept as appropriate, given the importance of the work that the commissions of inquiry do.

The CHAIRMAN: Commissioner, it might even be appropriate for me to comment that the alternative is to have secret hearings, as was the case previously, and then of course we had the ridiculous situation whereby people would say, "I have referred so-and-so to the place that shall not be named." Therefore, it seems to me, whether it is public or private, that mudslinging, if I can use that term, would occur in any event, so I do not know that we can take that any further. But what does interest me, commissioner, is that, as you quite rightly pointed out, it is an offence to have a frivolous or vexatious allegation. I cannot seem to find it in your report, but I seem to recall somewhere in there that you mentioned that, I think, there were about five such incidents.

Mr Roberts-Smith: Page 84.

The CHAIRMAN: Thank you, commissioner. What was the outcome? I would have thought that it would be a very serious matter to make a frivolous and vexatious allegation to the commission.

[10.50 am]

Mr Roberts-Smith: Yes and no; it depends. The first point I would make about that is what is being discussed at page 84 is misconduct allegations that were dealt with by appropriate agencies, not by the commission. Those were outcomes of appropriate authority investigations, not commission-conducted investigations.

The CHAIRMAN: Okay; so where it says frivolous and vexatious, they are frivolous and vexatious in the eyes of the —

Mr Roberts-Smith: Department or agency or whatever.

The CHAIRMAN: — department, not necessarily of the commission.

Mr Roberts-Smith: Correct. We would review the outcome of those of course, as we do. We do not necessarily have to agree with the outcome in every case as part of our review process. What we are looking for is whether or not the investigation has been conducted properly, all appropriate witnesses have been spoken to or interviewed, all of the relevant evidence has been looked at, the law has been properly applied in terms of the disciplinary process and potential disciplinary offence, and the outcome is reasonably open on the basis of the material that the investigator looked at. If we tick all those boxes, we will say that that investigation has been properly conducted. As I say, we do not necessarily have to reach a view that we would have come to the same conclusion on the evidence, because that is a matter for the department or agency, unless of course it is so far out of left field that it would be obviously wrong, and we would take a different view about that.

Mr J.N. HYDE: But you have had at least one convention on a vexatious complaint.

Mr Roberts-Smith: Yes, we have, and I will come to that, if I may. The next point I would make about that category of frivolous and vexatious is that we are talking about the outcomes of

investigations. I suppose one way of describing that is that the substance of the complaint or the allegation has been treated as frivolous or vexatious, which does not necessarily mean that the complainant was frivolous or vexatious. Then, if we are talking about what action could or should the commission or someone else take about complaints that fall into that category, we are looking at section 25(5) of the act, which makes it an offence for a person to make a report knowing the content of it is false or misleading in a material respect and does so maliciously or recklessly. To deal with somebody for making a false or misleading report, a frivolous or vexatious report in that sense, one would need to have evidence that would enable a court, on legally admissible evidence, to be satisfied beyond reasonable doubt of each of those elements. I think you might immediately appreciate that that would quite often be a difficult proposition when one is looking at the intent of the person who is making the allegation or the complaint. The other point I would make about that is that a charge cannot be brought under that section other than by the Director of Public Prosecutions. It would be a very unusual case, I would suggest, in which we would feel there was sufficient evidence on which a jury could be satisfied beyond reasonable doubt of each of the elements of an offence under section 25(5) sufficient to cause us to refer that to the DPP. There was, though, as has been pointed out, one case in which that occurred, and the evidence there was quite substantial. It involved a false allegation against a police officer by a person who was a prisoner at the time, and it involved email trails and various other things, which the prisoner said were emails from the police officer but which we were able to demonstrate had in fact been generated on the prisoner's own computer. There was no question about the falsity or the malice of that complaint. We referred that to the DPP to charge him and he was convicted.

Hon MATT BENSON-LIDHOLM: Commissioner, I just want to talk specifically about this idea of not sustained or frivolous or vexatious issues. I know it is a point that we have discussed with you in the past, but are there any issues in relation to the figures presented on page 84 of your report in terms of the not sustained numbers and percentages and also the frivolous and vexatious issues? Are there any issues there in respect of relatively smaller agencies or departments not being able to cope with that and then in turn that is passed on to another agency or goes back to your commission for further work? Is that an issue at all?

Mr Roberts-Smith: I would not say it is an issue. It is a relevant consideration, though, because, obviously, when we receive a notification of an allegation of misconduct or a complaint of misconduct, we undergo the assessment process. If it appears as though it is something that ought reasonably to be investigated, we then have to make the decision whether we are going to investigate it or whether we are going to refer it to the department, agency or whatever, or some other appropriate agency such as the police. The vast majority of them we refer back, because that is consistent with the intent and purpose of the Corruption and Crime Commission Act whereby we are to enable departments and agencies to develop their misconduct resistance processes and so forth. That is a primary objective. But the question of whether or not an agency has a capacity to investigate misconduct or the particular type of allegation that is made is obviously a relevant one. There are some agencies that have highly developed internal investigative capacities. The police are probably the most significant because they have had an internal affairs unit and internal processes for years now, and we are satisfied that, generally speaking, those processes work very well. There are exceptions, but, generally, as a system, it works very well. It is a mature system. The Department of Education, as a result of the commission's own intervention with that department some years ago, now has a very mature system. The Department of Health, which we are working with at the moment, is not as mature, and other departments and agencies vary quite considerably. In addition to that, of course, some of them are very large. The ones I have just mentioned are very big departments.

Hon MATT BENSON-LIDHOLM: That is the point I was going to make.

Mr Roberts-Smith: Some agencies—development corporations, for example—may have only about six or seven people in them. Local government councils usually do not have much capacity

themselves, and their relationship with the Department of Local Government is sometimes a difficult one in terms of jurisdiction to deal with these things. All of these issues go into the mix when we are considering what to do with a notification or allegation of misconduct. If we felt that a particular organisation would not or could not conduct an investigation because it, say, was too small or in a remote location or did not have the support, we would probably do it ourselves or give it to somebody else who we thought was appropriate to do it.

Hon MATT BENSON-LIDHOLM: Mr Chairman, there is a point to be taken from that by this committee. That is a resourcing issue that maybe we need to go back to the Parliament with. But I also put it to you that the figures contained within the table on page 84 of your report show that in 2007 the non-sustained figure of 61 per cent is mentioned and the figure for 2008-09 is 51 per cent. I would suggest that members of this committee would still be significantly concerned by such a high figure. Do you have any comment about the two figures presented?

Mr Roberts-Smith: What that statistic indicates is that a not insignificant proportion of misconduct allegations are proven to start with. To the extent that misconduct subverts agencies from achieving their business objectives, I would suggest that that statistic is quite telling in underlining—this perhaps picks up the point that is sought to be made here—the benefits of agencies developing their own misconduct resistance strategies and processes.

[11.00 am]

Systems that are developed identify and resolve instances of substantive misconduct. They do not just generate allegations, and it may well be that I think the point that is sought to be made here is right: that, to some extent, that is a reflection of immature systems and processes within departments and agencies that are either not identifying misconduct appropriately—that is to say not identifying the seriousness of particular allegations of misconduct—or do not have processes in place to actually deal with them or investigate them properly.

Hon MATT BENSON-LIDHOLM: Do you see this as being, to a certain extent, vindication of the education program you have in place? Is the fact that the figure has dropped by 10 per cent indicative of success in that area of the commission's workload?

Mr Roberts-Smith: I think it is. I would also say this: our experience has been—I think it is reflected at various places in the annual report for last year—that, with those departments and agencies in which the commission has had intervention, where we have engaged with them with agency reviews and the like or actually conduct misconduct investigations in relation to them, what we have consistently seen is a significant increase in notifications of misconduct. That says to us that those departments and agencies are better recognising misconduct when it occurs and we would expect from that also, if their process are evolving, they would be dealing with it better once they have identified it. That is the sort of process we are engaged in with departments as part of our corruption and misconduct resistance program all the way through. That is where the real work of the commission lies rather than in actually conducting misconduct investigations. They are very important but, of course, subject to our looking at the systemic issues, which we do, as I indicated earlier, they tend to be dealing with particular situations, whereas our corruption and misconduct prevention programs involving agency reviews and consultations with departments and agencies and so forth are directed to the longer term benefit of enabling them to identify their misconduct and corruption risks and to put processes in place to deal with them effectively. We would expect over time to see that reflected then in the sort of statistics we are talking about.

Mr J.N. HYDE: Parliamentary Inspector, on page 18 of your annual report it shows that your net costs were $543 000 but that your income from the government was just a touch under $231 000, leaving a deficit of $312 000. Does this show that your office is being underfunded? Do you need extra resources and funding?

Mr Steytler: The answer to that question is no; we do not need extra funding. What those figures reveal, or perhaps do not reveal, more accurately, is that, in the financial years 2004 to the current financial year, the office of the parliamentary inspector was allocated appropriations by Parliament, for the salary of my predecessor and also for other expenses in respect to which he was entitled to be reimbursed. Those arose out of the fact that he performed his statutory role from his own office using his own staff and equipment. He in fact never claimed anything other than his personal remuneration. So it built up a surplus that, at the time of these reports, was $312 125 in cash effectively, and that was used by Treasury as part of the total appropriation for the office. The only money needed from government was consequently the $239 976 to meet the total cost of just over $500 000. There was not really a deficit as such; it was just that there was no need it call on government for the full amount of the appropriation, and the accountant saw fit to reveal that as a deficit.

Mr J.N. HYDE: So Malcolm McCusker was subsidising anti-corruption in the state?

Mr Steytler: He certainly was.

Mr J.N. HYDE: In terms of this current budget then, I guess you have used up all of Malcolm's money. What is your allocation from the government for this year?

Mr Steytler: The allocation for this year will mirror that of last year, and that should be enough.

Mr J.N. HYDE: Good, so you will not be requesting any more from Treasury then?

Mr Steytler: Not any further than the $543 000, which it allocates to us in any event.

Mr J.N. HYDE: Thank you.

The CHAIRMAN: Inspector, during the reporting period, one of the reports you dealt with via our committee is report 3 on the matter of Robert Bilos. That was a report you tabled with our committee on 19 March this year. I draw to your attention some comments made by Hon Adele Farina in the Legislative Council on 13 August in relation to the provision of that report. You will recall inspector that you tabled it with our report but with a recommendation that not everything be tabled in Parliament, if I can put it that way. In fact, for the benefit of Hansard, I will be more precise. The committee agreed with the inspector's recommendation not to release the whole of the report as it identifies private individuals and mentions some operational aspects of the CCC. I then move to the comments by Hon Adele Farina, who said as follows —

> The parliamentary inspector is now to lodge the reports with the committee and the committee then provides a report to the house—that is fine—

She was, of course, referring to a previous report that had been filed in Parliament by our office when we indicated there was an understanding between the inspector's office and the committee that, as much as possible, the inspector would file reports to Parliament via our committee. She goes on to say —

> but we are now in a position where this house does not actually see, or may not see, the parliamentary inspector's reports. I am somewhat concerned about that because I think that this house should be able to view the parliamentary inspector's reports. If there are matters of confidentiality or procedural concerns that the CCC has, those sections of the report can be edited and names can be deleted, if there are individuals. Names that need to be deleted. It just seems to me that we are in a position now where Parliament is no longer having access to the parliamentary inspector's reports. This Parliament established the position of the parliamentary inspector for the parliamentary inspector to report to the Parliament. I am concerned about this change of events, which has occurred without any amendment to legislation and without—I am not sure, and I am happy to be corrected—discussion in this house.

In light of those comments, inspector, can you provide comment on because it seems a reasonable concern to be sharing with the house.

Mr Steytler: I believe that those comments reveal a number of misconceptions, Mr Chair. To start with, the Bilos report related to a question of where particular information had come from. It became apparent to us in the course of the inquiry that it had come from a source other than the commission. There was not much doubt about that in those circumstances. To reveal the source of the information would have placed a considerable concern for a witness who feared for her own wellbeing, whether rightly or not. That was one of the reasons that influenced us in asking that her name not be revealed. The operational information that was not revealed was very limited and not particularly relevant to the report at all, so the gist of the report was certainly made public.

As to the comments made generally by Miss Farina, my position is very simple. If I believed that some issue on which I report should be made public then I would table the report in Parliament. I have no difficulty, as I have said previously, in placing it first before this committee, but regardless of the views of the committee—I say that with the greatest respect—if I were to come to the conclusion that the matter was one of public interest, I would table it no matter what the recommendation of the committee might be in that respect. I certainly see that as the function given to me under the act and as my ultimate responsibility.

As I have said, for me the test is a relatively straightforward one. If it is in the public interest to know a particular shortcoming, or shortcomings, in the operations of the commission or if it is in the public interest that someone's reputation be restored from the situation in which it was damaged, I would wish to see that happen by way of tabling in Parliament.

[11.10 am]

The CHAIRMAN: Thank you, inspector. I will follow up on one aspect of that. You talked about reputations being restored. In terms of the complaints, your annual report talks about a number of 55 complaints being, I take it, received during the reporting period. Would you say that there are any recurring themes in the complaints that have been received?

Mr Steytler: Yes, there are. There are two recurring themes. One is disagreements with proposed opinions and conclusions of fact expressed by the commission in draft reports during the section 86 process. The second is allegations of failures by the commission to investigate, or properly investigate, complaints of misconduct. I have to add in saying that those are the two principal themes that the large majority of complaints made in respect of each theme have proved to be baseless.

Mr J.N. HYDE: Commissioner, in relation to the commission's finances, you have reported a $137 000 profit—I should not use the word "profit"—surplus.

Mr Roberts-Smith: We do not make a profit, Mr Chairman!

Mr J.N. HYDE: You have not had to raid the health department's funds this year!

The general cost of Corruption and Crime Commission work in this state is about $25.5 million. If we look at ICAC in Hong Kong, which in many ways is seen as the mother of most of our successful anti-corruption bodies and it has perhaps the most highly-developed organised crime responsibilities, its budget is around $A121 million. Has anybody done a back-of-the-envelope guesstimate that if the CCC does take on any variety of organised crime role, or a fuller role, what sort of impact that would have on the budget?

Mr Roberts-Smith: That has been an ongoing process obviously, because we are well aware of the government's proposal to introduce legislation to give the commission an organised crime function. That, indeed, was the position of the previous government before the last election. As I understand it, there was bipartisan support for the general proposition. Of course, the difficulty is it will depend very much on the content of the legislation. We have not seen that yet. As far as we are aware, it has

not even gone to cabinet for drafting instructions. It is very difficult to work out just how we could accommodate or what would be required in money and resource terms to accommodate an organised crime capability. We have been looking at it, obviously, though in almost a speculative sense and we have certainly been looking at other agencies—the ICAC in Hong Kong, perhaps not so much but certainly the Crime and Misconduct Commission in Queensland, the New South Wales crime commission and other agencies that either have an organised crime capability solely or have other functions, such as we do, together with an organised crime capability. The CMC in Queensland is perhaps the closest example of that. Certainly, it is possible to do back-of-the-envelope calculations and say, "They have both functions. Their budget is X more than the commission's, therefore there will be a greater need for resourcing." The qualification of that would depend enormously on just how the whole thing was to be structured, which would, in turn, depend upon the content of the legislation.

The CHAIRMAN: Commissioner, I come back to one of my earlier points, which was on the yardstick or the performance indicators. It is fair to say that the committee agrees with you that the percentage of convictions is not an appropriate performance measure. When I asked earlier what you thought should be appropriate performance measures my notes referred to, I suppose, what we could indicate as outcomes of misconduct investigations and outcomes from the educational process—that sort of two-pronged approach. Specifically you mentioned where departments introduced or strengthened procedures, where there was a change of attitudes and where there was an increased awareness of the risks of misconduct, all of which seem reasonable indicators. To what extent are those potential performance indicators being measured?

Mr Roberts-Smith: It is difficult to measure those things and that is recognised, I think, by most, if not all, agencies that perform work in this area as well as their oversight bodies and so on.

The CHAIRMAN: What you are saying is that the domestic and international experience is that it is difficult to measure those things.

Mr Roberts-Smith: It is. I am looking for some notes I made in relation to the work that we are doing in that area at the moment. Our key performance indicators are, of course, set as they are required to be in accordance with the usual government processes in this state involving consultation with and approval by the Department of Treasury and Finance and the Auditor General in particular. The process requires, for example, that the Auditor General be consulted about key performance indicators and to approve and certify their appropriateness, which the Auditor General has done in relation to ours. It is a reasonably convoluted process that does involve all those inputs. I am not entirely happy, and the commission is not entirely happy, with some of the key performance indicators that we have. They were, of course, adopted when the commission originally started in 2004. Obviously at that time, the commission had no track record—it had no experience; it was a new body—and they had to be adopted in anticipation of what we needed to be looking at and how useful it was thought that they would be based on ordinary principles applying to key performance indicators and experience elsewhere. As the commission has evolved it has changed in various important respects, but also, of course, it has had a range of experience in its work, its outcomes and outputs and so forth, which has informed the way in which we look at the key performance indicators.

The discussion today with this committee, for example, has, with respect, highlighted some of the issues that we have as an ongoing concern. We keep them under constant review. We have them under review at the moment. Indeed, we have a former officer of the Office of the Auditor General participating in a review of commission KPIs at the moment and we are looking at assessing those, obviously with a view to increasing the value of them. We are also currently taking part in external research that is being conducted by a project group of executive masters of public administration students from the Australian and New Zealand School of Government. That research is sponsored

by the Independent Commission Against Corruption in New South Wales and it is entitled, "Assessing measures to improve public sector integrity". We expect a report in the new year.

[11.20 am]

It might be helpful to reflect the views or the issues which I have just adverted to if I quote briefly from that project's explanation statement. It says —

> 'The overall aim of the project is to identify an effective approach to measuring public sector integrity that could be piloted by anti corruption agencies.'
>
> 'The starting point for the research project is the position that anti-corruption agencies do not presently have effective performance frameworks to measure their influence in promoting and achieving public sector integrity.'

So that is the position generally speaking and we are working with others, as I have indicated, to try to get a bit more clarity around that. That said, much of the material in the annual report does, I think, reflect the effective influence of the commission within the public sector in this state, and we have already, I think, adverted to some of those in the discussion today. We have seen, for example, specific structural changes in the sense of organisational changes within the Department of Education and Training, and we have seen changes in processes there, which are a direct result of the intervention of the commission at an early stage. We have seen and are seeing similar evolutionary changes within the Department of Health; they have a way to go, but there is movement and it is positive and constructive and encouraging movement. So we can see these things happening. Measuring them, of course, by performance indicators is another question. There are other indicia of that, and I think we have already adverted to the proposition that the correlation between agencies that the commission has invested the most time and effort in assisting to build their capacity to identify a managing report, misconduct is commensurate with the increases in their notification rates. That includes Education and Training, Corrective Services, Local Government and Health.

The CHAIRMAN: I am sorry to interject there. Are you saying that the more notifications you receive from a department means that they are more educated in terms of risks?

Mr Roberts-Smith: I believe that is the case, yes. At this stage certainly I would see it as indicative of that, rather than an increase in misconduct. I think there is no doubt that there has been under-reporting across the public sector. That is hardly surprising. It is consistent with experience elsewhere. So an increase in reporting in the first instance certainly when we are only still six years out from the inception of the commission, an increase in notifications of reporting I would attribute far more to the effectiveness of our corruption and misconduct prevention and education processes and programs, rather than any increase in any actual misconduct.

The CHAIRMAN: I imagine it would be not unreasonable to look to see in the future, though, a decrease in the fullness of time.

Mr Roberts-Smith: In the fullness of time one might see that, but a part of the difficulty is, of course, there are so many different issues and factors which impact upon this. And I guess perhaps the most obvious way to highlight that is to look at the experience of the CMC in Queensland and the ICAC in New South Wales. They are more than 20 years down the track and I do not think they have seen any significant decline in notifications or allegations, and they have had some very high-profile, particularly the ICAC—both of them have had some very high corruption and misconduct investigations over the last 12 months or two years.

The CHAIRMAN: I just indicate to members that we have probably got five minutes left.

Mr J.N. HYDE: Yes, just a final one from me. Page 99 of your legal requirements lists a variety of warrants that you have provided, and you have always been more than upfront with the committee on these, and we see it as one of our important oversight roles, but the figure is of 22 approvals for

assumed identities, nine surveillance device warrants, 49 telecommunications interception warrants. Of course one warrant might entail 20 phone, email, mobile or SIM cards; it is not just 49 individual actions.

Mr Roberts-Smith: It can be either. It can be a named person warrant, in which case it would authorise interception of any telecommunication device used by that person or it could be a specific service warrant.

Mr J.N. HYDE: In the past I think we have requested and received exactly how many devices were included in terms of these warrants. Is that something we could ask for on notice?

Mr Roberts-Smith: We can take that on notice. We would need to check that, I think, Mr Chair, and of course there are some constraints about that kind of information. But subject to that, I am happy to check and take that on notice.

Mr J.N. HYDE: Okay. In a variety of these warrants, they had assumed identities—SDs, TIs. Have you been knocked back or refused any warrant of these in this year?

Mr Roberts-Smith: The assumed identities are not warrants. The assumed identities are a process which can take place under our act on my approval. So if the question is have I rejected any internal application for assumed identity, the answer is no. My recollection is that we have not had any refusals for any applications for SD warrants.

Mr J.N. HYDE: Okay. The recent tabled similar police figures indicated they had been rejected on one warrant. I think most of us involved in this know you rarely get a warrant rejected, because by the time it gets to a judge or the responsible authority for signing it has all been worked out. The fact that one was rejected by the police, has there been any issue or discussion of oversight of police use of warrants? Is that just an area of interest or concern to the CCC?

Mr Roberts-Smith: It raised an interesting jurisdictional issue, I think, to begin with because, of course, the police use of telephone interception or telecommunications interception warrants is subject to the same regime as ours is, namely the commonwealth legislation. And the commonwealth Ombudsman has a responsibility of monitoring that. It has not been an issue that has arisen as far as the commission is concerned; and the only circumstance in which I would anticipate it might possibly ever become one would be if there was an allegation of police misconduct in relation to that, in which case, without committing the commission to any particular position in a particular case, we might then have jurisdiction with respect to the misconduct alleged.

Mr J.N. HYDE: Okay. The footnote refers to there being four combined TIs warrants; are they rollovers or are they ones where you might be doing a joint warrant with New South Wales police or federal police?

Mr Roberts-Smith: The stored communications warrants are a different kind of warrant. That does not signify rollovers, as you put it. It is a different kind of warrant.

Mr J.N. HYDE: Okay, how is it different?

Mr Roberts-Smith: Telecommunications interceptions, we are talking about intercepting ongoing, active lines or communications. Stored communications are a different type in the sense that there is a capacity for many of these telecommunications devices to store information, such as SMS messages and things of that kind. So that is what stored communications warrants are directed to.

Hon MATT BENSON-LIDHOLM: One last area of interest for me, commissioner, is the point about efficiency indicators. I want to go back to the resourcing issues that I was talking about a little bit earlier on. The efficiency indicator that I would particularly like to focus on just for a minute or two is contained in page 94 of your report when talking about the average time taken per completed commission misconduct investigation.

[11.30 am]

I see it has blown out to 100 days, as opposed to the 2005-06 figure of 70 days. That is on page 94, where it also states —

> As servicing these longer-term investigations, covering multiple reporting periods, required the available resources to be allocated to a higher than average number of concurrent investigations, improved average time efficiencies could not be achieved while also achieving increased productivity in completing investigations.

I have a couple of questions about these concurrent investigations. Could you give us some idea of why they are being undertaken, what they are and what are some of the issues associated with having this higher than average number of concurrent investigations? Is there a likelihood that these concurrent investigations will diminish in number?

Mr Roberts-Smith: I certainly hope that the answer to that is yes. Part of the answer is that you never know because we do not know what is around the corner. Our misconduct investigations are essentially reactive in the sense that if somebody makes a notification or allegation of misconduct and we then look at that, if we decide to investigate it, we have to do it. We do not know what is going to be notified or put to us in the immediate future. It might be a simple matter and it might look simple. Quite a number of our very significant investigations have started from what apparently were very minor complaints or allegations in the first place—for example, the toner investigation, which I think the committee is aware of, which we are still conducting. It started out as an allegation of possible misconduct with respect to one public officer in a small place in a country region of Western Australia. It was only once we started to look at that that we realised that it involved conduct across Western Australia, across the whole public sector, including local government, and involved an enormous amount of money. That was a very big investigation that came from one allegation of misconduct. The lobbying investigation that has been going for some years now, again, as the committee is aware, is hopefully virtually concluded. We still have two reports to table in relation to that. All the other reports have already been tabled. Again, that was a multiple-headed investigation that commenced from one allegation of possible corruption against three members of a local government council. When the commission investigated it, it turned out to involve a range of departments and agencies involving members of the cabinet, ministers generally, members of Parliament, local government people, senior public servants and so forth. We identified something like 76 separate investigations from that one initial complaint. That could never have been anticipated. As it evolved and these things were identified, the commission had to make decisions about whether to deal with them. We were simply not able to deal with many of them.

Hon MATT BENSON-LIDHOLM: So that figure of 100 days is quite plausible. Is it reasonable to expect that in the years to come we will see a continuation of that rather drawn out but larger than normal investigation, or is it necessarily something that is happening at a particular time given a certain set of circumstances?

Mr Roberts-Smith: The answer is that it could happen at any time. It would not be unreasonable to anticipate that it may. From an organisational point of view, I would hope that it would not. I might make the observation, since we are talking about investigative time, that if the legislation is enacted to give the commission power to investigate organised crime, one would expect that those investigations would be likely to extend over some years. By the nature of them, they would be very covert, there would be no public hearings, and there would be nothing in the public arena about the conduct of those investigations other than generalised reporting to this committee and by way of our annual report stating that an investigation has been going for so long and it has cost so much. The nature of that exercise would be a significantly different one to the conduct of misconduct investigations.

Hon MATT BENSON-LIDHOLM: I do not necessarily want you to make a comment, but to my way of thinking, as a committee member, it certainly appears as though we may need to look at some sort of flexible resourcing model as a joint standing committee.

The CHAIRMAN: Thank you for your evidence today. Are there any final comments you would like to make in relation to your annual report?

Mr Roberts-Smith: I will make one very briefly. It is to do with tabling of reports. There is a list in the annual report of reports tabled in the last financial year. It occurred to me that the committee might find it useful to have a list of all the reports that have been tabled by the commission since its inception. I have a list that I can provide to the committee. The committee will note, as a matter of interest, that in the three and a half years from January 2004 to June 2007, the commission tabled 15 parliamentary reports, not including annual reports. In the two and a half years from 5 June 2007, which was the date of my appointment as commissioner, to 16 November this year, the commission has tabled 19 parliamentary reports, not including annual reports.

The CHAIRMAN: For the benefit of Hansard, we will note that that has been tabled—the Corruption and Crime Commission reports tabled in the Parliament of Western Australia from 30 September 2004 to 16 November 2009. Thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence.

Hearing concluded at 11.37 am