

**JOINT STANDING COMMITTEE ON THE
ANTI-CORRUPTION COMMISSION**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON MONDAY, 25 AUGUST 2003**

CLOSED HEARING

Members

Hon Derrick Tomlinson (Chairman)

Hon Barbara Scott

Hon Graham Giffard

Hon Sue Ellery

Dr E. Constable

Mrs C.L. Edwardes

Mr J.N. Hyde

Ms J.A. Radisich

Committee met at 9.30 am

O'CONNOR, MR TERENCE EDWARD
Chairman, Anti-Corruption Commission,
examined:

DOIG, MR DONALD GEORGE
Commissioner, Anti-Corruption Commission,
examined:

The CHAIRMAN: You have received the information for witness forms. Did you read and understand them?

Mr O'Connor: No and yes.

The CHAIRMAN: Have you not got them yet?

Mr O'Connor: I did receive it, I did not read it but I do understand it.

The CHAIRMAN: Yes, you have been here many times. We have received your quarterly report and the report of the Anti-Corruption Commission for the period 2002-03. Do you wish to make any comment on the report or any general comments before we commence?

Mr O'Connor: Not really, save to say I have been away overseas for three weeks. I only got back into the office this morning, so I am a little rusty, but that is the position.

The CHAIRMAN: I will comment on the new format and presentation. It is very clear and informative.

Mr O'Connor: The credit for that should go to Terry Lewis. I should say at the outset that Graeme Charlwood is in the Industrial Commission this morning. I do not know where Moira Rayner is. I think she is away or something, and Terry Lewis is overseas.

The CHAIRMAN: If I could open up the questioning before we get on to the detail of the report, one of the matters raised in the last meeting and also repeated in the quarterly report is the position of contract staff of the commission. I wrote and asked whether we could have a current update on that issue.

Mr O'Connor: After the Premier issued a directive that contract staff were to be made permanent, following consultation with the Department of the Premier and Cabinet and with DOCEP, which is the department of employment or something, the commission resolved to make all contract staff permanent, and that was done in about October or November of last year. The current position is that this still seems to be unresolved. We are told in conversations with various officers that it is accepted that they are permanent, but no-one is prepared to put anything in writing. That is why I think the union has taken the matter to the Industrial Relations Commission. That is where Graeme is today. That is the position.

Hon SUE ELLERY: The documents you have provided to us indicate that the DPC has acknowledged that those staff who were subject to the decision in November are employees with indefinite tenure, as in ongoing tenure.

Mr O'Connor: They have acknowledged that in conversation but they still will not acknowledge it in writing.

Mr J.N. HYDE: Have you had any acknowledgment, or advice to the contrary position, of putting employees on to permanent positions?

CLOSED HEARING

Mr O'Connor: I do not think we have, no. As I say, we took the step following consultation with DPC and DOCEP; it was not something that was just done out of the blue. No-one has ever suggested that we should not. I think that subsequently when the royal commission report came down and with the benefit of hindsight everyone in government is wishing that it had not happened and is trying to find some way to sack our staff, which does not reflect very well on anyone.

Mr J.N. HYDE: Since the royal commission report has come down, have you made any employees permanent?

Mr O'Connor: No.

Mr J.N. HYDE: Staff that you put on in January are on short-term contracts, are they?

Mr O'Connor: No, they were all hired before January. We have not hired anyone on long-term or indefinite contracts since the royal commission report.

Mr J.N. HYDE: Let us be clear. I thought that new people were employed in January.

Mr O'Connor: No, they were employed before January; they arrived in January.

Mr J.N. HYDE: Contracts were signed before January, were they?

Mr O'Connor: I do not think they were signed. Indeed, I think through an administrative stuff-up they did sign contracts which provided for a fixed term, but that should not have happened because it had been resolved that everyone was on indefinite or permanent employment.

Mr J.N. HYDE: If the contracts were not signed until January and the royal commission report came out in December, how can you be signing contracts in January making them permanent employees?

[9.40 am]

Mr O'Connor: They did not sign contracts in January making them permanent employees. We engaged employees prior to the royal commission report. They arrived in January. Because of an administrative stuff-up in our office, they were actually given pro forma contracts to sign that provided fixed terms. That was not the intention. The intention was that they were to be employed on a permanent basis. If you want us to behave unethically with people we bring from interstate, I am sorry, we are not going to.

Mr J.N. HYDE: Could you not accept that surely it looks unethical if in December you find out there is no permanency to the ACC and issues are raised about whether employees are permanent, and, come January, you sign a contract? Regardless of when you had preliminary discussions, a contract is not a contract until it is signed. You put these people on permanency in January when you did not know how long you were going to be around for.

Mr O'Connor: No.

Hon SUE ELLERY: Do want to comment on that a bit further?

Dr E. CONSTABLE: I presume they would have had a letter of appointment before.

Mr O'Connor: Yes.

Dr E. CONSTABLE: So they had something in writing.

Mr O'Connor: Yes.

Hon SUE ELLERY: Did they have something in writing or were they told?

Mr O'Connor: I did not do it, so I am not actually sure, but I believe they had something in writing.

The CHAIRMAN: As I understand it from listening to the discussion, you made those offers of employment that commenced from January. They are fixed-term contracts.

CLOSED HEARING

Hon SUE ELLERY: No.

Mr J.N. HYDE: There was a stuff-up.

Mr O'Connor: No. They were engaged as permanent employees, but the contracts they signed were actually for a fixed term.

The CHAIRMAN: Are all other staff on fixed-term contracts?

Mr O'Connor: As far as we are concerned, yes - except we have some contract staff engaged for specific jobs and that sort of a thing who are still in that position.

The CHAIRMAN: Are any of them seconded from the public sector?

Mr O'Connor: Yes, I am reminded that perhaps the last one who was on a fixed-term contract for a specific job was the man who set up our telephone intercept who came from South Australia. He finished in February and returned in February. This is off the top of my head - I am not sure. If we have, we have got only one or two. Maybe we have got a computer man or something like that, and maybe one or two people who are on a contract for some other service.

The CHAIRMAN: The interim report of the royal commission brought down in December recommended the establishment of a Corruption and Crime Commission to replace the Anti-Corruption Commission. There was no specific reference in that to ACC staff -

Mr O'Connor: Except positive recommendations: positive statements were made about their efforts, despite what others may say.

The CHAIRMAN: Yes, but I refer to the continuity of the new organisation. Subsequently, the Attorney General and the Premier said that the Corruption and Crime Commission would be a new organisation with new personnel. In the interim or beforehand, a decision was made for all contract staff to be appointed as permanent staff in the public sector.

Mr O'Connor: A decision was made before.

The CHAIRMAN: Made before?

Mr Doig: On 28 November.

The CHAIRMAN: You made the decision that your staff were public sector employees and, therefore, subject to that.

Mr O'Connor: I might say that the Premier's tentative circular on this question came out, if my memory serves we right, in April. We had been in discussions from then on. In October, or some time like that, the final circular came out saying that people on contracts should be permanent employees. We moved immediately. I think, if I recollect rightly, we came up with a meeting. The commission said, hang on, we need to check something or other; I forget what it was - do you remember?

Mr Doig: No.

Mr O'Connor: It was deferred and came up at the 28 November meeting and resolved.

Mr Doig: Before that, DOCEP, or whatever the department is, said that even if we took no action, our staff would probably be deemed to be permanent anyhow. We decided to formalise that by resolution of the commission. Even when the royal commission report came out recommending a seamless transfer in investigations from the royal commission and from the ACC, it did not really concern us because in order to achieve that transfer it was our firm view that investigations in progress, in order to achieve a seamless transfer, would logically take the staff with them. It was not until subsequent government announcements about the future of ACC staff were made that it became of concern to us.

The CHAIRMAN: It was the Government's intention that the legislation would be enacted by the beginning of August or the end of July.

CLOSED HEARING

Mr O'Connor: The commission was to be in place by the end of August.

The CHAIRMAN: A decision was made in the Legislative Council to split the Bill, after discussion with the Attorney General, to give the Government power to appoint the Corruption and Crime Commission, the commissioners and, one assumes, staff - certainly the commissioners. The provisions of the Bill relating to the powers were referred to the standing committee. I understand that the Attorney General has since not made any appointments because he cannot do so until he knows what the powers of the commission will be. At this stage, the matter is still before the joint standing committee. Therefore, you have staff who are still uncertain about their future.

Mr O'Connor: We do, and, of course, they are starting to leave now.

Ms J.A. RADISICH: Has the Premier replied to your letter of 8 July?

Mr O'Connor: I do not know. He does not reply to very many of our letters. I am not sure whether that one was replied to.

Mr Doig: He has not.

Mr J.N. HYDE: Why is the Department of Consumer and Employment Protection, or whatever, saying that it will give you only verbal advice; why will it not put something in writing?

Mr O'Connor: I do not know.

Mrs C.L. EDWARDES: It is Department of the Premier and Cabinet.

Mr J.N. HYDE: Was that the case even when you were minister?

Mrs C.L. EDWARDES: No, it is Department of the Premier and Cabinet on this occasion, not DOCEP.

Mr J.N. HYDE: I am sorry - I thought you said DOCEP.

The CHAIRMAN: One of the effects is that the investigative staff are seeking employment elsewhere, and your investigating complement is diminishing.

Mr O'Connor: I do not want to overstate it. One investigator left on Friday, and I am not sure whether any others left while I have been away, but they would be stupid if they were not looking for jobs. We have certainly said to them that we will do whatever we can to assist them to gain alternative employment.

The CHAIRMAN: The disadvantage for the staff is that they would not have entitlement to redeployment or involuntary redundancy.

Mr Doig: That is before the Industrial Commission today. They may have in the future. If they went down that path, it would be just too silly for words, because the core functions of the ACC will become the core functions of the CCC. It is nonsensical not to just transfer the functions and the staff, and if the new commissioners want to recruit these people on merit at some stage in the future, they could be seconded in the meantime. It would be too silly for words to do anything else.

[9.50 am]

The CHAIRMAN: Any comment?

Mr O'Connor: I will just add to that. We actually do have some major investigations going on. We have certainly, as I said before, more in-house investigations than the royal commission has. There has been all this carry on about the importance of a seamless transfer from the royal commission. That is, with respect, rubbish.

Hon SUE ELLERY: Are you saying, Terry, that those major investigations that are going on now are compromised?

CLOSED HEARING

Mr O'Connor: No, no. What I'm saying is that they will be if we walk out the door and drop the ball, as it were, and it is left to the new body and, no doubt, it will endeavour to pick it up. It is not easy to pick up something which you have no knowledge of. That is going to be the problem.

The CHAIRMAN: The royal commission investigators have focused on matters of police alone. Some of the royal commission investigations have required the cooperation of the ACC, particularly for surveillance and IT.

Mr O'Connor: Virtually all of them - telephone intercepts.

The CHAIRMAN: Telephone intercepts - TI. Complaints against police represent about 46 per cent of your work. More than half is on other public officers. That is the corporate knowledge you are concerned about in a decision taken not to transfer the investigators from the ACC to the CCC.

Mr O'Connor: Yes, there is that plus - I can't pull the figures from the top of my head, but we probably only have one or two current police investigations. We have got 20 or 30 other investigations current that we are doing in-house that we haven't sent out anyone else to do. It may, in fact, be more than that. We have got a significant number - a much greater proportion - of in-house investigations that would be non-police than traditionally has been the case because we have handed a lot of stuff over to the royal commission. We have handed everything over to the royal commission.

The CHAIRMAN: Even if the decision were made to accept the staff as tenured staff, there is no assurance that the tenured staff would be employed by the CCC. They could be on redeployment and eventually redundant.

Mr O'Connor: Yes. We have proposed - it is not an extremely popular view among our staff I must say - but we would have no objection to the proposal that people going to this body should be recruited on merit. What we have suggested is that if you are really genuinely interested in a seamless transfer and not trying to score political points out of giving the ACC a kicking, then you second these people across for 12 months, 18 months, two years, to carry on what they are doing. That has the advantage from their perspective that they are given the opportunity to impress the new commissioner and may gain permanent employment. If they are unable to do that, then, of course, they have a problem; they go on to the redeployment list.

The CHAIRMAN: That is compounded by the delay in the appointment of the new commissioner, because at this stage it is a discussion between the three ACC commissioners and Executive Government and not a discussion between the outgoing ACC commissioners and the incoming CCC commissioner.

Mr O'Connor: Frankly, I have had it up to here - indicating the top of my head - and the sooner I can be out of this the better. I think we will be hanging around until, probably, at the earliest, the end of March, if not beyond that, assuming that our commissions are extended.

Mr Doig: See, there is a factor unknown in all this; that is, the identity of the new commissioner. If you stop for a minute and put yourself in the place of the new commissioner, who is going to accept a role where most of the responsibility rests with him to undertake the powers and functions of the new CCC, why on earth would you take on that responsibility under some sort of handicap that you are not going to have staff who are actively involved in current investigations? It is just too silly for words to think that you would do otherwise, even if it was only on a secondment basis for up to two years. It takes two years to get your structure in place, create positions and then advertise. The people who are there can compete on merit. Maybe at the end of the day they are not successful, but your investigations are not interrupted for a year or two.

The CHAIRMAN: There is a need for some transitional provision.

Mr Doig: Having been a permanent head for 10 years, there is no way I would take on a function like this without a guarantee that you are going to have staff and be up and running from day one.

CLOSED HEARING

Mr O'Connor: Perhaps I can add to that. As the Chairman and Dr Constable would know, one of the problems that the ACC had when it started was the necessity to deal with a huge backlog of material that had been dropped on it by the OCC. It was the same organisation, but the OCC had three full-time people.

The CHAIRMAN: And no real investigative powers.

Mr O'Connor: No investigative capacity. It had all these allegations. The effort of getting through that actually took, probably, two or three years. Potentially, the same mistake is going to be made with this new body, which would be very unfortunate.

Mr Doig: I would suggest that it would be magnified considerably, because in those days you were getting many less allegations in '96 than you are getting now. You would be in trouble in no time flat if you did not do what I just suggested earlier.

The CHAIRMAN: The mandatory reports are still coming in?

Mr O'Connor: Oh yes.

The CHAIRMAN: Any further discussion of that matter? The committee will discuss it afterwards.

The other question is the impact of the extension of the term of the royal commission on the Anti-Corruption Commission. Any effect at all?

Mr Doig: On the number of allegations?

The CHAIRMAN: Has there been any impact?

Mr Doig: Not really. The staff are starting to look at options elsewhere because of the uncertainty. That is sort of associated with the royal commission, but not specifically.

Mr O'Connor: The royal commission wanted the ACC to become involved in a joint operation on Argyle. We refused to do that. We had a look at Argyle in the past and had concluded that what has happened would happen; that is, that you would have great numbers of people making allegations against each other and nothing ever resolved. The matter has been trampled over by too many people for it to be capable of any real resolution. So, we just thought, because we were, for a starter, obviously unsettled - keeping focus is not easy and we have a lot of work in-house to do - redeploying people into Argyle was simply going to be a waste of our resources, so we refused to do it.

The CHAIRMAN: So the telephone intercepts that were given some publicity in evidence last week -

Mr O'Connor: I don't think they were telephone intercepts; I think they were taken from Rodden's car.

The CHAIRMAN: Oh, I see - surveillance.

Mr O'Connor: There was a listening device in his car.

The CHAIRMAN: Thank you.

Mr Doig: The only other thing I should mention is that last week we received a letter from the Commissioner of Police asking for our cooperation in providing two senior investigators to go onto the WA Police Service task force to look at matters arising from the royal commission. We have agreed to that although we have not yet identified who the two senior people will be. So that is a direct fallout from the royal commission. There is a fair amount of interest within staff to take up that because at least it provides some sort of short-term ongoing employment prospect.

[10.00 am]

CLOSED HEARING

The CHAIRMAN: Seconded from the Anti-Corruption Commission to the Police Service with some contractual commitment after the ACC ceases.

Mr Doig: It is subject to an agreement with the Corruption and Crime Commission for that to continue.

Mr J.N. HYDE: Just in terms of whether it is a car bug or a telephone intercept, does the royal commission not have to go through you to get TI approval?

Mr O'Connor: Only TI. The royal commission cannot get TI. It is allowed to have access to TI material. It can, under state legislation, put a listening device in a vehicle or a house or whatever.

Mr J.N. HYDE: So if it was a TI you would know about it?

Mr O'Connor: Theoretically, they could have gone to the Australian Federal Police or someone else. Just reading the paper on the weekend - I only just got back on Friday afternoon - I read the report in Saturday's paper and it looked to me as though it was an LD.

The CHAIRMAN: While we are on the issue of TI, John had some questions about TI in the report.

Mr J.N. HYDE: Just a couple of queries. The report is really good. The section on covert surveillance is on page 1 of the last four pages of the report. You rightly note on that page that a TI warrant can be obtained only if the specified offence attracts a penalty of seven years imprisonment or more.

Mr O'Connor: If the allegation being investigated is in respect of an offence that attracts a penalty of seven years or more.

Mr J.N. HYDE: On the next page, the fifth arrow just above the section headed "Warrants issued in 2002-03" states that there were three prosecutions. Sixteen warrants were issued, so three out of the 16 warrants resulted in a prosecution. This was for 2001-02. Despite that when you were given approval for a TI you had a reasonable belief that the offence could or would eventuate in an offence that could garner a prison sentence of seven years or more, 13 of the 16 did not.

Mr Doig: No, the warrants are for a dedicated service. In one prosecution you could have warrants relating to 10 different services. Your conclusion that one warrant equals one prosecution is a wrong deduction.

Hon GRAHAM GIFFARD: You might have multiple warrants on the one investigation.

Mr Doig: Yes. Do you see what I am getting at?

Mr J.N. HYDE: All right. Well, can you tell us in terms of the 16 warrants whether all 16 contributed to three prosecutions?

Mr Doig: I cannot; not off the top of my head.

Mr O'Connor: No. My colleague has said that it is impossible to say off the top of his head, but I am almost certain that they did not.

Mr Doig: I can confirm that because last week I signed certified copies of probably 10 warrants that all related to one case. Some were what are called named person warrants, some were service - a particular number. The whole lot could refer to the three prosecutions. We can confirm that if you want us to, but that is important.

Mr J.N. HYDE: Maybe that could be a suggestion for Terry for next time if that could be broken down even further to that.

Mr O'Connor: Will there be a next time?

Mr J.N. HYDE: You just told us that you are hanging on until March.

Mr O'Connor: That is my fear; that is not my hope.

CLOSED HEARING

Mr J.N. HYDE: Finally, on page 3 there is a section on TI outcomes. The first arrow point under that section states -

... TI provided evidence that significantly influenced the direction and outcome of investigations, including proof of police officers involved in improper computer accesses
...

On a point of clarification, would the offence of a police officer being involved in improper computer accesses be one that could garner seven years imprisonment?

Mr O'Connor: I do not think so, but I am not sure.

Mr Doig: No, I do not think so.

Mr O'Connor: It would be related. If you are investigating an allegation that could result in a prosecution with a sentence of more than seven years on conviction but you do not find sufficient evidence to establish those facts beyond all reasonable doubt but you do discover other information, you can use that for a prosecution even though the prosecution is likely to attract a penalty of less than seven years.

Mr J.N. HYDE: I guess what I am getting at is the difference between what is a trawling or fishing expedition or where there is a genuine seven-year -

Mr O'Connor: We do not go on fishing expeditions.

Mr J.N. HYDE: No, I know. Under the legislation you are not supposed to.

Mr O'Connor: And we do not. A lot of the work we have done in the past 18 months or so has been for the royal commission in joint operations we have had with the royal commission. You have seen some of the material that has been collected by our telephone intercepts come out in the reports of the royal commission.

Mr J.N. HYDE: I have a final point to make in terms of the TI outcomes. There are three arrow points that list the three outcomes - computer access, improperly warning individuals suspected of breaking the law about impending investigations, and ongoing improper associations. To me, none of those three are seven-year offences. I am seeing nothing in the outcomes of the TI that fits a seven-year or more offence from the way this is presented.

Mr Doig: We might be talking about the ones that come out of the investigation. Some of those referred to there are royal commission matters and a more serious outcome is yet to be determined. These might be peripheral matters that we can identify already.

Mr O'Connor: These are ongoing matters. At the present time we are preparing a brief - it may have gone to the Director of Public Prosecutions since I have been away - for a matter which was aired in the royal commission in which a TI product was used. You have to remember that we wait for some years for the DPP to make a decision as to whether a prosecution will eventuate. I have told you before that we have one matter that has been aired by the royal commission and that has been with the DPP for four years now, but with no response.

Mr J.N. HYDE: Okay. The issue I am getting at is that in terms of TI outcomes -

Mr O'Connor: The issue you are getting at is that we are somehow misusing our TI powers to look at incidental matters which are not within our jurisdiction, and I refute that.

Mr J.N. HYDE: No, the issue I am getting at is that as an oversight body, I would just like to see the evidence of the issues that are the seven-year offences, which is what you get the warrants for, rather than just getting the collateral damage. I am sure there is something.

Mr O'Connor: I am not sure that we would be prepared to give that to you. We have ongoing operations and we are not prepared to disclose information relating to those operations.

[10.10 am]

CLOSED HEARING

Mr Doig: There is a process to guard against that, because you do not get a warrant unless you can satisfy the judge that there is an offence which justifies -

Mr J.N. HYDE: Yes, but somewhere in the system there must be oversight rather than just Deirdre O'Donnell checking off that you have filled in the paperwork correctly. There must be an oversight process that identifies what has actually occurred, whether it is 10 years into the future for the next committee -

Mr O'Connor: If we tell you the same thing that we have told Deirdre O'Donnell, do you think you are likely to come to a different conclusion from her?

Mr J.N. HYDE: Under the legislation for Deirdre O'Donnell, she does not have an oversight role. Her only role is to make sure that you have filled in the paperwork.

Mr O'Connor: She has an oversight role; she can come in and check anything in our office whenever she likes.

Mr J.N. HYDE: That is right, the paperwork.

Mr O'Connor: Well, it is all on paper. How do you think we get the warrants - by waving a wand or something?

Mr J.N. HYDE: No, you get it from a judge. However, Deirdre's role is not this sort of questioning.

Mr O'Connor: Who said it is not?

Mr J.N. HYDE: The legislation says it is not and the Ombudsman's office says it is not. You can correct me if Deirdre or any Ombudsman has come in and has sought this sort of questioning from you.

Mr O'Connor: I have never been exposed to the Ombudsman's inquiries. I know that the Ombudsman is a designated officer who, on a random basis, carries out the obligations that the Ombudsman has under the legislation. Perhaps I can rephrase my proposition to you as a rhetorical question: do you think you are likely to come to a different conclusion than the judge from whom we got the warrant if we provide you with the same information that we provided to the judge?

Mr J.N. HYDE: Definitely, because not until you have done the investigation and got some evidence can you see if what you were asking the judge for has come to fruition.

Mr O'Connor: Well, you are not empowered to audit our investigations and we are not going to provide that information to you.

Mr J.N. HYDE: Okay, but I would love the new committee and the new organisation to have some sort of power or relationship so that whether it is two years, five years or 10 years, someone somewhere can find out if the warrant that was issued five years ago actually did relate to or did result in a prosecution and offence or an issue of the seven years.

The CHAIRMAN: However, there is no guarantee that any investigation will result in prosecution. It is a valid outcome of any investigation that there is no basis for prosecution.

Mr J.N. HYDE: Under the Telecommunications (Interception) Western Australia Act you must have reasonable suspicion that what you are doing will.

Mr O'Connor: A matter that has been with the Director of Public Prosecutions for four years, and which was aired by the royal commission, involves the Kalgoorlie detectives and the allegations of drug dealing. We have TI in that. The DPP after four years is still unable to make up his mind whether or not beyond reasonable doubt that a conviction can be sustained. In fact, all those police officers have been dismissed from the force. If you do not think that it is an appropriate outcome for a telephone intercept warrant that they be at least dismissed, then we have got to disagree.

CLOSED HEARING

Mr J.N. HYDE: All I can relate to is the legislation that you operate under and the judge who signs that warrant on the basis of your evidence to him that what you want the warrant for will garner or is eligible for a seven-year offence. That is all I am concerned with.

Mr O'Connor: What you are trying to say now is that you should be auditing the investigation that we have conducted in order to discover from the events subsequent to the issue of warrant whether the basis upon which we applied for the warrant had any substance. It is easy to be a Sunday punter, but when we are applying for the warrant we have to deal with the material we have. The reality is that you may be - as in the Kalgoorlie case, where people were dismissed arising from the material, a lot of which was gained from the telephone intercepts - able to establish on the balance of probabilities that the conduct occurred but you cannot establish it beyond reasonable doubt. You cannot tell me that there is no basis for that warrant even though, at the end of the day - as I suspect is likely now as it has been going for four years - the DPP says he is not going to prosecute. You cannot tell me that there was no basis for that warrant.

Mr J.N. HYDE: No, thank you. You have now explained that, but under TI outcomes in your report to this committee there are only three matters that do not reach that threshold. Perhaps, in the future, if we had some indication of what you have just told us -

Mr O'Connor: No, I have only told you that because it is now in the public arena. The matter has been agitated before the royal commission. I do not think we are in a position to disclose our operations to you. Your terms of reference and our legislation prevent it.

Mr J.N. HYDE: All you need then is one sentence under outcomes stating that you are not able to tell us what your outcomes are.

Mr Doig: Would that take you any further?

The CHAIRMAN: Two things arise out of this: one is the question for the functioning of the new committee, which is something for the new committee and this committee to work on through our strategic plan. The second is to raise these matters with the inspector of telecommunications who is the designated inspector of the Ombudsman. Perhaps we will raise it with the Ombudsman. However, our standing orders and the legislation, as Mr O'Connor indicated, will prohibit us from having access to operational matters.

Mr Doig: If there were an issue on which we had acted inappropriately or the new body have acted inappropriately, perhaps the new inspector general could investigate on reference from you. That might satisfy you that all is aboveboard.

Mr O'Connor: As we have said over the years, we have been quite happy to have someone inspect anything that we do. If we cannot substantiate the appropriateness and the validity of things that we do, then we should be given a rap over the knuckles. There are difficulties. The problem with trying to provide what Mr Hyde wants is that inevitably you start identifying people. To have it make any sense you have to identify people. We cannot do that under our legislation.

Hon SUE ELLERY: At one of the earliest meetings you attended with the committee, as it is currently constituted, we had a discussion about your view that it would be difficult for the public to reach a conclusion about the adequacy of the outcomes from the Anti-Corruption Commission because of its relationship with the DPP's office and the fact that the DPP - I am paraphrasing so I am not quoting you - was not processing material that you put before his office as clear as it should. Assuming this might be our last meeting together, has there been any change in your view on that sort of matter?

Mr O'Connor: No. I have a terrible memory so I cannot remember what I said, which gives a great opportunity to trip me up -

Hon SUE ELLERY: I am not trying to -

CLOSED HEARING

Mr O'Connor: I am not suggesting you are. I think I said - I have maintained this over the years - that for an investigative body like ours, it is just as important to investigate a matter and to find that there is nothing in it as it is to find that there is something in it, because you have got people in the public sector and so on, or outside the public sector, who have got complaints and are making allegations. It is good to clear the air. However, the media and others want to judge the effectiveness of the ACC not by that sort of thing, but by the number of heads you have on poles. The potential to judge us by that is significantly limited by the failure of the DPP to deal with any matters referred in a timely way.

[10.20 am]

In order to try and get around that - certainly with matters that do not involve the police - we now bring the police in at the last minute and say, "Well, here's the investigation. Do you think there is enough to charge?" The matter then goes forward. The police then get the credit for charging, but it is actually our investigation, something they had nothing to do with. We are doing that also in one or two cases involving police as well, where it is appropriate to do that. In other cases it is not as easy to do.

Hon SUE ELLERY: I am paraphrasing, and I am not trying to trip you up by putting words in your mouth, but the difficulties that you described to us in your dealings with the Director of Public Prosecutions - nothing in that has changed?

Mr O'Connor: No.

Mr Doig: One we have mentioned before is a Department of Health matter. We referred it to the Director of Public Prosecutions in September 2000. The DPP advised that it was appropriate to bring criminal charges.

Mr O'Connor: Perhaps I should interpolate here. This is the department of aboriginal health one. This is an area of current controversy. This does not relate just to one of the controversies that the woman whose name has been in the press has been concerned about.

Mr Doig: Subsequently the DPP sent the brief to the Department of Health and said, "If you institute disciplinary proceedings I will not lead any evidence before the District Court." That is what happened. It went to the Department of Health. It took two years to institute disciplinary proceedings. In the meantime the fellow resigned and went to the Northern Territory, and the matter went nowhere.

Hon DERRICK TOMLINSON: So did the superior officer.

Mr O'Connor: One of them has died, actually. That case has been publicly put up as another example of failure by the Anti-Corruption Commission. The DPP has not proceeded with the prosecution, which was instituted at the DPP's authority, but then he has this guideline that says that if there is some other alternative for proceedings to be undertaken that is appropriate, he will not prosecute. He regarded disciplining this officer for misusing public funds as an appropriate remedy. I publicly went on the record, because we were criticised about it, saying that I just thought it was absolutely disgraceful that people in positions of trust who misuse public funds should be just given a rap over the knuckles. From the ACC, that does not carry much weight.

Ms J.A. RADISICH: In the notes, there is reference to the Anti-Corruption Commission being concerned about the Commissioner for Public Sector Standards' approach to her review and the basis on which her conclusions were reached. Could you comment further on that?

Mr O'Connor: The review has been interpreted as some sort of finding against the Anti-Corruption Commission and its officers. At the outset she says that she will not do that. She is really just looking at perceptions amongst people. The report then goes on to frame, in effect, findings. I think that was an inappropriate way to deal with the matter. In fact, the first draft report that she had prepared contained a whole series of matters that were just ridiculous. They arose from

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some disgruntled staff, most of whom had left the organisation. We had never seen the draft report, and we had never been interviewed. After she had interviewed members of the commission, and the former member, Mr George, most of that stuff was deleted. However, some of the material that was used to support one proposition in that draft was then used to support another proposition in the report that was finally issued. What was not sufficiently recognised are the efforts that have been made by the commission to try to address the problems when we became aware of them.

Fundamentally, all these difficulties arose because - I think I have explained this to you before - when the ACC originally hired its staff, we were probably a little naive in that we did not put sufficient effort into making the investigators we hired understand the nature of the agency and the way it was going to operate. We have very strict accountability requirements in the ACC, and we required people, if they were given an investigation, to set out a time line for that investigation - what they are going to do, when they are going to do it, when it will be completed, and so on - a series of steps. They are required to adhere to that. That is the modern style of investigating. The old style of investigator is used to saying, "Trust me; I know what is right and I will just take this on." That is very much the way that many in the Western Australia Police Service still operate. Their supervisors really do not have any idea what is happening. They end up chasing all sorts of rabbits down burrows that are different from the original investigation. That is the genesis of bullying accusations against the person in charge of our operations. He accepted that perhaps he had dealt with some of these people inappropriately, but they wanted to take the trust-me-I-know-best approach, saying, "I know I have this plan, but because of other things that have come up I am going to move off that." He was insisting that they adhere to their plan or - and we do this regularly if something comes up - change the plan. However, this is done by agreement with the administration. He was insisting that they adhere to their plan or get authority to change their plan, and that all investigations should be conducted in that way, which is the way the commission wants them investigated. We criticised the Police Service for the fact that there is no supervision of their investigations, so it scarcely lies in our mouths to make such criticisms when we do not supervise our own investigations.

A lot of these people took great exception to this and felt that they were experienced investigators and should not have to be told what to do. It really led to a falling out, I suppose, between them and the director of operations, or the principal investigator, as he was called then. It got to the point where the regular meetings they would have would become slanging matches, and when we became aware of the problem I interviewed a number of people. A couple of them who had come criticism of the principal investigator said that it was nevertheless their view that some of the other investigators actually went out of their way to antagonise him and try and get him to lose his temper, or whatever, and were successful. He accepted that he had spoken inappropriately to people and so on. That is where it all had its genesis, and then it sort of all developed from there - as these things do. When they left we had a big meeting of everyone and said that management was here to manage. We accepted that some people did not like the way we operated, but that was going to be the way we operated, and we were not going to change it.

[10.30 am]

We told them that if they felt that was not appropriate for them, we were very happy to work with them to try to find other employment. We did that, and a number of them went off, and then they all went and complained. Basically their target was this principal investigator. As I say, it all developed from there.

Ms J.A. RADISICH: Can you expand on the statement that serious misconduct is creating social and economic cost to the whole WA community.?

Mr O'Connor: The nature of the misconduct or the impact?

Ms J.A. RADISICH: I am interested in what you perceive the impact to be and how widespread it is.

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Mr O'Connor: If people are misbehaving themselves in the public sector, it inevitably causes disruption and it usually involves them in some way or another misusing resources.

Ms J.A. RADISICH: Is the incidence so widespread that it impacts on the whole WA community?

Mr O'Connor: I think that might be a bit of Terry Lewis hyperbole, but in a sense any waste of taxpayers' money impacts on us all because we are all taxpayers. Aboriginal health is probably a very good example. It is not the whole community, but that segment of the community is grievously ill-served by the public health system in this country. Their conditions are a disgrace to a civilised community and they have the highest rates of infant mortality and disease etc - I do not need to go through it; I think everyone is probably aware of it - and to have resources that are made available through this agency for their wellbeing misused, in some cases fraudulently, clearly impacts very significantly on them, because it results in diminished resources or the use of resources in a way that does not benefit the people whom they are supposed to benefit.

Ms J.A. RADISICH: I guess in essence the comment in the documentation is a bit of a sweeping statement?

Mr O'Connor: It is probably a bit of hyperbole.

Mr J.N. HYDE: The second paragraph on page 3 states -

202 (39%) of the finalised matters were either outside the ACC's jurisdiction; the evidence was inconclusive; the allegations vexatious, not serious, or found to have been the subject of adequate prior investigation; or the pursuit of further action was deemed to be not justified or not in the public interest.-

Mr O'Connor: Sorry; I did not have a chance to go through the statement this morning and refresh myself with the wording.

Mr J.N. HYDE: The key point is vexatious allegations. I assume that, because of the legislation, you are not in a position to tell the victims of these allegations that they were vexatious?

Mr O'Connor: Yes, we do, if they know about them. Sometimes a matter comes to us and we say there is nothing in it and we do not pursue it, but if they know about it we tell them the outcome.

Mr J.N. HYDE: As bluntly as to say to a CEO of a local council, "We have called you in because it has been alleged that you have stolen 30 000 pencils, and we have now discovered that someone who you sacked at another council is being vexatious"?

Mr O'Connor: We probably do not use the word vexatious. We are more likely to say there is no substance in the allegation.

Mr J.N. HYDE: To take it a bit further, with the new body, would you recommend that there be the ability to perhaps be a bit more transparent? As you state, one of the main successes of the ACC is not just getting convictions but proving that something did not happen. It seems to me that because of the number of vexatious litigants, or whatever - up to 39 per cent - we need a bit of transparency in the community that not every whistleblower is right.

Mr O'Connor: One of the difficulties is that - it may not be his phrase, but the first time I heard it used was by your predecessor, Bill Thomas - many of these people are the mad, the bad and the sad. If the person the subject of the complaint does not know about it and we are unable to reach that conclusion, then we would probably say it is best just left rather than stir up the person against whom the complaint is made. However, if the person does know about it then we would tell him. I think vexatious is probably a slightly emotive way of saying it has no substance. It can connote more than no substance.

Hon SUE ELLERY: Intent.

Mr O'Connor: Yes.

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Mr Doig: We do note that prior to local government elections the number of local government allegations seems to escalate.

Mr O'Connor: Despite the fact that a person cannot publish the fact that he has made a complaint to the ACC, it still happens.

Hon BARBARA SCOTT: Under improper conduct, if you have done an investigation of sexual assault, particularly against children, but the public officer resigns or is dismissed, is no further action taken against that person?

Mr Doig: We insist that if it is a teacher it is reported to the police.

Mr O'Connor: They probably do that in any event. From time to time we get an allegation, particularly from the Education Department. The allegations seem to arise much too frequently. In fact, it shocked me, the number of allegations. That is not to say there is necessarily any substance in them. If it looks as though it is a criminal offence, then it must be reported to the police sexual assault or child abuse units. Sometimes the evidence falls short and discipline is the only alternative. If the person resigns, then that is the end of it.

The CHAIRMAN: You have no obligation to report allegations of sexual misconduct or child abuse?

Mr O'Connor: We do not have an obligation to report anything in that way, but we could not sit on such an allegation. We would either investigate it ourselves, or if it looked as though it was an offence, even vaguely, we would insist that it go to the child abuse unit; we generally would not do such an inquiry ourselves. If it has been to the child abuse unit and it has decided that there is not sufficient evidence to prosecute, we would then say to the employer, or whoever it is, that they have to look at it from a disciplinary perspective. However, if the person resigned and the police were not doing anything, then it would go on his record that an allegation had been made but there had been no disciplinary hearing because the person had resigned before that could take place.

Hon BARBARA SCOTT: With regard to the proposal to list in a register any charges against people who work with children, would an investigation by the ACC be listed as part of the criminal history of the person?

Mr O'Connor: No. I am not quite across what that proposal is, but I would not think so. Is there any legislation yet?

Hon BARBARA SCOTT: Not here, but there is in Queensland, and the criminal history includes any offences and allegations.

[10.40 am]

Mr O'Connor: It is a bit of a worry, that sort of thing.

Hon BARBARA SCOTT: I was really wondering what happened to it.

Mr O'Connor: At the moment, with our legislation as it is, no, but of course if legislation were introduced, then the ACC or the CCC could be required to report any matters that come to their attention. As a general rule, I cannot think of a case where an allegation has actually been made to us of child sexual abuse. Do you recollect it?

Mr Doig: By a public officer?

Mr O'Connor: Yes.

Hon BARBARA SCOTT: There are a number of them in this report.

Mr O'Connor: I will deal with that in a moment, but there has been no direct allegation to us under section 16.

Mr Doig: No.

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Mr O'Connor: But under section 14, of course, the obligation is to report to us; and that is what these are.

Hon DERRICK TOMLINSON: Thank you very much for appearing before us. I do not know whether this will be our last meeting. You have expressed a hope that the matter will be resolved.

Mr O'Connor: Perhaps you could invite us back for a drink or something!

Hon DERRICK TOMLINSON: Our situation is even less certain than yours, because we assume that when the ACC ceases to exist, we will cease to exist. The committee does not exist as a result of any legislation; it is a result of the standing orders of the Legislative Assembly. I wrote to the Clerk of the Legislative Assembly in March advising him of this and requesting that matters go before - I think it is - the Procedure and Privileges Committee to establish standing orders for a new committee. I am told that nothing can be done until legislation is passed, because it cannot have procedures until it knows what the procedures relate to. So, I would anticipate if the legislation is enacted by the end of September or mid October, we will cease to function mid October. Unless the Legislative Assembly does something quickly, there will not be a new committee until the spring session of Parliament.

Dr E. CONSTABLE: So, you will have to invite us for a drink.

Hon DERRICK TOMLINSON: Yes, you will have to invite us for drinks.

Mr O'Connor: Yes, that is right.

Hon DERRICK TOMLINSON: May I thank you for the way in which you have always cooperated with this committee from time to time. As I have said many times, our relations have not always been consistently congenial, because we have said and done things that you have not liked and so on. However, I think it has always been a productive relationship, and I thank you very much for that. You will receive a transcript of today's proceedings. Will you please correct any errors of style, but not substance, and return them to the committee.

Mr O'Connor: Can I just say that personal relations have always been very congenial; it is that sometimes we have not agreed with what you have done corporately.

Hon DERRICK TOMLINSON: As Peter Hastings said to me, if the committee were not so critical of the commission, perhaps it might have a better public image.

Mr O'Connor: Okay, thanks very much.

Committee adjourned at 10.43 am