



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

DEATH OF A WITNESS

**Report No. 14
in the 38th Parliament**

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Joint Standing Committee on the Corruption and Crime Commission

Death of a Witness

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DEATH OF A WITNESS

Report No. 14

Presented by:

Hon Nick Goiran, MLC and John Hyde, MLA

Laid on the Table of the Legislative Council and Legislative Assembly
on 24 February 2011

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COMMITTEE'S FUNCTIONS AND POWERS

On 25 November 2008 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

CHAIRMAN'S FOREWORD

On 10 September 2010 I was informed by the Commissioner of the Corruption and Crime Commission that a witness had committed suicide two days before his scheduled appearance before a public hearing of the Corruption and Crime Commission (CCC). The man had been under covert surveillance by the CCC.

On 15 September 2010 the Committee issued a formal reference to the Parliamentary Inspector pursuant to s 195(2)(d) of the *Corruption and Crime Commission Act 2003* seeking an urgent investigation into what the CCC knew about the circumstances of this matter prior to the man's suicide. The Parliamentary Inspector undertook a thorough investigation with the complete co-operation of the CCC.

The Committee was informed that the CCC had learned, through its covert surveillance, that the man had checked his life insurance policy, made enquiries to purchase a scalpel and visited suicide websites. In response the CCC made contact with the man's wife and his employer, raising with them the concerns that the CCC held as to the man's welfare. The intervention ultimately proved unsuccessful, as the man still took his own life.

This tragedy raises a number of important issues that should not be ignored, given the possibility that an analogous situation may arise again. Shortcomings in the CCC's procedures were identified by the Parliamentary Inspector and are discussed in this report.

In speaking with the Committee, the Parliamentary Inspector emphasised that in identifying these shortcomings he was in no way implying or suggesting that the CCC was to blame for the suicide of the witness. He expressed no view on that issue as he regarded it as being one that fell outside the scope of his report.

This report is a product of the Parliamentary Inspector's investigation, and the response of the CCC to the Parliamentary Inspector's findings and recommendations. The Parliamentary Inspector has confirmed that this report contains an accurate account of his findings, analysis and recommendations.

The family of the deceased man has requested that the Parliamentary Inspector and the Committee suppress the identity of the deceased witness. The Parliamentary Inspector and the Committee have agreed to this request.

I would like to take this opportunity to thank the Parliamentary Inspector, the Honourable Christopher Steytler QC, and the Assistant to the Parliamentary Inspector, Mr Murray Alder, for their professionalism and commitment through the course of this inquiry.

I would also like to extend my appreciation to the Commissioner for the CCC's complete cooperation during this inquiry.

A handwritten signature in blue ink, consisting of a vertical line that loops at the top and bottom, with a horizontal line crossing it near the top.

HON NICK GOIRAN, MLC
CHAIRMAN

RECOMMENDATIONS

Recommendation 1

That the Parliament of Western Australia advocate for the *Telecommunications (Interception and Access) Act 1979* (Cth) to be amended to permit the CCC to provide to the Coroner intercepted telecommunications material in situations such as the present case.

MINISTERIAL RESPONSE

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Committee directs that the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

CHAPTER 1 INTRODUCTION

1.1 Background

On 10 September 2010 the Commissioner of the Corruption and Crime Commission, the Honourable Len Roberts-Smith RFD QC, rang the Chairman of the Committee, Hon Nick Goiran MLC, to advise of the death by apparent suicide of a witness who had been summonsed to attend before a public hearing of the CCC. That public hearing, in aid of the CCC's ongoing investigation into alleged theft and contract manipulation of up to \$5 million by former employees of the City of Stirling, was to have commenced on 9 September 2010.

Commissioner Roberts-Smith also advised that the public hearing had, as a consequence, been postponed.

Later that day the CCC issued the following media statement:

CCC Commissioner Len Roberts-Smith QC said the public examination scheduled to start yesterday had been postponed because of the death of a witness.

He said the death was tragic and he extended the Commission's sympathy to the family and friends of the witness.

"The Commission recently came to believe that the witness was at risk of self-harm.

"Eight days before his death, the Commission informed the witness' immediate family and his employer of its concerns for his welfare.

"While this compromised some aspects of the Commission's investigation, it regarded the witness' welfare as more important.

The public examination was part of a Commission investigation into the alleged theft and contract manipulation of up to \$5 million by former employees of the City of Stirling.

Mr Roberts-Smith said the investigation has been underway for some months and the Commission's only contact with the witness was when he was recently served a summons to appear at a public examination, and a subsequent telephone call to confirm the details of that.

The Commission will announce the future of the public examination when the situation becomes clearer.

On 15 September 2010 the Committee convened a closed hearing at which Commissioner Roberts-Smith and the Parliamentary Inspector, the Honourable Christopher Steytler QC, were present. At that meeting the Chairman foreshadowed the possibility that the Committee would issue a formal reference to the Parliamentary Inspector to inquire into what was known by the CCC about the witness prior to his suicide.

Accordingly, on 15 September 2010, the Committee acting under section 195(2)(d) of the *Corruption and Crime Commission Act 2003* (the CCC Act) requested that the Parliamentary Inspector investigate the circumstances known to the CCC regarding the suicide of the witness.

1.2 Terms of Reference

The Committee's terms of reference to the Parliamentary Inspector were as follows:

The Committee desires to be informed of:

- *the circumstances pertaining to the witness's death as known to the CCC;*
- *how the CCC became concerned as to the welfare of the witness; and*
- *what the CCC did as a result of those concerns, including an assessment of any harm-prevention protocols that the CCC may have in place.*

By letter dated 28 September 2010, the Committee expanded the terms of reference by asking the Parliamentary Inspector to also express "any opinion, finding, recommendation, assessment or view the Parliamentary Inspector thought it appropriate to make" and, if the Parliamentary Inspector thought it appropriate, "to include the same in the Parliamentary Inspector's first or any subsequent report to the Committee."

1.3 Chronology leading to this report

Parliamentary Inspector's initial response to the terms of reference

On Monday 11 October 2010, the Parliamentary Inspector provided the Committee with his initial response entitled *Response by the Parliamentary Inspector to the Reference from the Joint Standing Committee of the Corruption and Crime Commission dated 15 September 2010* (the Initial Response). In the Initial Response the Parliamentary Inspector set out, at some length, the scope of his investigations and the information that he had obtained from various witnesses. As the CCC had not been given the opportunity to comment on the conclusions that might be drawn from his investigations, the Parliamentary Inspector refrained from drawing any conclusions, leaving them for a final report to the Committee.

Parliamentary Inspector prepares draft report and submits it to the CCC for comment

The Parliamentary Inspector then prepared a draft report dated 4 November 2010 (the Draft Report) and, pursuant to section 200 of the CCC Act, submitted the Draft Report to the CCC to enable it to make representations as to its content.

CCC makes its representations to the Parliamentary Inspector

On Friday 19 November 2010 the CCC provided the Parliamentary Inspector with its representations as to the Draft Report (the CCC's Representations).

Parliamentary Inspector provides the Committee with his report

The Parliamentary Inspector then amended his report to, amongst other things, include his response to the CCC's Representations, and on Monday 22 November 2010 this amended report, entitled *Report to the Joint Standing Committee of the Corruption and Crime Commission by the Parliamentary Inspector concerning the death of a witness* (the Report) was provided to the Committee. The CCC's Representations were attached as a schedule to the Report.

On 8 December 2010 the Committee convened a closed hearing attended by the Parliamentary Inspector to discuss the Report.

Committee seeks CCC feedback

By letter dated 13 December 2010 the Committee provided a copy of the Report to the CCC, and by letter dated 28 January 2011 the CCC provided its comments concerning the Report to the Committee. These comments were in addition to the CCC's Representations that the CCC had already made to the Parliamentary Inspector.

Closed hearings with the Parliamentary Inspector

On 2 February 2011 the Committee convened a closed hearing attended by the Parliamentary Inspector to discuss the response of the CCC. In that meeting, the Parliamentary Inspector offered to clarify a section of the Report, which was received by the Committee on 4 February 2011.

The Committee then provided a further revised draft of its proposed report to both the Parliamentary Inspector and to the CCC on 9 February 2011, and asked both parties to provide comments. These comments were received on 14 February 2011, and then the Committee convened another closed hearing attended by the Parliamentary Inspector on 16 February 2011 in which the received comments were considered. As a result of this hearing, the Committee provided a final draft of its proposed report to both the Parliamentary Inspector and to the CCC on 17 February 2011, prior to this report being tabled on 24 February 2011.

CHAPTER 2 THE MATERIAL FACTS

2.1 The material facts

In conducting his inquiry, the Parliamentary Inspector identified 44 material facts. The Committee sets out these material facts:

1. The CCC commenced an investigation into possible misconduct of public officers employed by the City of Stirling on 12 February 2010.
2. The witness was one of those under suspicion.
3. The witness was placed under physical surveillance by the CCC from 15 February 2010. Telecommunications interception (TI) by the CCC commenced on 22 February 2010.
4. TI from 9 March 2010 to 5 July 2010 revealed that the witness had attempted to sell his assets and that he was making enquiries about buying real estate in another State, to which State he said that he proposed to move at Christmas. TI also reveals that he was anxious to protect his assets from confiscation.
5. Between 7 and 9 July and on 21 July 2010, the CCC conducted private examinations in the course of its misconduct investigation. The witness learned of this from a number of the persons examined, contrary to an express direction from CCC Commissioner Roberts-Smith.
6. On 26 July 2010 the witness changed his name and collected an application for a new passport. On the same day, someone at his home carried out a Google search on “gaol terms for fraud”.
7. TI on 9 August 2010 showed that the witness was in the process of organising a \$500,000 bank loan.
8. On 20 August 2010, the witness was served with a summons to appear on 9 September 2010 at a public hearing to be conducted by the CCC.
9. On 23 August 2010, the CCC learned from TI that the witness had made enquiries concerning the coverage afforded by his life insurance policy.
10. On 24 and 25 August 2010, the CCC learned from TI that the witness had tried to buy a scalpel from a pharmacy in Perth.
11. During the evening of Friday 27 August and on Saturday 28 August 2010, the CCC learned from TI that someone in the witness’s home had been using a computer to access a range of websites concerning methods of committing suicide, including by cutting wrists. TI revealed that the witness was at home on these days.

12. On 28 August 2010, a senior CCC Intelligence Analyst (Analyst) was informed of the information in paragraph 11 by members of the CCC's Electronic Collection Unit who were monitoring the TI. He did not then pass this information on to the case manager for the investigation (the Case Manager), or to anyone else. It was not then known (as opposed to suspected) who, in the witness's household, had been accessing the websites.
13. At 7.30 am on 30 August 2010, the witness flew from Perth to a worksite in the northern half of Western Australia (the Worksite), where he worked for a company (the Company) on a 'fly in/fly out' basis.
14. By 8.00 am on that day the CCC had concluded that it was likely that the witness had been the person who had been accessing the suicide websites. This was because the person who had accessed the websites had, during the same period, used the computer to purchase an e-book reader and it had become apparent that it was the witness who had purchased the e-book reader. The information in paragraph 11 above and the fact that it was now believed to be the witness who had accessed the websites were reported to the Case Manager. The Case Manager informed the CCC's Acting Director of Operations. The Acting Director of Operations informed the CCC's Executive Director, and the two CCC officers then informed the CCC Commissioner. They did this in a meeting with the Commissioner that took place after 8.00 am.
15. After discussion between the Commissioner, the Executive Director and the CCC's Acting Director of Operations, a decision was reached that enquiries should immediately be made to ascertain whether the witness had succeeded in acquiring a scalpel and whether he had caught the morning plane to the Worksite as he had planned to do.
16. On the same morning, the Acting Director of Operations, the Case Manager and the Analyst reviewed a number of options available to the CCC in responding to its concern about the witness's well-being. The options that had not been discounted (for example, the option of doing nothing had been discussed and discounted) were reduced to writing by the Acting Director of Operations ('options paper'). They included, amongst other options, the option of arresting the witness and charging him with criminal offences identified by the CCC during its investigation and the option of cancelling the public examination of the witness which was scheduled for 9 September 2010.
17. The option of charging the witness was one of those that were not favoured by the Acting Director of Operations. This was because of a concern that this might aggravate the situation in circumstances in which it was believed that the witness would get bail and then be in a position to harm himself. As previously noted TI had revealed that the witness had been researching penalties for fraud. It had also revealed that he had been researching the possibility that his assets would be confiscated if he should be convicted of fraud. This led the Acting Director of Operations to conclude that these possibilities were the witness's principal concerns.

18. The option of cancelling the public examination on 9 September 2010 was another of those not favoured by the Acting Director of Operations. This was because, although that option ‘may take pressure off him [the witness] temporarily’, it would not achieve more than that.
19. The options paper did not include the option of changing the public examination of the witness to a private examination. When interviewed, the Acting Director of Operations said that he thought that this option had been considered. However, he had no clear memory of this. At the time, he had believed that the prospect of a public examination was not a ‘real factor of worry’ to the witness and that his concerns would have been the same whether his examination took place in private or in public.
20. Another of the options discussed was that of telling the wife of the witness and his employer that the witness had been checking his life insurance policy, that he had tried to buy (and had perhaps bought) a scalpel and that he had been accessing suicide websites (together ‘the material information’). This was their preferred option.
21. Once the outcome of the enquiries mentioned in paragraph 15 had become known (the enquiries had revealed that the witness had caught the morning plane to the Worksite and that the pharmacy from which he had tried to buy a scalpel had referred him to an art supply shop), the Acting Director of Operations took a type-written copy of the options paper with him to a second meeting with the Commissioner and the Executive Director. This took place at about 2.55 pm that day (30 August 2010). The Acting Director of Operations told the Commissioner and the Executive Director that the option referred to in paragraph 20 above was his preferred option. After some discussion, a decision was made to implement that option.
22. The Commissioner’s recollection is that the discussion encompassed the option of cancelling the proposed examination and that it was decided in that respect that the public examinations – including the examination of the witness – should proceed as scheduled. He says that this was because:

[W]e were all of the very firm view that what [the witness] was worried or stressed about was not the fact that he had been summonsed to a public hearing, but that the Commission had (or was obtaining) evidence of his conduct and that he would be convicted of serious offences, sent to prison and have his criminally obtained assets confiscated.

The Commissioner says that this was demonstrated, in particular, by the web searches that the witness had made as regards jail terms for fraud and by efforts that he had made to divest himself of assets.

23. The CCC makes the point that the options paper’s sole purpose was to deal with the potential for the witness’s suicide on that day, 30 August 2010 and that it was not intended to, and did not, ‘set the strategy for the CCC going forward’.
24. The Commissioner has also said, in a letter addressed to the Parliamentary Inspector dated 1 November 2010, that his recollection is that:

[T]he question whether [the witness] may have been contemplating harming himself because of a fear of being called for public examination and so whether that could be allayed by directing [that] his examination (or the hearings generally) be conducted in private were threshold questions for me – and were discussed – once the topic of suicide arose. They remained ever-present in my mind to the end, but so far as I can recall there was no further discussion about changing the public examinations generally, (or that of [the witness] specifically), to private examinations, because that was not the point of his concern.

25. It is unclear whether the discussion during the 2.55 pm meeting encompassed the question whether disclosure of the material information was permitted by the *Telecommunications (Interception and Access) Act 1979* (Cth) (TI Act).

- The Acting Director of Operations does not recall any discussion in this respect.
- The Commissioner's recollection is that there was discussion concerning the question whether disclosure of the material information was prohibited by the TI Act. He said that those present at the meeting reached the conclusion that disclosure of that information by the CCC was permitted by section 139 of the TI Act in order to preserve the life of a person who was the subject of its investigation. He also recalled that it was decided that the source of the material information could not be disclosed. Although he was confident that TI information could be disclosed under the TI Act, he thought that disclosure of the source might well breach the TI Act. He believes that a decision was made that, if the CCC officers who passed on the material information should be asked about its source, they should say that it could not be revealed but that it was reliable.
- The Executive Director has no recollection of any discussion concerning the possible application of the TI Act, but accepts that the issue may have been discussed. However, he subsequently considered the issue and concluded that the CCC's actions in disclosing the material information were defensible as the CCC could lawfully disclose TI information under the TI Act to preserve the life of a person who is subject to an investigation.

26. The Commissioner has said that he also had in mind an operational consideration, although he cannot specifically recall any discussion concerning it. This consideration was as follows:

We were dealing with a risk of self-harm. That was one of a number of possibilities. The investigation was still ongoing. If nothing were to eventuate in terms of that risk; or if it were to prove unfounded, the Commission investigation might still retain some benefit from TI even if [the witness] and others believed the Commission was doing that. A belief or suspicion is one thing: official confirmation by the investigating agency is another.

The Acting Director of Operations does not recall any discussion concerning this issue. Nor does the Executive Director mention any such discussion.

27. The Executive Director's recollection is that, despite the witness's actions, he then regarded the possibility of suicide as one of a number of possibilities. Others were that:
- The witness's actions amounted to a cry for help;
 - The witness was laying the basis for a medical certificate to avoid attending the hearings;
 - The witness's conduct amounted to a ruse to flush out whether the CCC was intercepting his telephones;
 - The witness's conduct amounted to a ruse to cover his intention to flee Western Australia; and
 - The witness's conduct formed part of an adjustment process by which he would accept the inevitability of the hearings and the possibility of criminal charges and jail.

However, by early afternoon on 30 August 2010 the Executive Director had also concluded that the witness's actions could be interpreted as a move from some form of mere ideation about committing suicide to planning to do so. His understanding was that males, once having started to plan to commit suicide, would often do so quickly, with a comparatively high level of success. He regarded this possibility as one that reinforced the need for the CCC to intervene that day.

28. On the afternoon of 30 August 2010, the Case Manager telephoned the Company's Operations Manager (Manager A) at the Worksite, and the Company's Business Manager (Manager B) and a long time friend of the witness. He passed on the material information to each of them. There is a difference in recollection concerning the question whether the two men were told the source of the information (both believe that they were, but the Case Manager believes that they were not). Whatever might be the position in that respect, it is clear that, if not told of the source, both men inferred, correctly, that it had been TI carried out by the CCC.
29. The Case Manager's recollection is that, during his conversation with Manager A he was told by Manager A that workers at the Worksite had access to doctors, psychologists and counsellors so he could take care of the witness as soon as possible.
30. On the same afternoon, CCC Investigators C and D were briefed by the Case Manager concerning the material information. They were asked to go to the home of the witness and pass that information on to his wife. The Analyst was present during the briefing.
31. Investigators C and D were not involved in the investigation.
32. There are differences in recollection concerning whether or not the two investigators were told not to reveal the source of the material information.

- Investigator C does not believe that they were told this.
 - Investigator D says that they were told by the Case Manager not to reveal the source. Investigator D recollects having discussed with Investigator C, on the way to the wife's home, what they would do if asked about the source of the information. Investigator D said that they decided that they would say that information was received from a large number of sources but that they believed that this information was credible.
 - The Analyst believes that, in response to a question from Investigator D, the Case Manager told Investigator D that the source of the material information was not to be revealed at that stage. The Analyst is 'not one hundred percent sure' of his recollection in this respect. He does not think that there was any discussion regarding the reason for non-disclosure of the source.
 - The Case Manager does not remember saying that the source of the material information was not to be disclosed. However, he accepts that he might have done so.
33. Investigators C and D arrived at the wife's home at 5.00 pm. They passed on the material information. When asked about the source of the information they told the wife that they had been told it by 'somebody' and that their source was credible. The wife, who was upset by what she had been told, expressed doubt about the source of the information and about the notion that her husband would commit suicide. She told the two investigators that she had been with her husband when he acquired the scalpel and that he had told her he needed it for work.
34. The investigators provided the wife with the names of two organisations she might contact for advice concerning her husband, being 'Crisis Care' and 'Beyond Blue'. They also provided her with their cards and told her that she could ring either of them at any time if she had any questions or if there was some way that they could help. They told her that they would telephone her in about an hour to 'make sure [she was] okay'.
35. The wife telephoned the witness at 5.41 pm, shortly after Investigators C and D had left. This conversation (which was monitored by TI) included exchanges to the following effect:
- (a) She told the witness that the CCC had just been to their house, that she didn't know what was going on and that the CCC had concerns for his safety. The witness replied that he did not know what the CCC was talking about.
 - (b) She told the witness that the CCC thought that he was going to commit suicide. He said that it was 'none of their business'. She asked why the CCC would be thinking this. The witness replied that he had no idea.

- (c) She repeated the information given to her by Investigators C and D. The witness was dismissive of it and asked why the CCC was searching their home. She told him that the CCC had not searched their home.
 - (d) She told the witness that she didn't understand how the CCC would know that he had bought a scalpel. The witness replied that he had no idea. She also asked how the CCC could know that he had 'been on websites'. He said, again, that he had no idea but added that 'obviously they're monitoring everything I've got and ever looked at at all'.
 - (e) The witness repeatedly assured his wife that he was fine.
36. After speaking with her husband, the wife examined one of two laptop computers owned by them (the other had been taken by the witness with him to the Worksite). She searched the history of sites previously visited and found the suicide websites that had been accessed by her husband. She did not tell her husband that she had done this and nor did she inform the CCC. She said that she did not want to believe that her husband would commit suicide (although she was worried that he might do so). However, she did speak with a friend of her husband, and expressed concern to him. He telephoned the witness, who assured the friend that he was not contemplating suicide.
37. On the evening of 30 August 2010, Investigator C made a telephone call to the wife to check that she was alright. The wife's mobile telephone was switched off. There was no further contact with the wife by the CCC before the witness' death.
38. TI revealed that, on the evening of 30 August 2010, someone at the wife's home (very probably the wife herself) had accessed the 'Beyond Blue' website.
39. On 31 August 2010, Manager B telephoned the Case Manager. He told the Case Manager that he had spoken to the witness (as he had done) and that the witness had denied that he had any thoughts of suicide. Manager B may also have told the Case Manager that the witness seemed 'fine'.
40. The CCC did not have any further contact with the Company concerning the witness.
41. TI revealed that, from 31 August 2010 until his death, the witness consistently maintained to his friends and to his wife that he had no intention of committing suicide. It also reveals that he continued to deny that he had accessed websites concerning suicide.
42. TI by the CCC also reveals that, at 4.12 pm on 6 September 2010, the wife telephoned Crisis Care and sought advice concerning the possibility that her husband might commit suicide.
43. The witness committed suicide at the Worksite on either 7 or 8 September 2010.
44. The CCC has no protocol directed specifically to a case of threatened suicide. It does not regard it as feasible to implement one.

CHAPTER 3 SHORTCOMINGS IN THE PROCEDURES ADOPTED BY THE CCC

3.1 Introduction

The Parliamentary Inspector found three shortcomings in the procedures adopted by the CCC.

In speaking with the Committee, the Parliamentary Inspector emphasised that in identifying these shortcomings he was in no way implying or suggesting that the CCC was to blame for the suicide of the witness. He expressed no view on that issue as he regarded it as being one that fell outside the scope of his report.

3.2 Information should have been relayed to superiors immediately

On Saturday 28 August 2010 the CCC's Electronic Collections Unit provided the Analyst with information that someone in the witness's home was accessing suicide websites. Unfortunately, the Analyst did not inform his superiors about this information until Monday 30 August 2010. By that time the witness had departed Perth for the Worksite.

The Parliamentary Inspector considers that, once faced with the information relayed to him, the Analyst should have at once alerted his superiors so that appropriate action could have been taken immediately, rather than waiting until Monday 30 August 2010 to do so.

The Analyst said that at the time he received the information about someone in the witness's home accessing suicide websites he was unaware that the CCC also had intelligence that the witness had attempted to purchase a scalpel. As to this, the Parliamentary Inspector considers that if the Analyst was not aware of this prior information (as to which the Parliamentary Inspector made no finding), then this of itself reflects a procedural failure. The Analyst also said that when he was informed of the access of suicide websites, it was not known who in the home had accessed the websites. As to that the Parliamentary Inspector has said:

[I]t seems to me that [the Analyst] should have appreciated, even without [knowledge of the prior information], that the overwhelming probability was that it was the witness who had been accessing the websites. If, when it was confirmed that it was the witness who had been accessing the websites, it was thought to be necessary for a report to be made, it is difficult to understand why this should not have been thought necessary merely because it was thought to be probable (as it must have been), rather than certain, that it was the witness who had been accessing the website. Either way, it should have been appreciated that there was a credible risk that the witness was contemplating suicide.

[...]

In my opinion, [the explanation offered by the Analyst] is unsustainable, even accepting that [the Analyst] did not know of the attempt to acquire a scalpel. The witness was known to have been in his home at the time that the sites were accessed. [The Analyst] knew that

the witness was aware that he was under investigation for serious fraud and also that the witness had only recently (on 20 August 2010) been served with a summons to appear at a public hearing on 9 September. It was obvious that he was, by far, the person most likely to have been accessing the sites. Moreover, the large volume and detailed nature of the sites visited should have made it obvious that this access was not for the satisfaction of some idle morbid curiosity or 'more casual suicidal ideation' [possibilities that had been suggested by the Commissioner].

In any event, the absence of certainty affords no justification for failure to report information of this kind. An undeniable probability (as there seems to me plainly to have been) that it was the witness who had been accessing the sites and that he had done so for reasons other than idle curiosity (or testing the CCC) should have been more than enough to justify an immediate report by [the Analyst] to his superiors. Even a realistic possibility of these things should, given their potential seriousness, quite plainly have resulted in a report.

The Parliamentary Inspector also said:

[A]s I have already said, if [the Analyst] was not aware of the prior information on 28 August 2010, this reflects a procedural failure. He was the person to whom the ECU personnel reported on 28 August, presumably in his capacity as the intelligence analyst assigned to the investigation. There had previously been a decision to 'monitor' the situation after the interception of calls relating to the check on insurance and the attempt to purchase a scalpel.

A journal entry made by [the Acting Director of Operations] on 24 August reveals that, after being spoken to by [the Case Manager], he had listened to both calls. Although his journal entry records, seemingly in respect of the call relating to the insurance, that it 'Appears to be generic enquiries re new super with [the employer of the witness]', it also bears the note 'To monitor situation'. [The Acting Director of Operations] told me that the CCC had had 'some concerns' about this and that 'we had conversations about it'. If [the Analyst] was to be one of those monitoring the situation, arising out of these concerns, he should have been told of them (if he is right in his recollection that he was not told).

In any event, given that [the Analyst] had been told that the witness had been accessing suicide websites, his decision to do nothing was insupportable, even accepting that he did not then know of the prior information. As I have said, there was an overwhelming probability, in the circumstances, that it was the witness who had been accessing the websites. The volume and nature of the sites visited by the witness should plainly have alerted [the Analyst], without more, to the prospect that the witness might have been planning to commit suicide... I should add that, if [the Analyst] wasn't given details concerning the websites, he should have been (and should have asked for them).

The CCC suggests that the decision not to report the access of suicide websites was not unreasonable given the circumstances that:

- the Analyst was not aware of the attempt to get a scalpel;
- the Analyst was required to make a judgment in off-duty hours;

- this was one of the hundreds of decisions taken each week in respect of investigations underway; and
- such decisions occur in a context where other activities are also occurring and the individual may be distracted from the task in hand.

The Parliamentary Inspector said, concerning these suggestions:

Leaving to one side the fact that [the Analyst] does not suggest that he was distracted from 'the task in hand', it is impossible to understand why the decision was not obvious and why it should not have been given the highest priority. Also, if [the Analyst] was not then aware of the prior information, which was already a source of concern to the CCC, this is, as I have said, itself indicative of a systemic failure.

The Parliamentary Inspector later went on to say:

That so potentially serious a lapse occurred makes it plain, at least with the benefit of hindsight, that there should be a standing requirement that every threat of suicide by a witness or suspect should at once be made known to a senior CCC officer, at least at the level of the Director of Operations. That this is necessary is underlined by [the Executive Director's] understanding of statistical probabilities, identified above in the penultimate sentence of paragraph 27 of the statement of material facts.

Having considered the representations made by the CCC, the Parliamentary Inspector accordingly made the following recommendation:

There should be a standing direction by the CCC that, upon receiving information revealing that a witness or suspect may be considering suicide, or that any person faces a risk of serious harm, the Director of Operations or, in his absence or unavailability, a more senior officer of the CCC should immediately be informed.

The Committee endorses this recommendation, and in forwarding the Parliamentary Inspector's Report to the CCC for comment, the Committee communicated this position.

Subsequently, the CCC advised the Committee that it has now implemented a commission-wide directive that:

Any Commission officer who becomes aware of any threat to a person or property is to immediately so inform the Director Operations, or in the absence or unavailability of the Director Operations, a more senior officer of the Commission.

The Parliamentary Inspector has advised the Committee that he considers this standing direction an appropriate response to his recommendation.

3.3 The CCC should have disclosed to the wife the source of the material information

The TI Act makes it a criminal offence, punishable by two years imprisonment, for any person to communicate to another person lawfully obtained TI information, unless the TI Act authorises such a communication.¹

It will be recalled from the material facts that the CCC Commissioner, in consultation with the Executive Director and Acting Director of Operations, decided at the conclusion of a meeting at 2.55 pm on Monday 30 August 2010 to tell the wife of the witness and his employer that the witness had been checking his life insurance policy, that he had tried to buy (and had perhaps bought) a scalpel and that he had been accessing suicide websites.

It will also be recalled from the material facts that it was unclear whether the discussion during this meeting encompassed the question whether disclosure of the material information was permitted by the TI Act. As to this, the Parliamentary Inspector determined that:

- The Acting Director of Operations does not recall any discussion in this respect.
- The Commissioner's recollection is that there was discussion concerning the question whether disclosure of the material information was prohibited by the TI Act. He said that those present at the meeting reached the conclusion that disclosure of that information by the CCC was permitted by section 139 of the TI Act in order to preserve the life of a person who was the subject of its investigation. He also recalled that it was decided that the source of the material information could not be disclosed. Although he was confident that TI information could be disclosed under the TI Act, he thought that disclosure of the source might well breach the TI Act. He believes that a decision was made that, if the CCC officers who passed on the material information should be asked about its source, they should say that it could not be revealed but that it was reliable.
- The Executive Director has no recollection of any discussion concerning the possible application of the TI Act, but accepts that the issue may have been discussed. However, he subsequently considered the issue and concluded that the CCC's actions in disclosing the material information were defensible as the CCC could lawfully disclose TI information under the TI Act to preserve the life of a person who is subject to an investigation.

As described within the material facts, ultimately CCC Investigators C and D visited the wife that day and told her that the CCC had received information that her husband had been accessing websites in relation to suicide. When the wife asked about the source of the information they told her that they had been told this information by 'somebody' and that their source was credible.

¹ *Telecommunications (Interception and Access) Act 1979* (Cth), ss 105 and 63.

The wife, who was upset by what she had been told, challenged the source of the information and the notion that her husband might commit suicide. The investigators did not reveal to the wife the fact that the CCC had received this information by way of TI undertaken by the CCC.

The Parliamentary Inspector added that, although the witness's wife had soon afterwards become aware, from her own investigations, that the information provided to her had been accurate, it was not inevitable that she would do so.

Investigator D's recollection was that the wife was not informed of the source of the information because their instructions were not to reveal the source of the information. Investigator C's recollection was that the TI Act prevented them from doing so.

The Parliamentary Inspector found that there was no clear or uniform understanding by officers of the CCC whether the TI Act did or did not prohibit disclosure of the source of TI information in a case of this kind, and that this lack of clarity was a deficiency in the procedures adopted by the CCC. According to the Parliamentary Inspector:

It... seems to me that the CCC should have been better prepared for a possible threat of suicide or other threat of serious harm to any person, in the sense that it should have arrived at, and communicated to staff, a decision on the question whether disclosure is legally permissible in circumstances of this kind. It also seems to me that, if disclosure of the source of TI information is permitted for the purpose of endeavouring to prevent the threatened suicide of, or other threat to the life of, a suspect (as seems to me to be the position), those conveying the material information should have been instructed in this case (and that they should be so instructed in other similar cases) that, if this should appear to be necessary to support the credibility of the information supplied, the source of the information should be disclosed.

In explaining his criticism, the Parliamentary Inspector made two points. First, his prima facie opinion is that, as a matter of law, there is no basis for distinguishing between TI information, on the one hand, and its source, on the other, for the purpose of deciding whether disclosure in a case of the present kind is a 'permitted purpose' under the TI Act.

Second, irrespective of whether his construction of the TI Act is correct, there was no clear understanding within the CCC of the rights and obligations under the TI Act, in an eventuality of this kind.

Accordingly, the Parliamentary Inspector made two recommendations:

1. *An education program should be implemented as soon as practicable to inform all CCC offices of the circumstances in which the TI Act gives them authority to disclose lawfully intercepted information and interception warrant information, with particular emphasis on cases of threatened suicide or other threats of serious harm to any witness, suspect or third person.*
2. *In the event that the CCC should form the opinion that the TI Act does not permit disclosure of lawfully intercepted information and/or interception warrant information in*

cases of threats of suicide and/or other threats of serious harm, it should inform the JSCCCC accordingly so that representations might be made concerning the need for appropriate amendments to the TI Act.

In light of these recommendations the Committee asked the CCC whether, subsequent to this matter, it had reached a considered view as to whether it was permissible under the TI Act to have revealed to the wife not only the fact that the husband had been accessing suicide websites, but that the source of that knowledge was from TI material.

In forming its response, the CCC obtained an opinion from Senior Counsel, and this opinion was then considered by the Committee and the Parliamentary Inspector.

The opinion is complex, and there are a raft of considerations that it provides for as to when, and in what circumstances it would be permissible for the CCC to be able to release TI material and TI warrant information if a person's life is at risk.

The CCC advised the Committee that the opinion would form the basis for a training program for its staff as to when and in what circumstances TI material and TI warrant information can be disclosed to persons such as the wife if an analogous situation were to arise in the future.

The Parliamentary Inspector is satisfied that if a training program is structured around the opinion that this will address his two recommendations.

3.4 The CCC should have either deferred or else changed the public hearing to a private hearing

The Parliamentary Inspector does not express a view as to whether or not the fear of a public hearing was a trigger for the witness's suicide. According to the Parliamentary Inspector:

Whether there is or is not evidence in support of the proposition that the fear of publicity was, in fact, a trigger for the suicide is beyond the scope of, and hence irrelevant to, this report.

The Parliamentary Inspector did, however, express his view that the Commissioner should have exercised his discretion under the CCC Act and either converted the public examination of the witness to a private hearing, or else deferred the public hearing to a later date and to have informed the witness of that fact. This, according to the Parliamentary Inspector, should have occurred because:

- there was no direct evidence that adverse publicity was in fact one of the witness's concerns but, equally, there was no evidence that it was not;
- the CCC, and the Commissioner himself, regarded the threat of suicide as credible;
- once there was a credible threat, the only logical and reasonable step was to assume that public exposure of his wrong-doing might be a trigger for the timing of his suicide; and

- given what was at stake, “it could not reasonably be concluded that it was in the public interest to open the scheduled examination to the public”.

The Commissioner considers the Parliamentary Inspector’s view to be unfounded in fact, unfair and unreasonable. The Commissioner says that the view he held, based on all of the information available to him at the time, was that it was not a fear of adverse publicity coming out of a public examination that had been, and was, driving the witness, but rather a fear that he would be charged, imprisoned and have his assets confiscated. The Commissioner said:

All of the available evidence positively revealed that the witness’s concern was the inevitable progression of the CCC’s investigation, to the point at which he saw he would be held to account for what he had done.

The critical point of difference between the Commissioner and the Parliamentary Inspector can be encapsulated in the following statements from the Parliamentary Inspector:

While there is force in what was said by [the Acting Director of Operations] and by the Commissioner as regards the longer term concerns that the witness may have had, it seems to me that it would have been unreasonable to assume that these were his only concerns and that he was not also concerned by a fear of adverse publicity.

I have said that the Commissioner saw, as ‘threshold’ questions, the questions whether the witness may have been contemplating harming himself because of a fear of being called for public examination and, if so, whether that could be allayed by directing that his examination be held in private. This makes it apparent that he foresaw the possibility that the public hearing might be a trigger for the timing of the witness’s possible suicide.

...[I]t seems to me that, having considered these questions and having foreseen this possibility, the only safe procedure (and therefore, in my opinion, the only reasonable procedure) was to take a conservative approach and to do whatever was necessary to defer the prospect of adverse publicity, given what was potentially at stake.

This could have been achieved by having the witness examined in a private hearing and either having subsequent hearings also held in private or making appropriate suppression orders in respect of them and by informing the witness immediately that these steps had been taken. Alternatively, it could have been achieved by deferring the scheduled examination (I have mentioned that this option was one of those that were rejected). Moreover, if the possibility that the public examination might be the trigger for the timing of the possible suicide was foreseen by the Commissioner only to be rejected by him on the basis that it was not a reasonable possibility (a point to which I shall return below), it seems to me that that conclusion was not one that was reasonably open to him.

As the CCC has correctly identified, the well-being of the witness was the paramount consideration. Even if it was reasonable to assume that the best that could be achieved by deferring the prospect of adverse publicity was to delay the implementation of any plan that the witness might have had, this was enough to require the adoption of that course and an immediate notification to the witness of what had been done.

It is relevant, in this respect, that s 139(1) of the CCC Act requires that, except as provided in s 140, an examination is not open to the public. Section 140(2) provides that the CCC 'may open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so'.

Given that the CCC had accepted that there was at least a realistic possibility that the witness was planning to commit suicide and given that it had, or should have, identified the possibility that a fear of publicity might have been a cause of this, it seems to me that, once this potential for prejudice was taken into account, it could not reasonably be concluded that it was in the public interest to open the scheduled examination to the public.

In any event, s 140(4) gives the CCC the power to close an examination for a particular purpose. There was consequently nothing to prevent it from conducting the examination of the witness in private and ordering that his name be suppressed in any subsequent hearings.

Later in his Report, the Parliamentary Inspector went on to say:

My conclusion was (and is) that it was unreasonable, in all of the circumstances, to assume that the witness's longer term concerns were his only concerns. In my experience it would be most unusual for someone who has apparently concealed fraudulent behaviour (certainly from his employer, as the CCC knew from its TI, and possibly from others, including his children) not to be concerned by the prospect of public exposure.

It is true that there was at the time no direct evidence that adverse publicity was in fact one of the witness's concerns but, equally, there was no evidence that it was not. I have said (and it seems to me to have been obvious) that no reliance could be placed on the witness's subsequent protestations to the effect that he was untroubled by the forthcoming public hearing (as I understand him, the Commissioner accepts this). In those circumstances, the only assumption that should reasonably have been made was that publicity might well have been one of his concerns.

That this is so still seems to be to be underscored by the fact that, as the Commissioner told me in his letter dated 1 November 2010 ... the question whether the witness 'may have been contemplating harming himself because of a fear of being called for public examination and so whether that could be allayed by directing his examination (or the hearings generally) be conducted in private were threshold questions for me - and were discussed - once the topic of suicide arose.'

That comment, and the comment that these questions 'remained ever-present in [the Commissioner's] mind to the end' seem to me to reflect an acceptance of the proposition that this was, at least, a possibility that justified serious consideration. Moreover, in my opinion it affords no answer to say that it was considered and rejected. The point is that it was, in all of the circumstances, unreasonable to reject it.

There is no doubt that the CCC, and the Commissioner himself, regarded the threat of suicide as credible. That is why the disclosures were made. Once there was a credible threat, it was a small step (and, in my opinion the only logical and reasonable step) to

assume that, whether the witness was or was not concerned primarily by his exposure, conviction and imprisonment and by the possible forfeiture of his assets, public exposure of his wrong-doing might be a trigger for the timing of this suicide.

As I have said, once it is accepted that this possibility existed as a reasonable possibility (and in my opinion it must be), then it must also be accepted that, in circumstances in which there was seen to be a credible threat of suicide by a man whose public examination was only one week away and who was to be away from his family throughout that week, the only reasonable course, given what was potentially at stake, was to take the conservative approach of deferring the prospect of adverse publicity. This would give the witness a better opportunity to change his mind, perhaps after having the benefit of face to face discussions with his wife and family. As I have said, the prospect of adverse publicity could have been deferred by hearing the evidence of the witness in private. Alternatively, the public examination might have been deferred in the hope that, by the date of resumption, appropriate protections might have been put in place.

I will not repeat what I have said concerning the weighing of the benefits of public exposure against the potential for prejudice. However, I should add that the benefits referred to by the Commissioner... to the extent that they had not already been achieved as a consequence of the Inquiry into the Department of Health, were achievable, in due course, through the publication of a report.

In making representations to the Parliamentary Inspector on this point, the Commissioner said:

As I have sought to make clear, having considered the possibility that [the witness's] concern was that his examination was to be public, my conclusion on all the information available was that that was in fact not the case. To say then, that "[H]aving foreseen this possibility ..." the only safe procedure was to do as you contend, presents the proposition in an unfair and incomplete way. This is because having foreseen that possibility (amongst others) and considered it in light of all the information available, I came to the view that was not the factor which was his concern. Not only was that positively indicated by the information which was available, but there was nothing to suggest his concern was with the public nature of his examination.

Having come to that view, I maintain it cannot properly be asserted that the only reasonable course of action was to conduct his examination in private.

The Committee's view differs from that of the Parliamentary Inspector on the basis that there was no direct evidence that the witness feared the publicity of a public examination. It cannot therefore be said, in the Committee's view, that it was manifestly unreasonable for the Commissioner to have proceeded with the public hearing.

CHAPTER 4 THE CORONER

4.1 The Coroner cannot access the relevant TI material

The Coroner is currently investigating the suicide of the witness.

Both the CCC and the Parliamentary Inspector have seen the suicide websites viewed by the witness, and have heard the telephone conversations between the witness and his wife in the days leading up to his suicide. Technically the Committee could also seek access to this information, but has chosen not to do so.

It is unlikely, however, that the Coroner will have the benefit of seeing these websites or listening to the phone calls.

The CCC has received an opinion from Senior Counsel that the CCC is prohibited from providing this TI material to the Coroner, by reason of the prohibitions in the TI Act.

The Parliamentary Inspector and the Committee have seen this opinion. It appears from the opinion that, while the CCC can release TI material to the Coroner if the Coroner is investigating the death of a person in relation to the commission of certain offences, the CCC cannot release TI material to the Coroner if the Coroner is investigating possible contributing causes to an apparent suicide that is unrelated to the commission of these offences.

It is the unanimous view of the CCC, the Parliamentary Inspector and the Committee that this is a most unsatisfactory state of affairs and that the TI Act should be amended to allow the Coroner to have access to this type of information if necessary. Accordingly, the Committee makes the following recommendation:

Recommendation 1

That the Parliament of Western Australia advocate for the *Telecommunications (Interception and Access) Act 1979* (Cth) to be amended to permit the CCC to provide to the Coroner intercepted telecommunications material in situations such as the present case.

CHAPTER 5 SUICIDE ASSESSMENT AND PREVENTION PROTOCOLS

5.1 Introduction

The Committee briefly considered the issue of suicide assessment and suicide prevention training. There is evidence that this type of training is given in some jurisdictions to front line organisations such as police, paramedics, and mental health workers who are likely to deal with persons of suicidal disposition on a not infrequent basis.

5.2 Suicide assessment and prevention training

By letter dated 13 December 2010 the Committee requested the CCC to advise what lessons have been learned from this matter and what changes have or will be made to CCC procedures and practices. In its letter, the Committee referred to the possibility of suicide assessment training for CCC staff.

According to the United States Department of Health and Human Services' *National Strategy for Suicide Prevention*, "key gatekeepers" are people who regularly come into contact with individuals or families in distress and gatekeeper training has been identified as one of a number of promising prevention strategies.¹ Key gatekeepers include a variety of professionals who are in a position to recognise a crisis and the warning signs that someone may be contemplating suicide, including teachers, school personnel, clergy, police officers, primary health care providers, mental health care providers, correctional personnel, and emergency health care personnel.

In its letter to the CCC the Committee expressed its desire to commence a dialogue with the CCC as to whether organisations such as the CCC should be added to this list. It seems to the Committee that the CCC, through its covert surveillance capacity, may (presumably infrequently yet on occasion) be uniquely placed to identify and intervene in suicide crisis situations.

The Committee provided the CCC with two documents:

- a paper by Paul Quinnett entitled *QPR Gatekeeper Training for Suicide Prevention - The Model, Rationale and Theory*; and
- a submission by Suicide Prevention Australia to the Senate Community Affairs Committee Inquiry into Suicide in Australia.

¹ United States Department of Health and Human Services, *National Strategies for Suicide Prevention: Goals and Objectives for Action*. (Rockville, Maryland: 2001) pp 78-79.

Both papers talk of the need for improved training of front line organisations that come into contact with suicide crisis situations. The Committee sought the CCC's views as to whether it could take on a proactive role in suicide prevention, and whether training on suicide assessment and suicide prevention protocols could be introduced into the CCC.

The challenge appears to be that such training is not a mainstream phenomenon. Indeed, prior to writing to the CCC the Committee sought information from a number of integrity and law-enforcement agencies around Australia as to whether they had implemented any such training: none had. Accordingly, the Committee advised the CCC that it would be charting new and untested waters if it were to pioneer a suicide assessment and prevention training program.

5.3 The CCC's response

In its 28 January 2011 reply to the Committee, the CCC advised that it would not be implementing suicide assessment and prevention training for its staff. According to the CCC, no such training "sits in a practical way with the Commission's covert surveillance activity." The CCC said:

In fact as a Commission's investigation may be the root cause of an individual's anxiety it would be at odds for the officers who are investigating an individual's alleged misconduct or criminal conduct to also be the officers who provide intervention and assistance to that individual if they are in crisis. As such, Gatekeeping training for officers of the Commission would be a misapplication of that for which the program is designed.

The CCC said that the most appropriate role for the CCC is to intervene when the view is formed it is necessary to do so, and by notifying appropriate people to get help in an attempt to ensure the individual in crisis gets appropriate medical and/or professional assistance. It is more realistic, the CCC says, for the CCC to encourage individuals to contact professionals who are specifically trained.

5.4 The Committee's view

The CCC made a number of points regarding suicide assessment and prevention training, and the Committee accepts that:

- suicide assessment and prevention training is designed specifically for professionals who are in the 'frontline' with regards to persons in crisis;
- the CCC does not readily come into contact with persons with suicidal tendencies; and
- the CCC is not in a position, nor should it be required, to provide counselling services.

The Committee accepts that the CCC should not become a counselling service. The Committee, however, maintains the view that suicide assessment and prevention training suitably tailored to the specific circumstances encountered by the CCC would be of great assistance if a similar situation were to arise again. It is important to note that:

- in this particular case, by way of its TI capacity, the CCC was privy to suicide warning signs that were not available to anyone else;
- the CCC elected to intervene by speaking to the wife, and to the witness's employer;
- the conversation with the wife was a form of counselling; and
- ultimately and unfortunately the intervention failed.

The Committee believes that tailored suicide assessment and prevention training would have assisted, in each of their respective roles:

- the Analyst;
- the CCC officers who had to make a decision as to whether there was a risk that the witness would take his own life;
- all those present in the meeting wherein the course of action taken by the CCC was decided upon; and
- the two CCC Investigators who visited the wife and imparted to her advice as to what she might do.

In stating the above, the Committee makes no judgment as to whether tailored suicide assessment and prevention training would have made any difference to the decisions made or the actions taken by the CCC in the current tragic instance. Nonetheless, it is the Committee's belief that tailored suicide assessment and prevention training would serve to enhance the internal decision-making process if the CCC has to face a similar set of circumstances in the future.

The Committee has decided ultimately not to make a recommendation with regard to suicide assessment and prevention training, as investigating the extensive literature and science of suicide prevention is not within the scope of this inquiry.

A handwritten signature in blue ink, consisting of a stylized 'N' and 'G' with a horizontal line extending to the right.

HON NICK GOIRAN, MLC
CHAIRMAN