

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

QUARTERLY REPORT

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON MONDAY, 7 APRIL 2003**

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 commenced at 9.38 am

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

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

RAYNER, MS MOIRA EMILIE
Commissioner, Anti-Corruption Commission,
examined:

CHARLWOOD, MR GRAEME
Chief Executive Officer, Anti-Corruption Commission,
examined:

LEWIS, MR TERENCE RAY
Executive Officer, Anti-Corruption Commission,
examined:

The CHAIRMAN: This is a properly constituted meeting of the Joint Standing Committee on the Anti-Corruption Commission, operating under the standing orders of the Legislative Council and the Parliamentary Privileges Act. A transcript of today's meeting will be provided. Moira, welcome to what I think is your first meeting with the joint standing committee. The last time we met you had only just been appointed to the Anti-Corruption Commission. Bob was a commissioner until about 31 December.

Ms Rayner: Until 11 December.

The CHAIRMAN: Welcome aboard. I am not sure how long we will continue to meet in this form.

We have received the report of the committee's operations. At the outset I commend the commission on that report. I think it is one of the most comprehensive we have ever received. Furthermore, it is in technicolour and, therefore, the chairman can understand it.

Mr O'Connor: I thought you needed pictures.

Ms J.A. RADISICH: Next time we want Clip Art.

The CHAIRMAN: Terry, do you want to make any comments about the report?

Mr O'Connor: I do not think so. It is best to defer to Terry Lewis. As we told you at the last meeting, we have been working on trying to provide this committee with better information. This report is the result of that effort. I am sorry it got to you a little late, but the ACC is not overburdened with staff. We will try to get it to you earlier next time.

Mr J.N. HYDE: Chair, is it our intention that the transcript of today's meeting be public and tabled with our report, unless there is a request to go behind closed doors?

The CHAIRMAN: Thanks very much for drawing that to attention. Standard procedure has been that these be closed meetings and therefore subject to confidentiality. Over the past few meetings

the committee has discussed the need to report to Parliament on the material that you present to it, particularly in this case as the report is so comprehensive and informative. The committee has resolved to table in Parliament at the first opportunity a report of today's meeting. That will incorporate this report so that it is brought to the attention of members of Parliament and the Press. Whether they respond to it is entirely up to them. Do you have any objection to the committee presenting this report; and, following from that, do you want this to be a closed meeting or an open meeting with an opportunity to go into a closed or in-camera session at your request?

Mr O'Connor: We have no objection to the report being published. Most of the information will be in our annual report anyway. I do not see any problem with this being an open hearing. There may be a couple of issues about which we will need to go into closed session.

The CHAIRMAN: We will proceed in open session. Any time that you think matters are sensitive you may exercise your right to confidentiality. Do members of the committee have any questions?

Hon GRAHAM GIFFARD: I may have asked this before, so pardon my vagueness.

Mr O'Connor: I hope I give the same answer!

Hon GRAHAM GIFFARD: I cannot find it in the minutes anyway. I am considering the arrangements with the Royal Commission into the Building and Construction Industry. What activities did the ACC undertake in relation to that?

Mr O'Connor: We had a protocol with the royal commission. I do not think we did anything with it. It approached us. We provided a bit of information on one matter which I do not think it dealt with in the end.

Mr Charlwood: We provided one bit of information relating to a matter the royal commission was considering. For a little while, we also had a commercial arrangement with the royal commission. It utilised our unutilised hearing room and adjacent office until it found other accommodation.

Hon GRAHAM GIFFARD: Was it operational stuff?

Mr O'Connor: No.

The CHAIRMAN: I refer to the first page of the report and the six months from July 2002 to 31 December 2002. It shows that 334 cases were active at 30 June and 270 new matters were reported - a total of 604 - and of these 127 were referred to other authorities and 99 were reviewed by the ACC. What happened to the other 378 cases?

[9.44 am]

I am referring to total matters addressed for the period; namely, 604. The figure of 127 referred to other authorities.

Mr O'Connor: The rest are ongoing.

Mr Charlwood: The figures from 127 down relate only to how the new matters were dealt with within that period. The matters of 30 June would have been reported on previously.

The CHAIRMAN: Do you have information about the duration of cases before you? I remind you of the situation a couple of years ago in which cases were outstanding for two years or more. Upon investigation they were found to be mainly within police internal affairs. Some considerable confusion arose because internal affairs had assigned them a case number different from that of the Anti-Corruption Commission. The net result was that even when we asked the question there was some uncertainty about which cases were being referred to. That indicated to me a need for some changes or improvement in information sharing. More important, it indicated that cases had been sitting with internal affairs for investigation and had not been resolved. What is being done about that now?

Mr O'Connor: In fairness, it is not only internal affairs; it is also the public sector investigation unit. That unit used to be part of the professional standards portfolio. It has been moved into crime, which we were concerned about at the time because we could anticipate what would happen. That unit was already short handed and some of the staff had been moved out. I think that has already happened, has it not, Graeme?

Mr Charlwood: Yes.

Mr O'Connor: It has fewer staff now than it had in that unit in the criminal portfolio. IAU and PSIU share it. There may be more with PSIU than there are with IAU, but I am not sure about that. For some while, at meetings every two months, in a very tedious exercise, we have been examining every matter on which we have not heard anything for two months and making a decision to do something about those matters, such as write and request responses and estimated completion dates. Occasionally we pend them to the next meeting before making any move on them. We have written to the Commissioner of Police on a couple of occasions expressing some concern about the number of staff in both units. In addition, the professional standards police investigation side - previously done by the internal investigations unit as opposed to the internal affairs unit - has been devolved to the regions. Therefore, there is often delay in dealing with the unit and quite often pretty unsatisfactory reports are received when it is dealt with.

Mr Charlwood: A perception was formed at least 12 months ago, if not before, that delays were blowing out in matters referred back to the police. We have recently conducted some research into that. Although we do not have those figures today, the time frames are available for matters referred to police in 2000-01 compared with 2001-02, and we can provide those figures.

[9.50 am]

The CHAIRMAN: If you would, please, because I think they would be useful.

Mr O'Connor: In fairness to the internal affairs unit, what has been happening in the royal commission is obviously distracting. Almost all of the matters that are dealt with in the royal commission are ACC matters or matters on which we have a joint task force with the royal commission.

The CHAIRMAN: I fully understand that.

Mr O'Connor: Nevertheless, a lot of them have not become public because we did not have enough information about the allegations.

The CHAIRMAN: That is one of the advantages of having a capacity for open hearings.

Mr O'Connor: Exactly.

The CHAIRMAN: Even so, it was a matter that was a problem before the royal commission. We would like to have a close look at the research that Graeme has referred to, because I think it is important that complaints be dealt with expeditiously if justice is to be done; furthermore, it avoids criticism of the commission. You are not alone in this. I picked up the other day a report in *The Courier Mail* of Queensland, complaining that the Criminal Justice Commission-Crime and Misconduct Commission took two years to hear a very important case and came up with the finding that it was unsubstantiated. *The Courier Mail's* question was: why are we wasting money on the CMC? It is absolutely essential that if there is not an early resolution of matters, there is some means of explaining -

Mr O'Connor: Not all matters are capable of quick resolution.

The CHAIRMAN: I know, but an explanation needs to be made from time to time.

Page 2 refers to matters outside your jurisdiction as being 25 in this financial year as opposed to 68. When matters outside jurisdiction are brought to your attention, what is their fate?

Mr O'Connor: The person who refers them to us is told that they are outside our jurisdiction and the file is closed.

The CHAIRMAN: Are they not referred to another organisation?

Mr O'Connor: It could be that if it is appropriate that they go to another organisation, we direct them to that organisation.

The CHAIRMAN: That is not within the usual procedure of the matter being referred, but simply that you believe the Ombudsman, or whoever it might be, should look at, even though it is outside your jurisdiction.

Mr O'Connor: The Department of Local Government and Regional Development probably has as many as any of them, or most of them.

Mr J.N. HYDE: May I cut to the real figures of the past six months?

Mr O'Connor: More real than the ones we are talking about?

Mr J.N. HYDE: The opening pages really give an overview. The top of page 7 refers to the number of criminal charges laid against public officers as being 24 cases. Does that mean that in the six months from 1 July to 31 December 2002, 24 criminal charges were laid as a result of investigations by the ACC?

Mr Charlwood: It is 24 cases.

Mr O'Connor: There could be multiple charges.

Mr Doig: Page 10 identifies 30.

Mr J.N. HYDE: Page 10, case 51 is headed "Police. Misuse of leave entitlements", for which somebody was fined \$500 and ordered to pay restitution of \$180.92. That does not seem to me to be an earth-shattering issue of corruption. Is that being counted as one in the statistics or is it somebody who may have been a mass murderer -

Mr O'Connor: One what?

Mr J.N. HYDE: One case.

Mr O'Connor: Yes.

The CHAIRMAN: It is serious and improper conduct.

Mr J.N. HYDE: It is one of the criminal charges that were laid.

Mr Charlwood: Yes, it is one of the 24.

Mr J.N. HYDE: Therefore, one of the criminal charges laid resulted in restitution of \$180. Can you go a bit deeper into it? Are there problems with the courts? Was this a more serious matter than it perhaps looks from the outcome?

Mr O'Connor: I am not clear as to the thrust of the question. Let us cut to the chase. Are you saying that this should not have been dealt with or what is the point of it? Let us assume that it is not as serious as it looks.

Mr J.N. HYDE: The point is that if we are benchmarking results or the outcome of the ACC operations, for me the most important outcome in this part of the document is that 24 cases of criminal charges were laid; in other words, the process has resulted in enough evidence for criminal charges to be laid in 24 cases. The next step I think is to look at the quality of those 24 charges. I am drawing attention to one of those.

The CHAIRMAN: The quality or the gravity?

Mr J.N. HYDE: It is the same issue for me.

Mr O'Connor: May I just pick you up on one point in case it is assumed that I accept your proposition. I do not accept that the most important thing for the ACC is the number of charges that are laid. These are not all ACC charges. I think the most important thing is that allegations are properly investigated; and, if found to be substantiated, that appropriate action is taken, and, if found to be unsubstantiated, that the relevant parties are so advised. I know that the media, and obviously you, want to look at the number of charges as being the only indicia, but I do not agree.

Mr J.N. HYDE: No.

Mr O'Connor: Having said that, the Act provides that the ACC must oversight or investigate a whole lot of things. It is not within our power to say, "Look, we don't think this is very serious" - if it is criminal conduct - "and, therefore, nothing should be done about it." The Act directs us that we must consider it. Certainly if we think that it is a trivial thing that is not worth investigating, we can make that decision, but if there are potentially criminal charges and obviously there is something there, we have no discretion to decide that either we or somebody else should not investigate.

Ms Rayner: I know what you are saying: that it does not seem really serious. May I just say that if you want to deal with a corrupt culture, you must pick up all kinds of corruption, which sends messages about what is and is not acceptable behaviour. If you look at the figures overall, there is evidence that in partnership with administrative bodies, inside the police and in government departments, action is taken which is talked about and has an effect on the culture if it is consistent and if people know that they will be picked up. This is the first time that this sort of report has ever been made to this committee. I agree with you; one would hope that we would have an overall picture of the extent and the nature of corruption in the public sector. That is what I expect to happen in the future. Having an overview and reporting to the committee is the most important thing that can be done. Publishing this sort of report and getting people talking about what it shows about corruption is tremendously important. If you look at, for example, the majority of actions taken, they seem to be taken against police and teachers. If you look at the nature of those charges, it tells us that there are particular problems in both those areas. That is the first step towards getting an overview instead of getting a picture on an individual basis. I am not defending anything here, because I was not there. I am merely saying that I do not think that picking up a "trivial" case of misuse of leave entitlements is necessarily a trivial matter. I remind you, for example, that Al Capone went to jail for tax evasion, not murder. It often sends a tremendously significant symbolic message to both that person and others.

Mr J.N. HYDE: I agree totally, hence my probing of this issue, because the statement was made that the 24 cases in the statistics may have related to multiple cases.

[10.00 am]

Mr O'Connor: No, not multiple charges. You must differentiate between case and charge.

Mr J.N. HYDE: The statistics that we are dealing with at the moment are for criminal charges.

Ms Rayner: It is individual complaints made to us in respect of which charges were laid. Potentially charges could be laid against a number of people for a number of offences. This is just saying that criminal action resulted in these cases.

Mr J.N. HYDE: I agree totally. The British figures indicate that criminal behaviour is associated with about 80 per cent of the people who park in disabled parking bays. I totally agree that there is no such thing as trivial corruption. However, my original question was: is case No 51, which is for misusing leave entitlements, not associated with any other charge or ongoing investigation? Is that stand-alone criminal charge one of the 24 cases in that group of statistics?

Mr O'Connor: Yes.

Mr J.N. HYDE: I move to case No 54, which was in a government department, so I presume it was the supply of drugs by a public servant. The public officer pleaded guilty to one count of

supplying a prohibited drug and was fined \$450. Can I have an explanation of why this is corruption and not something with which the police dealt?

Mr O'Connor: It is criminal conduct.

Mr J.N. HYDE: By what sort of public officer? It is not a police officer.

Mr O'Connor: No. Within our jurisdiction there are various levels of criminal conduct that are serious improper conduct.

Hon GRAHAM GIFFARD: When you were clarifying the point that you made, you said teachers. Is that in this report or is that based on your own knowledge?

Ms Rayner: It is in the report.

Mr Charlwood: They are not identified as teachers as such, but the details of the offences draw you inescapably to the view that these are people who have access to children in the course of their employment. Teachers are one such group, but not the only group, and they do feature within these figures.

Hon GRAHAM GIFFARD: It is quite a bit, is it? That is interesting.

Mr J.N. HYDE: I want to get to the bottom of this matter. Again, case No 54 is one count of supplying a prohibited drug. The issue I am getting at is why has this come to the ACC? Why was this not a police matter? If somebody was fined \$450 for supplying a drug, one would presume that it was a very small amount of drugs.

Mr O'Connor: Obviously you are a bit confused about our Act.

Mr J.N. HYDE: No, not confused.

Mr O'Connor: Our Act says that we must receive allegations on various matters either from heads of departments under section 14 or from persons other than heads of departments under section 16, and we arrange to have them investigated either internally or externally.

Mrs C.L. EDWARDES: Was it a matter that had been investigated previously and that went to the police and was then referred to the ACC?

Mr O'Connor: I am not sure offhand who investigated this matter, but I suspect that it would have been the police.

Mr Charlwood: It was a matter that was reported to us under section 14. It was referred to the ACC and then to the police to investigate, and they investigated and laid charges.

Mr J.N. HYDE: Can you explain? It was referred to the police and the police referred it to you.

Mr Charlwood: No. It was referred to us under section 14 of the Act, which requires public officers who are aware of corrupt, criminal or serious improper conduct by public officers to report it to the ACC. In this case we referred it to the police to investigate; they did, they charged the public officer and then advised us of the outcome. That is what is envisaged by the Act to be one of the roles of the ACC.

Mr J.N. HYDE: Okay. I will go further. Let us say that someone has one marijuana cigarette at work. As soon as you receive an allegation like that, do you go straight to the police or do you do a phone tap? What do you do?

Mr O'Connor: It depends on where it is, but we certainly do not do a phone tap because we are not authorised to just do phone taps. Most of the matters we would refer to the police. As my colleague Mr Doig pointed out the other day, FuelWatch has 11 investigators investigating the price of fuel around the metropolitan area - obviously because it has some political overtones. We have only 20 investigators trying to do all the things that we do. Clearly, we do not investigate the great majority of the matters that we receive, but the Act requires us to oversee them, and we do. We

get reports back and we consider the reports and the investigation. If we are not satisfied, we send them back and ask for a further investigation.

Mr J.N. HYDE: Finally, in looking at a new crime and corruption commission and a new Act, is the current legislation sufficient? If a chief executive officer suspects someone of having a joint of marijuana at work, the State's top corruption body should be the first -

Mr O'Connor: I do not think there is anything in the Act about joints of marijuana, as I recollect.

Mr J.N. HYDE: Under section 14, which deals with a CEO's responsibility to report corrupt or criminal behaviour.

Mr O'Connor: Or serious improper conduct.

Mr Doig: If it is conduct that can lead to his dismissal, it falls within our jurisdiction.

Mr J.N. HYDE: It still goes back to my question.

Mr O'Connor: That is a matter for you fellows, John; it is not a matter for us.

Mr J.N. HYDE: We are seeking, through your wisdom and years of experience with this body, a view on the new body.

Mr Lewis: This organisation is the only oversight body that has the collective view of corruption in Western Australia. If, in somebody's view, a person in a government agency is seen to be acting improperly, it may not appear on the surface to be a criminal matter. The agency is obliged to report the matter to the Anti-Corruption Commission. It may at the same time, and in fact before it comes to us, fall to the police to investigate. There may be sufficient evidence within the organisation to prove very quickly to police that there has been criminal activity. Notwithstanding that, we would record that the serious improper conduct was "improper conduct" for that public officer to deal in that sort of way, but it is not our role to prosecute any of those matters. The police are there to prosecute the action. However, it is very important that in that process we capture the information, because then we have the capacity to present to bodies such as this committee and to the community at large the total picture of corruption as it is perceived in this State. The role of this agency, apart from conducting investigations, is importantly to coordinate the information about that. We can then look at whether there are endemic issues so that we can work with agencies and say that they need to look at this or that. It could be all sorts of agencies, including the police, the Ombudsman or the Auditor General. All we are trying to present here is the total picture of it to give you an insight into where the situation is with corruption in this particular six-month period.

Ms Rayner: Can I also add something? The new body - forget what we used to do in my previous days at the ACC - needs to look at public sector cultures and corrupt or improper activities and attitudes. It needs a picture of all sorts of complaints, because sometimes it is the apparently insignificant details that show just what the culture is. For example, when I go into a large organisation that has some sort of problem with discrimination or harassment, one of the first things I look at is the leave records; that is, who is taking leave, who is not taking leave, who is taking regular long weekends, the levels of sickness etc. It is a "trivial" matter, but it may indicate significant issues involving the management of the organisation.

[10.10 am]

Mr O'Connor: I think there is a very serious role for the new body, which was not given to the ACC. It is in research and education. All this information is important. On the other hand, the new body should be able to say that although a matter may be in its jurisdiction it does not want to know about it. The ACC does not have that luxury.

The CHAIRMAN: A couple of things come out of that discussion. The first is that it is inadequately understood that the function of the ACC is to gather evidence. Thereafter, it is up to other agencies - whether the DPP or another department - as to what action is taken. The ACC can review the action taken, but its role has been simply to gather evidence and pass it on. The ACC

has been constrained by the Supreme Court from making any judgments about evidence. That is not clear in the report. When read side by side it looks like “action taken by the ACC to investigate”, “investigation”, and “consequence”. The assumption is that it is the ACC’s action. It is not the ACC’s action at all. That must be part of the educative process. The second point is that what is apparent in the data presented to people who understand the implications of sections 14 and 16 is that heads of department feel obliged to report for fear of a penalty of \$8 000. It is erring on the side of caution to make sure that matters are brought to the attention of the ACC. The third point is that once matters are brought to the ACC’s attention, it is not mandatory for the ACC to investigate them. My understanding is that the ACC may make an initial assessment. That is then reported to the commission and the commission makes a decision as to whether there will be a preliminary inquiry. After that, the report of the preliminary inquiry is referred back to the commission and the commission makes a decision about what further action should be taken depending upon the seriousness and nature of a case, and the status of the individual concerned. The ACC may decide to investigate or appoint a special investigator. Most cases are referred to other agencies. Although that is clear from the numbers, it is not clear in the public’s understanding or the presentation of this information. It is valuable information but there is a need for an indicative process. The other thing that I believe is improperly understood is that the range of matters for which the ACC has responsibility is defined in the Act. Criminal conduct refers to a very restricted range of conduct. The December report describes them as economic matters. They relate to matters investigated by the Royal Commission into Commercial Activities of Government and Other Matters. The matters referred to in the Act as corrupt matters are the matters that the royal commission recommended to the Public Sector Standards Commission. Similarly, with the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers, offences in the Act are defined as dismissible offences. Part of the failure of the ACC’s public relations has been its inadequacy of understanding. Even we are guilty of that. There has been inadequacy in getting information to the public and the Press. There is a perception that the ACC is the investigator and prosecutor of corruption, but there is no proper understanding of its role in dealing with improper conduct and prosecution or further action after investigation. These issues should have been addressed earlier. I will put up my hand and say mea culpa because the committee has never adequately responded to those matters.

Mr O’Connor: We have tried to address them through the media, but it is not interested in that sort of thing. I will pick up on one thing. Corruption has a reasonably wide definition, but the definition of criminal conduct is limited. The problem is that a lot of it is picked up under serious and improper conduct. For example, sexual misconduct by a teacher with a child is clearly not an economic matter. It is obviously serious and improper conduct and, hopefully, regarded as criminal conduct. That type of offence falls within our jurisdiction although, on the face of it, it may appear not to.

The CHAIRMAN: An assault by a police officer or a public officer when dealing with a citizen might be criminal assault but is dealt with in the jurisdiction of the ACC as serious and improper conduct?

Mr O’Connor: Yes.

Hon GRAHAM GIFFARD: There is a catch-all.

Mr Charlwood: It is not a catch-all, because it is not included in the schedule of offences. In its report, the committee has sought - as have we - to have the schedule expanded. The Government has ignored those overtures.

Mr O’Connor: I will expand on that. Regarding the police, we know that a lot of matters have not been investigated. One is wrongful access to the police computer. We keep records of every allegation received on the matter although we rarely investigate such allegations. We have been pressing the Commissioner of Police to do something about the problem. It has taken three or four

years but, at last, we have got the police internal affairs unit to recognise that wrongful access to the police computer is an offence under the Criminal Code. Prior to that, it would not countenance the argument. We presented it with opinions. It finally went off to the DPP and was so advised. Computer access is a huge problem. It will be picked up by the royal commission and I am sure something will happen about it. Another example is police notebooks. Police officers regard their notebooks as their personal property. When searching the premises of former police officers in respect of something alleged to have happened earlier in their service, we often found notebooks. None had been handed in. After much pressure from the ACC, a new policy has just been introduced that makes police officers accountable for their notebooks. Notebooks must be returned rather than kept. The Police Service may have a problem with keeping all the notebooks but at least something is being done about it. We need to have this sort of information coming in in order to make recommendations about what people should be doing.

Mr J.N. HYDE: It was not illegal for police officers in the 1960s or 1970s to have kept their notebooks.

Mr O'Connor: No. Perhaps that was not a very good example; computer access is a better one. I was just making the point that, arising from our experience, we press agencies for changes in the way they do things to avoid the potential for corrupt or improper conduct.

The CHAIRMAN: I am conscious of the time. Cheryl has indicated that she has to leave at 10.30 am. She may be persuaded to stay until 10.45 am. When she leaves we will not have a quorum, in which case privilege will not apply.

[10.20 am]

Unless there is something else about this report that you want to raise, I suggest we move on to the other questions that we want to ask.

Mr J.N. HYDE: On the second page of the report, reference is made to calls intercepted under warrants executed by the Anti-Corruption Commission. The number of phone calls intercepted was 61 599. I note the qualifier, which states that the figure includes duplicate calls, mis-dials and unanswered calls. However, for 45 warrants, that is still a pretty high figure.

Mr O'Connor: It is not 45 phone lines. There are more phone lines.

Mr J.N. HYDE: No, but one warrant is for one issue case - or what is your terminology?

Mr Charlwood: A warrant relates to an investigation.

Mr O'Connor: We might have two warrants on the same investigation. We could have multiple warrants. It is not possible to say that these are all in respect of one or two investigations, or all 45, or whatever the number is.

Ms Rayner: It is the number of lawfully intercepted telephone calls, and there might be numbers of telephone lines and numbers of individuals overseen during an investigation.

Mr O'Connor: Also, in a particular investigation, you could have more than one warrant. Someone could pop up onto the scene after you have been doing your telephone intercept, and you suddenly realise that that person is a person of significant interest in the whole thing and you need to put his phone off; so you get another warrant.

Mr J.N. HYDE: I refer to the mechanics of it. With the actual monitoring, it can all be taped?

Mr Charlwood: It is not taped. It is captured electronically - digitally.

Mr J.N. HYDE: For how long can it be kept?

Mr O'Connor: It is all covered in the Telecommunications (Interception) Act.

Mr Charlwood: Under the commonwealth Telecommunications (Interception) Act, once product is no longer required, it must be destroyed.

Mr J.N. HYDE: Are most of the records you are providing for the royal commission held under the Royal Commissions Act or under your own Act?

Mr O'Connor: No, we keep the product. We have joint operations with the royal commission. For example, the hearing that is starting today involves a police officer. Perhaps I should say this in camera, if I may, Mr Chairman.

The committee took evidence in camera

Mr O'Connor: On that one, they had an internal problem with doing it, so we agreed to do it. We were not involved in it; we just put information on disk and sent it to them.

Mr J.N. HYDE: Did the warrants come into effect in July last year?

Mr Charlwood: No, the end of September 2001.

Mr J.N. HYDE: In almost 18 months, there were 61 000 calls.

Mr Charlwood: It is only for six months.

Mr J.N. HYDE: Okay. In 2001-02 there were zero calls.

Mr O'Connor: Ten thousand a month.

Mr J.N. HYDE: Commissioners, in the operation of this, are you satisfied with the oversight of interception of calls?

Mr O'Connor: Yes.

The CHAIRMAN: That is dealt with by the Ombudsman.

Mr O'Connor: Yes. The Ombudsman is the person appointed under the Telecommunications (Interception) Act to oversight our TI activities, and so far we have a clean bill of health.

Mr J.N. HYDE: When will the Ombudsman be oversighting those 61 000 calls?

Mr O'Connor: It is done on a regular basis. The Ombudsman sends in her officers whenever she feels like it.

Mr Charlwood: A regime of regular and random checks is undertaken by the Ombudsman's office - through her officers - under the Telecommunications (Interception) Act.

The CHAIRMAN: The supervision regime is specified in the Telecommunications (Interception) Western Australia Act and the federal Act, and by regulation the inspector is the Ombudsman. The Ombudsman has regular and, as Graeme said, random and full access. The Ombudsman may enter a person's building or premises and have full access to records.

The committee has drawn attention to five matters. One is in response to the commission's letter about prison officers as public officers and the future of existing ACC staff, which has had some public airing. The investigation of complaints against local government authorities is an ongoing concern. The other two matters are your comments on the royal commission's first interim report and the role of the parliamentary oversight committee. Cheryl, do you want any of those first three matters to be dealt with before you leave?

Mrs C.L. EDWARDES: No.

The CHAIRMAN: I refer to the first one. The committee received the commission's letter about the prison officers being outside jurisdiction. In previous discussions, the commission has indicated that it has some concerns about the conduct of prison officers. The committee wrote to both the Queensland Crime and Misconduct Commission and the New South Wales Independent Commission Against Corruption, and the ICAC and the CMC both replied - you have a copy of those letters. It indicates to me the need for a change in the legislation in Western Australia - the Public Sector Management Act or the Prisons Act, but probably the Public Sector Management Act.

Mr O'Connor: From our discussion before we convened, you may be under a little misapprehension. Under the relevant legislation, some officers in the private prisons are within our jurisdiction because they have the high-security clearance; but not all the officers have that. We believed that it was appropriate that something should be done to address that. Of course, the police still investigate matters involving them. However, our view was that something should be done about that. The situation will be the same for the Corruption and Crime Commission when it comes into operation.

The CHAIRMAN: I think the best thing we can do is draw attention to this matter in our report, and we will make a decision about how much information we will incorporate. You do not mind the committee incorporating in the report your letter drawing attention to matters, if the committee so desires?

Mr O'Connor: No.

[10.30 am]

The CHAIRMAN: There has been some discussion about the future of existing Anti-Corruption Commission staff under the pending Corruption and Crime Commission structure. When I was approached by a journalist who wanted my opinion on the matter, I told him that it was my understanding that it was causing considerable disquiet among the ACC staff, particularly the investigators. Although it is desirable that each staff member win his or her position on merit, ACC staff would take with them a body of corporate knowledge. However, another press release stated that the one of the ministers - it might have been the Attorney General - was advocating a new broom. What is the ACC's view about the future of its staff?

Mr O'Connor: We are extremely concerned about that matter. We discern an effort in government to unload our staff. I say that because the Government's directive last year was that staff who were on contracts should be made permanent employees, unless the contracts were for a specific purpose. Although that did not technically bind the ACC, we came to the view that we should follow what was being done in the rest of the public sector; and, accordingly, we informed our people that they would be moving to permanent employment. The Department of the Premier and Cabinet has argued that they are not permanent public sector employees. It has now accepted that perhaps they are, but it wants the ACC, for reasons that escape us, to give it copies of the resolution of the commission, which was back in November last year, and other information. We did this on advice from the Crown Solicitor, the Department of Consumer and Employment Protection and the Department of the Premier and Cabinet. They want access to everyone's files. Obviously, privacy issues are involved, so it is an ongoing argument. Coupled with that, there seems to be a big effort by some in the royal commission to ensure that Anti-Corruption Commission staff do not become involved. I do not know why they would have a problem with ACC staff, because we have had joint operations, and there were no complaints about ACC staff during the royal commission. However, it is clear that some contract royal commission people wish to stay in Western Australia and see themselves moving into this new body. Indeed the royal commissioner, as a result of the pushing by one of his people, has written to the Department of the Premier and Cabinet asking whether - just in case things are not in place by 31 August - special arrangements could be made for royal commission staff to move into a position where they could be, in effect, on hold until the CCC was up and running. I am a little bit confused about how this fits in with the merit-based selections. However, that is the proposal.

The CHAIRMAN: Are you talking about investigative staff of the royal commission or other persons in the royal commission?

Mr O'Connor: Both, I think.

Hon GRAHAM GIFFARD: You said it was a proposal.

Mr O'Connor: That is what the royal commission has proposed to the Department of the Premier and Cabinet. The argument from the royal commission is that we have ongoing investigations, and it is important that there be a smooth transition from the royal commission to the new body, because that is what happened in New South Wales after the Wood royal commission recommended the Police Integrity Commission. We have an arrangement with the royal commission to provide it with a lot of information. We also entered into a memorandum of agreement or protocol at the start of the royal commission, under which it was agreed that it would refer back to the ACC matters that it was not going to deal with. Graeme, does the royal commission have more investigators than we have?

Mr Charlwood: About the same number.

Mr O'Connor: There are about 20 investigators. Although we have not seen much come back, it is our assumption that even if it were to continue investigating up until 31 August - there would not be public hearings, but even if the investigators continued to work until the hearings stopped - the investigators would be flat out servicing the hearings. They would be lucky to have three or four investigations going on when the changeover occurs. However, there is a great argument that there must be a seamless transfer from the royal commission. On the other hand, the ACC, as members can see, has 600 matters that are either under investigation or out with other agencies, and it has a wealth of corporate knowledge and information. If our staff start to decamp and look for other jobs because of the current uncertainties, there will be one hell of a mess trying to move over to the new body. We are obviously not the flavour of the month. As far as we can see, in government circles - I am talking about agencies, not political circles - it is kick the ACC because it will soon be dead. We think the whole thing is crazy. Since January, we have written to the Premier on three occasions asking to discuss with him the position of ACC staff. We have received no response. We have recently written to the Premier outlining a proposal that could be adopted if we are not to follow the Government's guidelines, which have been laid down and followed by other agencies that have been abolished; that is, people from the old agency should be able to move to the new agency with the positions they hold. If government policy is not to be followed for ACC staff, at the very least, and to achieve the seamless transfer that everyone keeps talking about, we should move the ACC staff over for 12 months while the merit-based selection process takes place so that there is a reasonable transfer of knowledge and files. Again, we have not had any response to that proposal, except for strong opposition from the royal commission people.

The CHAIRMAN: Some royal commission people.

Mr O'Connor: Yes, some royal commission people. Unfortunately, one or two chaps from the eastern States came over with a preconceived notion about the ACC. That notion was dispelled for some of the more reasonable ones after they had seen the quality of our work and they now think that the ACC is pretty good. In fact, the royal commissioner stated that despite the inadequate legislation under which it labours, the ACC is pretty good. That is the position, and, to use a colloquialism, it pisses me off big time.

The CHAIRMAN: The wise men came from the east and returned to the east, but they left behind the star they came to visit.

Mr J.N. HYDE: I may as well play the devil's advocate. You cannot have it both ways. You mentioned the statistics and explained that much of the ACC's role is knowing to which agency it should farm out certain complaints, and that it is not an investigative body -

Mr O'Connor: John, please; I did not say anything like that.

The CHAIRMAN: The judgment is made and the ACC may make the judgment that it investigate matters itself, according to the seriousness and the status of the matters.

Mr O'Connor: I never said that we are not an investigative body; we are an investigative body and we have done a lot of investigations.

[10.40 am]

Mr J.N. HYDE: You are not investigative in terms of bringing a matter to trial yourself; that is, from the acorn to finally cutting down the tree, you are not in every case involved in the investigation, prosecution, sentencing and education - the whole lot.

Mr O'Connor: And nor are the police. No-one in the world, except perhaps in communist Russia, can do all those things.

Mr J.N. HYDE: With 61 000 phone taps, perhaps. Surely you are not saying to us that if something new came in, all 600 matters could not possibly go any further because they are so intricate and your ACC people must deal with them to completion.

Mr O'Connor: I did not say that. If you want the seamless transfer from the ACC to the new body, which is what Government says it wants, it needs to do something sensible about the ACC staff. If no-one is left from the ACC, someone must come in and try to find where everything is. The corporate knowledge would disappear. That is my point.

Mr Doig: The thing that conveniently seems to be overlooked is that the police royal commission is looking at 5 000 police officers. The ACC's jurisdiction extends to over 140 000 other public officers whom the royal commission knows nothing about. There are current investigations into organisations other than the Police Service.

Mr O'Connor: We were doing those.

Mr Doig: Somebody must continue to do them. Our minimum suggestion is that all our people, regardless, should be seconded to the new organisation in that period; allow the new commissioner to set up any structure he or she wants, and select on merit from the people who are there. I do not think that is an unreasonable suggestion. That is disregarding the government policy that the chairman referred to earlier; namely, that in many other government organisations, when one function has been abolished in one department and has been created in another, level-to-level transfer occurs of that person to the new position. For some reason or other, there seems to be a concerted effort to say that this does not apply to the ACC.

Mr J.N. HYDE: Is it a concerted effort or a conspiracy theory?

Mr Doig: I do not know about that.

Mr O'Connor: Certainly a concerted effort. I do not know about the conspiracy theory.

Mr J.N. HYDE: You must acknowledge that if we have spent six years saying the legislation for the ACC is up the creek, surely the new body will be different and the multi-skilled people - be they ACC staff or new people - will have to adapt to new legislation and the new world order.

Mr O'Connor: I think the royal commission basically will give the new body the powers that the ACC believes and has argued it should have had. That essentially is what will happen.

Ms Rayner: I think everyone would agree that if we thought all our staff were duds, which we do not, as a matter of industrial justice, staff should know clearly and now what will happen. That is the push we ask for. We seek transitional arrangements to protect the staff so that they will know their rights and entitlements, and that reasonable expectations will be met.

Mr J.N. HYDE: That is fair comment.

The CHAIRMAN: That important point has been made several times. There must be a smooth transition. It will require about 12 months.

Mr Doig: That can only be achieved, as Moira said, if people are able to keep their eye on the ball and not worry about what will happen in the next 12 or 18 months.

The CHAIRMAN: Apart from looking nervous, are you finding staff are looking elsewhere?

Ms Rayner: They are.

Mr O'Connor: They would be stupid not to.

The CHAIRMAN: Precisely.

Mr Charlwood: Invariably in the process, the best people go first.

Mr O'Connor: The other thing one might say is that we have a significant number of investigators who relatively recently joined us from the eastern States - they left jobs over there. The whole thing is disgraceful.

Ms Rayner: A lot of them are very good women. The ACC lacked women in an investigation role. Some very good ones have come in. I have expressed my bias consistently in that regard.

The CHAIRMAN: I have a predilection for women as well! We will be "unquorumate" and the meeting will close when Cheryl leaves, although there are matters that we might want to discuss informally.

We will present your report in our report. I understand it is the commission's intention to put it on the web site also. I think our tabling of it will simply reinforce the availability of the matter. You will receive a transcript of today's hearing. Please read it and change any matters of style. Thank you very much for your attendance.

Committee adjourned at 10.46 am