

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

*Sixteenth Report — “Corruption and Crime Commission voluntary interviews with WA police officers” —
Tabling*

MR N.W. MORTON (Forrestfield) [10.05 am]: I present for tabling the sixteenth report of the Joint Standing Committee on the Corruption and Crime Commission, “Corruption and Crime Commission voluntary interviews with WA police officers”.

[See paper 1956.]

Mr N.W. MORTON: The genesis of this report is a recommendation from the president of the WA Police Union of Workers in July 2013 to its members that they cease participating in voluntary interviews with the Corruption and Crime Commission. The impact of the consequential action taken by members of the police union on the work of the CCC was immediate. Following the Western Australian Police Union’s directive, no police officer agreed to participate in a voluntary interview with the CCC, whereas prior to the directive, the vast majority of CCC interactions with police officers over the previous year had been by way of voluntary interview.

During the 2012–13 year, the CCC undertook about 30 investigations involving police officers that involved about 80 voluntary interviews. The committee was advised by the CCC in September 2013 that it was undertaking 13 investigations involving 34 police officers. Eight officers had been asked to attend a voluntary interview and all eight of the aforementioned police officers refused to attend a voluntary interview.

Given the complex nature of this issue, and the level of media interest in the Mexican stand-off between the union and the commission over the issue of voluntary interviews and CCC oversight, the joint standing committee resolved on 24 October 2013 to undertake a broader inquiry into the tension between WAPOL and the CCC. That inquiry remains on-foot with a scheduled tabling date of 4 December 2014.

The committee was provided in early August 2013 with a copy of the WAPU letter to the CCC about its directive to members. Chapter 1 outlines the correspondence and hearings established by the committee to assist in resolving this issue, including obtaining advice from the Director of Public Prosecutions and discussing it with the police commissioner, Dr Karl O’Callaghan. Regrettably, the parties themselves had not communicated about this issue since mid-August 2013 until the committee intervened and held its hearings. The then commissioner of the Corruption and Crime Commission, Mr Roger Macknay, QC, advised the committee that although there were other means by which the CCC could proceed with an inquiry, voluntary interviews were the most useful way of gathering information, particularly in the early stages of investigating a matter, and that compulsory examinations are relatively unwieldy and costly. The committee understands that one of the circumstances that led WAPU to make this directive to its members were claims from its members about the conduct of CCC staff during voluntary interviews. These claims included the manner in which initial contact was made by CCC staff as well as their conduct during the interviews. Another factor behind the WAPU directive is the uncertainty surrounding legal protections offered to WA Police when participating in voluntary interviews. The Corruption and Crime Commission Act 2003 provides protections for police officers if they attend a CCC interview under compulsion. Similar to other Australian jurisdictions, however, the CCC act makes no specific mention of voluntary interviews as a process to be used by the commission to gather information.

Chapter 3 includes information from other Australian jurisdictions on the protection their anti-corruption legislation offers police officers against self-incrimination during interviews. The committee has been provided with a range of legal interpretations of protections available to WA police officers during the voluntary interview stage and these are included in chapter 4. The impact on the common law rights of police officers of giving information during a voluntary interview with the CCC was explored with both the parliamentary inspector, Hon Michael Murray, QC, and the Director of Public Prosecutions, Mr Joseph McGrath, SC, in closed hearings with the committee this year. Their evidence is reported in chapter 5. The committee considers that to provide certainty to WA police officers, the Corruption and Crime Commission Act 2003 should be amended to ensure that anything provided by police in a voluntary interview with the CCC cannot be used in a later criminal prosecution, except in the ordinary exceptions such as to prove a prior inconsistent statement.

The Western Australian Commissioner of Police and the former Corruption and Crime Commissioner provided on 19 February 2014 a joint submission to the Attorney General to request an amendment to the CCC act. The proposed amendment is supported by the police commissioner and confers an additional power on CCC investigators to compel police officers to answer questions during interviews. This power would be in addition to existing powers enabling the CCC to issue a notice requiring written answers to questions or the production of documents, or to issue a summons to a police officer to attend an examination in which the officer would be compelled to answer questions. The CCC act provides the commissioner with the power to compel a public officer to attend a compulsory hearing and, under a criminal caution, answer any question and provide any

document. The commissioner attends the hearing to ensure judicial fairness. Section 14(1)(b) and (c) of the CCC act allows these powers of the commissioner to be delegated to an acting commissioner only when the commissioner is unable to perform the functions of that office or is absent from the state.

The CCC's voluntary hearings are currently undertaken by two CCC officers, without a criminal caution and with audio-only recording of the interviews. It would be a significant extension of the CCC's current powers if, under the joint proposal made by the police commissioner and the former CCC commissioner, its officers were delegated powers to compel the state's police officers to attend voluntary hearings with neither the commissioner nor the acting commissioner in attendance. Instead, the committee recommends to the Attorney General that he amend the CCC act to create a new class of voluntary interview which would create a privilege on evidence provided when police officers answer questions during interviews with the CCC. If the Attorney General accepts this recommendation, the CCC would have three options to interview police: first, a section 137 compulsory private or public examination before a commissioner or acting commissioner; second, a voluntary private interview undertaken by CCC staff wherein the evidence given would be privileged as against the interviewee; or, third, a voluntary private interview undertaken by CCC staff during which a criminal caution would be given and the evidence may be used against the interviewee.

For assisting the committee over the past year to produce this report, I thank the Parliamentary Inspector of the Corruption and Crime Commission, Hon Michael Murray, QC; the Commissioner of Police, Dr Karl O'Callaghan; the Director of Public Prosecutions, Mr Joseph McGrath, SC; the president of the Western Australian Police Union of Workers, Mr George Tilbury; and the former Corruption and Crime Commissioner Mr Roger Macknay, QC. I also acknowledge the work on this report by my committee colleagues: the chairman, Hon Nick Goiran, MLC; the deputy chairmen, Mr Paul Papalia, CSC, MLA, who resigned from the committee on 7 February 2014; and Mr Peter Watson, MLA, who joined the committee on 11 February 2014; the member for Churchlands, Mr Sean L'Estrange, MLA, who resigned from the committee on 19 March 2014; and the member for South West Region, Hon Adele Farina, MLC. Finally, I thank the committee's secretariat, Dr David Worth and Ms Jovita Hogan, for their efforts in completing this report.