

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

CORRUPTION AND CRIME COMMISSION “ANNUAL REPORT 2016”

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 19 OCTOBER 2016**

Members

**Hon Nick Goiran, MLC (Chairman)
Mr P.B. Watson, MLA (Deputy Chairman)
Mr N.W. Morton, MLA
Hon Adele Farina, MLC**

Hearing commenced at 10.14 am

Hon JOHN McKECHNIE
Commissioner, examined:

Mr RAY WARNES
Chief Executive, examined:

Mr DAVID ROBINSON
Director, Operations, examined:

Ms WENDY ENDEBROCK-BROWN
Director, Legal Services, examined:

Ms EMMA JOHNSON
Director, Assessment and Strategy Development, examined:

Ms EMMA MILNE
Director, Corporate Services, examined:

The CHAIRMAN: On behalf of the Joint Standing Committee on the Corruption and Crime Commission I would like to thank you for your appearance before us today. The purpose of today's hearing is to discuss the annual report of the Corruption and Crime Commission. The hearing will be conducted in two phases, with the first being a public hearing before we move into closed session. I would like to introduce myself as the chair of the committee, and to my left is the deputy chairman, Mr Peter Watson, MLA, member for Albany, and to his left is Mr Nathan Morton, MLA, member for Forrestfield. Hon Adele Farina, MLC, member for South West Region, could not be with us today. She is away on urgent parliamentary business. This joint standing committee is a committee of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings in the houses themselves. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. Hansard will make a transcript of the proceedings. If you refer to any documents during your evidence, it would assist Hansard if you could provide the full title for the record.

Before we proceed to the questions we have for you today, I need to ask you all a series of preliminary questions. For the sake of ease, I will move along with witnesses from my left to right. Have you completed the "Details of Witness" form?

The Witnesses: Yes.

The CHAIRMAN: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

The Witnesses: Yes.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet provided with the "Details of Witness" form today?

The Witnesses: Yes.

The CHAIRMAN: Do you have any questions in relation to being a witness at today's hearing.

The Witnesses: No.

The CHAIRMAN: Thank you. Commissioner, the primary purpose of today's hearing is to review the commission's annual report. Are there any preliminary comments that you wish to make about the operation of the commission in the past 12 months?

Mr McKechnie: Just briefly to expand in part on the report, but to say that in the past 12 months we have been actively engaged in realigning and rebuilding the commission to focus on serious misconduct. As part of that in particular, and as I think you will be aware, we have restructured the assessment directorate. There have been a number of changes. I am pleased to advise that all persons present today are now permanent positions; there were a lot of acting positions for various reasons. I should pause to acknowledge and thank Ms Peta Mabbs, who was director of corporate services for almost the whole of the year under review, but who accepted a promotion to another government department. We wished her well and were sorry to have her leave us, but it was a promotion. And Mr Tony Warwick, who was acting director of assessments, has now retired from the commission. As has been introduced, we have a team who—apart from Mr David Robinson, who is a long-term commission employee—have all been appointed since my own appointment. I will not go through them again, because you have already been introduced to them, but they are our new team.

The commission has over the past 12 months, as you have seen, continued to reposition itself to deal with serious misconduct. There are a couple of areas of concern that I will amplify in private closed session, but I think we have achieved a considerable amount, as our report shows. One of the things that largely we have done is taken the CCC off the front page of the news rather than what it has achieved. Those would be my opening remarks.

The CHAIRMAN: Commissioner, as you are aware, the minor misconduct function in this 12-month period has been given to the Public Sector Commissioner. In that respect one would expect that the number of allegations provided to the Corruption and Crime Commission would be fewer than in previous years. With respect to Western Australia Police, of course all notifications continue to go to the Corruption and Crime Commission, as has always been the case. I notice from page 19 of your annual report that there has been an increase in the number of notifications of reviewable police action. In the last financial year there were 229, and this financial year 466. Are you in a position to advise what might be behind the increase in notifications?

Mr McKechnie: Not immediately, although there was an increase in notifications of unauthorised computer access, which may explain some of it.

The CHAIRMAN: It does seem a significant increase. I do not have the previous numbers at my disposal. Is that something the commission could look into and report back to the committee on?

Mr McKechnie: Yes, we will take that on notice

The CHAIRMAN: It may well be that 2014–15 was an aberration, and that actually the 2015–16 figures return to normal. I am not sure. If it could be considered and your assessment provided to the committee, that would be appreciated. Another department that has been of interest and concern to the committee is the Department of Corrective Services. I know that has been a department that the commission has been looking at. Page 22 of your annual report indicates that the number of allegations has dropped from 797 to 247. I take it that the reason for that is simply because minor misconduct matters are now with the public sector commissioner.

Mr McKechnie: That is correct.

The CHAIRMAN: I guess it provides an interesting contrast to WA Police, where you receive all the allegations and can have a good appreciation for what systemic matters might flow through WA Police. Is there any concern that the minor misconduct matters for the Department of Corrective Services being now with the Public Sector Commission is restricting your capacity to look at systemic issues in that department?

Mr McKechnie: Systemic issues are a concern. We do have a good relationship with the PSC and a memorandum of understanding and I understand that the PSC is publishing in the near future an overview and survey of what has happened, which will give some idea. It is a pity that one body no longer collects all the data for misconduct. There are other good things about the split, but that is one of the defects I think.

Mr Warnes: I have a meeting with the Public Sector Commission tomorrow to look at some of the preliminary information it has been collecting together from a whole-of-sector point of view to get some information to start drawing out some indication of where there might be misreporting in the sector or where there might be a need for us to have a look at the intelligence of what they are getting from a minor misconduct point of view that is a pointer for something else that might be of interest to inquire into.

Mr N.W. MORTON: Could I just ask a clarifying question on that line of inquiry? Further from what the chair was saying, in that same table on page 22, I note significant drops in the Department of Education as well and more moderate drops to the Department of Health. Is that all relatable to minor misconduct going to the PSC?

Mr McKechnie: Yes.

Mr N.W. MORTON: That is consistent across those agencies?

Mr McKechnie: Yes, because in the Department of Education there is not much that needs to get the threshold of minor misconduct, so there were a lot of reports.

Mr P.B. WATSON: Page 26 of the report indicates that the number of allegations investigated by the commission dropped from 36 in 2014 to 25 this year. Is there a reason for that?

Mr Robinson: The commission's stated aim is to concentrate its investigating function on those matters where it feels it can make most difference. Over the past 12 to 18 months, we have consciously reduced a number of matters that we have investigated so we can concentrate on those that we think we can make the most difference on. Those decisions are made through the operations committee. That has seen a reduction in the number of matters investigated. Over the 12-month period, we were active on 79 investigations, some of which commenced in a previous year and carried on through that year.

Mr P.B. WATSON: Carrying on from that, page 29 indicates that there were 29 investigations this year but 21 commenced in the previous period, and there have been only eight new ones in the past 12 months.

Mr McKechnie: I am not quite sure about the eight; it is more than that.

Mr Robinson: Sorry, Mr Watson, which particular paragraph?

Mr P.B. WATSON: It is on page 29. Twenty-nine investigations were conducted during 2015–16 but 21 commenced in the previous period, which means there were only eight new investigations in the past 12 months.

The CHAIRMAN: You need to look at footnote (a) on page 29.

Mr Robinson: We have commenced more investigations than that. That might be a reference simply to the number of section 33 investigations. There are section 33(1)(a) investigations where we have solely done investigations. There are other investigations—cooperative and preliminary investigations. I would have to look further into that because the total number of investigations is certainly more than eight.

Mr Warnes: In that table at the back, in appendix 3 from memory, where we have listed all the investigations that we have undertaken, I think there are around 79 of those. That reflects the investigations that were underway or that we concluded part way through the year. That is the subject list of investigations that we have taken on board for that 12-month period.

Mr Robinson: It actually states in the footnote that of the 29 investigations conducted, eight commenced in the reporting period and 21 represents the investigations commenced in the previous period, so 29 active during that period. I think that is a reference to the number of —

Mr P.B. WATSON: So that is 21. How far back would they go? Would they be only in the previous period?

Mr Robinson: No, some might be longer than that. It depends if the matter has been before the courts. Sometimes if a matter is before the courts, it can take two or three years to conclude. But the majority would have been commenced in the previous year. I do not have the figures on the actual eight itself.

Mr P.B. WATSON: Can we get that information, please?

Mr McKechnie: We will get that information.

The CHAIRMAN: What are we taking on notice?

Mr P.B. WATSON: How many of the previous year's investigations were from previous years?

Mr Robinson: How many investigations carried over were from the previous years.

The CHAIRMAN: Of the 21 investigations carried over, when were the allegations received for those investigations?

Mr Warnes: Would it be useful for the committee to have that broken down into our preliminary investigations as well as our full-on investigations?

The CHAIRMAN: Sure; thank you. Further to that point, in this financial reporting period, some nearly 2,500 notifications were received. If I understand this information on page 29 correctly, of those 2,500 notifications, eight have been investigated independently by the commission.

Mr McKechnie: I am no longer sure of that because I think it is more than eight. I do not understand this figure. I will look at that. As a general principle, we would only investigate about four per cent of the allegations that were received. I am much more comfortable with that figure. Most are returned to departments to deal with pretty promptly.

Mr Warnes: Perhaps if I could add to that, looking at notifications that come in, you would understand that a notification may have on average about 1.8 allegations per notification. Once we have received it and we have made an assessment that there is an allegation, our focus is not so much on notifications, but the allegations. Under 10%—roughly between four and 8%—of those allegations we take on as a commission. There might be four allegations to an investigation or there might be one. The rest we would send back under the [Corruption, Crime and Misconduct] Act; a number back to agencies to investigate. We follow them up. With the new area we have created within the former Assessment Review Directorate, now the Assessment Strategy Development Directorate, we have an oversight function. It is not just sent back to an organisation, as we may have done in the past, with us just sending letters and asking where are they up to and it taking two years to get things done; we are a lot more active in that space. We would send back and say that we think that is about three months' worth of investigation work for them; and, if it is not, then there are negotiations about the time, but it sets up a regime for us to follow more actively with those investigations. Even though we are not directly taking them on, we are actively involved with where they are at and chasing up the status of those within the broader public sector.

The CHAIRMAN: It has always been the case that the commission has referred back the majority of the allegations to the responsible agency and has monitored the outcome of those investigations and the outcome of those complaints. That is entirely consistent with the practice of the commission for years. The issue here though is that the commission has a mandate to independently investigate any one of those matters and it understandably has finite resources and so it must prioritise which matters it will investigate. There was a period of time in which the committee was concerned that

there was not enough independent investigation, particularly into WA Police, which were considered to be, if you like, the first priority for the commission, and that has changed in more recent times. But I think we do need to get to the bottom of this issue because it does not ring true to me that there could only be eight independent investigations commenced, new investigations, out of the 2 500 notifications. As Mr Warnes has mentioned, if there are 2 500 notifications, there are many more allegations, and there could not be only eight investigations, surely.

Mr Robinson: I can clarify that the 29 refers to the section 33(1)(a) investigations. Those are investigations the commission conducts on its own. It does not include the 34 investigations that were conducted under section 32(2)—those are preliminary investigations—nor does it include the cooperative investigations that we have conducted with other agencies that are detailed at the bottom of the highlights page where we talk about 34 preliminary investigations; 29 commission investigations, eight of which were commenced in that year; 16 cooperative investigations with other agencies. The details of each of those are on the various pages. In relation to cooperative investigations, we were active on 16 during the period of this report, and a number of those were with police and we have also detailed the time frames in which we have dealt with those matters.

The CHAIRMAN: In table 18 under appendix C, which starts at page 114 and flows through to page 118, 79 investigations are listed. Do I take it then that the 79 is a grand total of investigations, being independent investigations, preliminary investigations and—

Mr Robinson: Cooperative.

The CHAIRMAN: —cooperative investigations?

Mr Robinson: That is correct.

Mr Warnes: It is the total of those that appears at that highlights page that Mr Robinson referred to.

Mr Robinson: Those 79 are matters that we were active on during the financial year in question, some of which may have commenced in previous years, but those are the matters that we were active on over that particular period.

The CHAIRMAN: Commissioner, just an administrative matter: is there at the present time just one acting commissioner in place?

Mr McKechnie: That is correct.

The CHAIRMAN: Has there been any discussion with government about the need for more than one?

Mr McKechnie: No. My preference, as I have expressed before, is for a deputy commissioner, but no, I think one should be sufficient, really more in case I am conflicted on a particular matter, which is unlikely, or in case of leave. The appointment by the Governor has somewhat changed the terms so that the acting commissioner does not automatically assume the commissioner's role if I am on leave. It is a better arrangement.

The CHAIRMAN: One of the things that has happened during the reporting period is the decision by the Court of Appeal with respect to the commission's past practice of laying charges and prosecuting. In some respects these next questions not only serve the purpose of this annual report hearing but also, as you would be aware, the committee is currently undertaking an inquiry into specifically that issue. Can you advise the committee how effective you have found the new arrangements whereby, as I understand it, you will be referring matters to the State Solicitor to make a decision on charging and prosecuting?

Mr McKechnie: Yes, I should say that in respect of the prosecutions that were current at the time of the decision, arrangements were made, particularly with the DPP, to take over all of those but one; one is presently under consideration by the DPP and the others he has taken over. An example was the recent plea of guilty in relation to Mr Alcock, a former Shire of Dowerin CEO, who was

charged by commission officers. The DPP took over indictment. In relation to the State Solicitor, Ms Endebrock-Brown and I have had discussions with the State Solicitor's Office and we have an arrangement with them. It is early days to say how effective that will be. They have slightly different standards in relation to what they require for a prosecution, so we are working through those in a mutual way with some different understandings, but we are working through it and it is the system we have. The State Solicitor is empowered to take prosecutions and we are preparing briefs for prosecutions, where appropriate, and submitting them to the State Solicitor, but of course it is his decision, or in the appropriate case the Director of Public Prosecutions' decision, as to whether a prosecution commences or continues.

The CHAIRMAN: You said that all of those existing prosecutions were taken over by the Director of Public Prosecutions.

Mr McKechnie: Or the SSO.

The CHAIRMAN: Right, okay. So if the matter was before the Magistrates Court, then the DPP did not take it over?

Ms Endebrock-Brown: That is right.

The CHAIRMAN: Has that got more to do with DPP policy than anything else?

Mr McKechnie: Yes, it does—and resources and policy.

The CHAIRMAN: The reason I raise it, commissioner, is that the committee has looked into what happens in other jurisdictions and the arrangement in Western Australia seems to be somewhat unique. The other jurisdictions simply have their DPP—or its equivalent—take the matter over, irrespective of whether it is an indictable matter or a summary matter. It seems to be a uniquely Western Australian thing to have this situation where the DPP does not deal with these summary matters. I wonder how efficient and effective it will prove to be in the medium to long term to have this arrangement, whereby in some matters you are dealing with the State Solicitor and in other matters you are dealing with the DPP. The committee has not formed a clear view on this; it is very early days.

Mr McKechnie: The DPP has the legal power to take over all of the matters. It is a policy and I do not wish to comment or criticise the DPP on the policy because I am sure it is partly to do with resources. The DPP is stretched in relation to, as it were, its general work, but it is less than satisfactory for us to go shopping for a prosecutor, to be blunt. We would prefer it if the DPP was the one stop where we would simply prepare briefs and give them to the DPP and what decision is made, is made. Part of the DPP's rationale is that it does not wish to be responsible for the disclosure undertakings that accompany a prosecution if prepared by someone else, although of course the DPP becomes responsible for the disclosure obligations of others, such as the police, on indictment anyway. But it is a less than satisfactory situation. As I think I have expressed before, I am personally quite relaxed about the commission not having the power to prosecute, believing because of my background that an independent authority should exercise that, but there is a practical difficulty that does arise because a prosecution notice is the commencement and is the charge. We have on occasions come across matters where it is really necessary that a person be charged then and there and we are now unable to do that. If we have to wait and put together a full brief for a prosecuting agency on the basis that the matter will go to trial, then injustices may occur because very often most people in fact plead guilty to most offences; that is statistically right. So the charge of a person may not require an entire brief to be submitted because the person is guilty and knows they are guilty and pleads guilty. It is a less than satisfactory situation that we are unable to charge. We can arrest, but then in broad terms a charge has to be laid within four hours and we have not yet tested the system, but it is less than satisfactory.

The CHAIRMAN: Since July, about four months now of operation, it sounds like there has not been a situation in which you have had to arrest.

Mr McKechnie: Not since then. But to take Mr Alcock as an example—which I can, because he has been dealt with—our officers travelled to Dowerin last year. He was very cooperative and admitted that he had stolen and was arrested and charged on the spot, and removed from Dowerin and any further damage that might be done. We could not do that now unless the State Solicitor was prepared to sign a prosecution notice on inadequate information for a full brief but sufficient charge.

The CHAIRMAN: Okay, let us run with that example. When your officers went to Dowerin, had they made the decision to arrest and charge on the spot on the basis of the information they obtained on that day?

Mr McKechnie: No, when they went, they did not know. We had allegations but we did not have much evidence. When we went it became clear what the problem was.

The CHAIRMAN: Only on the basis of the information that has been obtained on that day can you then make the decision to arrest and charge. The situation otherwise would be that you would refer those allegations to the police or otherwise proceed with one of your briefs to the State Solicitor.

Mr McKechnie: Yes, and at the moment we are still in discussions with police about whether they would be prepared to charge on our say-so, so to speak. Another example—I will not mention the name because it is still before the court—is a person who held a senior position in health and who was alleged to be stealing drugs and was located by commission officers allegedly just after he had ingested in a car in a public place and he was arrested and charged, for a number of reasons, including his own safety. There was credible evidence that an offence had been committed. That is another example where we could not now do that unless we found a willing police officer or the State Solicitor was available and agreed. It is, as I say, a significant problem and to my mind the solution we have proposed is a workable solution; namely, that we have the power to charge, to commence a prosecution, but that at an early stage the continuation of the prosecution is handed to another agency.

Mr P.B. WATSON: Does it give your investigators more grunt when they are investigating someone to say, “Look, we can charge you and prosecute”?

Mr McKechnie: Yes. It is a fluid thing, but in all our investigations we are mindful of: Are we investigating in terms of a public report? Are we investigating in terms of a private report to a minister or a department, or are we investigating criminality—fraud, for example—which is better simply prosecuted? The prospect of charges is always available. One of the definitions of serious misconduct indeed is an offence carrying more than two years’ imprisonment. We quite often come across that.

The CHAIRMAN: The only other jurisdiction that has this ability to charge is IBAC in Victoria. The committee’s discussions with them seems to indicate that they do not really use that power that much and to the extent that they do, it is still a very collaborative process with their equivalent DPP. In New South Wales, the situation is slightly different, quite a bit different actually, where they can initiate a prosecution but they tell the committee that they are really a glorified process server in the sense that they initiate the prosecution and then that is it. The DPP then handles the matters thereafter. That is ICAC, and their Police Integrity Commission cannot even do that. In discussions with other bodies, it seems to be that there are a few weighty factors that the committee needs to consider, including the distinction between a body with the powers of a corruption and crime commission that can compel an individual to give evidence, what I would refer to as a special investigator—an investigator with special powers that an ordinary investigator does not have—and, therefore, is it right and proper that there be a safety mechanism with an independent agency or body making a decision to charge and prosecute? So it is about the powers that the Corruption and Crime Commission has that other investigators do not have. That is something the committee obviously has to resolve, but I do take on board your point that if you do see something and it needs an immediate response, there needs to be a solution to that.

Mr McKechnie: As I have expressed, I am strongly of the view that there should be an independent body to decide whether an investigator such as us—whether prosecution should be mounted. I have no problem with that. But the practical reality is that original decision to charge, has to be made sometimes in the public interest by investigators and officers on the ground. At the moment, the way the Criminal Procedure Act is, there is no basis on which a charge can be laid by someone; it is the commencement of prosecution.

The CHAIRMAN: When the commission officers undertake an investigation, would it be right to say that the goal of their investigation is to expose any serious misconduct or corruption that has occurred—detect and expose?

Mr McKechnie: A qualified yes; it is to see whether there is serious corruption. It is something I am pondering: a lot of our work is actually that we have investigated things and found that there was no serious misconduct. I am struggling in a way to actually report that in a forum because I think that sometimes it is important that people know, especially if there have been rumours about something, that we have investigated and have found no evidence of it. But, yes, our principal responsibility I see is to Parliament, to report to Parliament on what we uncover in relation to serious misconduct.

Mr Robinson: I might just add to that that there are times when we complete investigations and even if we are not able to substantiate serious misconduct, we will still provide advice to agencies on the outcome of the investigation, particularly if we identify any particular risks that might come up during the investigation. Even though there might not be a concrete outcome in the sense of a public examination or a report, there is still usually some form of outcome for the agency concerned.

The CHAIRMAN: The investigators are looking to determine whether there has been serious misconduct. When they do the investigation, I take it that they are considering evidence gathering from the perspective of needing to satisfy you as commissioner that serious misconduct has or has not taken place on the balance of probabilities.

Mr McKechnie: Yes, although I think that is a little bit of a low standard to brand somebody as corrupt. I am not quite sure what standard it is, but it is a serious thing to form an opinion of corrupt behaviour. It is hard to explain quite what standard it is, but I have to be essentially very satisfied that that is an appropriate standard and take a very cautious approach.

The CHAIRMAN: Yes, I draw the distinction between that and, say, for instance, a police officer who is investigating a crime or an allegation of a crime, and they have to have in mind when they are doing their evidence gathering that this needs to be able to be proved beyond reasonable doubt, so this is another factor the committee needs to take into account when considering whether it is appropriate for an investigative body like the commission, that has not only the unique special powers but also a different mandate. Is it therefore then once again another reason there should be an independent decision-maker on whether prosecutions should be launched?

Mr McKechnie: A successful prosecution has greater consequences on a citizen than an opinion of misconduct. Even though an opinion of misconduct has damaging reputational consequences, it has no legal effect. When our investigators are collecting evidence, they do so on the basis that there may be a prosecution, so evidence chains and things are kept in mind. The best we can do is build in a series of checks and balances, which we do, into the system. The operations committee, which Mr Robinson has mentioned, makes the decisions on what matters we will take on. Lawyers are involved in the process, in a sense as a buffer between the investigator and me to ensure that things proceed according to law and fairness. But, yes, there is a different standard ultimately from a prosecution. I do not decide or form opinions on serious misconduct beyond reasonable doubt.

The CHAIRMAN: One other area I want to discuss is the issue of laying charges and prosecuting for offences under your own Act, the *Corruption, Crime and Misconduct Act*. That is an area that

has been left open by the Court of Appeal, in some respects regrettably but, nevertheless, it is what it is.

Mr McKechnie: The Chief Justice left it open. I am sure Justice Corboy did.

The CHAIRMAN: That is right; nevertheless, is that something that needs to be put beyond doubt.

Mr McKechnie: I think it does because I do not particularly want to test it. One would rely on the incidental power to prosecute in respect of own offences, so to speak, but I do not want to test it and then find it was wrong. My own view is that it actually would be quite hard to justify in light of the other parts of the judgement of Maughan.

The CHAIRMAN: Quite hard to justify that there would be the capacity to lay charges and prosecute?

Mr McKechnie: Yes.

The CHAIRMAN: Let us go back in time with one example. Two bikie gangs that were fighting at the Perth Motorplex went before Commissioner Len Roberts-Smith. One of the bikie gangs refused to be sworn in. One of them swore at the commissioner.

Mr McKechnie: Somewhat extensively, as I understand it.

The CHAIRMAN: Yes, and a form of contempt proceedings was then initiated and the outcome was that the Chief Justice sentenced each to two years' jail, and one got two years and three months for swearing at the commissioner. The reason I raise that example is, was it the commission that initiated the contempt proceedings?

Mr McKechnie: Can I just check? Yes, I just wanted to confirm: under the [Corruption, Crime and Misconduct] Act we specifically have the power to take contempt proceedings, so we could do that tomorrow.

The CHAIRMAN: So we have no doubt that that can be done?

Mr McKechnie: Yes.

The CHAIRMAN: If you do not mind me saying, when I last asked the former commissioner and the commission about the capacity to prosecute, they also shared the same confidence that they could definitely go ahead and do this, only to find that the Supreme Court said otherwise, but in this case —

Mr McKechnie: It is in the Act.

The CHAIRMAN: Categorically—there is no wriggle room for anyone to argue that you should not be able to do it.

Mr McKechnie: No, I stake Ms Endebrock-Brown's reputation on it!

The CHAIRMAN: To quickly go and check the precise provision and bring it to the attention of the committee would be helpful. So that is in relation to these contempt proceedings. As I understand it, there has to be some kind of certificate, I think, from the commissioner?

Mr McKechnie: Yes, that is correct.

The CHAIRMAN: Can you just take us through how those proceedings would commence? Is there a special form that must be supplied to the Supreme Court?

Mr McKechnie: Yes, it would be commenced under an application. I think it is Supreme Court rules that it would be commenced under a normal application for contempt. It is not unique, although the power to bring it is. In the Magistrates Court certain matters can be taken to the Supreme Court for contempt, so it is not a unique power that we have, and I think there are some other tribunals that have the same power. It is just a convenient way of treating it as a contempt of the Supreme Court.

The CHAIRMAN: In those proceedings, how would you describe the Corruption and Crime Commission? Is it a complainant?

Mr McKechnie: Yes, I think it would be, or an applicant.

The CHAIRMAN: Applicant.

Mr McKechnie: Section 163 of the [Corruption, Crime and Misconduct] Act states —

Where a contempt of the Commission is alleged to have taken place, the Commission may present to the Supreme Court a certificate setting out the details of the act or omission that the Commission considers constitutes the alleged contempt.

...

Where a certificate is presented ... the Supreme Court has jurisdiction ...

The CHAIRMAN: Okay, so you have the power to present a certificate but—this is why I am asking about the process—is the certificate the initiating process that starts the contempt proceedings or is there some other initiating process that needs to be done?

Mr McKechnie: Could I take that on notice and get back to you because I have not actually done it and I do not want to mislead the committee?

The CHAIRMAN: Yes, I think we need to get to the bottom of that because what I want to make sure that we do not have is somebody coming along and saying later that you have not got the power to initiate, all you have is the power to give a certificate. They may be one and the same things, I am not sure either, but let us get to the bottom of it.

Mr McKechnie: I will take that on notice, if I may, and get back to you.

The CHAIRMAN: If there is any area of grey on that, I take it, commissioner, that you would like it —

Mr McKechnie: I would like it cleared up.

The CHAIRMAN: — clear as crystal. Not just with regard to those contempt proceedings, but any ancillary prosecution that arises out of offences under this act.

Mr McKechnie: Yes.

The CHAIRMAN: Commissioner, we do have some questions that we need to deal with in closed session, but is there anything else in public session that you want to deal with?

Mr McKechnie: No, thank you.

The CHAIRMAN: On that basis I will declare the public hearing closed at this time and ask those in the public gallery to vacate the hearing room.

[The Committee took evidence in closed session]
