



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

**EXAMINATION OF THE 2004-2005
ANNUAL REPORT OF THE CORRUPTION
AND CRIME COMMISSION**

**Report No. 5
in the 37th Parliament**

2006

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Joint Standing Committee on the Corruption and Crime Commission

Examination of the 2004-2005 Annual Report of the Corruption and Crime Commission

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ANNUAL REPORT OF THE CORRUPTION
AND CRIME COMMISSION**

Report No. 5

Presented by:

Mr John Hyde, MLA and Hon. Ray Halligan, MLC

Laid on the Table of the Legislative Assembly and the Legislative Council
on 30 March 2006 and 4 April 2006 respectively

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Deputy Chairman	Hon Ray Halligan, MLC Member for North Metropolitan
Members	Hon Margaret Rowe, MLC Member for Agricultural Mrs Judy Hughes, MLA Member for Kingsley

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COMMITTEE'S FUNCTIONS AND POWERS

On 31 May 2005 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

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

It is the function of the Joint Standing Committee to -

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

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

CHAIRMAN'S FOREWORD

The Corruption and Crime Commission tabled its Annual Report 2004-2005 in the Parliament on 19 October 2005. Concurrently, the Joint Standing Committee on the Corruption and Crime Commission held a public hearing with the CCC in relation to its Annual Report. The Committee also held a public hearing on 19 October 2005 with the Parliamentary Inspector of the CCC, Malcolm McCusker QC, to discuss the CCC's Annual Report as well as his own. Transcripts of the hearings are attached as Appendices 2 and 3 of this report.

The Committee sent a series of questions on notice to the CCC prior to the public hearing. Many of the CCC's responses to those questions were contained in Commissioner Hammond's opening address to the Committee on 19 October 2005, included in the transcript of evidence.

The Committee is satisfied that the CCC operated efficiently and effectively during the reporting period. Its Annual Report 2004-2005 was comprehensive and informative, combining useful quantitative data and qualitative material.

Most chapters of the report contained a number of 'case studies' setting out real examples of investigations conducted by the CCC which highlight the particular issues discussed in the chapter. The Committee found this most useful and commends the CCC for adopting this approach. Case study examples help ensure that its operations and legislative framework are accessible to the public. The Committee encourages the CCC to continue providing case study examples in future annual reports.

The Committee draws to Parliament's attention a number of salient features of the CCC's Annual Report 2004-2005 in Chapter 1. The comments contained in this report are brief, as the Committee is due to hold its next quarterly public hearing with the CCC in early May 2006. Further, the sections of its Annual Report 2004-2005 that deal with shortcomings of the legislation will be addressed by the Committee in its current inquiry into possible amendments to the *Corruption and Crime Commission Act, 2003*.

I congratulate Commissioner Hammond and his staff at the CCC for establishing a credible independent corruption fighting body for Western Australia. The Parliament of Western Australia can be confident that the CCC is now fully operational and meeting its statutory purpose: "to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector."



MR JOHN HYDE, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

Act	<i>Corruption and Crime Commission Act, 2003</i>
CCC	Corruption and Crime Commission of Western Australia
Committee	Joint Standing Committee on the Corruption and Crime Commission
Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission of Western Australia

CHAPTER 1 JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION'S REPORT ON THE CORRUPTION AND CRIME COMMISSION'S ANNUAL REPORT 2004-2005

1.1 Misconduct Function

- (a) Of the 2,410 allegations and notifications of misconduct referred to the CCC, the vast majority (63.7%) were referred to the agency employing the public officer the subject of the allegations. The Committee agrees with the CCC's rationale for this; that Chief Executive Officers should take responsibility to manage allegations of misconduct on the part of their officers. Only 2.2% of the allegations and notifications were ultimately referred to the CCC's investigation unit.
- (b) Following the Committee's public hearing with the CCC on 19 October 2005, the CCC provided the Committee with a graph demonstrating the steady rise in allegations and notifications it received on a weekly basis from October 2004 to October 2005. The graph is attached to this report as Appendix 4. This rise can be explained in part by agencies developing a better understanding of the statutory notification requirements.
- (c) Despite the overall increase in agencies' awareness of their notification responsibilities, Commissioner Hammond gave evidence to the Committee at the public hearing on 19 October 2005 that there are still areas of considerable under-reporting:

The Commission's present perception is that many government agencies are generally not well equipped to detect and manage misconduct and its consequences, and that many of the Commission's more serious cases have developed, in fact, as a consequence of accidental discovery, or a third-party report, or as the result of proactive investigations based upon intelligence. I am happy to say that there are now some early indicators of very positive changes in this respect because we are now noting that public sector agencies are frequently seeking advice or assistance from the Commission on matters that they are suspicious of or unsure as to whether it constitutes misconduct, and the Commission is only too happy to assist in what I would call these over-the-counter inquiries.¹

- (d) The Committee concurs with the CCC's efforts to break down the number and nature of allegations received during the reporting period and provide some analysis as to trends and areas requiring further attention. For instance, in the 2004-2005 year, the majority of allegations and notifications of misconduct related to the WA Police (67%), and to a lesser extent, the education, justice, local government and health sectors. The CCC explained in

¹ Mr Kevin Hammond, Commissioner, Transcript of Evidence, 19 October 2005, p.8.

its Annual Report that the reason for the disproportionately high number of matters involving the police relates to specific reporting requirements for police under the Act that do not apply to other public officers. The practical effect of the statutory reporting requirements is that allegations of ‘minor misconduct’ must be notified. The Committee questioned the CCC about this issue at the public hearing, asking how many of the allegations involving police were found to involve minor complaints. Nick Anticich, Director of Operations, advised the Committee that of the 1,580 allegations relating to WA Police, approximately 50% of these were considered to be minor.² The Committee would welcome further details on this issue in the CCC’s next annual report. In particular, it would be helpful for the CCC to address the range of allegations involving police and clarify the threshold used to decide if an allegation constitutes ‘minor misconduct’. The Committee also seeks the CCC’s opinion as to whether the stringent statutory reporting requirements for WA Police are necessary and appropriate.

- (e) The CCC conducted 10 integrity tests pursuant to s.123 of the Act in conjunction with the WA Police. As explained in the Annual Report, integrity tests enable officers of the CCC to create realistic scenarios which test the integrity of public officers. According to the CCC, integrity tests have a deterrent effect across the public sector as public officers become aware of the existence of integrity tests and consequently decide not to engage in misconduct when an opportunity arises due to a fear that their actions may be monitored as part of an integrity test. The Committee agrees that integrity testing has enormous potential as a deterrent factor, and suggests that the CCC conduct further research to measure the deterrent value and examine ways to maximise the benefits of integrity testing programmes. This may be done as a collaborative project with other jurisdictions such as New South Wales and Queensland that also conduct integrity testing under their respective legislation.
- (f) During the reporting period, the CCC conducted four public hearings and 12 private hearings. Under normal circumstances, examinations of witnesses must be conducted in private. Section 140 of the Act provides that the CCC may open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so. At the public hearing on 19 October 2005, Commissioner Hammond stated that public hearings have the benefit of allowing the broader community and the public sector to see and examine the work of the CCC. However,

[a]s a black-letter lawyer, I go back to section 140 and very carefully weigh my responsibilities in this connection because, as I see it, the decision to go public, as it were, is one that I must make and live with.³

The Committee supports the Commissioner’s cautious approach to this matter. Part of the problem with the CCC’s predecessor, the Anti-Corruption Commission, was its secrecy,

² Mr Nick Anticich, Director of Operations, Transcript of Evidence, 19 October 2005, p.10.

³ Mr Kevin Hammond, Commissioner, Transcript of Evidence, 19 October 2005, p.6.

and the CCC has established strong credentials in being open and transparent to date. However, experience in other jurisdictions that have had anti-corruption bodies operating for longer than in Western Australia shows that public hearings may harm a person's reputation even if they are subsequently acquitted of criminal charges. The CCC has such extraordinary powers that it is incumbent on the Parliamentary Inspector and the Committee to monitor over time its use of public hearings and the amount of material it divulges to the media.

1.2 Implementation of Recommendations

- (g) Throughout its Annual Report 2004-2005, the CCC referred to having made various recommendations to agencies. In future reports the Committee would like the CCC to address whether and to what extent its recommendations to agencies are implemented. In the Budget Estimate Papers for 2004-2005, the CCC stated that it would develop its capacity to oversight the adoption of its recommendations. This issue, however, was not addressed in its Annual Report 2004-2005.

1.3 Stakeholder Partnership and Liaison

- (h) The Committee endorses the strategic partnerships entered into by the CCC with other state and federal agencies relevant to the work of the CCC, including Memoranda of Understanding with the WA Police, Ombudsman and various other bodies. The CCC states that it has a Memorandum of Understanding with its equivalent, the Queensland Crime and Misconduct Commission, but does not mention a similar Memorandum of Understanding being entered into with either the New South Wales Independent Commission Against Corruption or Police Integrity Commission.
- (i) In this regard, the Committee is pleased that the Integrity Coordinating Group was formed in 2004 by the Commissioner of the CCC, Ombudsman, Auditor General and Commissioner for Public Sector Standards. The purpose of the group is to meet on a regular basis to exchange information and coordinate collaboration between the relevant agencies responsible for ethics and integrity within the public sector. The Committee is keen to review the outcomes and ascertain the benefits that the Group may provide.

1.4 Prevention and Education Function

- (j) The CCC's Corruption Prevention, Education and Research Directorate has adopted a refreshing proactive approach. In addition to conducting some diverse independent research projects, it has sought opportunities to collaborate with other national research initiatives in areas such as whistleblowing. The Directorate also conducted a number of city and regional presentations to educate public sector agencies about misconduct and their responsibilities under the Act. Many of these seminars are now tailored to suit the needs and profiles of specific agencies, which is a necessary response to the growing number of allegations from within local government and education. In other words, the

Corruption Prevention Directorate is focussed on supporting the investigative functions of the CCC by directing its resources and activities to the areas most needed. In this regard, the CCC is able to address possible systemic problems and reduce the incidence of misconduct in the public sector over time.

1.5 Legislative Provisions

- (k) A whole chapter of the Annual Report 2004-2005 deals with the CCC's organised crime function. The Committee has already indicated its support of the CCC's request for amendments to the Act in respect of organised crime and contempt powers. The Committee is currently conducting an inquiry into these and other possible legislative amendments, and will report to the Parliament separately later this year.

1.6 Organisational Structure

- (l) Several important internal reviews and organisational and restructures of the CCC occurred during the reporting period. The Committee considers this acceptable at this stage given that the CCC is still in its infancy and has required time to determine its optimum structure and consequential resource allocation.

1.7 Performance Measurement

- (m) In the 2004-2005 budget estimates papers, the CCC stated that key efficiency indicators would be further developed in 2005-2006 following completion of the Strategic and Business Plan. In future reports, the Committee would like the CCC to address its performance against clear and meaningful measures.

1.8 Accommodation

- (n) In May 2006 the CCC relocated premises to 186 St George's Terrace. Having inspected the new premises, Committee members are confident that the CCC now operates from premises well suited to its special needs in terms of security, public and media access, and education facilities. The Committee agrees with the CCC that the new premises are also suitably accessible to witnesses and members of the public.

1.9 Budget

- (o) During the reporting period the CCC increased its staff complement from 16 to 130. At the public hearing on 19 October 2005, the CCC's Executive Director, Mike Silverstone, explained that there was a \$2.6 million shortfall in the 2004-2005 budget estimates for salaries. This significant shortfall was due to forecasts prior to the establishment of the

CCC underestimating the number of senior staff required to fill specialist roles within the CCC.⁴

- (p) Notwithstanding the above salaries shortfall, Mr Silverstone identified that the CCC could reduce its forecast budget requirements for capital contributions by \$10.349 million over the period of the current budget and forward estimates. By agreement with the Department of Treasury and Finance, the CCC was permitted to redirect funds from non-salaries to salaries to cover the above shortfall. The Committee is satisfied that the CCC is developing a clearer picture of its budgetary needs and is working with the Department of Treasury and Finance to resolve these matters for future budget cycles.

1.10 Employee Profile

- (q) In Chapter Eight of the Annual Report, the CCC provides statistics as to the level and gender of its staff. As with most other agencies, there are significantly more men than women employed at senior levels. At level 6, there are 12.4 female compared to 20 male employees. At level 7, there are 9.8 female and 21 males; at level 8 there is only one female and 14 males; at level 9 there is one female and four males; and at Class 1 level, there are three female and seven male employees. No reasons for this gender imbalance are provided by the CCC, but it would be useful for the CCC to specifically comment on this statistic in future annual reports.

1.11 Information Technology

- (r) During the reporting period the CCC undertook major improvements to their computing network generally and case management systems. As at the time of reporting, tenders had not yet closed for the case management system, and so the Committee will seek an update from the CCC about the implementation of the proposed new case management system and other IT initiatives at its next public hearing with the CCC.

1.12 Security Clearances

- (s) Although not addressed in the CCC's Annual Report 2004-2005, the Committee queried Commissioner Hammond about the CCC's security vetting procedures for staff at the public hearing on 19 October 2005. Commissioner Hammond confirmed that the CCC has adopted the Commonwealth Government's procedures, whereby all new staff must obtain security clearance prior to commencing employment with the CCC. The Committee is satisfied that the security vetting procedure is appropriately stringent. In respect of all prospective CCC staff, a full examination is conducted of their bank accounts, trips overseas and the reasons for same, a description of all organisations to which they belong, have belonged and why they left. More stringent procedures apply to those staff who have

⁴ Mr Mike Silverstone, Executive Director, Transcript of Evidence, 19 October 2005, p.17.

ever lived overseas. Furthermore, senior officers of the CCC must also undergo psychological profiling to obtain the status of “highly protected” officer.⁵

1.13 Parliamentary Inspector

- (t) The CCC does not address its relationship with the Parliamentary Inspector of the Corruption and Crime Commission in its Annual Report 2004-2005. The Committee would like future annual reports to address this formal oversight relationship, including information such as the frequency of meetings between the Parliamentary Inspector and the Commissioner, and the Parliamentary Inspector’s access to operational material.

⁵ Mr Kevin Hammond, Commissioner, Transcript of Evidence, 19 October 2005, p.9.

CHAPTER 2 PARLIAMENTARY INSPECTOR'S OBSERVATIONS ON THE CORRUPTION AND CRIME COMMISSION'S ANNUAL REPORT 2004-2005

The Committee also held a public hearing with Malcolm McCusker QC, Parliamentary Inspector of the Corruption and Crime Commission on 19 October 2005. In addition to giving evidence about his own Annual Report for 2004-2005, Mr McCusker gave evidence in relation to the CCC's Annual Report 2004-2005. The transcript of the hearing appears at Appendix 3 of this report.

As the Parliamentary Inspector has specific statutory duties under the *Corruption and Crime Commission Act, 2003* to, among other things, audit the operations of the CCC for the purpose of monitoring compliance with the laws of the State; to assess the effectiveness and appropriateness of the CCC's procedures; to make recommendations to the CCC and the Committee, the Committee requested his comments on the CCC's Annual Report 2004-2005.

Mr McCusker reported to the Committee that:

- He was satisfied that the CCC is performing its functions properly;
- In his dealings with the CCC from the Commissioner level down, he had nothing but the utmost cooperation from it;
- Complaints against the CCC or one of its officers have all been immediately referred to him by the Commissioner himself and have been accompanied by all the relevant material, with an invitation to question any officer on the subject matter of the complaints;
- With one exception, the nature of the complaints referred to the Parliamentary Inspector have been either that the CCC has not fully investigated a complaint or has not accepted that the complain comes within the jurisdiction of the CCC;
- On no occasion so far has he as Parliamentary Inspector had a direct referral from the CCC or from a complainant in which he has concluded that the CCC has not dealt with it in terms of procedure in a proper manner;
- Commissioner Hammond is an excellent head who keeps fully in touch with what is happening and keeps him informed as Parliamentary Inspector:

*There is no element of keeping things close to the chest there: they are very forthright.*⁶

⁶ Mr Malcolm McCusker, Parliamentary Inspector, Transcript of Evidence, 19 October 2005, p.25.

- There are only a very small number of referrals that are made to him as Parliamentary Inspector comprising complaints about the CCC. So far, he has not found any cause for complaint against the CCC's operations or procedures as such.

The Committee accepts the comments and opinions of the Parliamentary Inspector in relation to the operations of the CCC throughout the reporting period.

APPENDIX ONE

WITNESSES TO PUBLIC HEARINGS

Date	Name	Position	Organisation
19 October 2005	Mr Kevin Hammond	Commissioner	Corruption and Crime Commission
19 October 2005	Mr Michael Joseph Silverstone	Executive Director	Corruption and Crime Commission
19 October 2005	Mr Nick Anticich	Director, Operations	Corruption and Crime Commission
19 October 2005	Dr Irene Froyland	Director, Corruption Prevention	Corruption and Crime Commission
19 October 2005	Mr Alan Abraham	Manager, Finance and Administration	Corruption and Crime Commission
19 October 2005	Mr Michael Anthony Cashman	Director, Legal Services	Corruption and Crime Commission
19 October 2005	Mr Trevor Wynn	Transition Coordinator, Electronic Collection Unit	Corruption and Crime Commission
19 October 2005	Mr Malcolm James McCusker	Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission

APPENDIX TWO

TRANSCRIPT OF EVIDENCE

CORRUPTION AND CRIME COMMISSION

19 OCTOBER 2005

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

SESSION ONE

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 19 OCTOBER 2005**

Members

**Mr John Hyde (Chairman)
Hon Ray Halligan (Deputy Chairman)
Ms Margaret Quirk
Hon Margaret Rowe**

Hearing commenced at 10.00 am

HAMMOND, MR KEVIN
Commissioner, Corruption and Crime Commission
PO Box 7667, Cloisters Square
Perth 6850, examined:

SILVERSTONE, MR MICHAEL JOSEPH
Executive Director, Corruption and Crime Commission,
PO Box 7667, Cloisters Square
Perth 6850, examined:

ANTICICH, MR NICK
Director, Operations, Corruption and Crime Commission,
PO Box 7667, Cloisters Square
Perth 6850, examined:

FROYLAND, DR IRENE
Director, Corruption Prevention, Corruption and Crime Commission,
PO Box 7667, Cloisters Square
Perth 6850, examined:

ABRAHAM, MR ALAN
Manager, Finance and Administration, Corruption and Crime Commission,
PO Box 7667, Cloisters Square
Perth 6850, examined:

CASHMAN, MR MICHAEL ANTHONY
Director, Legal Services, Corruption and Crime Commission,
PO Box 7667, Cloisters Square
Perth 6850, examined:

WYNN, MR TREVOR
Transition Coordinator, Electronic Collection Unit, Corruption and Crime Commission,
PO Box 7667, Cloisters Square
Perth 6850, examined:

The CHAIRMAN: It being 10.00 am, I declare the meeting open. This committee hearing is a proceeding of Parliament and warrants the same respect the proceedings in the house demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as contempt of Parliament. Have you completed the "Details of Witness" form?

Mr Hammond: Yes, I have, Mr Chairman.

The CHAIRMAN: Do you understand the notes attached to it?

Mr Hammond: I do, indeed.

The CHAIRMAN: Mr Silverstone?

Mr Silverstone: Yes, I did.

The CHAIRMAN: Did you receive and read an information for witnesses briefing sheet regarding giving evidence before parliamentary committees.

Mr Hammond: Yes, I did, Mr Chairman.

Mr Silverstone: Yes, I have, Mr Chairman.

The CHAIRMAN: Would you please state your full name, address and the capacity in which you appear before the committee?

Mr Hammond: Kevin James Hammond of 186 St Georges Terrace, Perth, Commissioner of the Corruption and Crime Commission, and I appear before the committee in such capacity.

Mr Silverstone: Mike Silverstone of 186 St Georges Terrace, Perth. I am the Executive Director of the Corruption and Crime Commission, and appear before the committee in that capacity.

The CHAIRMAN: Thank you.

I understand other officers from the commission are here and the witness sheets have been filled in if the committee members require later in the meeting to ask questions of them.

Mr Hammond: Yes.

The CHAIRMAN: Thank you very much for giving us an advance look at your annual report, which is tabled at noon today, I believe, in the Assembly, which specifically relates to the period up to 30 June. Obviously, the committee has a keen interest in process and other issues that may or may not overlap with that time frame. We understand your rights and your transparency in coming before us today. Would you like to make a short opening statement.

Mr Hammond: Yes, thank you, Mr Chairman. I do seek leave to make a short opening statement. Is leave allowed?

The CHAIRMAN: Yes, leave is granted.

Mr Hammond: Mr Chairman and members, it is my pleasure to appear before the committee this morning and to make this short opening statement by way of introduction. I formally introduce to the committee the following persons who have accompanied me this morning - of course, there is Mike Silverstone to my left as well as Mr Nick Anticich, Director of Operations, he was formerly with the Australian Federal Police; Dr Irene Froyland, formerly of Edith Cowan, who is the Director of Corruption Prevention, Education and Research; Mr Michael Cashman, Director of Legal Services; and, finally, Mr Alan Abraham, formerly of the Department of Treasury and Finance, who is deputising for director, Ms Vanessa Grant, who is overseas at the moment.

When I spoke to this committee on 5 July last year, I said that -

It is also appropriate to look forward to the next nine months ending in April next year. This will be a period of consolidation. It is hoped that early in this period we will see recruitment completed, and we will then be able to develop strategic and business plans, which are of course necessary in an organisation such as the commission whereby

effectiveness and cohesion are important. It will be necessary to see the implementation of documents and complaint reception and to tighten up processes and procedures.

Indeed, the last year has been a very busy year for the commission. We have been called upon to finalise the investigations received from the Kennedy royal commission and various matters inherited from our predecessor, the Anti-Corruption Commission and, of course, as I said last year, there is work coming in the door all the time. We have received and assessed in this past year under review some 2410 allegations and notifications of misconduct and reviewed 1212 other agency misconduct investigations. One direct consequence of these assessment and reviews is that we have charged seven people with 43 criminal offences. Of course, the commission's efforts and energies are not solely focused upon prosecutions or disciplinary action but also on its review functions.

The corruption prevention, education and research function ensures a much broader focus that looks towards implementation of systemic change across the public sector with the ultimate aim of reducing the incidence of misconduct in this regard. Dr Froyland and her team have delivered 34 seminars to a variety of government agencies across the state with in excess of 1 300 attendees. It has also developed and delivered specific presentations for ministerial staffers, following an investigation into allegations of misconduct by a senior ministerial officer.

I respectfully commend for detailed reading chapter 2.0 of the report which summarises the year. One that I could avert to is the increase in staff with long-term contracts from 16 to 130, which increase took place in the year last past. Members will recall the committee established by the Department of the Premier and Cabinet that was in operation prior to even my arrival in January 2004 has established a proposed framework and structure for the commission with a ceiling of 153 people, and it is pleasing to see that we are well within that limit.

It is also necessary to make one other comment concerning the recruitment of staff. My personal involvement in this area was limited to the appointment and selection of the directors of the commission. I want to emphasise that thereafter the commission has followed, in my view, meticulously and, as I have said before, excruciatingly, the public sector management rules as to the employment of staff and staff selection. Panels have almost invariably included people from outside the commission or people from other public sector organisations and the processes involved in the selection of staff have, in my respectful view, been totally transparent and open to audit. On all occasions of panel selection, there is gender balance, and in the vast majority of cases an external human resource consultant is engaged to ensure required procedures are followed and to write the selection report.

In the year last past, much has been done to lay foundations for the future. We have relocated to the new premises at 186 St Georges Terrace, Perth. We have spent considerable time developing and implementing a strategic plan. We have acquired and installed a range of computer systems and applications for it. I am grateful to those members of our IT branch and business services who have had to work very hard in a very taxing year.

As noted in this committee and in other forums, the commission has very considerable powers to use or available to it in the performance of its purposes under the act. During the reporting period, the commission approved 436 applications for use of various statutory powers. These powers included the conduct of a number of examinations of witnesses by way of private and public hearings. The public hearings themselves have the added benefit of allowing the broader community and the public sector to see and examine the work of the commission. I am always

mindful of the limitations that are placed upon the commissioner by section 140 of the act when I consider whether or not a public hearing is in the public interest. As a black-letter lawyer, I go back to section 140 and very carefully weigh my responsibilities in this connection because, as I see it, the decision to go public, as it were, is one that I must make and live with.

I have also noted in the report, and it is appropriate to mention it, that while the Corruption and Crime Commission Act contains no major flaws, I have experienced concern and now express concern with respect to two particular areas of the legislation. The act's definition of "misconduct" and "public officer" are extremely convoluted definitions that in some way restrict the capacity of the commission to deal with misconduct matters, and in this year's report you will see identified the commission's particular concern with those definitions. If I might digress, I have in various public presentations, and perhaps showing my age, said that to understand those definitions you need a cup of tea, a Bex and a good lie down, but those particular definitions are difficult to understand.

The second area of concern is associated with the commission's organised crime function. Members will remember that the commission's involvement has been that described as of a gatekeeper, whereby the commission receives and considers application by the Commissioner of Police or the ability to utilise the extraordinary powers which are possessed by this commission but not by the Commissioner of Police.

There has been only one application in the reporting period and that suggests to me that the statutory approach laid down in the act is not as effective in comparison to the Queensland or New South Wales jurisdictions where the legislation permits the bodies equivalent to this commission to work in joint task force arrangements with respect to state police forces.

There was no application made to the commission for any fortification notices during the reporting period. There was one in the first six months of the mission but not in this past year. The commission's act describes what we do and prescribes how we are to do it. Prior to its establishment, the organisational structure and resources of the commission were designed in draft by a committee established, as I mention earlier, by the Department of the Premier and Cabinet. Further, the organisation was designed and recruitment staff against positions in that organisation of structure prior to the arrival of the majority of the commission executive.

As the Commission has settled in its work, it has reviewed its act, policy, procedures, processes and structures, and as a consequence has made adjustments. For example, the commission, earlier in the reporting period, shifted the security function out of operations into the business services directorate. Second, with respect to its legal advice, the commission took the decision to employee Ms Patti Chong as general counsel from the end of October 2004 for a 12-month period. We recently renegotiated that secondment with the Director of Public Prosecutions and Ms Chong will remain with the commission for a further 12 months in what could be described as a sensible shared engagement with the Director of Public Prosecutions.

[10.08 am]

A major decision by the commission was to disband the special operations directorate. This directorate was originally formed to comprise the special services unit and the electronic collection unit. Following a review of that function, the commission decided to place the special services unit, renamed the operations support unit, within the operations directorate. Additionally, the electronic collection unit will transfer to the business service directorate next month. Within

the operations directorate, the commission also established an intelligence function, not provided for in the initial structure.

In addition to that, and since the end of the last reporting period in June 2005, the operations directorate has taken steps to increase the number of investigators available from 13 to 20. All of these changes, particularly with regard to the operations directorate, are focused on delivering more resources in order to improve the effectiveness of the commission's performance of its misconduct function.

Finally, with respect to corruption prevention, education and research, the commission has recently taken the decision to restructure this important area and to expand its staff from eight to 13 positions. If further questions arise in that connection, Mr Silverstone will only be too happy to provide any further detail required.

It is clear that the commission has continued to evolve and has undertaken considerable organisational change in terms of its structure. It has done this in order to deliver the outcomes required by Parliament, as expressed in its act, in the most effective and efficient way possible. As a result, the commission has shifted resources in order to focus on the two directorates most directly concerned with the misconduct and prevention and education function. Again, all of these changes have occurred well within the personnel ceiling of 153.

Although not within the reporting period, I refer to the issue of the resignation of Ms Rayner, the former acting commissioner. This was a distressing incident that in the upshot has taken a lot of time and effort by the officers of the commission, who were required to attend upon and firstly assist the parliamentary inspector, and then the police officers investigating at the direction of the DPP. At the end of the day, however, I firmly believe that the commission acted with speed and total propriety in dealing with this issue. The commission was prohibited by its act from investigating this matter. The commission's obligation was to report its concerns to the parliamentary inspector, and then to provide the information and assistance required by the inspector, the Director of Public Prosecutions and the Western Australian Police. The simple fact of the matter is this: the commission found a problem, dealt with the problem, and dealt with it properly and entirely in accordance with the law. Its processes were open, and its actions will, as ever, be accountable to the people of Western Australia through the reporting mechanisms of the inspector, the parliamentary committee and the Parliament.

The eventual judgment on Ms Rayner's actions will be for others to make. I know that I speak for all of the commission when I say that we intend to move on and continue the task that Parliament has given us. Morale within the commission is at a high level, notwithstanding the events of the past two months. As I have said, work is coming through the door on a daily basis. It is my hope and expectation that the Rayner affair will not in the long run harm the commission because the commission acted without fear or favour to protect its integrity.

The question has and could well be asked on another matter as to whether or not the commission is noticing any trends in misconduct notification or occurrence. The profile provided by the media to the commission hearings and investigations has raised the awareness of the public sector and of the public to the commission and its activities. This, combined with the commission's education programs, has had a positive result. It appears there has been an increase in both the number and significance of misconduct matters referred to the commission. This is particularly apparent in the areas of local government, and increasingly from education. There is no doubt that the message that there is a duty on notifying authorities to report incidents of suspected misconduct is being

more widely accepted in the public sector community in many areas, although it is possible to conclude that there remain areas of considerable under-reporting. The commission's present perception is that many government agencies are generally not well equipped to detect and manage misconduct and its consequences, and that many of the commission's more serious cases have developed, in fact, as a consequence of accidental discovery, or a third-party report, or as the result of proactive investigations based upon intelligence. I am happy to say that there are now some early indicators of very positive changes in this respect because we are now noting that public sector agencies are frequently seeking advice or assistance from the commission on matters that they are suspicious of or unsure as to whether it constitutes misconduct, and the commission is only too happy to assist in what I would call these over-the-counter inquiries. Additionally, the commission is contemplating the development of tailored notification guidelines that are specifically directed towards particular areas of the public sector. We propose to speak regularly to the public sector, possibly by way of a newsletter. There are constant checks upon the numbers of matters under assessment and review, and the business of the commission overall has become more proactive.

We have also contributed and provided major detailed submissions to both the Mahoney inquiry and the current Department of Education and Training review of its complaints management process. Broadly speaking, the commission's view is to encourage major public sector organisations to improve misconduct management by establishing professional standards portfolios ensuring that the misconduct management function is appropriately resourced and that their staff are aware of the risks associated with misconduct and how and where to report it if they suspect that it is occurring.

There are two final matters that will not take more than a very short period of time. I would ask leave for Mr Silverstone to give you some detail as to the current finances.

The CHAIRMAN: I will leave that until the end of the meeting. We have a number of financial issues to discuss. I am very conscious of the time. I thank you for that short introduction, but I want to make sure my fellow committee members have time to ask questions - perhaps with succinct answers. I refer to page 16, which deals with misconduct - you have raised this in your opening remarks. I guess like many people in the public service, whether we like it or not we do have bad definitions and bad legislation. In determining whether an allegation warrants further investigation, what threshold do you use in deciding whether the misconduct is minor?

Mr Hammond: I will pass this to the director of operations.

The CHAIRMAN: I would prefer it if either yourself or Mr Silverstone could answer that question, in broad terms. I do not want that for every answer we have to go through a textbook. In the end, once investigations and all the issues are brought forward to your level, commissioner, you have to make the call. You are very much aware that the legislation may be deficient.

Mr Hammond: I do not complain about legislation. One accepts legislation, because that is the law of the country. I am simply stating that there are difficulties in it in assessing this misconduct issue. It is really only a value judgment. The way I would look at it is to go back to that definition, that meaning of misconduct within the act, and go through it and say is it this, is it that, and so forth, and what is it at the end of the day. Trivial or nuisance complaints, as opposed to minor, are very few. I suppose that is all it is really - a value judgment on the part of the original assessors. We were very fortunate in acquiring our assessment team very substantially from the Office of the Ombudsman, so these people have got years of experience in this connection.

The CHAIRMAN: I address page 48. In terms of corruption prevention, you talk about employment of your own staff and officers within the CCC, and the report states that before staff are employed, they are security vetted. We thank you for your previous -

Mr Hammond: Yes. I have written you a letter in this connection.

The CHAIRMAN: Yes. I would like to get that on the public record. The committee did raise the issue that at your level, and at the assistant commissioner's level, we would have expected that high-level security clearance had been obtained, so I would like a short comment on that.

[10:19 am]

Mr Hammond: Yes; we have adopted the commonwealth's structure for security vetting. There are persons within the commonwealth and our director of security, Mr Purdue, is a person licensed, authorised and enabled to conduct security vettings. All people coming on board are security vetted and they must get their clearance before they do anything effective around the commission at all. This requires an examination of all their bank accounts, trips overseas and the reasons why; and a description of all organisations to which they have belonged and why they left such organisations if in fact they have left them. It is extremely detailed and time consuming. It is so time consuming that the director of security cannot possibly do them all, so we must contract them out to people who have been authorised by the commonwealth Attorney General's department. I can assure you that to get to the status of "highly protected", which we are, is quite a procedure.

The CHAIRMAN: Does that level apply to both you and Ms Rayner?

Mr Hammond: Yes.

The CHAIRMAN: That included police clearances if people have worked overseas.

Mr Hammond: That is right. I understand there is a different procedure for people who have lived overseas for any period, and the procedure takes a lot longer.

The CHAIRMAN: In terms of general staff at the CCC, while the security clearance is obviously paramount, does the issue of, not so much psychological profiling, but ensuring the compatibility of people who are entrusted with dealing with sensitive information form part of your vetting or your recruitment policies? Obviously in the case of yourself and Ms Rayner being appointed, which was originally the recommendation from Justice Malcolm's committee, I do not know whether you do retro-psychological testing of yourself once you are appointed or whether one would expect that.

Mr Hammond: The senior executives of the commission have all been subject to that psychological analysis, which is undertaken by specialist people in that area. That is not the case for everybody. However, I make this observation: virtually every vacancy advertised by the commission has received numerous applications. I think the employment process itself has been very exhaustive and very complete.

Hon RAY HALLIGAN: Commissioner, reference is made on page 13 to many internal governance committees. How often does each of these internal governance committees meet, and on which do the commissioner and or the executive director sit?

Mr Silverstone: Both the commissioner and I sit on the directors' management committee, which meets weekly; both of us sit on the operations review committee, which meets weekly; both of us sit on the administrative resource committee, which meets monthly; I sit on the capability

management committee, which meets as required; and both the commissioner and I sit on the audit committee, which meets quarterly. Neither of us is a member of the occupational safety and health planning advisory group, the business improvement committee, the equity and diversity committee or the commission assistance committees.

Hon RAY HALLIGAN: Page 19 contains a table that tells us where the allegations are coming from. The table indicates that 67 per cent of allegations relate to the WA police. Can you tell us how many of these matters involved allegations of serious, as opposed to minor, misconduct?

Mr Silverstone: We cannot provide those statistics directly other than to note that of the 1 580 WA Police complaints, 1 310 were provided to us as a result of reviewable police action. The difference between 1 310 and 1 580 - of the order of 270 - came to us through sections 25 and 28 of the act.

Hon RAY HALLIGAN: Can that information be provided to the committee at some later stage? In other words, will you take that question on notice?

Mr Silverstone: I can. I have some information that might assist in that answer.

The CHAIRMAN: Do you want that information now?

Hon RAY HALLIGAN: If we have time.

The CHAIRMAN: Mr Anticich, have you completed the "Details of Witness" form? Do you understand the notes attached to it?

Mr Anticich: Yes, I do, Mr Chair.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet regarding giving evidence before parliamentary committees?

Mr Anticich: Yes, I did, Mr Chair.

In relation to that answer, at the moment we are unable to provide precise statistics. However, historically, police complaints were classified into what are known as local complaint resolutions or LCRs in investigation matters. LCR matters are analogous to what we would refer to as minor complaints; that is, they are dealt with at the local level. Typically, based on our experience principally with those people employed with the Ombudsman's office, they account for about half of those matters we receive, so 50 per cent of those we would generally call or refer to as minor.

The CHAIRMAN: At a later stage would you be able to give us an accurate statistical breakdown?

Mr Anticich: Yes.

Ms M.M. QUIRK: Commissioner, in your opening statement you referred to the organised crime function and how, if you like, you were underutilised in that capacity over the previous 12 months. Is it the commission's desire to do more work in that area?

Mr Hammond: This commission?

Ms M.M. QUIRK: Yes.

Mr Hammond: Yes. The act envisages that we do so. We are there; we are willing; we are able; and we are happy to do further work in this area.

Ms M.M. QUIRK: Have informed discussions been held with the WA Police about greater involvement?

Mr Hammond: There have been a number of informed discussions with the police over time.

Ms M.M. QUIRK: Is the current staffing establishment based on the fact that you would be doing perhaps more work than you are currently doing in that area?

Mr Silverstone: The current staffing establishment is established around the notion of the commission acting as the gatekeeper for the powers. If we were to transition to a different arrangement - for example, the conduct of joint task forces - then we would have to look at the structure of the commission and its resourcing.

Ms M.M. QUIRK: Mr Silverstone, are you saying you would need more staff?

Mr Silverstone: It depends on what was envisaged by the Parliament of what was required of us.

Ms M.M. QUIRK: Commissioner, you have also given evidence about education programs within a range of government agencies. Has the same education program been done within the CCC itself?

Mr Hammond: Yes. Our CPR directorate under Dr Froyland is an extremely active and ever-present directorate in the affairs of the commission.

Ms M.M. QUIRK: Did that take the same form, if you like, as that which was given to outside agencies?

Mr Hammond: Probably more informally within the commission.

Ms M.M. QUIRK: I understand an allegation was made some time during the year about an investigator possibly having taken a carton of wine. Did that education process take place before or after that allegation?

Mr Hammond: The taking of the carton of wine is alleged. The difficulty is that we have no complainant in the matter. We cannot even identify what wine, if any, was ever taken at any time. There is just nowhere to go on that.

[10.29 am]

Ms M.M. QUIRK: Is that allegation something you referred to the inspector?

Mr Hammond: No, because it really has not got the basis of an allegation within the commission. There has been some work done on that as a result of very recent correspondence, of which I assume you are aware.

Ms M.M. QUIRK: Yes, I am aware of that. That is all right.

The CHAIRMAN: The committee did forward a letter, but we appreciate that it was only a few days ago.

Mr Hammond: Yes, but, nevertheless, a few days ago we worked on it. There was a rumour about a missing dozen bottles of wine. Over a period of some weeks, attempts to locate it had failed and rumours began to circulate that the wine had been stolen and that there was an eye witness. Director Anticich heard these rumours and attempted to identify who the witness was. He asked the deputy director of operations to inquire into the facts, and so on and so forth. It is not even known whether any wine was missing. We cannot -

Ms M.M. QUIRK: Are you telling me that the commission is awash with wine?

Mr Hammond: There is even a suspicion they were cleanskins, not that I know what they are. At the end of the day, the chairman of the social club made an appointment to meet with the ED to report the wine missing, and, after initial inquiries, she cancelled the meeting on the basis that she was unable to report that any wine had been stolen.

Ms M.M. QUIRK: I am pleased to hear it.

Mr Hammond: Simply put, it is the view of the director that there is no evidence of any crime. There is some conjecture as to the quantity of wine missing, and in fact if there is any missing at all. When we shifted from 140 to 186, I, for example, said that I had inherited some extraordinary wine and some Guinness - I do not know from whom. It was in my fridge, and I said, "Will you take this and give it to the social club?" I think in the course of the -

Ms M.M. QUIRK: Someone took you a bit literally?

Mr Hammond: I think in the course of transition from one building to another something went missing. But this was treated seriously. We have no complainant and we have no stolen property.

Ms M.M. QUIRK: I understand that the person about whom the allegation is made no longer works for the commission?

Mr Hammond: No longer works for the commission.

The CHAIRMAN: There are no loaves and fishes missing.

Mr Hammond: No.

Ms M.M. QUIRK: Mr Silverstone, when you appeared at estimates hearings, we asked certain questions about the information technology system and the development of that for the commission. As I understand it, you were developing a special one-off system, if you like, that suited particular operational purposes. How is that going? Is it on time and on budget?

Mr Silverstone: Yes. The case management system request for tenders closed last week - I believe on 12 October. The committee that will assess that is about to sit, and that project is on time and we intend to come in on budget.

Ms M.M. QUIRK: Were you anticipating introducing that in December of this year? That is a fairly tight time frame.

Mr Silverstone: It is a tight time frame.

Ms M.M. QUIRK: When are the tenders due back?

Mr Silverstone: The request for tenders is due back now; the evaluation is going on. In terms of December this year, we will not see the whole system introduced.

Ms M.M. QUIRK: So, it will not be on time.

Mr Silverstone: It will not be on time, if that is the time.

Ms M.M. QUIRK: What about cost: has there been any cost blow-out?

Mr Silverstone: We will not know that until we have evaluated the tenders. We are very conscious of the cost issues.

Ms M.M. QUIRK: Thank you.

The CHAIRMAN: Commissioner, you talked about the fortification warning notices - section 68. You said there was none. Can you expand on why that was the case? You stated that none of them had been referred to you. Is that the simple answer?

Mr Hammond: I cannot really answer that. That is a question for the Commissioner of Police. There must be no cause for him to come to us. We are at the end of the chain. We are only the gatekeeper. He has to make the decision whether circumstances exist in some part of the country whereby he has to come and make application. He has not made application, and I cannot read his mind.

The CHAIRMAN: Okay. You surely have some sort of informal contact with him or debriefing. Is it an issue that raises concerns with you or not?

Mr Hammond: No. That, of course, is primarily concerned with the operations of motorcycle enthusiasts, and he knows more about them than I do; and, also, the one fortification notice I did issue very early in the days of the commission is still subject to Supreme Court action and is listed, I think, in the first week of December before the Full Court challenging the validity of the notice and everything else.

The CHAIRMAN: I guess I was alluding in some ways to whether that was perhaps a reason that none had been requested since.

Mr Hammond: I just do not know the answer to that. That is for Commissioner O'Callaghan.

The CHAIRMAN: I will just touch on another issue. On page 12, in a tinted box, you refer to the role of the acting commissioner.

Mr Hammond: Yes.

The CHAIRMAN: We are a year and a half into the position, and we now have a new acting commissioner. Are there practices or procedures that you may do differently, or is there a need for the relationship and the role of the acting commissioner to be different? We are very conscious that, unlike Queensland, where there are three commissioners, you are it for us; if the number 72 in St George's Terrace gets you tonight, and the acting commissioner takes over in the morning, he or she would need to have reasonable knowledge about what happens in the shop. Should they have total knowledge?

Mr Hammond: Ideally, I suppose, yes, but in practical terms, you have got this structure whereby there is one commissioner, which is moi. There is provision for the acting commissioner. We have an opinion that says that were I to become too busy, he or she could do part of the work at the same time that I am doing something. The oneness or the concentration of power in this one elderly person has, as you know, always concerned me, because, as I have said on countless occasions, at my age I could fall off the perch or under a bus at any time, and in that case if there is not an active acting commissioner, the commission is in chaos. There are lots of things that it cannot do. I am very happy with the new acting commissioner, Mr Shanahan, SC. He is available, he lives and works on the Terrace, and he has shown a great deal of enthusiasm so far for his work. Whether another structure was ever contemplated is basically another matter.

The CHAIRMAN: You have not seen fit at this early stage to recommend that as a potential change in legislation.

Mr Hammond: No, because I really have not managed to come to - it is a big jump to move, say, from one commissioner to a panel of three. Parliament obviously decided when setting up this act

that it wanted one commissioner. That is fine. No, I have not reached concluded views. I have in mind the three-year review, too, by the way.

Hon RAY HALLIGAN: Page 38 refers to your information technology and communications. Can you advise us whether you have provided the parliamentary inspector with any training in your IT systems and your case management systems?

Mr Silverstone: We have briefed him and provided access for him as required, but we have not provided formal training.

Hon RAY HALLIGAN: It is a hands-on type situation rather than a complete overview.

Mr Hammond: I doubt whether Mr McCusker would need formal training from us.

Hon RAY HALLIGAN: Well, I am very glad to hear that. In your 2003-04 annual report, you stated that the corruption prevention, education and research directorate would this year develop a corruption prevention strategic plan. Has this been done?

Mr Hammond: Yes. I would really like Dr Froyland to give you a couple of sentences on that, if you would be prepared to hear her.

The CHAIRMAN: At a future meeting, I think we will get down to the details. Today we are just checking -

Hon RAY HALLIGAN: May I ask whether we could receive a copy of that strategic plan when appropriate and then we can ask questions at a later date?

Mr Hammond: Absolutely.

[10.40 am]

Ms M.M. QUIRK: Page 36 of your annual report deals with the organised crime function. You are suggesting amendments to the act to change the definition of “organised crime”. In the first paragraph on page 36, you are suggesting that these amendments might be required to permit joint task forces with police, to use the words in the report, “to address more rigorously the threat of organised crime”. From the investigations and the work the commission has done, is there any suggestion that the Western Australia Police Service is falling short of the mark in the investigation of organised crime?

Mr Hammond: No, but the Police have indicated to us recently and very clearly that they would welcome the opportunity to join in joint task forces.

Ms M.M. QUIRK: In terms of this recommendation for an amendment, and others that we have talked about today, what is the timetable for making those recommendations to the Attorney General? Is it anticipated that that will be done soon?

Mr Hammond: I have certainly conveyed these matters to the Attorney General.

Ms M.M. QUIRK: Can we just go back to issues of conduct within the commission again? It has come to my attention that some investigators may have had some concerns about the former acting commissioner - not of a criminal nature, but just of her general conduct - and may have reported them further up the line. This was some months before the matters that became subject of the court proceedings. I am keen to know what the process is by which those investigator concerns were dealt with.

The CHAIRMAN: What is the process that is followed when there are complaints internally, spurious or otherwise, against the commissioner or the acting commissioner?

Mr Hammond: We cannot receive complaints either against the commissioner or the acting commissioner. The act says that we cannot even receive them; we simply have to pass them to the parliamentary inspector.

Ms M.M. QUIRK: Perhaps I put that a little inelegantly. I am obviously being cautious, given the subject matter. It is understood that some investigators, or persons working within the Corruption and Crime Commission, had some concerns in the course of their work with the acting commissioner and they reported those concerns up the line. I want to know how that was dealt with. If Mr Silverstone wants to answer, that is fine.

Mr Silverstone: The acting commissioner, by dint of the act, is, for all intents and purposes, the commissioner. All the power of the commission resides in the commissioner. As I have said, although this sounds a little arcane, the members of the commission are but the servants of the commissioner, and comply with the commissioner's requirements. In all organisations there are at times philosophical differences about how to handle different issues. That happens with Commissioner Hammond - we discuss the issues and approaches and he makes the decision. The same thing applies in the case of the acting commissioner. So, whilst there may have been differences in philosophical view, the acting commissioner was the commissioner and, having considered the views, took a position on what was to occur, and we got on and did what she required.

Ms M.M. QUIRK: So that was on an operational matter?

Mr Silverstone: If that is what you are alluding to.

Ms M.M. QUIRK: That is what I am asking you.

Mr Silverstone: I am conscious that there was a difference with regard to a particular matter that she had handling of, in that some of the investigators had the view that the matter was not within the jurisdiction of the commission. The acting commissioner took a different view and that was a continuing matter up until the time of her resignation.

Ms M.M. QUIRK: Who did those investigators go and see within the CCC?

Mr Silverstone: They saw the director of operations. The director of operations came and saw me, and the director of operations and I had a meeting with the acting commissioner.

Ms M.M. QUIRK: And resolved that by saying that whatever she said would go?

Mr Silverstone: The acting commissioner has the powers of the commissioner.

Ms M.M. QUIRK: I understand that the inspector is aware of these differences. How did that arise?

Mr Silverstone: We are talking too generally for me to be specific.

The CHAIRMAN: Can I be specific? It is obviously a public issue that is sub judice. If the committee is being informed that there was no problem with the performance within the CCC of the assistant commissioner or the commissioner, clearly any complaint within the commission dealing with internal issues has to be reported to the parliamentary inspector. Our direct question is whether any complaints regarding Ms Rayner that have been or should have been reported to

the parliamentary inspector are totally unrelated and have nothing to do with any current issues since 30 June.

Mr Hammond: Can I just clarify it as I see it? My understanding was this: when I went on leave for a fortnight earlier this year, I allocated a particular project to Ms Rayner to handle, because it had just arisen, and it concerned certain practices within a certain prison. Thereafter, I took no further part in the matter, believing that you can only have one boss in these things. That was Ms Rayner's project, and it was codenamed Russell. She continued on with that and I did not interfere with it in any way, except to resume control of the project following her departure, but that is another story. I understand that, in course of discussions between Ms Rayner and various investigators, there occurred, as there occurs all the time, a difference in emphasis. I can quite honestly say that investigators have brought things to me and I have said, "What! Come on!", and there has been a difference. We talk about it; these differences get ironed out and generally I put my hand up. But there is that discussion process. To the best of my knowledge and belief, what had occurred within Russell was one of those philosophical differences. Everybody around this table has a different view about what is the most important thing today. As far as I know, that is all it was. I do not believe there was a suggestion of impropriety. It was, again to the best of my knowledge, a difference of opinion over some issue.

Ms M.M. QUIRK: Sorry, I should clarify. I was not asserting that there was, but you will recall that there was an issue with your predecessor organisation about staff - some issues about bullying, whether or not there were appropriate modes of communication and whether legitimate concerns were treated seriously. That is more the issue I was alluding to. I understand, from what you said, Commissioner, that you are satisfied that it was dealt with in an appropriate way.

Mr Hammond: I believe that we look after our staff. If I have any feeling in my bones that we are not doing so, we will all hear about it. The staff of an organisation, whether it be the corner shop or the CCC, are the actual engine room of the place. It has been our philosophy from day 1 that we are running a decent organisation. As I used to do in the District Court, I walk through the building on a daily basis. I am available to everybody, and I have no hesitation in saying that, if people have problems, they know where to come. But I hope, and I believe, that morale is high. I do not suppose that you will ever get 100 per cent perfection, but I believe morale is high and staff are basically happy.

The CHAIRMAN: We met last week with the New South Wales ICAC commissioner, the inspector, Mr James Wood, and others. We are very much aware of healthy tensions that should be within a corruption body in dealing with an individual case. Clearly, with the committee accepting that the issue regarding Ms Rayner came up at a particular time in August and was dealt with, according to what the committee has said publicly, quickly, professionally and the way it should be, the committee did need to raise this issue to assure ourselves that there was not a previous issue, which may or may not be the normal tension within an organisation, that is related to that later issue. We are taking your response as being that any normal or other tensions, complaints or whatever, about Ms Rayner, did not concern any later matters.

[10.50 am]

Mr Hammond: No. As I say, the only thing I am aware of is that tension over Operation Russell. It was not major tension. There is one matter, with respect, Mr Chairman, which is tangential, but not, I think, for a public hearing and is not to do with Ms Rayner at the CCC.

The CHAIRMAN: I am well aware that you have touched on operational issues that, by right, you do not have to provide to us. The committee is grateful for that. If need be, we may go in camera at a later time.

Mr Hammond: I would be happy at any time to go in camera or into a closed session to give you that detail, but I do not believe it is appropriate for me to do so in public at this stage.

The CHAIRMAN: Yes. I am conscious of the time. One of the issues you have raised about the budget is the move into the new premises, which you have articulated as saving \$700 000 a year in rent. When will you take over the rest of the government's leasehold dealings, so that we can make similar savings?

Mr Hammond: I would love Mr Silverstone to give you that comment on the budget, which I tried to give earlier.

Mr Silverstone: Comment has been made about the review of the commission's processes, procedures and structure that has occurred this year. There has also been a review of our budget requirements. As a result of this review, we have reduced our forecast requirements for capital contributions by \$10.349 million over the period of this budget and the forward estimates. This figure includes a reduction from \$11.95 million to \$5.6 million for the capital requirements for this year. We have had discussions with the Department of Treasury and Finance about handing back that money.

With regard to the funds for the delivery of services, the commission has identified a considerable shortfall in the budget estimate for its salaries. This is attributed to the committee established to implement the commission - that is, prior to the formation of the commission itself - considerably underestimating the salaries required by some \$2.6 million in this financial year. Despite this underestimation, the commission has undertaken to remain within this expense limit of \$25.912 million for this year and will achieve this through a redirection of funds from non-salaries to salaries associated with the reduction in capital expenditure. We are working with DTF in the 2005-06 midyear review and the 2006-07 budget cycle to resolve these budget issues with the Department of Treasury and Finance. In addition, the commission has \$8.9 million cash at bank, which it has agreed, with DTF's concurrence, to use to fund this capital program to the period 2007-08. This will negate the requirements for a capital contribution in this period and will result in considerable net saving to the government over the forward estimates period.

Hon RAY HALLIGAN: That was interesting. I am wondering about the transfer of funds from expenses to salaries, all from capital.

Mr Silverstone: There shall not be transfer of funds from capital to salaries, but we have discussed with DTF about the transfer of funds within the recurring budget area.

Hon RAY HALLIGAN: Was the deficiency in the salary amount in the budget due to numbers or to levels of salary paid?

Mr Silverstone: It was due to levels. The committee that was engaged in discussions about forming the commission took a view that it would average out the salaries at about a level 6 salary for the commission. The fact is that the commission to this time employs people at a far higher level, given the nature of their backgrounds and experience and the need to attract them. There is a considerable deficiency between the rule of thumb that was applied by that committee and the reality. In our discussions with DTF, it has acknowledged that, at the time, that was just a figure produced by it as part of the estimates process, and we need to firm that up.

Hon RAY HALLIGAN: I am disappointed to hear that. That means that no research was undertaken. You have already mentioned the rule of thumb. That is not good enough under these circumstances. With any budget, it needs to be calculated. Then the commission can be compared with other agencies. However, just to say that it should average out at a level 6 - or whatever figure it was -

Mr Silverstone: I say that not having been present at the time, but that is my understanding.

Hon RAY HALLIGAN: I understand.

Ms M.M. QUIRK: On that issue, it would be true to say that supply and demand dictates salaries a bit. Certainly, there is a significant demand for particular specialists whom you need to employ. There is also the issue of the Edgar Hoover principle that you must pay your officers so well that they are incorruptible. That all comes into play, does it not?

Mr Silverstone: Yes, it does. However, we have done some modelling against other like agencies and we, on average, come out below the salaries paid by the Police Integrity Commission and slightly above those paid by the ICAC in New South Wales.

Ms M.M. QUIRK: When you gave evidence before the estimates committee earlier this year, I think you spoke about the refinement of staffing needs. I think you said that you were looking at exactly what you needed in the remaining positions that were unfilled to best fit the strategic direction of the organisation. Did that have any impact on salary blow-out when you identified the positions that were needed?

Mr Silverstone: Not as such, no, and certainly not significantly. It was just the total sum of people in the organisation with experience whom we needed to attract.

The CHAIRMAN: I thank you very much, commissioner, executive director and officers for your attendance today. At 11.15 am we will resume a public hearing with the parliamentary inspector. At this stage I ask that the committee room be cleared as the committee must go in camera to pass a motion. If that motion is passed, we will immediately invite the commissioner, the CEO and the parliamentary inspector into a closed hearing for 10 minutes before we resume the public hearing with the parliamentary inspector at 11.15 am.

Mr Hammond: Can I just ask one thing, Mr Chairman? Is there leave to distribute the annual report to members of the press at the end of these proceedings?

The CHAIRMAN: Yes. Commissioner, I believe that, under the powers that Parliament has given you, you can distribute anything at any time. However, we thank you for the courtesy.

Mr Hammond: I would not bet on that!

Hearing concluded at 10.58 am

[The committee took evidence in closed session]

APPENDIX THREE

TRANSCRIPT OF EVIDENCE

PARLIAMENTARY INSPECTOR OF THE CORRUPTION AND CRIME COMMISSION

19 OCTOBER 2005

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

SESSION TWO

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 19 OCTOBER 2005**

Members

**Mr John Hyde (Chairman)
Hon Ray Halligan (Deputy Chairman)
Ms Margaret Quirk
Hon Margaret Rowe**

Hearing commenced at 11.20 am**McCUSKER, MR MALCOLM JAMES****Parliamentary Inspector of the Corruption and Crime Commission,
45 St Georges Tce,
Perth 6000, examined:**

The CHAIRMAN: I thank the parliamentary inspector for giving the committee the courtesy of tabling his report with the committee before it is tabled at 12 noon in the Parliament.

Mr McCusker: In that regard, it has come to my attention that the copy that was sent to the committee was not the final copy. I will have to get the final copy. There was a problem with the production of it within the department that was dealing with it. It sent the committee a copy that was not the full version. Also, because of staffing reasons there was a problem with the Auditor General producing his report; therefore, that will not be included in the report that is tabled. As a result, I am not sure whether we will be in a position to table the final report at 12.00 noon today.

The CHAIRMAN: That is fine. Are you happy with the committee being able to address the issues to which you have alluded?

Mr McCusker: Certainly. The final report contains more material. I note that it just does not contain some material.

The CHAIRMAN: Excellent. Would you like to make an opening statement? This is your first full calendar year in the role.

Mr McCusker: Yes. As the committee will appreciate, this is the first full calendar year in which I am reporting the period up to 30 June 2005, which means that events after that date are not strictly relevant to the report. I have found during that period that a degree of change has taken place within the commission. One of the significant changes is that the commission moved to its present headquarters in May this year and a settling in period followed. The new premises of the commission are far more satisfactory than the previous premises from every viewpoint.

In my dealings with the commission, from the commissioner level down, I have had nothing but the utmost cooperation from it. Whenever a complaint has been made against the commission or an officer of the commission - I hasten to say that that has happened only rarely - the complaints have been immediately referred to me by the commissioner himself and have been accompanied by all the relevant material with an invitation to question any officer of the commission on the subject matter of the complaints. With one exception, the nature of the complaints referred to me have been either that the commission has not fully investigated a complaint or has not accepted that the complaint comes within the jurisdiction of the commission. In some cases it takes a great amount of time to deal with the complainant because although the primary task of the inspector is to determine whether the commission is performing its job correctly, which means looking at each allegation that it has not done so, nevertheless it is often necessary for that purpose to delve into the entire subject matter of the complaint. One complaint of which the committee is aware - I sent some information to the committee about this just yesterday - is a kind of bouncing ball. Each time I would say that the matter had been concluded, the complainant would come back to me with something further. As a result, it is impossible to say - I notice there has been a request in accordance with standard public service procedure - to try to estimate the average length of time it takes to deal with a referral. It is impossible to do that because some matters take a long time and

others take just a couple of hours. However, as I said at the outset of my opening statement, I have received nothing but cooperation from the commission and I am satisfied - as I have said in my report - that the commission is performing its functions properly.

The CHAIRMAN: This committee is very determined to ensure the closure of matters of serial complainants. Your appointment, through legislation of the Parliament and through the work of the committee, has been established to provide closure for those types of cases. Each time there is a change of government, which involves new members of Parliament and a bureaucratic reshuffle, the same complaint from a dedicated complainant is referred to the Ombudsman, the Commissioner for Public Sector Standards and the Leader of the Opposition when a new Leader of the Opposition is appointed. The committee must praise you, parliamentary inspector, regarding a complainant whose complaint has no substance and who has attempted to seek help from the Queen, Gough Whitlam, Bob Hawke, Kofi Annan, probably U Thant in his time. For the first time the head of a public body has told him that the case is finished and that if he continues with it, he will become a serial complainant and that there are ways of dealing with serial complainants.

Mr McCusker: Yes. That is true. There must be closure on these matters. Some complainants have a very genuine grievance, but it cannot be addressed by the Corruption and Crime Commission. The grievance may stem from a court action in which the complainant has failed and which has nothing to do with the commission. As I mentioned in the report, the public must be educated more about the true functions of the commission and the role of the parliamentary inspector. As I said in the report also, I want to make it clear that I am not an appellate court for the Corruption and Crime Commission. If somebody is not satisfied with the commission's handling of a matter or complaint, on occasion people come to me thinking that they can appeal to me on the decision. To some extent I must deal with that because I must determine whether the commission has handled the matter correctly. On no occasion so far that I have had a referral direct from the commission or from a complainant have I come to the conclusion that the commission has not dealt with it in terms of procedures in a proper manner.

[11.30 am]

The CHAIRMAN: I want to address the issue. We just went into a closed hearing. We thank you and the commissioner for both agreeing to appear on the same day. Clearly, the committee uses you and your position as our conduit into what operational matters we should be entitled to know in a broad sense. The clear question we asked the commissioner is related to the time of you making your report to the committee in August, that there were no existing complaints regarding Ms Rayner or matters that had not been brought to you or the committee at that point in time.

Mr McCusker: I was here, of course, when I heard the commissioner deal with that issue. What he said was perfectly correct. After the publicity that arose from the issue concerning Ms Rayner, there was a further matter that was raised that goes back a long way. It was pre the CCC's time. It was raised in relation to something to do with the ACC, of which she was previously an acting commissioner. Because of the statutory structure of the Corruption and Crime Commission - we have legal advice on the subject, too - it meant that this was something that had to be dealt with by the commission, which in turn, of course, because it was an allegation against a former acting commissioner, was referred to me. That had nothing to do with Ms Rayner's position as the Acting Commissioner of the Corruption and Crime Commission. The only matter that I am aware of was, as the commissioner said, in relation to one operation that the acting commissioner was dealing with - that was called Operation Rustle - where there was some difference of opinion between her and some of the investigators of the commission. But that was merely a difference of opinion and it was not something that could possibly be said to be the subject of a complaint against her as such. It was a difference of viewpoint really.

The CHAIRMAN: Do other members have a question at this point or would they like me to keep going?

Ms M.M. QUIRK: I have a general question; it is not in the other context.

I have a couple of matters, inspector. Firstly, in the course of the previous year in undertaking your task, are there any themes arising or any systemic issues that you have some concerns about?

Mr McCusker: No. I do not think that there are any systemic problems within the commission whatsoever. In terms of operational matters there was some slight problem in getting responses from the police, as I understand it from the commission, but that is as far as it went. I was made privy to the problem there. But that was resolved; I saw the steps that were taken to resolve that particular matter.

Ms M.M. QUIRK: My other question that I just quickly wanted to ask was that you note in your report that there might be a need for more, if you like, proactive work in the sense of looking at specific administrative procedures and so forth.

Mr McCusker: Yes.

Ms M.M. QUIRK: Would it be true to say that you have been pretty fully occupied with reacting to particular allegations?

Mr McCusker: I have so far. But what I have in mind doing, probably early in the new year - I will talk to the committee further about this - is possibly to engage a person, maybe on a part-time basis, to conduct some of that kind of investigation because the reaction to referrals is taking a lot of time. There is always a danger that you are going to, as it were, redo what someone else is doing. It is not the function of the inspector to look over the shoulder of the commissioner all the time and check. It is impossible. It is a very large organisation for one person on a part-time basis. The important thing is for the inspector to ensure that proper procedures are in place and that those procedures appear to be carried out correctly.

The CHAIRMAN: Are you satisfied at this point in time with the Police Service's response time to the CCC?

Mr McCusker: It has improved quite a lot since the issue was taken up by the commissioner at the highest level.

The CHAIRMAN: Is it acceptable now? Is it best practice?

Mr McCusker: Right at this moment I am not able to answer that. I think it probably would be but I would need to talk to the commissioner and get some further information.

The CHAIRMAN: The commissioner has not raised any issues with current or outstanding issues that the Police Service is eight months, 10 months or whatever overdue?

Mr McCusker: The commissioner did discuss with me some months ago that problem but he also showed me the steps that were taken to resolve it and responses from the Commissioner of Police. I think the matter has been resolved. Part of the problem with the WA Police Service appears to have been that an officer who would have been handling a matter had been shifted to another place. So you get the difficulty of finding who should now respond.

The CHAIRMAN: Hopefully he found Dumbleyung.

Hon RAY HALLIGAN: Inspector, you have already made mention of the fact that some of the excess workload that you have may well be due to the lack of knowledge in the community as to the workings of the CCC and the parliamentary inspector. In your 2003-04 annual report, you refer to preparing a brochure about the role of the parliamentary inspector.

Mr McCusker: Yes.

Hon RAY HALLIGAN: Has this been done?

Mr McCusker: The role of the parliamentary inspector is referred to in the Corruption and Crime Commission's booklet that they have produced. It is very clear there. Anyone who goes to the Corruption and Crime Commission is immediately informed by looking at the brochure that the parliamentary inspector is available if they are not satisfied with the Corruption and Crime Commission's handling of a matter.

Hon RAY HALLIGAN: Again, in the annual report, you stated that you would adopt a proactive role in conducting periodic inquiries to assess the effectiveness and appropriateness of the CCC's procedures. What have you done in that regard?

Mr McCusker: I have to a limited extent in that I have attended upon the commissioner from time to time. As I said earlier, I intend to engage, if I can, some person who is perhaps more familiar with administration and can more adequately deal with the administrative side of things and, in that way, become more proactive than at present.

The CHAIRMAN: At page 11, referring to the operation of the commission, you assert that 2 410 complaints or allegations of misconduct were reported, of which 582 were from individuals and 1 828 from public sector agencies. I presume that the 1 828 is from CEOs under their statutory requirement.

Mr McCusker: That is so, yes.

The CHAIRMAN: Is there any analysis of the 1 828 in terms of any of them being vexatious?

Mr McCusker: I do not know of any analysis that has been undertaken by the commission. I have certainly not undertaken that. I have little doubt that there would be a small percentage - I hope a small percentage - which could be said to be vexatious because that is always the way.

The CHAIRMAN: All right. Unfortunately, because the Assembly will meet promptly at 12.00 we will have to finish dead on seven minutes to 12.00.

Ms M.M. QUIRK: I do not have any other questions. I would like to thank the inspector - certainly for the short time I have been on the committee - for assisting us in our work. I think the role he plays is very valuable. We are certainly grateful for the level of assistance we have had from him.

Mr McCusker: Thank you.

Hon RAY HALLIGAN: I would like to echo those remarks as well but also ask a question, if I may.

Mr McCusker: Certainly.

Hon RAY HALLIGAN: Do you have any recommendations you would like to make to the committee regarding the CCC?

Mr McCusker: The CCC as such?

Hon RAY HALLIGAN: Yes, its operations.

Mr McCusker: No, I do not want to sound complacent but I am very happy with the organisation of the CCC. The commissioner is not here so I can say that he is an excellent head who, I have observed, keeps fully in touch with what is happening and does keep me informed, which is very important. There is no element of keeping things close to the chest there; they are very forthright. Of course, he has an excellent CEO. I notice in the report - and in my final annual report I have referred to it - that the commission does suggest some amendments to the act, one in particular being the definition of "misconduct". I agree with that. The definition of "misconduct" as it

stands in the act is very difficult for someone who has a statutory responsibility of making a notification to the commission to understand apart from the question of whether a person's conduct has been fraudulent or dishonest, which is fairly easily recognisable. The definition then goes on to say what might constitute an offence under various legislation. At that point, I think some persons' eyes might start to glaze and they might say, "How do I know whether that constitutes an offence?" I think a clearer definition would be helpful, if it is possible.

[11.41 am]

Ms M.M. QUIRK: You are going to make a liar of me now because I am going to ask you another question because of that. Do you think the education function of the Corruption and Crime Commission would be easier if that issue were clarified?

Mr McCusker: Yes, I do.

The CHAIRMAN: One of the issues in the CCC report is in terms of giving case studies of particular cases which illustrates, one hopes, in real terms to public servants correct conduct as distinct from misconduct. In global terms, you are saying, and we are saying it, that the CCC is motoring along well. We need to be able to summarise in an empirical way why. Having been in the building and having been in the old Anti-Corruption Commission environment, clearly we know that there is an entirely different morale and different process. We know that it is functioning well. What empirical evidence can you provide to the committee to back up -

Mr McCusker: One empirical observation I make is the very small number of referrals that are made to me comprising complaints about the CCC. It is very small indeed, which is good, and, of those, so far, I have not found any cause ultimately for complaint against the CCC's operations or procedures as such. They are really directed to a complaint that the CCC does not consider that a matter falls within its jurisdiction and the person aggrieved thinks that it should fall within its jurisdiction, or the CCC has come to a conclusion with which the complainant does not agree. However, that is no reflection on the CCC as such. The small number of complaints received directly from the public or referred to me by the CCC itself is very indicative of the situation.

The CHAIRMAN: In comparison with Western Australia, the number in Queensland is huge; that is the one empirical figure we have. The number here is minor. I have a final question. Obviously, we know you have access to anything in the CCC. Does the CCC have a monthly meeting, an operational meeting or something that you are invited to drop in on or that you regularly get involved with?

Mr McCusker: It has a weekly meeting. I have open access to that meeting at any time. I have attended a weekly meeting to see just what goes on. A lot of it is entirely operational. I have been provided with reports of the weekly meetings, which are pretty massive, and the agenda and so forth. What impresses me about it is that the operational people are there, where it is relevant, and the commissioner, of course, is kept apprised of everything that is going on.

The CHAIRMAN: We are in the process of looking at an acting parliamentary inspector. In terms of the budget, will his or her salary costs come out of your budget, or will that be separate from government?

Mr McCusker: I am not sure about that. An acting parliamentary inspector would, of course, be required only either when I am away and there is an urgent need for a parliamentary inspector or when I have a conflict. So far, the conflict has not arisen, but it may. So, it is important that someone is available. My understanding is that the acting parliamentary inspector would be called upon only on an ad hoc basis, but it would need to be someone, whether man or woman, who is reasonably close to the Perth metropolitan area.

The CHAIRMAN: Are there any further questions, members? I declare this meeting and hearing finished. Thank you very much, inspector.

Hearing concluded at 11.46 am

APPENDIX FOUR

***MISCONDUCT MATTERS RECEIVED BY CORRUPTION AND
CRIME COMMISSION PER WEEK - MOVING AVERAGE FOR
YEAR TO 14 OCTOBER 2005***

**Misconduct Matters Received per Week -
Moving Average for Year to 14 October 2005**

