

# JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

HEARING WITH THE COMMISSIONER OF POLICE



TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 14 AUGUST 2017

## Members

Ms M.M. Quirk, MLA (Chair)  
Hon Jim Chown, MLC (Deputy Chair)  
Mr M. Hughes, MLA  
Hon Alison Xamon, MLC

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**Hearing commenced at 10.17 am**

**Dr KARL O'CALLAGHAN**

**Commissioner of Police, Western Australia Police, examined:**

**Mr GARY DREIBERGS**

**Deputy Commissioner, Western Australia Police, examined:**

**Mr NICHOLAS ANDREW ANTICICH**

**Assistant Commissioner, Professional Standards, Western Australia Police, examined:**

**Mr PRYCE SCANLAN**

**Commander, State Crime, Western Australia Police, examined:**

**The CHAIR:** Thank you very much for coming into the committee, commissioner. I know it is the eleventh hour, but you are uniquely placed, I think, to give your parting impressions on the operation of the CCC and its relationship with WA Police. I thank you, as everyone else has in recent days, for your over four decades of service to the community. Thank you very much. I am Margaret Quirk, I am the Chair of the Joint Standing Committee on the Corruption and Crime Commission. I would like to introduce the other members of the committee present today, Hon Alison Xamon, MLC, and Mr Matthew Hughes, MLA, member for Kalamunda. It is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything that you might say outside today's proceedings.

Before we begin, have you any questions about your attendance today?

**Dr O'CALLAGHAN:** No.

**The CHAIR:** Thanks very much. We will just do a couple of preliminary questions and then the cameras can go, but we are happy for the other media to stay, thank you.

Over the years you have been reasonably outspoken about the CCC and you started, of course, as commissioner at the conclusion of the Kennedy royal commission. In that time, what is your overall impression about how we handle investigations of corruption?

[10.20 am]

**Dr O'CALLAGHAN:** I can only talk from the perspective of the interaction that I had with the CCC as far as police are concerned; obviously, they look at corruption in other agencies as well. It is probably fair to say that in my mind it took the CCC a long time to find their way to interpret their act correctly—not correctly, but to actually make some interpretations about their act. We have had over the years a fair bit of, I suppose, conflict about what their act means and how it should be applied. I was fairly critical right up until about I think maybe 2012, 2013 in particular. I guess it is also fair to say that I think Commissioner McKechnie, since his appointment, has taken a much more practical approach. There are probably two reasons that has occurred. I think Commissioner McKechnie, by nature, is more practical in the way he approaches these things, but there was also quite significant change to what the Corruption and Crime Commission were responsible for when a chunk of what they were doing went to the Public Sector Commission. They were focusing then

more on their oversight of police, which I think this committee over the years has probably made some comments about—you know, what level of oversight there should be—and also issues of corruption. I think that my early criticisms of the CCC probably do not apply in a contemporary sense and certainly since John McKechnie and I have been working together, a lot of those concerns have gone away and there has been some practical exchange of letters where we have had issues of disagreement.

**The CHAIR:** One of the criticisms that has been levelled in the past is the lack of communication between police and the CCC.

**Dr O'CALLAGHAN:** Yes.

**The CHAIR:** Do you recall offhand how many times you have formally met with Commissioner McKechnie over the last 12 months, for example?

**Dr O'CALLAGHAN:** We do not formally meet; we informally meet. Probably about once a quarter we have a conversation. But there is a working group that Mr Dreibergs attends and I think also Mr Anticich attends, that occurs more frequently with people at the operational level, so their director of operations et cetera.

**The CHAIR:** This committee, in its previous incarnations, had evidence from Mr Anticich's predecessor, saying that the police are far better to investigate police misconduct and that it is unhelpful if the CCC are actively involved in investigations. Is that a comment with which you would concur?

**Dr O'CALLAGHAN:** I think in the first instance, for most police misconduct issues, the WA Police are the best placed to do it. If we do it, usually we understand the environment it has occurred in, it is done quicker, it is resolved quicker, with the CCC overseeing the process. I certainly have a view that police are better placed to do that. We have had several instances in the past where—and I have had a talk with Mr McKechnie about this—the CCC have taken it upon themselves to issue the WA Police with section 42 notices to stop them actually doing the work of investigating police officers. When they have been served, that has also impinged upon the ability of police to actually conduct normal investigations. Because, some years ago the CCC took the view that if they served a section 42 notice, that we could not do anything around the investigation at all. I took the view that we have a statutory right to investigate crimes and other issues, but the CCC could issue a 42 notice for the purpose of investigating a single police officer or number of police officers about a particular issue. The problem is that those things almost always cross over and so everyone starts tripping over each other. We have had a conversation about the use of section 42 notices and I have made a complaint to the parliamentary inspector about it, and I think that has largely been resolved. It is not common for the current commissioner of the CCC to want to use section 42 notices and, if they feel like they have to intervene, to work more collaboratively with professional standards.

**The CHAIR:** What is your understanding, because I think the public have the perception that the CCC investigates more allegations of police misconduct than they do, and it is only a handful, really, each year? Can you discern from that what matters the CCC likes to take on themselves, because it is not readily apparent from the outside which out of the thousands of complaints they decide to investigate?

**Dr O'CALLAGHAN:** I think, from my experience, for the most part if it is a complaint of police misconduct, unless it is serious misconduct or corruption, they do not generally get involved in the first instance, so they refer it back to us. I think that is particularly the case since some of their resources have been moved to the Public Sector Commission, so they do not want to be getting involved in protracted internal investigations. Where we have seen them intervene, I think—my

colleagues can jump in and clarify some of this—is where they see a pattern of behaviour. For argument's sake, they took it upon themselves—this is going back a few years now—to look at the police misconduct issue in watch houses where there were assaults of people in watch houses or allegations of assaults and where they wanted to join the dots on several of those in several different locations. So they took a view that, rather than investigate the single assault, they wanted to investigate a number of them and come up with recommendations for the WA Police in how it might handle custodial care or something like that. They have had a propensity to want to do that where there is some type of serial misconduct in a particular area of policing.

**The CHAIR:** We just might get the cameras to go. Thanks.

In terms of their oversight, do the CCC, for example, ever make recommendations or suggestions in terms of possible disposition of a matter? Does that occur at all?

**Dr O'CALLAGHAN:** Yes, it does. If I can, maybe I will ask Mr Anticich to talk about how that occurs where they have a concern about a particular investigation and they want to make representations about how the officer is dealt with or how the organisation might change its policy.

**Mr ANTICICH:** If I could just go back a step to explain, I think that the relationship has matured quite significantly and I think, historically, with the investigation of matters it was a case of either/or. It was either the commission and/or the police. We see a lot more collaboration now where we work cooperatively and certainly it is the case that we share information about particular matters. It is very much the case that they receive notifications at the same time we do. They have immediate electronic access to our internal reporting system, so they see everything as we see it. There is an option for them to elect to take matters on. It is the case that during the process, we engage and often talk through the matters that we are dealing with. Ultimately, it is their role and function to actually examine those cases and look at the mechanics of what we did and what the actual outcomes were. I know, by way of example, in one particular incident, we looked at some activity and the commission had a view that was perhaps not shared by the WA Police. We sat down and explained what our position was. We actually wrote a letter to them explaining exactly why we arrived at a particular position, and once they were aware of all the facts, they fully understood. Often it is a case of communicating appropriately and presenting all the facts—where there have been differences in the past.

**The CHAIR:** Can you discern which cases the CCC seems to pick up on and which criteria there are that means the CCC wants to take on investigation themselves as opposed to saying, “You get on with it”?

**Mr ANTICICH:** No.

**The CHAIR:** As I said, there is a handful.

**Mr ANTICICH:** No. That criteria would be an internal process for the commission.

**Dr O'CALLAGHAN:** I do not think that we actually understand how that process occurs.

**The CHAIR:** That seems relatively unsatisfactory, does it not?

**Dr O'CALLAGHAN:** I agree. We do not know, for argument's sake, when they would make a decision or what the criteria are for them stepping into what would be normally our space. We cannot be clear about that. All I can do is articulate where they have done and point to certain types of inquiries.

**The CHAIR:** There have been a few cases in recent years where I think the disposition of matters compared with the evidence that has been made available publicly is at odds; in other words, a more lenient disposition of a matter seems to have occurred than public perception might think

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might be appropriate. What I am trying to find out is: are there cases where the CCC has been involved where they say, "We hand it back to you. These are our findings; this is what we recommend in terms of treatment of the alleged offenders"?

**Mr ANTICICH:** No, that is rare. As I said, in the case I spoke to previously, we came to a disposition that they did not think was appropriate. When we explained the circumstance and the fact around the particular matter, they accepted that the position was correct.

[10.30 am]

**The CHAIR:** Commissioner, there was an infamous investigation which the CCC was involved in in Broome. It took over 12 months and there was, as I understand it, some general unhappiness about the delay and the manner in which the CCC investigated that. I understand that when you were deciding what ultimately to do with the officer involved, you took that delay into account in your disposition of the matter. Can you expand on that a bit?

**Dr O'CALLAGHAN:** Yes. There have been a couple of matters up there, but there was a watch house incident—I think we are probably talking about the same thing—where the CCC served a section 42 notice and stopped us from investigating what was an alleged assault by a police officer in the watch house. We, if we had investigated it, would probably have investigated it, resolved it and charged the officer, I think, to be fair, within one or two weeks. They took more than 12 months to get this through the system. Even then, once it got to court, as you are probably aware, it was challenged—their power to do this. There were some complications there. The problem is that there were a number of other police officers who were also involved in that matter. They were peripherally involved, not necessarily involved directly in the assault, which we have to deal with. My view is that if you are going to issue a sanction, it needs to be proximate to the breach. It is no good coming back two or three years later when people have moved on, been promoted, been transferred or accepted as a detective or whatever it is and then say, "By the way, this thing happened three years ago and here is your sanction for it." What I do in those circumstances is that I really have no choice but to opt for a lower sanction than I might have opted for if I could have responded to it contemporaneously because of the lapse of time. I have been quite critical with the CCC about that. I referred to this issue about the section 42 notices earlier. I think Commissioner McKechnie has come to the same view as me that it is undesirable to do that for the reasons that we have just articulated.

**The CHAIR:** I have one question before I give my colleagues a go. Is there anything in your discussions and in the implementation of the memorandum of understanding that you have with the CCC as to the time in which an investigation should be completed?

**Dr O'CALLAGHAN:** We have some internal standards and I think that Nick can articulate what those are, but it is a little bit more difficult to affect the CCC's timings.

**Mr ANTICICH:** Certainly it is the case that we monitor runtimes on matters. It is often hard to put prescriptive times around things because they are often complicated by witnesses and external factors, but it is a performance measure that we monitor now to make sure that we are actually doing these things as efficiently as we can, given the circumstances.

**The CHAIR:** Mr Anticich, how many officers do you have allocated to investigate police misconduct?

**Mr ANTICICH:** We have about 40 people who are within the internal affairs unit.

**Dr O'CALLAGHAN:** Can I just add to that, Chair, because, of course, a lot of our internal investigations are not done by professional standards. They are done out in the districts and the regions so, theoretically, you could have 150 people tied up at any one time doing this sort of stuff.

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**Mr ANTICICH:** Correct.

**The CHAIR:** Have you formed any view, given that the CCC has over 120 staff, whether they can take on a greater role in terms of investigating allegations against police? They have got more resources to do it than you have.

**Mr ANTICICH:** I think, again, in the current regime with this high level of collaboration, it is the case now that we share those resources a little bit better than previously in that either/or scenario. I think it would be right to say that we are a lot more efficient and we do share and collaborate a lot more in this current day.

**Dr O'CALLAGHAN:** I think there is a choice for government in terms of resourcing the CCC. If they do not have strict criteria about when they pick up a police investigation or not, it is very difficult to make a decision about what sort of resources they should have. It seems to be down to a few people getting their heads together and having a chat rather than some criteria that you can examine and come to a landing on in terms of what resources should be applied to those things.

**Hon ALISON XAMON:** I have a few more questions about section 42 notices, if that is okay. I am curious to know, because there has been a review of section 42s, to what degree were the police involved with the recent review of the use of that with the CCC, and are you satisfied that you have landed to some sort of reasonable territory or understanding about how section 42s are going to work?

**Dr O'CALLAGHAN:** From my perspective, I had personal meetings with the commissioner about that. Since the changes have occurred, I do not know that there are too many issues of concern that have been brought to my notice. I am looking to the head of professional standards and he is saying the same thing. Time will tell, but we are comfortable with the way things are going at the moment. The other thing I mentioned earlier is that I made a complaint to the parliamentary inspector about this. He has intervened as well and made some recommendations about section 42.

**Hon ALISON XAMON:** I suppose I am concerned—I do not know if I misheard you—that it sounds like there just still is not that very clear understanding about when section 42s are going to apply. You have said that to the best of your knowledge that it is ideas around serious misconduct, corruption inquiries or, potentially, concerns about systemic issues around minor misconduct, but it does not sound like there is really much beyond that. It sounds like there may have been some discussion about maybe pulling back on the use of section 42s but there still seems to be quite a serious lack of criteria around that.

**Dr O'CALLAGHAN:** Yes. I think it is quite difficult to put criteria around it because when you issue a section 42 notice, the way the CCC were looking at it, it restricts the ability of police to do what they would normally be required to do, so you cannot technically do anything around that investigation. Bear in mind that sometimes these investigations are not strictly internal in terms of, say, a lock-up assault. They may be the result of a complaint from someone in the public domain where we have a role to manage a complaint or investigation and the CCC also has a role to investigate the police officers involved. But if you issue a section 42 notice, it stops all police action in that area or, if it does not, it is very difficult to draw a separation between what we can do and what the CCC can do. It causes more confusion than it solves most of the time.

**Hon ALISON XAMON:** What lines of communication exist if a section 42 is issued and the police are of the view that a particular investigation has maybe almost got to a point of resolution or that there are problems? How is that resolved?

**Dr O'CALLAGHAN:** This will be a job for Mr Anticich. He can give you an idea about how that works.

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**Mr ANTICICH:** Just to put it into context, I took up this role about two years ago and at the time there were a number of section 42 notices in existence. In fact, they had been issued and they had not been extinguished. Under the act, I think they exist until they are terminated. We had a bit of a tidy up then. We went back to the commission and said, "Look, we have all these investigations still outstanding or subject to 42s. They need to be brought to a halt." Which they did. Since that time, and I have been in the portfolio now for two years, I cannot recall us receiving a section 42 notice in the last two years. I guess that gives it some context. I think that in the past, for whatever reason, and it might come back to the previous model of either/or, perhaps a 42 was seen as that vehicle by which they could sanction or protect a particular investigation so it was solely their priority and their duty. That has not occurred, certainly with any frequency, and, to my knowledge, at all in the last two years.

**Dr O'CALLAGHAN:** One of the problems with a section 42 notice is, for argument's sake, in the Broome scenario, when police internal investigators go up there and take the police into interview rooms to talk about what has happened, we have the power of compellability in those circumstances under the police regulations—we can make the police officers respond. But if a section 42 notice is issued and Corruption and Crime Commission investigators just turn up at Broome police station, there is no requirement for the police to answer their questions. The only way they can make them do that is to take them into a hearing run by the commission. You can imagine that you go from something that is quite simple, where you have an interview where we can use compellability to a situation where, if Corruption and Crime Commission investigators come in, they have no real power and they just hope that they can get the information that they need initially. They can certainly get it in the long term if there is a public hearing or a private hearing, but that cannot normally happen for several weeks after the incident has occurred, whereas we would do it within hours sometimes.

**Hon ALISON XAMON:** It sounds as though the parameters around how that is utilised between the CCC and the police is really cultural and nothing more than that and that could shift with a change in personnel, from what I am hearing.

[10.40 am]

**Dr O'CALLAGHAN:** In that case, we have seen different commissioners and different executive directors take a different view about how those things should be applied. As I said before, lack of criteria makes it very difficult to make any reasonable assessments about how things are done.

**Mr M. HUGHES:** Are you saying you want more well-established criteria?

**Dr O'CALLAGHAN:** We are not asking for that.

**Mr M. HUGHES:** You are saying you would rather not have section 42.

**Dr O'CALLAGHAN:** We do not want section 42 used unless it is absolutely critical because it generally interferes with a whole range of things and the outcome is more protracted and often not the best outcome for everybody, particularly in terms of bringing the truth of the investigation into the foreground.

**Mr M. HUGHES:** If we go back and question why section 42 notices would have been instituted in the first place, just putting your thinking cap on, why would you regard them as important and the public having confidence about the veracity of inquiries into the police?

**Dr O'CALLAGHAN:** Section 42 notices have usually been issued when the commission believes that police will not be able to resolve this to the satisfaction of the community. I guess that is one way of putting it. I think in the early days the commission had a view that it did not entirely trust the internal investigation process to come up with the right outcome and it wanted to make people

come to hearings to give evidence that it thought maybe the internal investigators could not give. In fact, the reverse turned out to be true.

**Mr M. HUGHES:** The reverse being?

**Dr O'CALLAGHAN:** The reverse being, in fact, the section 42 notice hindered the outcome. The outcome became long term, protracted and very rarely solved anything. The other thing is that there is a view that the CCC can direct the commissioner as to what sort of sanctions the commissioner will impose on individual officers, including loss of confidence, but it does not have that power.

**The CHAIR:** That is what I was asking about before.

**Dr O'CALLAGHAN:** Bear in mind that the loss of confidence is entirely in the mind of the police commissioner; it is not in the mind of the CCC. It cannot order it nor ask for it.

**The CHAIR:** This is a bit of a bandwagon I have been on for a while, which Mr Anticich will of course be familiar with. The CCC does not really have any key performance indicators. Clearly, with successful prosecutions, if that was a performance indicator, it would certainly fail. Do you think there are some grounds to have a bit clearer demarcation of what their role should be and what performance indicators they should be expected to perform at?

**Dr O'CALLAGHAN:** From our perspective, it does not have a lot of impact on the way we operate. It probably has an impact from the outside—people looking in wondering what the CCC does. You could establish performance indicators. We say: you will review at least a certain percentage of all police investigations, for argument's sake. That might be one. It does not seem to be criteria around how many it will do. You could establish those sorts of things. From our perspective, it does not have a lot of impact on our business that the CCC have performance indicators, I guess.

**The CHAIR:** It no longer has an education role. In terms of people understanding what corruption is from a police perspective or when they should report something that is suspicious to authorities in that context, how does the community actually understand the issues around corruption if there is no-one responsible for education?

**Dr O'CALLAGHAN:** I think we have lost that capacity. That part of the CCC was one of the parts that actually worked quite well. Although I have been critical about the operations part of it, I have always been supportive of the educative side of it.

**The CHAIR:** Because it is preventive.

**Dr O'CALLAGHAN:** Yes, because we had a lot of interactions with it about long-term issues. For argument's sake, if we go back a few years, it had quite a substantial review of how police handled property. We worked together on that and came up with a series of recommendations, which were quite useful for policy. That part of the CCC worked quite well but, of course, that was dissolved a couple of years ago with the movement of some of the CCC's powers out of the public sector.

**The CHAIR:** In that regard, the CCC is about to get powers, as I understand it, to investigate unexplained wealth. I must admit that I grapple with why that cannot be done with a couple of extra forensic accountants in police, for example, or even the DPP. Why has it been decided—you would have been involved in consultations—that that is the appropriate body to deal with unexplained wealth?

**Dr O'CALLAGHAN:** I think the only benefit of it—I will get these guys to comment as well—is really the use of their coercive powers, I suppose. That would be the only benefit to us. Apart from that, all other aspects of it could be done by the WA Police. I will get Gary or Pryce to talk about that.

**Mr SCANLAN:** As the boss said, it is generally around what powers they have. They have extraordinary powers to be able to investigate. The unexplained wealth provisions are not



something that we have done well since it was enacted. There have been only a limited number of proposals put to the DPP, none of which I am aware have progressed. The environment has also shifted. When you have a look at the resourcing of our proceeds of crime squad, when you look at the work it is doing around meth at the moment, and the money that is being put together by all the criminal syndicates, a great component of their work now is targeting those organised criminals. As the boss said, it is generally around their powers and their ability to examine people in their hearing room where they are able to bring in the accountants and other family members and extract the information actually required. They are difficult investigations, they are long term and they are resource intensive.

**The CHAIR:** Implicit in that, you are talking about resources. The question that I asked earlier was that if there had been a couple more forensic accounts, a couple more analysts, certainly for organised crime, is that work that police could be doing or should have done?

**Mr SCANLAN:** If you have a look at the component, about 27 staff are attached to our proceeds of crime, which includes proactive investigators who are responsible for the Criminal Property Confiscation Act. Then we also have our new meth money team situated within, and then we have the forensic accountants. We could double the size of our squad overnight and they would still be inundated with the amount of work that they currently have around the money remitters and also the drug traffickers that we have targeted—crime use and crime derived. As I said, it is probably an area that we have not used very well over the last 10 years.

**The CHAIR:** Is the work that the CCC will be doing in that area qualitatively different from that which the police would do had you the resources?

**Mr SCANLAN:** Only the component that the boss said before is around powers and the examinations.

**Dr O'CALLAGHAN:** I think one of the criticisms was also the lack of willingness of the DPP to launch a legal process.

**The CHAIR:** Yes, absolutely.

**Dr O'CALLAGHAN:** At one stage, even before this committee, we asked the committee to consider investing that power in police to launch the process, which would mean we would not have to deal with the DPP. We think there is a cultural issue there. If we had that power, we could probably proceed with some of these things ourselves.

**Hon ALISON XAMON:** If this power is going to be invested in the CCC and it is going to have these resources, how confident are you that the police will be able to be working really closely with the CCC around all the intelligence it has gathered so that it does not become simply the purview of the CCC? Frankly, it is a concern I have. What assurances can we have that that intelligence is going to be shared appropriately?

**Dr O'CALLAGHAN:** This is my opinion. I would be comfortable with sharing of intelligence. What I am less clear about is whether the CCC would take a proactive approach to launching legal processes or not or whether we might find ourselves in the same situation we found ourselves with the DPP, where if we had the power invested in police, we would have a lot more control over those things. I know that several investigations have been done that we would have launched actions on if we had the power to do so. I do not know the CCC's view on this but we still do not have control. If it takes a conservative view, we will be in the same situation two years down the track as we are today.

**Hon ALISON XAMON:** Do you feel confident, taking the issue of prosecutions aside, and that is noted, that there would be a fair exchange of that intelligence as well?

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**Dr O'CALLAGHAN:** Yes, I think so. I think Gary wants to make a point.

**Mr DREIBERGS:** We have already met with the CCC on two occasions since the discussion has been had around the powers and the change of responsibilities and all indications are, with the senior officers group as well, that they are quite prepared to work with police.

**Hon ALISON XAMON:** It sounds as though it might be useful work to move forward to look at the issue of prosecutions, and have some greater understandings about when that is likely to be pursued.

[10.50 am]

**Dr O'CALLAGHAN:** Yes. It is a very hard thing to make a decision around until you actually see it working; that is the thing. It is not until we have some prosecutions under our belts that we can make some decisions about whether it works or not. At the moment it is a bit open-ended really.

**Mr ANTICICH:** The comment to be made is I think we were the first Australian state to get these powers, and the frustration is they have not been used. Effectively, I think this is intended to engage a body that will use the powers. The ultimate is the commissioner, the CCC or the DPP. My understanding is that it is simply a case of nominating them as another agency that can do this. My understanding also from the last meeting with the CCC is the DPP will still have that power even if the CCC get it as well. The thing for us is we think there is enormous scope. I am almost certain that all of those targets will be generated from police intelligence. I do not think that the CCC will be generating intelligence to nominate those sorts of targets. As we did previously with the DPP model, we would be putting together packages and nominating those people and the reasons why we think they need to be examined for unexplained wealth.

**The CHAIR:** Would you envisage, for example, WAPOL officers maybe being seconded to the CCC on these investigations?

**Mr ANTICICH:** I would suggest that would be the only way this would work—no different to what the DPP do under the current model.

**Mr SCANLAN:** In our initial discussions, Madam Chair, we actually detailed some of the mechanisms about providing them with the information and the target list that we have of proceeds of crime and also having a look at embedding our investigators, certainly in the infancy, with the CCC to assist them in the process. Whether or not, as the commissioner said before, that becomes a joint operation similar to many of the others we have with our partners into the future is something we would consider.

**The CHAIR:** What you are effectively saying is that a coercive hearing, where the evidence might not be admissible in a prosecution, is more effective than a police investigation where maybe a facilitator, an accountant or whatever is questioned by the police and maybe lawyers up—is that what you are saying?

**Mr SCANLAN:** That is correct. Also, we are required to assemble myriad evidence against these people which, again, includes the accountants, family members, anyone involved in the syndicate. They do not necessarily have to talk to us.

**The CHAIR:** Is that your experience in the past?

**Mr SCANLAN:** As I said before, we have used the powers, very limited, since they were enacted. Many of these criminal syndicates do not talk to police.

**The CHAIR:** Do you think there is room for maybe some more training of police around this area so they feel more confident?

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**Mr SCANLAN:** Our investigators are very good at what they do in the criminal interview space and also our proceeds investigators that are compelling certainly the people that we are arresting under drug trafficking and crime-derived matters. I am comfortable that they are very well trained and have the ability to extract the information they require to progress some of our investigations, but the fact remains some of these people do not have to talk to us and choose not to talk to us. The penalties that are applied around not talking to us when they are compelled are fairly small.

**The CHAIR:** It is notorious that the WA police commissioner has not used the exceptional powers of the CCC much, if at all, virtually. There have been a number of reasons for that. One of them that has been proffered is that the definition of “organised crime” is too restrictive, but one of the others is the cost to WA Police of using the CCC process. I am wondering if you could expand on that.

**Dr O’CALLAGHAN:** I will get these guys to expand on that because they are more familiar with it. I think the thing we raised last time was the definition. I do not remember having a conversation about the cost because I am not sure what that refers to, which aspect of it. Is that something we have given evidence on before?

**The CHAIR:** Yes, it is.

**Dr O’CALLAGHAN:** I am just trying to think what the aspects of the cost were. I think the main problem for us, the main roadblock that I was advised of, was the definition of “organised crime” and the way the CCC viewed it.

**Mr ANTICICH:** I think, Madam Chair, if you are talking about the exceptional powers in those applications, historically, from my recollection, there have been two previously. One was an anti-fortification application in relation to the Coffin Cheaters, which was successful. It was defended for a while and ultimately rolled over. The other related to five members of the Finks who appeared for examinations under an organised crime application and did not give the evidence they should have and ultimately were imprisoned for a period of 12 months. They were both circumstances that presented themselves at a point in time. I guess it is subject to those circumstances presenting that would enable that to occur. I do not know if there have been any subsequent applications since then, and they go back a few years now I believe. But it certainly is the case that it has been used, but most probably not recently.

**The CHAIR:** And that exceptional power provisions are overly legalistic and complex and it makes it difficult for police to mount an application. Can you comment on that?

**Dr O’CALLAGHAN:** I think we preferred to use the former Australian Crime Commission, now ACIC, because the process is easier and more streamlined.

**The CHAIR:** I personally know it is not that easy, so it goes to show that the CCC one might be —

**Dr O’CALLAGHAN:** Sure.

**Hon ALISON XAMON:** What could change to make the CCC process more accessible or any more attractive?

**Dr O’CALLAGHAN:** To be fair to the committee, we might have to make a separate submission on that so we can tell you what the steps are that we are most concerned about. If I get advice from our legal area, we can provide that to you by way of supplementary.

**Hon ALISON XAMON:** That would be useful.

**The CHAIR:** It has been tailored that it is just a definition of “organised crime”. If there are other issues, they really will need to be addressed together.

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I will move on to covert powers. In the past police have had to rely on the CCC to use those covert powers, but since legislation has changed, you are able to do that yourselves, but the CCC still has oversight of WA Police's covert powers. Can you perhaps tell us whether that presents any issues or problems?

**Mr DREIBERGS:** I can say that in more recent times we have had very close working discussions with the CCC around the use of covert powers and how they were oversighting it. There is a greater, I guess, understanding of the complexity of using those powers and the circumstances under which officers are placed during covert operations. Some of our issues—not issues, but concerns—were that they were quite finitely looking at our use of the powers. Effectively we have had significant discussions in the last 12 months where we are quite comfortable, although we continue to have those discussions as to our level of oversight.

**The CHAIR:** As I understand it, the report from WAPOL to the CCC on the use of covert powers contained a number of redactions. Do you recall that instance?

**Mr DREIBERGS:** The previous report of about 12 months ago?

**The CHAIR:** Yes.

**Mr DREIBERGS:** Yes, that is correct.

**Dr O'CALLAGHAN:** That is going back a fair way now.

**The CHAIR:** Can you explain why that was needed and how is it that the CCC can oversight effectively if it has not got all the information?

**Mr DREIBERGS:** From my recollection, the redactions were relative to revealing issues of an operational nature more so than anything. I would have to revisit that.

**The CHAIR:** Can you explain how the CCC can oversight when it has not had access to all the information that it needs?

**Dr O'CALLAGHAN:** I cannot recall what was redacted in that particular report.

**Mr DREIBERGS:** Our report to the CCC had redactions?

**The CHAIR:** Yes.

**Mr DREIBERGS:** I do not recall that our report to the CCC had redactions.

**The CHAIR:** Sorry, I apologise. I have it wrong; the redactions from the CCC were then recorded and given to Parliament.

**Mr DREIBERGS:** Correct. My understanding was that was because that had potential to reveal operational sensitivities of particular jobs that were undertaken at a point in time. The CCC had full access to everything. They have extensive access to all our information regarding —

**The CHAIR:** Was it in consultation with you that those redactions were made?

**Mr DREIBERGS:** That is correct.

**The CHAIR:** Can you assure the committee that those redactions are kept to a bare minimum?

**Mr DREIBERGS:** A bare minimum, absolutely.

**The CHAIR:** How has the use of covert powers been going since WA Police has got them in their own right?

**Mr DREIBERGS:** It goes very well, but it requires a fairly large level of oversight internally by our organisation. We have lawyers who work with us and also the assistant commissioner pays particular attention to all the covert operations to make sure that internally we are clearly meeting

all the requirements and not making any breaches because it is very easy to make breaches of any legislation—so all of the powers. So a very, very finite fine toothcomb examination internally around these particular tasks because we know that the CCC are looking very carefully at every operation that is undertaken.

[11.00 am]

**Hon ALISON XAMON:** So do you feel it is useful to have the CCC overseeing this thing?

**Mr DREIBERGS:** I think it is useful, but the discussions we have had around the CCC are about, I guess, we need to be comfortable about the level of understanding around the complexities of operations in a covert environment. For instance, if you are doing a covert operation, things are very dynamic and move very quickly, and our officers are working in a covert space with highly organised criminals, and also they are working, as you could imagine, as covert officers. Their activities are highly complex, dynamic, moving quickly, so hopefully our officers are making the right decisions within the powers they have been provided when they do that particular job.

**The CHAIR:** That is why the legislation contemplates ex post facto approvals, telephone approvals and so on, because I think it is mindful of those issues.

**Mr DREIBERGS:** Yes. It is a complex environment, but I am comfortable with the way they operate.

**Hon ALISON XAMON:** Okay, so you are confident that it is working effectively, then?

**Mr DREIBERGS:** Yes.

**Hon ALISON XAMON:** Okay.

**The CHAIR:** We have not yet focused on the background of those employed at the CCC. Do you think there could be an enhanced understanding of operational matters so that they can oversight more effectively, or do you think that they understand what police do in operational matters sufficiently?

**Mr DREIBERGS:** I would say that we need to continue to work with them so that they understand the particular complexities we are facing when we are doing those particular tasks around covert powers. I think there has to be a really positive relationship between the two agencies to work in that space. If you have a really positive, understanding relationship, it makes things significantly easier.

**Mr M. HUGHES:** In relation to the redactions in the report for 2014–15, it is noted that the 2015–16 report does not contain redactions. Why would that be the case, do you think?

**Mr DREIBERGS:** I am not sure. I would have to take that on notice.

**Mr M. HUGHES:** Could we have a look at that to address the previous committee's concerns on that matter, perhaps? If one year is important, presumably there were covert actions underway in 2015–16, but —

**Dr O'CALLAGHAN:** Maybe we moderated the language.

**Mr M. HUGHES:** Maybe you moderated the language, okay. So you will get back to us on that one?

**Dr O'CALLAGHAN:** Can do, yes.

**Hon ALISON XAMON:** On a different matter, I note that the previous committee recommended that interstate anti-corruption agencies could be involved in investigating allegations of corruption by a CCC staff member. I understand that we do have in-principle agreement for this to occur. I am interested in any comments you have about that arrangement and its potential effectiveness.

**Dr O'CALLAGHAN:** I think probably it is the way to go. We had a sort of ludicrous situation going back 12 months or more ago when we were investigating the Corruption and Crime Commission.

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There were several alleged criminal breaches. The parliamentary inspector referred them to us and we did them, but it is a bit of an upside-down situation. I think probably where you have your top oversight body being accused of doing things that are incorrect or criminal, then you probably need to bring in somebody from another state to do it so that we are not involved in the process. It could be construed that we are not independent or we have an axe to grind, so I think it is probably better done by another anti-corruption body—any corruption body.

**Hon ALISON XAMON:** Could you give me an idea of how that would likely be initiated? Would the police make a point of contacting another corruption body? What is the process?

**Dr O'CALLAGHAN:** I think, in the last scenario, it was reported to the parliamentary inspector by the Corruption and Crime Commissioner about potential breaches of a whole raft of things. The parliamentary inspector should then have the power to initiate an inquiry by another anti-corruption body from another state. We really do not need to be involved in that process at all, I would imagine.

**Hon ALISON XAMON:** Other than potentially drawing it to the parliamentary inspector's attention?

**Dr O'CALLAGHAN:** Yes, but in that scenario, my understanding is that it was drawn to the parliamentary inspector's notice before it came to our notice, so the only reason we got involved was that the parliamentary inspector came to us and said, "Look, we've got this alleged criminal conduct and I want you to investigate it."

**Hon ALISON XAMON:** Going into the future, there could well arise a scenario whereby the police may become aware, through your regular operations, of concerns.

**Dr O'CALLAGHAN:** I think it would then be as simple as casting a policy that, should that occur, the Commissioner of Police should make contact, through the PI, with another body in another state to do the inquiry.

**Hon ALISON XAMON:** So you are saying there is no clear policy about how that process would work at the moment?

**Dr O'CALLAGHAN:** There is no clear policy, no.

**Hon ALISON XAMON:** And that would be something useful to be developed?

**Dr O'CALLAGHAN:** Yes.

**Mr ANTICICH:** Legislatively we are bound to report any misconduct identified by way of commissioned officers to the parliamentary inspector as the first port of call, and then how that generates from there would be subject to, I guess, a bunch of variables, but it is not inconsistent and it is quite viable to consider the external, out-of-state —

**Dr O'CALLAGHAN:** I think this is to do with criminal conduct by employees of the Corruption and Crime Commission you are talking about; are you not?

**Hon ALISON XAMON:** Yes, I am.

**Dr O'CALLAGHAN:** We had that scenario going back a little way. We need to have some protocol or policy in place that provides a way of advising another state to — And we get other states to help us with certain internal inquiries as well, so it is not an unheard of scenario.

**The CHAIR:** Since this is your second last day, commissioner, you might feel free to be frank and forthright. There were some allegations made in relation to you and your credit cards. How appropriate do you think it is, especially in terms of ongoing relations, for the CCC to have the power to investigate the police commissioner, or should that be done in some other way? I would have

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thought that, in terms of ongoing relationships, it is inimical to a cordial, ongoing cooperative relationship, if that is the power that they have.

**Dr O'CALLAGHAN:** I think they should have the power to investigate all police officers, including the police commissioner. My concern was not so much about the fact that there was an inquiry underway, but the way the inquiry was conducted and the time it took to bring it to a conclusion. If you look at the eventual outcome, you can see why my concerns were there. Again, I think that was a product of its time and a product of the people who were working there at the time, and it has been largely resolved. The whole of the Corruption and Crime Commission employment at that level has changed and I think the current commissioner has a much more practical approach to that. However, I would not be averse to a similar sort of scenario that we have been talking about before, if they wanted to investigate a police commissioner, that they could use a corruption body in another state to do it. I do not think that is a problem either. Maybe it would ensure that relationships between the two were stable. I do not have a problem with that.

**The CHAIR:** You mentioned that you had issues with the time it took. What were the other issues you felt in relation to that particular investigation?

**Dr O'CALLAGHAN:** I think there was a whole raft of issues, including the material they were taking into consideration. It could have been a lot more streamlined. In fact, I think the whole thing could have been done in three months rather than nine, but it was just interminable and slow. As I said, it was very much a product of the crew that were there, and I do not think it would occur today in the same way.

**The CHAIR:** All right. There is a community perception, I think—I am happy to be advised otherwise—that police misconduct is not handled robustly enough in this state by yourselves and the CCC. Have you got anything to say in response to that perception?

**Dr O'CALLAGHAN:** I think there will always be that perception. There is always a perception, if an organisation investigates itself, that it is not entirely independent. But I think, in practical terms, there are hundreds and hundreds of internal investigations and if you were to farm them out independently, not only would it cost a lot of money, it would be protracted and things would be approached perhaps more legalistically than in a practical way. I still think it is the current approach of the police doing most of these and having them oversights by the Corruption and Crime Commission and DIPs handled by the PI, because I think the PI has been fairly critical of the Corruption and Crime Commission in terms of its oversight of, say, use of Tasers or use of force. We were talking about KPIs for the Corruption and Crime Commission; perhaps they could be cast so that there would be more analysis of those things and they would have to report to Parliament on that. It is never going to be practical, I do not think, for police to hand over all internal investigations to a completely independent body and say, "It's yours", because the impact on the system, in terms of the resource demand and at the time it would take and the complexity of it, would be untenable.

[11.10 am]

**The CHAIR:** I think in Northern Ireland they have a civilian oversight body as well—a sort of police board or something. Do you think there is any role for maybe something along those lines as well?

**Dr O'CALLAGHAN:** I am not sure what the police board does there. Is it internal investigation work or is it just a community police board that guides police in decision-making?

**The CHAIR:** It is more a question of just allegations and oversight, I think. I do not know whether Mr Anticich is familiar with that.

**Mr ANTICICH:** I think it might be around penalties. I am not too certain that they would actually investigate, as I recall.

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**The CHAIR:** Yes, I will have to pursue that down the track.

In terms of section 8, do you think you have had enough power or options under the section 8 provisions?

**Dr O'CALLAGHAN:** One of the things that we put forward for variations to section 8 is that there should be an option, apart from dismissal, for reduction in rank, rather than going through the whole section 23 process. The reason I believe that is there are a number of people who have committed breaches at rank, so they might be a sergeant or a senior sergeant or an inspector, where if there was a reduction in rank option, you could say, "Look, I don't have the confidence for you to continue this job as an inspector; you have shown you can't lead, or you can't supervise, or whatever it is. I would have more confidence if you were a sergeant or a constable doing the job and going back to the streets", so there is an option. At the moment there is no option. If you lose confidence in them, then you have got to dismiss them; you do not have a halfway point. I think that would be useful, I think the other thing about section 8, and it has been widely canvassed, is the removal of section 8 as it applies to officers who are being removed because they are unwell. I think most people agree with that. I think the only option I would be looking for is the ability to reduce someone in rank automatically, without going through a section 23 hearing process.

**The CHAIR:** In hindsight—again, just pretend you are out of the job in two days' time—with any of the high-profile allegations about police misconduct or corruption, would you maybe handle them differently? What are some of the issues that, looking back on them, you think might be addressed in a different way?

**Dr O'CALLAGHAN:** Hindsight is a wonderful thing, as you say, but let us take some high-profile ones like Spratt, for argument's sake. That comes to mind. But for the confusion about what, allegedly, Mr Spratt wanted and what his lawyer was making representations on, we probably would normally have gone to at least a section 23 process, if not a section 8 process, with those officers. But because of the whole raft of confusion and incoming conflict over what people wanted, we went for an option that was a different type of sanction option.

**The CHAIR:** What do you mean by conflicts about what people wanted?

**Dr O'CALLAGHAN:** This was widely publicised, so it is nothing new. We had representations made by persons purporting to represent Mr Spratt that he was looking for certain outcomes from this, and those outcomes were not around the dismissal of the officers. However, I think, taking a hindsight view of that, it might have been better from a public confidence perspective to have used section 8 in that process. There would be two or three of those over the last 13 years that could probably have been handled differently in terms of preserving public confidence in what the police are doing.

**The CHAIR:** The last question I have got is in relation to the Dhu matter. Another committee in which I was involved made certain recommendations about police lockups, notifying family, contact with the Aboriginal Legal Service and so on. That came out some months before the death of Ms Dhu. The same goes with coronial inquests. From time to time recommendations are made by the coroner. The process of those recommendations being followed up, actioned or implemented seems very blurred. I am just wondering if you can explain what happens.

**Dr O'CALLAGHAN:** We have had a very, very comprehensive custodial review project going on, and the recommendations from the Dhu matter have fed into that. Mr Dreiberger has been in charge of it so, so maybe I will get him to address you on that.

**Mr DREIBERGER:** All the recommendations from these hearings and from the coroner have been looked at in terms of custody and also our own internal issues, and also justice-type reviews that

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looked at Indigenous incarceration. It brings together quite a large package of work in the end. A lot of that work relates to cross-government agencies—responsibilities and roles of other agencies, whether it be the health department or whether it be DOTAG or corrective services. There is a whole number of pieces of work we have done, predominantly focused on actually reducing the people coming into police cells, and looking at the time that people actually will spend in police cells as well. It requires quite a significant level of commitment and cooperation from other agencies. We had senior officer meetings at different levels within different agencies. One of the complexities comes from when police try to ask other agencies to undertake more work relative to custody—corrective services, for instance—and then there is generally the view that what you are trying to do is cost-shift, particularly when you are moving prisoners out of cells into prisons.

**The CHAIR:** Well, it could be arguable that that was one of the issues in the Ward case; that in fact corrective services were pressured to get someone out of police custody too soon.

**Mr DREIBERGS:** It could be, but the issue for us is that police cells really are not suitable for extended periods of time for holding people in custody. Our position is, broadly, that we want people in our cells for no more than eight hours—that four to eight hours. What we really should be doing is getting them ourselves and moving them to places that have the capability to look after prisoners in, I guess, a more complex environment, where they have medical attention and they do assessments when they first come in. When you go to prisons, they get a whole lot of assessments undertaken relative to those people on the first two days that they go into prison, as opposed to us, which is they basically go to a cell and we check on them as per our processes. There are issues around that. Then there are our own internal issues around what we are doing around safe custody. We are very much starting to talk in the context of safe custody as opposed to—as you saw, it is very much the focus is around the safety and the welfare of the prisoner, so that people understand that, and it is at the forefront of their mind. Internally, we are looking at our own procedures around the escorting of prisoners as well, in terms of the supervision of prisoners. We are looking at the issue of dedicated watch-house keepers at points in time, and designated watch-house keepers, because if we have dedicated watch-house keepers in regional locations, that is very resource hungry and very costly. But we are certainly saying that when people are in custody, there should be designated watch-house keepers. There should be designated staff, and a minimum number of staff to pay attention to those prisoners when they are in custody, regardless of whether we are required to pay overtime or not. There is significant work being done in that space.

**The CHAIR:** I understand that you are considering maybe not even police personnel in those roles.

**Mr DREIBERGS:** Yes, there are lots of options around safety for prisoners. You can look at the idea, particularly in certain regional locations, where you could use the contractors that work for corrective services. There is also the idea of using our auxiliary officers, expanding our auxiliary program. We have auxiliary officers working in the Perth watch house and in other watch-house locations in the state, and they are highly regarded. They are trained for a specific purpose to undertake that role and do an extremely good job. The difficulty for us then is that if you are going to employ auxiliary officers, you have really got the complexities of employing them in regional locations. If you are trying to employ people in Kununurra or Carnarvon or those types of places, it does become problematic, and we have tried. I know that Geraldton was one area where we have tried extensively and still have not been able to be hugely successful, but auxiliary officers is definitely a very good model for looking after prisoners. I have a personal view that, ultimately, using people from local communities and trying to work out a way of engaging them in that space, particularly if you are talking predominantly around safety and care and welfare for people in cells, because in most instances when people are in cells over protracted periods they are not high risk as such in that space to the officers, though there is a level of risk and there is a level of security

required. But, most importantly, most of the concerns we have around holding people in cells is about their welfare.

[11.20 am]

**The CHAIR:** So this custody review, how long has that been going on for?

**Mr DREIBERGS:** Over a couple of years now.

**The CHAIR:** A couple of years. And when do you anticipate it will be concluded?

**Mr DREIBERGS:** It is going to be a continuous piece of work around continuous improvement.

**Dr O'CALLAGHAN:** Yes, it is iterative. The thing is that you fix one problem and another one comes up. But there is a lot of legacy issues in custody management in this state. So, for argument's sake, there is the warrant of commitment legacy issue about unpaid fines and the way the warrant of commitment commands police officers to arrest people without choice, technically. But we have also got to have a lockup clearance policy, where if you arrest someone and you take them to a watch house like Halls Creek or Fitzroy Crossing, that we have to be able to get them out within eight hours and get them into a proper facility if they are staying for some days.

**The CHAIR:** Sure.

**Dr O'CALLAGHAN:** That is complicated because you do not have the transport arrangements; you do not have the aircraft arrangements. So these long-term legacy issues—I mean even in the case of Ms Dhu, transporting anybody who is ill in the back of a police vehicle, in the back of a police van, is unacceptable, and so is transporting any prisoner over any distance which is more about 30 to 40 minutes, because they are not designed for it. But the problem for government is enormous. Once you move to either aircraft extraction or proper vehicles, and you need on-time extraction, you cannot get it because of the cost of servicing those communities. So there is a whole range of wicked problems in the custody environment that we are going to have to grapple with. I notice Gary avoided the term, but I will say it: the things we do are not humane because we are forced to do it by the way we are funded, and we have to come up with a better system.

**Mr M. HUGHES:** In terms of some of the images I have in mind, in terms of video images of the treatment of prisoners, do you want to comment about whether the review in relation to the way in which we manage people in custody, is that going to extend to a review about attitudes of police officers in relation to those matters?

**Dr O'CALLAGHAN:** You are talking about cultural issues as well, so all custody training and other types of training that we do, like cultural awareness training, is interwoven as part of what people do either internally in the academy as serving officers or as recruits going through the process. So those training programs are constantly being upgraded and changed. But there is no substitute, as Gary said, for proper supervision in watch houses; having a properly appointed custody officer who is not the arresting officer. You want a firewall between whatever has happened on the street and the management of someone in the watch house. You do not want the same people who have arrested the person managing them in custody really if you can avoid it. You need that firewall, because sometimes there are escalating tensions, as you can imagine, between an arresting officer and an offender—so separate those. The problem goes away if you can afford to—and Gary's point is—get the right sort of people running watch houses. In some of the bigger watch houses there is no doubt in my mind that if eventually we can hand those to corrective services for management, we would be even better off.

**The CHAIR:** Commissioner, can I suggest that the Royal Commission into Aboriginal Deaths in Custody was 25 years ago, and someone should do an analysis of how much it costs police to

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respond to these incidents when they are so poorly handled in the first place. I think you might be able to go to Treasury and say for every death that occurs it actually costs this much in responding and changing procedures and having countless meetings that the deputy commissioner is now involved in. As for cultural sensitivity and training, I understand that the deputy commissioner has recently been at the academy and might be able to tell me, but I understand that the extended training out to cadets has actually reduced.

**Dr O'CALLAGHAN:** I do not think this is necessarily just a cultural issue. This is a lot to do with people in custody being properly managed. It does not matter whether they are Aboriginal or otherwise, as far as I am concerned; it is that people need to be properly treated and there needs to be a system which treats people humanely and allows people to be transferred to proper care. In places like Port Hedland, where Ms Dhu occurred, there is no such arrangement in place to transfer someone into proper care out of police custody, which is a very confined environment, no place to sit, no chairs, nothing but just a floor and a mattress.

**The CHAIR:** But even at that time you said guidelines existed that people be contacted, and no-one was.

**Dr O'CALLAGHAN:** I think you will find that where one of our biggest challenges is—Gary has already alluded to this—is the perceived cost that would be imposed on other departments by insisting on a better response. I think this will never be resolved unless you have all the agencies responsible properly funded and in a balanced way so that they can respond in the way they need to.

**Mr DREIBERGS:** I should also point out that in terms of what we are doing currently, we are working very closely at the moment with a university to develop cultural understanding training for our officers, so a package for our officers. We are also working in the regions to look at improving their induction packages for place based—type training, so place-based inductions at a location. We are working with UWA on a project that is called—we are looking at Aboriginal incarceration and the rationale for that. We are looking at what other agencies across the spectrum can assist police to ensure that we have a reduction of incarceration of Aboriginal people in the community in particular. And when you start looking at things such as the Kullari Patrol, the refuges, the sobering-up shelters and how they are coordinated, how they are funded, how they work together is something that this research is going to find out. Because there are sobering-up shelters that are not used to their maximum, there are women's refuges that are not used to their maximum, there is men's outreach that is not used to its maximum, so we are saying, "Okay, what can we do as all agencies working together?" As researchers, at the moment, with UWA, we aim to work out how we can coordinate all those resources together with a very specific view of saying there are certain people who just should not be coming into our custody whatsoever. That is the ultimate goal: do not have anyone in our cells for matters where people do not really need to be in custody.

**Hon ALISON XAMON:** So another cohort that comes to mind for me are people who have profound mental illness, and of course we have the co-response mental health team which also extends out to the watch house as well.

**Mr DREIBERGS:** That is correct.

**Hon ALISON XAMON:** My understanding is that the pilot program has been a highly effective model.

**Mr DREIBERGS:** That is correct.

**Hon ALISON XAMON:** And yet it is uncertain what the future of that particular model is going to look like. Could you make some general comment about that?

**Mr DREIBERGS:** I am happy to comment on that. I think it is a highly successful model. Having mental health practitioners in the watch house at the Perth watch house, having a mental health

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practitioner on the road with our officers and a mental health practitioner at our police communications when jobs come in, where they have access to information, where they have access to providing advice to our officers, is a highly effective method. Similarly, we could say that within all of our regional custody locations within Western Australia we should have a similar service, and health and nurses working in our cells as well. But, quite simply, you do not have the capacity to do that.

**Hon ALISON XAMON:** My understanding is that we do not even have it in the entirety of the metropolitan area.

**Dr O'CALLAGHAN:** No.

**Mr DREIBERGS:** No, it is a pilot at the moment and it will be evaluated. But all the indicators are it is going exceptionally well, but then it will be a challenge going forward as to how you expand on that if that is what we choose to do.

**Hon ALISON XAMON:** If I can just go back to where we started, and talking about the way in which the relationship has changed and improved between the police and the CCC, I will just refer to the memorandum of understanding, which has been developed since 2015. How much do you feel that the MOU itself, as opposed to—you have described a lot the personal relationships that have improved. How much do you feel that the MOU has actively contributed towards that more positive interaction?

**Dr O'CALLAGHAN:** I think at an officer level they are very much aware of the MOU. I think it is good to have those sorts of guidelines in place. I still believe that MOUs—because they are just memorandums of understanding, they are not compulsory—they live or die on the head of the agency at the time and what they think of that. Both myself and Commissioner McKechnie are supportive of the way the MOU is constructed. I guess so long as that occurs, we will follow the MOU. But should that change, then the MOU can be changed in a snap by just someone writing another line in or taking a line out because it is not enforceable in any way and it is not compulsory.

**Hon ALISON XAMON:** That was one of my questions. Have there been any changes to the MOU annexures in the last two years or is it —

**Dr O'CALLAGHAN:** Not that I am aware of.

**Hon ALISON XAMON:** — pretty much as is.

**Dr O'CALLAGHAN:** Yes, it is pretty much as you see it.

**Hon ALISON XAMON:** Okay. You mentioned the senior officers group that is meeting. How often is that coordinating group meeting?

**Mr ANTICICH:** That should be quarterly. We only met last week —

**Hon ALISON XAMON:** It should be quarterly?

**Mr ANTICICH:** Yes, because for a period there we did not meet. So it was about, I think, nearly 12 months for whatever reason. It would have been—I do not know; I do not think the calendars lined up. However, I think the more important mechanism is the relationship between certainly my office and the CCC. We would meet a number of times every week to discuss various aspects of the matters that we have on hand.

[11.30 am]

**Hon ALISON XAMON:** What was the reason why you were not meeting prior to that, prior last week?

**Mr ANTICICH:** I cannot tell you. I do not know. It most probably would have been a case of the calendars lining up or whatever circumstances existed. It was just about 12 months to the day, from my recollection.

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**Hon ALISON XAMON:** Does that demonstrate a lack of priority being given to that senior level of collaboration?

**Mr ANTICICH:** I think it most probably depicts a situation where there are no issues, but rather we are getting on with the business; rather than highlighting problems, which I think maybe that would have been the mechanism for, there was just no need. I suspect if we had some issues, we would have been meeting a lot of quicker.

**Hon ALISON XAMON:** So there have not been any issues which have been required to be escalated to that group, is what you are telling me?

**Mr ANTICICH:** That is what I would suggest.

**Hon ALISON XAMON:** What I am curious to know is if you can, please, commissioner, articulate what particular changes you would like to see occurring in the relationship between the CCC and the police going into the future?

**Dr O'CALLAGHAN:** I think I have already said that the way things are operating at the moment seems to me to be satisfactory. From our perspective, whether the CCC has more KPIs or has to oversight more of our inquiries has no direct impact on the WA Police. It might have an impact on public confidence, and that is a good thing and I would support that. But that is probably the only change I would recommend. At the moment, I am not getting information from any of these people that there is a particular issue in the working relationship between the CCC and WA Police. I am thinking 2012, 2013, but certainly since the appointment of Commissioner McKechnie, a lot of those old chestnuts that the CCC refused to pay attention to when we raised it with them, like section 42, have been dealt with and I think the relationship is as it should be at the moment.

**Hon ALISON XAMON:** The chair has already indicated that there may be some concerns around the issue of resourcing within the CCC. Do you feel that the CCC are investigating enough allegations of police misconduct?

**Dr O'CALLAGHAN:** So far we have been focusing on the WA Police, but, in fact, most of their serious investigations are not into the WA Police; they are into other areas like the Department of Transport, local government, and so that is where most of their, if I can term them, big corruption or serious misconduct inquiries are. They are not into the police, because there is hardly any of that in the WA Police. That might be to do with the implementation of the Kennedy royal commission recommendations or not; I do not know.

**The CHAIR:** Or it might be it is low-hanging fruit.

**Dr O'CALLAGHAN:** I think you will find that the bigger misconduct things are not in police, they are outside, and that is probably where the CCC are struggling for resources, not so much on the policing front.

**Hon ALISON XAMON:** But you are here today so that is why we are focusing on the issue of police misconduct. So I will ask my question again: do you feel that the CCC are focusing on enough investigations of police misconduct?

**Dr O'CALLAGHAN:** We have got no complaints, I don't think—no complaints whatsoever.

**Hon ALISON XAMON:** So with the next police commissioner coming in, what advice would you be giving to him about managing corruption risk within the Western Australia Police?

**Dr O'CALLAGHAN:** There are very comprehensive corruption and risk plans and there are committees that meet and there are policies in place. Those policies and those risk plans need to be reviewed fairly regularly, but at least annually, to make sure that they are relevant and we are identifying particular issues which are coming over our horizon. Professional Standards have been doing a lot of work, for argument's sake, on information access on computers and things like that

because it has become the new challenge for us. As long as we are aware of—and we are constantly reviewing and adding to our risk list—the new challenges that are coming on board, we can keep on top of this. That is the advice I would give. There is a structure inside the WA Police, a risk management committee, that allows the commissioner to directly see those things and to discuss with people what is going on, how people are responding and whether there are any resourcing gaps in that.

**Hon ALISON XAMON:** So you have listed one. Have you got an example for us of other areas that you feel are emerging that might be areas that need to be developed?

**Dr O'CALLAGHAN:** I think the two most challenging issues at the moment—one of them is access to information on systems and the other one is probably the fallout we see from family violence. So, like any other group of people in the community, police officers get themselves into situations where there are allegations made, and that is because we are so much more focused on family violence these days, you generally get more complaints about police officers that you might not have got before. So, that is an issue to work through as well for us.

**Hon ALISON XAMON:** So can I be clear: is the nature of the allegations that a police officer maybe has taken a side or inappropriately, excessive violence —

**Dr O'CALLAGHAN:** Sometimes it is about a police officer in his or her private life being actually involved in the commission of an offence. That is what I am talking about because we are much more likely to hear complaints of that nature these days than we would have been five or 10 years ago. When you talk about police officers, they are police officers 24/7. While you might have the local detectives investigate that, that would naturally fall into the bailiwick of Professional Standards.

**Mr M. HUGHES:** So in relation to any organisation which, in fact, is subject to examination of internal risk, you would have a body within the police organisation that is specifically set up to continually monitor procedures that have been put in place to identify potential areas of risk in relation to the way in which the police are conducting —

**Dr O'CALLAGHAN:** Yes. The management audit unit as part of Professional Standards is responsible for that. They do a lot of reviews, a lot of thematic reviews, business area reviews, a whole range of things, so things emerge. We are, obviously, looking at things like property, access to information, a whole range of things which are tested regularly and find their way up to the audit risk committee, which the commissioner sits on.

**Mr M. HUGHES:** That structure and the way in which, in fact, that is implemented, did you share that information with the CCC?

**Dr O'CALLAGHAN:** Yes, they have access to that—and the Auditor General as well.

**The CHAIR:** Does the CCC do any integrity testing inside the WA Police?

**Mr ANTICICH:** Not that they tell us about, but that is not to say that they do not do it.

**The CHAIR:** Commissioner, you mentioned access to systems. Is there still an issue there, is there?

**Dr O'CALLAGHAN:** Yes. We get issues of people accessing information when they do not have —

**The CHAIR:** You mean unauthorised access.

**Dr O'CALLAGHAN:** Unauthorised access—I am just talking about operational access.

**The CHAIR:** In terms of information sharing, that has improved?

**Dr O'CALLAGHAN:** The CCC have access to all of our systems. We have just actually been through a process with them to improve that.

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**The CHAIR:** Does the IT actually talk to one another on those little minor issues that come up from time to time?

**Dr O'CALLAGHAN:** Yes, and they can log onto our systems anyway, so they —

**Hon ALISON XAMON:** Maybe they should tell Health!

**The CHAIR:** Last words, parting words, parting advice, commissioner?

**Dr O'CALLAGHAN:** No, I have got nothing except to say I have enjoyed coming to all of these committees and I have enjoyed the exchange of information.

**The CHAIR:** We have enjoyed having you. It is sometimes difficult to get you here, but that is all right; you are a busy man.

**Dr O'CALLAGHAN:** Thank you.

**The CHAIR:** No doubt we will see you popping up in public life in other roles.

**Dr O'CALLAGHAN:** Potentially, yes.

**The CHAIR:** I have got to do a formal statement. Some additional information is being provided, so, Mr Dreiberger, could you just, for the purposes of Hansard, tell us what that is.

**Mr DREIBERGS:** Two items that we are going to seek further information on is around the use of CCC powers to investigate organised crime. Is that correct, in your view?

**The CHAIR:** Yes.

**Mr DREIBERGS:** The other one is the question relevant to the redactions —

**The CHAIR:** Sorry; your issues with why the exceptional powers were not used.

**Dr O'CALLAGHAN:** Why it is complex.

**The CHAIR:** In other words, one of the issues was the definition of “organised crime”, but there were also some issues articulated in the past—cost and legality and complexity.

**Mr DREIBERGS:** Okay.

**Mr M. HUGHES:** I am interested in why redaction —

**The CHAIR:** Yes, the covert—the redaction.

**Mr DREIBERGS:** Why there were redactions in the 2014–15 report and why there were no redactions in the 2015–16?

**Mr M. HUGHES:** Yes, why that was necessary but seemed not to be necessary.

**The CHAIR:** We will write you a letter anyway. Thank you for your evidence today before the committee. A transcript of this hearing will be forwarded for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide any additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. Thank you very much.

**Hearing concluded at 11.39 am**

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