



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

HEARING WITH ROBERT COCK QC

**Report No. 7
in the 38th Parliament**

2009

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Joint Standing Committee on the Corruption and Crime Commission

Hearing with Robert Cock QC

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THE CORRUPTION AND CRIME
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HEARING WITH ROBERT COCK QC

Report No. 7

Presented by:

Hon Nick Goiran, MLC and John Hyde, MLA

Laid on the Table of the Legislative Council and Legislative Assembly
on 26 November 2009

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Research Officer

Michael Burton, BEc, BA (Hons)

COMMITTEE ADDRESS

Joint Standing Committee on the Corruption and Crime Commission
Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Tel: (08) 9222 7494
Fax: (08) 9222 7804
Email: jscccc@parliament.wa.gov.au
Website: www.parliament.wa.gov.au

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COMMITTEE'S FUNCTIONS AND POWERS

On 25 November 2008 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.

CHAPTER 1 ADVICE TO PARLIAMENT

1.1 Hearing with Robert Cock QC

On 14 October 2009 the Joint Standing Committee on the Corruption and Crime Commission ('the Committee') held a closed hearing with Robert Cock SC. Mr Cock was the Director of Public Prosecutions ('the DPP') from 2 March 1999 to 30 July 2009. Mr Cock is now Special Counsel to the Premier employed within the Public Sector Commission.

During the hearing, Mr Cock gave a very clear presentation on the following matters of interest to the Committee, arising out of his experience as the DPP:

- (a) how he adjudged the priority of prosecuting charges initiated by the Corruption and Crime Commission ('the Commission') as against prosecuting other crimes;
- (b) he does not support a suggestion that there be a Special Prosecutor to solely prosecute charges initiated by the Commission;
- (c) the distinction between laying charges and prosecuting charges;
- (d) the ability of the Commission to lay charges;
- (e) the length of time from the laying of a charge to trial;
- (f) the pros and cons of public hearings; and
- (g) the process that is followed when the Commission recommends disciplinary proceedings be considered by a public authority.

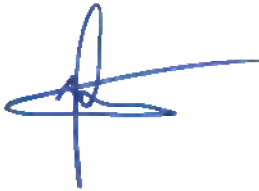
1.2 Decision of the Committee to make public Mr Cock's evidence

The Committee was impressed with the clarity of Mr Cock's evidence and requested his permission, which he gave, to having the entire transcript made public.

Accordingly, a copy of the transcript of the hearing appears at Appendix 1.

1.3 Committee's consideration of the issues raised by Mr Cock

The Committee intends to consider in detail the evidence of Mr Cock, and will be referring to his evidence in future reports to Parliament.

A handwritten signature in blue ink, consisting of a stylized 'N' and 'G' with a horizontal line extending to the right.

HON NICK GOIRAN, MLC
CHAIRMAN

APPENDIX ONE

***TRANSCRIPT OF HEARING WITH ROBERT COCK QC
ON 14 OCTOBER 2009***

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

**INQUIRY INTO HOW THE CORRUPTION AND CRIME COMMISSION
CAN BEST WORK TOGETHER WITH THE WESTERN AUSTRALIAN
POLICE FORCE TO COMBAT ORGANISED CRIME**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 14 OCTOBER 2009**

CLOSED SESSION

Members

**Hon Nick Goiran (Chairman)
Mr John Hyde (Deputy Chairman)
Mr Frank Alban
Hon Matt Benson-Lidholm**

—

Hearing commenced at 10.04 am

COCK, MR ROBERT ENOS
Special Counsel, Public Sector Commission,
examined:

The CHAIRMAN: On behalf of the Joint Standing Committee on the Corruption and Crime Commission, I would like to thank you for your appearance before us today, Mr Cock. The committee is undertaking an inquiry into how the Corruption and Crime Commission can best work together with the Western Australian police force to combat organised crime under potential amendments to the Corruption and Crime Commission Act 2003 and the implications of the above on the ability and capacity of the commission to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector, including without limitation of the Western Australian police force. I understand the committee's terms of reference have been provided to you. The purpose of this hearing is to inform the committee on its inquiry.

The Joint Standing Committee on the Corruption and Crime Commission is a committee of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings in the houses themselves. Even though the committee is not asking witnesses to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. Before we proceed to the questions we have for you today, I need to ask you a series of preliminary questions. Have you completed the "Details of Witness" form?

Mr Cock: Yes, I have.

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

Mr Cock: Yes, I do.

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

Mr Cock: Yes, I did.

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

Mr Cock: No, I do not.

The CHAIRMAN: I will now open up the time for questions. Perhaps if I can lead off, Mr Cock, by just getting you to perhaps give an opening statement to the committee on what your role is in terms of any potential amendments to the Corruption and Crime Commission Act?

Mr Cock: One of the responsibilities that I was asked to undertake when, on 3 August this year, I commenced with the Public Sector Commission was to have a general oversight of the various amendments that have been proposed by the government to a suite of statutes that include the Corruption and Crime Commission Act but, of course, are not limited just to that act, the Public Sector Management Act and potentially the Public Interest Disclosure Act, and there may be other

statutes also affected; and to be available to the government to provide advice on an ongoing basis about the desirability and capacity of ensuring consistency between these various statutory changes which have been foreshadowed and which are being progressed.

The CHAIRMAN: Obviously, your previous role at the DPP is matter of public record. You will be aware that one of the issues raised in the review of the act by Gail Archer, Senior Counsel, was in relation to the issue of prosecutions, and that has become somewhat topical of late. Can I ask you whether you are in a position to comment at all on prosecutions generally as a result of any charges laid by the CCC and the availability within the DPP to prosecute them?

Mr Cock: Naturally, any comment I make is limited to my role as DPP, which was from 2 March 1999 until 30 July this year. Of course, only during the latter part of that term was the CCC in existence. There was—I suspect this is the best way to describe it—ongoing tension between the desire of the CCC to have its prosecutions managed in a way that would give them priority over the objective of the criminal justice system, which was to ensure the fair prosecution of all crime of a serious nature that was undertaken by my former office. The tension that existed was between the desire of the CCC to have its matters given some priority both in terms of time and in terms of resources. It was always my view that, whilst I would do my best to accommodate the aspirations of the commissioner, my office was not set up to give priority to any particular individual, complainant or victim and we would do our best to manage all matters, trying to give priority to those in greatest need.

You may be aware, members, that child victims of sexual assault, for example, have been constantly a matter of considerable concern to the community and the court. My former office took particular concern to ensure that matters of that kind were given priority. The primary reason for that was that child victims seem to forget matters sooner than adults, and so it was important with that particular type of offence that that be given priority. During the latter part of my tenure, there was another emerging concern in the prosecution of serious sexual assaults in the Indigenous communities in the Kimberley. Those were also given particular priority, and the court itself assisted the system by assigning additional judges to the circuit towns to make sure that those matters were dealt with very fast. The reason for that fairly obviously was that a number of the communities had had large amounts of allegations arising out of them and the very viability of those communities themselves depended upon a fair and prompt resolution. Against that we have had the CCC wanting corruption allegations to be progressed with the same type of expedition and by very senior lawyers in my office or at the bar. We were not generally able to accommodate that to the same degree that we would accommodate child sex victims or Indigenous sexual assaults, but did our best nevertheless to assign senior lawyers in the DPP office to manage the briefs. Obviously, we did our best to ensure that they were given prompt attention, although, as I say, we were not able, in my judgement, to give them the level of priority of these specialist types of events for the reasons that I have explained.

That caused, I think, a level of disappointment by the commission, which made submissions, I understand, to Ms Archer, SC, to the effect that perhaps there should be an independent prosecution agency specifically dedicated to the prosecution of the crimes that had been identified through investigations by the CCC. That was not a recommendation that had my support. I saw that as simply removing resources from one area to another. The real issue, of course, is the delay in justice generally, which, presumably, you, Mr Chairman, are very much aware of. It is a systemic problem rather than one emanating from one particular type of criminal conduct. That is my response.

The CHAIRMAN: Can I just clarify that one of the recommendations from the Archer review was that the CCC be given a special prosecutor? Is that the submission that you are saying did not have your support?

Mr Cock: Yes, that was something that I did not support. I saw no point in that. It is unique. No other jurisdiction of which I am aware has such a functioning official. I must say that, for myself, I could not understand what arguments would sustain such an arrangement, which would entail a duplication of effort and resources and create some tension in the court systems between which prosecutor is given the priority to particular court dates that become available.

[10.15 am]

The CHAIRMAN: Mr Cock, one of the issues that has come up recently is the role of prosecutions in measuring the CCC's performance. The CCC has quite rightly responded by saying that convictions are not the main end of the game for the CCC; its role is to investigate misconduct. That may or may not, in some cases, lead to uncovering criminal activity, which might then lead to charges and a prosecution and may ultimately lead to a conviction. Do you think it is fair to say that, given that the prosecution and conviction side of things is really a secondary aspect to the main focus of the CCC, it probably reduces the weight given to the submission on the need for a special prosecutor?

Mr Cock: Yes; I respectfully adopt precisely the way you have expressed it. The CCC is there with not just an enforcement role, but also an educative role. An aspect of the enforcement role is, of course, the successful conduct of prosecutions of people who have been found to have acquitted themselves badly or perhaps criminally. That is obviously a function that is part of the role of the CCC. But it is not the predominant function, which is to ensure community confidence in the public sector generally and the police force in particular. That function can be achieved by a number of initiatives, which are all being actively embraced by the commission. I must say, I join with the commissioner in expressing concern about the unfairness that some reports have given to a suggestion that the CCC's performance is able to be measured by the number of successful prosecutions. I think that is way off the mark, myself, and I endorse your observation that, recognising, therefore, that one of the predominant functions of the CCC is not the successful conduct of prosecutions, the weight to be given to the recommendation to have a special prosecutor is diminished.

The CHAIRMAN: Separate to that, of course, is the issue of the CCC laying charges itself. My understanding is that the DPP is never the body that lays charges; it is either the police or, in this case, the CCC and in certain circumstances the DPP takes up the prosecution of those matters. I suppose there is a bit of what I understand is a misnomer out there that the DPP ought to be the one that lays the charges and not the CCC, which I would have thought was an impossibility. I am happy to be corrected by that from your experience. With your experiences, do you see there being any issue with the CCC maintaining its current powers to be able to charge individuals?

Mr Cock: No. I see no difficulty with the present approach continuing to operate the practice. Historically, Directors of Public Prosecution were established in Australia to ensure a separation between the investigative processes that led to a charge and the prosecution of that charge. Under that separation, it is obviously inconsistent with that separation for the DPP himself or herself to be the body that lays the charge, because to do that they become partly affected by the questions of the resource implications and others of the investigation process and they get too close to the investigators. One might then question their sufficient independence to properly evaluate whether

the public interest requires that prosecution to continue. With respect, Mr Chairman, I full endorse your summary of the situation that, throughout Australia and Western Australia in particular, the DPP does not lay charges, although it does review charges and may well change charges and may well charge something more serious or charge something less serious or abandon the charge completely. It has a role, but in my view, which is, I think, consistent with the view of both the former director and directors in other jurisdictions, the role is to be exercised or activated only once the charging authority, which is the police or investigator, has made the decision to charge. It is at that stage that the DPP office gets involved if the charge is provided to the prosecutor by that agency.

When the CCC was first formed, the inaugural commissioner, Mr Kevin Hammond, spoke to me about my view of the capacity of the CCC itself to lay charges. I can share with you that I took the view that it had the jurisdiction and power to do so and encouraged it to do so. I thought it was entirely proper, and an element of its investigation process that it also be authorised to lay charges. There has been some dispute about the power to do so. That was always overcome by having special constables who were in the CCC lay charges because there was no doubt about special constables' ability to lay a charge. That overcame any objections that there may have been about whether someone else in the CCC could lay a charge. That argument seems to have fallen by the wayside. No-one, as I understand it, has yet taken the point that the CCC cannot lay a charge. I support the present structure. I also I think it is appropriate in those circumstances for the CCC, if it wished, to seek preliminary advice before laying a charge, as the police sometimes do, but it does not invariably do that, nor should it have to.

Hon MATT BENSON-LIDHOLM: Is there a misunderstanding in the general community then? We call this the Corruption and Crime Commission. The commissioner, Roberts-Smith, talks mainly about misconduct. The community pushes parliamentarians to broaden, or not, the brief of something like the CCC. There seems to me to be some sort of misunderstanding then of the exact role of the CCC. You hear about the conviction rate from the journalist, whose report on this is poor, then you turn around and speak to the commissioner, who says, "Understand, that is not our brief, we really do tend to focus more upon misconduct in the public service." Given that the organised crime thing is not, from what I can see, entrenched in any statute of any great significance, maybe the sheer title of this particular commission is incorrect, because it really has more to do with corruption and misconduct rather than crime. I think there is a misunderstanding in the general community about exactly what the CCC is able to do. All people seem to want out of the CCC are prosecutions and people being locked up. When you speak to Len Roberts-Smith, it seems to me—I will not say minor—almost secondary to his thrust, which is primarily based upon misconduct and putting the onus back onto departments and agencies to control the goings-on in those agencies or departments. I suppose where I am going to then after that is to say that perhaps then, is there not a need for resourcing to be significantly improved for something like the CCC? You might be able to advise this particular committee that we need to be making some sort of recommendation.

Mr Cock: Whilst I do not profess to know much about the CCC's resources, I should say that additional resources at this stage without statutory change would not, I think, assist the CCC in living up to its name. It is not the Corruption and Crime Commission really at all. You are absolutely correct. The title is a complete misnomer. It is the public sector misconduct and corruption commission. That is what its present remit is under the statute. It has no authority to be involved in the investigation of crime or corruption or anything else unless it involves a public officer. Whilst there is a theory that a lot of organised crime and corruption in the general

community may have a link to a public officer, unless that link has been established, the CCC cannot start to investigate it. Whilst I do not speak for Mr Roberts-Smith, I think there is no doubt we are all agreed that the commission would be a far more effective body if it had some statutory power to be not hampered by the requirement that there be a public officer involved before it can commence an investigation. It may be that those investigations could end up finding a lead back to a public officer. But unless that is identified at the start, it cannot start and that is a significant impediment. It is a greater impediment than any resource issue.

Mr F.A. ALBAN: I think you have covered it, but you may want to clarify for me. My question is based somewhat on my local government background. I have heard considerable criticism of the delayed justice as you mentioned earlier. No-one will argue that child sexual assault cases are not a priority. But what I have heard continually is that someone who has been investigated by the CCC carries the burden of supposed guilt for the duration of two or three years, which affects their income, their livelihood, their chance of re-election and all of that, which I think you have covered to a degree. The time factor is very important. The quicker we can handle things, the better. I am not talking about miracles, but we need to be aware that two years between being accused and the time of a decision is probably a bigger burden than the decision at the end. It is very difficult for someone to say after two years, "I was really innocent the whole time." It would help our cause if you could suggest—I think you have already—ways of making that happen faster.

Mr Cock: To speak more generally to start with, prior to the Corruption and Crime Commission there was the Anti-Corruption Commission. The law that established that had a provision that kept secret any investigation. That was designed, I am sure, by those who framed it to reduce the adverse impact as you have just described, on an individual subject to an investigation or charge because the fact of the investigation was supposed to be a secret. Indeed, prosecutions were brought against people who leaked the fact that someone was being investigated; it was seen as that serious. But that led to a significant reduction of community confidence in the body itself because people get very concerned about powerful bodies that operate in secret. I must say that I think there was significant support for the view that was taken when the CCC act was enacted to abolish that secrecy. But the downside to that has been the one you have just described. The downside of the abolition of the secrecy that a person is being investigated and the fact that the CCC can now have public hearings is that the particular individual who is being investigated is subject to an immediate stigma. There is no doubt that if you throw enough mud, some of it will stick. It may well be that the person being investigated is really a victim of some malicious campaign, misunderstanding or error. You spoke of a two-year delay, but regrettably, it is greater than that because the CCC takes time, naturally, to properly conduct an investigation. Some of its investigations are long running, regrettably, but that is not its fault; it is the nature of the type of offence it looks at. Only when a charge is brought does the court time line start to run. Regrettably, at the moment, there is about a six-month delay in the Magistrates Court while those processes are carried out. There is then about a year's delay or so in the District Court if the case is committed to that court for trial. It may even be longer. If the criminal justice delay is about 18 months and the investigation delay can be 18 months or two years, you are talking three and a half years during which a person under investigation suffers a cloud over him, and I think there is uniform concern about that. The superficial approach of seeking to make it secret did not work as a protection. I think we have to look at other processes, and those may include some expedition of the criminal justice part of that delay. I point out that that is only probably not even half the delay. Even if you were to adopt the time lines that have been prevalent in New South Wales in recent

years, which is about a six-month delay between charge and resolution, you still go through an eighteen-month to two-and-a-half-year delay in the investigation anyway, so you do not cure the problem; you may reduce it a little.

[10.30 am]

The CHAIRMAN: Thank you, Mr Cock. I just recognise the attendance of the deputy chairman, Mr John Hyde, the member for Perth. Welcome John.

Mr J.N. HYDE: Thank you. Apologies for my late arrival.

The CHAIRMAN: I will just follow up on the question by Mr Alban and ask: would there be scope or merit in looking at the disciplinary proceedings aspect being streamlined in any way? Is that even a possibility to address some of these lags that we are speaking of?

Mr Cock: Yes, sir, as you would be aware, currently the jurisdiction of the Corruption and Crime Commission is to look at either misconduct or criminal or corrupt conduct. So, an investigation that it commences or, say, monitors may give rise to a criminal charge or it may give rise to something less than that which would ordinarily result in a disciplinary proceeding. Recent cases have disclosed that when the CCC conducts an investigation that results in a disciplinary charge emanating, the conclusions that were reached by the commissioner in the CCC investigation carried no weight so far as the decision on whether there has been a breach of discipline; and, in fact, the employer of that individual must commence afresh an investigation and reach his or her own conclusions. So we really double the time of further disciplinary action to happen.

It might be that one option is to have the CCC less actively involved in its own inquiries when there is only a breach of discipline. I say "only a breach of discipline" not to diminish the seriousness of it, but to distinguish it from what is a criminal behaviour. If in fact it looks as though a breach of discipline is what is going to be the outcome of the investigation, under the statute as it is presently formulated, for the CCC to go all the way to the end of that does not really advance the situation, because, as I think the Commissioner of Police said in the matter of Caporn, it does not assist him one iota; he has to start from scratch anyhow. It might well be that once the CCC realises that its investigation into a public officer is not going to produce a criminal charge, it would be better off immediately handing that over to the employing authority to start the time running on a proper disciplinary action and exercising its supervisory responsibilities, because the CCC can still monitor it and still be involved in making sure that a proper outcome is the result. At the moment, it continues to track that disciplinary matter down to the end of what it can do. There may well be reasons why it does it internally, but it does not assist the time frame because it cannot result in an outcome. It does not matter how clearly the CCC finds that a particular public officer has committed a breach of discipline; as we know, sometimes the officers will seek a review of that before the inspector. As we know, the former inspector at least was active in overturning some of those preliminary findings. In any event, the employing authority still has to start from scratch, and I think that is a real problem at the moment in the way in which the CCC exercises its jurisdiction in relation to misconduct.

Mr J.N. HYDE: You may have covered this, but has the alternative been explored to change the public service act and the Police Act provisions so that evidence gathering by the CCC could be deemed to be part of the disciplinary process? Is not that the other way of looking at it?

Mr Cock: That is a policy question, I think, on which I do not think I can make an observation really. Obviously, it is a solution, but it has its own difficulties, I must confess, because the statutory requirements of the disciplinary process are somewhat different from the very powerful

investigative powers that the CCC has. There is a citizen's rights argument that says, "An investigator should have lots and lots of powers but when you discipline me, I have to be given much higher levels of natural justice."

Mr J.N. HYDE: Yes, but Parliament, in terms of policy and legislation, is about to give the police the right to rock up to anybody without any suspicion.

Mr Cock: That is just part of the investigation, though. There are powerful policy reasons why investigators should have powerful powers to investigate, but the investigation cannot at the moment produce a conviction or a dismissal. If you want to move to dismissal or a conviction, you need to go into disciplinary processes or court processes, which people guard very precious. To suggest that we could convert outcomes that are produced by a tough investigative regime into a discipline or a criminal outcome cuts across all the freedoms that we so jealously guard by our disciplinary processes and our criminal processes. That is the policy issue.

The CHAIRMAN: I just want to follow up on the earlier comment. In regard to the disciplinary side of things, my understanding is that the CCC refers back to the department something in the order of 90 to 99 per cent of complaints referred to it. In terms of streamlining, I just want to clarify the earlier comment because my understanding is that it is doing that as much as reasonably possible. I think your comment was that with the remainder that it is fully involved in, maybe an extra level of caution needs to be taken; and, if it can pre-empt in any way that the matter is going to end up in a disciplinary fashion, probably it should refer it back to the originating agency or department as soon as possible.

Mr Cock: Yes, I can record my agreement with that statement. The CCC certainly refers and monitors many, many more disciplinary inquiries than it conducts itself. In excess of 95 per cent are actually managed by the agency or the employing authority. There is no doubt about that. The problem is that the two or three per cent that it does do are the ones that have the high profile. They are the ones where the time lines have dragged to ridiculously long periods of time, I am afraid. That is why it is a topical issue. Even though there are only a few—it may be only 20 or 30 perhaps—they are all prominent ones and they are all ones where we know the time lines were exceedingly long.

Hon MATT BENSON-LIDHOLM: These are obviously the more serious allegations of misconduct, are they not, that we are talking about where the resourcing is going to go?

Mr Cock: I am not sure about that. It may be that they are the ones that the commission perhaps has a much more complex view about than simply saying that they are the most serious. I do not want to speak for the commissioner, but I suspect that he would have a view that it is not just the most serious ones. Some of them, he might believe, could be well handled by the agency; it is the ones where he thinks the agency is not well equipped to do it.

Hon MATT BENSON-LIDHOLM: That was going to be my next point. Some of the agencies, perhaps because of their size, really do not have the same capacity for starters in the original process to be able to investigate themselves as some of the larger departments and agencies would obviously do. Could you comment at all about the inherent dangers, if you like, of these sorts of situations and perhaps how the government might seek to address these sorts of issues that stem from the serious allegations? I will not say that they are under-resourced, because they are resourced according to the size of the organisation. In your current capacity as special counsel to the Premier and the Public Sector Commission, are there any comments that you can make about

how those sorts of situations could possibly be handled, given the serious allegations that occur in smaller agencies relative to others that are obviously less well resourced? How would you recommend to us that we might go about making suggestions about how those sorts of situations can be addressed?

Mr Cock: The government has announced, I think, that it proposes to bring to Parliament legislation to amalgamate the functions of the Public Sector Commission and the Public Sector Standards Commissioner. At the moment, both those roles are separate under the Public Sector Management Act. It might be that the separation of those roles has left a bit of a gap in the superintendence by the public sector itself of its own disciplinary processes. Added to that is, I think, a widespread acknowledgement that the public sector's disciplinary processes themselves do not work very well. There are lots of reasons why the CCC has found it appropriate to step in and conduct investigations. I am not here in any respect to criticise the CCC for the number that it has conducted; indeed, some might say that it should have done more. But you can see why it has done it, because there is probably a gap between the Public Sector Commissioner's role, the Public Sector Standards Commissioner's role and the role of an agency's CEO who has quite complicated provisions of discipline to look after before he or she does what he or she is supposed to do. It might be that the amalgamation of the responsibility of the standards commissioner with the Public Sector Commissioner will create more credibility in the disciplinary process so that the Public Sector Commissioner himself will, once the amalgamation is complete, be in a better position to in fact superintend, or conduct himself, some of that public sector discipline in the role as employing authority. Then he or she can do what the outcome produces rather than the CCC producing an outcome and having to hand it over and have it done again. I must confess that I have some sympathy for that model because, I think, by creating a multiplicity of separate little structures in the public sector, we sort of create a few cracks and stuff falls through them, and the CCC has really had to come up and take an overarching responsibility. It might be that its burden would be lessened if we could get the public sector looking after itself better.

Hon MATT BENSON-LIDHOLM: So you are suggesting that that may well be the way that the government goes to get the public sector to better look after itself, certainly in relation to some —

Mr Cock: I think the government has to do that. Whether that frees up to the CCC is a different matter; I do not know.

Hon MATT BENSON-LIDHOLM: In relation to these agencies investigating themselves, though —

Mr Cock: Yes.

The CHAIRMAN: Noting the time, I ask members to draw their questions to a conclusion.

Mr J.N. HYDE: This really gets to the heart of the philosophy of this corruption-misconduct fighting body—that there are incidents that are not misconduct, but by the CCC undertaking an investigation, even a disciplinary issue, in a public way, it serves as a deterrent to corrupt behaviour and is really bringing transparency that internal disciplinary hearings do not bring. The very problems that you identify about the problems that we have with agencies is because they are not doing it in a transparent way and are perhaps covering up or sweeping it aside rather than actually dealing with the issue. It seems that every corruption body in the world goes through this phase where you get a couple of perception issues or people who are wrongly identified so therefore you want to take away from the corruption-misconduct fighting body its ability to

expose and be transparent. That is the philosophical argument that I keep going around with in circles with these bodies.

Mr Cock: I understand the general concern. For myself at least, I do not hear any statements that the government will be removing jurisdiction from the CCC; rather, it will be better facilitating the processes and the structure for the public sector to look after itself. Hopefully, if that can happen, the CCC, of its own volition, can perhaps better target perhaps fewer—it may not be fewer—matters where it needs to exercise its rights and powers to do a public disciplinary inquiry.

Mr J.N. HYDE: Can I pursue that? What we are looking at is a policy or an MOU in which the CCC would raise the threshold, rather than a legislative change saying that it is unable to go into disciplinary hearings.

[10.45 am]

Mr Cock: I cannot speak on policy, as you would understand. But if you had the public sector doing a better job itself, presumably the CCC would be more confident about letting the public sector do it. That is all I am saying. The other problem we have had is that the CCC has done a very public and very competent inquiry into particular public officers and when the public sector has then done the disciplinary inquiry, there has been the opposite outcome.

Regrettably, that has led to a significant diminution in public support for both the public sector and the CCC. It worked badly for both. It has not done any of us any good I am afraid. I am hoping to see changes that will ensure a better capacity for the CCC to target resources and produce very good outcomes that I am sure it is capable of.

The CHAIRMAN: Thank you very much for your comments to date. My understanding is that where the CCC uses some of its extraordinary powers to obtain evidence in its investigation, that evidence, by virtue of the fact that it has been obtained by the extraordinary powers, is not able to be admitted into court in any subsequent criminal proceedings. Can you just clarify that?

Mr Cock: There is some evidence that they can obtain by compulsion that is clearly inadmissible in the Criminal Court.

The CHAIRMAN: Is there any circumstance in a criminal prosecution in which the court has to ever weigh up the possibility of admitting some of the evidence obtained by the CCC, or does that never come up because of that issue we discussed?

Mr Cock: I am not aware of any *Bunnings v Cross*-type analysis of whether they should or should not allow evidence; it is all pretty much black and white as to the normal rules of admissibility—voluntariness—all those principles seem to apply.

The CHAIRMAN: Apart from that the only exception is the extraordinary powers and that is out of bounds.

Mr Cock: Yes.

The CHAIRMAN: Thank you. On that basis. I thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and a transcript returned within 10 days of 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 by these corrections and the sense of your evidence cannot be altered. Should you wish to provide 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.

One final comment is that, today we have been in closed hearing, Mr Cock. I want to ask you whether you have any reservations at this point about the transcript being made public, should the committee want to proceed in that way?

Mr Cock: No I do not, Mr Chairman.

The CHAIRMAN: Thank you for your time.

Hearing concluded at 10.47 am

