

**Division 28: Corruption and Crime Commission, \$34 122 000 —**

Ms A.R. Mitchell, Chairman.

Mr C.C. Porter, Attorney General.

Mr R.A. Macknay, Commissioner.

Mr R. Watson, Acting Executive Director.

Ms P.M. Mabbs, Director, Corporate Services.

Mr M.W. Hanrahan, Chief Finance Officer.

[Witnesses introduced.]

**The CHAIRMAN:** The member for Armadale.

**Dr A.D. BUTI:** I refer the Attorney General to the first dot point on page 346 under “Significant Issues Impacting the Agency”, which refers to the following —

The number of allegations received by the Commission in the 2011-12 financial year is likely to increase by 20.0% compared to 2010-11. This increase reflects greater awareness ...

Does the Attorney General expect that 20 per cent to stabilise or will awareness keep increasing? I know that is a bit difficult to answer because he has flagged in the third dot point that the focus of the commission will change. I presume that goes to organised crime. I turn back to page 345 and the 2012-13 budget estimates up to 2016 and note that the projected increases are quite small for the delivery of services and “Amount Authorised by Other Statutes—Corruption and Crime Commission Act 2003”. I have concern, given the increased awareness and the government’s intended change of focus, about whether he has given the CCC sufficient resources to deal with the matters it will presumably need to deal with.

**Mr C.C. PORTER:** In a moment, I will hand over to the commissioner and ask him to make statements, particularly about the complexion of the CCC’s work. The first point of the member’s question drew attention to the issue on page 346, which refers to a likely increase of 20 per cent in 2011-12 compared with the 2010-11 figure. This is what I will ask the commissioner to make some specific comment on. The complexion of the CCC’s work is diverse and changes substantially from year to year. Some years the allegations of a more serious nature are fewer; in other years, because something has been highlighted more publicly or perhaps because of the nature of some of the educative processes the commission is engaged in, there might be growth in an area of smaller allegations of misconduct. The complexion changes from year to year. I will ask the commissioner to comment on that in a moment.

The central point in the member’s question was that, inside, at least in the context of some evidence of an increase in allegations from one year to the next, the budget, as he will see, increases as a line item. Pursuant to legislation that will be introduced very shortly the CCC will have a new and substantive role. Will it be potentially financially equipped to undertake that role? I will make three comments: yes the CCC will gain a role, but under the legislative model we are proposing to introduce shortly, it will lose some functions, although it will have oversight. I am talking here about misconduct simpliciter, which will be largely dealt with by the Public Sector Commissioner, although with strong oversight from the CCC. Where there will be a role, a role will be lost. The CCC has underspent its budget over the past several years, so it is not as though its expenditure requirements are acute at the moment. We hope to have the legislation passed by the end of the year. I imagine that means the type of new role investigations we envisage for the CCC will start to flow in earnest towards the end of the 2012-13 financial year. If it is the case that there has been a misjudgement about the fact that there is a fair correlation between the work lost and the work gained, no doubt the commissioner will come back to me as Attorney General next year and say that the CCC needs further budgetary consideration with respect to this new role. I ask the commissioner to comment on that complexion of work and where that 20 per cent growth is coming from.

[11.20 am]

**Mr R.A. Macknay:** Member, bearing in mind that I have been with the commission for a little over six months, my advice is that public awareness has a great deal to do with the number of matters that are notified to us. The belief of the commission is that the increase in figures that the member alluded to is largely the result of public awareness. In the event that the planned legislative changes come about, there will be a change in numbers. I should say that the work done by the commission on that side of things at the moment is broken into three large groups: what might be described as serious misconduct—that is, misconduct that would generally be sufficient to ground a criminal charge of some kind; what might be called minor misconduct, which would be misconduct sufficient to justify terminating the public officer’s employment; and police oversight. There is an obligation on

police to notify us both of serious and minor misconduct matters and also what the act under which we operate describes as notifiable matters—that is, matters that are breaches of rules and the like. In the event that the proposed changes come about, as I understand, the government's intention is that the minor oversight would be removed from our bailiwick, which would have an effect on the number of matters that we deal with. But for many of those matters, of course, we adopt a general oversight approach and then carry out what are described as systems-based evaluations of the operation of a particular agency in relation to allegations of various kinds. It is the serious misconduct work that in fact takes up most of our time. Therefore, in the event that the changes do come through, we anticipate that although the numbers would diminish somewhat in relation to public sector misconduct, the work that we would actually have to carry out would not vary greatly.

I should say that since I have been commissioner, we have devoted some additional resources to police oversight, particularly in relation to allegations of excessive force by police officers. That is as a result of a report from the Joint Standing Committee on the Corruption and Crime Commission and also discussions that I had with various people before I commenced my duties, including the Attorney General. Without denigrating previous work done by the commission, it seemed to me that there was perhaps a need to adopt a slightly higher profile within that area. Clearly, work of that kind is also resource intensive, so if we maintain that profile at that level, I think we would certainly continue to require resources at the same level for that. Although we are commencing some very preliminary work on planning for the proposed organised crime capacity, we are not really in a position, I think, at the moment to make any estimate as to what changes would be required in relation to FTEs and the like with that work.

**Mr C.C. PORTER:** The commissioner, as he says, has been in that role for only six months, but he is obviously a fast learner because that sounds like the laying of groundwork for a potential future budget application with respect to the work, and that is to be expected. It may be that when the potential briefs start to flow pursuant to the organised crime investigation function that we envisage being passed by legislation that there will be either an amount of work commensurate to the amount of work lost or a gulf. If there is a gulf, the commissioner will come back through the normal budgetary cycle and seek further funding to allow for those investigations. If there is a gulf, as Attorney General, I would argue very strongly for extra funding because the point of this is to have the CCC become a robust investigative engine against very serious criminal conduct.

**The CHAIRMAN:** I ask that you keep your questions and answers a little shorter so that we can get through a few more questions.

**Dr A.D. BUTI:** Just following up on the investigation into the use of excessive force by police officers, I am encouraged by the fact that there may have been acknowledgement that in previous eras there was some concern in that area. It may already be available—if not, maybe the Attorney General will be prepared to provide it as supplementary information—but is there data on how many complaints of excessive use of force by police officers came before the commission and how many of those resulted in charges being laid?

**Mr C.C. PORTER:** My recollection is that the data previously available was by virtue of the parliamentary inspector's report. That data was of the nature that X number, which I think was in the 200s, of excessive force allegations had been moved by police to the CCC and only a very small number—two or three—had resulted in CCC investigation —

**Mr J.R. QUIGLEY:** It was 381 and two investigations.

**Mr C.C. PORTER:** That data is obviously publicly available. To the extent that the member's question was how many charges were successfully laid, I can say that it would not have been more than two because there were only two investigations. We may be able to get some updated data on the number of allegations that have flowed since the time of that parliamentary inspector's report and whether any have resulted in investigations. I think that is something we could take on notice here. I do not have that information to hand.

Obviously, this was a conversation that the commissioner and I had when the commissioner commenced in his role. Two investigations from 381 allegations is unquestionably insufficient. Again, that is not to malign the previous management or commissionership of the CCC; nevertheless, I think that any rational person would consider that an appropriately heavy focus was not being placed on the flow of those allegations up to the CCC. I have not heard a person dispute that proposition. Inside organisations such as the CCC, it is often the case that the focus gets turned onto a practice and in this case the practice was that very, very few allegations were being investigated. The focus in this instance was with respect to a number of instances of allegations of excessive force in which there seemed to be some significant merit to the allegations. Therefore, I imagine that over the longer run, that two from 381 batting average will change significantly. We can get the member any updated data that exists, but I will let the commissioner give the member an indication of that.

**Mr R.A. Macknay:** The act under which the commission operates requires that the commission in the first place build capacity whether it be within WA Police or the public sector generally. Our primary task is not one of

investigation. The act contemplates that we will pass that task to the authority in respect of which complaints were made concerning one of its employees. That has always been, and always will be of course, the course that the commission adopts for the vast majority of complaints of excessive force, and the police have quite sophisticated arrangements now for the receipt of complaints of that kind and for their investigation through either regional investigations or their internal investigations unit. The commission in the past has always adopted quite a high profile in the review of investigations by police internal investigators, but did not in practice investigate a great number itself. Since I have become commissioner, we have undertaken independent investigations of eight matters over the past six months.

These matters are resource intensive. Of course, the difficulty with allegations of this kind is that very often, as I am sure the member for Mindarie would be aware, there is no evidence other than the evidence of the person, usually arrested, and the arresting officers. There are difficult choices to be made as to which matters to investigate. Very often, an investigation will prove fruitless. Nonetheless, the decision I have taken is based partly on the basis that I think it is probably salutary that the commission is seen to be adopting a more active role in these matters. I am most interested in seeing the methods used by similar agencies, in particular in New South Wales and Queensland. One of my more pressing tasks is to find time to visit those agencies to have discussions with the relevant people there to find out the approaches taken.

[11.30 am]

**Mr J.R. QUIGLEY:** In relation to the policing agencies?

**Mr R.A. Macknay:** In relation to investigation.

**Mr J.R. QUIGLEY:** Of police?

**Mr R.A. Macknay:** In relation to allegations of excessive force.

**Mr J.R. QUIGLEY:** Yes, that is right.

**Mr R.A. Macknay:** I have seen that in New South Wales, and it is my understanding, alternative dispute resolution methods have been adopted by the New South Wales Police Force to broker allegations of this kind, and it would appear they have brought about excellent results in terms of a diminution of the number of people who are ultimately dissatisfied with their treatment by police. It seems to me that although in this state that would ultimately be a matter of responsibility for Western Australia Police, it would be something that I would be able to make recommendations on, and so I am most keen to make inquiries in relation to that in particular when I am able to get there.

**Mr C.C. PORTER:** As the commissioner points out, whether or not there was some form of alternative dispute resolution with respect to complaints against police conducted by the police or any other agency would be a policy decision of government. I, personally, would have to be strongly convinced; I am not aware of what goes on in New South Wales, but I would have a very good look at it, but it is a matter of policy.

**The CHAIRMAN:** Member for Armadale, are you seeking supplementary information?

**Dr A.D. BUTI:** I am.

**The CHAIRMAN:** Could I clarify the information?

**Dr A.D. BUTI:** Yes; through the Attorney General to the commissioner, is there capacity within the commission —

**The CHAIRMAN:** Sorry, member for Armadale, I think you are asking an additional question.

**Dr A.D. BUTI:** Additional, yes.

**The CHAIRMAN:** Were you seeking supplementary information from the Attorney General?

**Dr A.D. BUTI:** Sorry, yes, that is right—okay.

**The CHAIRMAN:** No, you are not; okay.

**Dr A.D. BUTI:** I was—was the Attorney General going to agree to that?

**Mr C.C. PORTER:** The answer has been that, as opposed to two from 381, in the past six months eight have been commenced. But we do not have the number of referrals, if you like, from police. I am sure we could get that information for the member; I would be happy to do that out of session.

**Dr A.D. BUTI:** I thank the Attorney General. I now have a further question—a follow-on question.

**The CHAIRMAN:** Member for Mindarie, did you have a further question on this topic as well?

**Mr J.R. QUIGLEY:** My question will be on this topic, yes.

**The CHAIRMAN:** We will stay with the member for Armadale then.

**Dr A.D. BUTI:** Mine is very brief. Is there capacity and inclination within the Corruption and Crime Commission to review previous investigations or reviews by the CCC in regards to excessive use of force?

**Mr C.C. PORTER:** I do not think I can answer that question, so I will hand that to the commissioner.

**Mr R.A. Macknay:** That is already done, member, in the sense that if somebody is dissatisfied with the police investigation, then they would ordinarily come to us.

**Dr A.D. BUTI:** But what about if they are dissatisfied with the CCC investigation—the CCC report?

**Mr R.A. Macknay:** Our legislation provides for a parliamentary inspector, and he would routinely take complaints of that kind from people who consider that our pursuit of a matter was not as thorough as it should be. Since I have been commissioner, I have made a practice of personally reviewing most matters when there has been a complaint to the parliamentary inspector of this kind, to see whether or not in fact we ought to proactively have another look at it ourselves. That has occurred in at least one case I can think of. In other cases the parliamentary inspector will pass something back to us and we will then conduct further inquiries in relation to it.

**Mr C.C. PORTER:** Member, the process is that the police arrest someone, there is a complaint about the circumstances of the arrest, that complaint goes to the police, they investigate it, and it may be referred up—are they all referred up?

**Mr R.A. Macknay:** With complaints, they would ordinarily be referred back to the police for investigation themselves, with a review by us in some cases.

**Mr C.C. PORTER:** So, the process is from police, CCC oversight, a response back to police, which may involve further investigation from police, or, in a small number of circumstances, an independent and fresh investigation by the CCC. If the complainant is dissatisfied with the CCC's independent investigation or the CCC's decision not to independently investigate, then of course that person goes to the parliamentary inspector, as the commissioner has noted. With respect to the University of Western Australia academic who brought all this into sharp focus, as I understand the position that matter had gone up to the CCC and the CCC had, in effect, referred it back down to the police and there was a level of dissatisfaction with that. When the individual came to see me, I said, "You need to send this to the parliamentary inspector", and the individual did. The process is long and perhaps a bit cumbersome, but ultimately the result there was that the parliamentary inspector thought the matter could have been more fulsomely dealt with, and it is and will be. I do not think the mechanism is perfect, but I am yet to have a slightly better mechanism suggested. With the reforms that the government is engaging in, although misconduct simpliciter will go, largely, to the Public Sector Commissioner, that will not be the case for police. The rules and procedures that apply as between the CCC and police will be the same.

**The CHAIRMAN:** Does the member for Mindarie have a further question on this topic?

**Mr J.R. QUIGLEY:** Certainly.

There seems to have been a slip between cup and lip somewhere along the line. I have gone back to the genesis of the CCC, which was really Mr Justice Kennedy's royal commission into police and his interim report of February 2002.

**The CHAIRMAN:** Member for Mindarie, I think you are asking another question.

**Mr J.R. QUIGLEY:** I am, on this topic.

**The CHAIRMAN:** Can you just refer me to a page and a line item?

**Mr J.R. QUIGLEY:** Certainly; the second dot point on page 346 of budget paper No 2, which is the statement that the commission has increased the number of misconduct investigations into police. The interim report of the Kennedy royal commission, which came from a round table conference involving the police union, the police, the Director of Public Prosecutions and all stakeholders, agreed on the necessity for an external body to investigate police. The debate was whether that body should also have a crime commission power as well. I think the commissioner has already mentioned Queensland and New South Wales, where I think they have separate bodies looking at the police separate from their crime commission; in this state it was fused. But the inception of the CCC was driven by the commission's report that there needed to be an external body to look at complaints. When we look at the report of the Joint Standing Committee on the Corruption and Crime Commission of September 2011, in which it noted that there had been two investigations out of 381 referred complaints, clearly what was intended by the royal commission was not being delivered. I am mindful that the commission is about to change its end focus onto organised crime, which we will come to in a moment, but the ramping-up to an adequate level of investigations into police is going to be a significant burden on the CCC's

resources in any event, is it not? It is just not happening—it has not been happening prior to the present commissioner.

**Mr C.C. PORTER:** I think that is a question loosely related to the budget but substantially about policy.

**Mr J.R. QUIGLEY:** The policy drives the budget.

**Mr C.C. PORTER:** My observations of that would be as follows: the first is that the CCC is a well-provided-for organisation in terms of budget and has had significant underspends in its budget over the past several years.

**Mr J.R. QUIGLEY:** Correct.

[11.40 am]

**Mr C.C. PORTER:** I do not think there is any dispute that the parliamentary inspector's observation of two independent investigations out of 381 referrals represented an insufficiency—if not, a significant insufficiency. I have had that conversation with the commissioner and there is no disagreement about that. It is now the case that we are seeing a growing number of independent investigations. That the previous failure—let us call it that because it was a serious insufficiency—was because of budget does not ring true to me, because there is a large budget with an underspend. It was a question of culture and focus, and a non-malign misjudgement about the importance of directing resources from different potential investigations to this type of investigation. That is a misjudgement that might occur culturally in an organisation over a time, but it was not linked to resourcing. Two, with respect to the Kennedy royal commission —

**Mr J.R. QUIGLEY:** My question at this time is: is there capacity now within its resources to both investigate organised crime and do a proper job in relation to the police agency?

**Mr C.C. PORTER:** I think that is a fair question and it is one we will reassess on a year-by-year, budget-by-budget basis; however, the Kennedy royal commission that the member spoke of, as well as identifying the role for a CCC-type body in precisely the area we are now discussing for investigations and independent investigations of police, also recommended that the body have a fused role of precisely the type that this government is now moving towards empowering the CCC to undertake, which is independent investigation of organised crime. In fact, the Archer review noted and reaffirmed that that was also an approach and finding of the Kennedy royal commission. Getting back to the member's point, as I answered to the member for Armadale, some functionality will be handed from the CCC to the Public Sector Commissioner and that will involve a freeing up of some resourcing. It will then be required to take on a significant role in investigating organised crime. I would imagine that, in terms of the expenditure of resources, that role will ultimately require some form of increase to the CCC's budget, but I do not think it will be a very sudden thing; we will look at that. Let me say that I cannot accept that the failure in this area was a failure of budgeting or an insufficiency in budget. I am quite happy for the commissioner to make any comment he wishes to.

**Mr R.A. Macknay:** My understanding, Mr Quigley, is that the Kennedy royal commission report referred to oversight of the police rather than investigation of the police. With respect, it is important to make that point. It would be easy to misunderstand the discussion to the effect that it means that no-one is investigating these allegations of excessive force, which are a form of misconduct. They are almost always investigated; in some cases they have been investigated at a local level and very often, if they were significant, they would be investigated by the police internal affairs unit. As the member is of course aware, an investigation involves such mundane tasks as the taking of statements from witnesses, and an investigation by the commission involves precisely that. It is open to the commission. The commission has always allowed the police to undertake those mundane tasks of ascertaining who the relevant witnesses are and obtaining statements, and then, in the event that the commission is not happy with the apparent outcome of an inquiry by the police, it can review that investigation by the police.

The review of an investigation might, in terms of its effectiveness, be as effective as an investigation carried out from the outset by the commission would be. It is important to appreciate that, although historically not a lot of matters have been investigated ab initio by the commission, the commission had routinely in appropriate cases carried out reviews of investigations done by the police. The act under which we operate, as I have already said, requires this and creates a function of helping to prevent misconduct by building up the capacity of agencies to investigate misconduct themselves. The learned materials in this area are plain that it would be quite unproductive to take away from an agency its ability to investigate on its own; that would be deleterious to the ultimate functioning of the agency. The most effective method of rooting out misconduct in an agency is to build up within the agency itself the capacity to deal with misconduct and to create a culture mitigating against misconduct. That is the primary task of the Corruption and Crime Commission across the public sector, including the police. To take away from the police investigation of matters simply because they involve some allegation of excessive force would be contrary to the task that the commission was given and would be contrary to the recommendations of the Kennedy royal commission, with respect.

**Mr J.R. QUIGLEY:** This is my last question on this. This does not come from me as a former barrister or lawyer or something like that, but comes from me as the member for an outer metropolitan seat. The feedback I get from constituents is that, since the instigation of the CCC, there has also been a devolution of the investigations to local areas. Therefore, in an area such as Mindarie, which after hours is policed from Joondalup, if there is a complaint, it is investigated by the station or the district that the complaint is about. Members of the public then complain that even if they write to the CCC or the commissioner with a complaint about the way they were dealt with by the police, although previously there was an internal investigation bureau or branch, that no longer exists, and it has all been devolved out to the districts. I wonder, in view of the commissioner's answer, whether the devolution of that specialised investigation into these things out to a district level from where the complaints came is actually building capacity within the agency to deal with these matters.

**Mr C.C. PORTER:** I think that is a very interesting question and I think that the commissioner has previously made a very good point, which is this: two from 381 means that they were previously two independent—*de novo*—investigations by the CCC of the 381 matters it reviewed. It does not mean, and I think there is an unfortunate tendency for the public to think this, that 379 matters that the CCC had in its possession at one time or another were just ignored. As the commissioner notes, they were reviewed. Sometimes that review indicated that there was not a need for further police investigations and sometimes that review meant that it had to be sent back to police for reinvestigation because there were problems with the original investigation. There seems to be agreement that two independent investigations by the CCC out of 381 is insufficient and I have no disagreement there. It is more difficult to say, in any cluster of matters for review, what the appropriate number is for independent investigation. Is it two from 381, is it eight or is it 28? That would of course depend on the matters that are coming up and what the CCC discerns as the quality or otherwise of the investigation. When they are reviewed by the CCC and either no action results from that or the requirement is that the CCC sends them back for reinvestigation, that reinvestigation, as I understood it, largely happens through the internal affairs unit of police. I do not have an answer about how much of the original police investigation or reinvestigation occurs outside of internal affairs. It is of course a matter in the province of the Minister for Police. However, I think it is a good question because my view would be that it would always be preferable to have the police investigations about things such as excessive force undertaken at first instance by internal affairs, who maintain a degree of separation from local police stations.

**Mr J.R. QUIGLEY:** That is right.

**Mr C.C. PORTER:** I do not have an answer for the member for Mindarie. He asks a good question and it is something that, in conjunction with the Minister for Police, I am very happy to get information about for the member. Nevertheless, there is not a matter of practice for the CCC. The CCC may take a view about who should be conducting the initial investigation inside the police or a reinvestigation inside the police.

**Mr J.R. QUIGLEY:** With respect, it is a matter for the CCC insofar as the commissioner has identified part of its charter as building the property capacity within the agency. It was always the internal investigations branch and internal affairs unit, but with the dissipation of the internal investigation branch, which looked at all these minor matters across the state and metropolitan area—everywhere—there seems to be a dissipation of that expertise and capacity.

**Mr C.C. PORTER:** I will invite the commissioner to offer any observations he can, freely. He may simply know more as a matter of mechanics and statistics about where the investigations originate from inside the police.

**Mr R.A. Macknay:** My understanding is that there is a central police body, the Police Complaints Administration Centre, that receives all complaints against police officers and then distributes them.

Some of them go to the internal affairs unit—there is an internal affairs unit—and some of them, as the member says, are sent out to regional centres. That devolution apparently occurred during the 1990s, so it is not a recent matter. PCAC then carries out quality assurance in relation to the investigations that occur, with a view to trying to ensure that they are done properly. Obviously on occasion there will be discontent with the investigation that is carried out, hence our involvement at times. That is, in fact, the administrative position in relation to the police.

[11.50 am]

**Mr C.C. PORTER:** It may be the case—I do not know whether the commissioner knows—that where matters are reviewed by the CCC and then referred back to the police because of some insufficiency in the investigation identified by the CCC, the usual practice is that those matters go to internal affairs rather than be devolved.

**Mr R.A. Macknay:** I am told that it would depend on the seriousness of the allegation.

**Mr J.R. QUIGLEY:** But generally they would go to the IAU?

**Mr R.A. Macknay:** Well, no; it would depend on the seriousness of the allegation.

**Mr C.C. PORTER:** These are statistics that the police would also be able to provide. My experience, on the few occasions that I prosecuted against the police, is that the instructing officers were always from internal affairs. I presume they were serious matters. But I take the point that the member raised—that there is a public confidence issue in devolution.

**Mr J.R. QUIGLEY:** The commissioner referred to mundane statement taking. I know the mundane task involved in statement taking in minor matters, and that task should probably be done by the police. But is the commission itself comfortable with the fact that these matters may go back to the very district from which the complaint has been generated? I ask that question because that causes the public some disquiet.

**Mr C.C. PORTER:** Sure. I will hand over to the commissioner. In terms of the commissioner now having enlivened eight independent investigations—I would imagine that those eight arose out of similarly hundreds of referrals up from the police—the commissioner might be able to comment on whether, generally speaking, the quality of the police investigation at first instance was found to be appropriate by the CCC; and, secondly, whether there are any misgivings about a secondary investigation that has been referred back by the CCC being devolved.

**Mr R.A. Macknay:** I think that in any organisation there is always room for improvement. There would be a concern, I think, if the allegation was a serious one and it was dealt with by officers who knew the person of interest well, for example. There might be occasions on which the commission would have some concerns about regional investigations. Western Australia is, of course, a place in which there are many remote police stations, and there is always a question of resources, necessarily, for the police as with anyone else. So if there was a complaint against an officer in the Kimberley, for example, no doubt it would be a very expensive business for an IAU officer or officers to be sent there for an investigation. But I think that if the matter was a serious one involving substantial injury or something of that kind, the commission would have a concern if the case was dealt with by officers who were well known to the officer of interest.

**Mr A.J. WADDELL:** I refer to page 346 and the fourth dot point under “Significant Issues Impacting the Agency”, which states —

The rapid evolution of information technology and the related changes to the legislative and regulatory environment requires the Commission to allocate substantial resources to keep pace with these changes.

However, in the actual financial figures in the budget, there does not appear to be any great allocation of the kind that might be implied to enable the acquisition of such information technology assets. Can the Attorney General explain what is meant by that dot point and where that investment is occurring?

**Mr C.C. PORTER:** For 2012–13, the net amount appropriated to deliver services—the member will see this line item in the budget each year—is close to \$32 million. The Corruption and Crime Commission was set up many years ago. That is a recurrent expense. There is also a capital expense of \$1.7 million in 2012–13. Some portion of that recurrent budget will be applied to information technology. To use an example, I would imagine that the purchase of software in some instances would look like recurrent expenditure rather than capital appropriation. I do not know how that would work with respect to each and every example. But having toured the CCC, I know that it was set up and established with an original capital budget that provided for some pretty whizz-bang equipment, if I can put it that way. That equipment will require continual updating. There are limits to what we would say publicly about the nature of that equipment and what its capacities are and what that money is being spent on. But there is \$1.7 million for fresh capital expenditure. Some portion of the recurrent budget would go to the type of technology that I think the member is describing. I am very happy for the commissioner to talk about that to the extent that he wishes.

**Mr R.A. Macknay:** I would prefer that it remain in general terms, if I may, because obviously there are operational issues, but, as can be seen, there are allocations in each of the forward estimates for capital expenditure of that kind. The commission has held off making some purchases and making decisions, because obviously in the event that the commission is tasked with the matters the subject of the government’s proposals, the commission’s role will change considerably, and the need for particular assets will change commensurately.

**Mr J.R. QUIGLEY:** Madam Chair, may I ask a supplementary?

**The CHAIRMAN:** Member, is this a further question on this dot point?

**Mr J.R. QUIGLEY:** I refer to page 348—we raised this, I think, in last year’s estimates—fit-out and refurbishment, with an estimated total cost of \$8.2 million and a forward estimate for 2013–14 of \$7.9 million. I do not have the *Hansard* in front of me, but my recollection is that that is to make provision for the end of the lease period at 186 St Georges Terrace and the need for relocation, if necessary. Is that correct?

**Mr C.C. PORTER:** What is the member referring to?

**Mr J.R. QUIGLEY:** I am referring to page 348, works in progress.

**The CHAIRMAN:** Member for Mindarie, that is not quite a further question on this dot point, but I will let it continue.

**Mr J.R. QUIGLEY:** I want to know whether that is related to the organised crime function or whether that is an end-of-lease provision.

**Mr C.C. PORTER:** It is not to do with the organised crime function. The reality is that if, as inferred, the provision to the CCC of the organised crime function, which we hope to achieve by legislation, requires further expenditure, the likelihood is that a significant amount of any further expenditure would turn up in the capital appropriation at page 345, as the commissioner notes, because the investigative role of the CCC would be enhanced. I think it is the case that those costs that the member is talking about are previously anticipated costs with respect to refit and lease.

**Mr R.A. Macknay:** Yes. The figure that Mr Quigley mentioned is an allowance that relates to the end of the first term of the commission's lease at 186 St Georges Terrace.

**Mr J.R. QUIGLEY:** Thank you, commissioner. That is all I wanted to ask at this stage.

**Mr C.C. PORTER:** Member, the police requests for capital appropriations for the investigation of organised crime are never ending, and interesting and exciting, and I am sure they will flow from the CCC in due course as well.

**Mr J.R. QUIGLEY:** I thank the Attorney General. I think I am on the list to ask that question in a moment, whenever I am called.

**The CHAIRMAN:** Member for Mindarie, your new question.

**Mr J.R. QUIGLEY:** Thank you, Madam Chair; it has come around quickly! I refer to page 346. The second item under the heading "Desired Outcomes" is "reduced incidence of organised crime". I assume that would be the new function that both the commissioner and the Attorney have spoken to. In the hearings and investigations before the Joint Standing Committee on the Corruption and Crime Commission on this matter, the previous commissioner put the cost of developing a mature organised crime portfolio or investigative capacity within the CCC at \$42.13 million. Is that the current view? I know that the commissioner has been in the chair for only six months, but the CCC must have been looking at this. Is it still the view that it would cost in excess of \$40 million to develop this mature capacity to look at organised crime?

[12 noon]

**Mr C.C. PORTER:** What does the member say was said in the parliamentary committee? I follow these things somewhat closely and I do not recall the context of that figure.

**Mr J.R. QUIGLEY:** I have the reference here. The previous commissioner said—that was a finding in the report—that to develop a mature organised crime investigation unit would cost in excess of \$40 million. This is the report by Hon Nick Goiran relating to organised crime. Can the current commissioner give an estimate of what the cost will be to develop a mature organised crime investigative capacity?

**Mr C.C. PORTER:** The commissioner will give his response in a moment after I make a couple of observations about that. There are often two divergent views when any organisation receives a new function: there is the view that emanates from the organisation about the cost of the function and the view that emanates from Treasury about the cost of the function, and often there is a fair bit of daylight between those two views. It is often the case, particularly in my experience with police, that the amounts nominated to undertake a function at first instance, particularly for capital, are very large amounts to the extent that if they were always granted in their entirety, the recurrent and capital budget for the police would eat up greater and greater amounts of the total budget. It would obviously be the case that there would be a cooperative sharing of physical and recurrent resources between the CCC and police. However, I have to say to the member that I think the estimate of an additional \$42 million for the CCC to undertake a role as envisaged by the legislation that will be introduced shortly is more than a gold-plated assessment. I do not know whether the commissioner has any preliminary views on that but certainly we have not got down to the point of discussing the brass tacks of any potential future increases in the budget, whether recurrent or capital. Once the legislation is bedded down, much would flow from how many briefs for investigations are put to the CCC and how many the two commissioners determine to investigate.

**Mr J.R. QUIGLEY:** When the Attorney General says "briefs for investigation to the CCC", that will not be briefs put up by the police; the CCC will be able to initiate its own briefs, will it not?

**Mr C.C. PORTER:** It can be both. The committee that will make the determination about whether or not a matter is investigated by the CCC will be a committee of three—the Commissioner of Police and the CCC commissioner, and we added a mediator between the two. That committee will make the decision. Where the genesis investigation emanates from—that is, who alerts the CCC or this committee to a potential investigation—could be the CCC, the police, the Australian Federal Police, the Australian Security Intelligence Organisation or another organisation. The genesis of the investigation will not necessarily be within the ambit of the CCC in the first instance. Nevertheless, the member is right; this is not an extra power that the CCC will have. The commissioner may have some views about the budgetary implications in the long run.

**Mr R.A. Macknay:** I presently have no views on that. However, I seem to recall being asked to see if we could provide some preliminary indication that, in circumstances for reasons of parliamentary privilege, I am not at liberty to divulge. We might have something in the not too distant future, but it would necessarily be guesswork.

**Mr J.R. QUIGLEY:** I go back to page 137 of the joint standing committee's report where it sets out a table provided by the CCC —

**Mr R.A. Macknay:** I had that drawn to my attention recently. I am not familiar with the document that the commissioner was utilising when he provided that information.

**Mr J.R. QUIGLEY:** It was \$42.1 million over a five-year period.

**Mr R.A. Macknay:** Yes. I had that drawn to my attention very recently.

**The CHAIRMAN:** I ask the commissioner to respond only when the minister asks you to; you need to go through the minister.

**Mr C.C. PORTER:** I make the point that that \$42 million is over five years; it is not \$42 million a year.

**Mr J.R. QUIGLEY:** No, it is not. I was looking at the out years in this budget. There does not appear to be any extra provision.

**Mr C.C. PORTER:** No, and that may well need to be considered. That \$42 million is over five years. That response was given on the basis that the CCC kept everything it had and on top of that received a serious and organised crime function. That is an estimate. Looking at the estimates that came from the CCC, that was \$5.6 million, \$8.2 million and so forth over the out years. I do not think we are comparing apples with apples. As I said to the member for Armadale, it may be the case that when that committee that we have spoken of starts to allocate investigations to the CCC, it considers that additional resourcing is required to allow for the investigation of the type and quantum that flows, but we do not know what type and quantum will flow yet and we will consider that in the context of the 2013–14 budget.

**Mr J.R. QUIGLEY:** That would perhaps require extra capital for technology et cetera.

**Mr C.C. PORTER:** It may require either or both extra resourcing for capital and recurrent expenditure. All that would depend on the number of briefs that were approved by the committee of which we have spoken and the nature and investigative tasks that had to be undertaken pursuant to those referrals.

**Mr J.R. QUIGLEY:** I turn to page 346 of the budget. When we talk about a new organised crime function, the commission of course already has an organised crime function. It is a fairly powerful organised crime function, is it not? The CCC has exceptional powers that can compel witnesses to give answers in circumstances when they ordinarily could not, if it were adjudged to be that sort of investigation, plus it can issue fortification warning and removal notices. However, I see on page 347 that there has not been one referral by the police to the CCC of those matters. In paragraphs (b), (c) and (d) on that page, the CCC appears to be stressing that it has the capacity but there has not been a referral. In the 2011–12 and 2012–13 budgets, the CCC is saying that if it gets a referral, it could do it within seven days. These are significant powers. There was an expectation, I think, by the public that fortifications would be torn down and that bikies would be brought up and made to answer questions about their cohorts et cetera, but there have been no referrals. Has there been any liaison between the commission and the police as to why the police are not referring these matters?

**Mr C.C. PORTER:** Four years ago I sat in the very chair the member for Mindarie is sitting in and asked Hon Jim McGinty, the then Attorney General, almost precisely the same question.

**Mr J.R. QUIGLEY:** Will the Attorney General give me Mr McGinty's answer, too?

**Mr C.C. PORTER:** He handed over to the then commissioner. My question was whether there was some form of cultural or demarcation reason that this was not happening. The commissioner's answer then, as I recall, was that there was no cultural or demarcation reason for it. I will ask the commissioner in a moment to give an explanation for why those applications have not flowed; and they have not flowed.

**Mr J.R. QUIGLEY:** The public still see these big fortifications and ask what is going on.

**Mr C.C. PORTER:** A primary reason for doing what we intend to do in terms of granting a more self-reliant power to investigate serious and organised crime is to fix this problem by another method. The commissioner may have something he wants to volunteer about his views as to why these applications have not flowed.

[12.10 pm]

**Mr R.A. Macknay:** I can say, with respect, that the commission does not have wide powers in relation to organised crime presently; it really has no powers in relation to organised crime. What the commission does have is a quasi-judicial jurisdiction to entertain applications from the Commissioner of Police to grant the Commissioner of Police what are described as exceptional powers within the Corruption and Crime Commission Act. The Commissioner of Police for a little while, if one looks back historically over the years, did make use of those powers. In recent times he has made little use of them. I can say, without going into details, that there has been liaison between my office and WA Police, but no application has been made during the current financial year. It seems to me, with respect, in the circumstances of the commission as it is presently organised, it is not asked to investigate organised crime, it is not equipped to investigate organised crime, and it would not be appropriate for the commission to approach the WA Police commissioner with a “please explain” couched in polite words as to why the commissioner chooses not to exercise the jurisdiction that is available to him. Those matters are necessarily matters for the WA Police, with respect.

**Mr J.R. QUIGLEY:** I understand that. We regard this as a very important area for the Attorney. Although there is no allocation in the budget, under the proposed system there will be references to the CCC, which will have some capacity to instigate these investigations. How will that change? If the police are reluctant to utilise the CCC, how will it change?

**Mr C.C. PORTER:** I think that revolves around the mechanism by which an investigation will be enlivened.

**Mr J.R. QUIGLEY:** That is probably a policy matter for a later date.

**Mr C.C. PORTER:** Probably, but as the commissioner points out, it is probably an overstatement to describe the existing powers as powers to investigate organised crime. It allows the police by application to receive that capacity from the CCC, particularly in hearings and fortification matters. That has not happened. However, it is appropriate that the commissioner pointed out the mechanism of the mediator. There will therefore be the Commissioner of Police, the CCC commissioner and a mediator. It may be in the matters that come before that committee that the CCC has come up with an idea for an investigation pursuant to some other investigation or knowledge, which will be brought to the committee, and there must be agreement on that by the committee. It is not relying on one arm of government, being the police, to make an application to another arm of government. It means that matters can be brought before this committee and a determination needs to be made one way or another on whether the CCC will investigate. My instinct tells me that that type of referral mechanism will mean that there will be a greater number of referrals than there have been previously.

**Mr J.R. QUIGLEY:** My final question in this area relates to something the Attorney General said in a previous answer on the costs for the CCC in the organised crime ambit of this portfolio. The Attorney General’s throwaway line was that there would obviously be a sharing of resources between the CCC and the police. There has not been much of that happening so far by way of applications brought by the police and so forth. Has any agreement been struck between the commissioner and the WA Police on a sharing of resources in the organised crime portfolio? What confidence do we have that the police will cooperate in this matter?

**Mr C.C. PORTER:** No, there has been no agreement, and the question is premature. The reason there has been no cooperation to date is that no application has flowed so that there has been nothing to cooperate over, to be blunt about it.

**Mr J.R. QUIGLEY:** That is what I am concerned about with the police’s attitude to the CCC.

**Mr C.C. PORTER:** The fundamental mechanism is different. At present the mechanism is an application from party A to party B. If party A determines that the application is not to be made, that is the end of the matter. We will now have a committee comprising A, B and C to which matters will go for hearing. All members of the committee will have to agree, but no one party will be the gatekeeper to those matters being considered by the committee.

**Mr J.R. QUIGLEY:** No, but when the police are handing over intelligence to the CCC, there will have to be a culture on the police side that all their intelligence will go across to the CCC. I remember a large, very disparaging anonymous article in the newspaper in “Inside Cover” by the anonymous police officer called “Deep Throat” saying, “We don’t trust the CCC.” That is cultural. How do we break that? The resources are not in the budget for the CCC to do that by itself. As the Attorney General said, the CCC will have to do it by cooperating with the police on resources.

**Mr C.C. PORTER:** I do not intend to comment on anonymous articles with less than inventive names presented for the source. I honestly say to the member that in my observation that level of distrust is highly overstated.

**Extract from *Hansard***

[ASSEMBLY — Wednesday, 30 May 2012]

p340b-350a

Chairman; Dr Tony Buti; Mr Christian Porter; Mr John Quigley; Mr Andrew Waddell

---

There is a very good relationship between the two commissioners and the two organisations, and that is notwithstanding that they are often investigating matters one to the other in terms of the CCC investigating police. But the relationship, it seems to me, is a very healthy and cooperative one.

**The appropriation was recommended.**