

**Division 47: Corruption and Crime Commission, \$34 637 000**

Mr I.C. Blayney, Chairman.

Dr K.D. Hames, Minister for Health representing the Attorney General.

Mr R.A. Macknay, Commissioner.

Mr M.J.W. Silverstone, Executive Director.

Mr M.W. Hanrahan, Chief Finance Officer.

[Witnesses introduced]

**The CHAIRMAN:** Member for Butler.

**Mr J.R. QUIGLEY:** I shall not be long on this section, but a couple of questions I have for the minister are repeats from the estimates hearing of last year, because there does not appear to have been any advance. My question relates to the use of exceptional powers provisions within the CCC legislation, and I note that there was budgeted to be one —

**Dr K.D. HAMES:** Has the member said which page he is on?

**Mr J.R. QUIGLEY:** Sorry, page 593. There was budgeted to be one application in 2012–13; but the estimated actual is none, and the budget for next year is one. I note that the commission itself in the budget papers on page 592 says —

The Commission continues to seek opportunities to promote the use of these powers.

This Parliament gave the CCC exceptional powers in relation to organised crime, but can the minister give any explanation as to why they are not being used, and why these figures in the budget appear to be one or zero?

**Dr K.D. HAMES:** Mr Macknay.

**Mr R.A. Macknay:** With respect, the Parliament did not grant the Crime Corruption Commission exceptional powers in relation to organised crime per se. The Parliament provided that the Commissioner of Police, in certain circumstances, could apply to the commission to have exceptional powers granted to WA Police; including, in particular, the right to conduct an examination. Regrettably, the legislation is rather difficult in terms of the ability of police to meet the required criteria. The bill presented to the house during the previous Parliament sought to address that; namely, to greatly simplify the criteria that we required and also, perhaps, to widen them.

The Australian Crime Commission offers a similar facility—that is, an ability, in certain circumstances, for the police to have persons examined on oath. The police, as I understand it, make some use of that facility. The commission is doing all that it can in relation to this particular part of its capacity. I have discussed the matter with the commissioner. General counsel of the commission addressed a meeting of senior police officers earlier this year and there has been ongoing liaison between the commission and WA Police with a view to educating police on the best way in which they might go about making applications. But again, the legislation is not user-friendly, if I can use that expression, in relation to applications. It has been the commission's experience that on more than one occasion the police have sought to use the facility, but have simply not been able to meet the criteria required to justify an application.

**Mr J.R. QUIGLEY:** I refer the minister to page 594 of the budget papers, and there it is stated that there was an application by the commissioner, but —

... the Commission was not satisfied that the grounds described in Section 46(1) of the Act existed, and therefore, did not make an exceptional powers finding.

Without asking the minister to divulge that matter, do we take it that there was an evidentiary deficiency, and therefore the commission was unable to make the finding that the exceptional powers could be followed up?

**Dr K.D. HAMES:** Mr Macknay.

**Mr R.A. Macknay:** Yes, thank you. I think that was before my time, but I can safely say that the matter would not have reached the stage at which there was a formal application before the commission that failed. Rather, I think it is very likely that the police put forward papers, which were reviewed by commission staff, and the difficulties in the application would then have been pointed out to the police and the application would have lapsed. But Mr Silverstone, no doubt, would be better placed than I to provide a definitive answer about that.

**Dr K.D. HAMES:** Mr Silverstone.

**Mr M.J.W. Silverstone:** In this matter they lacked sufficient evidence to support the claims required by the criteria within the relevant section.

**Mr M.J. COWPER:** I refer the minister to the table on page 593, which lists the number of allegations received, being 5 912 in 2011–12. In 2012–13, the CCC is budgeting for 4 000; presumably on the continuous improvement and the instance of misconduct in the public sector. But the estimated actual for 2012–13 is 6 149. Is that trending in the manner in which the minister expected? The CCC budgeted for 4 000, but the estimated actual is 6 149. I am interested to know how that was arrived at.

**Dr K.D. HAMES:** Mr Silverstone.

**Mr M.J.W. Silverstone:** These matters reflected an unforecast large quantity of matters coming out of the Western Australia Police and are connected with neglect of duty allegations associated with the failure to follow through on the WA Police Briefcase System; that saw a peak in numbers beyond the estimate for both 2011–12 and then 2012–13. We expect to see those figures decline back to our budget target of 5 100. Additionally, towards the end of the last financial year, we saw some 299 allegations from the Department of Health arrive in relation to gifts and benefits received by staff. Those unforecast, quite substantial figures drove our figures up. We expect to see the figures decline, but I note that we have seen a year-on-year increase of about 11 per cent across our allegations.

**Mr M.J. COWPER:** I am interested to know basically out of those 6 149 allegations, roughly the breakdown generally speaking in relation to departments. I remember asking this question some years ago. I think a large number of them were police related; but I am wondering how that compares now with other government departments and the manner in which they deal with allegations of misconduct.

**Dr K.D. HAMES:** Mr Macknay seems to have the answer.

**Mr R.A. Macknay:** In relation to the financial year just completed, the commission received 3 085 allegations in relation to WA Police. Those would have included allegations of misconduct and also reviewable police action notifications. In relation to the balance, I do not believe we would have a break-up of other departments. If the member requires that information, I could take that on notice and provide that information.

**Mr M.J. COWPER:** Roughly speaking, it is about half that are police related and the other half make up all the other government departments?

**Mr R.A. Macknay:** Yes, but bear in mind, of course, that there was this artificial hump arising from the briefcase allegations. Probably, a little more than half, I think.

[3.20 pm]

**Mr M.J. COWPER:** Did the police allegations received include the Corruption and Crime Commission's local complaint resolutions? Local complaint resolutions exist within the service, so I imagine it exists in other government departments as well.

**Dr K.D. HAMES:** We did not really get the question.

**Mr M.J. COWPER:** If there is an allegation of misconduct, a local complaint resolution system within the police deals with it. As I understand it, all allegations of misconduct under the legislation have to return to the CCC for its oversight. Would a large number of the 3 085 reports that have come from the police be local complaint resolutions that have been investigated locally by the police as opposed to the Corruption and Crime Commission?

**Mr R.A. Macknay:** There are two forms of notification: notification of misconduct, which includes serious misconduct, and notification that the act describes as reviewable police action—I can provide a definition if the member wishes—that provides for such things as unreasonable behaviour and would perhaps include some of the things the member is talking about. The obligation under the act on the commissioner, together with the chief executive officer of any notifiable authority, is to notify the commission immediately it comes to the attention of that chief executive officer that there is a reasonable suspicion of misconduct in relation to all public authorities that are included within the act. In addition to misconduct, the Commissioner of Police would also refer matters that are regarded as reviewable police action.

**Mr M.J. COWPER:** When a person is subject to a report, whether it be serious or minor misconduct, is it recorded at the CCC or within a government department? Is a record kept of antecedents or complaints made against individuals across various government departments?

**Mr R.A. Macknay:** Certainly the police keep a record of disciplinary matters where there is an allegation of all kinds of conduct, be it improper language or drawing a Taser when it is not necessary. A record is kept of those things by WAPOL, to which the commission has access. The commission database no doubt would be accessed in a way that would determine allegations made against an individual.

**Mr M.J. COWPER:** Is that uniform across other government departments?

**Mr R.A. Macknay:** I am not able to answer that question.

**Dr K.D. HAMES:** No.

**Mr J.R. QUIGLEY:** It is a strange one that.

Page 591 of the *Budget Statements* notes that the commission has come in under budget, yet the commission must deal with all those complaints concerning police behaviour. Has the commission been able to do more of its own investigations into allegations of police misconduct rather than referring them back to the department?

**Dr K.D. HAMES:** Mr Macknay.

**Mr R.A. Macknay:** In recent times the commission has adopted a significantly more proactive approach in relation to allegations of police misconduct and has undertaken a significantly greater number of investigations itself, particularly with relation to allegations of use of force.

**Mr J.R. QUIGLEY:** It was revealed in the use-of-force report there was perhaps a paucity of CCC inquiries into police misconduct. Has the CCC been able to establish a unit within the CCC to look at this?

**Mr R.A. Macknay:** The commission is divided into various directorates, one of which is corruption prevention that has a dedicated police oversight team.

**The appropriation was recommended.**