

Joint Standing Committee on the Corruption and Crime Commission — Sixth Report — The Corruption and Crime Commission's unexplained wealth function: The review by the Honourable Peter Martino — Motion

Resumed from 21 September on the following motion moved by Hon Dr Steve Thomas —

That the report be noted.

Hon Dr STEVE THOMAS: When we last considered this report, we looked at the overview of the unexplained wealth functions of the Corruption and Crime Commission, the importance of them and the things that the CCC is doing going forward. In the time I have left available today, I want to look at the conclusions of the review. For those members who are reading the report, it is on page 31, which is page 27 of the Honourable Peter Martino's report. It is the conclusions he reached from his review. I think we need to spend a little bit of time on an overview of what he did. The first part of his conclusion is about the approach taken by the Corruption and Crime Commission. The conclusions reached by the Honourable Peter Martino are generally favourable. He said —

... the allocation of its resources in the exercise of its criminal property confiscation powers has been appropriate.

He also said that the CCC had appropriate policies in place for the exercise of its functions under the act. Generally speaking, I think he was trying to put forward that the CCC does a good job with the resources it has.

The fifth dot point at the bottom of that page raises the considerable concern that the CCC is not adequately resourced to fully exercise its functions under the Criminal Property Confiscation Act. The reviewer took considerable time to point out what it needs to be able to do its job properly. I read-in a couple of weeks ago the list of things that he thought would benefit from additional funding. I do not propose to do that again, but if we say that the first part of the recommendations of this report were that the resources given were well used, the fifth dot point and the conclusion show that the Honourable Peter Martino's view is that the resources provided were not adequate to do all the things he thought that the CCC should be doing in relation to unexplained wealth. I hope that the government and all sides of Parliament take on board, effectively as a recommendation, that there is more that the CCC could do if its resources were lifted to allow it to function in that way.

In the very brief time I have today, I want to concentrate on the sections that the reviewer wrote on releasing frozen funds for legal expenses. He spent a fair proportion of the report on this and several of the points of his summation or conclusions relate to it. Once a set of assets has been frozen, a question remains. If the person who owns those assets believes that they are innocent—that the assets were obtained perfectly legally—they may be the only assets that they have in place that can fund a legal action to fight a court case to say they are legal assets. That can get a little bit complicated, for example, if someone has an asset and they have not explained it to the satisfaction of the CCC but believe they have a perfectly adequate case to take to court and a higher jurisdiction. We need to bear in mind that there have been numerous court cases in which findings of the CCC have been challenged and overturned. The CCC is not perfect in its process. Some of those cases are quite famous. If the person involved is unable to take that court action because they are unable to fund it because their assets have been seized, it is an issue that needs to be looked at and dealt with. The Honourable Peter Martino came up with a suggestion for this. For those members who are reading the report in more detail, it is paragraph 3.67 on page 22 and over the next couple of pages. He concludes —

In my view the CCC's approach to applications to a court to release frozen funds for legal expenses is appropriate and in accordance with legal authority.

He thought that it should be followed, but continues —

However, it is also my view, having regard to the time needed to be spent by parties and courts on such applications, and the difficulties raised by the necessity to balance the consideration of the reasonableness of legal expenses and legal professional privilege, that it would be desirable for the CPC Act —

That is, the Criminal Property Confiscation Act —

to be amended to provide that legal aid funding should be available to fund all the reasonable legal expenses ... of a person whose property has been frozen. Additionally, the Legal Aid Commission should be given a charge over the frozen property ...

That is, to use this to get back those funds. I think that is a fairly complicated and perhaps longwinded way to go about the process. It also relies on the capacity of Legal Aid WA, which as most members would know struggles to fulfil its obligations for people who have no assets and an inability to fund their own court cases. This is probably somewhere where I think we need to very carefully consider the recommendation of the reviewer, the Honourable Peter Martino. Bringing Legal Aid into the process and effectively giving it a lien over assets before they are liquidated to fund court cases, I think, would be incredibly difficult. If the government is going to do that

and allow that to happen, I might suggest that people will potentially want legal representation of a different structure and standard than that provided by Legal Aid. That is the advice that I would generally give my constituents.

Obviously, a court challenge to the seizure of property needs to be considered carefully. At a personal level, I do not see how the government or Parliament should not be allowing the cost of those court proceedings to come from the assets, even if at the end of that process the assets are seized. If it is found that the government seized those assets reasonably, it would have a reduced asset because the legal cost would have come out. That would be no different from many other court proceedings. One would also assume that if the court proceeded and the person was found to have legally acquired that asset and the CCC's recommendation was thrown out, they would get back an asset of lesser value than the one seized. There is a risk on both sides. I think this particular part of the report needs very careful consideration. I suspect there might be better ways to do it.

Hon KLARA ANDRIC: I begin by thanking Hon Dr Steve Thomas for his contribution on this report. I note his comments regarding frozen funds and assets, and in particular what it would look like and how it would work if Legal Aid was to, I guess, fund the legal requirements of a person who is not able to pay for his or her legal fees through anything other than what has been seized. That is quite an important note in the report and something to consider.

However, I also agree with the honourable member that the conclusions in the sixth report by the Honourable Peter Martino are, in fact, favourable. That is probably why I wanted to briefly speak on the sixth report today titled *The Corruption and Crime Commission's unexplained wealth function: The review by the Honourable Peter Martino*. The review report was provided to the Joint Standing Committee on the Corruption and Crime Commission in February 2022 and basically outlines his review of the commission's use of unexplained wealth powers. Essentially, the report summarises that the successful use of the commission's unexplained wealth powers requires significant resources. As a result, the commission has made a submission to government for funding over the next five years seeking just under \$5 million to fund 20 full-time equivalent officers. If approved, the funding will considerably expand the resourcing of the commission. The process of investigating unexplained wealth and the recovery of property from unexplained wealth is very complex. As one could imagine, these investigations, which are intricate and complex in nature and often require really fast action and very specialised skills, need resources.

As stated in the chair's foreword, the Corruption and Crime Commission has had the power to investigate unexplained wealth and criminal benefits, and initiate and conduct confiscation proceedings, since 2018. Laws such as the Criminal Property Confiscation Act 2000 aid in discouraging crime, particularly organised crime, by the very fact that they reduce the profitability of criminal acts and activities. As members will know, the commission uses its unexplained wealth powers to recover financial profits from serious misconduct undertaken by not only organised crime, but also public officers. In May 2021, the commission engaged with the Honourable Peter Martino to consider and report on the following matters, which are listed in page 1 of the report —

- the effectiveness of the commission's processes in contributing to the aims of the referral of powers under the CPC Act, and
- what, if any, changes are required to policy, procedure or legislation to improve the effectiveness and efficiency of the commission's work under the CPC Act.

As I have previously said in this chamber, organised and drug-related crime are a great risk to our society and safety and, quite frankly, our economy. The unexplained wealth function of the CCC acts as a deterrent by essentially debilitating the benefits gained by people who partake in such crimes. As mentioned at paragraph 3.28 of the report on page 14 —

The CCC's objective in the exercise of its unexplained wealth functions is to disrupt crime, corruption and associated illicit activity by removing the financial motivation for those activities, thereby reducing harm to the Western Australian community. In the three years since it has been provided with its unexplained wealth function the CCC has developed strategies to maximise its efficiency and effectiveness. In the early period after it was provided with the function the CCC focused its efforts on matters that were less likely to result in protracted investigation and litigation. This ensured that the CCC's limited resources were applied to cases which had the best chance of success and tested the CCC's system and processes to ensure they were effective, before actively pursuing more complex and challenging matters. The CCC has built on that experience and moved on to more sophisticated matters involving organised crime targets and their assistants involved in cross-border transactions.

The confiscation of these proceeds of crime through the CPC act of 2000 resulted in Western Australia becoming the first state in Australia to introduce legislation to allow for the confiscation of unexplained wealth. The objective of this very legislation is to deter crime, particularly organised crime, by removing the very motivation for these people, which is money. When the primary financial motivation for these crimes is targeted, the very core of the crime's success is destroyed. I find it encouraging that the confiscation of wealth laws target those who do not necessarily commit the crime themselves but who play a key and vital role in directing and financing criminal activity. Essentially, they target the people at the top. One of the recurring findings in the sixth report is that the primary

purpose of the CCC's unexplained wealth function is to disrupt crime and corruption by removing the financial motivation that exists to commit these crimes. This is quite a powerful tool to deter ongoing criminal activity. However, in order to succeed, the investigations need to move fast to ensure that the property or assets that these people accumulate are not moved beyond the reach of law enforcement. It may or may not have been mentioned in this house previously but unexplained wealth laws cover five kinds of confiscable property under the Corruption and Crime Commission Act. The report outlines that the first kind is unexplained wealth, which I have mentioned; followed by criminal benefits; crime-used property; crime-derived property and drug-trafficker property. It is worth noting that the CCC was given functions under the Criminal Property Confiscation Act by an amendment act. The long title of that act states it is an act to amend the Corruption and Crime Commission Conduct Act 2003 in relation to unexplained wealth and other matters, and also to amend the Criminal Property Confiscation Act 2000 in relation to the role of the CCC. With the very limited time I have available today, in closing I will remind members of a quite important point about funds that are seized from criminals.

Consideration of report postponed, pursuant to standing orders.