

*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 22 February on the following motion moved by Hon Dr Steve Thomas —

That the report be noted.

The CHAIR: Members, we are in Committee of the Whole considering committee reports and before I call the first item, I have a statement. Before we commence with consideration of committee reports today, I advise that the chamber timers are not fully operational. The debate and motion times will be displayed on the monitors; however, the clerks will keep members' speaking times from the table and will ring a bell when a member has spoken for 10 minutes.

Hon NICK GOIRAN: It has been about six months since we last considered this report, which is effectively the report of Honourable Peter Martino. He was tasked with looking into the Corruption and Crime Commission's special function on unexplained wealth. As I say, it has been approximately six months, I believe, since we had the opportunity to consider this matter. The questions of course then arise: What has happened by the government on this matter? Has anything happened over the last six months?

Members may recall that the genesis of this matter was comments by the Attorney General, Mr Quigley, who said that the front doors of the CCC will become the "gates of hell" for criminals who will be forced to testify about their unexplained wealth. This statement, made by the Attorney General in April 2017, not long after he was sworn in as the Attorney General, sounded like a very significant and substantial aspiration on his part—one might even say it was some form of a prophecy as to what would be happening. Here we are in September 2023 and the question that arises is: have any of the so-called criminals been forced to testify about their unexplained wealth? Have the front doors of the CCC indeed become the gates of hell for these criminals?

The point that was made by Honourable Peter Martino in this review, and I note that he says as follows —

... it cannot be assumed that the CCC will continue to be able to exercise its functions under the CPC Act effectively in the future without additional resources. The safe and effective exercise of the CCC's unexplained wealth and criminal benefits function would benefit from additional funding to resource:

- accountants and financial analysts;
- investigators, including experienced financial investigators;
- ...
- surveillance officers;
- digital forensic officers;
- support staff;
- further development to record management processes;
- acquisition of additional software capabilities and licences used to undertake analysis of large and complex data sets;
- acquisition of additional equipment including laptop computers, mobile telephones and surveillance equipment;
- acquisition of digital forensic analysis tools; and
- enhancements to security arrangements.

This is what Honourable Peter Martino found in his review into the CCC's function that is the investigation of unexplained wealth. This particular report that has been provided to us by the joint standing committee is more than a year and a half old. It was tabled in this place in March, not this year but last year. Since that time, the CCC has tabled its annual report, not the most recent annual report which is due by the end of this month, but last year's annual report. It was massively, massively delayed by the Corruption and Crime Commission. It is supposed to be tabled by the end of September each year; it was not even tabled in the last calendar year. It was massively delayed. In any event, we now have the CCC's *Annual report 2021–22*, and it tells us that 53 unexplained wealth matters had been identified, and that this resulted in eight initial investigations and nine more extensive investigations being conducted. Therefore, 53 were identified, but basically only 17 were actioned, so what has happened to the other matters?

We were told that there was \$1.7 million in confiscation orders, and this appears to have arisen from one singular matter before the District Court. Page 42 of the annual report, titled "Significant Issues", lists funding as an issue that needs to be addressed to allow the Corruption and Crime Commission to continue to exercise its functions in

the future. It noted that the 2022–23 budget provided additional funding to enable the CCC to maintain this function at the existing level of effort. It goes on to say that the CCC spent \$600 000 above the 2022–23 budget to continue the delivery of its unexplained wealth function. As I say, this is not news to members. We last had the opportunity to consider this matter in February or March this year. The questions that arise are: To what extent do we expect that the annual report that is due at the end of this month will shed any light on any movement in this regard? Have any additional resources been provided? Would a government member care to inform the house whether any additional resources have been provided? After all, it was the government that appointed the Honourable Peter Martino to undertake this review. He has identified the problem. Has anyone in government done anything about this?

While we are waiting for the CCC to provide its annual report, through the government, by the end of this month, it may be instructive to look at the annual report of the CCC that was tabled in this place fairly recently and see what it says about the Surveillance Devices Act 1988. Under the Surveillance Devices Act, the commission is required to furnish to the Attorney General, as soon as practicable after 30 June, information on its execution or use of the Surveillance Devices Act. This is a very short report. Other than the covering page, it consists of a one-page introduction and then a one-page substantive report. It is three pieces of paper in total. It is hardly any wonder that it is so brief because if members take the opportunity to look at how much the Corruption and Crime Commission has utilised the Surveillance Devices Act in the reporting period—that is, for a full financial year—they will see that the results are: applications for warrants, zero; warrants issued, zero; warrant applications withdrawn, zero; applications made on behalf of another law enforcement officer, zero; applications made by means other than filing out a written application of the court, zero; applications for warrant extensions, zero; warrant extension authorisations issued, zero; warrant extension applications withdrawn, zero; applications made on behalf of another law enforcement officer, zero; applications made by means other than filing out a written application to the court, zero; applications for emergency authorisations, zero; emergency authorisations issued, zero; and applications for emergency authorisations withdrawn, zero. There has been zero performance by the Corruption and Crime Commission on the use of the Surveillance Devices Act during the reporting period. Remember, Mr Quigley said that the front doors of the CCC would become the “gates of hell” for criminals, who would be forced to testify about their unexplained wealth. Remember also that Mr Martino has indicated that the CCC needs extra funding to resource things like surveillance officers. Obviously, the CCC does not have any surveillance officers because it did not use the Surveillance Devices Act over the last financial year. Mr Martino also identified that the CCC would like to have some surveillance equipment. The CCC must not have any surveillance equipment because the CCC has had zero performance under the Surveillance Devices Act 1998.

What exactly is going on? Will we get an explanation from the government about the current state of affairs? There was little point in the Attorney General telling Western Australians in April 2017 that the front doors of the CCC would become the gates of hell because criminals would be forced to testify about their unexplained wealth if the government then appoints a reviewer who has said that the CCC needs more resources, particularly for surveillances, and we find out there has been zero performance. Somebody in government needs to provide an explanation about what is going on here. If the Cook Labor government has completely withdrawn from the task of going after these criminals and their unexplained wealth, say so. Be honest enough to say that the CCC has not become the gates of hell and the government has completely given up on that. Be honest enough to tell us exactly what is going on.

Hon PIERRE YANG: We spoke on the sixth report of the Joint Standing Committee on the Corruption and Crime Commission for the first time on 21 September 2022 and we had another opportunity to speak on it on 22 February 2023. I think this is the third time we have had the opportunity to discuss this report. On the last occasion, I talked about the importance of the work done by the Corruption and Crime Commission and, of course, on the sixth report *The Corruption and Crime Commission’s unexplained wealth function: The review by the Honourable Peter Martino*. Specifically, we talked about the importance of the potential expansion of the unexplained wealth function powers. Today I will focus my attention on one specific aspect of this review, which is under the heading “The freezing of property”, on page 26 of the report. At paragraph 3.80, the report explains that the conduct of unexplained wealth matters —

... requires authorities, including the CCC, to act quickly to ensure that assets can be identified and restrained before they are moved beyond the reach of law enforcement.

That is particularly relevant when talking about properties that could be liquidated and their value moved outside of our jurisdiction or the boundary of the commonwealth of Australia. That would require the assistance of other countries and their law enforcement agencies, which would be a lot harder than if the property remained within Australian shores. The report continues —

The CPC Act provides for the freezing of properties freezing orders, which are issued by a court, and freezing notices, which are administrative in nature. The CCC can apply to a court for a freezing order. It is not given the power to obtain a freezing—which can be obtained by the DPP and WA Police Force ...

I think it is important to distinguish between a court order that a party must apply for in a Western Australian court—for example, in the District Court or the Supreme Court—and a freezing notice, which is different in nature. That can be done differently. Paragraph 3.81 of the report states —

The DPP has the ability to apply for both freezing orders and freezing notices. It uses freezing notices far more often than it applies for freezing orders, as can be seen from this table taken from its annual report for 2019–2020 ...

As we can see in that table, for 2019 and 2020, the DPP applied for 203 freezing notices but only four freezing orders. We can see the scale and nature of the complexities involved in applying for a freezing order.

I wish to draw from my experience as a practitioner 10 years ago. On one occasion, I recall that a party applied to Landgate to have a caveat placed on a property. It took a couple of hours to draft the form, get the form signed and lodge it with Landgate, which resulted in a caveat on a person's property. If someone has a caveat placed on their property, they have the right to object. As a result of that objection, the registrar of Landgate will tell the person who applied the caveat—the caveator—that they have 21 days to apply to the Supreme Court for an extension of the functions of that caveat. I was involved in one of the processes as the instructing solicitor. I went to a barrister, prepared the caveat and prepared the writ. It took a number of days to get the form ready. Twenty-one days may sound like a long time but in situations involving a caveat, someone has to speak to a barrister to get paperwork ready to go to the Supreme Court, which can take 15 working days. Members who have worked with lawyers or who were lawyers would know that it takes some time to go through that process. Fortunately, we were able to lodge the paperwork within 21 days and obtain a hearing, so the function of the caveat was temporarily extended and that was the end of the matter. However, it just shows that a matter involving an administrative process requires less intensive work; yet when it involves a court process, it tends to be more complex and involve more resources. When we look at the end result in the table in paragraph 3.81 of the report, it shows that 203 freezing notices were obtained and only four freezing orders were obtained.

Paragraph 3.84 of the report states —

... Mr Martin concluded that it was undesirable for there to be two different procedures for the freezing of property ... Mr Martin also concluded that the undesirability of ... freezing notices, being the process which involves the lowest burden on the WA Police Force and the DPP is exercised at an overwhelmingly higher rate by them, being the process which confers the least rights upon affected persons.

I want to use my remaining minute to touch on another experience I had during my time as a solicitor. In one case, a client came to me about some matters involving an investigation. Her properties were under freezing notices. Unfortunately, the value of her properties decreased significantly. She was not prosecuted after being accused of smuggling some drugs because she was found innocent by the court. Unfortunately, she lost a significant part of her wealth as a result of being set up by someone else, who was then prosecuted.

Mr Chair, I want to take this opportunity to thank you and the chamber for giving me the opportunity to make a contribution. I look forward to speaking at the next opportunity.

Hon KLARA ANDRIC: I rise today to make what I believe is possibly my fifth contribution to the sixth report of the Joint Standing Committee on the Corruption and Crime Commission, *The Corruption and Crime Commission's unexplained wealth function: The review by the Honourable Peter Martino*. Before I speak on some other areas that I have not already mentioned, I want to respond to Hon Nick Goiran, who mentioned a few things when he commented on the report. The JSCCCC's annual report is due at the end of the year, and I am sure Hon Dr Steve Thomas will agree with me when I say that we are very much looking forward to the report being tabled.

Hon Nick Goiran mentioned funding for the CCC. In the 2023–24 state budget, an additional expenditure of \$12.1 million from 2023–24 to 2026–27 was approved for the CCC to further develop its unexplained wealth function, and almost \$2.3 million for continuation of unexplained wealth functions for the 2023–24 budget year. I do not know whether that provides further clarification for the member; however, I thought I would mention those figures from the budget paper for the honourable member.

Hon Nick Goiran also questioned unexplained wealth outcomes, to which I thought I might refer him to a recent Corruption and Crime Commission media release. I can possibly go into it in a bit more detail if I have the time. It relates to a figure of close to \$1 million that was delivered from the unexplained wealth function relating to cases involving Mr Ronald Whyte and Mr James Villa. The media release on the CCC's website is dated 25 July 2023. That is quite a significant amount of money that was obtained as a result of the CCC's unexplained wealth function. It was obtained as a result of investigations undertaken relating to those two cases.

I have spoken quite a few times on the sixth report of the JSCCCC, but I wanted to mention the legal expenses of a person whose property has been frozen. I looked at this matter a while ago. I wanted to talk about some of the issues that Honourable Peter Martino raised relating to the legal expenses of a person whose assets have been

frozen, some of the commentary made by Honourable Peter Martino and also some recommendations relating to the Criminal Property Confiscation Act 2000. Currently, the CPC act does not include provisions for paying the legal expenses of a person whose property has been frozen. In some cases, the High Court will exempt some of the property under a freezing order on the condition that it is spent on legal services. As most of us can imagine, that process would be quite difficult: firstly, to determine whether the funds will go towards legal services; and, secondly, how substantial one's legal fees will be. I am sure that it would be quite tricky to figure out whether the assets were frozen as a result of unexplained wealth functions, the probabilities of legal costs and having exemptions to those funds to use for legal costs. As we all know, legal fees can be quite significant. The purpose of a limitation on exemptions is to make sure that funds are not misused. As I said, in some cases the High Court of Australia will exempt some of the property on a freezing order so that the money can be spent on those legal services. The report notes that this exemption must be taken with great care to ensure that the exempted funds are not then subsequently misused in that process. In the report, Honourable Peter Martino mentions a number of ways in which the funds can be misused such as through overservicing or overcharging, and possibly by other forms of abuse as well.

The process for exempting frozen property, as I have mentioned, is difficult and a number of factors need to be considered when deciding whether or not to grant an exemption. The sixth report outlines some of those key areas that I will take the opportunity to mention today. The decision to exempt frozen property must consider the following: whether the freezing order covers specified property only or all property that the individual owns, effectively controls, or—I thought this was interesting—has given away; whether the party has made a genuine application for legal aid assistance; and whether the individual has the capability to retain legal representation without assistance from an exemption, so is the person in question able to access legal services without having to have an exemption on the unexplained wealth properties. The sixth report outlines another consideration —

the extent of the frozen property available to satisfy a CPC Act declaration, and the risk of depletion of frozen property by future legal fees;

As I mentioned earlier today, the legal fees can be quite extreme. I imagine that consideration given to any form of exemption would have to take those matters into consideration, after all, if it looks like the legal fees for that person will exceed or come close to exceeding the value of the unexplained wealth seized, I imagine that that would weigh heavily on the decision as to whether a person is entitled to that exemption.

The competing factors between an accused's choice of counsel and what constitutes reasonable legal expenses is another element of that consideration and something that Honourable Peter Martino noted extensively in the sixth report. In respect of the legal expenses of a person whose property is frozen he commented —

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. In my view its present practice should be followed under the legislation in its present form.

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 to be amended to provide that legal aid funding should be available to fund all the reasonable legal expenses, in both criminal and civil proceedings, of a person whose property has been frozen. Additionally, the Legal Aid Commission should be given a charge over the frozen property for the legal expenses that it funded ...

That basically means taking ownership on to the legal service and whatever the outcome of the proceedings in which the property was frozen.

Question put and passed.