

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

**PUBLIC HEARINGS WITH THE CORRUPTION AND CRIME COMMISSION**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 8 SEPTEMBER 2021**

**SESSION ONE**

**Members**

**Mr M. Hughes, MLA (Chair)  
Hon Dr Steve Thomas, MLC (Deputy Chair)  
Mr S. Love, MLA  
Hon Klara Andric, MLC**

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**Hearing commenced at 9.45 am**

**Hon JOHN McKECHNIE**  
**Commissioner, examined:**

**Ms WENDY ENDEBROCK-BROWN**  
**Director Legal Services, examined:**

**Mr DAVID ROBINSON**  
**Acting Chief Executive, examined:**

**Ms MARY BROWN**  
**Director Assessment and Strategy Development, examined:**

**Mr JON TUTTLE**  
**Acting Director Operations, examined:**

**The CHAIR:** Good morning, everyone. I would like to begin this hearing by acknowledging the Whadjuk Noongar people, the traditional owners of the land on which we meet today, and pay our respects to their elders, both past and present. Commissioner, on behalf of the committee, I would like to thank you for agreeing to appear today. My name is Matthew Hughes and I am the Chair of the Joint Standing Committee on the Corruption and Crime Commission. I would like to introduce the other members of the committee: Hon Dr Steve Thomas, MLC, deputy chair, and Mr Shane Love, MLA. Hon Klara Andric, MLC, sends her apologies. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything that you might say outside today's proceedings. Before we begin with our questions, do you have any questions about your attendance here today?

**Mr McKECHNIE:** No, other than to thank you for the opportunity.

**The CHAIR:** Would you like to make an opening statement?

**Mr McKECHNIE:** Just briefly, if I may, chair. As I said, thank you for the opportunity. The commission is, by statute, a fairly secretive organisation. I have held the view that within the statutory limits, it is important to be as open as we can. We acknowledge that the JSC has a very important job in oversighting the commission so we thank you for the opportunity to explain our work. There are a few things, if I might, before opening to questions. I might at various stages, with your permission, defer to one of the directors for particular information. The commission is unable to discuss certain operational matters in relation to ongoing investigations or whether indeed we are conducting an investigation into a particular matter. But if there are other matters, thanks to the chair's kind invitation, I will indicate that I would prefer to answer in private.

Could I make just a few comments. Since my return, I have been impressed at the way the commission is running. As you know, and very sadly, the chief executive is presently on leave with a serious medical condition. We hope to see him back in due course. That is why we have an acting chief executive and acting director of operations. I would like to pay public tribute to Mr Scott Ellis, who was acting commissioner and, even though notionally a part-time job, acted throughout the period in which there was not a permanent commissioner. The objectives and priorities I have

returned to are much the same as those that were in the organisation previously and it may well be that they will be the subject of questioning. But, broadly, we have concerns over procurement in government. We consider the report published by this committee's predecessors on procurement was a very useful and important report and it should be required reading, I think, in all departments. It made the point, as I have made frequently, that the chief corruption prevention officer in the state is not the CCC; it is directors general. They are the ones that should be managing the risk of corruption and misconduct. The commission's role is specific, but it is not to manage the risk. That point is made considerably in your report, so we welcome questions on procurement.

Data information remains, in our view, a very significant challenge. The Criminal Code has penalties for unauthorised use of a restricted computer, which is basically a computer with access. As our recent report on transport and other investigations have shown or are showing, whether it is the milieu in which we live or whether it is something else, there is a disturbing amount of data integrity breaches that we are seeing.

[9.50 am]

Government departments hold databases containing private information for good and official purposes, but it is important that there are barriers and standards in place so that it is not misused in any way.

We remain, as you know, considerably in the police sphere. We have about 50 per cent—but Mary Brown will speak about figures a bit later—of allegations and notifications come in relation to the police and they take up a lot of our time. We take that role very seriously. The state is not big enough to have a police misconduct commission separate from an anti-corruption commission, as they do in New South Wales, so we have to balance our resources to servicing that area, as well as the many other areas that we need to service.

The other area which will be appropriate to speak more on either today or shortly is unexplained wealth. As you are aware, Parliament enacted some years ago an unexplained wealth function in the Corruption, Crime and Misconduct Act, which really gave a use to the word "crime" for the first time, and we will give you some figures. We have been basically trialling, or piloting I should say, unexplained wealth. It is resource intensive. Although it has been successful in confiscation matters, its primary purpose is not to raise money for the state, or the fund, but to disrupt crime. Anecdotally, it seems to be quite a disruptor to take away people's profits of crime. We will never be in the same league as police, of course, who have the ability to seize sometimes millions of dollars in cash. Our work was given to the commission because, although it has always been in the confiscation act, neither the DPP nor the police had really been equipped to deal with unexplained wealth, so we have taken over. We have finished a pilot, I will call it, and we are ready for the next step, but we will need resources for that.

I will leave for questioning other areas, but there is one area which I have hesitated to raise but one I raise because it may be that this committee is able to give assistance to the commission and to the Legislative Council. As I think everybody in the state is well aware, the Legislative Council and the commission were in litigation partly over a laptop and several electronic devices. In broad terms, the court has held that the notices to produce those devices were a valid exercise of the commission's powers and that those devices ought to be produced to the commission, given a reasonable time for Parliament or the privileges and procedure committee to remove or redact privileged material. Now, it is just over two years since the Council took possession of those items. Latterly, the Council has taken advantage of an offer we made some time ago to assist in the exercise by providing a digital forensic specialist, and that has been very productive. That person has, by agreement, signed a confidentiality agreement with Parliament, so he is unable to tell us of the

material which is on that device until it is produced to us. However, when he went into the matter, he discovered that there was an area of the computer particularly that had not been analysed—so-called slack spaces—which seemed to amount to about 150 gigabytes of material that has not yet been considered. Now, two years have passed, which one would have thought was a reasonable time to achieve a redaction of necessary material, yet I am here in front of you two years on to tell you that we still have not got the laptop. We still have not got the devices and we have absolutely no idea when we will ever get them.

This is a serious concern because of two reasons. One is we cannot conclude our Operation Betelgeuse until we have examined that material to decide whether or not there is material of serious misconduct. All we have are former member Mr Edman's comments, which were reproduced in our first report, that there is material that could sink a lot of political lives. Now, I have no idea whether that is bombast, whether it is true or whether any material actually reaches the threshold of serious misconduct. If it does not, of course it will never see the light of day. Whatever might be on that laptop will remain secret to us because of our secrecy provisions. We are only interested in particular areas in relation to possible misconduct. We cannot complete until we receive those items, and, as I say, we have no information as to when that might be.

I thought I would ask this committee, who may or may not be able to do anything, but it seems to me a very serious matter now for the state, two years having passed, that we are, in effect, no further advanced, as far as we can tell, than we were two years ago. There will come a time when the person to whom the notice was produced, Mr Pratt, the Clerk of the Legislative Council, may be in breach of the Corruption, Crime and Misconduct Act. I have already publicly said, and will say again, that even if he was to get to that stage, the commission would never take action against him. He is a public servant doing the best he can and we would never take action against him for that reason, but it does mean that there may come a time when he is at least technically in breach of the act. Nobody wants to see that. I am sure—I know—that the Legislative Council and the committee does not wish to impede the commission, but here we are, two years on, and we have nothing. Obviously, that is a matter which the committee will consider, but I would just ask if there is any assistance that the committee feels it could do, we would welcome it.

With that, chair, I conclude my opening remarks.

**Hon Dr STEVE THOMAS:** The question is: do we address the elephant in the room first and then go to the other questions? It might be pertinent, then, to continue that conversation now and then refer to some of the other more general questions afterwards perhaps.

**The CHAIR:** Yes, I think it is clearly a matter of great importance to the commission.

**Hon Dr STEVE THOMAS:** Obviously, the court case finding was that parliamentary privilege is important and does matter; that it was appropriate that the CCC issue its request, its instructions; and that it was inappropriate for the Parliament to hand them over without dealing with those parliamentary privilege issues. I thought that the judgement was a very good one and effectively said that a memorandum is required, therefore, to deal with this, as occurs in other jurisdictions. My understanding was that there should be some negotiation of an MOU, then, between the CCC and the Parliament. Is what you are saying that there is no activity happening in relation to the construction of a memorandum of understanding?

[10.00 am]

**Mr McKECHNIE:** No, not at all. And I am pleased to advise that we are well progressed towards a memorandum of understanding. Following a meeting I had with the Speaker of the house, the President and the Commissioner of Police, we all agreed that a memorandum of understanding was

essential. A working party has been set up, headed by the Clerk of the Legislative Assembly with, I think, Mr Paul Grant from the Legislative Council, Mr Lawrence Panaia, who I think is an assistant commissioner, and Ms Endebrock-Brown. It is meeting regularly—weekly or fortnightly—and I am confident that there will be agreement by the end of the year. That might be misplaced, but I am actually reasonably confident that everybody is approaching it with goodwill. That, however, does not cover this particular issue. It will help for the future, but this issue remains.

**Hon Dr STEVE THOMAS:** But surely then the laptop and its contents will be subjected to the MOU rules and agreement, and then that information, which is not subject to parliamentary privilege, would be made available to the CCC. I would assume that that is how everybody is operating.

**Mr McKECHNIE:** Well, yes, under the MOU, but everybody has operated under that arrangement over this until now. The privileges committee has always asserted, correctly, its right to decide on parliamentary privilege, and it has also always asserted that it wishes to get on with the job and do the job. So we are not really in disagreement about it. My concern, and because of the confidentiality agreement that my forensic specialist has signed, is that I do not know what the present position is. All I know, all he can tell me, is that they have recently discovered 150 gigabytes of material yet to be analysed. That is very concerning, as I say, because in two years I am sure the Legislative Council has spent a lot of money redacting material. To find that there may be 150 gigabytes that still has to go through that process may slow things down for an unexplained time. We are not sure whether the problem is technical, managerial or not. I do not have, as I say, any information, but I would very much doubt that any politician is holding it up. But at the end of the day, we have not got it and it is two years on.

**Hon Dr STEVE THOMAS:** That is very true, but this process started in early 2019. Would it be fair to say that the information is not going anywhere until this situation is sorted out?

**Mr McKECHNIE:** It is certainly not going anywhere; it is locked away.

**Hon Dr STEVE THOMAS:** The information is not disappearing, though, and I suspect nobody is suggesting that the MOU would not apply to things retrospectively—that is, that the MOU would not apply to existing information. Surely that is not a part of the discussions—that anything received before the MOU would be untouchable.

**Mr McKECHNIE:** No, no.

**Hon Dr STEVE THOMAS:** So it will absolutely be the case that information will go through the process as agreed by the MOU and be available to the CCC with the exception of, presumably, the fairly small amounts that would be subject to parliamentary privilege. That would be a reasonable assumption?

**Mr McKECHNIE:** A reasonable assumption, and reasonable is the thing. The essence of the judgement is that whichever house is subject to it respond within a reasonable time.

**Hon Dr STEVE THOMAS:** Was there a process effectively of working out a MOU between the previous Legislative Council President and staff and the Procedure and Privileges Committee and the CCC?

**Mr McKECHNIE:** I might hand over to Ms Endebrock-Brown.

**Ms ENDEBROCK-BROWN:** Thank you, commissioner. There were some discussions—not substantive discussions. Historically, there was a recommendation made by the previous joint standing committee that there be an MOU.

**Hon Dr STEVE THOMAS:** Do you know how long ago that was?

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**Ms ENDEBROCK-BROWN:** I would need to go back and double-check the dates now. It was a number of years ago. I am speaking from memory now; I hope I do not get it wrong. I am pretty sure I made contact with the Legislative Assembly Clerk to start with. I was advised that they would do a draft and provide it to the commission to consider. We waited for some period and did not receive one—so I followed up. There was something else happening in the eastern states at the time. They were going to wait for that to happen and then finalise the draft and provide it to us. That happened. We followed up again. Unfortunately, we just were never presented with one. Then this particular issue arose under Operation Betelgeuse. We did end up writing our own because it was important enough from the commission's perspective that we try to have one in place, but, unfortunately, we could not reach agreement over the draft that we presented for consideration.

**Hon Dr STEVE THOMAS:** Was there a negotiation from the Parliament to amend that draft? Did that draft, for example, contain a component where the Parliament would review and decide on privilege or whether the commission would, or an alternative third party would? Sorry; I am asking you to quote from memory, which is tough.

**Ms ENDEBROCK-BROWN:** No; I thank you and I appreciate your understanding. I am also a little bit restricted in that some of the negotiations or some of the discussions happened in the course of the Supreme Court proceedings as part of the confidential process of facilitation and mediation, so I am just wanting to be careful that I do not disclose anything that I should not there either. The draft that we drafted was presented to the previous joint standing committee as well, so that is on your records. That was a subject of discussion, but did not go anywhere. That draft did and the draft that we are discussing in the working party at the moment provides a very easy process, we think—a very practical process—involving Parliament in the determination of privilege.

**Hon Dr STEVE THOMAS:** I am not sure whether you can answer this, but I will try. I understand if you cannot. Did the draft that was put forward previously contain a process where the Parliament itself reviewed documents and determined privilege before the documents were handed on, or the laptop was handed on, to the CCC? If it did, was the commission prepared to negotiate that the Parliament itself at that point should determine privilege?

**Ms ENDEBROCK-BROWN:** The short answer is yes.

**Hon Dr STEVE THOMAS:** So yes to both—yes and yes?

**Ms ENDEBROCK-BROWN:** Yes to both. The commission has always taken the position that it is Parliament's privilege. The commission does not want anything subject to parliamentary privilege, so is more than happy to work with Parliament on that. The difficulties are more around the practicalities. We have the digital forensics expertise in the people and the equipment and the software and everything that goes with that. We have it all on site. There were issues around where the processing, for instance, of a laptop might happen. We can easily do it. We can do it quickly. We can do it with representatives from the Legislative Council or the Legislative Assembly being there, but we were not able to agree to anything around that. It was all around the time of the Supreme Court proceedings, so it did not get very far.

**Hon Dr STEVE THOMAS:** Sorry, chair, I am going down a rabbit hole. That is very good, Ms Endebrock-Brown; thank you. From what I understand from your answer then, there was a willingness from the CCC's perspective to have the Parliament determine privilege effectively.

**Mr McKECHNIE:** I can answer that. There has always been; we have always—I was a constitutional lawyer in the state for years and always acknowledged Parliament's principal role in privilege. What went wrong, as the judge found, was that somebody else purported to determine privilege.

**Hon Dr STEVE THOMAS:** Exactly.

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**Mr McKECHNIE:** That was a mistake. I think everybody acknowledges that was a mistake. We have always acknowledged that the problems have always been practical. If you have a file of that, somebody can sit down and work it out. When we are talking about 150 gigabytes, it is simply impossible, and what I suspect has happened is that the Legislative Council has accidentally bitten off more than it can chew. We are now in a better space in terms of cooperation. Both the police and the commission have the tools to do this; this is our work. It is not just this computer; this is what we do, and we can do it quickly and we can do it under supervision of parliamentary officers, or whatever wants to be put in place.

[10.10 am]

**Hon Dr STEVE THOMAS:** I think that is critical, and thank you for that. I think that is a critical component. It would appear that at the point at which the laptop was taken off and examined by groups which were neither the Parliament effectively—sorry, the judgement on whether things were subject to parliamentary privilege or not was a decision not taken, then, by the CCC or the Parliament, but by somebody else?

**Mr McKECHNIE:** Yes, it was taken, I am sure, with the best of motive and on legal advice. That goes because the DPC holds the parliamentary computers. I do not want to get into that argument.

**Hon Dr STEVE THOMAS:** It is almost a pity, but let us keep going.

**Mr McKECHNIE:** He, on advice, purported to do that work himself. That was where it went wrong.

**Hon Dr STEVE THOMAS:** Okay. I will let you take advice first before I continue.

**Ms ENDEBROCK-BROWN:** I would just like to clarify.

**Mr McKECHNIE:** This often happens to me!

**Hon Dr STEVE THOMAS:** It happens to us, too.

**Ms ENDEBROCK-BROWN:** The review that the SSO did was not over the laptop or any of the devices. The review that the SSO did was over a thumb drive containing documents produced by the DG of DPC. So the SSO has had no role to play with the laptop.

**Hon Dr STEVE THOMAS:** Thank you. It would not have really mattered. I thank you for the clarification, but it would not have mattered because it was the definition of “privilege” I think. So, effectively, as I read this—it will probably become obvious later where we are going—the CCC has been prepared to go through the process appropriately, and you are saying that it would always be prepared to work with the Parliament to get the right outcome. To my mind, there was an interference with that process, and I think that is exactly what the judgement says. To some degree, the judgement exonerates the CCC and it exonerates the Legislative Council. It is the interference between those two groups that has been the issue, and that is probably why we are dealing with the two-year delay process. But I am very pleased to hear that the CCC at all times was prepared to negotiate in an appropriate manner to deal with these things, and I am very sorry that that was circumvented. I think we are in furious agreement, chair.

**The CHAIR:** We might be. Just when you go back to the original memorandum draft, which you indicate came to the predecessor committee, this committee does not have access to that information—I just make that clear. The issue with respect to the negotiations having stalled, I just want to be clear about what the commission’s view is about what caused the negotiations on the MOU to stall. What was it that you could not get over?

**Mr McKECHNIE:** The MOU, or the suggestion for an MOU, goes back to a privileges report in relation to Ms Turnsek, and following that, as part of the report, it was suggested an MOU be entered into.

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That was the one where, put bluntly, nothing came back to the CCC. When the litigation started was probably —

**The CHAIR:** Can I just interrupt you? When you say “nothing came back”, so, it just sort of disappeared, did it, on the other side?

**Mr McKECHNIE:** Yes.

**The CHAIR:** Within the Council, and presumably with the Speaker as well?

**Ms ENDEBROCK-BROWN:** With both houses. As I understood it, there were discussions happening between the houses, the Clerks of the houses, but, unfortunately, we just never received the draft that was —

**The CHAIR:** So, it was silence?

**Mr McKECHNIE:** Yes.

**The CHAIR:** Just silence, not the fact that this is a compromised position which we are not prepared to proceed with?

**Ms ENDEBROCK-BROWN:** No, there was no indication of that.

**Mr McKECHNIE:** There were no negotiations.

**The CHAIR:** So, it was just silence?

**Mr McKECHNIE:** Just silence.

**The CHAIR:** Okay.

**Mr McKECHNIE:** When this started, it is not the most conducive to reach an arrangement in, but the parties have never actually been that far apart.

**The CHAIR:** No.

**Mr McKECHNIE:** It really comes down in the end, I keep saying, to the practicalities of how it is done. Nobody disputes the points of principle about privilege and nobody disputes that the CCC should not obtain the material in due course.

**Hon Dr STEVE THOMAS:** Sorry to interrupt, but I think what we are determining is that nobody at the table disputes those points. Obviously, the CCC has taken a very pragmatic approach, which is good, and I think perhaps the Legislative Council took a pragmatic approach, but perhaps it might be said that others, particularly if the State Solicitor’s Office has taken off those emails and started to assess them in their own right, I am not at this point prepared to extend the same credibility to other organisations. I suspect that if the CCC was left to its devices to continue its very good work, then perhaps you might have had a solution earlier rather than later and without a court case. But that is a hypothetical, chair, that we do not necessarily know the answer to. But that is good. From this point on, the MOU negotiations are proceeding apace.

**Mr McKECHNIE:** Very well.

**Hon Dr STEVE THOMAS:** It will obviously be the case if there is such goodwill between, presumably, both house of Parliament and the CCC that the recognition of the Parliament needing to determine privilege will be enforced in that memorandum of understanding. Do you have a recommendation, then, on how the Parliament, apart from borrowing your workers as it were, which I am not sure we are very grateful for, do you have an indication of how that process might be then speeded up when you are talking about hundreds of thousands of documents? Is that, then, something that in your view will require additional resources in some way, shape or form? And should the responsibility for that process remain with the two Clerks? Surely, we do not need a third body overseeing that; it just

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starts to become immensely cumbersome. Do you have a view—either of you; all of you—on what that process might look like that you can let us know, obviously in advance of the negotiations, which is a bit cheeky?

**Mr McKECHNIE:** Yes. The agreement already contemplates—we know what we are looking for, bluntly. We have search terms. Now, of course, a search might lead you to something else and something else; that is the nature of an investigation. As the judgement disclosed, you might start searching for this and then find something else. That is the way that Betelgeuse started, through something that we were doing in relation to the trade commissioner in Japan. So investigations can lead. That apart, we have some defined search terms. Wendy will correct me when I go wrong. In broad terms, what we would propose is that we go in, we use those defined search terms under supervision, that material is then checked to see whether there is anything that should be redacted, and the balance goes to our investigators then to make what they will of the results. They may come back and say, “Well, we now need to search for so forth”, and the process continues. You will see how much quicker and easier that is than if Parliament says, “Well, we need to look at everything on this computer to see whether there is parliamentary privilege.” That, to my mind, has been the cause of the two-year delay. It is just practically impossible.

**Hon Dr STEVE THOMAS:** So can we assume that that is a part of the ongoing negotiation, then?

**Ms ENDEBROCK-BROWN:** Yes.

**Hon Dr STEVE THOMAS:** You do not need to give us a scoop here necessarily in advance. We will trust your ongoing negotiating skills to see where that ends up.

**Ms ENDEBROCK-BROWN:** It is actually what was proposed by the commissioner right at the very beginning. It is the process that we have been putting forward since the beginning. There is nothing different. There is no scoop. That is the basis on which the current discussions are occurring around a potential MOU now.

**Mr R.S. LOVE:** Do you have any idea how long that process will go? You are saying that you are making process, but at what point are you?

**Ms ENDEBROCK-BROWN:** We have had two meetings so far. We have got our third meeting this coming Friday. They are happening fortnightly at the moment. I must say, the approach of each of the parties, particularly the Clerk of the Legislative Assembly who is leading the group and the Deputy Clerk from the Legislative Council, are both very positive and very collaborative. I am hopeful, as is the commissioner, that as he said, we will have an MOU in place by the end of the year at the latest. But a draft has just been presented and we are yet to start real discussions about the nitty-gritty.

**Mr R.S. LOVE:** So, presumably, once you have got that MOU, regardless of what happens, that laptop can then be analysed?

**Mr McKECHNIE:** If it is accepted; if our proposals are accepted.

**Ms ENDEBROCK-BROWN:** And I think the commission’s hope is that it will not take that long for us to get the material from the laptop, or to get the laptop, as required by the valid notice that we issued.

[10.20 am]

**Mr R.S. LOVE:** In terms of the MOU, given the shift to different methods of data storage and the like and cloud-based storage systems et cetera, you will not, presumably, in the future be taking so much possession of a hard drive as a key to some other storage. Is that part of that? How will that work into the future?

**Mr McKECHNIE:** That is getting into operational matters but I will, nevertheless, accept it. We have a range of strategies for that. Obviously, with the move to the cloud, that presents new challenges. With the move to cyber phones and other items that are more difficult to trace, that presents new challenges. With this particular arrangement, it should be remembered that the finding of the laptop was an accidental event. We did not go looking for it; we did go looking for devices. But this was an accidental event, along with the other devices. We were not expecting to find in the house of a former member a DPC laptop two or three years after, let alone his description of it later on telephone was new to us. Having received it, obviously, we wished to examine it, and that is when, because he was a former member, the problem has arisen.

**Hon Dr STEVE THOMAS:** Can I just check and confirm, then: in terms of the negotiation of the MOU, I think you have already answered this, but just to get it on the record that the previous draft and the position of the CCC, whilst it may be reasonably firm, is not absolute and that good amendments coming from either Clerk or the processes of Parliament will be considered in ideal terms.

**Ms ENDEBROCK-BROWN:** Absolutely. My clear instructions are to go in with a very collaborative approach to agree on something that is going to work for everybody. That is in the best interests of the state.

**Hon Dr STEVE THOMAS:** I have a couple of questions around the greater, not just Betelgeuse. Are you happy for me or do you want to join and shift in?

**The CHAIR:** Yes, I am.

**Hon Dr STEVE THOMAS:** Get me out of the way and then everybody else can ask their questions.

**The CHAIR:** I know you have to leave at 11.30.

**Hon Dr STEVE THOMAS:** Yes. Funnily enough, there is a budget tomorrow to occupy us. Hopefully, the CCC will see an increase in its funding in the budget! We will be looking at that in great detail, chair.

Obviously, there has been, I guess, some tension, shall we say, around political parties and the CCC, and I am very keen to try to make sure that that is gone. My understanding is that in relation to Operation Betelgeuse, and I think it is right that an accidental discovery of a laptop that should have been handed in, as I had to do back in 2008, was—I am amazed that the laptop was still held, to be honest. I am not sure how that happened, and that is perhaps somewhere around procurement and retention might be an even greater investigation at some point. Obviously, the CCC looks at a range of other things in relation to MPs, and I want to get a sort of baseline for this. Would it be the case that the activities of MPs are reported? We know that 50 something per cent of your reports are police officers. Surely there are MPs that are also reported. Is that the case? Surely there might be other not necessarily investigations, but there might be reports that have been looked at and dismissed et cetera. Is that the case? Is that a piece of information that you are able to give us?

**Mr McKECHNIE:** I am able to give it in general terms. Mary can correct me on the figures, but there are not that many reports about members of Parliament, and a lot of them are out of our jurisdiction anyway. Our jurisdiction is serious misconduct, which is defined in the act but for present purposes means corruption—corrupt conduct. We do not, as it were, target MPs.

**Hon Dr STEVE THOMAS:** No. Sorry; I was not suggesting that.

**Mr McKECHNIE:** No, I know. If we have a credible report, it does not matter who it is; we will pursue it. But a lot of the activities which we get told about simply do not fall within our jurisdiction; they do not meet the threshold of reasonable suspicion of serious misconduct.

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**Hon Dr STEVE THOMAS:** Excellent. In relation to, and it is an extension of Operation Betelgeuse and the misuse of entitlements in particular, if an MP, for example—I will be careful what I say; you never know who has done what—was using entitlements to pay for party memberships or underwriting fundraising events for a parliamentary party, would that come under the auspices of serious misconduct, or is that slightly separate to —

**Mr McKECHNIE:** It is difficult to say whether it would reach the threshold. Could I say, one of the great things I think that came out of Betelgeuse is that the Salaries and Allowances Tribunal, as you all know because you are all subject to it, have completely rewritten the rules in a way that I think—I will speak about misconduct risk, which does not mean there was misconduct. But the previous rules, to my mind, were vague, difficult to follow and difficult for members to understand the limits. The new rules provide, I think, far greater clarity and have certainly reduced that misconduct risk.

**Hon Dr STEVE THOMAS:** I am not sure there is a perfect system. It is all a bit hazy. I have been through three or four different systems and all had strengths and weaknesses. Just to finalise that train of thought, effectively, reports about MPs are fairly rare, I would presume. I am looking to confirm that they would be completely party apolitical, and I am sure that is the case. What about the relationship between MPs and donors, for example? I am thinking particularly of ministers. Is that something that —

**Mr McKECHNIE:** It is much more likely that that would be an issue in the executive part of government than the legislative part.

**Hon Dr STEVE THOMAS:** Is that an issue that you have looked at at all or had reported at all?

**Mr McKECHNIE:** That is not a matter I would want to comment on publicly or privately. Unlike some other states—for instance, as you have all seen, New South Wales has rules prohibiting donors—we do not have any of those rules. Whether we should is a matter for others. As to the apolitical, I joined crown law in 1976 and shortly after began advising governments and I decided then, to do my job, I would not have a political view, because I was advising over the years governments, first junior and then later, and that is still the case. I have no politics. My staff, if they have politics, I do not know what they are. We go where the evidence takes us.

**Hon Dr STEVE THOMAS:** Last question, chair. I almost apologise for asking this one, but it is a question we put to the parliamentary inspector, and that is effectively to ensure there is a distance, if you will, between the various groups, and there obviously is between the legislatures—so, both houses of Parliament. Obviously, you have to have some form of working arrangement with the police and also, presumably, through the Department of Justice and the Attorney General. Can you just define how close that working relationship is? I am interested probably because I suspect the police is a bit more of an oppositional relationship and I understand why, and I think we are on both your sides with this one. But in terms of the Attorney General, that is a very much hands-off relationship, I presume.

**Mr McKECHNIE:** It is a hands-off relationship. The Attorney General has administrative responsibility for the CCC, so when the CCC and the Legislative Council got into serious dispute, I informed the Attorney General that we were being sued. But in relation to investigations and things, we would not tell him anything about what is going on; it is not an administrative matter. We go to him cap in hand, but we do not share operational matters with him, and nor, I should say in fairness, has he ever asked. Both the previous Attorney General, Michael Mischin, and the current one have always respected the boundaries. With the police, the best way I can sum it up is the relationship is tricky, because, on the one hand, particularly in unexplained wealth, we are working closely and cooperatively with them; on the other hand, and this is Mary's department, we are oversighting them and calling them out on things that we think are wrong.

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[10.30 am]

So, the relationship is tricky. At the top, the commissioner, who is presently the Vaccine Commander or something, and I have good personal relationships, as I did with Karl O'Callaghan, but that does not get in the way of either of us. For instance, if we sent a draft report, as we recently did, for comment, the comments that came back were pretty pungent, and that is the way it should be. Whether we take them into account is another matter. The relationship needs constantly to be managed. On relationships with other organisations, again, Mary can speak to that; she holds regular meetings with other major organisations where there are misconduct risks.

**Hon Dr STEVE THOMAS:** I think I have had a fair run, chair. It is probably time to give someone else a go.

**The CHAIR:** I think so. You did mention the budget session.

**Hon Dr STEVE THOMAS:** Yes, we will be looking for a significant increase in the budgets of both Parliament and the CCC!

**The CHAIR:** I see.

**Mr McKECHNIE:** I wish you the best of luck!

**The CHAIR:** The question, really, I think, is about the level of resourcing. In terms of the allocation that you get, it is something in the region of, is it, \$28 million?

**Mr McKECHNIE:** It is \$27.9 million.

**The CHAIR:** Is that sufficient, particularly when you mentioned the pressure placed upon resourcing the investigations into unexplained wealth?

**Mr McKECHNIE:** Obviously, every department would like more money. It is not sufficient if we are to continue the unexplained wealth function.

**The CHAIR:** It is not?

**Mr McKECHNIE:** We simply cannot continue with the resources we have to do unexplained wealth, and we will be making a presentation to the Attorney about that in due course. That is the reality. We do have, as I have said on previous occasions, an advantage in that we get to pick and choose a bit. We get to choose to do investigations or not do them. I often say, "If there are four homicides today, the Commissioner of Police has to stand up four squads to deal with it; they have no choice. If indictments go up 25 per cent, the DPP has to deal with those." We have, in a sense, the luxury of saying, "We won't deal with that because our resources would be better off." But that does mean we miss things. One of the ways over the last few years we have tried to get more bang for the buck is through Mary's area with oversight and monitoring and active oversight whereby the agency will do the work and we will look at it and, if necessary, say, "You haven't done this and you haven't done that." So, yes, an increase would be good, but —

**The CHAIR:** The issue you mentioned earlier is that the responsibility for risk management and, therefore, presumably, education about inappropriate conduct or the way in which we in fact discover suspect behaviour is really with each of the agencies. The question really is: are the agencies up to it? How do you determine the capacity of agencies to do exactly what you expect them to do, particularly if, in fact, you refer quite a lot of investigations to them and engage with what might be active oversight, and I think there is another function which is a collaborative work with them? There would be a variation across agencies?

**Mr McKECHNIE:** Yes, and I will hand over to Mary to give more detail, but, broadly, some are better than others.

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**Ms BROWN:** Obviously, they vary in size and they vary in their capacity and ability to take actions in relation to the matters that we refer to them. You would be aware that we have two levels in the oversight space where we refer a matter back to an agency for them to take action and outcome, and that is simply at the point that they complete their action, they report back to us, we consider the action that they take and, providing it appears to be sound, that matter is filed, so to speak. When we put something into active oversight, that is where we have the ability to have a more, as the title suggests, active engagement with an organisation. Sometimes we will send the matter back to an organisation for them to take action and we will monitor it on the basis that we are, I guess, analysing or critiquing their capacity and ability to see the matter through to conclusion. Part of the active role that we take is that we have regular meetings with an agency, and whilst we do not instruct them as to the action that they should take, we certainly have conversations which help us to understand whether they are on the right track or not. If during any of that stage we get the sense that the agency is not handling the matter appropriately, we can then bring it back into the commission and suggest through our operations committee that the commission take that matter on themselves as an investigation.

But, back to your original question, agencies are very different depending on their size and their capability, but that is something that we monitor very, very closely.

**The CHAIR:** All right; I will not ask you to rank them.

**Ms BROWN:** Okay; thank you!

**The CHAIR:** One of the observations, of course, is in relation to the way in which you give to the police commissioner the responsibility for pursuing allegations of misconduct amongst police officers, or every complaint against police officers is reported to you, is it not?

**Mr McKECHNIE:** Yes.

**The CHAIR:** One of the observations that perhaps is made, certainly in public forums and certainly in the Council, is that perhaps there is too great a reliance upon the police to in fact investigate themselves. Though you have mentioned that we do not have, as a population, sufficient numbers for us to have our own separate body to investigate police matters, are you satisfied with the way in which the police are able to effectively manage the internal investigations into officers who might be subject to allegations?

**Mr McKECHNIE:** I will pass over to Ms Brown again because she is dealing with it day by day, but I think probably the answer again is patchy. They have an IAU which is much bigger than the commission's investigative body, so it is logical to use them. They cannot handle it all; they have to send off to the regions and then—Mary might correct me on this—those matters that come back from the regions are sometimes more problematic. Occasionally, we have disagreements with the IAU and occasionally we will publish reports that say that.

Could I make two extra comments that may not quite fit in here? First, the police have had body cameras now for —

**Ms BROWN:** Since about the middle of 2019.

**Mr McKECHNIE:** — and they are very, very useful. They are still, in a sense, in trial. They are very useful because they can confirm or refute, sometimes, allegations. With every accountability measure, there is a cost and the cost to us is a slowdown in doing an assessment, because if six police attend, an assessor might have to watch six pieces of five or 10-minute video. But, on the whole, the body cameras have been a very significant misconduct prevention measure and we are very pleased with it.

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The other area which I raise which is —

**The CHAIR:** Could we just come back to the body cameras? Correct me if I am wrong, but they are not automatically activated, apart from when the police officer pulls a firearm, so they are really at the discretion of the police officer.

**Mr McKECHNIE:** I will hand over to Mary.

**Ms BROWN:** Yes, it is a discretion of a police officer. The policy states that when it is practical and safe to do so, they should turn their body-worn camera on, with a number of criteria from an operational perspective that they should consider when turning the camera on.

**The CHAIR:** Yes. In other jurisdictions, and New South Wales in particular, the default position is that the cameras should always be on. Do you have any view about that or that is a matter for the police?

[10.40 am]

**Ms BROWN:** It is a matter for police. There are four criteria which an operational officer needs to consider and that is whether the operationalisation of the body-worn camera provides assistance to record a use-of-force matter, whether it is likely to provide evidence of a particular matter as it is unfolding, to give comfort to the member of the community that they are dealing with, and the fourth one is from an evidentiary and a transparency perspective. As I say, it is discretionary and it is up to every police officer. My observations to date would be it appears that police officers turn them on more often than not.

**The CHAIR:** Perhaps we can stay on the theme of police. You will be familiar with report 15, which the previous committee presented to the Parliament, which Parliament did not have the time to respond to. I let you know that tomorrow, we are going to reintroduce the recommendations into the Assembly and, I think, into the Council at some other stage. We really would like the government to respond to the observations made, the findings and the recommendations. Has the CCC anything to say about the findings and the recommendations in the report?

**Mr McKECHNIE:** I will just check, but I think we are working on a response. Yes, we are working on a response.

**The CHAIR:** Yes, because we have written to ask you that. Is there anything you might like to say this morning in relation to that?

**Mr McKECHNIE:** Somebody else will have to say it.

**Ms BROWN:** No. We are progressing a number of, if not all, those recommendations. As the commissioner said, it is our intention to write formally to you, so perhaps that is the best forum in which we formalise that.

**The CHAIR:** I will just push a little bit further on this. In relation to the observations made by the Aboriginal Legal Service, where they felt that the CCC, and I do not want to misquote them, effectively was tone deaf in relation to approaches to the CCC in relation to matters of excessive use of force by the police, is that a reasonable characterisation of the way in which the CCC deals with the approaches from the ALS—that you are tone deaf to them?

**Ms BROWN:** No, not in my experience. We have a good professional relationship with ALS and, in fact, we meet with them every six months to discuss matters relevant to themselves and ourselves. They do not wish to meet any more regularly than six monthly. Having said that, we also have, on numerous occasions between those formalised meetings, communications directed either from us to them or from them to us.

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**The CHAIR:** It is just of interest because it was the director of the Aboriginal Legal Service who described the CCC as completely tone deaf when it comes to dealing with Aboriginal people and issues.

**Mr McKECHNIE:** I cannot speak of the last year, but that has not been my experience of the commission. Part of the difficulties are the cultural difficulties, because very often I will call them the alleged victims of police misconduct are young, they are distrustful of the whole judicial system and we might get an inquiry and then when we look further, nobody is to be found. But we treat them all very seriously. Last week, we sent a senior officer up as part of a number of complaint bodies into the East Kimberley area. We previously Zoomed into a meeting in relation to the Pilbara area to try to reinforce that we are actually there. There is an issue which has developed which affects police interactions with everybody, but particularly, I suppose, with Aboriginal people while they are over-represented in the criminal justice system.

Mary will correct me on this, but police policy is that use of force involving a weapon—drawing a taser or baton or something—is required to be reported with a use-of-force report. Use of force that causes injury should be reported, but police use empty-hand tactics as the predominant method and they are not required to be reported. Now, that creates both a risk, we think, for the Commissioner of Police and a risk for us, because we cannot see what is not there in reports. The Commissioner of Police, if asked, because I have asked him, would respond, I think, very reasonably that police use use-of-force empty-hand tactics every day and to report on them would just completely clog up the system. I understand that. On the other hand, we have had a number that I have seen since I have been back of empty-hand tactics, some of which were not reported by the officer and others of which were fortunately reported by junior officers, which is a most encouraging trend. But it is an area we do not have visibility over, and that is a concern. But I will pass over to Mary.

**Ms BROWN:** There is probably not a lot more to say on that, but you are right; it is a blind spot and a risk that we see emerging.

**Hon Dr STEVE THOMAS:** This is an area where I think there might be a diversity of views a little. It is interesting to talk about. The risk of the misuse of authority is obviously there, but what we do not often talk about is the risk as a part of this process to the police officers themselves effectively in their daily duties, as it were. We have had recent cases of police suicides and all the rest of it. It is a fairly topical issue, I would have said, at the moment. How does the commission manage, I guess, the expectation that it will oversee the misuse of force with an organisation that sends its people out to almost daily abuse? That might be a great exaggeration, but violence is not an uncommon factor that they deal with, and the personal threat, I would have thought, would be significant. None of us come to Parliament with the threat of physical abuse; we do occasionally get a little abusive across the chamber, but it is entirely verbal! It may be the only workplace in the world where that level of abuse is normal; however, that is for us to have fun with. I do not think police officers should necessarily be put in the same category. This is a question about balance, I suspect. I am sure that you have a system in place to try to manage that balance of the police service being able to protect themselves almost universally in a situation where they have almost no protection.

**Mr McKECHNIE:** Again, I will hand over to Mary. Both Mary and Jon are former police officers. They bring that knowledge and understanding to the commission. I have not noticed that they are softer on police officers because of it; quite the contrary. We will receive a report where there is excessive force. That might be determined by IAU that the force was not excessive in the circumstances. Excessive force is defined in the Criminal Code; there has to be a reasonable basis for it and the officer believes it. We are very slow to second-guess an assessment that the force was not excessive

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or was because of the reasons you have outlined, member. The situations that I occasionally see from the body camera are always dealing with people who are difficult, violent and resisting, so we certainly do not want to persecute police officers doing their job. On occasions, though, there will be force that any reasonable person would say, "That has gone well beyond anything." I know the Commissioner of Police is aware of it. There are significant mental health issues in relation to how police are managed and some of the workload that they do. My observation, not really as commissioner but as a person standing back, is that it is, on occasions, an unsafe workplace and the police need to really promote their duty of care to their officers in dealing sometimes with the worst of violence and trauma.

[10.50 am]

**Hon Dr STEVE THOMAS:** I am not suggesting, chair, that the commission does not need to do the work that it does; I think that it absolutely does, but perhaps the police service needs a champion for their cause as well.

**Ms BROWN:** May I just say something? I think there are two things. Clearly, with the introduction of the body-worn camera, it helps my team when we receive notifications to get the whole context of a situation. Previously, we would do a desktop analysis in the absence of body worn, so it was very much a he-said, she-said scenario. The body-worn camera footage now clearly assists in our assessment process because we can see it for ourselves. I think in about October last year, I took my team up to the police academy and we spent a day up there exposing them, clearly in a safe training environment, to allow them to understand and experience what it is like to be a police officer on the street when you have an angry person coming at you and you have got to make split decisions in a moment in a time of haste. It was to try to give my team, I guess, some skills and some understanding and appreciation of what it is like to be a police officer. That has helped them in their judgement in balancing, as I say, the context of a situation where an officer is faced with an angry person.

**Hon Dr STEVE THOMAS:** Would it be the case, then, that accumulated threat or stress might be a significant contributor to an overreaction and the use of inappropriate force, and is that an issue that the police service and all of us need to address in a more detailed way?

**Ms BROWN:** To answer your question, yes, I think it can compound over time depending on a police officer's work environment. But there are some work environments that are more prone to constant aggressive people than others and I think it would be fair to say that the police commissioner is acutely aware of that scenario unfolding.

**Hon Dr STEVE THOMAS:** It sounds like Parliament!

**The CHAIR:** Yesterday evening in debate, the issue of Scott Austic came up in consideration in detail. You know the circumstances with respect to there was an appeal against his sentencing for the murder of Stacey Thorne in 2007. Apparently, the commission undertook an inquiry back in 2013, but that report was not published. Is there any intention to revisit the issue in relation to the matters that were revealed as a result of the appeal?

**Mr McKECHNIE:** I do not like to be obstructive, but I do not wish to either confirm or deny that there is any investigation in relation to that matter.

**The CHAIR:** It is just that it was in the public arena and we are aware that there has been an approach to the commission by his lawyers.

**Mr McKECHNIE:** I can confirm that the commission has received a detailed letter from Mr Austic's solicitors.

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**Mr R.S. LOVE:** Just on that, I was the only other speaker in consideration in detail. The issue that I also raised at the time was the police commissioner did not see the need for a further internal review following the overturning of that case and quite damning findings of the Court of Appeal. It did seem strange to me that there would not be an automatic response from the police to review that investigation. I do not expect you to make a comment one way or the other, but I just found that quite staggering and would, in a general sense, ask if you would think that it would be something that you would expect from the police in the ordinary course of events when a case is overturned and a finding is there that there may have been some planting of evidence that there should be a review.

**Mr McKECHNIE:** I am not commenting in any way on what the commission may or may not be doing, but I have read the judgement and there was expressed by the Court of Appeal to be credible evidence that at least two items were planted. One would expect in the normal course there to be a review of that within the police, because it is not just somebody's opinion; it is a judgement of a court. In fact, it is a judgement of the highest court in the state.

**The CHAIR:** I have a couple of areas that I would like to look at and then I personally will be finished with what I would like to talk to you about. On the review of the act, we are aware that the Department of Justice is reviewing it.

**Mr McKECHNIE:** You should be aware that the Department of Justice has been given the task by the Attorney; I do not know that anything has happened yet.

**The CHAIR:** I ask the question: do you know the scope of the review?

**Mr McKECHNIE:** No. Ms Endebrock-Brown is to be our representative.

**Ms ENDEBROCK-BROWN:** We received a letter from the Department of Justice advising that they had received instructions from the Attorney General to undertake a comprehensive review of the act and that they would be setting up a consultative group to do so and could they have somebody from the commission to be on that group, and that will be me.

**The CHAIR:** So it is still a work in progress?

**Ms ENDEBROCK-BROWN:** Yes, we are waiting to hear further.

**The CHAIR:** Just the development of the terms of reference?

**Mr McKECHNIE:** Or yet to start. My view, having worked with the act for six years, is you need to start with a clean sheet of paper, work out what an independent anti-corruption agency would look like, work out what a crime commission would look like and then work out what you want. As an example, the commissioner, not the commission, may grant the police exceptional powers, but the barriers or the preconditions for that are such that it is very difficult for the police to meet. Because of the way the act is drawn, it is extremely difficult. On occasions, they have been used. They have not been used in my time, and I can understand why—because it is the police applying to a commissioner, not really the commission, for exceptional powers which unlock exceptional powers. But the preconditions are so strict that it is virtually impossible for the police to meet them. So, in my view, particularly in this day and age, a very significant tool available to the police needs to be looked at and made easier to use, and still have proper safeguards but without the preconditions to it. The definition of serious misconduct is effectively—to give you just one, to my mind, odd example, one definition of serious misconduct is that the person has committed a crime carrying imprisonment of two years or more. Another provision which is common in all acts of similar bodies says that the commission is not to make a finding of guilt or imply that anybody is guilty. They are completely inconsistent. There are many other examples. It needs to start afresh, and I would think it would be a thing that this committee would want to be fairly intimately involved in.

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**The CHAIR:** I certainly would think we would have an interest in the approach.

Just going back to resourcing, do you think there is room to appoint a second acting commissioner?

**Mr McKECHNIE:** Yes. Actually, what I think the commission needs is a deputy commissioner rather than an acting commissioner. The purpose of an acting commissioner was really if the commissioner either was too busy on other works or had a conflict. Probably the best example is some years ago in the Mallard matter where a retired Supreme Court judge from New South Wales, John Dunford, was sworn in as an acting commissioner to deal with that. It was a very big matter. Had the commissioner dealt with it at the time, nothing else would have got done. I think we are at the stage where a deputy is required.

[11.00 am]

If not, certainly consideration should be given to a second acting commissioner, because during the period when I was not there, there was one acting commissioner. There are powers under the act that are delegable and I have delegated furiously to four people, but there are certain non-delegable powers, quasi-judicial powers—signing notices to produce, swearing witnesses and the like—that only a commissioner can operate. You will understand if there is only one, it is a single point of failure.

**Hon Dr STEVE THOMAS:** In relation to the parliamentary inspector, the parliamentary inspector has advised us that they know very little about what goes on in terms of the work of the CCC, that they are largely hands off and they quite often deal with complaints of outcomes, as expected. Is that a reasonable kind of assessment? I know we are potentially talking about who is watching over the watchers who are watching over the watchers, but effectively, then, if the CCC inspector, the parliamentary inspector, is seeing one or two per cent of the cases afterwards in review, potentially—if that is an accurate assessment—then is that role really a comfort or is it really then a take-on-trust situation?

**Mr McKECHNIE:** It is certainly a comfort to me to have it because I do not pretend that we always get it right. His function, in a sense, like ours, is triggered by a complaint. If I might indulge just briefly, there are two types of complaints. We tell Mary Brown's staff when they join, "Congratulations. You'll get more complaints than anybody else."

**Hon Dr STEVE THOMAS:** Again, politics might disagree, but let us not go there.

**Mr McKECHNIE:** A focused complainant might write in and say, "The Premier's corrupt." That is all you get. We assess that. There is no evidence, there is no allegation and there is nothing to do, so we say, "We're not proceeding with this." Then the parliamentary inspector gets a letter saying, "The CCC is corrupt in this person." "Why?" "Because they didn't believe what I said." You probably get similarly focused things. Those parts are dealt with. The others are more serious. Occasionally, we get it wrong. Occasionally, we respectfully disagree with an outcome. My limited experience with Inspector Zilko, who is of my vintage, is that he is very conscientious. He approaches his task with deliberation and care. He has, I think, visited and seen how things work, and that will always be the case. From my point of view, as I say, it is very helpful. We did not get to statistics, but we had an increase to—how many?

**Ms BROWN:** In the 2020–21 financial year, we assessed 7 190 allegations, which was an increase from 5 743 in the 2019–20 financial year, so a significant increase.

**Mr McKECHNIE:** Dealing with those, occasionally we are going to make a mistake, and it is helpful to have the parliamentary inspector there to tell us when they do.

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**Hon Dr STEVE THOMAS:** Is there a role for the inspector to have more overview? I mean, they do not get briefed on the cases necessarily. Is there a role for the inspector to be more interactive or is it appropriate at the level that it is at?

**Mr McKECHNIE:** It is appropriate that he is not involved in the detail. He also audits various of our things—assumed identities, for instance, which the commission is authorised to do. They are audited periodically by him, and other matters. Our telephone intercepts are audited by the commonwealth and the state. We are pretty well regulated.

**Mr R.S. LOVE:** Just on something completely different, there is some information that we have been provided with and a number of reports have been released. One in particular is the Department of Transport's TRELIS report, which you tabled on 5 August. In reading the report, as I recall, the Department of Transport did not seem to think that the fact that unlawful activity had occurred on numerous occasions was in fact a serious matter or something which was serious misconduct. When you did the analysis of the unlawful interactions with the system, it seemed to be fairly low-level potential corruption in the sense that most of it seemed to be around people accessing it for friends and relatives and that type of thing. Are there any triggers that are automatically put in place that may detect more serious misuse of a system like that, rather than that very low-level trigger point that seemed to be just picking up people that happened to be in your street or shared your surname or whatever it was that was the trigger point? I know that might be a bit operational, but it did concern me to see that the department felt that that was not important.

**Mr McKECHNIE:** I will happily duck it because it was not my report. I will pass over to Mary.

**Ms BROWN:** In respect to the Department of Transport, they have a number of internal mechanisms that trigger alerts. They have the ability to control those alerts. I think the problem in the report to which you refer is that their lack of understanding about what constitutes unlawful access was a concern in the sense that if something larger was happening over here, their interpretation even for, as you called them, less serious matters was not even being picked up at that early stage. It is really for the organisation to control, in this instance, the TRELIS system and the users of it. Given the high amount of information that TRELIS holds, they need to be obviously monitoring and taking their own risk mitigation from the low end right to the high end. You are right; we did not see any high-end accesses.

**Mr R.S. LOVE:** As I recall your report, it seemed to be that, when you wrote the final conclusions, the department was still not accepting that that was a serious matter. Have you had any further indication that there has been a change of view?

**Ms BROWN:** No, not to date.

**The CHAIR:** Commissioner, is there any matter that you would like to —

**Mr McKECHNIE:** No, thank you, other than again to thank you for the courteousness and the ability to meet with you.

**The CHAIR:** I have a closing statement to give you. Thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information and elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. Thank you for your attendance today.

**Hearing concluded at 11.08 am**

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