

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

**HEARINGS WITH THE CORRUPTION AND CRIME COMMISSION**



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 15 MARCH 2023**

**SESSION ONE**

## **Members**

**Mr M. Hughes, MLA (Chair)  
Hon Dr Steve Thomas, MLC (Deputy Chair)  
Ms M.J. Davies, MLA  
Hon Klara Andric, MLC**

---

**Hearing commenced at 9.15 am**

**Mr JOHN McKECHNIE**

**Corruption and Crime Commissioner, examined:**

**Mr SCOTT ELLIS**

**Acting Corruption and Crime Commissioner, examined:**

**Mr DAVID ROBINSON**

**Acting Chief Executive, examined:**

**Ms KIRSTEN NELSON**

**Director, Legal Services, examined:**

**Ms TRACEY POLMEAR**

**Director, Assessment and Strategy Development Directorate, examined:**

**Mr DANIEL DI-GIUSEPPE**

**Director, Corporate Services, examined:**

**Mrs SHANNON BLACK**

**Acting Deputy Director, Investigations, examined:**

**Mr HITESH HANS**

**Senior Financial and Management Accountant, examined:**

**The CHAIR:** Good morning. Just before we begin, you will note there has been a change in the composition of the committee. I have great pleasure to invite—no, not invite. Parliament has appointed Hon Mia Davies to the committee, presumably for the duration of this Parliament.

Thank you very much, commissioner, for joining us this morning along with your team. We are broadcasting today's proceedings. I would like to begin by acknowledging the Whadjuk Noongar people, the traditional owners of the land on which we meet today, and pay my respects to their elders both past and present. 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 present today: Hon Dr Steve Thomas, MLC, who is the deputy chair; Hon Klara Andric, MLC; and Mia Davies, MLA. I advise that the proceedings of the committee's hearings will be broadcast live within Parliament House and via the internet. The broadcast may include documentation provided by you to assist the committee in its investigations. 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 you might say outside of today's proceedings. I note that the media is present so before we start, I would advise media that it is common with hearings with the commission that the committee may decide to move into closed session at some point, at which point in time everyone

---

in the public gallery will be asked to leave and the broadcast will cease. Commissioner, before we begin with our questions, do you have any questions about your attendance today?

**Mr McKECHNIE:** No, thank you.

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

**Mr McKECHNIE:** I will if that is convenient, chair. I would like to commence by first acknowledging the work of Ray Warnes, PSM, and former chief executive of the commission who passed away last October. The Attorney General gave a fulsome tribute in the house, which I will not repeat other than to say that Ray was a public servant in the finest tradition, who did much to restore a somewhat battered commission to its present improved state.

Could I give you some brief statistics? The year in overview: due to the lateness in tabling of our annual report, which was circumstances beyond our control, it is nearly time for another one. Here are just some updated figures. In the year to date, 17 investigations have been closed and 22 are active. Six are active operational intelligence matters. Of those, 53 per cent are procurement, three relate to Western Australia police use of force. In relation to unexplained wealth, we have 14 initial investigations and nine full investigations, and \$11.4 million of assets are currently frozen and we have realised \$628 000 so far this year.

[9.20 am]

I might just expand briefly in relation to unexplained wealth. Parliament added a real purpose to the crime part of the name by giving the commission a function in relation to unexplained wealth. We spent three years proving the concept, culminating in the independent Martino report. Government has followed through on its commitment with significant funding in the forward years and for this year. I acknowledge the enthusiasm of the honourable Attorney General for the concept of unexplained wealth. In November, we closed the office for three weeks while renovations were made to support the extra staff. Of course COVID had taught us all how to work from home so the commission kept functioning throughout that period. The purpose of unexplained wealth targeting is not principally about revenue, although we expect to pay our way, so to speak. It is about disruption of serious crime and the removal of benefits of wealth which cannot be lawfully explained.

I want to specifically in opening to mention the question of the deployment of police dogs. The commission is gravely concerned about incidents where dogs have been deployed against suspected young offenders. The police rate dogs as a use-of-force option between a taser and a firearm. The dogs are trained to attack and bite. The commission assesses each notification of suspected misconduct, which may come from a member of the public but more likely from WA Police or the Aboriginal Legal Service, and we assess each one. Looking at each deployment individually, it is difficult to find misconduct when an officer is substantially following procedure. As part of our misconduct prevention function, we are looking wider at the policies that underpin the deployment of dogs. The present policies are not racist in intent but are racist in effect. Many dog deployments are against young and/or Indigenous persons. With my background, I am well aware of the effect of crime. It is to say the least frightening and frustrating to be the victim of a crime, burglary, car stealing and assault. However, the word "complex" does not begin to describe the issue of juvenile offending. Its causes are many and its solutions are difficult, but at the end of the day we are people who are content to unleash dogs on children. I think we are better than that. We look forward to working with the Commissioner of Police to find a way of limiting the use of dogs while maintaining, of course, the protection of the community, and like every aspect of juvenile offending, a solution will not be easy to find.

---

I will mention witness welfare. The commission is acutely aware of the stress a commission investigation or examination might bring. It has itself experienced a person under investigation committing suicide more than a decade ago. Recently, as I am sure the committee is aware, a person who received an adverse report for comment and response in Victoria committed suicide. For some years, we have been developing and then refining our witness welfare policy. For example, it is usual for witnesses to be summoned with what we call a nondisclosure notice, which means they cannot discuss it with anyone except a legal practitioner. We now routinely expand that, consistent with the aims of the commission, to include a support person or a nominated counsellor. We also provide information at the time as to the process and places which may assist the witness. Most witnesses are called to give evidence of facts and are not suspected of misconduct, but nevertheless it is no doubt a very frightening thing to receive a summons. But some people are suspects. Their anxiety may well be caused by what they have done and its possible consequences if it is brought into the open. We remain actively aware of the issue and have updated procedures in light of the Work Health and Safety Act and we keep it under constant review. Chair, that concludes by opening remarks. The only other matter I would say is that in due course, I suspect in closed session, when we deal with the matter of William Farmer, we have a report to give to the committee.

**The CHAIR:** Thank you very much for that. Before we commence, I will mention that Hon Dr Steve Thomas needs to go to an estimates committee.

I just want to raise something with you regarding your observations about the effects of current policy and the use of police dogs being not racist in intent but racist in effect. I want to make a segue to some of the controversy that surrounds juvenile detention at Banksia Hill. My question really is: given one of your concerns is to in fact ensure that vulnerable people in our community are not exploited, do you have any observations to be made about the alleged conduct of some custodial officers at Banksia and whether that warrants an investigation by the commission?

**Mr McKECHNIE:** I will pass over to Ms Polmear shortly who is the director of assessments. We receive notifications from Banksia and often they are out of jurisdiction. I will pass over to Mrs Polmear if I may.

**Ms POLMEAR:** I can provide you with some statistics. Since 1 July 2021, we have received 16 notifications pertaining to 39 allegations within the Banksia Hill environment. Only one of those was from a member of the public. The remainder would have been from the Department of Justice. Twelve of those 16 related to excessive use of force allegations. That is where our jurisdiction comes into play because it is very different when compared to police officers. With the use of force, it only comes into our jurisdiction if, as part of the assessment, the force is excessive and resulted in serious injuries—that is to say assault occasional bodily harm or higher as per the Criminal Code—or the use of force occurred in the presence of other children. That is where some of them do come into our jurisdiction.

**The CHAIR:** The question is does it warrant the attention of the commission with respect to an investigation as to what is happening within Banksia Hill?

**Ms POLMEAR:** For those in jurisdiction?

**The CHAIR:** Yes.

**Ms POLMEAR:** I have not got the breakdown of how many of those 16 were in jurisdiction but a high majority of them I would say were probably outside jurisdiction. The more serious allegations we have seen that were in our jurisdiction have resulted in criminal charges by the WA Police, and in that regard we would consider that WA Police is best placed to take that action.

---

**The CHAIR:** We will just park that for a moment and maybe the committee might give some consideration to this response and whether or not we will seek further information from you.

**Hon Dr STEVE THOMAS:** We will deal with the annual report. I am just noting that if you compare the —**Mr McKECHNIE:** Sorry, could I ask what page?

**Hon Dr STEVE THOMAS:** Sorry, just jump to page 54. I am going straight to the finances as is my wont. I note that from 2020–21 to 2021–22 there was a minor change, effectively, to funding and activity. The total cost of services was just slightly down by \$1 million and funding from the state government was up slightly a few hundred thousand. I would have expected that with all these additional roles, you would be looking at a significant increase in 2022–23. Are you able to give us a rundown of what additional resources you might be looking at that you have spent in the current financial year and going forward?

**Mr McKECHNIE:** I will pass to the acting chief executive and, if necessary, the director of corporate services.

[9.30 am]

**Mr ROBINSON:** The funding kicks in in the next financial year. It has just recently been approved. We have an additional \$12 million over four years. We are using that to start the recruitment process across the commission in relation to unexplained wealth. We have recruitment underway in both legal services operations and also within corporate services. We are using that \$12 million over four years to support an expansion of the unexplained wealth function. That is why it does not appear in these papers—because it was just recently approved and it will appear in the forward papers.

**Mr McKECHNIE:** One of the things that the increased funding will do is to enable us to return some resources to the misconduct area.

**Mr ROBINSON:** Yes, that is a good point. When we established the unexplained wealth function, we decided to cut back on our resources into serious misconduct. We can now move those resources back into that function. We will see a small increase in the number of resources deployed in relation serious misconduct function, particularly within the operations directorate.

**Hon Dr STEVE THOMAS:** But the majority of the increase will go to —

**Mr ROBINSON:** Yes.

**Hon Dr STEVE THOMAS:** Okay. Can I then jump to page 8 where you have got your key highlights for the particular financial year that we are looking at. On 23 December 2021 it says the commission and the Presiding Officers of the Legislative Council and the Legislative Assembly signed the protocol in relation to access. There are a couple of issues there that I may not be able to say in a public forum. I did resist earlier asking Mr Robinson whether he had sufficient money because I thought that might be dangerous going forward, so I will let you off that one, but in relation to the process around Operation Betelgeuse, which might require some confidentiality—I am not sure—you have had access to the laptop since that period of time, a year and a bit. I presume that that investigation is ongoing because we have not heard anything in terms of outcomes. Is there an indication of how long that might be going? I think I have said before, on behalf of the committee, we have enormous sympathy for the poor devils that have to sit and read through it—you have our sympathies—but are we in a position to know whether there might be an end point to that investigation?

**Mr McKECHNIE:** It has effectively ended. There is some material that we are looking at on a proposition of our own, but all I will say about the laptop is that it did not live up to its hype.

**Hon Dr STEVE THOMAS:** I am not surprised and I think the committee reiterates its sympathy for the poor devils who have had to look at it. Having said that, that is interesting and that investigation

---

has basically concluded. Are you in a position then to give a comment about the effectiveness of the agreement then? Did that meet all of the needs of the commission in relation to access and in your view is that agreement therefore solid going forward for any other eventuality that might occur that is foreseeable?

**Mr McKECHNIE:** I will switch to Ms Nelson, director of legal services, who has had recent experience, but broadly speaking it is working as intended. It is working well. There is a lot of cooperation between the lower house and the upper house with us. Necessarily, things take time. In a current investigation we had whittled down from one million to about 369 000 documents that need to be searched. In the end probably 20, 30 or maybe 100 might actually be relevant but you have to get everything. But, yes, it is working as far as I can tell. Ms Nelson.

**Ms NELSON:** Thank you, commissioner. Just to summarise what the commissioner said, we are pleased with the level of cooperation between us and the relevant persons in Parliament in relation to matters that are ongoing, but the protocol has not removed entirely the logistical issues that we faced due to the huge volumes of the data seized that we are required to look at. That is requiring some ongoing negotiations.

**Hon KLARA ANDRIC:** I think the commissioner addressed quite a few of the questions that I had to ask today in regard to funding for unexplained wealth and also the use of police dogs. I thought I might ask a question on witness welfare, which I know you also touched on. Is there anything set in place at the moment where it is available for the person to seek, I believe, approval from the commission if they wish to see a psychologist or health practitioner?

**Mr McKECHNIE:** Yes, there is. I routinely, and so does Mr Ellis, grant permission once we know the name of the psychologist. I will not tell them to seek a psychologist—well, psychologist, psychiatrist, doctor or anyone whose profession requires confidentiality in any event. We will sometimes extend it to a spouse if the spouse is not involved.

**Hon KLARA ANDRIC:** Is the commission looking at maybe the ways in which the eastern states both in Victoria and New South Wales have the option where it is granted, unless the commission has advised otherwise, that yes, you can seek to see or contact a health practitioner regarding your situation unless—you are sort of reversing the role where it is granted unless otherwise advised.

**Mr McKECHNIE:** I understand, the default position being it is granted.

**Hon KLARA ANDRIC:** Yes.

**Mr ROBINSON:** When someone is a witness, we give them information about possible sources of support should they require it. We provide them with that information and make it clear to them that they can seek variations if there are nondisclosure notices on them. The other thing that we do is to ensure that we have a witness support person when the person actually comes into the commission for an examination. We have also just recently made some amendments to our witness welfare procedures in light of the report from Victoria. There were quite a few things that we are already doing. Another thing that we have had in place for some time is training for operational staff so that they are aware of these issues and how they might be able to manage stress that is identified in individuals. Just more recently, we have upgraded our procedures to include, for example, the provision of information about support options when we send letters out requiring a section 86 response. When we are completing a report, if there is an adverse mention we will provide a person with an opportunity to respond. There was a case in Victoria where unfortunately a person who was going to be adversely named in a report took her life after she received her report. We have amended our procedures to make sure that people are alerted at that stage because it can be quite a considerable time between both the examination and their appearance and giving evidence and

---

then the report itself, so we want to remind people of the options available to them. We have also made some other adjustments in terms of our bench book just to make sure we are fully across the risk and are able to respond.

**Mr McKECHNIE:** Would it be helpful if we provided the committee with a copy of the current policy and the information given?

**Hon KLARA ANDRIC:** Yes, thank you, commissioner.

**The CHAIR:** Can we just have a look at KPIs and the review that you are undertaking? Last year's report for 2021–22 indicates that you are not meeting your KPIs. For example, 46 per cent of assessment of allegations of significant misconduct have been completed.

**Mr McKECHNIE:** Sorry, what page? I have it. Will "Year at a glance" do on pages 6 and 7?

**The CHAIR:** Yes, okay. Thank you very much for that. I apologise for not having that to hand. It says that 46 per cent of the assessments of allegations of serious misconduct were completed in 28 days compared to the one per cent of the previous year, and the target was 80 per cent completion in 28 days. The question is why are you not meeting your KPIs?

[9.40 am]

**Mr McKECHNIE:** It is a good question and, of course, there is a qualification that the auditor has put on us. I will hand over to Ms Polmear, because if I have learnt nothing else, it is how to handle a hot potato!

**Ms POLMEAR:** Our KPI for the percentage of allegations assessed within 28 days was largely impacted due to staffing constraints across —

**The CHAIR:** Staffing constraints—what does that mean?

**Ms POLMEAR:** The employment market is difficult at the moment. We are no different. We have had a lot of vacancy rates across the directorate. My directorate has been operating on, on average, a 20 per cent vacancy rate.

**The CHAIR:** Twenty per cent, a fifth, down.

**Ms POLMEAR:** Yes. Despite recruitment ongoing, we also have additional delays in our recruitment by virtue of the security vetting process, so when you go out to market it does take a considerable time to get someone in.

**The CHAIR:** You are not thinking of taking trips to the UK and Ireland?

**Mr McKECHNIE:** No, not recently. I will pass back but I will just comment on the security. Because of our various relationships with particularly commonwealth agencies, there is a protocol whereby every member of the organisation has to receive a negative vetting. That can take two months. And, of course, many people cannot wait two months. You offer them a job and say, "In two months' time, we'll take you on." So that is an additional problem, which I do not know how to solve, because common across all agencies is the backlog in the vetting. But I will return to Ms Polmear.

**Ms POLMEAR:** In addition to staffing, we are also seeing increased complexity of assessments. So, assessments are taking longer for us to complete and there is a number of factors that are contributing to that. We have a high volume of reports made by members of the public, and it takes a long time for us to distil that information and draw out the allegations. We still have the issue of body-worn camera and video footage in general, the time taken to view that. We have also made some changes to our own processes on the back of the OAG audit, and that has resulted in assessments taking longer as well. They are the main contributors. We do know that we have further work to do on improving the KPI, and that was specifically with the assessment process. That was

also an outcome from the independent review, and we will be doing a bit more further work looking at our processes this year.

**The CHAIR:** Who conducted the independent review?

**Ms POLMEAR:** It was commissioned to an external consultant, Callio Consulting.

**The CHAIR:** Sorry?

**Ms POLMEAR:** Callio Consulting was the company at the time.

**Mr ROBINSON:** As part of the review they looked at the performance of assessment functions in other anticorruption agencies across the country. We all face sort of similar issues: an increasing amount of information that feeds into the assessment process and into the complexity of the process. Ultimately, one of the significant issues for us is that under the legislation we are required to assess every allegation that is received.

**Hon Dr STEVE THOMAS:** Commissioner, you made a comment in your introductory remarks about the use of police dogs. I noted that you talked about the protection of the community. I would presume that the protection of police officers themselves would be a part of that review.

**Mr McKECHNIE:** Absolutely. They go into situations of peril and they need to be protected.

**Hon Dr STEVE THOMAS:** I would have thought that the predominant use of police dogs is to actually take risk away from serving officers. I am sure that would be a part of what you looked at, but I just thought I would confirm that.

If we are dealing with police, we can jump to page 30 and the agency performance and the overview of how you look at police misconduct, which is obviously a significant focus of what the commission does.

**Mr McKECHNIE:** It is about 50 per cent of our work.

**Hon Dr STEVE THOMAS:** Absolutely. Just before I jump in with probably a couple of more specific questions, are you able to give us an overview of the effectiveness, in your view, of the current legislation? Obviously there is a review that is happening and we are not sure when that is going to be completed. Maybe you know more than we do, and you can tell us more than we already know. In theory, you would think we would probably know as much as you do, but we do not. We probably know less, sadly. If you have any hot gossip in that regard, we would gratefully take that. But if not, if you can give us your overview on the effectiveness currently. I am particularly interested in how effective you see your investigations are into things that I might consider fairly minor. I am on the record of being on the right-wing end of the committee, as it were.

**Mr McKECHNIE:** I would never have guessed.

**Hon Dr STEVE THOMAS:** I say that quite openly, so I do not mind. On those things that I think are a bit minor, can you give us an overview of how you think the commission is effectively dealing with those. I will give you advance notice of the second half of the question. I understand that you also have a very strong interactive role with police in terms of discussion, training et cetera, and I think that is great. It is something the committee is looking at in its “What happens next?” investigation. It is very focused on education in advance rather dealing with these things. Some of those things, I think, are really critical around police, given that they are 50 per cent of your investigations. A couple of issues have been popular in the media lately. I do not know whether these are the sorts of issues that you might provide guidance on. But police pursuits, for example, what is appropriate and what is not appropriate, is that something that you as a commission would give advice to presumably the commissioner and the minister on or are you restricted in the areas for which you can provide advice

---



specifically to opportunities for distinct corruption, if you will? I am interested in what your capacity is because that is something that the committee is very focused on.

**Mr McKECHNIE:** I will shortly hand over to Ms Polmear, but in answer to one question is for police but not for the public service, we have a corruption prevention and education function. So that is very helpful and Ms Polmear will talk about how that works in practice. For the low-level stuff, we take no action. If it is sort of a bit beyond that, it may be referred back to the agency for outcome. We may take it to review the outcome—monitor the investigation and review the outcome. That is usually very effective. We will talk later, probably in closed session, about William Farmer as an example of what we do in that. Then, on occasion, we will do an active investigation. As I said, we have three of those current. But Ms Polmear will help more, I think.

**Ms POLMEAR:** As part of our oversight function, we do work very closely with WA police. We meet monthly at a minimum and discuss a number of matters, predominately those that have been referred back to police for them to take action, and then we are monitoring and/or, on some occasions, reviewing the action they have taken. If I talk about your question in regards to police pursuits —

**Hon Dr STEVE THOMAS:** It is just an example.

**Ms POLMEAR:** Yes. For instance, in a matter like that, depending on the decision that the commission takes, if we do decide to refer that back to Police, we will meet monthly and request updates from Police as to what action they are taking throughout that investigation. If we have any significant concerns along the way, we may escalate it back to our executive and change our decision, and may look to do our own investigation. But it is more during our meetings with police that we can those discussions about broader risks that we may see in that realm of police pursuits. That is also what we do when we do a comprehensive review. We are doing a review of their action to make sure they have addressed the allegations, but we are also looking more broadly to ensure that WA police is managing the risks associated with that function, such as police pursuits.

**Hon Dr STEVE THOMAS:** Okay. So it is through you, commissioner, obviously. The two answers were—the first was quite specific around incidents, I got the impression. There is obviously a second component that is more around process and policy. Does it require an incident to set you down the path of looking at process and policy or can you simply go to process and policy and say, “We think there’s an issue. There is a risk”—I am a big believer in risk assessment—“of corruption in a particular policy area”, and you can effectively initiate an own investigation in that regard?

**Ms POLMEAR:** We can do an own investigation. Also, if we see an emerging area of risk, we may decide to do a schematic review. But generally they are based on the notifications that we see coming in, and we make our decision based on that.

**Hon Dr STEVE THOMAS:** I picked police pursuits just because that was in the newspapers recently. Is that something you have looked at or would look at? Something you have to make a decision based —

**Mr McKECHNIE:** It is something we would look at if we get a notification, and sometimes if we do not get a notification we will look at it, but the police are very good at notifying us of anything that might amount to misconduct. Often it does not actually. I stress again we have a wider jurisdiction in relation to police; we have that corruption prevention and education function.

**Ms M.J. DAVIES:** I’m okay.

**The CHAIR:** You’re okay.

**Ms M.J. DAVIES:** Just for explanation, this is my second meeting so I am just getting up to speed.

---

**The CHAIR:** It gets better.

Can we talk a little bit about the focus of investigations undertaken by the CCC? They mostly relate to procurement and financial management, strategic—that theme. Why is that the case? Why does it remain the case that we are still focusing on that?

[9.50 am]

**Mr McKECHNIE:** Our focus is corruption and the place where you are most likely to get corruption is in procurement in all its sort of terms, because that is where the money is. The other main area is abuse of power, which can lead to corruption, but that is in my experience much more limited. Mostly it is about money.

**The CHAIR:** Given the focus and some notable revelations that have taken place since I have been in Parliament, is the public service learning anything from what has happened? Do you discern any changes in processes?

**Mr McKECHNIE:** Yes.

**The CHAIR:** I know there has been a lot of discussion about reform.

**Mr McKECHNIE:** The acting chief executive will talk a little bit about public sector management and what they have done, because they now have the corruption prevention and education function—but yes. For example, Department of Communities has invited us, I think next month, to a meeting to explain to us what they have done because they had a massive wake-up call. But it is not just them; that has filtered throughout the public service. I think a direct response by Parliament has been the Procurement Act 2020. Finance has published a series of guidelines in relation to bidding and so forth. I will hand over to the acting chief executive.

**Mr ROBINSON:** We work closely with the Public Sector Commission, which has that broader misconduct prevention function. They have, particularly since the Paul Whyte matters, produced a number of I think really useful documents for agencies to start thinking more about integrity issues. They have issued an integrity strategy, integrity framework. They have issued a number of checklists that agencies can use to work through various misconduct risks. Those are all really useful documents I think. We have been asked —

**The CHAIR:** Will you see some national recognition as other jurisdictions have seen that as a good model? Am I right about that?

**Mr ROBINSON:** I think so, yes. Certainly they were mentioned at the recent APSACC, a conference, so I think there has been some recognition of the quality of that product. Whether it has actually led to change or a significant improvement in terms of how integrity is managed within agencies is difficult to tell. From the commitment that we have seen from directors general and senior people in our interactions with them, I think there is a very strong commitment to making sure that they appropriately manage serious misconduct risks. The commissioner spoke about the meeting we have coming up soon with the Department of Communities to talk about how they have responded to the various issues they faced as a result of the Paul Whyte matters. They have gone through a comprehensive process of reform.

**The CHAIR:** Was that initiated by the commission or by the department?

**Mr ROBINSON:** Yes, we initiated that meeting. Our view is that it is important for us to follow through on our recommendations to make sure that we can see if they have some traction and some effect within agencies. We took that approach with the Department of Justice some years ago where we issued a series of reports, made recommendations for fundamental change. The Department of Justice took that up very seriously, they responded very effectively. We then followed up with a

---

number of hearings where we heard about how they were managing the particular risks that we had identified. We are adopting a similar approach with Department of Communities and other departments where we see there are significant issues. It is important for us to follow through and find out if the changes are actually having an effect and whether the department is taking these issues seriously. I can say in the case of the Department of Justice and Department of Communities that that certainly appears to be the case.

**Mr McKECHNIE:** The other thing that helps is prosecutions. If you have the recent statistics, it is a great deterrent when people start going to jail or get charged. We do not have a prosecution function; we do not want one. But recently, as you probably saw, Mr Fullerton was the last of the north metro people to go to prison. I forget how many contractors there were but there were lots that either went to prison, got a suspended sentence or were severely fined. That in itself has a ripple effect. We might just give you those figures briefly.

**Ms NELSON:** Yes, committee, I can give you figures in relation to the Operation Betelgeuse prosecutions. As you are aware, as we are not a prosecuting agency, we have no control over the number of charges that are commenced, but we do have a direct relationship with the State Solicitor's Office to refer matters, especially where there are likely offences arising under part 11 of our act—those offences that interfere in some way with our investigations. Arising from Operation Betelgeuse there were seven individuals who we referred to the SSO for consideration, and charges were commenced against five individuals. One was subsequently discontinued—or the charges were discontinued. Three of those individuals have since entered pleas of guilty and been sentenced, and there is one remaining outstanding.

All the other matters, the prosecutions that have arisen in probably the last six months, have been as the result of WA Police commencing charges on the back of our investigation. They then have a direct relationship with the Director of Public Prosecutions to pursue those charges. The commissioner referred to charges being finalised from Operation Neil, which was the North Metro Health Service investigation. That very last prosecution was Mr John Fullerton, and he was sentenced in December last year, so that closes that matter.

There are other prosecutions that the DPP is still pursuing in relation to Operation Taurus arising from the Department of Communities investigations and spin-off investigations and other investigations.

**The CHAIR:** I might use the wrong language, but why does the commission not brief the DPP directly, given presumably the heavy workload of the State Solicitor's Office?

**Ms NELSON:** Yes, very good question. Well, as you know, in May last year we entered into a protocol with the DPP and the SSO. As a result of that, we agreed that prosecutions under our act would be direct referrals by us to the State Solicitor for him to, firstly, consider whether to commence charges and then, secondly, to take the carriage of those, because they are generally in the Magistrates Court, in the lower courts; whereas, when we recommend as a result of our reports or otherwise that prosecutions are considered under the Criminal Code, normally WA Police will then put together that investigation and brief of evidence, and that would go directly to the DPP. As a result, we tend not to have that direct relationship with the DPP at the stage where charges are being considered that we have with the State Solicitor's Office. Our relationship with the State Solicitor's Office arising from Operation Betelgeuse is very good. Also, the protocol vastly helped with that. Myself and the Deputy State Solicitor met in December just to firm up all the different ways that we give them information so that it is fit for purpose and I would say that is a very defined pathway going forward. It works well.

---

**Ms M.J. DAVIES:** I have a questions about the Department of Communities follow up that the commission is doing. You are following up on the recommendations that are made. How is that then reported, or is it reported? Does it come back through the committee? Is it public? What happens to that information once the CCC has it?

**Mr McKECHNIE:** If we make formal recommendations—I have just had a mind blank as to whether we have.

**Mr ROBINSON:** We have made some small number.

**Mr McKECHNIE:** There we go. For some years now, we will make a recommendation in a report and then we say we will check in 12 months to see what you have done and we will often publish a small report—the department has accepted 1, 2, 3 and 4 but they have not accepted 5, 6 and 7 for these reasons—so we do follow up.

[10.00 am]

**The CHAIR:** Publish publicly?

**Mr McKECHNIE:** Yes.

**Hon Dr STEVE THOMAS:** I have a couple of issues. The “year at a glance” stuff is quite interesting on page 6. But your examinations, can I just check, I am pleased to see the commission has, let us say, ended a process of public hearings which were, dare I say it, a little salacious—I am not politically siding on either side of the fence. But have any of your hearings been public in that reporting period? How many public hearings are you holding versus what I think is a far more just and appropriate process, which I think you are taking the bus down the path of closed hearings unless there is a specific benefit?

**Mr McKECHNIE:** Yes, and that is what the act requires. We have had one public examination. Our practice—I say “our” because Mr Ellis is also a commissioner—is that if a person is a suspect, we would not hold a public hearing. We would give them the opportunity to explain. Some ICACs will do always a private examination followed by a public examination. I just myself do not see the point of that. The purpose of an examination is to gain information or to put to a witness facts we have uncovered for their comment. It is not for public shaming. The one example that we did do public arose out of the Paul Whyte matter and, broadly speaking, we asked the former head of Communities, Mr Graham Searle, what went wrong. It was not that we were alleging and do not allege that Mr Searle himself had any part to play in misconduct, but how did it happen that the deputy director general was able to get away with \$19 million over five or six years? What went wrong? So we did do that and that is the sort of thing that we would probably continue to do, ask people who were in charge, “How did this happen?” But, again, not to shame them, but that is information that we would probably think is in the public interest.

**Hon Dr STEVE THOMAS:** So that, in theory, plays as much of an educational role —

**Mr McKECHNIE:** Correct.

**Hon Dr STEVE THOMAS:** — for others as it does anything else. Again, I would like to know how far through the process the new bill is because that is the sort of thing that perhaps a new bill might better focus on and empower the commission to do rather than—but like I say, I am still waiting for a drop of secret information.

**The CHAIR:** Can I just go back to the agency responses to CCC recommendations. In the period under consideration, you produced two reports. One was regarding the Department of Corrective Services and the other was related to drugs in hospitals. The responses of the agencies became known to the public. There are other agencies where you have made recommendations which are not public

because you have decided not to make a comment or observation about the extent to which there are observations or recommendations being responded to. Why is it not done by all agencies with regard to the progress that they have made in relation to findings?

**Mr McKECHNIE:** I am struggling to think particularly of one—somebody might help me. We do make reports direct to chief executives comparatively often public —

**The CHAIR:** Yes, I was talking about public knowledge. That is what I am interested in, because other jurisdictions do.

**Mr McKECHNIE:** Well I thought we did, but obviously we do not.

**The CHAIR:** Maybe not as much as others do. What happens next is an interesting area of accountability with respect to our agencies. We are looking at ways in which you can improve transparency in that regard. Am I right in saying that that is sort of—is there anything that prohibits you from putting all of your reports to agencies up in the public forum and then making comment about the extent to which the agencies in fact are progressing towards realisation of those recommendations, if that makes any sense?

**Mr McKECHNIE:** Yes. I am struggling to think of ones where we have not, but as a general rule, we should, and if we are not, there may be good reason. We like, particularly if there is a systemic issue—when we are considering at the operations committee what to take on, it is often a lone wolf actor or a lone actor who is corrupt. We might or might not get involved with that or more likely give it to police or someone, but if there is a systemic issue, then we are more likely to take it because of its educative value. Every report should be an education for every director general. If we are not doing the 12 months, as a general rule I think we ought to.

**The CHAIR:** Maybe I am misreading the situation but thanks for that response.

**Hon Dr STEVE THOMAS:** I am interested in how the relationship is going with the parliamentary inspector. He plays an obviously critical role in oversight as well as this committee. Mr Zilko appears to be very enthusiastic in his work. Let us start with that simple question: How is that relationship? Has it changed over the last 12 months since our last annual report hearing? Has his focus been to deliver cooperative outcomes as such with the commission itself? Let us begin there.

**Mr McKECHNIE:** The relationship is very positive, as it was with the previous parliamentary inspector who sadly passed away, Michael Murray. The relationship is positive and professional. He has access to our systems. He looks at matters. He gets a lot of complaints because with the previous parliamentary inspector, there was an argument with the commission about whether they were required to tell him about everything or only matters which reached the threshold of reasonable suspicion. That had been going on for some time. While I am inclined to be of the view that it is only allegations that reach that threshold, I agreed with the previous and continue with this to tell them everything, most of which is nothing. If somebody comes in, the assessor assesses that there is no misconduct, they join the corruption and they send us a letter saying, “This assessor must be corrupt because they don’t agree with us.” We send that to the inspector, but of course there are matters of substance that we send to him. He is the only person who has jurisdiction over minor misconduct in the commission. If a commissioned officer may fall within the minor misconduct, that is within the PI’s jurisdiction even though he allows us to handle it. For serious misconduct, if it arose, we would decide on a case-by-case basis who did what, but the relationship is very professional and very helpful because if on occasions we get it wrong, he points it out and we can correct it.

**Hon Dr STEVE THOMAS:** Have there been any occasions when the parliamentary inspector has sought information that has not been able to be handed over for some other reason? Has there been any instance where he has not been able to access things that he has requested?

---

**Mr McKECHNIE:** I am unaware of any.

**Ms POLMEAR:** There are none that come to mind.

[10.10 am]

**Mr McKECHNIE:** He will write seeking access to the file—it is all done electronically, of course—and then we give him the link to the file.

**Hon KLARA ANDRIC:** Commissioner, just following relationships, I do believe that I asked a question at a previous hearing in regards to the commission's relationship with the ALS. I just wondered if you could further describe how that is going, and also if you have received any feedback or discussion paper from the ALS on the use of dogs.

**Mr McKECHNIE:** I will pass to Ms Polmear. I read their last appearance here. I do not think they like us very much!

**Ms POLMEAR:** We still meet with ALS, as recently as yesterday. We are looking to make that a regular engagement every six months. In that forum, we discuss more the higher level issues as opposed to getting into specific cases in our discussions. It can be quite difficult because we have those restrictions on official information and we want to still be able to share with them what we can. For instance, yesterday we spoke about police dogs and we spoke about Banksia Hill, so they are two topics of interest at the moment. We also did discuss about the ALS police dogs report. They advised that they are going to forward us an updated version, so we are expecting that very shortly.

**The CHAIR:** Commissioner, you indicated that you would like us to go into closed session. We are happy to do that. On that basis, I would ask the members of the public gallery to depart.

**[The committee took evidence in closed session]**

---