

**SELECT COMMITTEE
INTO THE POLICE RAID ON THE *SUNDAY TIMES***

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
Monday, 9 June 2008**

SESSION THREE

Members

**Hon George Cash (Chairman)
Hon Adele Farina
Hon Giz Watson**

Hearing commenced at 1.05 pm**ANTICICH, MR NICHOLAS****Director, Operations, Corruption and Crime Commission,
sworn and examined:****WYNN, MR TREVOR****Manager, Investigations, Corruption and Crime Commission,
sworn and examined:**

The CHAIRMAN: On behalf of the committee, I welcome you to the meeting today. Before we begin, I ask you to take either the oath or the affirmation.

[Witnesses took the oath.]

The CHAIRMAN: Please state the capacity in which you appear before the committee.

Mr Anticich: I am the Director of Operations of the Corruption and Crime Commission, Western Australia.

Mr Wynn: I am the Manager of Investigations at the Corruption and Crime Commission.

The CHAIRMAN: You will have signed a document entitled "Information for Witnesses". Have you read and understood the document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you in due course. However, to assist the committee and Hansard please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones, and try to talk into them and be sure you do not cover them with papers or make a noise near them. If both speakers are to speak, if you can speak in turn that will be helpful for Hansard. I remind you that your transcript will become a matter for the public record.

If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Do either of you gentlemen wish to make an introductory statement?

Mr Anticich: Mr Wynn and I are here to represent the commission. We come here with full authorisation of the commissioner. Our intention is to fully assist and provide whatever information it is that the committee seeks.

The CHAIRMAN: Thanks, Mr Anticich. As you are probably aware, the committee has been directed by the Legislative Council to inquire into and report on all circumstances surrounding the police raid on the *Sunday Times* on 30 April 2008. As such, your prior or subsequent knowledge, understanding or involvement in any matter relevant to the police raid on the *Sunday Times* on 30 April 2008 is of interest to the committee. You should be aware that, while the Parliament has wide powers to require persons to answer questions and produce papers, it is not the wish or desire of this committee to interfere with any ongoing police or other investigation. To avoid interference with

any police or other investigation, you may request the committee to take any of your evidence in private. If the committee agrees, the committee hearing room will be cleared of any members of the public and the media.

You have advised of the capacity in which you appear before the committee today. However, before we proceed to ask some specific questions, it would be helpful to the committee if you would explain the role and responsibilities you have as officers of the CCC, so that we can understand where you are coming from and, we hope, that you understand where we, as members, are coming from.

There is a matter we need to determine just before we hear from you in your general roles with the CCC; namely, the question of whether the evidence is heard in public or private. Do you have a particular preference in regard to that?

Mr Anticich: Certainly, it is the case, Mr Chair—I have conferred with the commissioner and it is the position of the commission—that we have no objection to it being heard in public.

The CHAIRMAN: Mr Anticich, I have indicated that should there be any matter that you wish to raise that you believe could prejudice an ongoing investigation, or investigation generally, please let us know, because we would be pleased to take that in private. It is not our wish or intention to upset any continuing investigations.

Mr Anticich: I understand.

The CHAIRMAN: Thank you for that. In a moment we will invite Mr Driscoll to advise the media that the hearing is to be in public. Can you tell us a little about yourself so that we understand your roles within the commission?

Mr Anticich: The Corruption and Crime Commission is split into a number of directorates. One of the major directorates is that of operations, of which I am the director. Within that area of responsibility there are a number of business units. Principally, it is our role to assess, review, monitor and in some cases investigate misconduct that is reported to the commission. I have overall span of control as it relates to the operation, the physical assets of the people, within that directorate. Mr Wynn appears as a manager within the investigations unit; that is, he manages a team specifically tasked with those matters that the commission is tasked with or determines to undertake investigations into. Hopefully, that provides some explanation.

[1.10 pm]

The CHAIRMAN: You do not disagree with any of that, do you, Mr Wynn?

Mr Wynn: No, I do not.

The CHAIRMAN: I will direct my questions in the first instance to Mr Anticich but clearly, Mr Wynn, if you wish to respond, let us know so that Hansard is aware because the questions are directed to both of you.

Mr Anticich: If I might explain, the reason Mr Wynn is with us today is that he had some specific involvement in some of the issues I believe the committee may have an interest in. He is here for that reason.

The CHAIRMAN: Thank you. I refer to the 10 February article published in the *Sunday Times* at page 3 headed “Bid to ‘buy’ Labor win”, which was an exclusive report by Paul Lampathakis. When and how did you first become aware of that article?

Mr Anticich: Certainly, we would have been aware of the article but in an official capacity within the commission the first official notification we had was on 12 February 2008. It came to the commission by way of a notification pursuant to section 28 of the act and consisted of a letter from Mr Mal Wauchope, the Director General of the Department of the Premier and Cabinet. He wrote to report on a matter of suspected misconduct, as I said, pursuant to section 28 of the Corruption and

Crime Commission Act. I believe we are in a position to provide the committee with a copy of that document.

The CHAIRMAN: That document is received and is exhibit 3A.

Mr Anticich: In broad terms, I will explain that it sets out the background relating to that *Sunday Times* article. It then touches on some detail as it relates to the allegation of misconduct. I draw the committee's attention to page 4 and the penultimate paragraph where there is a reference to the matter being referred to the relevant unit within the WA Police, as it may constitute disclosure of an official secret under section 81 of the Criminal Code.

The CHAIRMAN: The document at page 3 names a particular person and that name is circled. The word "error" is written next to it. Can you explain, without naming the person, the reason for circling the name? Firstly, was it done by a commission member or staff or someone else?

Mr Anticich: It was. By referring to our case notes as it relates to this, I understand we contacted DPC and fixed that error. That was wrong. It was incorrect.

The CHAIRMAN: Is that to say that the name in the document is an error and that the error belongs to the Department of the Premier and Cabinet?

Mr Anticich: Correct.

The CHAIRMAN: Thank you. Mr Wauchope sent this letter to you and outlined what he believed was a breach. Did you take any action to satisfy yourself that there was an unauthorised disclosure of confidential documents relating to the substance of the 10 February article?

Mr Anticich: No, the commission did not.

The CHAIRMAN: Is the commission obliged under the Corruption and Crime Commission Act to take any preliminary action when it receives an allegation?

Mr Anticich: Yes, it is.

The CHAIRMAN: Can you explain to the committee what that requirement is.

Mr Anticich: There is an obligation on all departments to notify of suspected misconduct. That comes to the commission and the principal role of the commission is to consider that against the act to determine by virtue of the allegation if it does constitute misconduct and/or serious misconduct. That is reliant upon the interpretation of a section within the act. We, as matter of course, would have undertaken an assessment as to whether we thought the matter constituted potential or serious misconduct.

The CHAIRMAN: An assessment was made. Was it made under section 32?

Mr Anticich: That would be correct, I believe.

The CHAIRMAN: Did you form an opinion that there was potentially misconduct?

Mr Anticich: We formed an opinion that there was serious misconduct.

The CHAIRMAN: Serious misconduct?

Mr Anticich: That is correct.

The CHAIRMAN: Thank you. What did you then do, Mr Anticich, having formed that opinion?

Mr Anticich: The second part of the process is to determine how the matters that come to us are actioned. With this matter, as I alluded to in the reference from Mr Wauchope, it indicated that in fact WA Police had also been notified of this matter.

The CHAIRMAN: You referred to that notification on page 4 of Mr Wauchope's letter dated 12 February 2008.

Mr Anticich: That is correct. As a general principle, the commission can take a number of actions. It can refer the matter back to the department from which it emanated; it can refer it to another appropriate agency to deal with it; or it can, on occasion, take it upon itself to investigate matters either independently or jointly with another agency. They are broadly the types of decisions we make.

The CHAIRMAN: As provided for in the act.

Mr Anticich: That is correct.

Mr Wynn: That is under section 33.

The CHAIRMAN: Section 33 is headed “Decision on further action on an allegation”. Is serious misconduct a criminal offence?

Mr Anticich: There are three areas under section 4 of the act that define what constitutes serious misconduct. One of those—from recollection it is section 4(c)—defines serious misconduct as an act where —

a public officer whilst acting or purporting to act in his or her official capacity, commits an offence is punishable by 2 or more years’ imprisonment.

In other words, that is one of the triggers for defining an allegation as being serious misconduct.

The CHAIRMAN: Is there a specific offence in the Criminal Code that deals with that?

Mr Anticich: No, there is not. It is defined as any offence that is liable to be punishable by two years of imprisonment.

The CHAIRMAN: Did you satisfy yourself that a criminal offence may have occurred?

Mr Anticich: On the basis of the notification that we received; that is correct.

The CHAIRMAN: Having regard to section 4(c) of the CCC Act 2004?

Mr Anticich: Correct.

[1.20 pm]

The CHAIRMAN: Did section 81 of the Criminal Code come into your thinking at that stage?

Mr Anticich: Obviously, that is an element of that determination. It is one of those offences that trigger those precise provisions. If the notification or allegation is—I think section 81 refers to a two-year penalty—then obviously if that is contained with the allegation of misconduct, it would therefore be serious misconduct under our act.

The CHAIRMAN: Are you aware of any other offences that relate to the disclosure of confidential documents without authorisation?

Mr Anticich: Pursuant to the Criminal Code?

The CHAIRMAN: Pursuant to any code, act or administrative instruction.

Mr Wynn: The one that comes to mind relates to disclosing official secrets. As you read that section, it goes a lot further than “secret” means in its ordinary meaning. That is the other offence that would also be relevant.

The CHAIRMAN: You established that a criminal offence could have occurred as a result of the apparent unauthorised disclosure of information.

Mr Anticich: Certainly, on analysis of the allegation at its worst, if it were shown to be correct, there could have been a criminal offence.

The CHAIRMAN: I asked what action you took. You indicated that Mr Wauchope advised you that he was referring the matter to the police. What further action did the CCC take?

Mr Antcich: Perhaps to enable us to tender some documents, I will outline what happens when cases or matters come to the commission. We have an electronic case management system that effectively is a computer on which we log and put down the details of steps, actions and other things that we take. I am able to go to the case management system. I will tender to the committee a copy of the relevant entry. These are contemporaneous entries made by the relevant officers at the time in terms of the actions they took. I will hand over to the committee a document titled "Case Note" with the Corruption and Crime Commission logo. Its created date is 26 February 2008. It has the number 14.07, which reflects the time it was saved. In common terms 14.07 is 2.07 pm in the afternoon. It identifies the case officer who made that entry.

The CHAIRMAN: We will call that exhibit 3B for the purposes of receiving the document.

Mr Antcich: I can either refer to that entry and read that entry into the transcript or take questions. Effectively, it steps through the actions taken by the officer in determining what action the commission would take regarding that allegation.

The CHAIRMAN: It would be helpful if you were to read from the document, if that is what you wish to do. We want to place on record what occurred after the receipt of the letter from Mr Wauchope of the DPC to the Commissioner of the Corruption and Crime Commission.

Mr Antcich: I can say by referring to this that on 26 February 2008 at 9.09 am the officer concerned rang the Department of Premier and Cabinet and spoke with Ms Lisa Ward as the contact named on the notification. There was some clarification about that name that you previously mentioned, Mr Chair. She advised that there had been an error in terms of that name. She was asked whether the matter had been reported to the police. She advised that they had done so and it was to the fraud squad, as is now required. There has been a change in the administrative arrangements with police and notifications.

The CHAIRMAN: Could you go through that change in notifications?

Mr Antcich: Certainly. Up until more recent times within the WA Police there existed a group known as the public sector investigations unit. Its history goes back to our former agency, the ACC. It was effectively a divisional area within the WA Police that dealt with investigations of public sector matters. On 19 November 2007 the commission was advised by the WA Police that that role and function was to be dissolved and that it was to be absorbed within the specialist crime portfolio under the management of the major fraud squad.

The CHAIRMAN: Thank you. You referred to a phone call at 9.09 from the commission to the DPC. On that same day at 9.15 the CCC rang some other party.

Mr Antcich: Yes. At 9.15 the WA Police were contacted by the officer. He spoke with a member of the fraud squad. There is a phonetic pronunciation of that member's name as another person from the WA Police was not there. They were advised that the matter had been reported and assigned; however, the officer could not identify the case officer or the case number. Our case officer advised that when the section 28 notification was forwarded to the commission, he should include these details and quote our reference number, which was given to him. At 1.50 pm that officer received a message to contact Lisa Ward once again. When contacted she advised that she had just received notification from the police that they were investigating the matter and quoted the police reference number. There is a number in there. Lisa also inquired into whether the police would investigate all issues. She was advised that the police would only investigate criminality and would not investigate procedural matters and that would be for the DPC to determine once the police investigation was complete.

The CHAIRMAN: Is that the only documentation that you have on your files about this matter?

Mr Antcich: No, it is not.

The CHAIRMAN: What other documentation do you have?

Mr Anticich: As it relates to the development of this specific matter?

The CHAIRMAN: Yes.

Mr Anticich: There was a fair bit of quiet between that particular point in time and the next highlight. Perhaps I should explain another process. In deciding whether the commission takes on a matter within our workings, we have a group known as the tasking coordination group. Effectively, it is that group's job to look at matters and determine against a bunch of criteria whether we should take matters on. I can say that on 27 February this matter went to the tasking coordination group. I have a similar case management note, which I can tender to the committee. I will contextualise again the decision and position of the commission.

The CHAIRMAN: Exhibit 3C is the document, "Case Note (General) - 000003".

Mr Anticich: It says this —

The T&CG met out of session . . .

It nominates the officers —

. . . to consider the notification made by DPC, together with the accompanying report from —

One of our officers.

The CHAIRMAN: Does the accompanying report relate to that document there or some other document?

Mr Anticich: It does relate to that.

The CHAIRMAN: That is the only report that it relates to.

Mr Anticich: That is correct.

Mr Wynn: We have copies of that for the committee if you like, Mr Chair. That is the document Mr Wood compiled and sent to me.

The CHAIRMAN: That document is exhibit 3D.

Mr Anticich: Importantly, it reads —

The T&CG had regard to the fact that the matter had also been reported by DPC to the WA Police and that confirmation was received on 26FEB08 that the WA Police had commenced an investigation.

The T&CG also noted that numerous named people had access to the information that was allegedly leaked, together with, as DPC state "it is likely that a number of other officers from DPC and the Department of Treasury and Finance may have had access to the information". If the information was confidential, it seems on the face of it that a considerable number of people did have access. The T&CG also noted that the information was considered by Cabinet on 17DEC07.

Having regard to the fact that the matter is being investigated by the WA Police, and the absence of any compelling reason why the Commission should stop that investigation and in turn investigate the matter itself, the T&CG rejected the matter.

The CHAIRMAN: Rejected the matter—meaning?

Mr Anticich: We did not take it on as an investigation in our own right; rather, it was being dealt with appropriately by another agency.

The CHAIRMAN: How did the T&CG know that the matter had been considered by cabinet on 17 December 2007?

[1.30 pm]

Mr Anticich: We are privy to information and materials provided to us as part of, I think, the initial referral, Mr Chair.

The CHAIRMAN: So are we going to find that in the letter from Mr Wauchope to the CCC?

Mr Wynn: Mr Chair, if I can help.

The CHAIRMAN: Mr Wynn.

Mr Wynn: Mr Chair, on the letter of 12 February, on page 2 of that letter —

The CHAIRMAN: Yes, yes.

Mr Wynn: — in the paragraph immediately above the bold “Confidentiality of Cabinet Documents” it goes on to speak about the submission was prepared by an officer of the department, it was considered by cabinet on 17 December 2007, as it was an attachment to the minutes of the cabinet subcommittee on a communication meeting of 4 December 2007.

Mr Anticich: Mr Chair, I can say that we did receive a letter from Mr Tim Marney, the Under Treasurer, actually pointing that out to us.

The CHAIRMAN: A separate —

Mr Anticich: That was on 21 February 2008.

The CHAIRMAN: 21 February 2008?

Mr Anticich: Yes.

The CHAIRMAN: Have you got a copy of that letter that is available?

Mr Wynn: We do, Mr Chair.

Mr Anticich: Just to clarify, that is dated 21 February, but received by us on 26 February.

The CHAIRMAN: Right. Thank you.

Mr Wynn: Mr Chair, we do not seem to have seven copies of that one, but I will hand up the one copy that I do.

The CHAIRMAN: Thank you. We will get that —

Mr Wynn: I beg your pardon, I have got that many documents—I have found it.

The CHAIRMAN: That is all right. Let us pause while we organise the documents.

Mr Wynn: Mr Chair, I do not appear to have multiple copies of that document.

The CHAIRMAN: We will ensure that it is photocopied, and therefore, David, that is 3E, is it not? Yes, that is 3E. The reason that we do not have to hold the proceedings up, Mr Wynn, is that we actually have a similar copy from the Under Treasurer, but we will still receive your document separately as 3E.

Mr Wynn: Thank you, Mr Chair.

The CHAIRMAN: Mr Anticich, you said you had received this documentation from the Under Treasurer, and we have now been provided with a copy of it. Just in respect to that internal memo, exhibit 3D, I notice that in the fourth paragraph, second part, it states —

I have contacted the Public Sector Investigations unit within the Major Fraud Squad and have been advised that the allegation has been received and allocated to a case officer.

In your case note, you later indicate that—that is dated the 26th; this is the 26th, the same day. The police advised the officer from the DPC that a particular police reference number had been given to that—that is the reference that is being made in your internal memorandum?

Mr Anticich: That is correct.

The CHAIRMAN: Okay. Now, Mr Anticich, we interrupted your flow.

Mr Anticich: What I was saying, Mr Chair, was, effectively, the matter, certainly from the perspective of the Corruption and Crime Commission, fell reasonably silent, if I could describe it as that. One of the other functions of our role is that, once a matter is referred out to another agency, we go into a monitoring process that is, effectively, watching or keeping an eye on these things. Ultimately, when a matter is concluded, it comes back to the last part of the process, which is a review of what has actually been conducted.

The CHAIRMAN: Can we talk about the monitoring? Is that under a particular section of the CCC act?

Mr Anticich: It is. Section 41 of our act, I think, Mr Chair, takes you to that. Effectively, it is just our ability to watch as these things unfold.

The CHAIRMAN: It is before that. Section 40?

Mr Anticich: Section 40?

The CHAIRMAN: Section 40.

Mr Anticich: Yes. I beg your pardon, it is section 40.

The CHAIRMAN: Section 40. Section 41 comes after the event and deals with the review.

Mr Anticich: Absolutely, yes. My apologies.

The CHAIRMAN: In respect to the monitoring, Mr Anticich, you were indicating that the commission adopted a monitoring role, after—you said that there was notification on the twelfth, and there seemed to be a gap until the twenty-sixth; on the twenty-sixth certain documentation was produced; on the twenty-seventh the Under Treasurer wrote—he wrote on the twenty-first, in fact. On the twenty-sixth various—you had some internal reviews or discussions in respect to the matter.

Mr Anticich: Yes.

The CHAIRMAN: What happened after the twenty-sixth?

Mr Anticich: In essence, the matter has gone to the police for investigation and there is no active role for the commission, other than to await the conclusion of that inquiry or that investigation, until the next active participation of the commission, if I could call it that. Again, I take you to another case note entry that we have previously provided. These are contemporaneous notes made by the office concerned at the time.

The CHAIRMAN: Which note are you going to take us to?

Mr Anticich: This is a case note again with the Corruption and Crime Commission logo, headed “Case Note (General) — 0009”. It has been created on 30 April 2008 at 11.51 by a nominated officer, who is a Mr White who works at the commission.

The CHAIRMAN: Yes. Mr Anticich, just interrupting to say that that will be exhibit 3F, for your records. Yes?

Mr Anticich: That entry then details a discussion with Arno Albrect, who I know to be an inspector with the WA Police commercial crime area. If I take you through that note, it states that the office had received a call from Mr Albrect at 10.15 hours that date. He believed that Arno had contacted him because he was a member of the commercial crime committee, which meets at his office quarterly. In other words, the association between our officer and Mr Albrect relates to a meeting that they go to; it is not specific to this case, but rather an association through another forum. Continuing with the case note: Arno advised that they intended—the WA Police—executing a search warrant on the *Sunday Times* that afternoon and wanted to discuss another way of proceeding with the investigation. The note continues —

Arno suggested the Commission hold a hearing instead — to avoid the media fallout, and to overcome the fact that the WAPS are unable to compel any witnesses.

Bear in mind, I will just reinforce the fact that Mr White has no involvement with this case. The note continues: after discussing the matter with another one of our officers, Trevor Wynn, who was the manager at the time, our officer phoned Arno back and informed that the matter was considered by the operations directorate, which had decided not to investigate the matter, thus the referral to the WA Police. I have taken you through the process that that involved. He also informed Arno that we were unable to work with them jointly and assist using our hearing powers, as it was not a matter relating to organised crime. I quote —

Therefore, if we were to conduct a hearing, we would need to take over the investigation. In any event, I advised that conducting a hearing for the sole or dominant purpose of compelling a journalist to reveal their source is not considered an appropriate use of the Commission's hearing powers.

The officer suggested to Arno that he contact Trevor Wynn should he wish to discuss the matter further.

If I can take you then to another case note entry. This is headed "Case Note (General) 000010".

The CHAIRMAN: Dated 30 April; exhibit 3G.

Mr Antcich: I take you to the creation time, which was 30 April 2008 at 12 o'clock. It relates to a conversation between Mr Wynn and Mr Albrect. For the purposes of, I suppose, direct evidence, I might ask Mr Wynn to relate that to you.

[1.40 pm]

Mr Wynn: If I can just put this into context. My telephone rang, as it happened, moments after the conversation had concluded with Mr White. Actually as I answered my phone, Mr White was at my door and I had not realised that Mr Albrect had actually spoken with Mr White when I had this call. I will read from the case note that I made —

Telephone call from Supt Arno Albrect . . .

Albrect telephoned after speaking with Paul White. He was slightly aggressive questioning why the Commission would not serve a notice to obtain documents from the Sunday Times and demand that a journalist reveal his sources in a hearing.

WAPOL are intending to execute a search warrant on the Sunday Times and Albrect says it will turn into a media circus. He says this could be avoided if the CCC undertook the investigation and issued notices so that it couldn't be reported.

I inquired as to what the purpose of the S/W was, —

That is, search warrant —

presuming it was to obtain documents. He confirmed this.

I proceeded to advise Albrect that a notice to produce documents was an entirely different tool to a search warrant and I went on to explain the differences. He reluctantly accepted that a notice was not a substitute for a S/W.

If I can just assist the committee there. A search warrant allows you entry to the premises and, as it suggests, to search for documents; whereas a notice is something that is handed to a particular person which has a return date on it and that person then produces the material. It is a very real issue forthwith and to a certain extent it is dependent on the person cooperating to provide the documents sought in that notice.

As to the issue of media circus, I advised Albrect that if the CCC attended at the Sunday Times and executed a S/W there was nothing the Commission could do to prevent reporting

of that. The restricted information applied to the issue of notices, appearing at hearings, and associated matters.

Albrect continued to assert that no journalist would talk to them and the CCC was set up to deal with these situations when for example a journalist could be called in and made to reveal a source.

I advised Albrect that the use of the Commission's coercive powers was on a judicious basis and generally only used when no other alternative avenue was available to achieve desired investigative outcomes. I said to Albrect that in the current matter, if they had formed a view that a S/W was needed, I would have thought that a process would have then taken place to review the material located, in an attempt to discover the source of any leak, regardless of whether a journalist would speak to them or not. I indicated to Albrect that for the Commission to call in a journalist for the predominant purpose of revealing a source, which of course goes against the very fabric of the journalists code of conduct, whilst we wouldn't completely rule it out, the circumstances would have to be very serious and grave, as there were a number of flow on effects such as whistle blowers losing confidence in confidentiality with journalists etc.

I concluded by advising Albrect that once the investigation was complete, the Commission would review the results as part of our normal review process. That process would include looking at whether the agency (WAPS) —

Western Australia Police Service —

or the Commission could reasonably take the matter any further.

Albrect concluded by thanking me for the explanation.

I should also point out to the committee that at the time that I wrote that case note, which, as Mr Anticich has indicated, was at midday, I was not aware that the police were intending to execute the search warrant that afternoon. That did not form part of my discussions with Mr Albrect.

The CHAIRMAN: You indicated Mr White was at your door?

Mr Wynn: He was. Basically my phone was ringing and as I went to pick it up, he motioned to me basically "It will be Arno".

The CHAIRMAN: In respect of that particular document, and I am referring to exhibit 3G, in the seventh paragraph, last sentence —

I indicated to Albrect that for the Commission to call in a journalist for the predominant purpose of revealing a source, which of course goes against the very fabric of the journalists code of conduct, whilst we wouldn't completely rule it out, the circumstances would have to be very serious and grave, as there were a number of flow on effects such as whistle blowers losing confidence in confidentiality with journalists etc.

Can you tell me what you would regard to be a "serious and grave" matter that would cause the commission to be involved?

Mr Wynn: It is a very difficult question to answer, Mr Chair, because I am dealing with hypotheticals, but —

The CHAIRMAN: It was, Mr Wynn, something that you said to Mr Albrecht at the time.

Mr Wynn: It was. I said that on the basis that in the history of the commission—and I perhaps would prefer not to go into those details—we have, as I recall it, called in two journalists in the past in respect of certain matters where certain questions have been put to them when the commission considered, in the circumstances that existed with those matters, it was necessary to do so. One of the things that is important when we weigh up the considerations is: what alternatives are available other than the use of the commission's coercive powers? With, for example, the execution of a

search warrant, the actual execution of the search warrant is only one phase of it. There is then a process where investigators will go through and review that evidence and then look for secondary sources, I suppose, to prove or find evidence of certain matters. In this particular example, if a search warrant had been executed and there was some evidence found, if the journalist chose not to speak to the officers concerned, then an alternative course is go through the evidence that was seized to see what other avenues of inquiry are available.

The CHAIRMAN: I appreciate those comments, but I still come back to my question: what would constitute a “serious or grave” circumstance that would cause the commission to act?

Mr Anticich: The use of the coercive powers are under the authority of the commissioner and it is under his direct authority that we are able to access them. It would have to be of such gravity to be in the mind of the commissioner to warrant the use of those powers. There are certain tests that lay within the act, but I think it is a case of proportionality of using those powers very judiciously. I am not deliberately trying to be obtuse but rather trying to clarify that we are very cautious that we are not seen to abuse those powers that are given to us.

The CHAIRMAN: I agree, Mr Anticich, that it is a matter of proportionality, but I am interested in what “serious and grave” constitutes and recognise that it is a matter of proportion. At the moment you have not told me what you or the commission believes to be a circumstance that would be sufficiently serious and grave to have the commission act rather than the police; that is, the commission to act on a search warrant rather than the police. I was hoping you would define for me what the words “serious and grave” were meant to infer.

Mr Anticich: We may have merged two issues into one, Mr Chair. In terms of the decision that the police deal with this rather than the commission, I do not think the gravity of the matter was really a factor. I think it was more to do with the fact they had taken the matter on. The second issue seems to be when we would apply or use those coercive or special powers and what is the test around that. I suppose what I can say with clarity is—no, I cannot even say. It is difficult and it is a situational thing that really lays in the wisdom of the commissioner, I would suspect.

The CHAIRMAN: Mr Anticich, that is the very reason why I was asking you because it is a difficult area. I am very interested in how you define “serious and grave” and at the moment we are no further on that. However, that does not stop our inquiry here because at the moment it seems that your discussions—when I say “yours”, the commission officers’ discussions—with the police were very much a case of letting the police know that they were handling the matter, as I understand it, not the CCC; is that a fair representation?

Mr Anticich: Absolutely, Mr Chair.

Mr Wynn: It is, Mr Chair. There was nothing that was brought to my attention on that day as part of that phone call that suggested to me that there was any reason for the commission to become involved in the investigation. Again just saying that I was not under the impression that a search warrant was going to be conducted that afternoon, or any other afternoon for that matter.

The CHAIRMAN: I read into what the police comments are to Mr White, and your response is that the police were very much on their own. The CCC was indicating it was not its inquiry.

[1.50 pm]

Mr Wynn: I was indicating to them that I could not see, on the basis of what he was telling me, any particular reason for the commission to become involved. It is certainly true that, in terms of the execution of a search warrant, we have available to us an identical power to that of the police. The beginning of that phone call was about avoiding a media circus. Had the commission, for argument’s sake, been involved in this and had we decided to go down the path of executing a search warrant, we would have achieved no less and no more than the Western Australia Police could have done, because our act does not put any confidentiality, for good reason, around the execution of search warrants. It is very specific in relation to the use of coercive powers, and

obviously a search warrant is not. If it were to come down to executing a search warrant, I could not see the commission offering anything more or putting anything more on the table than what the police were indicating.

The CHAIRMAN: Thank you for that, Mr Wynn. I understand your comments.

Hon ADELE FARINA: It seems to me from the file note that the police were actually asking you to use your coercive powers to have the journalist inform the CCC who the source was, rather than having the police execute the search warrant.

Mr Wynn: Yes, I think that would be one observation that you could make of it. I think they were concerned about, as it says there, the media circus that may evolve and whether there was another way of doing it. Of course, when you talk about a media circus, that often depends on how the search warrant is actually executed, too.

Hon ADELE FARINA: In the normal procedure at the CCC, the decision on whether or not the CCC should use its coercive powers to ask the journalist to name his or her source, it would be at your discretion to determine whether or not to use that power?

Mr Wynn: No, it would not. If this was a matter that the CCC was investigating—again, of course, this was not one, but if we assume that there was an investigation on foot that the commission was handling—and if anything arose during that investigation and it was considered that a private or a public hearing may be appropriate, a submission would be prepared and it would ultimately be presented to the commissioner for him to make a decision on whether or not he would use the power available to him under section 96 to call particular individuals in to give that evidence. That is the power that is available only to him; it is not able to be delegated to any other person in the commission, although obviously we would make submissions to him on certain matters.

Hon ADELE FARINA: Is it not possible for a joint investigation to be conducted by the CCC and the police?

Mr Wynn: Under section 33 of the act, it is possible for a joint investigation to be conducted. It does not happen very frequently, but it is a possibility. Under section 33(1)(b), the commission may decide to investigate or take action in cooperation with an independent agency or appropriate authority.

Hon ADELE FARINA: You did not interpret this telephone conversation to be a request along those lines for a joint investigation?

Mr Wynn: No, I did not.

Hon ADELE FARINA: Can I also just go back to your exhibit 3B? It is case note 000001 in which you inform Ms Lisa Ward at the Department of the Premier and Cabinet that the police have identified a case officer and a case number for the matter and that the police will be investigating the criminality, but not any procedural matter. How did you come to form that opinion? As I understand it from your file note on 26 February 2008 at 9.15, the discussion with the police did not actually indicate that the police were investigating the matter, but simply that possibly a case officer and a case number had been assigned. I ask this because I am not aware of this, but if a case officer and a case number are assigned, does an investigation automatically follow? Is there not some discretion as to whether or not the police will investigate?

Mr Anticich: Certainly, for the purposes of our decision on whether we were going to take it on, we believed that the police had actually taken on the matter. I am certain that we have correspondence after that date that confirms that that is case.

Mr Wynn: I might be able to assist the committee in relation to that and hand up another lot of emails.

The CHAIRMAN: Mr Wynn that is 3H.

Mr Wynn: I turn to the last page of that three-page set of documents that I have handed up. It is an unsigned copy and it is on blank white paper instead of police letterhead. It is a letter that appears to be written by Kearns Gangin, who is the detective sergeant of public sector assessments in the major fraud squad, and is dated 22 February. It is a letter to the Director General of the Department of the Premier and Cabinet. In that letter he acknowledges receipt of the correspondence from DPC of 12 February. He goes on to say —

The Major Fraud Squad has conducted an assessment of the information provided and determined that further investigation is required. Police will investigate a potential breach of Section 81 of the Criminal Code pertaining to disclosure of official secrets.

The investigation will be conducted by the Major Fraud Squad, . . .

He goes on to quote an incident number. The middle page is a notification back to us, because the Western Australia Police is obliged under section 28 of the act to advise us of any matters that relate to misconduct. It is a memo to our commissioner and states —

This message is to notify you of the result of the assessment of a matter received in this office against a person believed to be a WA public officer.

It goes on to quote various file numbers; the substance of the allegation, which was the disclosure of cabinet information, possibly committing an offence under section 81 of the Criminal Code pertaining to disclosure of official secrets; and the action taken, which was that the matter was assessed as requiring further investigation. The same officer signed that memo. The first page of those documents is an email from Detective Sergeant Kearns Gangin dated Tuesday, 26 February at 9.25 am for the attention of Tony Wood, who is the assessing officer in our agency. It states —

Tony

This is to confirm our phone conversation regarding the complaint from the Dept of Premier and Cabinet alleging disclosure of official secrets.

The matter is being investigated by the Public Sector Investigation Team within the Major Fraud Squad. Det Sgt Mark LANGFORD is the person to contact.

He goes on to quote the police incident numbers. We were in no doubt that the police had this in hand. For the commission to then come in on that basis, we would have had to have issued a stop notice to them, which is provided for under section 42 of our act, whereby the commission may direct an appropriate authority not to take action. We do not do that very often. The most common time we would do that is in cases of police misconduct when we feel that it is not appropriate for that agency to conduct that investigation. That is what we would have had to have done to stop this investigation.

Hon ADELE FARINA: To clarify that, there was not a formal referral of this matter from the CCC to the police. The referral came from the Department of the Premier and Cabinet to the police, and the police determined, on a preliminary assessment, that an investigation was warranted and then advised the Department of the Premier and Cabinet and the CCC that they were going to undertake an investigation. Is that correct?

Mr Anticich: To explain it, there was a dual referral. DPC wrote to both us and the police at the same time. At the point that we were considering what we were going to do, we had received advice that the police were well underway in dealing with it.

Hon ADELE FARINA: There was no referral of this matter from the CCC to the police?

Mr Anticich: We did refer it then, saying that we had received the matter and forwarded it on to police.

The CHAIRMAN: Is there a document that indicates the referral and the time of referral?

Mr Wynn: Yes, Mr Chair. I will hand that up to you now. It is a document from the CCC to the police dated 27 February. At the same time and on the same date that that letter was sent, a letter in similar terms was sent to the Director General of the Department of the Premier and Cabinet advising the director general of the action taken by the commission; that is, to refer the matter to the police. If it pleases the committee, I will hand that up as well.

The CHAIRMAN: Thank you. The letter dated 27 February 2008 from the CCC to the police major fraud squad constitutes your official referral?

[2.00 pm]

Mr Anticich: I think a confirmation of their decision to take the matter on and certainly advising them that we were not dealing with the matter.

The CHAIRMAN: The reason I am asking if it constitutes a confirmation or referral is that you said in your letter —

“In any event, in accordance with sections 33(1)(c) and 37(3) of the *Corruption and Crime Commission Act 2003* (the Act) the Commission has decided to refer this complaint to you for investigation within a period.”

I am assuming —

Mr Anticich: We have to rely on those mechanisms under the act.

The CHAIRMAN: Yes. So that is the formal referral to the police and, as a result of the formal referral, that enabled you to take a continuing interest in the case, so to speak, in respect of monitoring and requiring a report back in due course.

Mr Anticich: That is correct.

The CHAIRMAN: Exhibit 3H is the letter, according to your records, Mr Wynn —

Mr Wynn: No, it is 3J.

The CHAIRMAN: Yes, you are right—3J.

Mr Anticich: Mr Chair, just to clarify, in case there is some misconception. In terms of that monitor role, it is not an active thing where we watch what they do day in, day out. Rather, we generally track the time it takes. As is often the case, when we get involved in, for example, a matter that is taking an extended period of time, we might send a hurry along letter. I just want to clarify the misconception that somehow we are actively involved in what they do; that is not the case.

The CHAIRMAN: I was not suggesting that you were sitting on top of the inquiry, so to speak, but there are certain provisions within the CCC act that require the body to whom you referred to report back in due course, but equally it gives you the authority to seek information in respect of the ongoing investigations.

Mr Anticich: That is correct.

Mr Wynn: Mr Chair, for completeness here, can I hand to the committee another letter dated 28 March 2008, which is also from the commission to the police. I do not know if too much turns on this, but it us referring additional information to them that DTF has supplied to us in the meantime, and that was the letter from Mr Marney that Mr Anticich referred earlier. It is us recognising that they were conducting the investigation and us providing that additional information to them.

The CHAIRMAN: That is exhibit 3K, Mr Wynn.

Mr Wynn: Thank you.

The CHAIRMAN: In respect of exhibit 3H—this is the email from Mr Gangin, the police, sent on Tuesday, 26 February and, in part attachments, it talks about expenditure review committee doc—I presume “doc” is referring to the word “document” and expenditure review committee documents. Did you have a copy of the document that was said to have been disclosed without authorisation? Did you ever acquire a copy of that document or copy said to be the document?

Mr Anticich: To the best of my knowledge we believe we did not receive that document.

The CHAIRMAN: Therefore, as I understand it, you made a determination that “the document” constituted a document that contained confidential information. I am wondering how you determined that to be the case if you never saw the document, as established as the status of the document itself?

Mr Anticich: Certainly, it is the case when we assess an allegation that we take it on face value in terms of its actual existence or otherwise. There are circumstances where we may undertake some preliminary investigations to establish those facts. In this case, if the WA Police had not been involved or had not taken the matter on and we had not progressed, we more than likely would have done exactly that. Because, by the time we received it, it was evident they had this underway and there seemed no purpose for us to actually proceed with that on the basis the police were going to deal with it.

The CHAIRMAN: I have to say that it surprises me that in your preliminary investigations or preliminary assessment in determining whether there was a serious misconduct committed that you did not sight the document that was said to have been leaked. Is there some reason why you would not have done that in your preliminary investigations, and that is before you referred it to the police?

Mr Anticich: Mr Chair, given these things happened virtually on the same day, there seemed little purpose to replicate what we would assume the police would undertake in the normal course of their investigation.

The CHAIRMAN: Yes. I am more interested in the CCC making an inquiry of the Department of the Premier and Cabinet or the Department of Treasury and Finance in an attempt to get a copy of the document that was said to be leaked. This was, of course, during your preliminary assessment stage and before you had referred officially to the police, recognising that there was a dual referral.

Mr Anticich: Perhaps to clarify, Mr Chair. What happens with allegations is that we run this assessment over them on the basis of trying to determine it against the definition under section 4. So that assessment is done and that then triggers the mechanisms that involve us and/or other agencies under the act. As a consequence of the investigation those things either fall away and/or are proven. It is not necessary for the purposes of our assessment to necessarily have all the evidence, but rather deal with what the allegation is and whether it would constitute misconduct or serious misconduct.

The CHAIRMAN: Yes, and I am assuming from what you said that in due course you would attempt to get a copy of the document, if you were handling the investigation, and then you would determine whether it was a document with a particular status. It seems to me that if it was not such a document, the whole inquiry might fall away.

Mr Anticich: That is absolutely correct.

Hon ADELE FARINA: I ask that the documents identified as attachments to exhibit 3H be provided by the CCC to this committee.

The CHAIRMAN: Yes. Are you referring to all the documents said to be the attachments?

Hon ADELE FARINA: All the documents said to be the attachments.

The CHAIRMAN: Mr Anticich, you had one of your officers assist you a few minutes ago.

Mr Anticich: Yes.

The CHAIRMAN: I presume it was to see whether you had the documents with you.

Mr Anticich: Perhaps with that one, we could take that on notice and I will undertake to get that response to you in writing.

The CHAIRMAN: Thank you. You provided us with documentation which sets out in part the chronology of events that the CCC has followed. We will have to have some time, as you would appreciate, to read that documentation to understand where it fits into the scheme. Following the raid on the *Sunday Times* on 30 April 2008, and we have the information you provided in the events leading up to that incident on 30 April. Following the raid on the *Sunday Times* did the CCC have contact with the police?

Mr Anticich: Yes, we did.

The CHAIRMAN: Can you tell us what contact you had and what notes, if any, were made in respect of that contact?

Mr Anticich: I can say that there was an exchange of letters commencing with a letter from Commissioner of WA Police addressed to our executive director at the commission, Mr Mike Silverstone, on 2 May 2008, which was very close after 30 April.

I am also aware, but I perhaps do not have the detail here, that there were a number of other conversations between senior officers of the commission and Western Australia Police. I can also say that our commissioner responded to that letter of Commissioner O'Callaghan's.

The CHAIRMAN: Do you have a copy of that letter with you, Mr Anticich?

[2.10 pm]

Mr Anticich: I do.

Mr Wynn: I have copies of the letter from our commissioner to the police commissioner, dated 4 June, for the committee.

The CHAIRMAN: It is 4 June, but we are looking at the one of 2 May from the Commissioner of Police to the commissioner of the CCC.

Mr Anticich: I have got the original here, Mr Chair. I just did not want to part company with it; that was all.

The CHAIRMAN: We can have it copied if required.

Mr Anticich: Could I ask for that one back, please?

The CHAIRMAN: If we could copy that now, because we need to talk to Mr Anticich about it. Mr Anticich, while we are waiting for the photocopying to be completed, can you just give us an indication of the nature of the correspondence between the police commissioner and the CCC and, indeed, the CCC and the Commissioner of Police?

Mr Anticich: Certainly. I think the central theme or gravamen of it is this: that the police commissioner expressed a view that matters of the nature of leaking documents and things around the *Sunday Times* are more appropriately dealt with by the commission; that is, it is the commission's role, give its nature, that they deal with it and, effectively, that police have other things that they deal with, and it is best that we handle this.

The CHAIRMAN: Does he state his reasons why?

Mr Anticich: I think he does go to some points within the act and some interpretation of some of the provisions. I know that they have met, but our commissioner also responded by way of letter, which you have been given a copy of, and effectively took issue, I guess, on some of the points that were raised. Principally, it turns on this: I think it turns on this notification and referral, and our commissioner put some clarity around it, in that there is an obligation under the act for all agencies to notify the commission but in actual fact the commission then deals with these matters. There is

an absolutely right of decision within the act as to whether we actually take an investigation on or otherwise. In a letter from our commissioner to Commissioner O'Callaghan is a reference to the fact that we receive something in the vicinity of 3 000 notifications—an obligation on departments to notify us of misconduct—but we actually investigate less than one per cent of those matters. Principally, our core function is to continuously improve the integrity of the public service, and much of that relies on them actually dealing with misconduct in their own way.

The CHAIRMAN: You said 3 000 referrals.

Mr Anticich: Notifications.

The CHAIRMAN: Sorry, notifications, and you investigate about one per cent.

Mr Anticich: Correct.

The CHAIRMAN: What happens to the balance?

Mr Anticich: They are generally referred out. They go to other agencies, as this one was, and they are undertaken, and ultimately our role kicks in in reviewing and making sure that they are adequately dealt with.

The CHAIRMAN: If they are referred to the other agency under the act, there is a responsibility on the investigating agency to report back to the CCC in due course, isn't there, in respect of their conclusions or investigations?

Mr Anticich: Absolutely correct.

The CHAIRMAN: So, you do not abandon.

Mr Anticich: Not at all.

The CHAIRMAN: You refer them elsewhere for investigation. I assume that is the ones that you believe should be investigated. Of those 3 000 there must be some that you do not believe warrant any further action. Would that be the case?

Mr Anticich: Correct. There is a small percentage of matters that come to the commission that are determined at the outside of jurisdiction or there is a problem with the basis. That is right.

Hon GIZ WATSON: If I could just follow for my own clarity, it seems to me that you said that the commission did feel it was a serious misconduct matter but that because the police already had an investigation underway and you only consider putting a stop on that investigation in the most serious of cases—is that correct?

Mr Anticich: No.

Hon GIZ WATSON: Perhaps I am not following it correctly.

Mr Anticich: The seriousness of an allegation is but one component that we would necessarily consider, not to be confused with serious misconduct, which is a definition pursuant to section 4.

Hon GIZ WATSON: You are not referring to the definitional matter?

Mr Anticich: When we get a notification, we are talking about the categorisation, the assessment of the matter, and when we look at it we apply the test against section 4 and determine whether it is misconduct at all or serious misconduct, which is another provision under that definition; as opposed to the seriousness of an allegation in terms of a determinant as to whether we take a matter on—that is another matter altogether. Seriousness of a matter can be a factor but not to be confused with serious misconduct.

Hon GIZ WATSON: Just for my clarification, in this case you decided that it was serious but it was not serious misconduct?

Mr Anticich: We decided it was serious misconduct and we did not turn our mind as an agency to the seriousness of it, albeit that Mr Wynn made comment to that effect to Mr Albrecht.

Hon GIZ WATSON: It just seems slightly strange to me, and I might not be understanding this. If it was serious misconduct, would it not then have been the responsibility of the commission to take it on even if the police had something underway?

Mr Anticich: If that were the test for the matters we took on, of those 3 000 matters that come to us, I would believe that about 2 500, quite a large proportion, would fall into that category and, therefore, we would be inundated with matters we would have to investigate.

Hon GIZ WATSON: Even though you took a view that it was serious misconduct, you for other reasons decided not to take it on. In which case, what were those other considerations?

Mr Anticich: Principally, the major driver was that it had been sent out at the same time to police and police had actually commenced that investigation. It seemed illogical to take an active decision to order a direction to bring it back to the CCC when effectively we believe that the police are more than capable of dealing with the matter.

Hon GIZ WATSON: And you are still of that view in this case?

Mr Anticich: Absolutely.

Mr Wynn: If I could further assist the committee there, one of the considerations that we have with all these matters is: what is the capacity of other agencies or what other alternatives are available. Just stepping outside this particular matter for a moment, there are some agencies that are much better equipped to deal with misconduct issues than others. That is because that is how they are set up. They have their own investigation unit. One of the factors that come into our considerations is: does another agency have the ability to do it? Are there other alternatives available? If there are no other alternatives available, then it really comes down to, I suppose, a decision as to whether the commission is going to have a look at it or not if there is nothing else available, but this was not a case where we were faced with a situation where there were not other, appropriate alternatives available.

Hon ADELE FARINA: Can I just clarify, if the commission had made a determination that it felt that given that the police had already started an investigation and the matter was best handled by the police, why then did the CCC refer the matter to the police? I am just having difficulty understanding why you would take that step if you make a decision that the investigation has already been commenced by the police and you think that the police are the appropriate body to handle the matter. Why then would you formally refer it?

Mr Anticich: Because it was sent to the police and to us at the same time, we had actually formally received that matter, but it was actually the same matter; it is just that it has gone to two different agencies. In order for us to fulfil our obligation under the act, we could not just leave it sitting there knowing that the police are dealing with it. We effectively bundled it up, I guess, or sent it on to that agency, so one particular agency was dealing with all of those matters. It was a neat and tidy way and most probably in accord with the act. To think it through, what would our alternative be? To have received the matter, we have got to do something with it; we have to treat it in some way.

[2.20 pm]

Hon ADELE FARINA: What do you do with the other 99 per cent of the 3 000 that you receive that you do not proceed to investigate?

Mr Anticich: We apply the same process in this instance —

Hon ADELE FARINA: So, you refer it back to the agency that referred it to you?

Mr Anticich: Possibly, that is one alternative. Sometimes we can refer it to a number of agencies. Mostly if it involves criminal conduct—an allegation of criminal conduct—nearly always it will go to the police because an agency cannot investigate criminal conduct. I think, you know, in the history of the commission, going back certainly over the last 18 months or so, this is not an isolated

incident. I believe something in the vicinity of 400 or 500 matters have followed a similar course from the commission to the police. It is not unique or unusual, I suppose I am trying to say.

The CHAIRMAN: Thank you. Mr Wynn, for your records, that letter from the Commissioner of Police to the CCC dated 2 May is 3L.

Mr Wynn: Thank you, Mr Chair.

The CHAIRMAN: And the letter from the commissioner of the CCC to the Commissioner of Police dated 4 June 2008, is 3M.

Mr Anticich, if we can move forward—that is not to say we were not moving forward—can you tell us whether or not the CCC has a view on the appropriateness or otherwise of the police raid on the *Sunday Times* on 30 April 2008?

Mr Anticich: Mr Chair, I think we do.

The CHAIRMAN: Will you share it with us then, Mr Anticich?

Mr Anticich: I would, with the greatest respect, like to express this view. The commission is very much about, I think, and it is empowered to make comment about misconduct and matters to do with along those lines. It puts us in a difficult situation to be perhaps exercising an opinion or expressing an opinion as it relates to the conduct of matters that are —

The CHAIRMAN: Can I stop you there by saying that my next question is going to be: what recommendations have you got—would you care to make—in respect of us improving the situation because there is clearly some disagreement between the police and the CCC. I said the police and the CCC—I am not sure at the moment about the CCC and the police because it was the police who were seeking your intervention, so to speak, at one stage. So, I am looking at a positive resolution for the future when these things occur, as they may, again, but I am sorry to have interrupted you.

Mr Anticich: No, no, I understand.

The CHAIRMAN: So the question is: your view on the appropriateness or otherwise of the raid on the *Sunday Times* by the police on 30 April 2008.

Mr Anticich: My view is that I would hope it would have been—they would have been executing a warrant on the basis of information that ground the issue of that particular warrant. One would think and one would hope that that has been done lawfully and appropriately. In terms of their actions and the way it was executed, based on some of the media reporting, one could express the view that, as I think they anticipated, it did turn into a media circus. What do you do to avoid it? I do not know that it is particularly a problem of the commission as more so an issue of the police and how it is they approach these types of matters in the future. I do not think that this turns on the fact that the commission or the matter was referred to the police rather than the commission. I think it is a peripheral issue and perhaps the only area of potential positive recommendation would be that if the police have a valid, sincere and proper intention to engage the commission and some of its powers that there should be perhaps somewhat more of a process rather than a phone call on the day or hours preceding executive action.

The CHAIRMAN: And I assume, Mr Anticich, you would go on to say that Mr Wynn in fact presented them with that proposition by indicating that he was available—if there was need for further discussions, he was available—as did other officers at the CCC.

Mr Anticich: There is a view that having regard to the fact that those two phone calls were made by the police, that they had a concern. There is a view having received the advice from our officers that if there was a concern that perhaps they could consider their position and I do not know what the compelling reasons were to advance the matter on that day.

The CHAIRMAN: Are you suggesting—and I do not want to put words into your mouth and that would be pretty difficult, Mr Anticich, you are an experienced officer—but are you suggesting that

perhaps they could have deferred raiding the *Sunday Times* on that day and engaged in further discussion with the CCC?

Mr Anticich: Mr Chair, I think there were a number of options available and that is most probably a question best answered by the police.

The CHAIRMAN: I was hoping you would tell us, Mr Anticich, from your point of view.

Mr Anticich: It is difficult for me to express, I guess, a view; I am not across the entire detail that the police had. There may well have been compelling reasons that are unbeknownst to me that made it that that had to occur on that particular day.

The CHAIRMAN: Yes, thank you. Mr Anticich, in hindsight, how differently would the CCC approach an issue with similar circumstances should a similar situation arise?

Mr Anticich: Again, I think it turns on what I said that if we have that approach and those telephone calls on the day. Certainly, if I go back a bit, in terms of the process and the steps we took—nothing; we would deal with it exactly the same. In terms of the informal approach or the phone calls on the day, the advice would be well, you know, if you are genuine in what you desire, then take this on formally for it to actually be considered, bring it forward, you know, at a higher level or do something that actually brings it as a conscious action to be considered by the commission.

The CHAIRMAN: Thanks, Mr Anticich. Have you any recommendations that you can suggest to improve the reporting and investigations of the unauthorised disclosure of confidential information or documents and/or information? If it is convenient, we would be happy to receive something from you in due course. We do not expect you to come up with all the recommendations today but we would be pleased to receive any recommendations you may have that might improve the situation for all of the parties, so to speak, not just restrict it to the CCC.

Mr Anticich: Mr Chair, the commission is graced with the experience of having dealt with a very similar type of matter some years previously and we have actually produced a public report.

The CHAIRMAN: Is this the one —

Mr Anticich: Treasury and finance.

The CHAIRMAN: Is that the one titled “Report on the Investigation into the Department of Treasury and Finance: Suspected Misconduct Concerning the Unauthorised Release of Treasury Information” dated June 2005?

Mr Anticich: That is correct and it touches on some themes—similar themes.

The CHAIRMAN: Yes, I still say—and I have read the document and read the recommendations that the commission made—should there be any other recommendations having regard to the circumstances surrounding this inquiry or what might eventuate from a similar incident in the future, we would be pleased to hear from you if you have something to offer.

Mr Anticich: Thank you, Mr Chair, and also I believe that there is another report that we did more generally in relation to the release of or dealing with information within the public sector.

The CHAIRMAN: Well, Mr Anticich, if you would care to—if we could have a copy of that in due course that would be helpful if Mr Driscoll could receive a copy that may be of value to the committee.

Mr Anticich, are there any other matters that you want to—sorry and Mr Wynn, I did say that I would direct my questions to Mr Anticich. But, Mr Anticich or Mr Wynn do you have any further matters that you want to raise in respect to the committee’s inquiry?

Mr Anticich: Only to say this, Mr Chair: we have a very good working relationship with the WA Police. It is a difficult relationship because we deal with them in one context of oversight of their

misconduct function internally but then working cooperatively and collaboratively as we would hope in such instances. We are fairly keen that we address that relationship and make sure it is a positive relationship. This has caused some tensions, as you can imagine, but we hope that we can positively resolve them with the police to make sure because they are an important stakeholder that deals significantly with a large proportion of misconduct matters or certainly those involving crimes that we must refer to them.

The CHAIRMAN: Especially, if you are making formal referrals and expecting reports back.

Mr Anticich: Correct.

The CHAIRMAN: Mr Wynn, do you have any further information or matters that you want to raise with the committee?

Mr Wynn: No, Mr Chair, I do not.

The CHAIRMAN: Thank you. Mr Anticich, you mentioned earlier that the letter of 2 May from the Commissioner of Police to the CCC and the response from the CCC to the Commissioner of Police on 4 June. You said at the time that there was some additional notes that the CCC had in respect to, I understood them to be, phone calls or other communications between the two bodies. Could you provide to the committee a copy of those documents so that we get a more fulsome understanding of the discussions that occurred between the two agencies following the raid?

[2.30 pm]

Mr Anticich: Mr Chair, I believe I said that there had been some contact. I am not so certain that we have generated any correspondence or notes as a consequence. Certainly, I know I had some meetings with some senior officers, as our commissioner did, and there were some conversations, but as to whether they generated any formal documents and/or notes, I am not sure. I will undertake to seek that and, if I can, provide the rest.

The CHAIRMAN: If you could undertake to seek any further documents, including but not limited to emails, letters, file notes in respect of this matter, it would be helpful. We recognise that there may be some file notes that may lend some assistance on how we might be able to improve the situation in the future.

Hon GIZ WATSON: With regard to the CCC's position on confidentiality of sources for the media, is there a policy or guidelines the CCC has about matters such as these, recognising that you did not pursue this particular investigation, but you have in the past. Is there a particular approach or policy the CCC has?

Mr Anticich: Not in relation to that specifically. I think Mr Wynn made some generalised comments. We have no written policy that relates to that. Our policy turns on the use of the powers and so forth more generally rather than specifically to refer to journalists and their sources.

The CHAIRMAN: Are you aware of any minister, parliamentary secretary or member of Parliament contacting the CCC in respect of this matter?

Mr Anticich: No.

Mr Wynn: No, I am not, Mr Chair.

The CHAIRMAN: Thank you very much for your attendance before the committee this afternoon. You have been helpful in the information you have provided. However, you have also provided us with considerable documentation. I should indicate that the committee will take some time to consider the documentation you have provided and, obviously, the transcripts. If there is a need for further clarification or questions about the matters raised, obviously we will advise your office accordingly. I wanted to let you know about the possibility of recall. Thank you, Mr Anticich and Mr Wynn.

Hearing concluded at 2.32 pm