

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

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



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 23 FEBRUARY 2022**

**SESSION ONE**

**Members**

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

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**Hearing commenced at 9.54 am**

**HON JOHN McKECHNIE**

**Corruption and Crime Commissioner, examined:**

**MR DAVID (SCOTT) ELLIS**

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

**MR DAVID ROBINSON**

**Acting Chief Executive, Corruption and Crime Commission, examined:**

**MRS WENDY ENDEBROCK-BROWN**

**Director, Legal Services, Corruption and Crime Commission, examined:**

**MS KYM SQUIRES**

**Acting Director, Corporate Services, Corruption and Crime Commission, examined:**

**MRS TRACEY POLMEAR**

**Acting Director, Assessment and Strategy Development, Corruption and Crime Commission, examined:**

**MR JONOTHAN TUTTLE**

**Deputy Director Investigations, Corruption and Crime Commission, examined:**

**MR MATHEW SQUIRES**

**Chief Finance Officer, Corruption and Crime Commission, examined:**

**The CHAIR:** Welcome, commissioner. Thank you very much for attending this morning. We would like to begin by acknowledging the Whadjuk Noongar people, the traditional owners of the land on which we meet today, and pay our respects to their elders both past and present. 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 who are present today: Hon Dr Steve Thomas, MLC, deputy chair; Mr Shane Love, MLA, Deputy Leader of the Nationals WA, is joining us on the big screen today; and to my left, Hon Klara Andric, MLC.

I advise that the proceedings of the committee hearing will be broadcast live within Parliament House and via the internet. This 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 that you might say outside of today's proceedings. If you do not object, you may remove your masks when speaking. Before we start, I note that we have a number of members of the media present in the public gallery. As is common practice with hearings with the Corruption and Crime Commission, the committee may choose to go into closed session at some point, at which time everyone in the public gallery will be asked to leave and the broadcast will cease.

Do you have any questions about your attendance here today?

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

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

**Mr McKECHNIE:** Thank you, chair, I would. I will keep it brief so that we do not impinge on members' question time. We have sent through a PowerPoint, which I might address at the conclusion. Thank you for the opportunity, chair. It is very important that oversight bodies such as the committee maintains supervision and oversight of a body such as the commission, as we are seeing in various other jurisdictions. Some of the matters that have arisen since the annual report—I should say, if there are questions on the annual report, or when there are, I will defer to Acting Commissioner Ellis who was here for the whole period of that year. Some of the matters since: a memorandum of understanding between the commission, the Legislative Assembly and the Legislative Council was signed on 24 November last year. It is a high-level document setting out the process for determination of claims of immunity from production by reason of parliamentary privilege. The Commissioner of Police contemporaneously signed a memorandum of understanding in the same form. That was followed by a protocol, which is a more detailed document for procedures dealing with claims of parliamentary privilege arising out of search warrants and notices issued under our act. The protocol, again, is one the police signed in similar terms to the commission. We have seen early success of the use of the protocol when the image of the computer, which has been the subject of contention in relation to Operation Betelgeuse, was made available to the commission. Since then, subject to workload, the task of evaluating the material on that laptop is ongoing.

In relation to protocols, the Attorney General tabled a report on the review into prosecutions from the commission in May 2020 and recommended that a protocol be developed. Currently, the commission is working with the State Solicitor's Office and DPP to develop and finalise that protocol. I expect it to be finalised within the next month or two.

[10.00 am]

One thing I thought I would mention, which has not been an issue here but that members will be aware has been an issue in Victoria recently; that is, the welfare of persons who are called or may be adversely affected by the commission's activities. This is something that we had been cognisant of for some time. In November 2018, we introduced new procedures and policies concerning the welfare of witnesses. Some of the key features include: providing witnesses with information about the examination process and how to seek support about the range of emotions they may experience when giving evidence; a witness welfare card that details those matters; an introduction to the CCC examination process, explaining the key features, what witnesses can expect. A witness, of course, is entitled under the act to legal representation. Many, but not all, witnesses take account of that. Also, assigning a witness liaison officer for each witness, someone not directly involved in the investigation; and a process for initiating additional support from an external agency or party, if there is an immediate threat to safety or welfare that we hear about. That may include, and often does, the inclusion of a private examination. The commissioner or acting commissioner will make an order that no details are to be disclosed to other people, but almost routinely, we will vary that if a person is in need of psychological or psychiatric assistance, or other counselling. Finally, we run a training program to assist commission officers to recognise and deal with the symptoms of stress.

Those are some of the matters. We are very alert to it. Many years ago, there was a suicide of a person who was under investigation. Of course, suicide is a complex matter and it may well be that it is the fact of exposure or likely exposure which is the instigating feature in a suicide, not necessarily the commission's processes, but the result of that. We did have a witness who was materially successful for our purposes in the north metro health matter. Subsequently, before he was charged—he was flying to Australia to be charged—sadly, he took his own life. It is an area

about which we are well aware and, as I say, have instigated policies to try to mitigate against the damage.

I will not spend too long on sector-wide commission achievements, because that may be a matter of questioning. We have noticed a number of implementation of recommendations and of government taking action. Possibly the most dramatic was after the Communities' Paul Whyte matter was exposed. The government mandated external chairs of audit committees for government departments and increased the Auditor General's forensic capacity by, I think, 20 FTE. The Public Sector Commission has developed an integrity and financial management self-assessment checklist. Police have changed quite a number of policies, but I will deal with them in due course. The only other matter, if we can run the PowerPoint, I will simply refer to the documents and I will talk you through them.

**The CHAIR:** I think, commissioner, we are in a position where we are limited somewhat by our IT. We have hard copies.

**Mr McKECHNIE:** I appreciate that; we would shut out Mr Love. And, of course, I have completely lost them!

We will give copies to the media who may be finding it difficult to follow. I take it that the committee has received a document?

**The CHAIR:** We have got this one.

**Mr McKECHNIE:** It is the same document. I will talk you briefly through. As members will be aware, in 2018, Parliament put bite into the crime part of the name by giving the commission power over unexplained wealth and over criminal benefits. Unexplained wealth is as it says—a person has wealth that cannot be lawfully explained away. We set out to prove the concept that the commission could make a difference. There is a report by a former judge, Judge Martino—which, if we have not, we will make available to the committee—who reviewed thoroughly the progress so far, if I can put it that way. I just want to give you a snapshot of some operations. Necessarily, these involve time. They are complex. The police, of course, do a very good job at seizing assets, but in a sense, that is easy. That is not to deny that what they do is very important, but if they come across \$4 million in the back of a wagon, they immediately seize it. Our work is going after those who may be elusive targets. The main aim is disruption. It is disruption of organised crime and criminal conduct. People can focus on the money, which is substantial, but the real aim as I will illustrate is disruption. It is hard to measure that, but, anecdotally, we have heard some things that indicate that it is having an effect.

We have currently \$15.7 million frozen. That, of course, does not mean that it is confiscated at this point; it means that we have persuaded the court to issue a freezing order so that the property cannot be used or disposed of pending finalisation in one sense or another. It does not mean that we will necessarily get \$15.7 million. But we have confiscated \$7.4 million in cash, and I will come to a couple of those operations very briefly.

I have just noticed a typographical error under "Investigations". I learnt "i before e except after c" — but obviously not!

We have done 14 preliminary investigations and three full investigations. There is one other figure that I should have given you, which is the number of referrals we have had. We have received 128 referrals. They are referrals from the Australian Federal Police, AUSTRAC and WA police in the main. We have commenced 14 preliminary investigations, three full investigations and we currently have seven investigations in process. We have a small team, but we are hoping to expand that. One of the great differences between us and the DPP in relation to unexplained wealth is that the DPP must

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apply to the court for an examination order and then an examination will be held before a judicial officer. Under our act, a commissioner may make an examination order and that order will then trigger an application for a freezing order. It is a heavy responsibility and because we have two commissioners now, we have so far as possible divided up the work so that one commissioner will deal with the matter, advising on the investigation, issuing notices and so forth, while the other commissioner is kept completely separate from that so that the other commissioner will hear the application and decide on the application. It is not perfect, but it is our attempt to get a little bit of distance and fairness into it. For example, Mr Ellis may be working on a number of investigations about which I know nothing and vice versa.

Supreme Court proceedings: we finalise matters with an order which is often a consent order.

[10.10 am]

I will now take you very briefly to the case studies. The first is Operation Plutus. Operation Plutus was referred to the commission by a suburban detective agency. They had suspicions about the person but were unable to obtain any evidence. The commission, after consideration, took the matter on. It has recently concluded with a settlement, after examination of various witnesses in the matter by both Commissioner Ellis and I. Another advantage of having two commissioners is that we were able to sit concurrently, minimising the opportunity for witnesses to adjust their stories after examination.

So, Operation Plutus, you will see, is a house in the northern suburbs. That film is part of a continuous search warrant film. That is just a still from that—of officers. The next photo will show the dwelling itself. There were two motor vehicles which the commission seized and subsequently the consent to forfeiture. One was the A-class Mercedes and the other was the second Mercedes. The next slide will show, somewhat unusually, a display panel of sneakers. These are designer sneakers worth, I am told, quite a lot of money, but they are hard to value. They will be auctioned in due course. They were kept as trophies. They, along with the next slide we will show you, are conspicuous consumption by a person who had unexplained wealth in the vicinity of \$1.7 million—flaunting, almost, the wealth. There were pinball machines, as you will see in the next one, and a series of designer handbags, Gucci purses and the like, all of which will in due course be sold by public auction. The house will also be sold. The amount was \$1.7 million admitted. The state will not quite recover that because there is a mortgage on the property and it will depend in part on how much some of the assets fetch. But it should be somewhere north of \$1 million.

The next operation as Operation Elpis, which was an organised crime target. This again ended in a consent settlement, again after examinations. Examinations are very useful because the commission goes in armed with quite of detail and often the person has no explanation for the money. So you can see a red Ferrari and a couple of Rolex oyster watches, which were part of the seizure, and \$90 000 in cash. There was also a Mazda RX7 racing car and vehicle trailer. It is that, anecdotally, that has really hurt, and the news has got about in the areas that the person associates that this is actually very painful. Surprisingly, it is often the toys that cause more pain than anything.

The last I will speak about very briefly because it is now well known. Operation Helios, which was Paul Whyte, who is now serving a sentence of 12 years in prison. This was, in a sense, a good example, because unexplained wealth commenced in Hong Kong and was principally aimed at public servants. That was its principal use. It has now expanded for organised crime and complex criminal matters. He was a public servant and eventually, as the committee will know, we seized and sold both his houses and, more importantly, government then managed to change the state superannuation regulations so that a corrupt public servant in the future may find that their

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superannuation benefits are forfeited to recover some of the proceeds they may have received. There is also a picture of the horses. I am told they did not actually fetch very much.

We thought we would take this time to thank you, committee, for the opportunity, because we had a small team, we think we have proved the concept—we will give you a copy of the Martino report—and it is work that we hope to continue to do. That would conclude my opening statement. Thank you, chair.

**The CHAIR:** Thank you, commissioner. In fact, I was going to ask you a question about who reviewed the commission's unexplained wealth function, so thank you for that information and the offer to provide us with a copy of the report.

I know that various members of the committee have specific questions. I just want to turn to the budget that we received. I note that in 2020–21 it is just short of \$28 million, which is slightly less than the cost in 2019–20. Given what you have said about the unexplained wealth function and referring to some remarks you made to the committee back in September regarding—can I say—the allocation of resources that were necessary from your existing budget for the unexplained wealth function, do you want to comment about the adequacy of the budget that you are receiving?

**Mr McKECHNIE:** The budget does not account for the unexplained wealth function. We have been, in effect, carrying that. We cannot continue to carry it and properly fulfil our other functions. We have made a submission to government, which will no doubt go through the normal processes, for funding over the next five years. So we will just have to wait and see. But the present budget does not really account for it at all.

**The CHAIR:** Is it possible to have some information regarding the request you made to government or would you rather not?

**Mr McKECHNIE:** It is probably not appropriate at this point. It has gone to government and it is being assessed by Treasury, who will no doubt go to the Expenditure Review Committee.

**The CHAIR:** Could I put the question a different way: what would you estimate to be the increased level of resource necessary?

**Mr McKECHNIE:** I have not got the monetary figure. The FTEs is 20.

**The CHAIR:** That is 20 FTE in relation to that.

**Mr McKECHNIE:** Mr Robinson has the monetary figure; and, if not, Mr Squires will.

**Mr ROBINSON:** I do not have the monetary figure off the top of my head. From memory, it somewhere in the order of about three to four million.

**Mr M. SQUIRES:** The funding required to maintain the unexplained wealth function is just shy of \$5 million a year, and that is what the submission is seeking to maintain.

**The CHAIR:** That is good to hear, all right. Thank you very much for that.

You began by speaking about the MOU and the protocols. I know that my deputy has some questions in that area.

**Hon Dr STEVE THOMAS:** I am happy to jump in. Thank you, everybody, for your attendance. Commissioner, and team, I note page 44 of the annual report refers to the memorandum of understanding with the Parliament. Obviously we are aware that the memorandum has been signed and some protocols have been put in place. If I could ask you a couple of broad questions and then some more specific questions around that process. I guess the first one is obvious: is the commission therefore comfortable that both the memorandum of understanding and the protocols are

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adequate for the needs of the commission? Are there any areas that you think are inadequate or should be altered, and could you give us potentially an outline of those?

**Mr McKECHNIE:** I might defer to Ms Endebrock-Brown who negotiated it.

**Mrs ENDEBROCK-BROWN:** The memorandum of understanding, as you will have seen, is a very high-level document. It outlines the key issues that all parties are agreed on and then there is the protocol that we negotiated. The commission is very happy with the protocol. We presented the draft to the working group. We worked very collaboratively together. Of course, there was Kirsten Robinson from the Legislative Assembly, Paul Grant from the Legislative Council and Lawrence Panaia from WA police. We met regularly, we communicated regularly and we were able to come up with a protocol that actually suits all parties.

[10.20 am]

So there is nothing in this protocol that we have been able to negotiate that is very different from the draft that we produced. It is based on protocols that exist in other jurisdictions that are already working in other jurisdictions, but are changed to adequately encompass the specific needs of the commission under our act and the Legislative Assembly and the Legislative Council in our state.

**Hon Dr STEVE THOMAS:** You referred to the draft. I presume that was the draft that originally started some years ago. The comment, I guess, might be made is that it is a pity that it was not completed way back then; it might have saved everybody a great degree of stress and untoward anxiety.

**Mr McKECHNIE:** I would not disagree with that.

**Hon Dr STEVE THOMAS:** I am not surprised that the commission likes the protocols. In relation to the protocols, they appear to indicate that if the commission seeks something that is potentially in a member's office in the parliamentary precinct, even in a member's private residence, which the commission would have access to, it is deemed effectively that all that documentation would be available to the commission unless the member identifies that some of those things should be under parliamentary privilege. That is my understanding of how the protocols work. Then there is a two-week period when a member can suggest that it is under parliamentary privilege. Was there discussion in the negotiations around what might identify parliamentary privilege versus what should be excluded? Are there guidelines potentially that MPs might pick up to suggest, you know, what might be under parliamentary privilege? For example, communication with a constituent might be considered under parliamentary privilege, but it might also involve transfers of money that were untoward. So, are there guidelines in place around that or is it simply because the commission is ultimately empowered under the protocols unless the member seeks to address it and it then goes to the Parliament for an indication?

Even if the commission disagrees with that, I note that there is this thing called the determinator, which sounds remarkably like Dr Who and the Daleks! I would have potentially come up with a better name than that. If I could get some broad comments around that process, whether there are discussions around what might or might not be under parliamentary privilege and the circumstances in which you might then go to a determinator, whoever that might be, who ultimately makes that final decision, or is it all expected to be done by agreement, which is obviously what we would all hope would happen?

**Mr McKECHNIE:** We would hope it would happen. I will pass over to Ms Endebrock-Brown, but I will just make this comment. The problem with parliamentary privilege is some things are obviously privileged. Speeches in Parliament are obviously privileged. There are other things that may or may not be privileged, and that is the grey area. It is hard to sort of have too many guidelines over what

is a grey area. To take an example, a constituent might write to an MP about the parrots in the trees down the road. The MP might think, “I’m not going to deal with that; get rid of it” or the MP might think, “No. That’s an important issue; I might raise this in Parliament using this.” Now that would probably convert it into a parliamentary privileged document, but nobody might know that just looking at it. Those are the difficulties. I will hand over to Ms Endebrock-Brown.

**Mrs ENDEBROCK-BROWN:** The protocol does not set out guidelines, but it does attach as an appendix excerpts from Justice Hall’s decision from the Supreme Court which gives guidance on what is parliamentary privilege. So I would suggest that is probably the closest to a guideline that is available as to what a member might consider is properly covered by parliamentary privilege. But you are absolutely right; the best position for all concerned is that we all agree to a procedure, and that is effectively what the protocol has done. It has agreed a very—we, all parties, think—simple, straightforward, sensible procedure to be applied in all cases. So, the procedure, very high level, is that if we are aware that there is likely to be material that is properly subject to, or is potentially subject to, a claim of parliamentary privilege at a premises or in documents that we might issue a notice for, then before we execute a search warrant or before we issue a notice to produce, we will make contact with Parliament and make sure that things are set up already to be able to deal with that. I am hoping in the future it will be hard to imagine that this protocol will not actually cover any situation, any investigation that the commission is involved in, that might involve either directly or indirectly material from Parliament that is subject to privilege.

**Hon Dr STEVE THOMAS:** If I could just continue down this line a little bit, when we met last time, it was put quite straight that the commission was happy for Parliament to determine privilege in issues of privilege. Is it the case, though, under the protocols that the final arbiter may or may not be Parliament itself, because we have this appeal to a determinator? Could you give us an idea of who the determinator might be? I should have gone Arnold Schwarzenegger not Dr Who, but anyway! If we can get an indication of who that might be. Obviously, again, it works if we are all working from the same hymn sheet. That is good, but in terms of a conflict, who, ultimately, is the determiner of what is privilege and what is not in terms of that appeals process, because by my reading there is a possibility that it might actually be taken out of the hands of the Parliament itself?

**Mr McKECHNIE:** Again, I will just make a comment before referring. The ultimate determinator may be the court, because both Parliament and the courts can determine privilege. The determinator is more an agreed arbitrator.

**Mrs ENDEBROCK-BROWN:** The privilege determinator is defined in the protocol as meaning the Presiding Officer or Presiding Officer’s delegate or any other person, entity or committee authorised by the relevant house of Parliament. So it is very much intended that the person or people determining parliamentary privilege are people within Parliament.

**Hon Dr STEVE THOMAS:** You make a good point. If it goes outside, it is then at the will the Presiding Officer effectively.

**Mrs ENDEBROCK-BROWN:** It is only if we get to that stage under the protocol. The protocol, you are absolutely right, does allow for if the process that we have agreed does not work, then there is the ability to go elsewhere, and that would most likely be the court.

**Hon Dr STEVE THOMAS:** You raise a good point about the court being the final arbiter, and I think that is probably right.

**The CHAIR:** That is what the judge observed, I think, when he considered this matter about the issues around this.

**Mrs ENDEBROCK-BROWN:** I am sorry, chair; I cannot hear you.

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**The CHAIR:** I am just saying that the presiding judge who determined the applications that were made made that very point: it is either Parliament itself or the courts

**Mrs ENDEBROCK-BROWN:** He did. Yes.

**The CHAIR:** Can we just turn to Operation Betelgeuse, which gave rise to some of the difficulties that we experience. Are you able to advise on the status of that investigation at this stage?

**Mr McKECHNIE:** It is ongoing, in the sense that the laptop is still being evaluated. There are no other lines of inquiry unless the laptop throws up some.

**The CHAIR:** All right. Thank you very much for that answer. Hon Klara Andric has some questions relating to the commission's oversight of police excessive use of force report and in relation to the relationship between the commission and the ALS.

[10.30 am]

**Hon KLARA ANDRIC:** The ALS, yes. Thank you, commissioner and everyone for your time today. I just wanted to, I guess, get a bit of an update specifically on report 15, recommendation 8, which was —

The Corruption and Crime Commission should be more proactive in investigating the systemic issues being raised by the Aboriginal Legal Service of Western Australia.

And subsequently, in recommendation 10 —

The Corruption and Crime Commission should establish mechanisms to improve its engagement with Aboriginal people in Western Australia. Initiatives developed could also facilitate better engagement with other diverse groups, including those that may be marginalised or vulnerable.

My question is, commissioner, in regards to the ALS and that recommendation 8 was supported and that the commission continues to be proactive in investigating matters raised by the ALS. But I also note the comments for recommendation 10—that the commission continues to actively seek engagement with Aboriginal people and other diverse groups in Western Australia. Essentially, what I was hoping to get more information on is: you mentioned the significant barriers that are due to a lack of regular engagement by the ALS and their reluctance to report matters to the commission in a timely manner. I want to get an update as to that relationship and how it is progressing.

**Mr McKECHNIE:** I might ask Ms Polmear to comment. She is the acting director of ASD. Her substantive position is manager of oversight, so she is well across it, I hope.

**Mrs POLMEAR:** Thank you, commissioner. We continue to regularly meet with ALS. At the moment, we meet on a six-monthly basis. We continue to discuss matters that are important to the Aboriginal people in the community. It is somewhat difficult for us to speak about specific matters, so that is where the communication can get difficult in those meetings. However, every matter that is notified to us by the ALS goes through the same assessment process that we do for every matter. Our assessment team is very vigilant in identifying matters that involve Aboriginal persons and of being cognisant of the impact that may be placed on them, being vulnerable persons in the community. We have had some engagement. In 2021, officers from the assessment and strategy development directorate participated in a regional awareness and accessibility program with the WA Ombudsman. The purpose was to reach out to those regions and communities that may not have access to, or awareness of, WA complaint agencies such as the commission. Two trips were conducted in the Kimberley region. They were successful in that they provided us with an opportunity to explain and communicate our role and purpose to people living in the Kimberley region. Likewise, it provided an opportunity for our officers to get a greater understanding of the

complexities faced by people living in those regions, and that information was brought back to the team and we use that in our assessments moving forward. It is difficult to quantify the success of those trips, but we hope to continue to engage with the WA Ombudsman and identify further opportunities where we can engage with Aboriginal communities.

**Hon KLARA ANDRIC:** Can I just ask: was there any response from the ALS in terms of those communications in terms of that it was deemed by them to be successful or whether they had given any response to the commission about the bettering of the relationship?

**Mrs POLMEAR:** In respect to our regional trips or our —

**Hon KLARA ANDRIC:** Yes, regional trips and also —

**Mrs POLMEAR:** I believe they were not specifically involved with the regional trips, but for the ongoing communication with our meetings, we do the best that we can. Each agency has conflicting viewpoints. We would strongly encourage the ALS to notify us at the earliest opportunity because that empowers the commission to be able to take action, especially when we are looking at taking proactive action. But, equally, we appreciate where ALS is coming from in that they are trying to do the best for their clients. That is an ongoing issue that we keep having discussions on, but we will do our best and continue to engage with them.

**The CHAIR:** Can I just make the observation that previously, and included in our report, the ALS asserts that the CCC is in effect tone deaf in relation to the matters that it raises with the commission. Do you want to just comment about the strength of that statement? Give me reasons why the ALS believes that and that is not the case, particularly in relation to the way in which the CCC undertakes cultural awareness training.

**Mrs POLMEAR:** I would argue that we are not tone deaf. We conduct our assessments and we have a vigorous process behind all our assessments. I understand that the ALS is probably somewhat frustrated in the sense that we may conduct an assessment of one of their matters and, ultimately, based on our assessment and the information that we have considered, which may be more than they have access to, we form a decision that we have to take no action, for example. We are constrained in what information we can provide ALS as to why we have made that decision, so I appreciate that would be a level of frustration for them. But I can assure you that we have very stringent processes for our assessors.

**Mr McKECHNIE:** If I could just add to that two things: one is what Ms Polmear is referring to is our secrecy provisions, which means that it is very difficult for us to explain precisely why. So I can understand well that a body or a person might be quite frustrated at our response, which is constrained by the act. The other thing is—she will correct me if I am wrong—the ALS tends not to report to us if there have been court proceedings until the conclusion of those court proceedings, and then often it will be that the magistrate has made comments adverse to police or something, which we may pick up ourselves anyway. But it makes it very difficult, if it is a year or 18 months later, to start a meaningful investigation of something and also the particular person may have moved on. They may not have an interest particularly in pursuing it. The ALS interest is nevertheless legitimate on behalf of Aboriginal people. So that is a problem. Frequently, we will get notifications—because the police are obliged to notify us—about the same matter from police and from ALS. Sometimes—quite often—we will get it much earlier from police, and they have looked at it and assessed it.

We just want to say something about cultural awareness training, which Mr Robinson will take.

**Mr ROBINSON:** I will ask Kym Squires to give some of the details, but just very briefly, the commission has, over the last several years, implemented a diversity program, which includes a

number of sessions and a number of activities that are run across the commission, driven by each of the directorates looking to increase awareness in terms of diversity and in terms of the community that we represent. But also, specifically in relation to Aboriginal and Torres Strait Islander cultural awareness, the Public Sector Commission has rolled out a training program in relation to that. That has been promoted to all commission staff, and I think our current compliance rate with that is about 99 per cent who have completed that training. Kym might be able to provide some more details in terms of some of the diversity work that we are doing across the commission.

**Ms K. SQUIRES:** Thanks, David. That is correct. Like many agencies, we picked up the Public Sector Commission's cultural awareness training. It is actively promoted. It is an excellent program. It is an e-based program and it is mandated as part of our compliance training. We have a completion rate of 99 per cent. We report that up to the corporate executive quarterly. We also have implemented our diversity and inclusion plan. You will also see initiatives on things such as signature and welcome to country; all of those sorts of things have been introduced as part of our day-to-day operations, and our plan is published on the internet.

**Mr McKECHNIE:** I do not know whether you were going to ask about another recommendation, which was dogs, or not.

[10.40 am]

**The CHAIR:** We were probably going to come to that. You know the issues in relation to observations made about the police using dogs in relation to apprehension of —

**Mr McKECHNIE:** Yes.

**The CHAIR:** Particularly, I think, as it relates to you. Would you like to comment on that?

**Mr McKECHNIE:** It is often used. If you wish, Ms Polmear can talk about where we are up to.

**The CHAIR:** Yes, we would be interested in that.

**Mrs POLMEAR:** Just to give you an overview of the review, it is nearing completion, but it has been a multistage review. It was commenced in November 2020. So, we have looked at it from a number of angles. We did an analysis of five years' worth of data—the WA police use-of-force reporting data—involving police dogs. That was between 2015 and 2019. We looked at all the allegations of excessive use of force by a police dog in the financial year of 2020–21, including five matters of which we conducted a comprehensive review. We also did a random audit of use-of-force reports for a one-month period. We did this in an attempt to make sure that the use-of-force events that were occurring, were they being reported to us, if they should have been? Most recently, we are doing a further analysis of the use-of-force reporting data for the last year, so we are looking at police data to see whether there are any changes in the use of police dogs more recently. The review is nearing completion. We are aiming to table the report in late March. We have been consulting and updating ALS where we can throughout the review, although, again, we are quite limited with the official information, but we will let them know as well in due course when it is about to be tabled.

**The CHAIR:** Thank you very much for that. We look forward to that report.

**Hon Dr STEVE THOMAS:** I understand you have got a financial officer present, so, hopefully, they might be able to do this. This is a technical question out of the annual report. I note that in your financial position you have a modest amount of "Receivables" of \$247 000 and "Amounts receivable for services" up to \$1.3 million. That is page 58 of the report. I take you to page 61, cash flows. It appears that the \$1.3 million is a cash flow out of a holding account, which is referenced on page 75, which is another asset, which is "Amounts receivable for services (Holding Account)", which has

\$16 843 000 in it. Is it possible to explain how the holding account works? I am a bit interested to know what receivables the CCC has—so who is paying for what service, if you will—and how that account operates, because it appears to be just a little different to the way lots of departments and public entities operate.

**Mr McKECHNIE:** I will call on the CFO, Mr Matt Squires, to respond.

**Mr M. SQUIRES:** Thank you, commissioner. With respect to the holding account, that relates to our fixed assets. The Department of Treasury, rather than appropriating us directly for depreciation expenses as assets are consumed, they hold those moneys in what is known as a holding account, and that accumulates over time. That is what the \$16 million represents; it is an accumulation of depreciation and amortisation charges that the commission has incurred over many years. The \$1.3 million is a drawdown on that, which we are funded through government, as a capital appropriation, and it allows us to do our asset replacement, so replacing both physical assets, such as building and equipment and systems, and those intangible assets as part of our asset investment program detailed in the budget papers.

**Hon Dr STEVE THOMAS:** Through you, commissioner, can I just confirm: the holding account, is it holding \$16 million in it or is that basically an on-paper amortisation level and, effectively, this is an accounting system that you are using and what you have actually got is \$1.3 million to invest in capital?

**Mr M. SQUIRES:** The \$16 million is a notional amount. We never receive that cash; it is part of a Treasury calculation that they do. The \$1.3 million received annually, that is actually the physical cash that we have to make use of for our asset purchases.

**Hon Dr STEVE THOMAS:** Okay. I think, chair, at some point, somebody should look into the use of amortisation and depreciation in government departments, because it does not operate as the private sector does. But thank you for that clarification.

**The CHAIR:** If we turn back to the annual report with respect to the allegations of serious misconduct, we note the increase in the number of allegations that were made—something in the order of a 25 per cent increase for the period that has been reported on. My simple question is: do you know what is accounted for in that increase in allegations?

**Mr ELLIS:** In part, it is because, I think, of an increasing profile that the commission gained during that financial year as a result of some of the high-profile matters that we were engaged in. Some of it is probably also that notifications to us are increasingly complex and involve more than one allegation.

**The CHAIR:** Because the number of notifications was a smaller increase, but the number of allegations were larger.

**Mr ELLIS:** Yes, so it is a bit of both. It is more notifications and we are finding more allegations. That is, at least in part, as a result of the thoroughness with which ASD considers notifications that are made to us. Members of the public are giving more —

**The CHAIR:** Given the complexity of the allegations contained in the notifications, has the workload increased? Again, I point to some of the constraints that you have got in terms of resourcing.

**Mr ELLIS:** Yes. It is an issue that we look at. The ability to get through all the notifications in a timely fashion is an ongoing challenge that we have had.

**The CHAIR:** Does that have an impact on the prioritisation of those areas that you would investigate, or choose not to, or refer back to agencies?

**Mr ELLIS:** No—I am sorry, it does, apparently!

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**Mr ROBINSON:** I was just going to say that there are a couple of reasons for the increase in allegations that the commission has assessed in the last 12 months. These factors have different weight, but one of the first reasons is that we now have in the assessment process, access to a lot more information, whether it be through intelligence databases or whether it be access to body-worn cameras, so it not only increases the number of allegations that we can identify, it also means they are often more complex to assess because there is more available information. The other factor is that we have received some commentary from the parliamentary inspector in relation to the inferring of allegations, where they are obvious from particular matters. I think that has led to an increase in the number of allegations that have been identified out of material. But you are right: there has not been a significant—I do not think much at all—increase in the number of notifications and reports that we have received, but there certainly has been a significant increase in allegations, primarily for those reasons.

What I would say in terms of the allocation of resources and the impact that that extra work is having on resources is that it is a real pressure point for the commission, particularly as I think the increase in allegations now brings us to where we were prior to 2015 when we lost the minor misconduct jurisdiction. So, one of the things that Tracey Polmear has recently commenced is a review of the assessment function and the oversight function more generally to see if we can make it as efficient and effective as possible. Obviously, once we look at that review, one question that we may need to consider—it is not obvious yet—is whether additional resources are required. But before we make any request for additional resources in that area, it is incumbent on us to look at making sure that we are conducting the processes as efficiently and effectively as possible. So, we have instituted the review and Tracey has been liaising with officers from the CCC in Queensland and, I think, IBAC in Victoria to get their expert assistance in terms of that review, because the anti-corruption agencies face similar issues.

**Hon KLARA ANDRIC:** I am not sure, chair, if you wanted to, just in regard to the increasing number of reports, whether we wanted to ask the question about the new strategies for their communication and media that was on there?

**The CHAIR:** If you want to ask a question, you can ask that question.

[10.50 am]

**Hon KLARA ANDRIC:** Commissioner, following on from that, I just wanted to take the opportunity to ask in regard to the annual report, it notes that in 2020–2021 the commission developed a new communication and media strategy, and I understand you also launched podcasts last year. The two questions I have are: what is your strategy and whether or not those podcasts were successful; and, if they were, how was that measured?

**Mr ELLIS:** I did not do any of the podcasts. I have to say, I do not have details of the podcasts.

**Mr McKECHNIE:** Can we take the podcasts on notice? And we will get the figures.

**Mr ROBINSON:** So I do not have figures in terms of access to, or downloads of, the podcasts. But what I can say is that our website averages about 150 visits from people per day and about 1 000 downloads each time we release a report. More generally, the objective for the strategy is to make sure that all stakeholders—the Western Australian community—has timely access to material put out by the commission on its role, activity and the benefits that we deliver. So that is the general strategy. Obviously, there is the website. There is our participation in anti-corruption day, which we have done with the Public Sector Commission, and there is also the podcast. But I do not have the figures in terms of the downloads for that.

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**Mr McKECHNIE:** We will take that on notice. I might just tell you, briefly, we had a great spike in December of hits. It turns out that in America there is an anti-vaxxer conspiracy campaign that links the state department and the Rockefeller Foundation with spreading vaccinations under the name of Operation Lockstep. Now, we publish the names and broad details of our operations, and one of our operations happens to be Operation Lockstep. So, if you were in America, which is where most of the hits came from, you googled “Operation Lockstep” and it would send you to this provincial agency across the other side of the world, and there is an Operation Lockstep; therefore, it must all be true.

**The CHAIR:** Interesting—yes. The last committee was particularly interested in relation to issues around procurement and financial management across the public sector. Do you continue to focus on that as a commission—procurement issues? We are really interested to know why this remains a strategic theme, a priority area, for the commission.

**Mr McKECHNIE:** It remains a strategic priority because we consider it remains a strategic risk to the finances of the state. It will be interesting to see what the passage of the procurement act last year will have on the public sector, and, as I mentioned earlier, the Public Sector Commission has published material and the Auditor General has been expanded. But in a lot of the material that I see, there are misconduct risks abounding. It does not mean always that there is misconduct, but there are misconduct risks that do not seem to diminish. I have now been in the commission, on and off, for about six or seven years. We have published reports. People have gone to jail, and yet we still have current matters. It is as if people think that it is not going to happen to them. So, it will remain a strategic focus, but I hope that the procurement act will mitigate against some of the misconduct risks.

**The CHAIR:** I think the follow-up question would be: have you observed any improvements in the way in which finances and procurement practices operate and the controls that are put in place?

**Mr McKECHNIE:** Yes, when we have tackled things—for instance, the Department of Communities. We have an ongoing investigation, or several, into the Department of Communities. We will be releasing reports later this year, and some reports we cannot release until the conclusion of legal proceedings. But I think it fair to say that it was a misconduct risk—rich environment and it is now—what I have seen; and Mr Robinson will speak to it because he actually was seconded there for a time—they have really tightened up their procedures. That tends to happen after north metro health, after some of our reports—procedures are tightened. I know that is shutting the stable door, but it is better that it happens.

**Mr ROBINSON:** Yes, so, I was on a five-month secondment to the Department of Communities where I assisted in the development of some of their corruption-prevention strategies, and also ran some programs in terms of corruption-prevention education. Obviously, it is hard to measure these things in any scientific way, but, certainly, there was a very strong commitment from the DG at the time, Michelle Andrews, and I know the current DG, Mike Rowe, to put in place really robust integrity strategies across the department, and the work that I did was a small part of that. I know that they have made efforts to establish an integrity unit within the department and they are paying much closer attention to the sorts of issues that we have identified through the reports.

**The CHAIR:** So the misconduct risk environment existed. Now, I do not want to sort of characterise it as somewhat a complacent environment; as a result of the investigations that were taking place and the response of government—we notice the determination of agencies to, in fact, clean up their act.

**Mr ROBINSON:** Absolutely, and I think the commissioner spoke in the opening statement about some of the work done by the Public Sector Commission in promoting their integrity framework and

integrity checklists in relation to financial management. I know they are doing some follow-up work in relation to those matters, because, obviously, the Public Sector Commission has the primary role when it comes to corruption prevention in this state.

**Hon Dr STEVE THOMAS:** Apologies, this is a bit of a hodgepodge of jumping around a bit. Again, whilst I have got your financial officer there—on page 68 of the annual report, I see you spend three and a quarter million on consultants and contractors. Would it be correct to assume that the majority of that is contractors doing operational work? I cannot imagine there would be a huge demand for consultants in the CCC, but I would be interested to know if you could give us any sort of detail on that.

**Mr ROBINSON:** You would be surprised.

**Hon Dr STEVE THOMAS:** Okay; I might be about to be!

**Mr M. SQUIRES:** So the category of consultants and contract is quite a broad one, and it captures a lot of activities within the commission. We do not utilise consultants in a great degree for strategic decision-making, but we do have a number of individuals who support activities at the commission in regard to some of our functions. One of the biggest elements within it, however, is within our system licensing and service and contracts of our IT and IS systems. So a number of those types of annual service contracts and maintenance contracts sit within that category as well —

**Hon Dr STEVE THOMAS:** I imagine they are quite significant, those IT contracts—that you are a big user of IT.

**Mr M. SQUIRES:** We are a technology-driven agency and that obviously is cached within that cost.

**Hon Dr STEVE THOMAS:** All right. Thank you for that.

**Mr M. SQUIRES:** Thank you.

**Hon Dr STEVE THOMAS:** Sorry—just jump around then, just as we come a bit towards the end of things. Operation Betelgeuse is obviously ongoing. You may not be able to give us any indication of how long that is likely to take or when you finalise; that might be confidential. But is there any end in sight?

**Mr McKECHNIE:** There are no active investigations anymore, save for examination and evaluation of the material on the laptop. If material on the laptop leads to an area of inquiry, we will pursue it. But bear in mind that we are only interested in serious misconduct. If the laptop merely shows people behaving badly—and I have no idea what it does, because I have not seen it—we would not be at all interested, and we would not be publishing anything.

[11.00 am]

**Hon Dr STEVE THOMAS:** You can pass on our sympathies to the poor devils who have to watch it, I suspect. But anyway, that is an alternative thing. One last jump-in while I can, chair. This is a little out of left field, commissioner, but has the commission ever looked at the role of lobbyists in terms of the activity—because you assess members of Parliament, you assess ministers, you assess, to some extent, cabinet. Has the commission ever looked at the role of lobbyists or would it ever consider looking at the role of lobbyists? For example, take a hypothetical situation: a Premier who makes themselves unavailable to the wider community, perhaps even their own cabinet members, so if you want to access that person, that decision-maker, there is a lobbyist route through which you go. Has the commission ever considered the risk of corruption around that process? I would be really interested in your comments on that.

**Mr McKECHNIE:** The short and complete answer is no, because a lobbyist is not a public sector officer.

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**Hon Dr STEVE THOMAS:** Despite the fact that the member of Parliament would be.

**Mr McKECHNIE:** Yes. We might look at the member's activities if we knew about them, and the member might engage in serious misconduct, and then the lobbyist would be ancillary to that, but we do not have jurisdiction over lobbyists. We do not have jurisdiction over, for instance, donations by property developers, which is a specific thing in New South Wales and, I think, Queensland, so we are limited to public sector officers. We do look at individuals but only ancillary—north metro health is a good example where a public sector officer is currently awaiting trial, so I will not comment about him. But Mr Mulligan pleaded guilty yesterday; he will be sentenced on Friday—there was a bit of a glitch. He was a public sector officer. The people who bribed him, or others, have been dealt with. I think there were five contractors, not relating solely to Mr Mulligan, who pleaded guilty: three went to jail, one received a substantial fine due to personal reasons, and one received a suspended sentence. So we do, as it were, pick people up that way, but not directly.

**Hon Dr STEVE THOMAS:** Is it possible at some point a commission in the future might look to access, I am thinking government ministers in particular, and restrictions on that? I agree that the lobbyists themselves would be a side issue but the fact that that exists is surely a risk factor for corruption in some way, shape or form.

**Mr McKECHNIE:** That may well be. We are limited to serious misconduct, which, as presently defined, is basically corruption. We are in the process of putting together a submission for a new act. One of the areas that will have attention is, in fact, what the definition should be.

**The CHAIR:** And maybe what constitutes a public officer because in relation to the Albany hospital situation, we copped that later.

**Mr McKECHNIE:** Yes, I am fully supportive of the parliamentary inspector's point, which is a point that we encounter often and it takes quite a lot of resources in Tracey's area and then in Wendy's area to often work out whether a person is or is not a public officer. Often people will be engaged through, say, a labour hire company that will be working sometimes in the same desk that they worked in before they got severance or redundancy. They are not technically government employees because they have been through a labour hire company but they are exercising governmental functions, they are spending governmental money or doing that. Sometimes we cannot touch them because of the restrictive definition. We are supportive of and will be having suggestions to widen so that, broadly speaking, anybody who is directly or indirectly paid by the state should be within our jurisdiction.

**The CHAIR:** Just turning to the review of the Corruption, Crime and Misconduct Act, the director of legal services, I think, is part of a Department of Justice project reference group. Are you able to comment about the scope of the work of that group and the progress to date?

**Mr McKECHNIE:** I will pass over to Ms Endebrock-Brown.

**Mrs ENDEBROCK-BROWN:** We have recently been notified, on 18 February, that the Attorney General has issued new instructions to the Department of Justice. Those new instructions are for a reform of the act. The previous instructions were for a review of the act. We were therefore notified by the Department of Justice that the group that I was a part of, the previous group that had been formed, that process was to end. There is to be a new process.

**The CHAIR:** There is a new process?

**Mrs ENDEBROCK-BROWN:** There is a new process, it sounds like. We are pleased with what we have been told about the new process, which will result in a reform of the act rather than a review in about 12 months, which then may lead to reform. There has obviously been a very detailed review previously by Gail Archer. A number of things were identified as a result of that review that have



not been progressed that I believe is to be the basis of this new process with the other things that the parliamentary inspector, and the previous committees of this group, have identified as being issues with the act that the commissioner has written previously as being issues to the act. The idea, as I understand it, is to start with that as a base.

**The CHAIR:** I am trying to get my head around that. The review is to one side. Now we are talking with reform. Does that imply there is not going to be a complete rewrite of the act? I know it is something which, commissioner, you have often said you felt the whole thing needs to be rewritten from go to whoa. Do we infer that it is simply going to be a process of amendment to the existing act in accordance with some of the primary issues that have been identified over the last decade and a half?

**Mr McKECHNIE:** No, it is a new act. The commission was established nearly 20 years ago. The world has changed. Different risks apply now. To take an example: the commission has an organised crime function, which is basically to grant special powers to police. The hurdles that police must overcome to get a successful application are almost impossible. They are very, very hard for police to meet. I think there is a question why they should be so hard. What that did in the past was unlock all sorts of powers, such as assumed identities, search warrants and so forth, which are now covered by the Criminal Investigation (Covert Powers) Act, which came into place a couple of years later. The only power really left is the examination power, which is a useful power but arguably does not need the detail that the present act requires. It is that sort of thing that now I think needs to be looked at for 2020. We face different risks now.

**Hon Dr STEVE THOMAS:** Commissioner, in terms of the review of the act, which we take very seriously, perhaps the Attorney General might think that we are going to contribute to that process. We would rather overview that process rather than simply be one of the people in it. Is there an issue around confidentiality, particularly in terms of consultation, which makes the review of the act and the rewriting of the act more difficult?

**Mr McKECHNIE:** I would not have thought so. It is a public act. They are structural issues in the main—definitions like “public officer”, things of that nature. The essential power of the commission to do investigations and hold examinations would remain, with all the safeguards.

**Hon Dr STEVE THOMAS:** So there should not be a confidentiality issue around reviewing the act itself?

**Mr McKECHNIE:** I should not think so.

**Mrs ENDEBROCK-BROWN:** The commissioner issued a certificate under section 152(4)(c) of the act to enable me to partake in the last review in a way that would allow that review to happen. We have very, very strict secrecy provisions in our act, as you know. I would not have been able to contribute well to that group without a direction from the commissioner to allow me to do that. In any future reforms of the act, I anticipate that that is exactly what would happen again.

**Hon Dr STEVE THOMAS:** You raise a really good point. Is there an issue of the public engaging in the process because obviously there are strong secrecy provisions around what you do and they are probably not going to be completely open to conversations and should not be, rightly? Is somebody looking at how you balance that out?

[11.10 am]

**Mr McKECHNIE:** I am sure as it proceeds it will because it is for the public. I am sure, for instance, the ALS will have views that they wish to express, so will police, so will others. But there was the Archer report review back in 2008. It is still relevant. There have been a lot of reports from this

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committee that are still relevant. That is why we thought, “Well, there is no point in having yet another review. Let’s just get on and do it.”

**Hon Dr STEVE THOMAS:** I think, chair, we would all like to be as open as possible, acknowledging that there might be some components of debate that cannot be, which I think we accept.

**The CHAIR:** I think that covers the items that we wanted to discuss in open session. We have a couple of points that we want to raise in closed session, if that is okay with you.

**The WITNESSES:** Yes.

**The CHAIR:** So, I am going to ask the public gallery if they would, please, depart.

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

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