

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

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
MONDAY, 30 JUNE 2008**

**SESSION FOUR**

**Members**

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

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**Hearing commenced at 3.20 pm****O'CALLAGHAN, DR KARL:****The CHAIRMAN:** We will talk with the Commissioner of Police now.**[The committee took evidence in private]**

[3.25 pm]

**[The committee resumed taking evidence in public]****The CHAIRMAN:** Can the commissioner tell the committee what is his knowledge of the inquiry into the alleged disclosure of unauthorised material or information in relation to an expenditure review committee proposal, which, in part, caused the police to raid the premises of *Sunday Times* on 30 April 2008? Can I explain to you the nature of the question: we invited you here today not necessarily to hear from you on every operational aspect of the case, but more to deal with some policy matters. We would like to know your knowledge of the inquiry anyway.**Dr O'Callaghan:** My knowledge of the inquiry is post the execution of the search warrant on the *Sunday Times*. It is pretty much what is contained in the internal investigations file, which was provided to you. Prior to that, I had only a very scant understanding of what was in it, so my understanding of this whole matter now consists of what is in the internal investigations file and the evidence I have heard here today.**The CHAIRMAN:** Perhaps I can move to whether you are aware of the police requesting the CCC to use their coercive powers to interview Mr Lampathakis. Of course, that is part of the documentation I believe you may have read. Do you believe that the police request to the CCC was reasonable; and, if so, why?**Dr O'Callaghan:** I think it was a reasonable request—some of this has been addressed already. One of the things about section 81 is that it is, historically, very difficult for police to get a good result with the investigative techniques they possess. I think the reason the investigators went to the CCC was that, if the coercive powers and private hearing powers were used, it could have been done in a way that would have meant a more reduced commitment of resources to the investigation and a less public investigation than actually occurred at the end of the process. This is not an isolated case; there are a number of other cases, and you have mentioned a couple already, in relation to section 81 of the Criminal Code that are notoriously difficult for police to resolve within the scope of what they can do. That is one of the reasons I think, in this instance, the investigative officers approached the CCC and asked them to use their special powers—not just their coercive powers, but the ability to have private hearings etc.**The CHAIRMAN:** Thank you. Apart from the coercive powers of the CCC being requested to be used by the CCC, do you think the CCC should have been operationally involved in the reference that was made to the police at any other time during the inquiry?**Dr O'Callaghan:** In retrospect, I think, yes. After having reviewed the internal investigations file, I think, as I said before, that there were two or three contact points along the way and it would have been helpful for them to be more involved in that inquiry. I preface my response by saying that I understand, of course, that the Corruption and Crime Commission is constrained by resourcing

issues, as are police. Under the types of public sector investigations that we do, there are several hundred of these a year.

It is actually difficult to engage the CCC in a lot or all of them, but there are some which we think they should be more involved in.

[3.30 pm]

**The CHAIRMAN:** Yes. Can you expand on that and give us the instances or the types of investigations you are referring to? Are they only section 81 inquiries?

**Dr O'Callaghan:** The public sector investigations unit, before it was disbanded, did all criminal investigations into currently serving public officers. One of the reasons we disbanded it was that I was not of the opinion that we needed a dedicated unit to investigate public servants. In other words, if it is a criminal act—stealing or fraud—by a public servant, then that part of the police force could inquire into it, like they do for anybody else. Most of those are normal police business. They go in there and do the inquiry as they would any other stealing or fraud inquiry. It is just that section 81 creates all sorts of difficulties for proof of evidence and obtaining evidence, particularly in cases that involve the media, as we have seen.

**The CHAIRMAN:** Therefore, should the involvement of the CCC have been at joint operational level, or was it your belief that the police should have requested that the CCC take the whole case back?

**Dr O'Callaghan:** I think it could have been either/or. We would have been very happy to assist in that sort of inquiry. We do joint inquiries with the Corruption and Crime Commission on a number of fronts. There is no reason we would not remain involved in the inquiry. It was not for me just a matter of handing it over. The committee will be aware of a letter I sent to the commissioner, saying that I thought it was well within the ambit of the CCC to do this inquiry; that was not to say that I wanted to wipe my hands of it completely, but the use of its powers would have been very useful in resolving this matter a lot more quickly and in a lot less public way.

**The CHAIRMAN:** Commissioner, what do you say to the CCC position that it would only want to use its coercive powers in issues that constituted serious or grave circumstances?

**Dr O'Callaghan:** I think, firstly, I would like to understand its definition of “serious”. This is a serious offence in that it carries a penalty of three years’ imprisonment. The CCC has certainly used its coercive powers investigating assaults by police officers, which you might consider a less serious offence. I am not sure how it grades those things, but there are many examples of situations in which the CCC has used coercive powers for offences that we would not consider to be at the major end of the scale.

**The CHAIRMAN:** The other question I asked of Mr Lampard, but you were present at the time. Did you believe that a phone call from a detective inspector of the police force to an equivalent ranking officer in the CCC is adequate in requesting the CCC to consider using its coercive powers in respect of an aspect of a police inquiry?

**Dr O'Callaghan:** I think the formation of the Corruption and Crime Commission loosely aligns to the same time I was appointed Commissioner of Police. That process seems to have worked reasonably well. I think we have got to the stage now—this has been highlighted in this particular inquiry—where there probably needs to be a more formal way of approaching the Corruption and Crime Commission to ask for its support or the use of its powers in situations like this. That enables the matter to be escalated to a higher decision-making level in both organisations. I think, in this instance, as far as I am aware, the highest it went to was the inspector in charge of the fraud squad and one of the senior operational people in the Corruption and Crime Commission. Perhaps—I am only speculating—if it had been escalated and formal letters had gone out, we might have had a different result.

**The CHAIRMAN:** Yes, or can I put it to you that it may have been prudent for your detective inspector, having been refused by the CCC, to have the CCC act in respect of the use of its coercive powers? It might have been prudent for your detective inspector and whoever else was associated with him to have determined that the search warrant not be executed until such time as there were further discussions at a higher level within the respective organisations.

**Dr O'Callaghan:** I think if we had had that policy in place—of course, it was not in place at the time—then probably the search warrant may not have been executed if there was still a requirement for the commissioners of both organisations to correspond with each other or senior people in the organisations to formally correspond with each other, because one would go through that process first. We did not have that policy in place and we have not yet got that policy in place. It has been spoken about here today for the first time.

**The CHAIRMAN:** Is that a matter that you are taking up on the police side to discuss, in due course, I assume with the Corruption and Crime Commissioner?

**Dr O'Callaghan:** Sure; I notice the gentleman is here today. I am sure he would be keen to talk to me about it as well.

**The CHAIRMAN:** We are very keen that there be some discussions with the commissioner, but that is at your level. Mr Commissioner, you heard your officers indicate to the committee that they believed it was appropriate for the search warrant to be executed prior to investigations taking place with the 12 named persons who were employed or associated with the Department of the Premier and Cabinet and the Department of Treasury and Finance. Do you believe it was prudent to move directly to the execution of the search warrant rather than conduct an investigation into the use of other options that were available to the police?

**Dr O'Callaghan:** I think the evidence we have heard from the detectives is the evidence that most detectives would give about most of the inquiries they do; it is standard police operating procedure to do those things first, rather than to move around the edges. It is a difficult situation. I think my view would be that these people have followed the method of investigation that they have been taught and that police have been teaching their people ever since I have been in the police force, although I understand it has changed over the years slightly.

**The CHAIRMAN:** The only other immediate question I have is whether it was your intention to meet with the Corruption and Crime Commissioner to discuss what appropriate protocols might be put in place so that this sort of issue does not arise again, if a similar incident were to arise?

**Dr O'Callaghan:** We meet on a regular basis. I think there is a meeting programmed for the next fortnight, so we will certainly raise this issue when we get together.

**Hon ADELE FARINA:** In your view, should the police—given their concern about the execution of the search warrant becoming a media circus—have referred the matter to you or consulted with you first before executing the search warrant?

**Dr O'Callaghan:** No, not necessarily. The fact that it becomes a media circus is an adjunct to the case. The focus of the investigating team is to get to the bottom of the problem and try to identify who the offender is. I think, in some respects, it is prudent to advise the commissioner's office that such a thing is going to occur because there will be some post search warrant execution media to manage, and I believe that our media section was at some stage advised about the raid. I am not quite sure when that occurred. The first I heard about the raid was when I was called by the *Sunday Times* itself, while the raid was in progress.

**Hon ADELE FARINA:** Do you think the police left it too late in the process to make contact with the CCC in relation to either a joint investigation or the use of their special powers?

**Dr O'Callaghan:** I understand that there was correspondence or discussion about a month before the search warrant was executed, so I do not think so. The question I would raise is: how often

would one raise the matter with the Corruption and Crime Commission before one decides that they will not get involved, then move out and do the inquiry oneself? As we have been discussing, I think a more formal exchange of letters on these matters between the two authorities would probably militate against that occurring in future.

**The CHAIRMAN:** I will ask a question while Hon Adele Farina is looking at the next question. Mr Commissioner, should the media be treated differently to any other group?

**Dr O'Callaghan:** No, not from a police perspective. I think if we are investigating any entity, we have to investigate it in the same way, using the same guidelines, the same policies and the same laws. One cannot treat special interest groups differently under law. One can have policies about the way one goes about one's business, if there are special issues, but generally everyone gets treated the same. If the police get into treating different interest groups in different ways, we will get in trouble and be criticised for it.

**The CHAIRMAN:** There is an opportunity, in respect of special interest groups, to have policies relating to them. I am really thinking more of a management issue rather than the operational side.

[3.40 pm]

**Dr O'Callaghan:** One of the issues that came up today that I was quite interested in was the notion that if, for argument's sake, one is going to conduct a search warrant on a commercial business, as far as possible one tries not to interfere with the progress of that commercial business.

If we develop a policy like that, that is obviously going to be a matter for the investigating officer about what sort of time it should be executed, and we may not always have that information. If it is a consideration, and the detectives or the investigating officers give it due consideration, I do not see why that could not be enshrined in policy. I am not talking about the media; I am talking about any commercial business.

**The CHAIRMAN:** Having regard to the nature of an operation or business.

**Dr O'Callaghan:** The question is whether you would shut down Myer while it is trading in the middle of the day if you needed to get some sort of information from it. I think you could enshrine that in a policy without identifying one particular interest group.

**Hon ADELE FARINA:** Commissioner, do you have any concerns about the way the police conducted the execution of the search warrant on the *Sunday Times*?

**Dr O'Callaghan:** Not at all.

**Hon ADELE FARINA:** Is it your view that having 27 police officers involved in the execution of that search warrant was an excessive number?

**Dr O'Callaghan:** It is very, very difficult, as Commissioner of Police, to second-guess what happened. The commander at the scene on the day has to make all sorts of decisions based upon the perceived degree of resistance, occupational health and safety, the security of the building, managing media—a whole range of things. I am not going to second-guess the decisions of that commander at the scene. I think it is a very difficult position to be in and I think the commander has made a decision in good faith. Maybe if we break down the inquiry into little bits, we might find that there were one or two too many there, but I am not in a position to second-guess them; in fact, I am not the best qualified to second-guess them.

**Hon ADELE FARINA:** Commissioner, we have heard from the CCC, and also the police received a letter from the CCC noting that the CCC considered that the matter under investigation did constitute, or may have constituted, serious misconduct. We also know that the Department of the Premier and Cabinet also referred the matter to the police because of the concern that a criminal offence may have been committed under section 81 of the Criminal Code. Is it possible that an act of unauthorised disclosure of confidential information could be misconduct, yet not meet the burden requirements for a section 81 criminal offence?

**Dr O'Callaghan:** Absolutely. I think often it works the other way too. What might start as a misconduct inquiry could easily turn into a criminal inquiry when more evidence is gathered.

**Hon ADELE FARINA:** Is it the jurisdiction of the WA Police to investigate misconduct?

**Dr O'Callaghan:** No, it is not.

**Hon ADELE FARINA:** Do you think that the CCC should consult the WA Police before referring matters to the WA Police, pursuant to its assessment process and the action that it takes from that point on under section 33 of the act?

**Dr O'Callaghan:** I am not sure there is absolutely no consultation in place. I do not think it is all that arbitrary. There is always, I am sure, with the investigating officers at officer-to-officer level, an open-line policy whereby they can talk to each other about this—I am not saying we always agree. I think this whole issue about communication between the Corruption and Crime Commission at that level is something that the Corruption and Crime Commissioner and I should be able to sort out quite easily.

**Hon ADELE FARINA:** Is it the case that the CCC can only work jointly with the WA Police in matters of organised crime?

**Dr O'Callaghan:** I am not sure about that. Certainly, we do work together in matters of organised crime; I am not sure about matters of criminal investigation.

**Hon ADELE FARINA:** In view of Mr Albrecht's contact with the CCC, asking it to either have a joint investigation with the police in relation to this matter or exercise the use of its special powers, and given that a number of those decisions are actually decisions within the power of the Corruption and Crime Commissioner to make, do you think that the CCC officers should have referred that to the Corruption and Crime Commissioner, or higher up, rather than simply making a decision at officer level?

**Dr O'Callaghan:** I think one of the difficulties is how much of this you actually refer right up to the commissioner of either organisation. There are hundreds and hundreds of these inquiries that go on all the time, and I think both of us would prefer that we were not making decisions on all of them. There needs to be a clear protocol in place for decision making, and when there is an absolute sticking point on a matter of significant importance, then it gets elevated. There would need to be some sort of triaging system, I would imagine.

**Hon ADELE FARINA:** Do you think that the commission's coercive powers should be used to force journalists to reveal their sources?

**Dr O'Callaghan:** I think the commission's coercive powers should be used to resolve matters under section 81. I am not singling out journalists or anybody else, but if anyone is subject to complaint or investigation under section 81, we could use those powers in that case.

**Hon ADELE FARINA:** Commissioner, I have referred to this report earlier today; it is the CCC report in relation to an unauthorised disclosure matter back in 2004. In that report, the commission stated that the CCC report on the investigation into the Department of Treasury and Finance concluded that there was no adequate legislative base for the prosecution of persons involved in the unauthorised access to and disclosure of official information. In view of that finding, do you think it is questionable whether the commission ought to be referring such matters to the WA Police for investigation? It seems to me that if there is a view that there is a lack of legislative base to bring about a successful prosecution, the natural question that follows from there is: why expend the resources undertaking the investigation until the legislative base is sorted out?

**Dr O'Callaghan:** Of course we would argue that in the big scheme of things, WA Police has got so many, many, many much more serious case files—for argument's sake, in the sex crime area—that this, to us, is at the bottom of the heap in terms of priority. If the commission concluded that there

was not an adequate legislative base, it would seem to me that we would even be less interested in getting involved in this until that legislative base was repaired.

**Hon ADELE FARINA:** Do you have the same view that the legislative base is inadequate?

**Dr O'Callaghan:** What we have said—and I have said this before—is that it is notoriously difficult to prove the case. That is perhaps why we are going to the Corruption and Crime Commissioner saying, “Could you use your coercive powers and your powers of private hearing to resolve this?” because we do not think, the way it is structured at the moment, that police actually have many successes in this area.

**The CHAIRMAN:** Commissioner, we talked earlier about the degree of resistance. I think they may have been the words of Hon Adele Farina—I am not sure—but the words “degree of resistance” were raised. You will recall that I talked about the cooperation of the *Sunday Times* with your investigating officers during earlier evidence.

**Dr O'Callaghan:** Yes.

**The CHAIRMAN:** Are you aware of the degree of resistance that was offered by the *Sunday Times* in respect to this matter?

**Dr O'Callaghan:** I am only aware of what has been reported by the detectives. What I have read in the internal investigations case file is the only information I have in terms of the degree of resistance.

**The CHAIRMAN:** When I say “degree of resistance”, I think that should be tempered by “/lack of cooperation”.

**Dr O'Callaghan:** I was going to say that I think the words are probably “reluctance to cooperate” rather than “resistance”, because “resistance” sounds a bit more physical, does it not?

**The CHAIRMAN:** Indeed. I would expect that you would have regard to the lack of cooperation given the context of a particular matter at the time. For instance, if your officers were required to consider entering a premises to search for drugs, such as bikies' whatever they are called, a gang house or —

**Dr O'Callaghan:** Yes, yes, a clubhouse.

**The CHAIRMAN:** A clubhouse, is it?

**Dr O'Callaghan:** Yes.

**The CHAIRMAN:** You know what I mean, commissioner. I would assume that the lack of cooperation would be taken into account having regard to the context of that particular issue on the day.

**Dr O'Callaghan:** Sure.

**The CHAIRMAN:** I have a question in my mind as to the actual lack of cooperation existing at the *Sunday Times*. That is why I invited you earlier to have a look at the video that was produced by your officers. It does seem to me that that particular video does not indicate a lack of cooperation that would require 27 police officers to be on the premises of the *Sunday Times* at any one time. However, that is my interpretation, having seen the video; you have indicated that at some stage you will have the opportunity of looking at it too. I raise that because it seemed to me that it seemed generally agreed between Mr Jane and me that the initial use of five officers to enter the *Sunday Times* was not unreasonable.

The turning point, which seems to hinge on the lack of cooperation, caused a very significant number of additional police officers to be brought on to the premises, and that is where I have some difficulty with the operational side. I think that when you do see the tape, however, you will be obliged to acknowledge that Detective Sergeant Jane did a very professional job.

**Dr O'Callaghan:** Yes.

**The CHAIRMAN:** No comment was raised by the *Sunday Times* in respect of the manner in which he carried out the warrant; that is, the way in which he conducted himself with the editor and the managing director of the *Sunday Times* and their solicitor. Do members have any other matters?

Mr Commissioner, thank you very much for your attendance this afternoon. We appreciate that you have given up a fair amount of your day for us, and we look forward to some positive resolutions of this.

In due course the transcript of your evidence will be provided to you and should there be a requirement for any further clarification, we will obviously contact your office.

**Dr O'Callaghan:** Thank you.

**Hon ADELE FARINA:** Our apologies for detaining you.

**Hearing concluded at 3.50 pm**