



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

**PUBLIC HEARING WITH THE
CORRUPTION AND CRIME COMMISSION
ON 3 MAY 2006**

**Report No. 8
in the 37th Parliament**

2006

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Joint Standing Committee on the Corruption and Crime Commission

Public hearing with the Corruption and Crime Commission on 3 May 2006

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ON 3 MAY 2006**

Report No. 8

Presented by:

Mr John Hyde, MLA and Hon. Ray Halligan, MLC

Laid on the Table of the Legislative Assembly and the Legislative Council
on 15 June 2006

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COMMITTEE'S FUNCTIONS AND POWERS

On 31 May 2005 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

CHAIRMAN'S FOREWORD

The Joint Standing Committee on the Corruption and Crime Commission continues to devote considerable time and research into its oversight responsibilities for the Corruption and Crime Commission.

This year has again provided an important array of specific investigations, inquiries and education undertaken by the CCC.

The looming deadline for a review of the CCC legislation means both the CCC and the Committee are also focussing on improvements to the process as well as ongoing core business.



MR JOHN HYDE, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

Act	<i>Corruption and Crime Commission Act, 2003</i>
CCC	Corruption and Crime Commission of Western Australia
Committee	Joint Standing Committee on the Corruption and Crime Commission
Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission of Western Australia

CHAPTER 1 PUBLIC HEARING WITH THE CORRUPTION AND CRIME COMMISSION ON 3 MAY 2006

1.1 Background

One of the functions of the Joint Standing Committee on the Corruption and Crime Commission is to monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission. As part of this oversight role the Committee holds quarterly public hearings with the CCC. The Commissioner, Executive Director and Directors appear before the Committee to give evidence about the CCC's operations and activities during the relevant three-month period.

The Committee's most recent public hearing with the CCC was held on 3 May 2006. A transcript of the hearing is attached as Appendix Two of this report.

The Committee is satisfied that the CCC is operating effectively and efficiently. Since its last public hearing with the Committee on 19 October 2005 the CCC has:

- increased its staff numbers from 140.8 Full Time Equivalent positions to 151.4 Full Time Equivalent positions;
- commenced a Rural and Regional Outreach Program;
- significantly increased the number of education seminars presented in regional locations and the metropolitan area;
- prepared a comprehensive kit dealing with Conflict of Interest in collaboration with other members of the Integrity Coordination Group;
- tabled five reports in Parliament;
- completed a number of complex investigations involving allegations of serious misconduct on the part of public officers; and
- prepared a detailed submission for the Attorney General's Review of Administration of Justice Legislation.

The above examples represent only a small sample of the recent activities of the CCC.

The CCC also provided evidence to the Committee that during the first six months of the current financial year, there has been a considerable reduction in the proportion of notifications. Of the 1,133 notifications assessed, the proportion of reports and notifications that fall outside of jurisdiction has fallen from 7.1% to 5.8% and those that require no further action from 23.9% to 15%.

According to the CCC, this apparent emerging trend could be as a result of a number of factors including increased public sector knowledge of the responsibilities and jurisdiction of the CCC through the education programs, liaison and increasing experience.

The Committee will continue to monitor the activities and operations of the CCC and will seek a further update at its next quarterly public hearing in August 2006.

APPENDIX ONE

WITNESSES TO PUBLIC HEARINGS

Date	Name	Position	Organisation
3 May 2006	Mr Kevin Hammond	Commissioner	Corruption and Crime Commission
3 May 2006	Mr Michael Joseph Silverstone	Executive Director	Corruption and Crime Commission
3 May 2006	Mr Nick Anticich	Director, Operations	Corruption and Crime Commission
3 May 2006	Ms Vanessa Grant	Director, Business Services	Corruption and Crime Commission
3 May 2006	Dr Irene Froyland	Director, Corruption Prevention	Corruption and Crime Commission
3 May 2006	Mr Michael Anthony Cashman	Director, Legal Services	Corruption and Crime Commission

APPENDIX TWO

TRANSCRIPT OF EVIDENCE BY THE CORRUPTION AND CRIME COMMISSION

3 MAY 2006

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

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 3 MAY 2006**

Members

**Mr John Hyde (Chairman)
Hon Ray Halligan (Deputy Chairman)
Mrs Judy Hughes
Hon Margaret Rowe**

Hearing commenced at 10.40 am.

[The committee took evidence in open session]

HAMMOND, MR KEVIN JAMES:

GRANT, MS VANESSA:

ANTICICH, MR NICHOLAS ANDREW:

SILVERSTONE, MR MICHAEL JOSEPH WILLIAM:

FROYLAND, DR IRENE:

CASHMAN, MR MICHAEL ANTHONY:

The CHAIRMAN: I welcome everyone to this open hearing. Commissioner, do you or Mr Silverstone wish to make an overall comment regarding the confidential documents we have been given or are you happy for committee members to ask questions?

Mr Hammond: I welcome the opportunity, Mr Chairman and members, to again appear before the Joint Standing Committee on the Corruption and Crime Commission. Since our last meeting on 19 October the commission has been very busy. I have provided the committee a report that summarises its various activities. I hope it is useful to you. In order to ensure that the commission provides the most appropriate responses to your questions, I seek your agreement to refer matters of detail to the directors where appropriate.

The CHAIRMAN: That is quite appropriate. I will begin on the TAFE lecturer and I expect you to correct me appropriately. My understanding, and this was an issue that we referred to previously, is that Morris Michael Danaher, 50, TAFE lecturer, was given a suspended sentence late last week in the courts. He was fined \$9 000 and ordered to pay back \$11 400 he stole from his employer, Edith Cowan. My memory, perhaps there is another lecturer or TAFE involved, is that some of the students involved in share trading -

Mr Hammond: Different person.

Hon RAY HALLIGAN: This is not TAFE; it is a university.

Mr Hammond: May I just ask: where is that particular prosecution at the moment?

Mr Anticich: That is before the courts. I believe we have a plea of guilty in relation to a number of stealing charges and we are waiting for that person to appear.

Mr Hammond: That will be in the District Court. It is an entirely different kettle of fish. That is the lecturer who was involved in share schemes with the students. That has been the subject of a number of charges - 68 or something like that - and there will still be more.

The CHAIRMAN: Danaher stole only \$11 400?

Mr Hammond: Yes.

The CHAIRMAN: I would be interested in your response. This is one of the issues that has come through the commission and now reached completion.

Mr Hammond: It is now completed. It was the subject of what we termed "Operation Dasher". Mr Danaher is 50 years of age; he was a lecturer at ECU; and he has been around here and Singapore for some time. In brief, three layers of charges were made against him. He appeared in a private hearing before me and, quite honestly, he did not tell me the truth. He was charged but within a matter of days, through his solicitor, he came back, put his hand up, and said he did not tell me the truth; this is now the truth and he confessed and so forth.

[10.45 am]

That made it somewhat unusual. He was charged not with perjury - which is an offence under the Criminal Code and carries a penalty of 14 years and one that is difficult to prove - but with misleading the commission or giving false evidence to the commission under section 168 of the Corruption and Crime Commission Act, which carries a maximum of three years or a \$20 000 fine or something of that sort. There was a total of three fraud charges; four were brought under the Criminal Code and there were four accounts of opening false bank accounts, which is an offence against some federal legislation. He was a first offender; he confessed to his misleading evidence at a very early stage, which makes him rather unusual. He was charged under a section of the act. He indicated through his lawyers a very early plea. He was represented by Philip Dunn, QC, from Melbourne. They were seeking a spent conviction and various orders, none of which they got. I think they were seeking a spent conviction but we resolutely opposed that. I approved the approach of the prosecutor, which was to say that the offences of false evidence deserved a term of imprisonment but that we had no objection to that term of imprisonment being suspended. That is in fact what the magistrate did. The fine of \$9 000 for the fraud is significant. The order for restitution or recompense, which can be enforced if it is not complied with, is in the sum of \$11 400. I looked at the file earlier this morning. There were a number of references on his behalf, and there was some medical evidence on his behalf. At the end of the day, I am perfectly happy with that disposition if I put my previous hat on. In fact, that disposition overall, in some circumstances, might have been a bit lighter. I do not see the disposition in the case of Mr Danaher as being at all exceptional. I thought that our people did very well with detailed submissions. It is the old story. When people put their hand up for an early guilty plea and express remorse and put things right, as our fast track system shows, they are entitled to some recognition. I do not think that he got off lightly at all.

The CHAIRMAN: Although the case has only just finished, do you think there will be a strong enough deterrent from that or will it be able to be used in your outreach work?

Mr Hammond: I would have thought so because I would think that his career is finished. The finishing of a career, which is sometimes not recognised by people who criticise judges' decisions, has an enormous effect, especially when one is not as young as one used to be. I was perfectly satisfied with it from my view, if I go back to my previous life. The suspended sentence is a sentence of imprisonment which is suspended. There are arguments which can be raised about the strength of that as a penalty. The Sentencing Act of Western Australia places a term of imprisonment at the top of the sentencing options. The next option is whether it can be suspended. A suspended sentence is really second from the top of the list. I know that public commentators might say that there is nothing in a suspended sentence. Mr Chairman, there is. You have been

sentenced to a term of imprisonment and that will stay with you. It happens to have been suspended. I am sorry, I am slipping back into my previous life there.

Dr Froyland: I will add something about the outreach part of that. Coincidentally perhaps, the university had already asked us to address a group of their heads of department. That will happen in about three weeks. As a deterrent effect, we can now discuss it since it has been before the courts. Believe me, the universities are all twitching about it. The deterrence will be a flow-on effect that I feel quite strongly about.

The CHAIRMAN: Before I hand over to other members, I will refer to three issues. We have had some sort of resolution in the Laurie Marquet charges. I am wondering whether you would like to comment on that case or on anything in terms of deterrence and advice to Parliament on that particular issue or whether that is inappropriate at this time. The second issue is that the deputy chair, the executive officer and I have recently attended the world corruption conference. Two big issues coming out of that are conflict of interest in terms of governments and agencies. I would certainly like to know what the commission's thinking is on that and what we are actually doing. Associated with that, the other big issue is in terms of outsourcing. Governments all over the world are outsourcing, in effect, government roles. They are becoming monopoly private sector transactions. In the current wheat board case we are seeing that some public servants see their role as merely to act as a mail room and that they have no responsibility if bribery and other things are happening. I wonder if the issue of outsourcing is on WA's radar yet. They are my three general issues.

Mr Hammond: I will take them in reverse order. Firstly, the issue of public officer. You will see that in the submissions we have made to you and in the submissions to the Attorney General we have addressed that point by stating that Parliament should consider an extension of the definition of "public officer". We talk about foster carers, prison officers and custodial staff. We also talk about officers and employees of companies contracted to government to provide public services; for example, companies providing public health services at a private health facility. We have already made those recommendations. They are before your committee as to whether Parliament thinks fit to extend to that area.

The CHAIRMAN: It is a glaring omission; our legislation just does not cover it.

Mr Hammond: It is up to Parliament; perhaps it should. Can I leave that to one side and pass to Irene to answer the question of conflict of interest, because there is a lot to do there. Going back to the Marquet issue, I would prefer to leave that for the moment. I do not think we have signed off our file on it. The report is in preparation.

The CHAIRMAN: There will be a report on that issue?

Mr Hammond: Yes.

Dr Froyland: Are we planning anything on conflict of interest? I am delighted to say that, hopefully, by the end of this week a kit of materials, guidelines and some scenarios will be in envelopes to go out to the public sector. Coincidentally, we had decided that this is a significant issue. As with all the things we are doing in corruption prevention, we are looking to maximise our resources. We have lent very heavily on the materials developed in New South Wales and Queensland. We have put six months' worth of effort into making them Western Australian materials or of Western Australian significance. They are at the printers at the moment. In order to maximise the impact they will go out from our office but they will go out badged jointly by the other integrity agencies as well. The Commissioner for Public Sector Standards will be promoting

them; the Ombudsman will be promoting them; the Auditor General will be promoting them. Certainly, we will too. This is the start of what I see will have to be a big issue. These are materials only. We will need to develop this as an education package. Right now there are guidelines in paper format. The minute they go in the mail there will be a web link that is activated and people will be able to read the guidelines, the scenarios and background material on the web. Yes, we see it as important; no, we have not managed to do everything we wanted to do about this yet but something will be out there next week. We are quite excited about that. Down the track I think we probably need to develop something more along the lines of an interactive DVD so that you can go in and work actively with it. We are planning to become more sophisticated with our education materials but we do know that there is an issue and we are addressing it.

Hon RAY HALLIGAN: Now that you have mentioned the group, would you like to update the committee on the progress and outcomes of the integrity coordination group?

Dr Froyland: I am happy to talk about it. It is very interesting. The group has been going for over a year. Its major purpose is to ensure that we speak a common language and that we coordinate our activities. It is fairly important that this does not become a fifth integrity group. We are working on this balance. Conflict of interest was a good case study. We said that the group should have a common language and coordinate their activities. We undertook to do it on behalf of the group. What the next project will be, the group has to decide. We are trying to achieve that balance between using the group to have a common language and coordinate activities but not to make it an extra integrity body. We all have to be alert to that. The leadership of the group has passed from the Commissioner for Public Sector Standards to Deirdre O'Donnell, the Ombudsman. Her senior staff will start next week to remind themselves what the group is meant to achieve and they will make some plans for the next step. It is exciting and important, and that is where we are at.

Hon RAY HALLIGAN: Does that mean that you are developing formal strategies?

Dr Froyland: One of the difficulties is that the materials developed jointly do not meet the needs of each of the four agencies totally. They become a foundation set of materials. For instance, take conflict of interest. Everyone is concerned about conflict of interest but when we bring the materials back to the commission we need to go into much greater depth because we are often interested in criminal and major corruption matters. It is a matter of finding an approach that uses those common materials but then allows each agency to use them in the own way. Yes, the commissioners meet four times a year. The working group under them, which are the directors such as myself, meet more frequently. I am quite positive about how we are going. We talk about what is needed and what the effect is out there. Yes, we have decision-making strategies. Always bear in mind that this is a starting point for each of the four agencies and not the end point. We have a different footprint in terms of the agencies we are responsible for. We are certainly involved with much more serious behaviour than some of the other agencies. Having said that, the common starting point is a good way to go.

Mrs J. HUGHES: I have a question about the delegation of investigative powers to agencies that may want to investigate a different level to perhaps the CCC. What sorts of backstops are in place relevant to those investigations that are being undertaken by CEOs and that type of thing?

Mr Anticich: In relation to those matters, part of our process is investigation, review and assessment. By review, generally, where investigations are undertaken concerning misconduct in other agencies, by virtue of the act there is a requirement that they come to us for review. It is

quite often the case that we track a standard type of complaint of misconduct. It may come to us and we may assess it. It would be relevant and appropriate for the agency to investigate it. That would go out to the agency. It goes into the phase we refer to as “monitor”. We monitor its tracking through the investigative process. Ultimately, it comes back to us for investigation review in the complaints assessment area. They review how that investigation was undertaken. In most instances and most cases, that is appropriate and we advise them that is the case; and in some cases where we believe it has been or could be done in another way, we advise them to that effect and usually monitor the rollover of those recommendations.

[11.00 am]

Dr Froyland: Could I again - I am sorry, I seem to be chipping in all the time - add another point? We are at the very beginnings, and I do not want to make any false promises, of working very closely with Nick's people on developing some misconduct investigation guidelines, which will be guidelines out there for some of the smaller agencies to use. It is really important because it needs to be a collaborative effort and it needs to give them all the help they need without letting them think that they are kings of the hoop in terms of being able to do an investigation. So we recognise that responsibility, but we are at the very beginnings of that. I hope when we meet 12 months from now we will have something beautiful to show you.

Mr Silverstone: I might add from a strategic point of view that whilst we are focused, very many allegations return to agencies for them to deal with. If we come back to, I guess, a foundation principle for the commission, it is the responsibility of CEOs of departments to address misconduct issues within their department and part of our interest is developing their capacity. You will see reference within the report we provided to you to a number of reviews of complaint-handling mechanisms that the commission has as it is conducted; and the purpose of that is to improve the capacity of agencies to deal with these matters themselves. In our view, acceptance of responsibility by CEOs is important, but also ensuring that they have skills and capacity to deal with matters before them as well. So an important part of our strategic emphasis is reviewing and attempting to improve their capacity.

The CHAIRMAN: Since you raised that, I will leap into another issue. Thank you, commissioner, for your letter regarding the coverage of judicial officers under the CCC act. I think finally somebody has been able to give us the answer of what we suspected: the very point that Mr Silverstone just made then - that CEOs of government departments are responsible to report misconduct, except for the Chief Justice. I think, as your information conveys to us, you would really only become involved if a judge had undertaken a misdemeanour so heinous that it would end up in his removal from office.

Mr Hammond: That is what the legislation says.

The CHAIRMAN: The legislation says that and, of course, I understand that no judge has ever been removed from office in Western Australia because it needs both house of Parliament to determine that.

Mr Hammond: I am sure that is right.

The CHAIRMAN: Certainly I was of view, and I think the committee was in our review, that if we were not to convince the Chief Justice to create a judicial commission, then we would certainly be pushing that the judiciary be treated like every member of Parliament and every public servant. We note that the new Chief Justice is making noises about a judicial commission being acceptable, which I think is a wonderful step forward. So you outline to me in the letter those two options:

either a judicial commission or amending the CCC legislation to bring in judges. Would you like to comment on that aspect?

Mr Hammond: No. I think all the comment would be contained in that letter, because it is a difficult area of the act. I think the letter of 12 April has set out what our complete understanding is of it. In the long run, that will be an issue for government, I suppose, as to whether anything in that connection changes; but the recent comments of the Chief Justice have been very interesting.

The CHAIRMAN: It does seem an amazing anomaly to me that - we know judges are different, with respect - whereas every other CEO and public officer in the state does have to tell you everything, the CCC legislation says that you must go and nicely talk to the Chief Justice, even if there is an issue that is so heinous that the Parliament might in a blue moon consider removing a judge. Is that a normal anomaly or an unusual anomaly?

Mr Hammond: I must confess I really have not looked at the other states in that connection, apart from New South Wales, which, as you know, has a completely different structure. But where did I see in the last 24 hours there was talk of the New South Wales government wanting to re-organise even that structure? I will leave this one to Parliament.

The CHAIRMAN: Okay, thank you. I will just keep going on some of my questions, unless other members are ready, in which case please jump in on me. You have given us - and thanks very much - your concise analysis of TIs, telecommunication intercepts, and SDs. That written summary would have to be the best summary and understanding of contemporary action that I have read. I do not know where it has come from or if you have lifted it off the Internet from somebody. I am giving the opportunity to somebody to take credit.

Mr Hammond: I am not the author of that material but I agree entirely. When I read it, it is extremely clear and it makes very clear some very complex legislation.

The CHAIRMAN: Okay. It actually makes it easier for us to ask difficult questions. With TIs there is the requirement at the reporting period for the actual cost involved in that to be reported. That was the earlier issue we were looking at in terms of a police station, an officer and integrity testing. So if intercepts were used on that, then that costing would have to be revealed at that point; is that correct? What I am getting at is that there will be a transparent way for you, us and the public to see whether the cost of the integrity testing is worthwhile.

Mr Silverstone: If I might make a comment?

The CHAIRMAN: Yes.

Mr Silverstone: In terms of the development of our systems and processes, we are now two years into the establishment of the commission. We have been focusing on doing our day job, if you like, in terms of dealing with the thousands of notifications and allegations that come forward to us, developing a corruption prevention capacity and conducting investigations and at the same time putting in place business systems and processes. So our focus to date has been getting the appropriate IT systems in place, writing policies and establishing processes. We have had agreement with the Department of Treasury and Finance just recently in terms of key performance indicators, which will certainly come forward in the next round of the budget papers against which we will be reporting. At the same time there have been previous questions about where our case management system is. The case management system is going to be very important to us in terms of managing our resource attribution and cost attribution in terms of specific cases that we conduct. The case management system has been identified. We are in the process of adopting it,

but we expect it to be fully operational about August of this year. So we have seen our key performance indicators, which will go to requiring us to identify costs for major investigative and other activities, and loaded into those costs will be the costs of such things as our telephone intercept capability. So when we look at how much it costs us to do with a particular matter, we will be able to broadly say in terms of matters that lie in the operations area, it will be the cost of the investigators, the complaints managers, the electronic collection unit and their slice of the administrative costs. So it will be a broadband issue. The director of operations will over time, but not immediately, be able to identify the specific costs for a specific matter. We have had a reference in terms of Operation Athens with regards to the allegations round the D'Orazio matter for Operation Athens. We should be able to come to you and say, "It cost us this much" and give you a slice of what that looks like. We are not quite there yet, because of the process we will be going through, but that is our intent so that we can be in a transparent way held account to specific operations costs and more broadly the cost of each matter that comes to us.

The CHAIRMAN: Okay. Dealing with the specifics, you have informed us that in the six months from 1 July last year to 30 December - maybe page 11, if we were looking at something we were allowed to look at - that you had 14 TI warrants and 14 warrants were issued. One of the issues I think it refers to, perhaps at the bottom, is a TI product lawfully disseminated to South Australian police. Is this one of the ongoing cooperation issues and whether it is accurate that it is something lawful, or are we talking about somebody who may have unlawfully disseminated TI information.

Mr Anticich: Perhaps, commissioner, I could explain. That is terminology lifted directly from the telephone interception act. A telephone intercept has a whole bunch of law around it that protects the privacy and the sanctity of it as an intrusive tool. Lawful dissemination means that it is done pursuant to the provisions of the act. To do it, there are certain requirements. A telephone intercept can only be given to certain agencies that are qualified to receive it under the act, so it can only relate to certain types of offences that are quite serious and significant. So when we talk about lawfully disseminated, that is terminology lifted from the act. It is an offence under the act to unlawfully deal with telephone intercept material, I suppose, and makes it an offence prescribed under that act, but it is terminology around the product being done pursuant or given to that agency pursuant to the act.

Mr Hammond: Does the commonwealth *Gazette* not approve agencies for the purpose of receipt, and is it not correct that some agencies are entitled to receive but are not entitled to collect?

Mr Anticich: Correct, and Queensland is a point in question where they can deal with it but it has no state agency that can actually intercept.

Mr Silverstone: And a reading of that line should not be taken to imply that we unlawfully disseminate or would unlawfully disseminate.

Mr Anticich: No.

Mr Silverstone: It is just lifting it out of the act to indicate we are performing the processes of the act by lawfully disseminating in accordance with the telephone interception act.

The CHAIRMAN: Seeing as you have raised the issue of the D'Orazio allegation case and you have indicated that you expect next Thursday to be able to hand down to Parliament and us your more fulsome report, your interim report did refer to two lawful intercepts regarding that, and one intercept, I think, undertaken perhaps in the office of *The West Australian* where you did not qualify that by the word "lawful". I am wondering whether in that very concise, excellent interim report that was a deliberate omission or whether that was just a terminology issue.

Mr Silverstone: I think one refers to matters collected by the former Anti-Corruption Commission using lawful telephone intercept warrants for the purpose of doing that. The other refers to my understanding of an interview that Mr Taylor from *The West Australian* conducted with Mr Spagnolo and recorded. That was conducted by him and provided by him, and we accepted that that was part of his records and I understood to have occurred when they were face to face and perhaps Mr Spagnolo was conscious of that.

[11.15 am]

The CHAIRMAN: Obviously, the second last paragraph has no reference to that, but it may refer to other issues on page 12 regarding integrity tests that have been conducted in relation to IT product that is disseminated to WA Police for further action in relation to non-public officers. I assume from that that if in your investigations into public officers, and maybe the TAFE officers, you come across illegal activity not involving public officers, you are able to pass that information on to the police?

Mr Anticich: Yes. Again, coming back to the provisions of the act, we can only disseminate pursuant to the act - I think it is under section 68 - to an agency that is authorised to receive it. However, we are most fortunate under the Corruption and Crime Commission Act in that it contains a provision that relates to the examinations that the commissioner presides over. I think the term that is used is "exempt proceedings". Effectively, it is a mechanism by which lawfully intercepted telephone conversations that do not fulfil some of the other requirements under the act can be put into that actual forum. Therefore, the commission has the ability, in hearings, to actually produce and play lawfully intercepted telephone intercept material. There is a provision that is specially made for us.

The CHAIRMAN: Under the TI act, if you can justify that you are, let us say, intercepting a zookeeper because you suspect he is undertaking an activity that may incur a seven-year sentence for embezzlement of elephant manure or whatever - of course, you will stop me if I have accidentally said something I should not have - and in the course of those TIs you become aware that some drug running was involved with private people, you are able to lawfully hand over to the police all that information and all that intelligence on the non-public servants, even though it is not the subject of your original warrant?

Mr Anticich: That is correct. If the warrant is lawful and lawfully issued, and the material is captured pursuant to the warrant, there is really an obligation for us to disseminate the material if it is evidence of crimes that fulfil the provisions of the act.

The CHAIRMAN: So there is no shadow of a doubt that any warrant you have obtained regarding any illegal activity, be it to a public officer or a private officer, would be dealt with or handed on?

Mr Anticich: That is correct. I would have to qualify that. In some instances there may be some exceptions in terms of when that is done. When a matter is ongoing and we come across or capture information, there may be operational reasons why we may not deal with that until a later point in time.

The CHAIRMAN: Of course, it could be that the zookeeper has totally fabricated that his neighbour's wife, whom he was having an affair with but which had ended, was drug running with the lion tamer.

Hon MARGARET ROWE: You have a wicked imagination!

The CHAIRMAN: I am just trying to use examples that I hope have nothing to do with reality or ongoing cases.

Mr Anticich: Again, to put that into context, it is common practice for us and other law enforcement agencies that come across information which relates to other jurisdictions and which fulfils the requirements of the act to pass that on to the relevant agencies.

Hon RAY HALLIGAN: You have indicated that you do not meet formally with the parliamentary inspector on a regular basis. Has the parliamentary inspector recently raised with you the need to formalise that arrangement?

Mr Hammond: Not so far; not recently. In relation to our contact with the parliamentary inspector, he is only down the road. He can be phoned at any time; he can phone me at any time, and that really has been the basis of our relationship since inception. Of course, he is welcome at any time, and particularly to the directors' meetings that are held at regular times. It is clear that in the past 12 months the commission has become very busy, both with the number and the complexity of the issues that we are dealing with. The transition in the past two years has really been quite remarkable. I would anticipate that there will be more contact with the parliamentary inspector over these complex issues. It is, of course, basically a matter for the parliamentary inspector to initiate rather than ourselves. Our reaction on all matters that must go to the parliamentary inspector is that they go to him instantly. They hit my desk and they are on the way down St Georges Terrace immediately.

Mrs J. HUGHES: On the same subject, we now have acting parliamentary inspectors as well. Is there any liaison between the commission and the acting parliamentary inspectors, or is it only ever through the actual parliamentary inspector?

Mr Hammond: There is an acting inspector at the moment, and his appointment was called for because the inspector felt himself disqualified from one particular matter. This is the first time that we have had an acting inspector, and it has only been in the matter of Minister D'Orazio and the review of our activities there. It has been a fairly ad hoc arrangement. He cannot operate through the real parliamentary inspector, because the real parliamentary inspector - when I say "real", I mean "the" parliamentary inspector - is disqualified. Therefore, he must operate independently. Mr Scott does not in fact have an office because he is retired and he lives in the suburbs. I think that points to the fact that there really ought to be a dedicated parliamentary inspector's or inspectors' facility that stands alone and is not in our office. We have no problem with as much supervision as the parliamentary inspectors wish to impose; the more, the merrier. We have nothing to hide, and the oversight is most important, both for ourselves and for public confidence. As I said, ideally, I think the parliamentary inspector and his offsider or surrogate should have their own premises.

The CHAIRMAN: Thank you for those comments. We have actually been pursuing that. As we have stated before, one of the strengths of the relationship is that the commission, the committee and the inspector do not collude. However, it also means that whereas we are aware that there is a huge budget for the inspectorate, nobody perhaps informed the inspectors how to go about it if they need a typist or an office or things like that. We are undertaking - hopefully, we will consult with you and the inspectors on this - an MOU, so that the parliamentary inspector is able to access resources away from Parliament and away from the commission, as deemed fit.

Mr Hammond: Yes. He can be at arms length as much as he wishes; the further, the better.

The CHAIRMAN: We also note that you suggested - I think the Attorney General acted toute suite - the appointment of a further acting commissioner to be available in the pool.

Mr Hammond: Yes. I have oft times before spoken about the number 72 bus and if I fall under it. Can I say this: having turned 70 the other day, my impression is that I am getting slower and the buses are getting faster. Therefore, an additional acting commissioner is definitely required, and I hope that there is expedition in the appointment.

The CHAIRMAN: Yes. I understand the appointment period has closed, and the committee will be expecting and demanding that its full role under the legislation in the appointment of that acting commissioner is adhered to by the government of the day.

Mr Hammond: That, sir, is your argument, not ours.

Hon RAY HALLIGAN: A budget was mentioned. I believe that at our last quarterly hearing it was mentioned that there was a budget surplus. Can you bring us up-to-date on your current financing arrangements and whether they are meeting your expectations?

Mr Silverstone: Certainly. At our last meeting we indicated that we had conducted a major review of our capital program and reduced it by some \$10.3 million - moneys that we returned to Treasury. Similarly, as a result of the amalgamation of this commission with the various resources of the Anti-Corruption Commission and the Kennedy royal commission, we found ourselves with \$8.9 million cash at bank. As a result of discussions with the Department of Treasury and Finance, we undertook to not only reduce our capital program, but also to self-fund our capital program over the next four years out of our cash at bank by running down our cash at bank appropriately. That has occurred. We indicated at the last meeting that while, broadly speaking, we would fit within our current expenses cap, there was inadequate funding for salaries, but we would be able to pick that up within savings from within our budget. For this year, we have been able to remain within our expenses limit, as required by Treasury. As we go forward to the end of this financial year, we anticipate that we will have savings in our expenses of the order of about \$1.5 million. That is just a rough estimate at this stage as we go forward.

However, an issue before us, as the committee would be aware, is that we have the matter of Andrew Mallard, which will be subject to an inquiry by this commission. We have signalled to the Attorney, and we will be signalling to Treasury, that we feel the need to engage counsel from interstate in order to deal with some of the more sensitive issues at play there, and that will attract a considerable cost. Therefore, in due course we will be seeking with Treasury to carry forward some of that \$1.5 million surplus as we go. Of course, we are adequately resourced, and we are committed to sitting within our expenses requirement. We have, I think, a good understanding with Treasury that, because we are still a new agency, the cost of conducting some elements of our business is uncertain. For example, there were some very broad and gross guesses as to how much it would cost to run our telephone intercept facility. We are now starting to refine those costs. Similarly, we are now approaching the end of 12 months' occupation of our premises at 186 St Georges Terrace, and we are now getting a handle on just how much it is going to cost us to run that facility. We talk regularly with Treasury about managing the various elements within our budget to fit within the expenses limit and at the same time make sure that we are properly and truly attributing costs where costs should be.

The CHAIRMAN: You have raised the issue of the Mallard case. Something with such a high profile might have the potential to engulf enormous resources, particularly within the commission. Do you have any expectation of the time that will be involved with that?

Mr Hammond: A lot of work is being done at the moment in scoping the manner in which we will proceed. I think it is a little early to make any positive assessment there. I do not know whether Mr Anticich would like to add to that.

Mr Anticich: Certainly. I would perhaps describe it as our assessment phase. At this point in time, the matter is within the investigations review complaints assessment area. It is composing the totality of matters that we would say comprise the Mallard matter. They will go before the commissioner. An assessment will be made of which of those fulfil the requirements of our act; that is, those that relate to serious misconduct, misconduct, reviewable police action and so forth as applied against the tests within the act. The commission and commissioner will then make a judgment as to those matters that will fall within the purview of the investigation. That will then form the basis of the investigation plan around which we will then have a better sense of what is required and how long it will take.

[11.30 am]

The CHAIRMAN: The television documentary on Thursday night will create a degree of public interest in the Mallard issue. Have you an idea of when perhaps you might be able to make a statement about where the commission will be going and whether it will be months or weeks?

Mr Hammond: We have already indicated that we would expect public hearings in July. Between now and July I think we will be in a position to make clearer exactly where we are going, but we have set July as the date.

Mrs J. HUGHES: In respect of the budget, in the report you talked about amendments to the act due to the review process and that there could be the possibility of the need for additional resources. Could you give me some examples of the budgetary implications if some amendments are made?

Mr Hammond: Say, for example, that this issue of public officer was redefined so that a public officer included foster carers, prison warders and contractors with the government. It would affect our whole canvass. We are only guessing, but if in fact Parliament saw fit to enlarge the area of our activities, naturally we would require more resources, but certainly we are not saying at this time that we are looking for more resources. We are operating within budget, and very strictly so.

Mr Silverstone: There are two choices, of course. If you enlarge the number of tasks available to us and do not increase, or even reduce, the resources available to the commission, that will affect the amount of work we do. We have a prioritisation process. We would deal with the high priority issues and not with the lesser priority issues. An example, which is not on the table now, is that we have an investigative process for an organised crime function. If that were to occur, once again it would depend on the degree to which the Parliament viewed the commission as necessarily participating in those investigations. On the one hand, a view could be formed that we should have that function but the resources available would not be increased. We would then have to shift resources off other tasks and focus them on the investigative area. Alternatively, we could say to government that we would need an additional 10 full-time equivalent positions to provide supplementary investigators, intelligence staff and perhaps IT staff, to enable us to meet the requirement. That would have to be the subject of a cabinet submission and agreement. If we could get the resources, we could do more things, but if we could not get the resources, we would have to prioritise.

Mrs J. HUGHES: On the question of the organised crime issue, additional resources and your taking over some investigative powers there rather than working with the police, and the

separation of those two roles, do you believe that the CCC actually needs to take on that role? Does it hamper your investigations to a large extent at this stage? Does the duality of the investigation make it unworkable at the moment?

Mr Anticich: If I can go back to the two functions within the act: we are currently resourced to deal with misconduct in the public sector, and we do that. Our role in relation to organised crime is more simply that of a gatekeeper, in that we have access to the exceptional powers, which are these coercive powers that add to what is normally available to a royal commission for law enforcement in this state. Our experience to date has been somewhat awkward in that role, if I can best describe it in that way. Also in relation to misconduct, it is quite often the case that where you have organised crime, a relationship exists with members of the public sector. There is quite often this interrelationship. Serious organised crime relies on corruption within bodies, agencies and private enterprise to operate. We had experience of significant cases that we have investigated that have had their genesis in an organised crime investigation. We started out, I suppose, separating the two in the act and quite distinctly saying that we cannot investigate organised crime as a limiting factor in relation to what we can do in some instances in relation to misconduct.

Hon MARGARET ROWE: Your interim report includes some statistics in relation to the source and type of allegation. How do you account for the sharp increase in the number of various categories of allegations referred to on page 15?

Mr Hammond: Without being too specific, I think we also make the point elsewhere that as we progress, the availability of the commission and the duty of people to report matters to the commission are increasing within the public sector community. I think that is reflected in the number of matters coming forward and the number of significant matters coming forward. That is just off the cuff. I do not know whether any of the other directors would wish to comment.

Mr Anticich: I think we need to be cautious in relation to our statistics. While we are able to comment on what we are currently seeing, the realities are that as we get older as an organisation and as we build up a much larger database, we will be able to be a little more scientific about our comparative comments in this regard. It is one thing to notice or supposedly see a trend; it is another to try to explain it. Sometimes it is quite complex. I would suggest that perhaps at this point in time we can see these things but our full understanding of why and how they are occurring is perhaps beyond us.

Dr Froyland: This is certainly something that engages the people in my team. If we do the job well, we will be reminding people that they have to notify us of misconduct, increasing the number of notifications, or we will be reminding them that they have to prevent misconduct, so decreasing the numbers. We are not quite sure how the measure of our success will be, but I agree with Nick that it is very early days to get too excited about trends. I am hoping that in my next three years the number of notifications goes sharply up then down, so there will be no need for me to worry about retiring. There would be no need for me. I do not know if that is likely to happen.

Hon RAY HALLIGAN: May I refer you to the act and to the functions of the parliamentary inspector? As you are on the receiving end of this, or part thereof, I am just wondering how you feel about the situation. Section 195 talks about the parliamentary inspector having the following functions. I will be selective because I am alluding to one word and one word alone, and that is “audit”. The section reads -

(a) to audit the operations of the Commission . . .

. . .

(cc) to audit any operation carried out . . .

I have not been able to find a definition of “audit”.

Mr Hammond: It is not in the act.

Hon RAY HALLIGAN: That is right. I am just wondering, because of that, whether that causes you some concern?

Mr Hammond: No, it does not cause the commission any concern. I repeat that whatever functions the parliamentary inspector chooses to exercise, he is more than welcome to do so. I have looked at “audit” before. I do not know that “audit” means actually getting into the accounts section and checking the vouchers, but if he wanted to do that, that is fine. I do not know what is meant by “audit” there. I have just assumed that it means to generally oversee, to check or to investigate the operation.

Hon RAY HALLIGAN: I accept your explanation. I had some concern with it as well, purely because of its ambiguity, as far as I am concerned, not knowing what the parameters are likely to be. That was the reason for my question of concern, not so much that you are worried that it might pick up on something that you have not thought of. It is handy to know what the parameters are likely to be.

Mr Hammond: I would have thought that the only bar to him is the section that says that he cannot -

Mr Cashman: Interfere with the operation of the commission. I am trying to put my hand on the section. Under section 198 the parliamentary sector is not to interfere with, obstruct, hinder or delay any lawful operation of the commission.

Hon RAY HALLIGAN: That is understood.

Mr Hammond: It is open.

The CHAIRMAN: One of the issues we have discussed with the inspectors, and I think we have undertaken to look at, is a conflict of interests register for the inspectors. Your responsibility is that when there may be an allegation or if you think there is some issue that must go to the inspectors, you would send it by carrier pigeon, or whatever, up the Terrace. What we were coming to from an uninformed position is that we should be identifying the office of the public inspector. Even if you, or more importantly a crook you are dealing with, say that the parliamentary inspector has a conflict of interest and he cannot deal with an issue, any of those sorts of issues should go to the office, and it would then be up to the parliamentary inspector to deem whether he has a conflict, not for something to be directly going to one of the 13 acting inspectors or whoever. As a mode of operation, would that be your understanding of where we should be going?

Mr Hammond: Looking at the question of conflict in the broad sense, if someone says to a judicial officer or a person in authority, “I think you have a conflict,” in the first instance it is merely for that officer to make a conclusion on it. If he makes the wrong conclusion, he can be called to account.

The CHAIRMAN: Correct.

Mr Hammond: I think that is the general proposition in respect of conflict of interest. Section 195(3) puts the onus on the parliamentary inspector who may declare himself or herself unable to

act in relation to a particular matter by reason of an actual or potential conflict of interest. The onus is on the inspector.

The CHAIRMAN: We are getting a number of letter writers and others - I am sure they are people known to you - who are becoming bolshy and taking it upon themselves to declare that the inspector or the commissioner has a conflict and, therefore, they want the Premier or the committee to come in and do it.

Mr Hammond: I have had some correspondence like that.

The CHAIRMAN: I think we probably do need to articulate in writing that issue of conflicts of interest with the inspectors. Maybe we will liaise with you on that issue.

Mr Hammond: It is the practice within the commission that when I declare a conflict of interest, or a potential one, I sign a certificate to that effect, which is then filed, and I no longer have anything to do with it.

Mrs J. HUGHES: On the role of the parliamentary inspector and how we promote him and his role to the public, and not being able to be a secondary source of a new investigation as such, are you looking at promoting his role so that we do not have these people wanting the parliamentary inspector to redo an investigation that has been done by the CCC?

Mr Hammond: In all our publications we make it quite clear that if you have a complaint against the CCC, this is where you go to the parliamentary inspector. That is made clear in all presentations. We really cannot control what happens thereafter.

Mrs J. HUGHES: The parliamentary inspector's role is not to reinvestigate. How do you promote to the public that he is a port of call but not necessarily a port of call to reinvestigate?

Mr Hammond: He has looked at investigations very closely. Whether it is to redo the investigation or not, he has reviewed investigations very closely.

The CHAIRMAN: The process, not the investigation.

Mr Hammond: The files are sent to him.

Mrs J. HUGHES: Exactly, but how do we promote to the public that his role is purely at that review level? Are you looking at ways to make that clearer?

Mr Hammond: I wonder whether it would send the correct message to the public by way of trying to give an impression that his role was limited.

Mrs J. HUGHES: In my view the commission's role is to do the investigation. The parliamentary inspector is not an investigator as such.

The CHAIRMAN: The issue that we are pushing is that you have dealt with an issue. If people are happy or unhappy with the outcome, that is fine. The inspector has cause to act only if your processes in coming to that outcome are incorrect. What we need to be articulating to the public is that the inspector is not another CCC but has oversight.

Mr Hammond: That is really a matter for the inspector.

Hon RAY HALLIGAN: I agree; I do not think it would be appropriate for the commission to try to communicate anything of that nature, because if you should miss something, it would appear that you are trying to protect yourselves.

Mr Hammond: Yes, I would be loathe in any way to give the impression that we are limiting, or wish to limit, or seek to limit, the powers of the inspector. That lies with him. He has the powers

to reinvestigate if he wants. He certainly has looked very closely at some matters for particular people.

Mrs J. HUGHES: It is a question for the parliamentary inspector then.

Hon RAY HALLIGAN: And this committee.

Mr Hammond: Yes.

The CHAIRMAN: We would like to thank you very much again for being transparent, open and available. Obviously because of the forthcoming estimates hearings, we will not be holding our next quarterly meeting with you in June, July or whenever. Obviously the estimates committee would be performing that role on the financial side of it in the Assembly, and I understand the Council has a role there. Do you have any closing comment?

Mr Hammond: I will just file with Miss McCallum a graph showing the incoming misconduct notifications over the past several months. Over the past year or so it shows a very steady input.

The CHAIRMAN: Thank you very much for attending today, commissioner and commission officers. I declare the meeting closed.

Hearing concluded at 11.47 am