



**Joint Standing Committee on the
Anti-Corruption Commission**

**REPORT ON COMPLAINTS MADE BY
DETECTIVE SERGEANT PETER COOMBS
AGAINST THE ANTI-CORRUPTION
COMMISSION, SPECIAL INVESTIGATOR
GEOFFREY MILLER QC AND OTHERS**

Third Report

JUNE 1998

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Third Report
In the Thirty-Fifth Parliament

Presented by
Hon. Derrick Tomlinson, MLC
and Mr Bill Thomas, MLA

Laid on the Table of the Legislative Council and the Legislative Assembly on
18 June 1998

ORDERED TO BE PRINTED

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*Joint Standing Committee on the Anti-Corruption Commission***TERMS OF REFERENCE**

On Wednesday 18 June 1997 the Legislative Assembly and the Legislative Council agreed to establish the Joint Standing Committee on the Anti-Corruption Commission with the following Terms of Reference –

- (1) That a Joint Standing Committee of the Legislative Assembly and the Legislative Council be appointed —
 - (a) to monitor and review the performance of the functions of the Anti-Corruption Commission established under the Anti-Corruption Commission Act 1988;
 - (b) to consider and report to Parliament on issues affecting the prevention and detection of “corrupt conduct”, “criminal conduct”, “criminal involvement” and “serious improper conduct” as defined in section 3 of the Anti-Corruption Commission Act 1988. Conduct of any of these kinds is referred to in this resolution as “official corruption”;
 - (c) to monitor the effectiveness or otherwise of official corruption prevention programs;
 - (d) to examine such annual and other reports as the Joint Standing Committee thinks fit of the Anti-Corruption Commission and all public sector offices, agencies and authorities for any matter which appears in, or arises out of, any such report and is relevant to the terms of reference of the Joint Standing Committee;
 - (e) in connection with the activities of the Anti-Corruption Commission and the official corruption prevention programs of all public sector offices, agencies and authorities, to consider and report to Parliament on means by which duplication of effort may be avoided and mutually beneficial co-operation between the Anti-Corruption Commission and those agencies and authorities may be encouraged;
 - (f) to assess the framework for public sector accountability from time to time in order to make recommendations to Parliament for the improvement of that framework for the purpose of reducing the likelihood of official corruption; and
 - (g) to report to Parliament as to whether any changes should be made to relevant legislation.

-
- (2) The Joint Standing Committee shall not -
 - (a) investigate a matter relating to particular information received by the Anti-Corruption Commission or particular conduct or involvement considered by the Anti-Corruption Commission;
 - (b) reconsider a decision made or action taken by the Anti-Corruption Commission in the performance of its functions in relation to particular information received or particular conduct or involvement considered by the Anti-Corruption Commission; or
 - (c) have access to detailed operational information or become involved in operational matters.
 - (3) The Joint Standing Committee consist of 8 members, of whom -
 - (a) 4 shall be members of the Legislative Assembly; and
 - (b) 4 shall be members of the Legislative Council.
 - (4) No Minister of the Crown or Parliamentary Secretary to a Minister of the Crown be eligible to be a member of the Joint Standing Committee.
 - (5) A quorum for a meeting of the Joint Standing Committee be 5 members, each House of Parliament being represented by at least one member.
 - (6) The Joint Standing Committee have power to send for persons, papers and records, to adjourn from time to time and from place to place, and, except as hereinafter provided, to sit on any day and at any time and to report from time to time.
 - (7) The Joint Standing Committee not sit while either House of Parliament is actually sitting unless leave is granted by that House.
 - (8) A report of the Joint Standing Committee be presented to each House of Parliament by a member of the Joint Standing Committee nominated by it for that purpose.
 - (9) In respect of matters not provided for in this resolution, the Standing Orders of the Legislative Assembly relating to select committees be followed as far as they can be applied.

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CHAIRMAN'S FOREWORD

When preparing this report, the Committee was mindful that some of the matters it had to take account of were the subject of an earlier Supreme Court action. An injunction still applies to the Report of the Anti-Corruption Commission Special Investigation conducted by Mr Geoffrey Miller QC. Hence, highly confidential evidence which would inform this report cannot be presented or discussed.

Other matters arising from the Miller Investigation and pertinent to the allegations made by Detective Sergeant Coombs, are of a different level of sensitivity. For that reason, individuals identified in evidence remain anonymous. Only witnesses to this inquiry are named in this report. The Committee is not being coy, it is protecting the welfare of others.

There also is an unresolved civil action brought by Mr Miller and Mr George Tannin against Mr Howard Sattler and Radio 6PR. That action arose from the same allegations which Det. Sgt. Peter Coombs presented to the Committee. Det. Sgt. Coombs subsequently elaborated upon them to include allegations that resources of the Anti-Corruption Commission were used to assist Mr Miller and Mr Tannin in their defamation suit. Those allegations had to be responded to. In doing so, the Committee has had to take care not to present prejudicial information. Even so, there are matters which had to be aired here that some might see as disadvantaging one or other of the parties.

Finally, a second Special Investigation is being conducted by Mr George Tannin. To the best of the Committee's knowledge, the matters before Mr Tannin are not related to the subjects of the Miller Investigation. The Committee had to be confident, however, that nothing it reported here could jeopardise the Tannin Investigation.

These sensitivities have caused the Committee to be cautious about what it might say. Some matters brought to our attention give cause for concern. This is not the place to discuss them. Rather, this report attempts to answer the allegations brought by Det. Sgt. Coombs. Det. Sgt. Coombs raised grave complaints and we responded to them accordingly.

Our experience in this inquiry has reaffirmed our belief that there is need for an independent arbiter to respond to complaints against the conduct of the ACC or its officers. Some complaints can be dealt with by the Commissioners. Others can be referred to the Police Service for further action. When complaints are made of the kind raised by Det. Sgt. Coombs, however, there is need for high-level and independent action. Similar agencies in Queensland and New South Wales provide for a Parliamentary Commissioner or Inspector General to ensure that civil rights are not denied. These agencies are considered briefly, along with other options, in this report. They also are discussed in detail in the Discussion Paper tabled recently in the Legislative Assembly and the Legislative Council. The Committee intends to present recommendations for an arbiter when it has evaluated public responses to that Discussion Paper.

HON. DERRICK TOMLINSON, MLC
CHAIRMAN

1. Executive Summary

Background

Since early April 1998 Detective Sergeant Coombs of the Western Australian Police Service has made a series of complaints to this Committee against the Anti-Corruption Commission (the ACC), Special Investigator Geoffrey Miller QC and others. Det. Sgt. Coombs' complaints were made and enumerated in –

- a letter from Det. Sgt. Coombs to the Committee dated 9 April 1998;
- a Statutory Declaration by Det. Sgt. Coombs dated 19 March 1998 and attached to Det. Sgt. Coombs' letter of 9 April 1998 to the Committee;
- a letter from Det. Sgt. Coombs to the Committee dated 24 April 1998;
- evidence given to the Committee by Det. Sgt. Coombs at three Committee hearings held on 29 April 1998, 20 May 1998 and 27 May 1998.

Det. Sgt. Coombs' complaints arise from events which occurred on the morning of 3 October 1997 at a hearing being conducted by ACC Special Investigator Geoffrey Miller QC into allegations of drug related corruption in the Western Australian Police Service. Det. Sgt. Coombs and five other officers were suspended by the Commissioner of Police following the completion of the Miller Inquiry in December 1997. Det. Sgt. Coombs' allegations concern evidence given to the Special Investigator by him that the Special Investigator had been observed in the company of certain allegedly known criminals and an instruction issued by the Special Investigator that this evidence not be included in the transcript of the hearing.

Conduct of the Inquiry

The Committee investigated Det. Sgt. Coombs' complaints. It took evidence from Det. Sgt. Coombs over three hearings, during which time he progressively elaborated upon his complaints. In addition, the Committee heard evidence from every person present in the Special Investigation hearing room on 3 October 1997. Evidence also was given by the supervisor of the court reporters who had custody of the hearing tapes and transcripts on that day. The Committee met with the Chairman and members of the Anti-Corruption Commission three times in the course of its investigation.

Before the hearings commenced, the Committee had been given a copy of the transcript of that part of the day's hearing which involved the proceedings about which Det. Sgt. Coombs complained. The three ACC Commissioners, Mr Terence O'Connor QC, Mr Don Doig and Commodore David Orr, RAN Retd, provided a statutory declaration that the copy given was a true and accurate transcript of the master tape of the recorded proceedings. Finally, the Committee attended the offices of the ACC to listen to the master tape and verified that the transcript was accurate. The Committee heard nothing which indicated that the tape had been erased or tampered with.

In addition to that transcript of evidence, the Committee was given transcripts of other parts of the Special Investigator's hearings which were relevant to other claims made by Det. Sgt. Coombs at successive stages in his evidence.

All of the evidence accumulated by the Committee refuted Det. Sgt. Coombs' complaints. Each of the witnesses gave a consistent account of the day's proceedings and the progress of the Special Investigation which denied Det. Sgt. Coombs' allegations. He produced no substantial evidence to support his claims, but relied solely on supposition and inference to elaborate and defend his story. The Committee found him to be a manipulative and unreliable witness.

Detective Sergeant Coombs' Complaints and the Committee's Findings

Letter of 9 April 1998 and Statutory Declaration dated 19 March 1998

Complaint 1

That there is a close personal association between Mr Miller and certain known criminals.

Finding 1

The Committee finds that the allegation is without foundation.

Complaint 2

That Mr Miller used his position as a Special Investigator, and the coercive powers associated with that position, to gain highly restricted police information about these individuals for personal benefit.

Finding 2

The Committee finds that Mr Miller did not improperly use the powers of an ACC Special Investigator to obtain highly restricted police information for personal benefit.

Complaint 3

That a conflict of interest existed between Mr Miller's role as a Special Investigator and his connection with certain criminal identities which undermined his role as a Special Investigator of the ACC.

Finding 3

The Committee finds there was no such conflict of interest.

Complaint 4

That Mr Miller and Mr Tannin agreed to erase the portion of the tape dealing with the matters raised by Det. Sgt. Coombs and that Mr Miller issued an instruction to that end.

Finding 4

The Committee finds that no instruction to erase any part of the hearing tape was issued by Mr Miller and there was no erasure.

Letter of 24 April 1998

Complaint 5

That the ACC conspired to prevent Det. Sgt. Coombs from appearing before the Joint Standing Committee to give evidence about matters raised in his letter of 9 April 1998.

Finding 5

The Committee finds that the allegation is without foundation.

Hearing of 20 May 1998

Complaint 6

That, even if the instruction to erase the tape was not carried out, there was a criminal conspiracy between Mr Tannin and Mr Miller and an attempt to falsify by omission the record of the hearing.

Finding 6

The Committee finds that the allegation is without foundation.

Complaint 7

That, as a Special Investigator, Mr Miller breached s. 50 of the ACC Act by failing to disclose his material personal interests in persons who were subjects of the Special Investigation.

Finding 7

The Committee finds that the allegation is without foundation.

Complaint 8

That the Chairman of the ACC, Mr Terence O'Connor, must have known of Mr Miller's own personal interests in associating with "high level crooks".

Finding 8

The Committee finds that the allegation is without foundation.

Complaint 9

That the powers of the ACC were being utilised to support Mr Miller and Mr Tannin's private personal action against Mr Sattler and 6PR and this represented a conflict of interest and an abuse of power of that office.

Finding 9

The Committee finds that the allegation is without foundation.

Complaint 10

That the Chief Executive of the ACC, Mr Wayne Mann, had no authority to state on 16 April 1998 that no charges would be laid against Det. Sgt. Coombs for any action arising out of the publication of Det. Sgt. Coombs' Statutory Declaration.

Finding 10

The Committee finds that the allegation is without foundation.

Complaint 11

That the Chairman of the ACC, Mr Terence O'Connor QC, conspired with officers of the Commission to prevent Det. Sgt. Coombs from giving evidence to the Joint Standing Committee.

Finding 11

The Committee finds that the allegation is without foundation.

PART I: BACKGROUND

The Miller Report

On 16 June 1997, Mr Geoffrey Miller QC was appointed as an ACC Special Investigator to inquire into allegations of police corruption. Mr Miller presented his report to the ACC on Friday, 5 December 1997. The Commission met to consider its response to the Report on 9 December 1997 and on 12 December 1997 letters from the ACC were delivered to six police officers informing them of findings and recommendations made against them by Mr Miller. In an ACC media statement dated 9 December 1997 it was reported that Mr Miller had recommended that serious disciplinary action be taken against the six officers.

Following the ACC meeting on 9 December, matters arising from the Report were referred to the Director of Public Prosecutions (DPP) and a brief of evidence was presented to the DPP by the ACC on 19 December 1997.¹ The DPP announced on Friday 24 April 1998 that criminal charges would not be laid against the six suspended officers.²

Matters arising from the Report also were referred to the Commissioner of Police. On Friday, 12 December 1997 the six officers subject to adverse findings by the ACC were suspended without pay by the Commissioner of Police. In the first of two press releases that day, five of the suspended officers were named and the Commissioner stated –

As a consequence of the findings of the special investigator, Mr Geoffrey Miller QC, I have lost confidence in the ability of each of the officers to perform the functions of the office.

In the later press release it was announced that the sixth officer, who originally had been directed to take paid leave, also was suspended without pay.

The suspended police officers took the matter to the Supreme Court. Following an application heard before Justice Steytler on Wednesday, 17 December 1997, interlocutory injunctions were granted preventing the Commissioner of Police or the ACC from publishing the findings and recommendations contained in the Miller Report. The matter went before the Full Court of the Western Australian Supreme Court on 22 April 1998.³

The Full Court ruled that the ACC was an investigatory body only and that it had acted beyond its authority in making findings of guilt against the six officers.

The Court reserved its decision on the question of whether the Commissioner of Police had acted beyond his authority in suspending the officers. On Friday, 8 May 1998 the Court handed down its decision. A majority of the Court ruled that the Commissioner of Police had in fact acted

¹ Response by the Hon. P. Foss to question on notice, Wednesday, 18 March 1998, Hansard p. 785.

² Reported in *The West Australian* Saturday, 25 April 1998

³ *Parker and Ors v Miller and Ors*, Western Australian Supreme Court, Lib No: 980249A.

beyond his authority as he had based his decision on the ACC's findings of guilt which the Court had held earlier to be beyond its authority.

Following this decision, the ACC announced on 13 May 1998 that it had provided the Commissioner of Police with reformulated details of the allegations against the six officers.⁴ What further action is taken, if any, is now a matter for the Commissioner of Police.

The ACC has not reported publicly in any detail on the Miller Report. The Committee looks forward to its public release.

Circumstances of Receipt of Letter Dated 8 April 1998 Sent by the Chairman of the ACC, Mr Terence O'Connor, QC

On the morning of Wednesday, 8 April 1998 the Chairman of the ACC was interviewed by Mr Howard Sattler on Radio 6PR. Towards the end of that interview Mr Sattler asked some questions concerning an allegation that, following evidence from Det. Sgt. Coombs that the Special Investigator, Mr Miller, had been in the company of a suspected criminal, Mr Miller had ordered that the tape of this part of the hearing be rewound and wiped. Mr Sattler asked that Mr O'Connor investigate this matter. Mr O'Connor indicated that the matter would be investigated.

We are informed that upon return to the ACC offices after the interview Mr O'Connor checked the record of the hearing Mr Sattler had referred to and concluded that no alteration of either the tape or the transcript had occurred. He wrote to Mr Sattler informing him of the outcome of this inquiry.

By letter dated 8 April 1998, Mr O'Connor informed the Committee of the allegation made on Mr Sattler's programme and the action taken with respect to it. With the letter the following documents were enclosed –

1. A copy of the transcript of the interview between Mr Sattler and Mr O'Connor.
2. A copy of a statutory declaration dated 19 March 1998 which deals with the events leading up to the alleged erasure of part of the hearing tape, but with the signatory obliterated.
3. A copy of part of the transcript of the hearing before Special Investigator Mr Geoffrey Miller QC dealing with that part of the hearing referred to in the statutory declaration.
4. A copy of a letter to Mr Sattler from Mr O'Connor dated 8 April 1998 in which Mr O'Connor informs Mr Sattler that his allegation has been investigated and that the allegation is baseless.

Mr O'Connor offered to meet with the Committee.

⁴ ACC Media Statement, 13 May 1998.

Receipt of Letter Dated 9 April 1998 Sent by Det. Sgt. Coombs

The allegation aired by Mr Sattler, along with a number of other complaints, were raised with the Committee by Det. Sgt. Coombs in a letter dated 9 April 1998 to which was attached a Statutory Declaration signed by him dated 19 March 1998.

Det. Sgt. Coombs' complaints arise from events which occurred on the morning of 3 October 1997 at a hearing being conducted by ACC Special Investigator Geoffrey Miller QC into allegations of drug related corruption in the Western Australian Police Service. Det. Sgt. Coombs and five other officers were suspended by the Commissioner of Police following the completion of the Miller Inquiry in December 1997. Det. Sgt. Coombs' allegations concern evidence given to the Special Investigator by him that the Special Investigator had been observed in the company of certain allegedly known criminals and an instruction issued by the Special Investigator that this evidence not be included in the transcript of the hearing.

In addition to Det. Sgt. Coombs' complaint regarding the possible erasure of the hearing tape, he complained that the Special Investigator had a "close personal association" with "higher echelon organised crime figures", that the Special Investigator used the ACC's coercive powers to obtain "highly restricted police information" regarding these figures which was "unrelated to the issues at hand and only served as a personal benefit to Mr Miller QC", and that Mr Miller's alleged association with those crime figures compromised his role as an ACC Special Investigator as it revealed a conflict of interest.⁵

Det. Sgt Coombs concluded his letter with a request that the Committee investigate these matters.

The Committee's Decision to Investigate

The Committee is a Joint Standing Committee of the Legislative Assembly and the Legislative Council. Under the Committee's Terms of Reference it has been appointed, among other things, –

- (1) (a) to monitor and review the performance of the functions of the Anti-Corruption Commission established under the Anti-Corruption Commission Act 1988.

The Committee concluded that the complaints made by Det. Sgt Coombs, and the circumstances in which they arose, constituted important matters of public interest concerning the operation of the ACC. The complaints raised by Det. Sgt. Coombs were of themselves serious, but, in addition, the integrity of an ACC Special Investigator had been raised in public.

The Committee determined that an inquiry into these matters would come within its function of monitoring and reviewing the performance of the functions of the Anti-Corruption Commission. It resolved to undertake such an inquiry.

⁵

Letter from Det. Sgt. Coombs to the Hon. Derrick Tomlinson, MLC dated 9 April 1998.

In performing its functions the Committee's Terms of Reference provide that the Committee has the power –

- (6) ... to send for persons, papers and records, to adjourn from time to time and from place to place, and, except as hereinafter provided, to sit on any day and at any time and to report from time to time.

The Committee's Terms of Reference further provide, however, that the Committee shall not -

- (2) (a) investigate a matter relating to particular information received by the Anti-Corruption Commission or particular conduct or involvement considered by the Anti-Corruption Commission;
- (b) reconsider a decision made or action taken by the Anti-Corruption Commission in the performance of its functions in relation to particular information received or particular conduct or involvement considered by the Anti-Corruption Commission; or
- (c) have access to detailed operational information or become involved in operational matters.

The limitations on the Committee's powers are consistent with the scheme of the *Anti-Corruption Commission Act 1988* (the ACC Act). As the Committee has discussed in its recent Discussion Paper *Secrecy under the ACC Act*, the Commission is not required to provide detailed operational information to the Committee.

This does not prevent the ACC from releasing information to the Committee, though, where it does so, the Commission may supply that information on a confidential basis, in which case the confidentiality provisions under the Act apply to those to whom such information is provided.⁶ There is a question as to whether these provisions are consistent with parliamentary privilege.

The restrictions imposed upon the Committee by its Terms of Reference and the ACC Act in performing its monitor and review function constrain the ability of the Committee to investigate matters such as those encompassed by Det. Sgt. Coombs' complaints. However, the Committee is satisfied it was able to fully investigate Det. Sgt. Coombs' complaints, but in doing so it relied on the co-operation of the ACC to supply certain highly confidential information. Moreover, the Committee was established to perform a general oversight role with respect to the ACC. This role does not extend as a matter of course to investigating and pronouncing upon complaints. Rather it should evaluate and report to Parliament upon independent investigations. For these reasons, the further and more general question of how complaints against the ACC can be appropriately investigated was immediately raised for the Committee.

The Committee has been concerned for some time how complaints against the ACC or its officers involving ongoing operational matters may be properly investigated. This is an issue which comes within the ambit of the Committee's ongoing inquiry into secrecy under the ACC Act. The

⁶ Sections 52(7) and 52(8) of the ACC Act.

Committee will bring down a recommendation for an appropriate complaints mechanism at the conclusion of that inquiry. However, as this inquiry into Det. Sgt. Coombs' complaints has raised the complaints question, this report concludes with a general discussion of this question. Four models through which such complaints may be dealt with are included for consideration.

The Events Which Gave Rise to Det. Sgt. Coombs' Complaints

The events which gave rise to Det. Sgt. Coombs' initial complaints concerned an ACC Special Investigation hearing at which he was giving evidence. The hearing was held at the National Crime Authority headquarters located at 2 Howard Street, Perth. Just before a morning adjournment of the hearing at approximately 11.30 am Special Investigator Geoffrey Miller QC asked Det. Sgt. Coombs questions regarding whether he, that is Mr Miller, should 'stay away' from certain people. After an exchange with Counsel Assisting the Investigation, Mr George Tannin, Mr Miller issued an instruction that this part of the hearing should not be transcribed.

Det. Sgt. Coombs' interpreted Mr Miller's instruction as being to erase the tape. However, the evidence shows that the instruction was not to erase the tape but rather that part of the tape should not be transcribed.

During the adjournment Mr Miller decided that the instruction should be rescinded. He spoke to Mr Cyril White of Verbatim Reporters (1980), who was responsible for overseeing the taping and transcription process, informing him of this decision. As his earlier instruction had not been acted on, no further action was taken.

It should be noted that all hearings are recorded and transcribed by Verbatim Reporters (1980), a private court recording company contracted to undertake this task by the ACC.

Following the resumption of the hearing at approximately 11.55 am, but before Det. Sgt. Coombs was called back into the hearing room, Mr Miller formally rescinded his instruction.

As Det. Sgt. Coombs did not re-enter the hearing room until after Mr Miller had rescinded his instruction he was not aware that this decision had been made.

The people present in the hearing room at the times these events took place were as follows –

Before the adjournment

Mr Geoffrey Miller QC, the ACC Special Investigator
Mr George Tannin, Counsel Assisting the Special Investigator
Mr Calogero Pruiti, Junior Counsel Assisting the Special Investigator
Ms Rosie D'Uva, Recording Monitor, Verbatim Reporters (1980)
Mr David Warren, ACC Senior Investigator
Det. Sgt. Coombs, Officer-in-Charge, Organised Crime Squad, Western Australian Police Service

Upon resumption

Mr Geoffrey Miller QC, the ACC Special Investigator
Mr George Tannin, Counsel Assisting the Special Investigator
Mr Calogero Pruiti, Junior Counsel Assisting the Special Investigator
Ms Rosie D'Uva, Recording Monitor, Verbatim Reporters (1980)
Mr David Warren, ACC Senior Investigator

PART 2: CONDUCT OF THE INQUIRY

Introduction

The Committee investigated Det. Sgt. Coombs' complaints. It took evidence from Mr Coombs over three hearings, during which time he progressively elaborated upon his complaints. In addition, the Committee heard evidence from every person present in the Special Investigation hearing room on 3 October 1997. Evidence also was given by the supervisor of the court reporters who had custody of the hearing tapes and transcripts on that day. The Committee met with the Anti-Corruption Commission three times in the course of its investigation.

Before the hearings commenced, the Committee had been given a copy of the transcript of that part of the day's hearing which involved the proceedings about which Det Sgt Coombs complained.⁷ The three ACC Commissioners, Mr Terence O'Connor QC, Mr Don Doig and Commodore David Orr, RAN Retd, provided a statutory declaration that the copy given was a true and accurate transcript of the master tape of the recorded proceedings. Finally, the Committee attended the offices of the ACC to listen to the master tape and verified that the transcript was accurate. The Committee heard nothing which indicted that the tape had been tampered with or erased.

In addition to that transcript of evidence, the Committee was given transcripts of other parts of the Special Investigator's hearing which were relevant to further claims made by Det. Sgt. Coombs at successive stages in his evidence.

The Committee identified eleven complaints made by Det. Sgt. Coombs. It deals with each separately in the body of the Report.

The Inquiry Process

The Committee took evidence and/or sought documentation from the ACC and each person involved in the hearing of 3 October 1997 at which Det. Sgt. Coombs was giving evidence.

The Committee held hearings over a number of days during the course of the inquiry.⁸ The first hearing took place on 15 April 1998 and subsequent hearings were held on 29 April 1998, 8 May 1998, 14 May 1998, 20 May 1998, 27 May 1998 and 11 June 1998.

Given that some of the evidence taken by the Committee concerned highly confidential police and ACC operations some of the hearings were held *in camera*. Where *in camera* evidence is taken it cannot be quoted or reported on. In other words, where evidence is taken *in camera*, it is taken in secret. The Committee did not make the decision to take evidence *in camera* lightly. It is preferable where possible the process be open. However, the nature of the matters which the

⁷ A copy of that part of the transcript of the Special Investigation hearing of 3 October 1998 containing Mr Miller's instruction and his subsequent recision is contained in Schedule 2 of this report.

⁸ A table of evidence is contained in Schedule 1 of this report.

Committee had to look into in the course of this inquiry meant that no other responsible decision could be taken.

Evidence was also taken by the Committee in open and closed session. The distinction between the two is that a closed hearing is where members of the public or the media may be excluded. In either case, evidence cannot be reported or disclosed until it has been reported to Parliament, unless the House or the Committee otherwise orders.⁹ The Committee has had to carefully consider what material to include in this report because, even where evidence was not taken *in camera*, evidence was taken which could have serious repercussions for ongoing investigations and the individuals involved if publicly disclosed.

Apart from taking evidence, the Committee met on 6 May 1998 and discussed, among other matters, the progress of its inquiry into Det. Sgt. Coombs' complaints. It also met on 10 June 1998 and 17 June 1998 to deliberate on the content of the Report. The Report was approved at a Committee meeting on 18 June 1998.

Meetings With the ACC

The Committee met with the ACC three times during the course of the Inquiry.

The first meeting took place on 15 April 1998 at the Legislative Assembly Annexe, 34 Parliament Place, West Perth. Evidence was taken from Mr O'Connor, the Chairman of the ACC, and Mr Wayne Mann, Chief Executive Officer of the ACC, regarding the matters raised by Mr Sattler and the complaints contained in Det. Sgt. Coombs letter of 9 April 1998. The evidence was taken *in camera*.

During the hearing the Committee requested that arrangements be made for it to listen to the master tape of the relevant part of the hearing of 3 October 1997. By letter dated 20 April 1998, Mr O'Connor dealt with some outstanding matters from the hearing of 15 April and advised the Committee that the Commission did not believe it was appropriate that the Committee listen to the tape.

The second meeting took place on 14 May 1998 at the Legislative Assembly Annexe. The Committee met with the Chairman of the ACC and members of the Commission. The meeting was one of the regular quarterly meetings held by the Committee with the ACC. The Committee took evidence on matters relevant to the Coombs' inquiry. Confidential evidence was taken *in camera*.

The third meeting took place on 11 June 1998 at the offices of the ACC, 66 St George's Terrace, Perth. The Committee met with the Chairman and members of the Commission.

Evidence was taken to verify the accuracy of the transcript of that part of the hearing tape of 3 October 1997 which was the subject of Det. Sgt. Coombs' complaints. The hearing was held *in camera*.

⁹ Legislative Assembly Standing Order 375.

The Committee resolved that the transcript was a true and accurate record of the relevant part of the hearing tape.

In addition, on 4 June 1998, The Hon Derrick Tomlinson, MLC, the Chairman of the Committee, and Mr Bill Thomas, MLA, the Deputy Chairman, met with the ACC at its offices to discuss various matters arising out of the Coombs' inquiry, including how to deal appropriately with evidence of a confidential nature gathered by the Committee.

Documentary Evidence Sought From the ACC

The Committee sought verification of the transcript record from the ACC by requesting that the Commission itself certify the transcript.

In a letter dated 5 May 1998, Mr O'Connor enclosed a statutory declaration signed by each of the ACC Commissioners certifying that the transcript excerpt of the hearing supplied to the Committee was a correct transcription of the original tape.

The Committee further sought parts of the transcript of the hearing to determine when and how the name which prompted Mr Miller's questions on 3 October 1997 arose during the hearing.

This material was supplied to the Committee on 19 May 1998. The transcript record presented to the Committee covered evidence given by Det. Sgt. Coombs on 2 October and 3 October 1997.

Witnesses Examined

- **Det. Sgt. Coombs**

The Committee took evidence in closed hearings from Det. Sgt Coombs at the Legislative Assembly Annexe on 29 April 1998, 20 May 1998 and 27 May 1998. At each hearing Mr Leo Tsaknis of Francis Burt Chambers accompanied Det. Sgt. Coombs as Counsel.

- **Other Witnesses**

On 8 May 1998 the Committee took evidence from each person who was present in the hearing room for that part of the hearing on 3 October 1997 relevant to Det. Sgt. Coombs' complaints.

Evidence was taken from the following witnesses –

- Mr Geoffrey Miller QC, the ACC Special Investigator
- Mr George Tannin, Counsel Assisting the Special Investigator
- Mr David Warren, ACC Senior Investigator¹⁰
- Mr Calogero Pruiti, Junior Counsel Assisting the Special Investigator

¹⁰

Mr Warren tabled a statement in his evidence dealing with the Special Investigation hearing of 3 October 1998 at which Det. Sgt. Coombs gave evidence. This statement, excluding confidential material, is contained in Schedule 3 of this report.

- Ms Rosie D’Uva, Recording Monitor, Verbatim Reporters (1980)

The Committee also took evidence from Mr Cyril White, Manager of Verbatim Reporters (1980), who was responsible for overseeing taping and transcription of the hearing.¹¹

Where confidential matters were discussed evidence was taken *in camera*.

¹¹ Mr White’s evidence is contained in Schedule 4 of this report.

PART 3: COOMBS' COMPLAINTS – CONCLUSIONS AND FINDINGS

Since early April 1998 Detective Sergeant Coombs of the Western Australian Police Service has made a series of complaints to the Committee against the ACC, Special Investigator Geoffrey Miller QC and others. Det. Sgt. Coombs' complaints were made and enumerated in –

- a letter from Det. Sgt. Coombs to the Committee dated 9 April 1998;
- a Statutory Declaration by Det. Sgt. Coombs dated 19 March 1998 and attached to Det. Sgt. Coombs' letter of 9 April to the Committee;
- a letter from Det. Sgt. Coombs to the Committee dated 24 April 1998;
- evidence given to the Committee by Det. Sgt. Coombs at Committee hearings held on 29 April, 1998, 20 May 1998 and 27 May 1998.

Complaint 1

That there is a close personal association between Mr Miller and certain known criminals.

Det. Sgt. Coombs' complaints begin with, and to an extent follow on from, a close personal association he alleges exists between the Special Investigator and what he describes as an "organised crime syndicate". The basis for the allegation is information Det. Sgt. Coombs claimed he had available to him as a result of having been Officer-in-Charge of the Organised Crime Squad.¹²

The Committee gave Det. Sgt. Coombs the opportunity to explain in detail the nature of the Special Investigator's allegedly close personal association with these individuals. Evidence was taken in regard to this complaint from Det. Sgt. Coombs on 29 April 1998 and 27 May 1998.

Det. Sgt. Coombs was specifically asked about whether the alleged relationship between the Special Investigator and these figures could be characterised as one of acquaintance. Det. Sgt. Coombs discounted this possibility, saying –

... [it was] definitely a close personal relationship.¹³

¹² Letter from Det. Sgt. Coombs to the Hon. Derrick Tomlinson, MLC dated 9 April 1998.

¹³ Evidence, 27 May 1998.

And again later he said, in response to the suggestion that it might be a rather limited association, –

Absolutely not, no.¹⁴

Det. Sgt. Coombs' evidence was to the effect that an association had existed between the Special Investigator and these individuals over some time, but that it was limited to a shared recreational interest. Det. Sgt. Coombs did not present any evidence that the associations with any of these individuals extended beyond this recreational interest or that Mr Miller met with any of these individuals outside of the recreational interest.

Det. Sgt. Coombs' contention about these associations was that they were not professional but represented close personal associations and that information which Mr Miller might have access to as result of his position as a Special Investigator might be, albeit inadvertently, passed on to these individuals.

In saying this, Det. Sgt. Coombs was less ambiguous in his evidence to the Committee on 27 May 1998 than in earlier hearings. He stressed that he had no evidence that Mr Miller's association with these individuals was in any way a criminal association. Nor did Det. Sgt. Coombs present any evidence that Mr Miller had provided, inadvertently or otherwise, any confidential information arising out of the Special Investigation to these people.

At the hearing of 8 May 1998, in which Mr Miller gave evidence to the Committee, the Committee questioned Mr Miller about his association with the individuals referred to by Det. Sgt. Coombs as higher echelon organised crime figures, among other things.

Mr Miller gave the Committee a full and frank account of his association with each of the individuals.

He accepted that he had known these individuals over some time, but in all cases except one, it was limited to a shared recreational interest and did not go beyond that of mere acquaintance. With respect to this one person, however, Mr Miller acknowledged a friendship and also a professional relationship in that he had acted for him.¹⁵

Det. Sgt. Coombs asserted in his evidence to the Committee that a close personal relationship existed between Mr Miller and these individuals, but his evidence did not go beyond his observations, or knowledge of observations, of Mr Miller with them while engaged in the shared recreational activity.¹⁶ Det. Sgt. Coombs presented no evidence to the Committee to displace the evidence given by Mr Miller.

As to the criminality or otherwise of the individuals Mr Miller asked about, the Committee makes no findings. However, the Committee has received information regarding their criminal records.

¹⁴ Evidence, 27 May 1998.

¹⁵ Evidence, 8 May 1998.

¹⁶ Letter from Det. Sgt. Coombs to the Hon. Derrick Tomlinson, MLC dated 9 April 1998; Evidence, 27 May 1998.

These do not reveal any convictions for crimes which would obviously identify these persons as members of an organised crime syndicate. Nor is there any record of these individuals having spent any time in prison.

Det. Sgt. Coombs presented no evidence that Mr Miller knew of any criminal records these individuals may have. However, he made the observation that Mr Miller must have known of the alleged criminality of these individuals. He based this claim on his belief that Mr Miller would have known because it was common knowledge among those who worked in the criminal justice area and Mr Miller, as a defence barrister, did so.¹⁷ Mr Miller denied any knowledge of criminality on the part of the persons about whom he questioned Det. Sgt. Coombs.¹⁸

Conclusion

The Committee concludes that Mr Miller's acquaintance with all but one of the individuals named was incidental to a shared recreational interest.

The Committee found nothing in Mr Miller's association with any of these individuals that was improper or inappropriate. Any contrary implication is not supported by the evidence.

The suggestion by Det. Sgt. Coombs that Mr Miller must have known about the alleged criminal activities of the individuals Mr Miller asked about is not substantiated by Det. Sgt. Coombs' evidence.

FINDING 1

The Committee finds that the allegation is without foundation.

Complaint 2

That Mr Miller used his position as a Special Investigator, and the coercive powers associated with that position, to gain highly restricted police information about these individuals for personal benefit.

Det. Sgt. Coombs' allegation is that, while he was under oath at the hearing on 3 October 1997, and just before a morning adjournment of the hearing, Mr Miller asked questions about certain individuals known to Mr Miller which Det. Sgt. Coombs was required to answer, but which were

¹⁷ Evidence, 29 April 1998.

¹⁸ Evidence, 8 May 1998.

not related to the Investigation, which served only to benefit Mr Miller personally, and which required Det. Sgt. Coombs to reveal highly restricted police information.

The questions Mr Miller asked of Det. Sgt. Coombs related to whether certain individuals with whom Mr Miller was acquainted through being involved in a shared recreational interest were people he should stay away from. In the first instance, Mr Miller asked about a person whose name had come up during the course of that morning's questioning of Det. Sgt. Coombs. He then asked whether he should stay away from a number of other individuals involved in the recreational interest. In both instances Det. Sgt. Coombs said he should.

At both the beginning and end of the questions Mr Miller noted that the questions were of a personal nature. He further accepted in evidence to the Committee that Det. Sgt. Coombs was under oath and was required to answer the questions put to him. This view was also accepted by others present in the hearing room at the time.¹⁹

Det. Sgt. Coombs characterised the information sought by Mr Miller as "highly restricted police information". That information was highly restricted in Det. Sgt. Coombs' view because, in answering the questions put to him by Mr Miller, he necessarily implied that the people Mr Miller asked about were of concern to the Police Force and, in particular, the Organised Crime Squad. In addition, from the information supplied it might be inferred what criminal activity these people were allegedly engaged in.²⁰ Det. Sgt. Coombs expressed concern that the release of this information could have serious repercussions.

In his evidence to the Committee, Mr Miller characterised the information Det. Sgt. Coombs' supplied as advice that he should not associate with these people. Mr Miller noted that this was all he was after and he was not seeking to gain access to any restricted police information.

Mr Miller explained that during the course of the morning's evidence a name had come up of a person with whom he was acquainted which raised concerns for Mr Miller about whether he should, as a Special Investigator, associate at all with that person. It was this which Mr Miller says prompted him to ask Det. Sgt. Coombs about this individual and his associates.

Mr Miller denied that he used the coercive powers of the ACC to elicit police intelligence about his association with certain individuals for personal benefit and in a way unconnected with the investigation he had been appointed to undertake. Mr Miller, in explaining the purpose for which he asked the questions, said –

Any judge or investigator who is conducting a hearing has a general power to ask such questions as he thinks are appropriate to the proceedings at hand. In this instance, I asked questions which I thought were appropriate, because I was a special investigator, and I knew somebody whose name had come up. It was not using coercive powers to obtain restricted police information. He [Coombs] did not give me any restricted police information. He simply said "Keep away from them".²¹

¹⁹ Evidence, 8 May 1998: Mr Miller QC; Mr Tannin; and Mr Warren.

²⁰ Letter from Det. Sgt. Coombs to the Hon. Derrick Tomlinson, MLC dated 9 April 1998; Evidence, 29 April 1998.

²¹ Evidence, 8 May 1998.

Mr Miller said to the Committee that he believed it was “in the best interests of the investigation” for him to openly disclose his acquaintance with the person named by Det. Sgt. Coombs during the course of the morning’s evidence on 3 October 1997 and that this led to the naming of the other persons.²²

On Mr Miller’s explanation, the questions were not personal in the sense that they were asked for his personal or private benefit, but personal in the sense that they related to his private life. Mr Miller felt obliged to ask the questions because he was concerned not to see his investigation compromised by his acquaintance with the person named by Det. Sgt. Coombs and others associated with this person.

When the proposition was put to Det. Sgt. Coombs that Mr Miller’s motive in asking the questions was because he did not wish to see the inquiry compromised by being associated with these people, Det. Sgt. Coombs refused to countenance the suggestion. His response was –

No. It certainly does not. Personal gain was for his own personal knowledge; it had nothing to do with compromising anything.²³

Det. Sgt. Coombs, however, when pressed on exactly what tangible personal benefit accrued to Mr Miller, did not go beyond what is asserted in the allegation.

The question of the purported use of coercive powers to gain highly restricted police information is brought into question by Det. Sgt. Coombs statements that the identity and associations of the individuals named were either common knowledge²⁴ or already well known to the Special Investigator.²⁵

²² Evidence, 8 May 1998.

²³ Evidence, 27 May 1998.

²⁴ Evidence, 29 April 1998.

²⁵ Mr Coombs claimed in evidence that the Special Investigator had full access to far more confidential documentary information than the information gained at the hearing. Evidence, 29 April 1998.

Conclusion

The Committee concludes that the information Det. Sgt. Coombs supplied in answer to Mr Miller's questions may by inference amount to sensitive and confidential information. However, it is in the nature of a Special Investigation that Special Investigators and others involved in such investigations will become familiar with highly sensitive and confidential information. Det. Sgt. Coombs provided no evidence to the Committee that Mr Miller improperly released confidential information acquired during the course of conducting the Special Investigation.

While the Committee has some reservations about the wisdom of Mr Miller asking the questions of Det. Sgt. Coombs that he did, the Committee finds no basis for the sinister slant put on that by Det. Sgt. Coombs.

FINDING 2

The Committee finds that Mr Miller did not improperly use the powers of an ACC Special Investigator to obtain highly restricted police information for personal benefit.

Complaint 3

That a conflict of interest existed between Mr Miller's role as a Special Investigator and his connection with certain criminal identities which undermined his role as a Special Investigator of the ACC.

Det. Sgt. Coombs argued Mr Miller's association with the individuals he asked about constituted a conflict of interest as he believed those individuals were subjects of the Special Investigation Mr Miller was undertaking.

In giving evidence on this matter to the Committee, Det. Sgt. Coombs emphasised the point he was making by saying –

... one cannot socialise with them [criminals] at night and target them during the day.²⁶

Mr Miller and Mr Tannin addressed this matter in evidence they gave to the Committee on 8 May 1998. Both stated that the individuals named were not being investigated by Mr Miller. None were called as witnesses. No findings were made against them. This was confirmed by Mr

Warren in his evidence on the same day. Under these circumstances, Mr Miller and Mr Tannin expressed the belief that no conflict of interest could arise.

The evidence taken from those involved in the hearing, and, in particular, Mr Tannin and Mr Warren, confirmed that only the first person named by Mr Miller was relevant to the inquiry.²⁷ That person was not him or herself under investigation. The name was volunteered by Det. Sgt. Coombs in the course of the inquiry. The other people named by Mr Miller were not the subject of evidence other than that resulting from Mr Miller's questions immediately before the morning adjournment on 3 October 1997.²⁸

It should be noted that a number of times in evidence before the Committee and in his correspondence to the Committee, Det. Sgt. Coombs said that the questions Mr Miller asked about certain individuals had nothing whatsoever to do with the investigation Mr Miller was undertaking. They were not relevant to other matters raised with Det. Sgt. Coombs, and it was contention that Mr Miller asked those persons only to gain information for his private benefit.

Conclusion

The Committee concludes that the evidence did not substantiate the allegation that a conflict of interest arose for Mr Miller as a Special Investigator.

FINDING 3

The Committee finds there was not such conflict of interest.

Complaint 4

That Mr Miller and Mr Tannin agreed to erase the portion of the hearing tape dealing with the matters raised by Det. Sgt. Coombs and that Mr Miller issued an instruction to that end.

It is Det. Sgt. Coombs' belief that Mr Miller issued an instruction to the person recording the hearing to erase that part of the hearing tape relevant to his complaints and that this was in fact done.

The part of the hearing to which this alleged instruction related was that immediately preceding the adjournment during which Mr Miller asked the series of questions about whether he should stay away from certain individuals to known to him through a shared recreational interest.

²⁷ Evidence, 8 May 1998.

²⁸ Evidence, 8 May 1998, Mr Warren.

In Det. Sgt. Coombs' Statutory Declaration of 19 March 1998, Det. Sgt. Coombs states in clauses 12 and 13 –

At this point [just prior to a morning adjournment of the hearing] Mr Tannin stated to Mr Miller QC that he thought that the conversation that we had just had should be rewound and wiped from the recording tape. No explanation was offered in my presence.

Mr Miller agreed to this and asked the female telepathist [the recording monitor] to rewind the tape and delete the conversation that had been had. This was done in my presence. The Court then adjourned.

Det. Sgt. Coombs' statement that the erasure "was done in [his] presence" suggests that in fact he had seen the erasure take place. When pressed on this by the Committee Det. Sgt. Coombs reaffirmed his belief that the erasure was done in his presence.²⁹

In his evidence to the Committee on 20 May 1998, Det. Sgt. Coombs stated –

... I could see her [the recording monitor] looking down and obviously working on the machine and hear the noise of the tape recorder being manipulated. Then came the adjournment so I believed she had, or was going to, or was in the process of doing exactly what was asked of her. I cannot say she did it, but it would be like turning on the light. I do not know who turned the light on but someone turned the light on because it is on.

The Committee took evidence from everyone in the hearing room at the time the alleged erasure took place. Every person except for Det. Sgt. Coombs gave evidence that the tape had not been altered or tampered in anyway and no erasure took place.

In addition, Mr Cyril White, the Manager from Verbatim Reporters, the company contracted to undertake the recording of ACC hearings, confirmed that no instruction was issued to his staff to erase the hearing tape or part of the tape.³⁰

Mr White explained in detail how the recording equipment worked. He noted that two tapes were being made at all times: one the master tape and the other the transcription tape. The transcription tapes were constantly being transferred at six minute intervals to Verbatim Reporting staff for transcription. While it was certainly possible to rewind the tapes, and, in particular, the master tape and record over it, Mr White gave evidence that the process would take several minutes. He described the possibility of the master tape being erased before it was presented to the ACC as nil.³¹

Central to Det. Sgt. Coombs' contention that the tape had been erased is his belief that Mr Miller issued an instruction to that end. However, every person in the hearing room at the time, except Det. Sgt. Coombs, including the person responsible for making the recording, gave evidence that the instruction was not that the tape be erased, but rather that the questions Mr Miller asked of Det. Sgt. Coombs just before the adjournment not be included in the transcript.

²⁹ Evidence, 29 April 1998.

³⁰ Evidence, 8 May 1998.

³¹ Evidence, 8 May 1998.

The ACC supplied the Committee with a copy of the transcript of the part of the hearing of 3 October 1997 upon which Det. Sgt. Coombs bases his complaints and the period immediately following the morning adjournment of the hearing.

It was put to Det. Sgt Coombs at the hearing of 20 May 1998 that the transcript recorded the exchange which, in his terms, implied a compromise of Mr Miller. He replied by suggesting that the tape had been partially wiped saying that in his recollection there were parts missing. He did not present evidence of any material information that was missing from the transcript.

The Committee took evidence regarding the transcript from every person who was present in the hearing room before the morning adjournment and the period immediately following the adjournment. Every person in the hearing room at the time, except Det. Sgt. Coombs, accepted that the transcript was an accurate record of the relevant part of the hearing. No witness except Det. Sgt. Coombs suggested that it was in any way a partial or incomplete record. The Committee also received on 5 May 1998 a statutory declaration signed by each of the Anti-Corruption Commissioners, Mr Terence O'Connor QC, Mr Don Doig and Commodore David Orr, RAN Retd, attesting that, having listened to the master tape and compared it to the transcript, the transcript was an accurate record of the relevant part of the hearing.

To verify the evidence given by witnesses, the Committee itself took evidence at the offices of the ACC on 11 June 1998. The purpose of the hearing was to listen to the master tape of the relevant part of the Special Investigation hearing of 3 October 1997 and compare it to transcript the Committee had been given. The Committee verified that the pages of the hearing transcript supplied to it by the ACC were a true and accurate transcription of the original tape. The Committee heard no indication that the taped record of evidence had erased or tampered with.

However, the transcript does contain the instruction by Mr Miller that part of the tape not be transcribed. Following the adjournment the transcript records this instruction being rescinded by Mr Miller.

The Committee took evidence from Mr White of Verbatim Reporters (1980) that shortly after the commencement of the adjournment Mr Miller approached him and informed him of his instruction that part of the tape not be transcribed. Mr White said, however, the instruction had not yet been acted on. Mr Miller then said he that he would rethink the instruction. Mr Miller returned to Mr White during the adjournment and told him to disregard the instruction not to transcribe all the tape.³²

Conclusion

The Committee concludes that there was no instruction made by Mr Miller to erase any part of the proceedings from the hearing tapes. The Committee is satisfied that the master tape of the day's proceedings is intact and that there was no erasure.

The Committee further concludes that an instruction was given not to transcribe part of the hearing immediately preceding the morning adjournment on Friday 3 October 1997, but it was countermanded before it was acted upon.

FINDING 4

The Committee finds that no instruction to erase any part of the hearing tape was issued by Mr Miller and there was no erasure.

Complaint 5

That the ACC conspired to prevent Det. Sgt. Coombs from appearing before the Joint Standing Committee to give evidence about matters raised in his letter of 9 April 1998.

In his letter to the Committee dated 24 April 1998, Det. Sgt. Coombs refers to a verbal request from Mr Mann, the Chief Executive Officer of the ACC, for him to meet with the ACC.

Det. Sgt. Coombs suggested in the letter that the purpose of the meeting was to initiate an inquiry by the ACC into Det. Sgt. Coombs' complaints and so preclude Det. Sgt. Coombs from appearing before the Committee. Det. Sgt. Coombs' argument was that, through commencing an inquiry itself, the ACC could then prevent any inquiry by the Committee going ahead, as the Committee's Terms of Reference prevent the Committee from –

- 2 (a) [Investigating] a matter relating to particular information received by the ACC or particular conduct or involvement considered by the ACC.

The Committee sent Det. Sgt. Coombs' letter of 24 April 1998 to the ACC on 29 April 1998 requesting a response. The Chairman of the ACC responded to the matters raised in Det. Sgt. Coombs' letter in a letter to the Chairman of the Committee dated 5 May 1998. With respect to this complaint the Chairman said –

It would seem from the last paragraph on page 2 and the first paragraph on page 3, that Mr Coombs is setting up an argument that we were seeking to interview him before his meeting with the Joint Standing Committee, so that we could then contend that the Committee was precluded by its Terms of Reference from hearing his complaint because it would be "investigat(ing) a matter relating to

particular information received by the ACC or particular conduct or involvement considered by the ACC”.

I must say that Det. Sgt. Coombs attributes to the Commission a strategy which, simply never occurred to us. To the contrary, at all times we have encouraged the Committee to investigate these allegations. In any event, we would not have needed to see Det. Sgt. Coombs to develop such an argument. Under s.13(1)(d) of the ACC Act, the Commission itself can make an allegation that someone has engaged in serious improper conduct. If we were minded to adopt the strategy, suggested by Det. Sgt. Coombs, which I reiterate never occurred to us, we could have created our own allegation that Miller may have done something improper and raised the argument that the Committee was precluded from enquiring into the matter.

I would say in passing that I cannot envisage a situation where the Commission could properly contend that the Committee was precluded from investigating the conduct of an ACC officer because the ACC is investigating that conduct.

Conclusion

The Committee concludes there was no attempt to prevent Det. Sgt. Coombs from presenting his complaints to the ACC.

Finding 5

The Committee finds that the allegation is without foundation.

Complaint 6

That, even if the instruction to erase the tape was not carried out, there was a criminal conspiracy between Mr Tannin and Mr Miller and an attempt to falsify by omission the record of the hearing.

At the hearing of 20 May 1998 at which Det. Sgt. Coombs gave evidence to the Committee, Det. Sgt. Coombs cited section 85 of the Criminal Code.

The relevant subsection of section 85 of the Criminal code is as follows –

Falsification of records by a public officer

85. Any public officer who corruptly –

...

(d) by act or omission falsifies, destroys, alters or damages any record;

...

is guilty of a crime and is liable for imprisonment for three years.

Det. Sgt. Coombs noted that this section needed to be read in conjunction with section 558 of the Code, *Conspiracies to Commit Indictable Offences*, and 552 of the Code, *Attempts to Commit Indictable Offences*.

It is Det. Sgt. Coombs contention that if Mr Miller and Mr Tannin agreed to alter the record of the hearing and an instruction was issued to that end, whether or not the instruction was carried out, this constituted a criminal conspiracy to falsify a public record.

This complaint was made by Det. Sgt. Coombs on the basis that there was an instruction to erase the tape. However, all the evidence, as discussed above under complaint number four, except that of Det. Sgt. Coombs, is to the effect that the instruction made by Mr Miller referred only to the transcript and not to the tape.

Det. Sgt. Coombs, however, submitted in his evidence to the Committee that –

If the tapes and transcript are there it is conspiracy under the Criminal Code to commit an offence between Miller and Tannin. Without going into too much of the law side of it, once an agreement is reached the offence of conspiracy is committed whether the parties go ahead and perform the act.³³

Mr Miller explained to the Committee why he initially issued the instruction not to transcribe part of the hearing –

... I had raised the names of ... innocent people who had nothing to do with the investigation and against whom there were no outstanding charges. They were not convicted of anything. I had raised their names. I thought, "I am not sure that their names should be in the transcript of the proceedings of the special investigation when they were not part of the terms of reference".³⁴

Conclusion

The Committee was presented with no evidence by Det. Sgt. Coombs to substantiate a charge of criminal conspiracy against Mr Tannin and Mr Miller.

The Committee accepts Mr Miller's explanation of why he issued the instruction, but it does not accept that it was an appropriate instruction.

The Committee accepts that Mr Miller acted in good faith in issuing this instruction and neither Mr Miller or Mr Tannin acted with any corrupt motive in mind.

³³ Evidence, 20 May 1998.

³⁴ Evidence, 8 May 1998.

FINDING 6

The Committee finds that the allegation is without foundation.

Complaint 7

That, as a Special Investigator, Mr Miller breached s.50 of the ACC Act by failing to disclose his material personal interests in persons who were subjects of the Special Investigation.

This allegation by Det. Sgt. Coombs is the conflict of interest allegation framed more precisely. Det. Sgt. Coombs repeated this allegation in the hearing of 20 May 1998 to the Committee. He did, however, cite sections 50(1), (2), (3) and (4) of the ACC Act.

Section 50 provides –

Disclosure of interests

50. (1) A member who has a material personal interest in a matter in respect of which the Commission is performing its functions shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of the interest at a meeting of the Commission.

Penalty: \$8 000 or imprisonment for 2 years.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting.

(3) A person who is an officer of the Commission or a seconded officer and who has a material personal interest in a matter in respect of which the Commission is performing its functions shall, as soon as possible after the relevant facts have come to the knowledge of the person, disclose the nature of the interest to the Commission.

Penalty: \$8 000 or imprisonment for 2 years.

(4) The Commission is to ensure that a person who has disclosed an interest in a matter under subsection (1) or (3) is not involved in considering, inquiring into or investigating that matter unless the Commission is satisfied that the involvement of the person would not prejudice the consideration, inquiry or investigation of the matter.

[Section 50 inserted as section 10^{1b} by No. 29 of 1996 s.22.]

Det. Sgt. Coombs alleges that a conflict of interest arose for Mr Miller in his role as Special Investigator because of his association with the individuals Det. Sgt. Coombs alleges are criminal

identities. As such, Det. Sgt. Coombs suggests Mr Miller was in breach of the disclosure of interest provisions set out in section 50 of the ACC Act.³⁵

Det. Sgt. Coombs presented no further evidence to support this allegation that a conflict of interest arose within the terms of section 50 of the ACC Act.

Conclusion

The Committee concludes no such conflict arose.

FINDING 7

The Committee finds that the allegation is without foundation.

Complaint 8

That the Chairman of the ACC, Mr Terence O'Connor, must have known of Mr Miller's own personal interests in associating with "high level crooks".

Det. Sgt. Coombs tabled at the hearing of 20 May 1998 a letter from the Chairman of the ACC dated 30 April 1998 inviting him to meet with the Commission.

Det. Sgt. Coombs suggested that, as the letter from the Chairman indicated the Chairman was able to locate within an hour of his interview with Mr Sattler the relevant transcript of evidence without knowing any details about the particular hearing, that he must have been aware "of Mr Miller's own personal interests in associating with what [Det. Sgt. Coombs termed] high level crooks".³⁶

The Committee took evidence that Mr O'Connor was made aware of the hearing soon after Mr Sattler's interview because Mr Warren, the ACC investigator present at the time of Coombs' hearing on 3 October 1997, heard part of the interview and realised that Mr Sattler was referring to the October hearing. He immediately prepared a memo outlining the events which gave rise to the allegation aired by Mr Sattler which he delivered to the Chairman.³⁷ The Committee has a copy of the memo.

³⁵ Evidence, 20 May 1998.

³⁶ Evidence, 20 May 1998.

³⁷ Evidence, 8 May 1998: Mr Warren.

Conclusion

The Committee concludes that Mr O'Connor had no knowledge of the events of 3 October 1997 before he was questioned about them by Howard Sattler on 6PR on the morning of 8 April 1998.

FINDING 8

The Committee finds that the allegation is without foundation.

Complaint 9

That the powers of the ACC were being utilised to support Mr Miller and Mr Tannin's private personal action against Mr Sattler and 6PR and this represented a conflict of interest and an abuse of power of that office.

Det. Sgt. Coombs also suggested to the Committee that another reason why Mr O'Connor wished to speak to him was related to private civil actions being taken against Mr Sattler and 6PR by Mr Miller and Mr Tannin.

He said, as these were private civil actions, that if the ACC were to support those actions it "would be totally a massive conflict of interest and an abuse of power of that office".³⁸

Mr O'Connor responded to this allegation in a letter to the Committee dated 5 May 1998. In that letter he said –

The ACC is certainly encouraging Messrs Miller QC and Tannin in their action against Sattler and 6PR. The allegations made by Sattler are an attack not only on them directly, but also, indirectly on the integrity of the Commission and its people. A successful defamation action by Messrs Miller and Tannin would go some way to redressing the harm done by Sattler and 6PR to the reputation of the ACC and its people.

A further interest the ACC has in this action is that the sort of attacks that the Commission, and our Special Investigators, have been under, are obviously designed to destabilise the ACC. If they are allowed to pass, without appropriate response, the ACC detractors will be emboldened. The consequences could well be that busy barristers question the desirability of sitting as Special Investigators, if the result is that they have their reputations besmirched by baseless allegations. This may make it difficult for us to find suitable people to perform this important function for the ACC.

The ACC has not used its powers to assist the actions and would not do so.

We have provided copies of some relevant material such as the transcript of the 6PR broadcast and the copy of the Statutory Declaration to the lawyers for Messrs Miller and Tannin (although not the

transcript of the relevant Coombs' evidence) and I have spoken with them on the telephone on two or three occasions. Apart from that no other ACC resources have been provided.

I have indicated to the solicitors that I am prepared to show senior counsel for 6PR and Sattler the relevant transcript if they are minded to settle the action.

Conclusion

The Committee was presented with no evidence that the powers of the ACC were used to support Mr Miller and Mr Tannin's private personal action against Mr Sattler and 6PR.

FINDING 9

The Committee finds that the allegation is without foundation.

Complaint 10

That the Chief Executive of the ACC, Mr Wayne Mann, had no authority to state on 16 April 1998 that no charges would be laid against Det. Sgt. Coombs as a result of the publication of Det. Sgt. Coombs' Statutory Declaration.

In his letter of 24 April 1998 Det. Sgt. Coombs raised a number of issues with the Committee, some of which have already been considered.

The letter expressed concerns about a telephone call he had received from Mr Wayne Mann on 16 April 1998 asking that Det. Sgt. Coombs attend the ACC offices that afternoon for "a little chat". Det. Sgt. Coombs said Mr Mann noted he wished to speak to Det. Sgt. Coombs about his affidavit and Howard Sattler. In a later conversation Det. Sgt. Coombs said Mr Mann stated that "no charges would be laid against me [Det. Sgt. Coombs]" regarding the affidavit.

Det. Sgt. Coombs asked in his letter of 24 April 1998 upon what authority did Mr Mann undertake to say that no charges would be laid and under what authority did Mr Mann request Det. Sgt. Coombs' attendance at the ACC?

In his evidence to the Committee on 20 May 1998 Det. Sgt Coombs raised this matter again. His concern was that Mr Mann had exercised a discretion not to charge Det. Sgt. Coombs which was not within his authority. He said to the Committee –

I find it extraordinary, if not threatening, that Mr Mann who is – no disrespect to his title – the CEO of the ACC has no authority, no position, to even mention charges laid or say they will be laid or not laid or make a decision on charges laid against me.

In the ACC Chairman's letter to the Committee of 5 May 1998 the Chairman responded to this complaint, saying –

Mr Mann telephoned Det. Sgt. Coombs on my authority and at my request and asked him if he would meet with the Commission to discuss the statutory declaration provided to us by Sattler and which declaration we believed had been made by him. In this context I enclose a copy of a letter of 30 April I have written to Det. Sgt. Coombs.

At my request, Mr Mann made it clear to Det. Sgt. Coombs that we are not seeking to take any action against him arising out of the release of the information in the statutory declaration.

Conclusion

The Committee concludes that Mr Mann was acting on the authority of the Chairman of the ACC in making the request to Det. Sgt Coombs to attend the ACC.

The Committee concludes that Mr Mann, in making the statement that Det. Sgt. Coombs would not be charged as a result of the publication of Det. Sgt. Coombs' Statutory Declaration, was acting on the authority of the Chairman of the ACC.

FINDING 10

The Committee finds that the allegation is without foundation.

Complaint 11

That the Chairman of the ACC, Mr Terence O'Connor QC, conspired with officers of the Commission to prevent Det. Sgt. Coombs from giving evidence to the Joint Standing Committee.

Det. Sgt. Coombs repeated his allegation as set out in complaint five while giving evidence to the Committee on 20 May 1998. He suggested that the purpose of preventing him from giving evidence to the Committee was to prevent his complaints from being brought to the attention of others.

Det. Sgt. Coombs submitted that –

I believe from Mr O'Connor's letter of 30 April that he was fully aware of what transpired in October in the hearing room with Mr Miller, Mr Tannin and the tape. I believe he was fully aware of the conflict of interest between Mr Miller and the high level drug dealers of this state. I believe that they

are endeavouring to stop me bringing this matter to anyone's attention by putting an order of secrecy on me.³⁹

Det. Sgt. Coombs did not present any additional evidence which might substantiate this complaint.

CONCLUSION

The Committee concludes that Mr O'Connor and officers of the ACC did not conspire to prevent Det. Sgt. Coombs from giving evidence to the Committee.

Finding 11

The Committee finds that the allegation is without foundation.

PART 4: COMPLAINTS AGAINST THE ANTI-CORRUPTION COMMISSION

The Commission exercises a supervisory role regarding the work of the ACC and its officers. The Commission is constituted by three part-time Commissioners who oversee the operations of the ACC. In performing this role, the Commissioners can have complaints investigated and can take further action if that is required. Consistent with this, the usual practice of the Committee, where it receives complaints against the Commission or its officers, is to refer those complaints to the Commission with a request for it to report back to the Committee on the complaint and any action it may have taken with respect to it.

The Committee may also investigate complaints against the ACC, as it has done in the case of the complaints made by Det. Sgt. Coombs. The Committee explained in Part 1 of this Report its reasons for undertaking the inquiry. It noted, however, that the restrictions on the Committee's access to detailed operational information imposed on the Committee by its Terms of Reference and the ACC Act constrain its ability to investigate such complaints.

The Committee is satisfied that it was able to fully investigate Det. Sgt. Coombs' complaints and that it was essential that it do so, but it is not satisfied that it is the appropriate mechanism through which such complaints as a matter of course should be investigated. The restrictions on its access to information do not constitute the Committee as an ideal mechanism to deal with complaints against the ACC. Nor is this the task for which the Committee was established by Parliament. It performs a broad monitor and review function with respect to the ACC. Detailed investigations into the ACC's operations do not as a rule come within this function and detract from the Committee's ability to perform this function. The Committee's role with respect to complaints against the ACC is more appropriately one of evaluating and reporting to Parliament on independent investigations.

The issue of whether the existing mechanisms for dealing with complaints against the ACC are satisfactory was an important general question raised for the Committee in inquiring into Det. Sgt. Coombs complaints. It is a serious issue which the Committee was already considering as part of its ongoing inquiry into the secrecy provisions in the ACC Act.

The experience of investigating the complaints made by Det. Sgt. Coombs has confirmed the Committee's belief that appropriate mechanisms need to be considered to allow for high-level and independent investigation of serious complaints against the ACC or its officers.

As part of the Committee's inquiry into the secrecy provisions in the ACC Act, it has published a Discussion Paper entitled *Secrecy Under the Anti-Corruption Act*, and has called for written submissions on the issues raised in that paper. Complaints Procedures are discussed by reference to the Queensland Criminal Justice Commission (CJC) and the New South Wales Police Integrity Commission (PIC).

In Queensland a Parliamentary Commissioner has recently been established. The Parliamentary Commissioner is an officer of the Parliament who may exercise extensive powers to review and investigate the operations of the CJC as directed by the Parliamentary Criminal Justice Committee, the Parliamentary Oversight Committee established by the Queensland Parliament to oversee the CJC.

In New South Wales an Inspector-General model was adopted as the mechanism through which the operations of the PIC would be audited. Like the Queensland Parliamentary Commissioner the Inspector may exercise extensive powers to review and investigate the operations of the PIC. Unlike the Parliamentary Commissioner model, however, the PIC Inspector is independent of the Parliamentary Oversight Committee which oversees the PIC.

Both these bodies perform a broad accountability role in ensuring that the agency they oversee is accountable for its operations. Part of that role involves investigating complaints against the agency or its officers.⁴⁰

The Committee is considering whether one of these operational oversight models should be adopted with respect to the ACC. If the Committee concludes that it should, it may recommend that one of its functions be to investigate complaints against the ACC or its officers.

The Committee also offers for consideration two further models through which serious complaints against the ACC or its officers may be investigated. These are –

- Amendment to the *Parliamentary Commissioner Act 1971* to grant powers to the Parliamentary Commissioner (Ombudsman) appropriate to respond to serious complaints against procedures or officers of the ACC.
- Giving to the Minister the power to appoint a person of appropriate standing to enquire into such complaints.

At the conclusion of the Committee's inquiry into secrecy under the ACC Act the Committee will bring down a recommendation for an appropriate complaints mechanism.

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The accountability and complaints mechanisms in place with respect to the PIC, and the CJC, before the recent amendments, are discussed in detail in the Committee's First Report, *Confidentiality and Accountability: Parliamentary Supervision of Anti-Corruption and/or Law Enforcement Agencies in Australia*, 1997. These mechanisms are also addressed in the Committee's Discussion Paper, *Secrecy Under the Anti-Corruption Commission Act*, April 1998. In this Discussion Paper an outline of the Parliamentary Commissioner model is provided.

Schedule 1

TABLE OF EVIDENCE

Table of Evidence

Date	Witness	Position and Organisation
15 April 1998	Mr Terence O'Connor QC Mr Wayne Mann	Chairman, Anti-Corruption Commission Chief Executive Officer Anti-Corruption Commission
29 April 1998	Det. Sgt. Peter Coombs	Officer-in-Charge, Organised Crime Squad Western Australian Police Force
8 May 1998	Mr Geoffrey Miller QC	Special Investigator Anti-Corruption Commission
8 May 1998	Mr George Tannin	Counsel assisting the Special Investigator Anti-Corruption Commission
8 May 1998	Mr David Warren	Senior Investigator Anti-Corruption Commission
8 May 1998	Mr Calogero Pruiti	Junior Counsel assisting the Special Investigator Anti-Corruption Commission
8 May 1998	Ms Rosie D'Uva	Recording Monitor Verbatim Reporters (1980)
8 May 1998	Mr Cyril White	Manager Verbatim Reporters (1980)
14 May 1998	Mr Terence O'Connor QC Commodore David Orr, RAN Retd Mr Donald Doig	Chairman, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Commissioner, Anti-Corruption Commission
20 May 1998	Det. Sgt. Peter Coombs	Officer-in-Charge, Organised Crime Squad Western Australian Police Force
27 May 1998	Det. Sgt. Peter Coombs	Officer-in-Charge, Organised Crime Squad Western Australian Police Force
11 June 1998	Mr Terence O'Connor QC Commodore David Orr, RAN Retd Mr Donald Doig	Chairman, Anti-Corruption Commission Commissioner, Anti-Corruption Commission Commissioner, Anti-Corruption Commission

Schedule 2

**THAT PART OF THE TRANSCRIPT OF THE SPECIAL
INVESTIGATION HEARING OF 3 OCTOBER 1998
CONTAINING MR MILLER'S INSTRUCTION AND HIS
SUBSEQUENT RECISION OF THAT INSTRUCTION**

Schedule 3

**STATEMENT OF DAVID ROBERT WARREN BEFORE THE
JOINT STANDING COMMITTEE ON THE ANTI-CORRUPTION
COMMISSION, 8 MAY 1998**

Schedule 4

**TRANSCRIPT OF EVIDENCE OF
MR CYRIL WHITE,
MANAGER, VERBATIM REPORTERS (1980)**

The CHAIRMAN: Have you read and did you understand the notes at the bottom of the form entitled "Details of Witnesses"?

Mr WHITE: Yes.

The CHAIRMAN: There may be tension between the obligations of confidentiality under the ACC Act and the requirement to answer questions put to you by this committee. Did Mr O'Connor give you any instruction about answering questions?

Mr WHITE: No.

The CHAIRMAN: If you feel at any time that there is a conflict between your confidentiality obligations to the ACC and the questions asked by us, you may ask that the evidence be taken in camera as a protection, but I can tell you that we have the protection of parliamentary privilege.

Mr WHITE: I not feel that it will be in conflict, except that if you did ask me for my recollections of what went onto the transcript at that stage, I might ask for some directions.

The CHAIRMAN: The committee has received a number of complaints from a Detective Sergeant Coombs regarding certain events which occurred during an ACC special investigation hearing last year at which Mr Coombs gave evidence. The events relate in particular to certain questions that Mr Miller asked during the hearings and to an instruction that he gave with regard to those questions. Do you recall the investigation which gave rise to Mr Coombs' complaints?

Mr WHITE: Yes. I recall that day. I do not know about his complaints because I have not heard.

The CHAIRMAN: The committee understands that Mr Geoffrey Miller QC was the special investigator appointed by the ACC to conduct the investigation which was the subject of those hearings. Is that correct?

Mr WHITE: That is correct,

The CHAIRMAN: Was Mr Tannin counsel assisting Mr Miller?

Mr WHITE: Yes.

The CHAIRMAN: The ACC has advised the committee that the events about which Mr Coombs complains took place on the morning of Friday, 3 October 1997. Would you agree with that?

Mr WHITE: I agree with it now. I had it refreshed in my memory. I would not have picked the day at all, other than giving that statement that I mentioned to you earlier to Mr Tannin.

The CHAIRMAN: Having refreshed your memory, you accept that it was Friday, 3 October?

Mr WHITE: Yes.

The CHAIRMAN: The ACC has also advised that the events about which Mr Coombs complains took place during a mid-morning adjournment of the hearing at which Mr Coombs was giving evidence. Is that your understanding?

Mr WHITE: That is right.

The CHAIRMAN: What was your role in that investigation?

Mr WHITE: I was checking the transcript and putting it together - page numbering it and getting it ready for return to the ACC. There was a morning break, and Mr Miller came out and said to me, "Look, I am going to take out of the record part of the last few questions". That is quite common. That is not an unusual thing, whether it is with Mr Miller or judges. It happens all the time in the Family Court in the eastern States, but not so much here. It is reasonably common if something has happened that people may want to be kept private. I said, "Okay". We were then talking a bit about it, and I think I said, "Is it important?" I mean, it is unusual in that sort of hearing. He said, "Well, really, it is not, so we might leave it in." However, he came out to tell me that when the girls had reached this particular point, because the tapes had not been typed then, they were to leave it out. He then went back in, and I think he spoke to George Tannin, and he then came back and said, "Leave it in"; so when we got to the point, I instructed the girl who was typing the tape to put down exactly what had been said and then type in everything that was on the tape.

The CHAIRMAN: We might return to that at a later stage in the hearing. I would like to get some more information about your role. In what capacity do you work for the ACC?

Mr WHITE: We have a contract to produce its transcript.

The CHAIRMAN: Who is "we"?

Mr WHITE: Verbatim Reporters.

The CHAIRMAN: You are employed by Verbatim, and your company had the contract to perform the work of recording and transcribing the ACC hearings?

Mr WHITE: Yes.

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The CHAIRMAN: Who else does the company work for?

Mr WHITE: We do work for the Ministry of Justice, the Magistrate's Court, the Family Court, the Children's Court, the industrial commission courts and other outside agencies that require transcription.

The CHAIRMAN: It is principally court recording.

Mr WHITE: Yes.

Mr TRENORDEN: And very occasionally the Parliament?

Mr WHITE: Very occasionally; not often enough. Neil will like to hear that!

The CHAIRMAN: Unfortunately, this is confidential, so Neil will not get to hear about it! What is your position in the company.

Mr WHITE: I am the manager of the company.

The CHAIRMAN: You have already explained to the committee exactly what your job requires during an investigation. With respect to the transcription of the hearing of Friday, 3 October, at which Mr Coombs gave evidence, where did the hearing take place?

Mr WHITE: It was at what I think is called the National Crime Authority court, at 1 Howard Street. I forget exactly which floor, because we had to go to the second floor to get the key, and then to, perhaps, the fourth floor.

The CHAIRMAN: Where was the transcription of the hearing tapes undertaken?

Mr WHITE: We had set up the transcription typists in the room next to the hearing room.

The CHAIRMAN: It was separate from the hearing room.

Mr WHITE: Yes, but on the same floor in the building.

The CHAIRMAN: Was the morning session of the hearing on 3 October delivered to the transcription room?

Mr WHITE: We have two tapes. There is a backup tape, and a typing tape which has a history sheet with it. That tape is about five or six minutes long, approximately two pages of transcript. That comes out to the typists, but the master tape, the backup tape, stays in the court. At the end day that is brought out to me or whoever is putting the transcript together, and forms the archive of the hearing of the day.

The CHAIRMAN: During the hearing two tapes are recorded?

Mr WHITE: Yes.

The CHAIRMAN: One stays in the room for the whole day.

Mr WHITE: I will explain this again. One tape is recorded as a backup. Then there are alternate six minute tapes being produced with a history sheet. The typists are using these.

The CHAIRMAN: The six minutes tapes are taken from the hearing room to the transcription room.

Mr WHITE: To the typists.

The CHAIRMAN: The other tape stays in the hearing room.

Mr WHITE: Yes.

Mr TRENORDEN: Is there one tape or are two audios being taken?

Mr WHITE: There are three machines, similar to the one that is being used by Hansard at this hearing, which is used as a backup. We use a machine that is a different model, but which works on the same principle. One side of the tape records for 45 minutes, which gives an hour and a half on one full tape. That stays as the court record. Then we produce two six minute tapes alternately for the typists to work on. They are wiped and the history sheets are shredded at the end of the day.

Mr THOMAS: They are taped separately.

Mr WHITE: Two machines are taping at once, and then we start the third -

Mr TRENORDEN: They can be alternated.

Mr WHITE: It may sound a bit confusing.

The CHAIRMAN: Every six minutes a tape is taken to the transcription room with its own history sheet showing who has spoken?

Mr WHITE: Yes.

The CHAIRMAN: Was the tape of proceedings immediately before adjournment delivered to the transcription room during the adjournment?

Mr WHITE: No, it was not long before the adjournment. It might have come out at the adjournment, but it had not been typed.

The CHAIRMAN: Does a typist who -

Mr WHITE: The typists go in to get them.

The CHAIRMAN: How soon after the adjournment did the transcription of the hearing tapes begin?

Mr WHITE: Maybe 15 or 20 minutes.

The CHAIRMAN: Who was transcribing the tape from Friday, 3 October?

Mr WHITE: Three girls were there, one of whom transcribed that tape.

The CHAIRMAN: Do you know which one?

Mr WHITE: Karen Richardson.

The CHAIRMAN: Is she a member of the Verbatim Reporting staff?

Mr WHITE: Yes.

The CHAIRMAN: One of Mr Coombs' allegations is that Mr Miller issued an instruction to erase part of the tape of the hearing of 3 October at which Mr Coombs was giving evidence. Was any such instruction made to you?

Mr WHITE: No.

The CHAIRMAN: You were not instructed to the erase the tape?

Mr WHITE: I never have been, and I have been 25 years at this. It is just something that would be not done. Someone may ask to strike something from the record - the transcript - but not to erase the tape. That is totally different from erasing a tape.

The CHAIRMAN: Was any instruction given relating to the tape of the hearing immediately before the adjournment?

Mr WHITE: To do what?

The CHAIRMAN: Was any instruction given?

Mr WHITE: There was an instruction on the transcript, as I found out when Mr Miller came out. He said on the tape for transcript, "I will have those remarks taken from the record." This is where the confusion has come about.

The CHAIRMAN: There are two very important points: One is the question of erasure; the other is the question of not including certain words in the transcript. It is your quite clear understanding that no instruction was given about erasure of the tape.

Mr WHITE: Definitely not.

The CHAIRMAN: Could the tape be erased?

Mr WHITE: It could be, yes; any tape can be erased.

The CHAIRMAN: But no instruction was given?

Mr WHITE: Definitely not.

The CHAIRMAN: Was an instruction given about the transcript of the hearing of the evidence?

Mr WHITE: It was given during the hearing.

The CHAIRMAN: Then Mr Miller came out and gave the instruction to you.

Mr WHITE: He came out and said, "I have asked for part of the words to be deleted from the transcript".

The CHAIRMAN: Do you know to whom he gave the instruction about this?

Mr WHITE: He gave it to the court. I suppose he gave it to whoever was going to type it. In the court I think he just said, "I'll have those struck out of the transcript".

The CHAIRMAN: Who was in charge of recording the proceedings at that time?

Mr WHITE: Rosy, the previous witness?

The CHAIRMAN: Ms Rosy D'Uva?

Mr WHITE: Yes.

The CHAIRMAN: Was it your understanding any instructions given by Mr Miller would have been given to her?

Mr WHITE: No; they would have been given directly to the transcript typist. She is the girl listening to his instructions. Rosy does not really do that. The monitors do not take a great deal of notice of what is going on during the case.

The CHAIRMAN: The typist is present in the room at the same time?

Mr WHITE: No. She is outside, but when she pick up the next tape, as she types it she will hear the voice saying that.

The CHAIRMAN: It is not an instruction in the sense that I turn to the person who is recording the proceedings and say, "Do not transcribe that." It is an instruction in the sense that it is on the record and the typist responds to the recorded instruction.

Mr WHITE: Yes.

The CHAIRMAN: Was it acted upon?

Mr WHITE: No.

The CHAIRMAN: It may be that an instruction was made, but the instruction may have been that only part of the hearing not to be transcribed. What was your understanding of the instruction?

Mr WHITE: My understanding of it is that which I got, having read the transcript. When Mr Miller came out and said, "I have given an instruction for part of my statement not to be included

in the transcript", I asked when he had said that. I went to find the tape so I would know who would type it. Then I could tell the girl where he wanted to stop and start.

The CHAIRMAN: Was that instruction subsequently rescinded?

Mr WHITE: Yes.

The CHAIRMAN: By whom?

Mr WHITE: Mr Miller.

The CHAIRMAN: To whom?

Mr WHITE: To me.

The CHAIRMAN: Under what circumstances? What happened after that?

Mr WHITE: I said, "We can do that." I think I asked, "Is it that important?" When we are transcribing things, particularly something like the ACC or a lot of the stuff that is fairly confidential, we do not often leave things out. We leave them out of transcript if a magistrate or a judge requests it. For example, yesterday there was a restraint order and the magistrate said that he did not need the lady's address in the transcript. That is the sort of things that happens. When she is sworn, she gives her address; but we put "(Address deleted by order)", because that information can be sensitive. Sometimes people can say names that do not need to be in a transcript. That is what happened in this case. It was a personal aside. Mr Miller then said, "I think I will rethink this." It had not been typed. He went away and then came back to me and said, "We will leave it in; put everything in."

The CHAIRMAN: Mr Miller spoke to you twice, first telling you that he did not want it transcribed, and at this stage it had not been transcribed.

Mr WHITE: That is right.

The CHAIRMAN: He came back to you again and told you to disregard what he previously said.

Mr WHITE: Yes.

The CHAIRMAN: In the meantime, that tape had not been transcribed.

Mr WHITE: No.

The CHAIRMAN: To what extent is the process of recording and transcribing of hearings within the control of Verbatim Reporting staff?

Mr WHITE: We transcribe it; that is the control.

The CHAIRMAN: You have absolute control?

Mr WHITE: Yes.

Mr THOMAS: Subject to direction.

Mr WHITE: I mean we get a tape and transcribe it. Directions opposite are not common. That is why I am not aware of them. Most of the time, the process just goes straight through.

Mr TRENORDEN: The standard procedure is that you put whatever is on the tape into the transcript.

Mr WHITE: Exactly.

The CHAIRMAN: Do you have any independence about the transcribing?

Mr WHITE: No. I do not allow the girls to have any independence. It is a different matter with Hansard, because there is an independence. We have not allowed that. It is not that important for us. It is the better for us to say, "It goes in, but if you want it out, that is up to you."

Mr TRENORDEN: Poor grammar and all?

Mr WHITE: For a witness, poor grammar goes in; for a judge or a lawyer, we tighten up the tenses sometimes, but we do not change the words, mainly because the lawyer and the judge are not on trial.

The CHAIRMAN: Do you exercise a discretion?

Mr WHITE: Only fairly slight, but it would not affect any transcript.

The CHAIRMAN: What role does the ACC have in the process of recording and transcribing the hearing.

Mr WHITE: None, apart from the fact that we are its agent. We have no directions.

The CHAIRMAN: What happens to the tapes and the transcripts once they are completed?

Mr WHITE: They are given to one of our girls, Jo. We give her an envelope with the day's transcript, two disks and the master tapes - what we call the backup tapes.

The CHAIRMAN: Who is Jo?

Mr WHITE: She is one of the ACC employees.

The CHAIRMAN: Verbatim returns the tapes and the transcripts to the custody of the ACC?

Mr WHITE: Then we wipe the computer record.

The CHAIRMAN: After you have transcribed them, you have no responsibility for either the transcripts or the tapes?

Mr WHITE: No; none at all.

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Mr THOMAS: It is appropriate to say that they do not leave the ACC premises?

Mr WHITE: We transcribe on the ACC premises. They stay there. I presume they put them in a safe or something. An inspector called Howard collects them as well. When we finish the transcript, we give them the disc, the back-up tapes and the transcript.

The CHAIRMAN: I feel you have answered this, but I want you to reaffirm it: Is it possible with the equipment used to rewind the master tape?

Mr WHITE: Yes.

The CHAIRMAN: Is it therefore possible to erase the tape?

Mr WHITE: Yes.

The CHAIRMAN: Is it possible to rewind and record over?

Mr WHITE: Yes, you can do that. All tape recorders have an erase head in them. The Laniers do not have one. They have a fail safe which picks up words and then stops. You cannot record. Ninety nine per cent of them have an erase head, so when you press record it erases what is on the tape and then records afterwards, a millimetre on.

The CHAIRMAN: With the equipment available it was possible to erase?

Mr WHITE: Yes.

The CHAIRMAN: Was the tape erased?

Mr WHITE: No. I have never had a request in any court anywhere in Australia to have a tape erased.

The CHAIRMAN: The instruction not to transcribe was rescinded and the transcription is verbatim?

Mr WHITE: Yes, and the tape is as it is. One of the problems with tapes, that you might understand, is that once it is erased, there is a problem because there is a gap. Erased tapes are very easy to pick.

Mr TRENORDEN: If the tape had a point of erasion on it, it would be noticeable?

Mr WHITE: Yes, because you cannot fill it in without huge difficulties. You must get the right voice and run the tape on. It is like counting to ten when you erase from four to eight. There is a three-quarter inch gap on the tape which must be filled in with something. Even Nixon could not do that.

The CHAIRMAN: If the instruction were given to erase in the hearing room, the erasure would have to take place within the hearing room?

Mr WHITE: If the instruction were given, it would not be done in the hearing room by Rosy. It would have to come to me.

The CHAIRMAN: If Mr Coombs alleged that the erasure took place in his presence in the hearing room, you would doubt the veracity of that?

Mr WHITE: Yes. How it would have to happen is that he would have to say, "We will erase that." Rosy would have to stop the machine - not the six minute tape but the back-up. She would have to play it back and find out where the voice came in. The recorder has a little speaker in it so she would hear it. She would have to play to that point and ask, "From here?" She would then have to press play again but first of all she would have to go through from start to finish so that she knew where to stop, otherwise she would erase too much. She would have to listen to the words of the investigator from one to 10, for example, because she would take the unit numbers and say that it started at 183 and finished at 420. He would say, "Right. I want that part erased." That in itself would take several inches of tape. She would then press play and everyone would be quiet until the tape had gone from 180 to 420. Then she would stop and you would have this great gap.

The CHAIRMAN: All of this would be with the master tape. Would the six minute transcription tape be running the whole time?

Mr WHITE: With that sort of thing you would stop your transcription tape because the whole court would stop.

The CHAIRMAN: Is it run by the same mechanism or are there two separate machines?

Mr WHITE: They are in front of the girl. She would press stop.

The CHAIRMAN: She would have to press stop on both?

Mr WHITE: Yes. There would be an interruption. If I wanted to erase that tape, we would all have to stop. I would have to stop the tape and run it back. We would stop writing, do the exercise and then you would say, "We will now commence the questions again."

The CHAIRMAN: You would have to say to us, "Be very quiet"?

Mr WHITE: Yes, otherwise once you press the button it records.

Dr CONSTABLE: How long would all that take?

Mr WHITE: It would take as long as the words spoken. If I remember, it may be a minute or 30, 40 or 50 seconds.

Dr CONSTABLE: Would she go back to the beginning of the tape?

Mr WHITE: She would go back until she heard the words where he said, "I think we had better delete that from the transcript."

Dr CONSTABLE: Would it take at least a minute or longer?

Mr WHITE: Obviously you have not got the transcript. It would have been four or five lines which would take about three minutes.

The CHAIRMAN: We have a copy of pages 2492 and 2493 of the transcript.

Mr WHITE: Half of that page would take approximately one and a half minutes. It is a matter of where he said, "I want that deleted."

Dr CONSTABLE: That is on the next page.

Mr WHITE: That would be close to two minutes, which is a lot on a tape. You could splice them but that is even worse because it stands out like a sore thumb.

The CHAIRMAN: So in the context of the hearing a pause to rewind the tape would have been quite significant?

Mr WHITE: For Rosy or even me to go back there, we would have to go back to three to five different spots and play the tape until we got "have a short break" and those words from Geoff Miller. That is not easy to find. You might have three to five attempts to find it. You must then play the tape through until you get to the words "I do not think that should be transcribed". You would have to listen until there and then someone would say, "That is where we want to stop." I would have then said, "It starts at 180 and finishes at 420", so I would run the tape back to 180 and press record. That would then wipe the tape.

Dr CONSTABLE: So it would take more than a minute.

Mr WHITE: If I had to do it here now and wipe two minutes off the tape, it would probably take four, five or six minutes. The whole thing would have to wait because you would have to ask, "Here?" and be told, "No, it is further on. It is back further. It is further on." I would then have to say, "Right. All be quiet because I am pressing record." The record would then run from 180 to 420, which takes two minutes which, as you know, if you are sitting here doing and saying nothing is a hell of a long time. You would then start again. It is quite a complex thing.

Mr TRENORDEN: Would the possibility of the tape being erased be close to nil or would it be nil?

Mr WHITE: If it has been erased, it has not been erased by us.

Mr TRENORDEN: During the period before it was handed to the ACC, would it be possible?

Mr WHITE: No. The possibility is nil. Rosy or I would have to be there. It is just too difficult. It just has not happened. He has mistaken the words "delete from the transcript". He has not heard it properly.

The CHAIRMAN: You will receive a transcript of today's hearing. Would you please read it, correct any errors of grammar but not of fact and return it to the clerk as soon as possible. I remind you that this hearing is subject to parliamentary privilege. It cannot be discussed by any person outside this room, by you or by us, until such time as we report to the Parliament. I ask that you respect that confidentiality.

Mr WHITE: You have my word on that.

The CHAIRMAN: Thank you very much.

[The witness retired]

THE COMMITTEE ADJOURNED
