

**JOINT STANDING COMMITTEE ON THE
ANTI-CORRUPTION COMMISSION**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON MONDAY, 29 MARCH 2004**

Members

**Hon Derrick Tomlinson (Chairman)
Hon Barbara Scott
Hon Graham Giffard
Hon Sue Ellery
Mr J.J.M. Bowler
Dr E. Constable
Mrs C.L. Edwardes
Mr J.N. Hyde**

[9.40 am]

Committee met at 9.39 am

DOIG, MR DON
Commissioner, Anti-Corruption Commission,
PO Box Z5068, St Georges Terrace,
Perth, examined:

O'CONNOR, MR TERRY
Chairman, Anti-Corruption Commission,
PO Box Z5068, St Georges Terrace,
Perth, examined:

RAYNER, MS MOIRA
Commissioner, Anti-Corruption Commission,
PO Box Z5068 St Georges Terrace,
Perth, examined:

CHARLWOOD, MR GRAEME
Chief Executive Officer, Anti-Corruption Commission,
PO Box Z5068 St Georges Terrace,
Perth, examined:

LEWIS, MR TERRY
Policy Officer, Anti-Corruption Commission,
PO Box Z5068 St Georges Terrace,
Perth, examined:

The CHAIRMAN: This is a properly constituted meeting of the Joint Standing Committee on the Anti-Corruption Commission. The proceedings will be recorded for the purposes of Hansard. You have each received a "Details of Witness" form. Have you completed it?

The Witnesses: Yes.

The CHAIRMAN: Did you read it?

The Witnesses: Yes.

The CHAIRMAN: Did you understand it?

The Witnesses: Yes.

The CHAIRMAN: Welcome to the meeting. When I spoke to you, Terry, about the meeting you expressed some surprise that it was on, because we have not had a quarterly meeting for some time and we anticipated that the Anti-Corruption Commission would have ceased to exist by now. Originally it was August, then it was December and then it was January. The commissioners for the Corruption and Crime Commission were appointed at the end of December. You did anticipate that there would be a handover in March, but you are still here. The purpose of this meeting is to look at

the report that you presented to the committee for the period July to December 2003. Before we commence, do you have any general comment you wish to make?

Mr O'Connor: Not on that at this stage, Mr Chairman.

The CHAIRMAN: You have received a series of indicative questions. I will go through the indicative questions prepared by staff not in the order as presented to you, because they move from one table to the next. I will try to look at questions as they relate to particular tables in the report. I note that that 119 matters received between 1 July and 31 December last year relate to alleged serious improper conduct, and there are 305 active matters. I presume that the bulk of those matters will be transferred from the ACC to the CCC. I am looking at table 1 on page 2 of the report, ACC operational activity from 1 July.

Mr O'Connor: Yes. Anything that is not finalised by us will go to the CCC.

The CHAIRMAN: There is a total of 517 active matters as at the end of December. Have you received additional matters since that time?

Mr O'Connor: No.

The CHAIRMAN: No additional matters?

Mr O'Connor: No. The CCC has taken over from 1 January. All new matters go to it, so we are reducing the number of matters we have.

The CHAIRMAN: Can you indicate how many matters are outstanding at the moment?

Mr O'Connor: One hundred and sixty.

The CHAIRMAN: Of those 517 matters, you have reduced it to 160 currently.

Mr O'Connor: Yes. Obviously, we have been putting a fair amount of effort into doing that, because we are anxious not to overburden the CCC with a whole raft of matters in addition to the other problems it will have in getting started.

The CHAIRMAN: I recall that when the ACC was appointed in 1996, you inherited a backlog of matters that the Official Corruption Commission had dealt with and it took you something like 18 months to work through those.

Mr O'Connor: It probably took longer, yes, so we are very cognisant of the difficulties involved in having a huge backlog.

The CHAIRMAN: Do you have any idea when the ACC will be disbanded?

Mr O'Connor: No. We are having a meeting with the CCC after this and we hope to get some idea at that meeting.

The CHAIRMAN: When last we spoke, you anticipated March. It is almost 1 April and still you do not know. Can you indicate what is causing the delay?

Mr O'Connor: The delay obviously is in setting up and getting organised to take things over. I think it is still going through that phase.

The CHAIRMAN: You are doing your best to minimise the number of matters that will be incomplete before that time.

Mr O'Connor: Certainly, yes.

The CHAIRMAN: I turn to question No 1 and the new matters referred to the ACC in the table on page 2. Nine per cent of the new matters reported come from individuals. That is fairly consistent with previous history.

Mr O'Connor: No. For example, in 2001-02, 17 per cent came from individuals. We have made efforts to make the public aware obviously of our presence and activities. In early 2003 we started our web site, which we have been working on for quite some time. Obviously with press releases

and things like that, we have sought in the past to let the public know of our existence. However, I suspect that we have had a drop off in the number of people making allegations during 2003 because of the activities of the royal commission. Obviously that provided a place for people to go in respect of the police. Of course, at the beginning of 2003 it was announced that we were to be wound up, and all that, I am sure, affected the number of people who came to the ACC.

The CHAIRMAN: The police royal commission may explain the transfer of the focus or attention from the ACC to the royal commission, but the royal commission was about police. Some 48 per cent of the matters dealt with by the ACC historically have involved other public officers, so the royal commission operating at that time does not explain entirely the drop. Other factors appear to be involved in spite of your efforts to make people aware.

Mr O'Connor: As I say, I can assume only that it is related to the fact that it was announced that the commission was to be disbanded and that had some effect, but we have no real explanation for it other than that.

Mr J.N. HYDE: The amount of information, statistics and so on that we are now getting is great. You had spent 70 per cent of your budget by 31 December. In six months 70 per cent of the budget has gone. Is there an explanation for that?

Mr O'Connor: We are on budget and we have sufficient funds to carry on. Obviously, we were going to spend more of our budget. If we were not expected to go for the full year, we would like to spend more of our budget in the first part of the year.

Mr J.N. HYDE: However, until December you did not know that you would not continue.

Mr Charlwood: The simple explanation - we are talking about the operational component of our budget - is that there was a need to upgrade our telecommunications interception facility to take account of the technological change by the service providers. That money - some \$325 000 - was in fact planned expenditure and it occurred in the early half of the financial year. That in the main is the reason for the 70 per cent having been spent.

Mr J.N. HYDE: That is a capital, rather than an operational, item.

Mr Charlwood: It is capital, but in terms of our operational budget and the way that we report here, it is part of that.

Mr J.N. HYDE: One of the requirements under the Anti-Corruption Commission Act is that it is incumbent on CEOs to report any evidence or suspicions of corrupt activity.

[10.00 am]

If they become aware of information regarding corruption they must report it to the ACC. During the period of the ACC, have you prosecuted any CEOs, heads of department, politicians or whoever, who have not reported corruption?

Mr O'Connor: No.

Mr J.N. HYDE: Has the ACC received any allegations of that?

Mr O'Connor: We have had concerns about failures of agencies to report corruption, particularly early on when we were still getting used to the idea. In the case of one agency we complained to the minister in the previous Government. The problem was addressed and fixed up. However, whenever we have found there have been delays in reporting matters, we have taken it up with the agency and pressed it to improve its game. The agencies that have regular issues such as the Police Service and the Department of Education and Training have processes. Agencies that rarely have some allegations against staff are obviously not as aware of the requirements of the Act as those agencies that are constantly having these problems, so they sometimes fall down.

The CHAIRMAN: I refer to the budget matter that John Hyde raised with you. While 70 per cent of the operational budget was expended by the end of December - as Graham Charlwood pointed

out, it was investment in telecommunications; in fact, the total expenditure is 45 per cent of budget - that is online. I assume the telecommunications investment will be transferred to the CCC.

Mr O'Connor: The CCC will get all our assets. Yes. We do not know what the CCC will do. If it does not take up our telephone interceptor capacity and decides to get its own, I would want someone to ask questions because we have a state-of-the-art facility. The CCC will inherit that facility, there is no doubt about that.

Mr J.N. HYDE: During the budget process last year, the police applied for and received a lot of money for TI equipment as well as the ACC. I think we have raised this previously and there was a degree of cooperation but separation in terms of the equipment.

Mr O'Connor: We wanted to do that and the police wanted to do that but the Government stopped it. I think it will be a matter for the CCC. I have not heard what the latest position is. Graham, do you know?

Mr Charlwood: It is still on the agenda to establish a joint facility. There would be significant cost savings in doing that, of course. However, as the chairman said, it is a matter between the CCC and how comfortable it is with that arrangement. We are very comfortable with it. We were satisfied that the security of the ACC's data was covered. The technology is available. It is a matter of the will I suppose to do it.

The CHAIRMAN: I think that is a matter that the committee should take up with the CCC at the first opportunity

Hon BARBARA SCOTT: Did the government give an explanation of what grounds it used to not amalgamate those facilities in the future?

Mr O'Connor: They want to leave it to the CCC to decide whether it wanted to do it.

Hon BARBARA SCOTT: Even though the Government knew there would be immense duplication of the technology?

Mr O'Connor: The Government is aware that there would be duplication if it did not happen.

Hon BARBARA SCOTT: Did a minister of the Government approach you to discuss that matter?

Mr Charlwood: No; it was dealt with in the CCC steering group forum, of which Mal Wauchope was there as the chair of that group. As far as I am aware, the police have not proceeded with the installation of a new facility. Although the money has been allocated, I understand that money has not been provided.

The CHAIRMAN: I refer to question No 2 regarding new matters reported to the ACC. Eleven per cent of the matters received by the ACC in this period related to public officers in local government. It then refers to "matters unsubstantiated", but I think it should read "matters unclassified". Local governments received some considerable attention. We looked at the list of local governments that have had some investigation or public comment; namely, Canning, Wanneroo, East Fremantle, Busselton, Margaret River, Belmont, South Perth and I think Wiluna.

Hon BARBARA SCOTT: Cockburn.

The CHAIRMAN: Cockburn. Given that amount of focus on local government, the number of matters received from the ACC is apparently small. I can see Moira Rayner looking quizzical.

Ms Rayner: Yes, I am very quizzical about the low number of matters.

Mr O'Connor: The ACC has some concerns about what is happening in some areas of local government. The ACC is running some operations at the moment that have been the subject of substantial surveillance and ongoing telephone interception. I think we will pass those across to the

CCC. However, historically, local government has been an area of concern and it remains so for us and will, I am sure, for the CCC.

The CHAIRMAN: Has the ACC confronted any particular difficulties in dealing with local government matters?

Mr O'Connor: Obviously we have argued for a long time, as this committee only too well knows, that the ACC has had inadequate powers. We are obviously pleased that the CCC will get the powers we have been arguing for. That has inhibited all our investigations. I suppose the only particular problem with local government is that it has an incapacity to investigate matters itself. Occasionally, it is a good thing to send something back to the department and ask it to look at it and report back to the ACC. It is not equipped, generally, to do that. Other than that, we have not had any particular problems with local government.

Mr J.N. HYDE: I refer to the CEO at Broome case. You have done your job as part of the team and that has now gone to the DPP so a court case or charges are under way. In terms of debriefing that process - clearly it is something that has gone on and some people thought there was an issue and some people within local government thought there was not.

Ms Rayner: He was convicted.

Mr J.N. HYDE: You had nothing to do with the trial. Your job is to get the case to the DPP.

Mr O'Connor: We provided the evidence for the DPP at the trial. I think in fact he pleaded guilty in that particular case so it was fairly straight forward.

Mr J.N. HYDE: For that process to have gone on for so long, surely there was a debriefing process or words of wisdom.

Mr O'Connor: For what process to have gone on for so long?

Mr J.N. HYDE: For the CEO to have pleaded guilty for the charge to have been made, a situation in which the previous president had been perhaps made aware of some things of which other members of the council or the existing president were not aware. At what point who within the organisation should have been taking action to stop it from reaching that end point?

Mr O'Connor: Are you talking about within the Shire of Broome?

Mr J.N. HYDE: Yes. Surely, in the whole three years we have been here, it is what we have seen replicated throughout local government.

Mr O'Connor: Obviously, if you are talking about the shire clerk or a senior executive, it is the responsibility of the council and the mayor to supervise what they are doing. However, if they do not do that, it allows people to get away with things.

Ms Rayner: Western Australia has a large number of very small councils. It has struck me in my relatively short time on the commission how little they understand basic concepts such as conflicts of interest and the need to implement proper checks and balances on the use of powers and discretions that officers and councillors have and the different responsibilities and interests of councillors and paid staff. One of the issues that I hope the CCC takes up with some passion is a collaborative educational exercise to prevent corruption. Corruption can happen only when councils understand that no matter to whom they are related or work or live next to, they have public duties first and private duties second. The identification of a conflict of interest must result in an appropriate reaction.

[10.00 am]

It seems to me, just from looking in a general way - I am not talking about Broome specifically - that in small geographical areas where councillors have a large number of responsibilities - public, private and complicated relationships - it is crucial they understand that, because corruption and serious improper conduct arises in an environment where you can turn a blind eye, look a bit vague

and not fully understand and have a discussion and have it go on for a long time in order to be just without any rigorous understanding that there is a process with principles involved. I have seen a small number of complaints come up through local government but, from my short time back in Australia, I have heard an awful lot of discussions about what goes on in local government. It seems to me it is a systemic matter that has to be addressed by the new body as a matter of some urgency. It cannot do it just on its own. Education and prevention has to be done in a way that is embraced as necessary education by the bodies themselves. I am saying that from my experience in educating people to avoid harassment, discrimination, victimisation and the like. The circumstances are almost identical: the culture in which those things thrive are cultures in which there are bullies, the bullied, nepotism, lack of a merit process and vague and opaque processes to make decisions - all of which allow people to avoid personal responsibility. If I am sounding a little bit passionate, I do not mean to be. I am simply saying I think it is an urgent necessity to be addressed in this State.

The CHAIRMAN: If it is urgent, why is it a matter that the CCC should take up as a matter of priority when it has been around for some time to the ACC's knowledge?

Mr O'Connor: We have never had the power or the resources to embark on education programs. That, again, is one of the things that we have made submissions about, but nothing ever happens.

The CHAIRMAN: Does the CCC Act make provision?

Mr O'Connor: Yes, and that is going to be very important. It is not only in local government that people do not understand what conflict of interest means. We see it in other areas as well. In many areas we see a total misunderstanding of the whole concept of conflict of interest.

The CHAIRMAN: It has been an outcome of ACC investigations that administrative action has been taken, and some of that has meant changes in processes and procedures. You would say that was inadequate? Would you support Moira's proposition that there needs to be a great deal done for education and corruption prevention?

Mr O'Connor: Absolutely. We always make a recommendation to change procedures if we see the necessity for that, but we really do not have the power to insist on it and to go in and try to educate people. Quite often, we will ask people to send back the new procedures and, ultimately, generally they do. From time to time, agencies say no, they are happy with their procedures. The police is a very good example. These questions raise the problem of dealing with confidential information. We have made recommendations over the years to the Police Service about how they should overcome the problems with wrongful or inappropriate access to computers; that is, the IT information. The police have accepted some proposals and rejected others. They rejected as too much of a problem in a force of their size, procedures that have been adopted in New South Wales, for example.

The CHAIRMAN: Previously, you told this committee about the problems in dealing with local government because they are small and do not have investigative resources. Many of the matters dealt with by the ACC are not corruption or criminal matters; they are improper conduct. Most often they are referred back to the agency.

Mr O'Connor: Or the Department of Local Government and Regional Development.

The CHAIRMAN: Given that difficulty of investigating matters by local government itself, what has happened in the past?

Mr O'Connor: Often the matters go to the Department of Local Government. At other times, we look at them ourselves. Sometimes, I suspect they fall between the cracks a bit because our resources are not unlimited. As I said many times before, we have fewer investigators than the Macro task force and other similar police units.

The CHAIRMAN: In addition to the need for education and corruption prevention, it would appear that the investigative functions of the local government association could be reconsidered?

Mr O'Connor: I think that may be done by increasing the number of investigators in the Department of Local Government. They do a very good job but I do not think they have very many investigators.

Mr Charlwood: I am not aware of the numbers. I know they have moved to recruit additional investigators. I suspect they have similar numbers to us.

The CHAIRMAN: I turn now to question 6, which refers to the same table, that is, the audit of other authorities. There were 114 matters. First of all, what is the nature of the other authority investigations?

Mr O'Connor: They could be all sorts: police investigations and public sector investigation unit investigations, for example.

The CHAIRMAN: They are matters that come to the attention of the ACC and, after a preliminary inquiry, they are referred to the appropriate agency for further action?

Mr O'Connor: Not necessarily after a preliminary inquiry. They might be referred straight to the other agency after having a look at what the allegation is.

The CHAIRMAN: As an assessment?

Mr O'Connor: It could be the Department of Local Government, the education department, the Department of Justice - all those sorts of agencies.

The CHAIRMAN: The number of matters for review is quite substantial. Is that indicative of the matter you raised earlier that you are trying your best to finalise matters before the transition?

Mr O'Connor: Yes, we have been putting very heavy pressure on agencies to complete the matters we have referred to them so that we can tidy them up before we have to hand things over to the CCC. Obviously, we are endeavouring to expedite our own cases, although they are diminishing as our people leave.

The CHAIRMAN: I want to come to the matter of your staffing later on.

Mr O'Connor: Yes, it would be a reflection of the efforts to not burden the CCC with a vast backlog.

The CHAIRMAN: Since we are addressing that table at page 2, question 12 refers to the increase in physical surveillance from October to December 2003. My first thought was that the physical surveillance may be related to the royal commission, but I think the royal commission substantially completed its investigations by the end of July.

Mr O'Connor: Yes. None of it was related to the royal commission.

The CHAIRMAN: This physical surveillance is not electronic surveillance; it is the physical whatever you do?

Mr O'Connor: Using the "dogs", as they are called.

The CHAIRMAN: Using the "dogs". Can you explain why there seems to be some substantial jump?

Mr O'Connor: We had some significant investigations running that required physical surveillance.

The CHAIRMAN: Fourteen in the Western Australia Police Service and 14 relating to other public authorities.

Mr Charlwood: Can I perhaps add to that that I think it demonstrates the use to which telecommunications interception is put. We do not randomly drive around looking for misconduct.

Telecommunications interception enables us to focus our resources on targets or particular areas and apply physical surveillance to that to gather evidence, hopefully to be used in prosecutions or other forums.

Mr J.N. HYDE: Part of the success or rationale of any corruption fighting agency is the ability to get rid of unfounded allegations of corruption; to deal with them and get them out of the way quickly.

[10.10 am]

Mr O'Connor: I am pleased to hear you say that it is part of the success. It is something I have been arguing for a long time.

Hon GRAHAM GIFFARD: Obviously with some success.

Mr O'Connor: Yes, I have convinced someone.

Mr J.N. HYDE: Part of the success is making people know about it. You inherited a number of issues from the OCC. You are about to hand issues over to the new body. Are there any cases, allegations, rumours or innuendos that have been hanging around like bad smells through the time of the three bodies and that we as a community and you as an agency have not been able to put a lid on? Are there serious issues of corruption that have not been able to be proved through the time of the OCC and the ACC and are now being passed on to the CCC? Those are two areas of the spectrum.

Mr O'Connor: I cannot think of any off the top of my head.

Ms Rayner: Do you mean cases that have not been finalised or cases in which the outcome has not been what we think it should have been?

Mr J.N. HYDE: Part of the reason that the Government is giving your bodies incredible powers is that -

Mr O'Connor: We have not got incredible powers. The CCC has all the powers.

The CHAIRMAN: Could I attempt to clarify what I think John is saying? You have files that are closed because the matters have reached criminal prosecution or disciplinary action; you have files that are closed because facts are unsubstantiated; you have files that are inoperative but open; in other words, information and intelligence gathering is contributing to those files. Have any such files that have been opened through the period of the OCC and the ACC be transferred to the CCC?

Mr O'Connor: I cannot think of any.

Mr Charlwood: I cannot think of any. There are historical matters like Argyle and the Mickelbergs, which some might say have been done to death in a number of forums. Of course, our files on those matters are no longer active.

Mr O'Connor: Some of the perennial complainants are already at the CCC.

Mr J.N. HYDE: That is the issue I am getting at.

Mr O'Connor: They would have complained to the OCC and not got satisfaction; they would have complained to the ACC and not got satisfaction; and they now complain to the CCC; they will probably complain to you or some of your colleagues at some stage.

Hon SUE ELLERY: If they have not already.

Mr O'Connor: Yes, they probably have.

The CHAIRMAN: There is a difference between the person who might in another jurisdiction be called a vexatious litigant.

Mr O'Connor: A focused complainant.

The CHAIRMAN: The difference between that and matters that have an aura of suspicion about them but cannot be substantiated and are therefore subject to continuing -

Mr O'Connor: We do not -

The CHAIRMAN: You do not have those?

Mr O'Connor: Let me finish. We do not have files that are inactive, I think you said, but on which we are receiving intelligence - they are either open or they are closed - but we do have intelligence facilities in the intelligence section. We quite often refer the information on a file to the intelligence section and close the file, but it remains there with the intelligence section. We have in the past reactivated matters when further information happened to come in, such as another complaint coming in, and that added to what we already held meant that it was something we should look at.

Ms Rayner: I just want to make a comment before I hand over to the guy who knows all the facts and the detail. You would expect that sometimes comments or reports would be made to us without any substantiating facts at all. Without some detail we cannot investigate them. I am sure that quite a few people would have brought to us over time matters of deep suspicion which have never been able to be investigated because they do not know names, dates and places. However, over time more information may come in. They are not open files, but they are, as Terry said, kept somewhere in the corporate memory of the organisation - which is about to be completely lost - to be reactivated if at some point facts come in that can be dealt with. A major worry for me is that ongoing suspicions will not be reamed out. The royal commission was intended to ream out ongoing suspicions about criminal conduct. It dealt with some matters, but other matters will keep on coming back, I think.

Mr J.N. HYDE: I am trying to focus on corporate knowledge of issues about which there is suspicion and there is some evidence but they cannot go to trial. In the overview, are there crooks who have been too smart so far? Could you give us an idea? Are we dealing with a major problem or a couple of cases?

Mr O'Connor: The royal commission has given you some information, and various people have taken different takes on it. The royal commission's information was the information we gave it. Its investigations were basically our investigations, but published. Some years ago now before this committee, I said that there is evidence to indicate that a not insubstantial number of the detective cohort engage in criminal and corrupt conduct. The evidence on which I based that statement came out in the royal commission. That remains the case with police. We have said that we have concerns with local government, but it is always a matter of gathering evidence, and it is not easy.

The CHAIRMAN: My recollection is that you stated publicly that there were 70 police officers or thereabouts who were not particularly wholesome.

Mr O'Connor: We had evidence to indicate that there were 70. That is what I said, which is not to say that there might not have been more, but that is what I base this statement on; that there was not an inconsiderable number.

The CHAIRMAN: My recollection is that the royal commission identified 53 serving officers and 152 in total.

Mr O'Connor: Yes. The royal commission had the advantage because when it took our material away, of course, it was able to compel people and to obtain other information, which we could not do. Yes, there is a problem there and there is a problem in other areas of government, but I have to say that I do not think in general in government it is widespread - in fact, I am sure it is not - but there are pockets. Local government is one area where there are some pockets.

The CHAIRMAN: That causes me concern in the light of what Moira has said of this loss of corporate knowledge. I assume that all the files that are kept by the ACC will be transferred to the CCC.

Ms Rayner: Yes.

The CHAIRMAN: When you refer to the corporate knowledge, what in particular are you referring to?

Ms Rayner: It is the links between files; it is the people who bring up a matter. At our commission meetings a number of staff attend, as well as the commissioners, such as my colleagues who have been commissioners for a long time. I am the baby commissioner; I say that of myself because I have not been at it very long. The links are made through people remembering things that have happened in the past or having an understanding about liaison meetings with the police or being aware of the latest development in a TI exercise. That is when you get an overview. The overview may not have been addressed sufficiently under the ACC in its time for a whole range of reasons. The thing that worries me most is that overview, which is only between people, will be lost, because people will not know which files to open. No-one reads a file and gets it, but someone has the big picture, or a range of people may have it when they talk together. That will not be there any longer. I have been involved in restructuring organisations for many years. One of the worries I have is about the way in which the new CCC is starting its operations without giving the existing staff, many of whom have got tremendous skills and a huge reservoir of ability, any opportunity to contribute towards their new corporate knowledge. What we have here is a serious worry, for me anyway.

The CHAIRMAN: The Attorney General indicated at one stage that many of the ACC investigators would be taken up by the CCC. Is that not happening?

Mr O'Connor: I do not think the Attorney General ever indicated that.

The CHAIRMAN: He certainly did, Mr O'Connor. He made that statement quite clearly. He might not have made it to you, but he has made it quite clear that many of the ACC staff would be transferred to the CCC. My question to you is that in the light of your concern about the loss of corporate knowledge, is the ACC staff being taken up by the CCC?

[10.20 am]

Mr O'Connor: No.

Ms Rayner: No.

Mr Charlwood: Only two in the information technology area have been offered re-employment with the CCC. Our solicitor has been offered placement with the CCC through redeployment. No other staff have been offered long-term positions. A number are there on secondment, until the end of May, or thereabouts.

Mr J.N. HYDE: However, only half of the CCC positions have been advertised and dealt with, so far.

Mr O'Connor: In terms of the operational positions, they have moved through the directors, managers, senior investigators, investigators, intelligence officers and senior intelligence officers. I am not sure how many other operational positions are still to be announced.

Mr J.N. HYDE: You would think that a number of your very good staff would have applied for those positions that have not been announced yet.

Mr O'Connor: A number of very good staff have applied.

Dr E. CONSTABLE: Are they getting interviewed?

Mr O'Connor: Three have gained interviews in the process, so far.

Dr E. CONSTABLE: How many would have applied?

Ms Rayner: Tens - lots of them.

Mr O'Connor: I do not know - people are very private about these things. It will mean that the CCC will take time to get up to speed, and will lose a lot of staff.

The CHAIRMAN: It will not merely take time to get up to speed; there is also that loss of corporate knowledge, as has been described by Commissioner Rayner. Can I ask the question in another way -

Dr E. CONSTABLE: Can I make another point? There is also the loss of investment. I have watched this in the ACC since the beginning, because I have been on the committee for seven years, or however long it has been, and large amounts of public money have been spent on the ACC. That will just go up in a puff of smoke, because we are not keeping that expertise. As Hon Derrick Tomlinson says, it is the loss of the corporate memory. It is a loss of investment by the State.

Ms Rayner: That is one part of it. The other is that it is a very expensive way to start up a new anticorruption body, by just ditching the old one entirely, including its infrastructure, leaseholds and so forth, and then starting with an entirely new body. I understand the political imperatives behind it, but it is very expensive. One of the costs is that loss of the recognition of ties that cannot possibly be created in a paper file.

Dr E. CONSTABLE: And the skills of the people.

Mr O'Connor: It is a bit surprising that they do not seem to be interested in our document handling facilities or our information technology facilities. They really seem to be about to set out to reinvent the wheel.

Mr Doig: The royal commission, in fairness, found nothing that would detract from the way in which the ACC had investigated matters. That is a fairly relevant point, as the chairman said. In many of the matters that were raised at the royal commission, we had done all the groundwork; they recycled our work.

The CHAIRMAN: Following up on Terry's comment, the CCC has at this stage indicated no interest. I think he referred specifically to IT. If they are not interested in your IT - I presume that you are talking about electronic data storage - is it the assumption that they will set up their own electronic information storage and retrieval facility, which may not be compatible with yours?

Mr O'Connor: That is the impression we get, yes.

Ms Rayner: It will not be compatible.

The CHAIRMAN: Not only will you have a loss of corporate knowledge, you will also have a loss of direct access to stored information.

Ms Rayner: My concern about that, having been involved in restructuring several times, is that the ability to use the old system is very quickly lost when the new system takes over, unless there is some form of continuity. I do not wish to be unduly critical here; it just seems to me to be highly risky that you will not be able to access our old system to get onto our old records unless there is some way of keeping the people who remember how it works at least for a while in the new organisation, and making sure that there is some sort of exchange. That does not look likely at the moment.

Mr J.N. HYDE: The secondment of ACC staff has been extended to when?

Ms Rayner: To May; and not those staff. They are investigative staff.

Hon GRAHAM GIFFARD: Can I get this clarified? You are worried that the CCC will not have the ability to access the old information?

Ms Rayner: I am warning that it could be completely lost. As soon as you have an old system -

Hon GRAHAM GIFFARD: I am trying to establish how clear your understanding is. You are concerned, or you know?

Ms Rayner: I am not saying you will not be able to; I am saying that, from my experience, having been involved in restructures, reconfigurations and new systems in a number of areas, one loses the capacity even to interrogate the data you have on an old system as soon as a new one comes in, because you get up to skill on the new one - which I am sure will be fantastic - and you forget about the clodhopper one, which is the only other way you will have access to the information that now looks so terribly outdated. That happens really fast, unless it is part of your business plan to keep it, and make sure that you have the people with the skills still there working side by side. My other bit of information and advice, if anyone asks - which no-one has, but now I am going to say so - is that you would actually need to run the two in parallel for a couple of years. That is the only way it is actually going to occur. Maybe that is what the CCC intends to do.

Mr O'Connor: Except that they are not making any effort to find out anything about us. Our people that have gone across are not working with our system. Our people who have been seconded to the CCC are not working with our system.

The CHAIRMAN: How many of your staff, particularly senior investigative staff, have sought, or have been appointed to positions elsewhere, other than the CCC?

Ms Rayner: Eighteen.

The CHAIRMAN: Eighteen, of how many?

Ms Rayner: Sixty.

The CHAIRMAN: Eighteen have left the ACC and will not be available to the CCC?

Mr Charlwood: Not necessarily. They can still apply for positions that have yet to be advertised. We have six seconded to other agencies; five are employed; three have employment outside of those two methods; and we have four on long-term leave without pay. There are in fact six contract officers seconded to the CCC.

The CHAIRMAN: Are those six part of the 18?

Ms Rayner: No - these are people who have been seconded, so they have not actually got jobs.

The CHAIRMAN: I will jump over to question 9, about serious misconduct and action taken, on page 6 of your report, which indicates a high proportion of alleged assaults in the general public sector. Can you indicate the nature of these assaults?

Mr O'Connor: They are not alleged; they have been prosecuted.

The CHAIRMAN: They are actual assaults?

Mr O'Connor: Physical and sexual, on which charges have been laid. Perhaps I should say that they might still be alleged, but they have gone past the mere allegation, and there has been sufficient evidence for charges to be laid.

The CHAIRMAN: We find that nine are criminal charges relating to assault, nine criminal charges laid against other government departments, seven are assault or sexual assault, and only six are against police officers. Can you explain this?

Mr O'Connor: The bulk of them come from the Department of Education and Training. Is that the explanation you are looking for?

The CHAIRMAN: Of the nine criminal charges, four relate to sexual assault.

Mr O'Connor: Yes.

The CHAIRMAN: They come from the Department of Education and Training. Why are these matters, which are serious criminal matters, dealt with by the ACC, rather than the Police Service?

Mr O'Connor: They are not dealt with by the ACC. They are dealt with by the Police Service. We have an obligation to oversight them, and that is what we are reporting - our oversight.

The CHAIRMAN: If a complaint initially comes to ACC -

Mr O'Connor: Not necessarily; following the obligations under section 14, the head of the agency reports the incident to us and we refer it. In cases of child sexual assault, we would always refer to the child abuse unit at the Police Service, who are expert in this area, and we exercise oversight.

[10.30 am]

Mr J.N. HYDE: Is the Department of Education and Training managing the issue itself?

Mr O'Connor: No. We have concerns about its policies. It has very muddled policies. It does not understand the difference between sexual assault and harassment. The ACC has asked the Department of Education and Training to review its policies and to give proper training to its staff. Members should see its policy on these issues; it is muddled between teacher-on-teacher or staff-member-on-staff-member assault and staff-member-on-child assault. It is muddled between what is harassment and what is assault. It is very confusing.

The CHAIRMAN: The Department of Education and Training is the amalgamation of TAFEs and schools. Is the focus of the ACC's concerns on the school sector, the TAFE sector or both?

Mr O'Connor: The school sector.

Hon BARBARA SCOTT: Has the ACC dealt with allegations of child sexual abuse with the Department for Community Development? I am referring to children in foster care and that sort of thing. Has the DCD approached the ACC?

Ms Rayner: No, it has not.

Mr Charlwood: I cannot recall any specific allegations having been made.

Hon BARBARA SCOTT: Yet a number of child sexual abuses that have happened in Western Australia have been revealed in Parliament.

Mr O'Connor: I can think of only a couple of allegations of assault by a staff member over the past six years. I do not remember any sexual assaults at all.

Mr Lewis: Is it the fact that the bulk of those matters that come from DCD relate to private individuals rather than public officers, so there is no obligation on the agency to report to the ACC?

Dr E. CONSTABLE: Foster carers are paid by the State; they care for children.

Ms Rayner: I would have thought they were public officers.

Hon BARBARA SCOTT: I do not know about the category of that, but I know that the Crime and Misconduct Commission in Queensland revealed a raft of allegations and instances of abuse of children in foster care in Queensland.

Mr O'Connor: That is right. There was a lot of publicity about that.

Mr J.N. HYDE: At the end of the ACC's watch, it is important for the committee to hear the views of its longstanding members and also from Moira, who has experience in other jurisdictions. A finding of the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers was that there seemed to be less corruption in Western Australia compared with other States. The royal commission found that Western Australia is not at the boil-bursting point at which New South Wales and Queensland were, and certainly that Victoria seems to be with regard to its Police Force at the moment. Do you have an opinion on that?

Mr O'Connor: Do you mean about corruption in the Police Service?

Mr J.N. HYDE: In Western Australia as a State.

Mr O'Connor: I do not know whether the royal commission knows about anything else other than the Police Service. It did not investigate anything else. I do not believe that it is equipped to make that comment. It is very difficult to compare levels of corruption between different Police Services. The ACC does not have an intimate knowledge of what happens in other jurisdictions. As far as I am concerned, any corruption is too much corruption. There are certainly problems within the Western Australian Police Service.

Mr J.N. HYDE: Can you put it in perspective? Is Western Australia comparable with Zimbabwe, for example?

Mr O'Connor: I do not know. I have not been to Zimbabwe.

Mr J.N. HYDE: If there is no corruption, tell us to close it all down. Surely there must be a degree of recommendation or will the Government and the public keep chucking money -

Mr O'Connor: Obviously I am not making myself clear. I repeat: I said there is a level of corruption in the Police Service that is very concerning.

Mr J.N. HYDE: Any corruption is a concern. What level is it at?

Mr Charlwood: If the committee looks at the figures reported in the ACC's July-December report and compares them with the reports -

The CHAIRMAN: Which page?

Mr Charlwood: Page 1 - the number of matters reported. Members must bear in mind that 212 matters were reported in a six-month period. We have reported that that is a reduction in the number of reports. However, the number of allegations of corrupt, criminal and serious improper conduct that the ACC has received over the years has not varied significantly. The figures have hovered between 450 and 500 a year. I do not have the figures in front of me, but I suspect that if the committee looked at corruption and criminal conduct, there would not be a great variation in the number of cases that were reported each year. The figures demonstrate that there is a problem.

Ms Rayner: We will never know until people's attitudes, beliefs and behaviours are audited. To find out the answer to the question the member has asked, the public sector would have to be reviewed in an effective way. We would have to find out what public servants believed they ought to do when ethical issues arose, such as conflict of interest - as I have already mentioned - or when they became aware that a colleague had bent the rules or that nepotism had led to claims that people had been given jobs and that the merit selection had been disrupted etc. It would appear that that is a big ask in Western Australia, but it is being done in various private sector agencies and companies with which I am involved. They regularly check those types of matters with an external body. The justification for having an anti-corruption body is that it is meant to be an external mechanism for assessing the quality of the environment of the public sector, which is intended to lead to good government in Western Australia.

The CHAIRMAN: I refer the committee to page 4 of the ACC's report, which quantifies that statement. The ACC finalised some 290 matters, 53 of which - or 18 per cent - were substantiated. That embraces activities from corruption through to improper conduct. Some 54 matters were unsubstantiated and 172 "other outcomes" were the results. "Other outcomes" appears to support what Mr Hyde said previously about the ACC having demonstrated that the concerns were without substance.

Ms Rayner: In those cases, there was nothing we could do under the existing legislation and powers of the ACC, which is not necessarily the same thing. As members will see from the ACC's answer to that question, it has received a wide range of responses to allegations that have been made. Merely not being able to do anything formal with allegations may mean that the ACC believed that the matters were being appropriately investigated elsewhere. The measure of

complaints is only one crude measure of the levels of corruption, improper conduct or a lack of ethical and acceptable public sector behaviour. It is not until you talk with people anonymously in a safe environment that you find out what are their experiences and their perceptions. That is another measure. There must be a bit of triangulation. Recently the Sex Discrimination Commissioner of the federal Human Rights and Equal Opportunity Commission conducted a survey on the experiences of sexual harassment in the workplace and found that up to 28 per cent of women were sexually harassed in the workplace. Twenty-eight per cent of female paid employees will not make complaints of sexual harassment, sexual assault or anything like that; they will deal with the matter in various ways. That tells us that there is a culture in which this conduct is tolerated, borne, complained about and persists. I put to the committee that the new body and this Government must take up and address that issue. It is not known what the levels of improper conduct are, and the Government does not have to look for villains to prosecute. The culture in which that type of behaviour is put up with, persists and endures must be changed.

Mr O'Connor: That will require resources.

The CHAIRMAN: You have already indicated that, given the nature of local government, some of the small local government authorities lack the capability to investigate their own matters.

Mr O'Connor: It is worse than that.

The CHAIRMAN: You have said also that the focus of the Department of Education and Training on its school sector policy regarding assault is unsatisfactory.

Ms Rayner: Some individual instances have come to our attention that indicate that the policies, even if they were good, have not been communicated very well to individuals. Let me be clear about that.

Mr O'Connor: In some cases an allegation that was made was clearly an allegation of sexual assault, yet it was treated as though it was harassment.

[10.40 am]

Ms Rayner: With mediation, when someone should have gone to the cops.

The CHAIRMAN: By the time the matter gets to the police that there is an allegation of sexual assault, it is a very serious matter. That may be symptomatic of matters that have not been brought to attention.

Ms Rayner: The serious and obvious cases are such. I remember once seeing an allegation of an assault upon a child, which was responded to by a person in the department concerned as, "Well, I don't know what she did to provoke it", which indicated to me that there had been a bit of a failure in education and communication on otherwise good policies. I am not saying that was the Department of Education and Training, but I have seen it.

Mr O'Connor: Not in this State, you are saying?

Ms Rayner: I am just not saying any identifying particulars, Terry. I see it over and over again in other areas, so I am not surprised to see it here. However, when they are making a report to the Anti-Corruption Commission and do not understand the enormity of what they have reported, that alarms me. It indicates that the reporting agencies do not understand that they have just revealed that their staff totally mishandled what was actually a sexual assault on a minor.

The CHAIRMAN: Moira, what you are saying concerns me. However, when you consider that we are talking about the Anti-Corruption Commission, which is an investigative agency to respond to complaints from the public sector, it is obliged to report them. In addition to the ACC as an investigative agency, we have the Ombudsperson, or Ombudsman - I am sorry about the -

Ms Rayner: That is a Swedish word. It is all right.

The CHAIRMAN: The Ombudsperson: you will accept that?

Ms Rayner: Ombudsman.

The CHAIRMAN: The Ombudsperson - in this case the Ombudswoman -

Ms Rayner: No, Ombudsman.

The CHAIRMAN: - is there to mediate complaints between public officers and private citizens. In addition to that you have the Public Sector Standards Commission, which is about ethics and the sorts of things that you have been referring to. You have the Information Commissioner for freedom of information. We have a plethora of agencies, yet there are gaps that you have observed, particularly in the corruption prevention function.

Ms Rayner: Indeed. I would expect this, though, Mr Chairman. I was remarking to two of my colleagues earlier on the plethora of child protection mechanisms in New South Wales, while the child abuse rates continue to soar. It seems to me self-evident that the only way one can deal with improper conduct, unethical behaviour and, ultimately, corrupt conduct is to recognise that there will always be some crims who will take advantage of an opportunity. There will always be some people who, through propensity, deliberately get themselves into a position in which they can misuse authority, as paedophiles do, and others who get themselves into those sorts of areas. However, the majority of corrupt and improper conduct comes from people who are exposed to a temptation and start to believe it is okay.

The CHAIRMAN: Opportunistic corruption.

Ms Rayner: Opportunistic stuff and affected by the culture that they are in. The best defence to building a corrupt culture is to work very hard at building an ethical one of long standing. Edgar Schein says it takes 25 years to do that. It takes sustained leadership, and it takes a very clear message that failure to do so has nasty consequences. However, it does not mean working in an atmosphere of fear; it means working in an atmosphere in which these issues are identified and discussed in a creative and positive sense. I suspect that one of the reasons that we do not have that discussion is that there is a lack of information, for example, about what is a conflict of interest and a perception that if you identify it, then you have done something wrong, which you have not. Conflicts happen all the time. It is what you do that matters, and there is a lack of sophisticated alternatives to doing particular things. However, to me, it always get down to the same thing: that any anti-corruption body really should be working to change the culture, which means highlighting the big picture, working with other agencies, ensuring that educational activities are targeted and that people understand that their duties are to speak out, say no or whatever else, and I think that is a new shift.

Mr O'Connor: I think you can have a hundred oversight bodies and other bodies. They are not going to make any difference until the agencies start to own the problem and recognise that they have a responsibility. They cannot just hand it off to the Public Sector Standards Commission, and they cannot just hand it off to the ACC or the CCC or whoever. They must address the issues. Every agency must address them. Until that happens, the situation is never going to improve. As Moira says, you need information in order to be able to address the issue, and that requires some -

The CHAIRMAN: Terry, there is an alternative explanation, and that may be a lack of coordination or sharing of information among the agencies. For example, Moira has talked about the need for the development of corporate ethics within the public sector, identified in the work of the ACC. The Public Sector Standards Commission has the responsibility for corporate ethics.

Mr O'Connor: That is the problem.

The CHAIRMAN: Yes, exactly.

Mr O'Connor: I think the agency has the responsibility for it. Until the agency says, "We are really going to adopt this as something that we are going to push in our agency", it is going to be a

battle. You will never get someone from outside coming in and imposing those sorts of things on an agency.

The CHAIRMAN: When you refer to “an agency”, you are talking about a government department or -

Mr O’Connor: Yes. I personally have been driven mad by the number of rules, regulations, policies and other crap that you have to put in place in an agency like the ACC, as required by government. When someone is forcing you to do all these things, the temptation is to do it all and then throw it away or throw it in the bottom drawer and never look at it again. People have to sort of feel as though they are part of what it is that they are doing and required to do.

Hon BARBARA SCOTT: From the discussion and from the information you have given us about the culture in agencies in Western Australia, could you comment on the whistleblowers, or is that evidence of frustration within an agency at not having a proper structure in place within the agency so that people can complain about something that is happening; therefore, they must go outside that agency to make the complaint? We just seem to have whistleblowers everywhere complaining.

Ms Rayner: A whistleblower is usually a person of actual and/or self-perceived integrity who believes so strongly that things ought to be done a particular way that if they are not done, their disappointment requires them to speak up. They learn very quickly - this is the universal experience - that to speak up against an institution is to invite vast, inexorable retribution, no matter what the law says. I think it takes tremendous courage for people to speak up, or they are mad. Sometimes they are both by the time they are finished. I think the whistleblower legislation can only ever provide a moral stand; it will never actually provide real protection for those who make those complaints. That is my sad and cynical experience.

Mr O’Connor: That is borne out by the evidence.

The CHAIRMAN: It is part of the corporate ethics of organisations.

Ms Rayner: An ethical organisation will accept a difficult whistleblower experience as a learning experience and will protect that person; and I do not see it very often anywhere.

The CHAIRMAN: You are talking there about internal whistleblowing. There is also the concern that private individuals are not going to the ACC - a very small number appear to be - which would suggest concern there as well.

Ms Rayner: Lack of trust, I would think. I hope that the new body earns the trust of the public, and it is inundated with substantial complaints.

The CHAIRMAN: I have one final question, and that is question No 11. I refer to the outcomes of matters finalised on page 5. There has been a significant jump in substantiated criminal matters relating to police. Between July and September, there were two matters, and between October and December, 12 matters. Did that flow on from the royal commission, or is there some other explanation?

Ms Rayner: Lots of new staff, mainly.

Mr O’Connor: I think it is just first things being finished off. It is difficult to look at these things in short periods. Some investigations take quite a long time.

The CHAIRMAN: Any further questions? Any final comment to make?

Mr O’Connor: As we are in the early stages of rigor mortis and this is our last occasion, can I just say that, for me, it has been a privilege to be chairman of an organisation that has had working for it a body of people who have been very dedicated to the task in hand. Because of the inadequacies of our legislation, we were subjected, and they were subjected, to abuse - quite unreasonable abuse by and large - for the work they were doing.

[10.50 am]

They stuck to their task despite the high level of abuse that they received, and I am very proud to be associated with them. I should say that the quality of their work has been exemplified by the report of the royal commission. As I have said, virtually everything that the royal commission reported on were matters given to the royal commission by the ACC. In a couple of cases they were able to enhance the material because of the powers the royal commission had which the ACC did not have, but, by and large, they were not able to add anything to the ACC's work to find out anything else that the ACC had not found. Of course they were able in the end to say that they did not expect many prosecutions, because the ACC had already been advised by the Director of Public Prosecutions in a number of the cases that prosecution would not be pursued. The ACC, in conjunction with the police internal affairs unit, has been able to take one of the matters that the royal commission had worked on, but on which it did not talk to the ACC about further work it had done, and, by adding our corporate knowledge, we expect to see another police officer charged, which would be unexpected, but it would again be as a result of work done by ACC staff in conjunction with police internal affairs. So I think the community has a lot to thank the ACC people for, and I wish someone would apologise to them for the unpleasant abuse that they have received over such a long period of time.

The CHAIRMAN: If I have ever been the source of unpleasant comment, let me apologise, but I feel that there is nothing to apologise for. I have been chairman of the committee for seven years. I have worked with two chairmen of the commission, and with, I think, about seven or eight commissioners. This committee has always had a frank and very honest relationship with the ACC. We have been constrained by our standing orders and by the ACC Act in our ability to respond publicly to some of the matters that have been brought to attention. The commission has been unsparing in providing information to this committee; in fact, it has sometimes provided information that may be contrary to the confidentiality provisions. I am grateful that the committee has never, to my knowledge, broken faith and revealed any of that confidential information that you have given to us, but because of that confidentiality we have been unable to respond to some of the criticisms that have been unfairly directed at the ACC. I am extremely grateful that the Government has now taken up the recommendation that we made some six years ago for the appointment of a parliamentary inspector who will have access to operational information. There are very good reasons that politicians should not have access to operational information. However, with the new inspector having full access to files and all the powers of a royal commissioner, I think the problems of the past will be minimised. I am not saying that they will disappear. On behalf of the committee, I thank you all for the way in which you have cooperated and worked with us in the past.

Mr O'Connor: If I could just say on behalf of my colleagues as well, we appreciate the way in which the committee has dealt with the ACC. My criticism is not directed at the committee. We appreciate the relationship and the fact that the confidences that we have been able to share have not been disclosed. Despite the then Premier, Mr Court, and the then Leader of the Opposition, Dr Gallop, telling us that we should never tell anything confidential to a politician because they will never keep it to themselves, the committee has been -

Dr E. CONSTABLE: There are some exceptions to that!

Mr O'Connor: - the committee has been exemplary in that regard. We appreciate the relationship that we have had with the committee over that time.

The CHAIRMAN: I should advise you, however, that I will be retiring in May, and I will be writing a book. It will be published posthumously, but it will all be there!

Mr J.N. HYDE: Just to clarify, May of which year?

The CHAIRMAN: That is for you to find out!

You will receive a copy of the *Hansard* record. Will you please correct any errors of form but not of substance and return it to Kathy as soon as possible. The committee will be tabling a report on today's hearing, which will include the information that you have sent to us in your quarterly report and a summary of the matters discussed today. Thank you very much for your attendance.

Committee adjourned at 10.55 am

