

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

**THE CORRUPTION AND CRIME COMMISSION'S INTERACTION
WITH THE INTEGRITY COORDINATING GROUP**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 26 AUGUST 2013**

Members

**Hon Nick Goiran, MLC (Chairman)
Mr Paul Papalia, MLA (Deputy Chairman)
Mr Sean L'Estrange, MLA
Hon Adele Farina, MLC**

Hearing commenced at 2.04 pm**MACKNAY, MR ROGER ANTHONY****Corruption and Crime Commissioner, examined:****SILVERSTONE, MR MICHAEL JOSEPH WILLIAM****Executive Director, Corruption and Crime Commission, examined:**

The CHAIRMAN: This committee hearing is a proceeding of the Parliament and warrants the same respect that proceedings in the House itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as a contempt of Parliament. I have a few preliminary questions for you in respect of today's hearing which is, of course, in relation to the involvement of the Corruption and Crime Commission with the Integrity Coordinating Group. The terms of reference for the committee are that we will inquire into and report on the role played by the Corruption and Crime Commission within the State's Integrity Coordinating Group; the extent of any jurisdictional overlap between the CCC and other members of the ICG; how the CCC handles instances of jurisdictional overlap with other members of the ICG; the costs and benefits of the CCC's participation in the ICG; any operational implications of the CCC's participation in the ICG; and the model used by other misconduct and anti-corruption agencies in establishing their relationships with agencies within their jurisdiction.

Before we commence with the questions we may have for you today, I ask: have you completed the "Details of Witness" form?

The Witnesses: Yes.

The CHAIRMAN: Do you understand the notes at the bottom of the form?

The Witnesses: Yes.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet regarding giving evidence before parliamentary committees?

Mr Macknay: No, but I am familiar with it.

Mr Silverstone: Similarly.

The CHAIRMAN: Commissioner, just to get things started, can I just ask you the date you started as Corruption and Crime Commissioner?

Mr Macknay: From memory, Mr Chairman, 21 November 2011.

The CHAIRMAN: Would you happen to know when the Corruption and Crime Commission became involved with the Integrity Coordinating Group?

Mr Macknay: No, I am not in a position to give you that information; it was certainly well established when I commenced. Mr Silverstone, who has been with the commission since its inception, will probably have some idea.

Mr Silverstone: I would say in 2005; if not the title group, then there was certainly a movement towards having meetings of that group, although at the time, the Public Sector Standards Commissioner was leading the charge on that. The Public Sector Commission did not exist, and Mr Wauchope, as the director general of the Department of the Premier and Cabinet, had no role to play in the ICG at that stage.

The CHAIRMAN: Right. Then Commissioner, can we just take that on notice to establish when the commission first attended a meeting of the Integrity Coordinating Group?

Mr Macknay: Yes, of course.

The CHAIRMAN: No doubt my colleagues will have a few questions to ask, but I just want to commence by giving an indication as to what has, if you like, been the genesis of this inquiry in this thirty-ninth Parliament. You will be aware that the Auditor General tabled his seventh report in June this year, entitled 'Fraud Prevention and Detection in the Public Sector'. It is a report on which I have corresponded with you and I appreciate the detailed reply that you sent on 5 August 2013. As I understand it, this particular report delves into the jurisdiction of the Corruption and Crime Commission in the sense that it is speaking about the issue of corruption in the State of Western Australia. I understand from your correspondence of 5 August 2013 that the Auditor General had not informed you of the nature of that inquiry before undertaking it.

Mr Macknay: That is so, Mr Chairman, yes.

The CHAIRMAN: The natural question that then arises is: given that both you and the Auditor General are on this Integrity Coordinating Group, is this the type of thing that one would normally expect would be communicated between the agencies at these forums?

Mr Macknay: There is a particular form of communication; there are two forms of meeting. There are quarterly meetings between people at directorate level; when I use that term, our Commission is divided into directorates, as the Chairman knows, and the Director of Corruption Prevention, Roger Watson, would attend, together with the Deputy Public Sector Commissioner, Ms Fiona Roche, and the Deputy Ombudsman and Deputy Auditor General, so there is a meeting at that level where there would be exchanges.

Then, in the following month, and again on a quarterly basis, there is a meeting of the heads of the agencies together with those people who had attended the working group. What passes between people at the working group would not necessarily come to my attention. Mr Watson was probably away on extended leave when we received notice of this. It is theoretically possible that the Auditor General put in a template that comes forward. The only document I intended to pass to you this afternoon was a redacted template that came from a meeting last year, just to show you the sort of information that we would provide to the other members of the group of a general nature.

So it is, I would have to concede, theoretically possible that some reference was made to it, but I certainly have no recollection of it. I must say, had I been aware of it, I would not necessarily have been concerned about it. Without leaping ahead, one of your terms of reference is overlap, and as I am sure you will all appreciate, the two agencies that are likely to have the greatest area of common action are the Auditor General and this Commission, really, because the Auditor General is looking at the books, if you like, for irregularities, and we are looking at the behaviour that led to the irregularities, so necessarily he is going to come across things where there will be irregularities. That is a matter for him, of course, as to how he considers he will discharge his mandate.

The CHAIRMAN: Just on that, if the proposed reforms to divest some of the Commission's jurisdiction proceed by sending it to the Public Sector Commissioner, will that then also become quite pertinent in the sense that the PSC will have quite a level of overlap with you?

Mr Macknay: Yes, there would be overlap. It is not something I have really given any thought to, but I suppose if we are talking about financial irregularities, that usually involves a defalcation, which would constitute the criminal offence of stealing, which would mean it would be serious misconduct for the purposes of our act and not minor misconduct of the kind that, in the last Parliament, it was contemplated would be sent to the Public Sector Commissioner.

The CHAIRMAN: Is it the overlap that exists, as you have identified, with the Auditor General and, in due course, likely with the Public Sector Commissioner that provides a basis, a justification, for involvement in the Integrity Coordinating Group?

Mr Macknay: I suppose that question, with respect, presupposes that I gave considered thought to whether or not I would attend the group; it was already in existence when I began and it seemed to

be serving some kind of useful purpose, and I simply continued the practice. In fact, there is a statutory underpinning for it. If you will bear with me, I will take you to the relevant parts of the Act very quickly. Section 3 defines “independent agency” as meaning the Parliamentary Commissioner, the Auditor General and the Public Sector Commissioner. Section 18 provides for the misconduct function.

The Act’s primary modelling is to create functions of the Commission and then to create powers and so on to enable it to carry out the functions. Section 18 provides that the Commission performs the function by, amongst other things, consulting, cooperating and exchanging information with independent agencies. So there is a clear mandate, if not a duty, on the part of the Commission, to consult and to exchange information with independent agencies—those, of course, including therefore the Ombudsman, the Auditor General and the Public Sector Commissioner. If the ICG did not exist, in order to properly discharge that power, there would have to be informal discussions and exchanges. Clearly, part of the Commission’s function is to acquire information from all relevant sources, so quite apart from section 18(2)(g), the Commission would have an interest in talking to other people involved in the oversight of the public sector, just to get intelligence, if you like. The Commission is authorised by that section to impart information to other relevant independent agencies.

Obviously, the Commission is very careful about the information it imparts and operational requirements would always be to the fore in relation to that. Certainly, nothing would be divulged that would possibly have any deleterious effect on operational activities.

The CHAIRMAN: Commissioner, can I just ask, in terms of the agencies that are involved in the Integrity Coordinating Group, there seems to be some basis for communication with the Auditor General and the Public Sector Commissioner. What would be the basis for the Information Commissioner, from your Commission’s perspective?

Mr Macknay: I am sorry?

The CHAIRMAN: What would be the rationale for the communication—the link with the Information Commissioner—from your perspective?

Mr Macknay: Yes. The Information Commissioner was and is a member of the group; he is engaged in an activity in the Western Australian Government. It would be, I suppose in a very general sense, beneficial if he is aware of the nature of our operations. In terms of specific benefit, I am not sure that I would be able to point to any. In terms of receipt of information from him, again, it might be of a low level in terms of relevance but there might be times when information would be acquired which would be useful.

The CHAIRMAN: I will now hand it over to the Deputy Chairman. I had forgot to, at the beginning, Mr Commissioner, indicate, of course, that to my left is Paul Papalia, the member for Warnbro, who is the Deputy Chairman; to his left is the Hon Adele Farina, the member for South West Region; and to her left is Mr Sean L’Estrange, the member for Churchlands, but I will now hand over to the Deputy Chairman.

Mr P. PAPALIA: Thanks, Chair. Commissioner, although it was not the factor that initiated this inquiry my concerns regarding the Integrity Coordinating Group were probably crystallised by the Chief Justice’s speech, the Whitemore Lecture 2013. Specifically, some of the concerns I felt he articulated well. I would just like to hear your view as to whether or not you share the Chief Justice’s view that the integrity agencies have an important role to play, but they should remain firmly within the executive branch of government, and as quoted from his speech be —

“... subject to the scrutiny of Parliament, and to laws passed by the Parliament and enforced by the courts.”

Mr Macknay: Yes, I have no difficulty with that at all, Mr Papalia. I mean, the term ‘the fourth estate’—

Mr P. PAPALIA: I think that is what set the alarm off—

Mr Macknay: The fourth arm of government is spoken about. I make no comment in relation to that other than to say that is not an expression that I have used, I think, or would be likely to use.

Mr P. PAPALIA: Can I just then extend the questioning with regard to the relationship between your body and specifically the Public Sector Commissioner because that is one that—not your relationship, but the Public Sector Commissioner’s role, particularly in relation to inquiries—has been the subject of some public comment. In our meeting this morning, without specifying the details, it became clear to me that it is possible that an inquiry initiated within the Corruption and Crime Commission could be passed to the Public Sector Commissioner—an inquiry about another department, not the Public Sector Commissioner’s own department, but another department within government, could be passed to the Public Sector Commissioner for further action.

What I am concerned about—I think it is a concern shared not only more broadly in Parliament, but also in the wider community—is that, acting under the *Public Sector Management Act*, as identified by the Chief Justice, the Public Sector Commissioner is not obliged to be transparent at all. The subsequent inquiry, apart from the findings, which are not necessarily even all the findings, but just specifically the ones the executive chooses to release, may never see the light of day in the public domain. What is your view with regard to that potential—that is, what starts off as an inquiry under the auspices of CCC may, for it to be then passed through an agency that may not pursue the same level of transparency or ensure the same level of transparency at all? I have concerns about that, but do you have any observations?

Mr Macknay: Well, there are only two matters that spring to mind and before I mention them, I must say I cannot envisage passing an investigation into misconduct to the Public Sector Commissioner. The Public Sector Commissioner, I think, would have no role in relation to that unless he set up a special inquiry under the *Public Sector Management Act*. There is one instance in which the Public Sector Commissioner has done that in recent times and that was the Katanning inquiry; that occurred before I began. Clearly, that was an investigation into misconduct by a former public officer. I am told that the Commission was given notifications in relation to it, but decided, because of the historic nature of the matter, and no doubt the likely size of it, that although clearly it was of very substantial importance to the people who were involved, the Commission’s point of view, and given its limited resources, that it was obviously not a matter of current behaviour, if you like, within the public sector and that the Commission, therefore, allowed the Public Sector Commissioner to proceed with that particular inquiry. That is the only instance of which I am aware. I cannot envisage that it would be likely to arise again in relation to a contemporary matter.

The Peel Health Campus matter, of course, garnered a lot of parliamentary media attention, but the advice I was given in relation to that was that, although the hospital Act makes provision for the contracting out of health services, and although that hospital was, in part, a public hospital, that the people who were operating it—who were private contractors, of course—were not exercising authority under a written law and were, therefore, not public officers. That being the case, the Commission had no jurisdiction in that area. It was something I was concerned about, but it was for that reason the Commission was not involved there. Had those people been public officers—on a consideration of the hospitals act—I have no doubt we would have acted in that area and conducted an investigation ourselves.

The only other matter that I would mention is a matter where we conducted an investigation and it became apparent to us that there were problems in the proper functioning of a government department. There was then discussion at director level between the Commission and the Public Sector Commission. The Public Sector Commission was carrying out work that was plainly, I think, within its own bailiwick in relation to that department and used some information, which we passed to it in relation to the code of conduct that was operating, I think, within that department, and recommended some changes. Now that was not a matter where we passed an allegation of

misconduct to the Commission. That was a matter where there was a flaw in the administrative arrangements of the department in relation to the way that disciplinary matters were dealt with; and, therefore, as I say, was properly within the jurisdiction of the Public Sector Commission. It was passed to the Public Sector Commission on that basis, but it was not passed as an allegation of misconduct. As I say, I do not believe that one could be, unless a special inquiry had been set up, and in practice, I do not believe one would be.

Mr P. PAPALIA: One further question with regard to the last example you have given, which is the one I was concerned about, but the concern I would have would be that perhaps the intelligence gathering on that particular issue had not yet been completed, and then maybe further information had come to light. I would be concerned that the Public Sector Commissioner's inquiry then would subsume or prevent any further inquiry by the Commission, and again, my concerns with that are around the lack of obliged transparency on behalf of the Public Sector Commissioner, and the fact that—whether it is perception only or not—he appears to be very close to the executive as far as they being the ones who determine whether information is released as to the nature of the investigation, the nature of the inquiry, and the findings that, if we are lucky enough, we get to hear about.

Mr Macknay: Well, the particular matter that I have in mind, if we are on the same page, as they say, Mr Papalia, was the one where there was an investigation in relation to two instances of misconduct and there was a final investigation report. There was a finding by the Commission officer who conducted that that there was no misconduct in either case; so the inquiry had come to an end. I had a concern about what appeared to be a disciplinary practice as it emerged from those things and, as a result, I wrote to the Chief Executive Officer of the department expressing a concern. The Corruption Prevention Director of the Commission later on in discussion—an informal discussion, I think, with the Public Sector Commission—on becoming aware that the Public Sector Commission was doing some work in relation to that department, passed that information to the commission. It might have been sent by way of letter at some point; I do not recall. Then, when the Public Sector Commission did quite a lot of work in relation to that department—I think conducted a survey as to staff attitudes, and then did a review of various things within the department, what we passed on was used as part of that process. But there was no consideration of misconduct nor, in my view, could there have been by the Public Sector Commission.

Hon ADELE FARINA: I might take us back a little just to get it clear in my mind. The ICG meets quarterly?

Mr Macknay: Yes.

Hon ADELE FARINA: Who actually goes to the meetings from the CCC?

Mr Macknay: The Commissioner, if he or she is available, or an Acting Commissioner—or, the next meeting, Mr Silverstone; but normally, the Commissioner and the Director of Corruption Prevention.

Hon ADELE FARINA: The purpose of the meetings of the group is to exchange information?

Mr Macknay: It is multi-faceted, I suppose, like most of these things are. As I have already said, we fulfil our mandate in part by obtaining and releasing information where we think it is appropriate so to do. I have an example, if you want me to pass it up, of the sort of thing we provide.

Hon ADELE FARINA: Yes, please.

The CHAIRMAN: Thanks Commissioner; we have a document entitled “‘ICG Work Program Template’ Corruption and Crime Commission”.

Mr Macknay: This is redacted. Information provided by others has not been included because it is not for me to publicly reveal that information, it seems to me. No doubt you will hear from them anyway. I am just showing the sort of thing we tell people about.

The CHAIRMAN: This would be an example of, shall I say, a report that is provided by one of the ICG members for the benefit of the other ICG members.

Mr Macknay: Yes; it is worked up. Mr Watson is in the backblocks of China at the moment, so I cannot tell you exactly how he goes about it. No doubt the working group has its discussion and this document appears. It is a template and everyone's contribution is set out on the one document, so everyone must send in their bit and it then gets collated. That is the sort of thing that at our level we provide. "We are having a look at this and that," just so that other people are not working entirely in the dark and they give us information in a similar sort of level. "We've just published a report on this," and that sort of thing.

Hon ADELE FARINA: Where are the meetings held?

Mr Macknay: At the premises of the chair for the time being; the previous chair being the Auditor General and the present chair being the Public Sector Commissioner. I think if I am still in existence in my present form in 11 months' time, it would probably be my turn.

Hon ADELE FARINA: Does the agency that has control of the chair incur all the costs associated with those meetings?

Mr Macknay: Yes; I think so, as I recall. I am able to talk to you about cost. Yes. Do you want me to run through the staff effort for routine meetings? I have a little list here if you want me to.

Hon ADELE FARINA: Yes, please.

Mr Macknay: This is per quarter. It shows three hours of my attendance, including preparation. I think that is probably an exaggeration, really; Roger Watson, Director of Corruption Prevention—six hours of his attendance.

The CHAIRMAN: Is that because, Commissioner, he is going to two meetings?

Mr Macknay: He goes twice, yes, plus preparation. There is note of managers and team leaders within corruption prevention. They provide input into the template and there is attendance there. I do not know where that comes from. That is said to be three and a half hours and an executive assistant provides secretarial assistance of two hours so the total is 14.5 hours per quarter. There is no monetary cost set out there, so I assume the office bearer bears the cost.

Hon ADELE FARINA: The agency that has chair of the committee provides secretarial support to the committee?

Mr Macknay: Yes. There is also a cadet—a young officer—who is employed by the Public Sector Commission and placed with each of the agencies on a rotational basis. He works his way through the different agencies to get an understanding of oversight and accountability. That person provides some secretariat support, apparently, for the group.

Hon ADELE FARINA: I am a bit unclear. This cadet is employed by the Public Sector Commission?

Mr Macknay: Yes.

Hon ADELE FARINA: How long has he worked at the CCC?

Mr Macknay: They spend three or four months, I think, or maybe up to six months at each of them. Of course, when he or she comes to work for us, they are sworn in as a commissioned officer and become bound by the provisions of the act in relation to our affairs.

Hon ADELE FARINA: What level of accessed information would that person have at that time?

Mr Macknay: Only that appropriate to his or her security rank.

Hon ADELE FARINA: Which would be?

Mr Macknay: From memory; it would be low level. It would be someone working in the corporate services section. Alternatively, certainly in one case, Mr Silverstone reminds me it was someone who was a young law graduate who worked in legal services. In addition to that, the ICG has produced some product, the most recent of which is a document, 'Conflict of interest: guidelines for the Western Australian public sector/the Integrity Coordinating Group', which was a joint effort.

Hon ADELE FARINA: How was that funded?

Mr Macknay: The Commission did not contribute to the cost of that. The Commission prints its own supplies on a needs basis and I am told the latest print run was \$4,263, plus GST. I think the only other addition there was a regional outreach in Geraldton earlier this year, and that was funded by the Public Sector Commission in terms of airfares, and there was the cost of a car being driven up and back. I was indisposed, so the Acting Commissioner, Judge Herron, as his honour now is, had to attend, so we had to pay him for three days.

Hon ADELE FARINA: Does the CCC provide regular reports to your Minister in relation to the activities of the ICG?

Mr Macknay: We do not really have a Minister, Ms Farina.

Hon ADELE FARINA: Not the Attorney General?

Mr Macknay: No. Clearly, we have to have someone we can talk to. But in terms of oversight, we report, of course, to the Parliament.

Hon ADELE FARINA: You do not have regular meetings with the Attorney General?

Mr Macknay: No. Can I just say, clearly, the exercise of any power carries with it the possibility of abuse. I understand the Chief Justice's comments and criticism entirely and his concerns, but my experience of the ICG is that its activities are relatively benign. If I thought there was a problem with it I would not be associated with it. In the event that it ceased to exist, in order to fulfil our statutory mandate, as I have pointed out, we would have to continue to have informally these conversations and receipt of information and provision of some information, but it would simply be done without that title. That would make things less efficient perhaps, but if I was of the view that there was a substantial level of public concern about the Commission belonging to the ICG, then I would withdraw the Commission from it.

The CHAIRMAN: Can I take that a bit further, Commissioner, because I think it adequately summarises my own perspective on this matter? I am attracted to the use of the word 'benign' because I do not have a concern that there is any misuse of power as such, particularly with regard to the Corruption and Crime Commission. I might have a personal view as to why the Information Commissioner needs to be involved, but that is not the role of this particular Committee. This Committee has jurisdiction over yourself and the Parliamentary Inspector, so I confine my remarks to the Commission.

My concern is more about effectiveness and efficiencies. If my memory serves me correctly, the Commission has, from time to time, expressed a level of concern about the quantity of time that it requires to be spent in responding to the Parliamentary Inspector. From time to time, because of its overwhelming workload, the Commission could be described as being time poor, so my sole interest in this particular matter is to ensure that both your valuable time and Mr Watson's valuable time are being used efficiently. It may be very attractive for some of the other members of the ICG to have the CCC at the table, but that is a matter for them. I am interested in the Commission.

It concerns me somewhat that this template is being provided. From the letter you have provided to us of 5 August this year, it is clear that there was no formal request by the Auditor General for input by the Commission in its report. It seems to me that if there is going to be a benefit of the Commission and the Auditor General meeting together quarterly from time to time, there ought to

be some expectation that the Auditor General will draw to your attention matters that are plainly within your purview and invite you to comment, so that we do not have a situation in which the Auditor General is tabling a report, ostensibly for the benefit of the public sector, that may not have the benefit of the Corruption and Crime Commission's experience, data and so forth. That summarises, I guess, my present concern. I seek your response in terms of ways we might be able to improve the levels of communication between the Commission and the Auditor General?

Mr Macknay: Yes, Mr Chairman. As I have already said, I think the area of potential greatest overlap is clearly between the Corruption and Crime Commission and the Auditor General. I think I previously expressed the view that there is, potentially in my view, a need for agencies such as the Corruption and Crime Commission to have some ability to look at private contractors that are being paid public money to provide services which, until modern times, would always have been provided by government departments, and which are not currently subject to anything like the same level of oversight as people would be if they were public officers. The New South Wales ICAC has written some material in relation to that. The Western Australian Auditor General has, I think, some limited ability to look at people of that kind or to follow the money trail, if you like, in those circumstances. The New South Wales ICAC Act, as I recall it, gives a jurisdiction to ICAC to go where the New South Wales Auditor General can go and I think there is much to be said for that.

This would run the risk that His Honour the Chief Justice points out of assembling greater power, but if there was some creation perhaps, rather than formalisation, of a closer link between this commission and the Auditor General, then in some circumstances I think that—as you point out—clearly it would be likely in some cases anyway to lead to greater efficiencies. I think it would also be publicly beneficial, particularly in the event that the Parliament decided that some greater purview of private contractors delivering public services with public money is required.

The CHAIRMAN: Commissioner, is it correct to say that the Auditor General's jurisdiction is as wide as the Corruption and Crime Commission's in the sense that it covers the entire spectrum of the public sector?

Mr Macknay: Off the top of my head, I would agree with you, Mr Chairman, but I must say I have spent less time looking at Mr Murphy's Act than my own. Mr Silverstone is probably—

The CHAIRMAN: Perhaps that highlights a point, Commissioner, that when the heads of these agencies meet together on a quarterly basis, one might assume that they then become familiar with the relative jurisdictions of each of the agencies so as to not create duplication and overlap?

Mr Macknay: I think with respect that is probably to overstate the depth with which things are gone into. They are meetings of a relatively formal kind, they are relatively brief, there is a discussion about some points of interest, people bring things up and a cup of coffee and everyone is on their way, really. They are not intense working groups, nor could they be, I think, really. Maybe it is a sign of my age, but I have enough trouble with my Act without trying to master half a dozen others, Mr Chairman.

The CHAIRMAN: Commissioner, where we have reached this afternoon at least is that it is clear to the Committee that, from the Commission's point of view, the greatest overlap is with the Auditor General.

Mr Macknay: Potential overlap, yes.

The CHAIRMAN: Potential overlap—does that then manifest itself in meetings between yourself and the Auditor General, separate meetings, from time to time?

Mr Macknay: No, that has not taken place. When I say 'potential overlap', we are looking at the same thing, of course. There is an obligation on any notifying authority, being a department or local government. I am not sure that the Auditor General would have jurisdiction in relation to local government—I do not think he does, in fact—nor universities, so they would be two quite significant areas where we go where he cannot. But we would be notified of misconduct by the

notifying authority immediately that became apparent. The Auditor General does not pursue misconduct as such, of course; the Auditor General reports on discrepancies. So, it is an area of operation where the overlap exists rather than activities of the same kind, so we would not both be conducting investigations into individuals. The Auditor General would not do that.

The report of the Auditor General that you made reference to was really an educative one, I suppose; a corruption prevention activity rather than an investigative activity. We have our focuses in relation to that; clearly, we cannot examine every department in town. We are an agency that has been, I think, well-funded by government; it would have to be said in fairness, governments of both persuasion have properly funded the Corruption and Crime Commission. But we still have limited resources and we have looked at particular departments. It is no secret that we have looked at the Health Department, for example, which is a very large organisation where, clearly, decisions were made by those who were responsible that that was an area of greatest need. As a result, we have not looked at the departments that were the subject of the Auditor General's inquiry to the same extent.

The CHAIRMAN: Commissioner, could you see a case being made in the future for there to be some level of meeting or forum between yourself and the Auditor General from time to time?

Mr Macknay: Yes, I think it would be useful.

The CHAIRMAN: It might then alleviate the situation with regard to this most recent report where there was no formal invitation to the commission to provide some input.

Mr Macknay: Yes. I am not sure that that brought about any inefficiency; I would not necessarily concede that is the case. I think the principles are reasonably well known—the principles as they are usually applied, I should say. There is an Australian standard in relation to the way that an organisation should be set up.

The CHAIRMAN: Yes, you referred to that in your letter, Commissioner—AS8001–2008. But I am conscious that earlier in that letter, if I can quote from it, on page 3, you said—

While sharing a common interest in fraud prevention and detection, the Commission's approach to building integrity and misconduct resistance in the WA public sector differs from the approach taken by the Auditor General's inquiry. The Commission's experience is that requiring public authorities to develop fraud and corruption control plans is not, of itself, effective in improving the misconduct resistance of individual public authorities or the public sector as a whole.

Mr Macknay: Well, it is a start. I mean, it is a start but you need to do a risk assessment, you need to put it in place, you need to conduct audits from time to time. The Committee heard me banging on about all of these things in a different forum recently, so I will not subject you to it twice. But just putting in place a plan and then thinking, "that's all we need", is plainly not going to solve anything. But I am not sure that the Auditor General failed in that respect. I have read the report but not in preparation to attend today. The Auditor General clearly is concerned in the first place with structures, I suppose. Could we have made a contribution to that? Perhaps maybe we could, but was there any great inefficiency flowing from the fact that the Auditor General did it himself rather than talk to us? I do not believe there was any great harm done by the Auditor General doing it separately. We would not have made a study of those departments ourselves.

The CHAIRMAN: It would not have been a matter that you would have agreed to take on as a joint investigation or report in all likelihood.

Mr Macknay: No. I do not think that would really assist the process, Mr Chairman.

Mr Silverstone: Excuse me, Mr Chairman, I understand that the Auditor General's view is that they are precluded from doing joint activities, and that is certainly very strong. You would have to check their legislation, but that is certainly the tenor of discussions I had with them some years ago about that.

The CHAIRMAN: I acknowledge that I am unfamiliar with that, but can I say perhaps all the more reason why their level of communication needs to be robust, because if it is the case that the Auditor General has to operate in a silo, then it would be good if the Corruption and Crime Commission was aware as to which silo it was operating in at any given time.

Mr Macknay: Yes, certainly. Can I just say that Auditors General have been around for a while; the Corruption and Crime Commission is not yet 10 years of age. The model for it is only relatively young; these organisations are still evolving necessarily and better ways of doing things, no doubt, will emerge.

The CHAIRMAN: Members, I would like to move to a discussion around the Ombudsman, because we have not got to the Ombudsman yet, but is there anything further on the Auditor General specifically?

Hon ADELE FARINA: Not on the Auditor General; I have got some general questions.

Mr P. PAPALIA: I have got other questions.

The CHAIRMAN: All right. I might go to the member for Churchlands and make it a new line of inquiry.

Mr S.K. L'ESTRANGE: It is probably just to get an opinion from the Commissioner, if that is okay. You made it very clear at the start that it is in the CCC Act for the CCC to interact with other independent agencies as a part of needing to do your work effectively. You have outlined to us that there is no set minister per se who oversees the operations of the ICG but rather you as Commissioner are overseen by this Committee and by the Attorney General—

Mr Macknay: By the Parliamentary Inspector.

Mr S.K. L'ESTRANGE: By the Parliamentary Inspector, sorry. One of the things that came to hand was a brochure showing the Integrity Coordinating Group—a picture of all of the members—almost a charter of what the group was there for. It kind of gave the impression that it was a separate body that might have had an oversight group that monitored its activities. Today I have discovered that that is not the case and I know we are mainly interested in the CCC's involvement in it. You have just mentioned that you will evolve over time. Do you see some evolution linked to why this brochure came about and why there was a need for that type of communication?

Mr Macknay: Whether it would be better if there was one organisation with separate departments or three or four organisations is not something I really feel able to comment on, but it might be that in the fullness of time there could be some amalgamation or rearrangement of these things. We do have a common goal, which is to try to ensure that the public sector in Western Australia operates as efficiently as possible. That of course necessarily involves operating in a way that is corruption free. So, whether that means, as I say, that some rearrangement of activity could occur or some amalgamation of activity, I am not sure. In principle, there is no reason why not.

Hon ADELE FARINA: Mine are general questions.

The CHAIRMAN: That is all right; start a new line of inquiry.

Hon ADELE FARINA: Just in terms of concerns that have been raised about the lack of transparency with the ICG, did you want to make any statement about your views about those concerns?

Mr Macknay: It is not for me to comment on the activities of others. In relation to our activities, we do two things. We obtain information, and we make no apology for obtaining information; that is what we are there for. So it seems to me, with respect, that is not something that would properly be made the subject of criticism—that we speak to other people and get things from them. We impart information, that is something where we can properly be brought to account if we are giving away things that we ought not. What I say in response to that is, firstly, we are mandated to tell

other people things, specifically the Ombudsman, the Auditor General and the Public Sector Commissioner. We are directed, in effect, to talk to them to exchange information with them. It is good from a practical point of view, I think, we are all in the same area, that we have some idea of what people are doing because it tells us where people might have concerns. In a broad sense, it might suggest to us that, “Well, people are looking there, then perhaps there’s a problem there.”

Thirdly, we are the subject of a great deal of oversight. It is hard to imagine a body that has more oversight than us. With respect, Mr Chairman, during the life of the last Committee in the previous Parliament, pointed out in a newsletter to his constituents that the Committee of which he was Chair provided more reports to Parliament than any other committee in relation to the CCC. In addition, we have a Parliamentary Inspector. The two Parliamentary Inspectors that I have had have both been extremely senior judges who have been Appeal Court judges for much of their time. If one looks at the Act in relation to the powers of the Parliamentary Inspector, they are as good as plenary in relation to us. The Parliamentary Inspector has the right to examine any document in the place, can question anybody in the place, can conduct an inquiry and interrogate anyone from the commissioner down under oath. So in terms of the Parliamentary Inspector, we are utterly transparent.

I should say as an aside that I see that the Chief Justice criticised the office of the Parliamentary Inspector as lacking accountability too, but that is by the by. There have been times in the past, during the life of the previous Parliamentary Inspector, since my commencement there, that we have had a lawyer in effect working full time dealing with inquiries, where I have felt I was being trained to go onto the complaints desk at Myer. I feel as though, although the ICG might not be the subject of specific oversight, certainly our activities—they are, again, all I can really be concerned with—have the benefit, even if it does not always feel like that, of a great deal of oversight.

Hon ADELE FARINA: You have provided us with a copy of the work program template that forms part of the agenda of the ICG meetings, what other components are there to the agenda?

Mr Macknay: From memory, there would just be the welcome minutes, information sharing—of which you have our relevant bit of this particular agenda for the forthcoming meeting—a debrief on a forum, handover of the chair, next working group meeting and other business closed.

The CHAIRMAN: Would it normally go for 60 minutes to 90 minutes?

Mr Macknay: I do not think it would be 90 minutes, I have to say. They are not normally drawn-out affairs. It is quite a mild activity, I have to say.

Mr P. PAPALIA: Commissioner, below your level and perhaps other higher level relationships between other members of the ICG, is there a working group relationship at the investigator level?

Mr Macknay: No. We are all doing different things. The Ombudsman, I suppose, carries out investigations of a sort, in the sense that he gets complaints. The Auditor General audits. The Information Commissioner does something quite different! The Public Sector Commissioner is again really concerned with other things as well. So, no, there is no discussion that I am more aware of on the floor, so to speak, between our people and people from other areas. If there was a specific matter, that might be different, but I am not sure that any really springs to mind.

Mr P. PAPALIA: Increasingly, though, the Public Sector Commissioner conducts inquiries. I assume he has investigators and that is the sort of field of relationship I am interested in—whether there is a relationship between the CCC investigators and those conducting inquiries.

The CHAIRMAN: At the moment, Commissioner, would it not be the case that with any investigation that the Public Sector Commissioner would be doing, there would be an obligation for them to report its existence to you?

Mr Macknay: There have been four special inquiries in recent times—the Perth Hills bushfires, the Margaret River bushfires, the manager of the Peel Health Campus and the Katanning youth hostel.

Regarding the bushfire inquiries, I am not sure that any issue of misconduct arose in either of those cases. Regarding the Peel Health Campus, I think we probably received a notification in relation to that. As I said, we certainly considered it with a lot of angst. I cannot give the details about the Katanning matter, but we were certainly aware of that. The Public Sector Commission gives us notification in relation to misconduct about matters that it encounters in the course of its activities from time to time, so there is not an issue there, I do not think.

The CHAIRMAN: As I understand it, it is no different to any other agency in a sense in respect to the fact that if it is doing some form of, shall I say, minor misconduct investigation, your Commission would be aware of it and may choose to get involved or monitor it or do as it sees fit.

Mr Macknay: A specific example comes to mind where I think the Public Sector Commission might have taken on a disciplinary matter in relation to particular public officer and on becoming apparent there was a reasonable suspicion of misconduct duly notified us—quite recently.

The CHAIRMAN: Can I open up discussion about the Ombudsman at this stage? We have discussed that the greatest potential of overlap is with the Auditor General. We have also discussed the pending reforms in the Public Sector Commission and how that might have an impact in terms of overlap. I think we will put aside the Information Commissioner in terms of any substantive overlap, but we have not discussed the Ombudsman in any great detail. The Ombudsman obviously receives complaints about administrative decisions made in the public sector. I imagine that from time to time they are the types of complaints that you would also see at the commission. Is there some form of memorandum of understanding or something like that?

Mr Macknay: Yes, there is, Mr Chairman. There is a formal memorandum of understanding of March 2004.

The CHAIRMAN: Is that the only ICG member that there is a formal MOU with?

Mr Macknay: Yes, and that requires the Ombudsman to notify us as soon as reasonably practicable upon becoming aware of any matter that it is suspected on reasonable grounds concerns or may concern misconduct of a public officer.

The CHAIRMAN: Could we be provided with a copy of that, if not necessarily today, in due course?

Mr Macknay: I could let you have this copy.

The CHAIRMAN: It is not urgent, Commissioner.

Mr Macknay: This is a copy that was provided to me for the purpose.

The CHAIRMAN: The question then arises of whether there would be any benefit in a memorandum of understanding being established with either the Auditor General and/or the Public Sector Commissioner?

Mr Macknay: As presently advised I do not think there is probably a great deal to be gained in either case. That memorandum of understanding contains obligations of course. As you point out, there could always be a greater level of discussion or communication between agencies and that is probably something that I could usefully pursue in relation to the Auditor General. I am not sure whether there is a great need for further opportunities of that kind to be created with the Public Sector Commissioner. I am just not sure what the content could usefully be that could not be matched just by joint activity.

The CHAIRMAN: Your evidence to us, this afternoon at least, is that in terms of the relation between the CCC and the Ombudsman, it is being adequately catered for by virtue of this memorandum of understanding.

Mr Macknay: To the best of my information, yes, Mr Chairman.

Hon ADELE FARINA: Commissioner, if I heard you correctly, you said that there would be no instance in which the CCC would refer a complaint about misconduct of an officer of another agency to the Public Sector Commission—is that correct?

Mr Macknay: Only in the event that it concerned an officer of that Commission, in the same way that we might send something back to the Health Department or the Education Department if we did not think it was appropriate for us to investigate it. But if the Public Sector Commission advised us that it had seen suspected misconduct in the Health Department, we would not send it to the Public Sector Commission to investigate misconduct in the Health Department, nor could it as I understand it.

Hon ADELE FARINA: In view of the fact that this Committee provides oversight of the CCC, what would your position be if this Committee were to request the CCC be provided with the ICG minutes?

Mr Macknay: Again, I suppose my only concern is that it is not something I have discussed with the other agency heads. It might be they have no difficulty in the event that you bring them along here and of course you can require them to produce them. It is a confidential document in the sense that it was provided to us for a limited purpose and whether there is informational material in it that could be potentially embarrassing is not known to me. Can I ask whether we can defer it? There is an ICG meeting in immediate prospect and Mr Silverstone will be able to raise it with the other members. In the unlikely event they had difficulty we could immediately communicate that to you and we could then deal with it as it comes. In the same way that if you gave me a document intended for my eyes only, I would not like to release it without speaking to you. It is that level of concern.

Hon ADELE FARINA: That is fine. Can I just say that the Committee has not formed a view on this; it is just a question that I will put to you. It is a matter that the Committee would need to consider if it wanted to go down that path.

The CHAIRMAN: It certainly would be interesting to know what the Information Commissioner thought about the release of the minutes!

Mr Macknay: I am sure the Information Commissioner finds the ICG forum of very great assistance to the carrying out of his duties.

Hon ADELE FARINA: Are you able to point to some tangible benefit that the CCC has obtained from being a member of the ICG? It seems to me that there is an exchange of information going on that could be done by exchange of emails.

Mr Macknay: I have got to know all of the other people to some extent, which I think is really, if not necessary, very useful. There are issues of common concern. We are looking at the same public sector at the same time, so if I am concerned about something it means I can ring somebody up and speak to them without having to introduce myself for the first time—that sort of thing. I think that is intangible, but undeniably useful, with respect.

Mr P. PAPALIA: On that particular question, I guess the flip side of that is whether there is any possibility of a diminution or an erosion of your ability to conduct your oversight of those individuals and their agencies as a consequence of that relationship?

Mr Macknay: I understand what you mean, Mr Papalia, but I do not believe so. I think we deal with notifications as objectively as we can. Can I say, for example, with our police oversight, at managerial level there are people from the Commission who are in daily communication with senior officers in the Internal Affairs Unit and who enjoy very good working relationships with them. I do not believe that that detracts from our ability to oversee the police, for example, but it greatly benefits the passage of information from one to the other to have good working relationships.

Hon ADELE FARINA: For each of the last five years, would you be able to provide the Committee with how many investigations the CCC has conducted into a misconduct complaint of any member of staff of any of the agencies of the ICG?

Mr Macknay: Yes, certainly; I think I will be able to get that information for you.

The CHAIRMAN: Thank you, just take that on notice.

Hon ADELE FARINA: Also, for each of the last five years, how many complaints to the CCC in relation to misconduct of an officer of any of those agencies of the ICG have actually been referred back to those agencies?

Mr Macknay: Yes; I understand.

The CHAIRMAN: Commissioner, in terms of the memorandum of understanding dated March 2004 between the Commission and the Ombudsman, I note that, as one would expect, it was signed by Mr Hammond and Mr O'Donnell.

Mr Macknay: Ms O'Donnell. The Ombudsman is referred to as 'her' in various parts of the document.

The CHAIRMAN: I stand corrected. Commissioner, it seems to me that, approaching 10 years on, there may be a case for reviewing the memorandum and ensuring that it is still current and achieving the objectives originally sought. Is that something that the Commission has had any reason to consider?

Mr Macknay: I am not aware of any operational aspect to that. I suppose it is almost worthwhile having a look at it. If the Committee recommended that we have a look at it, we would have a look at it. Personally, I must say I do not think there have been any problems. Perhaps we could remind the Ombudsman of its existence; that never hurts.

The CHAIRMAN: So on the whole, the relationship is working well, it is adequately covered by the memorandum of understanding, and there have been no, as we understand it, blatant concerns with respect to duplication or overlap?

Mr Macknay: No. Clearly, if the Ombudsman did not tell us things, we would not necessarily know. It is a document that casts an obligation on the Ombudsman.

The CHAIRMAN: But would it not be the case, Commissioner, that you would see a trend 10 years on to say, "We are continuously getting complaints sent to us after they have first been to the Ombudsman—

Mr Macknay: Yes, absolutely.

The CHAIRMAN: —and we have been frustrated by no progress being made?"

Mr Macknay: I am not aware of any concern of that kind at all.

Hon ADELE FARINA: Has there been any discussion at any of the ICG meetings about transferring certain responsibilities currently within the ambit of the CCC to the Public Sector Commission?

Mr Macknay: A discussion of that kind, as best I can remember, has not been had at any ICG meeting, no.

The CHAIRMAN: Commissioner, I think we have concluded our questions for today. Is there anything else that you would like to draw to our attention in respect of this inquiry, bearing in mind that as I close the matter in due course there will always be the opportunity in the usual way for the commission to provide a supplementary written submission?

Mr Macknay: I think only, as you pointed out, Mr Chairman, the learned Chief Justice completed his Whitmore address by pointing out that the integrity agencies have an important role to play in contemporary Australia but must remain within the executive branch and be subject to the scrutiny

of Parliament and the laws passed by the Parliament and enforced by the courts. He further went on to point out that transparency was very necessary. I, with great respect to him, do not have any difficulty with any of those views, and perhaps his reference to transparency might be a reference to his previously expressed views in relation to the benefits of public hearings as opposed to private hearings; and in relation to that I would not seek to dissent from His Honour either.

The CHAIRMAN: Thank you, Commissioner.

Before I close, there is one final question that arises. I apologise for the ad hoc nature of my questions this afternoon but this is the first time I have seen the memorandum of understanding between your office and the Ombudsman. I notice that clause 9.3 states —

Where issues arise between the CCC and the Ombudsman in relation to any matter arising under this MoU, the parties will seek to resolve the issue, in the first instance, through a formal meeting between liaison officers.

Can I ask you to take on notice a couple of questions that arise from that? Firstly, can you confirm that there is a liaison officer presently in place for the CCC, and likewise, at least from the knowledge of the CCC, that there is one for the Ombudsman; and, secondly, in what instances has it been necessary for them to have a formal meeting under clause 9.3 of the MOU, if any?

Mr Macknay: I suspect the answer would be, firstly, there are no liaison officers; and, secondly, there has not been any need for a discussion of that kind. But we will provide that information to you.

The CHAIRMAN: I suspect, Commissioner, that there will be liaison officers, albeit they may not have had to meet, because clause 9.1 indicates that the obligation on each agency is to nominate an officer to act as a liaison officer. But we will take that on notice.

Mr Macknay: Mr Silverstone tells me that it is Mr Watson, wearing another hat.

The CHAIRMAN: That is very good. He is always very busy, Mr Watson.

Mr Macknay: He is indeed.

The CHAIRMAN: Commissioner and Mr Silverstone, thank you for your evidence before the Committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 working days from the date of the letter attached to the transcript. If the transcript is not returned within this period of time, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular point, please include a supplementary submission for the Committee's consideration when you return your corrected transcript of evidence.

Hearing concluded at 3.21 pm
