

REPORT OF PROCEEDINGS BEFORE

**COMMITTEE ON THE OFFICE OF THE OMBUDSMAN
AND THE POLICE INTEGRITY COMMISSION**

**INQUIRY INTO PROCEDURES FOR EXAMINING
COMPLAINTS AGAINST THE POLICE INTEGRITY
COMMISSION**

At Sydney on Monday, 19 October 2009

The Committee met at 2.30 p.m.

PRESENT

The Hon. K Hickey (Chair)

Legislative Council

The Hon. C Lynn
The Hon. L Voltz

Legislative Assembly

Mr P Draper
Mr M Kerr
Mr P Pearce

HARVEY LESLIE COOPER, Inspector of the Independent Commission Against Corruption, PO Box 5341, Sydney, sworn and examined:

CHAIR: The Committee has received your answers to the questions on notice. Would you like to make an opening statement?

Mr COOPER: All I would like to do is to correct an error in my letter to you. I did say that amongst the procedures I can take applications for and executions of search warrants, warrants under the Telecommunications (Interception and Access) Act and warrants under the Surveillance Devices Act. I was wrong. I have no power to apply for those in my own right. I can, of course, in appropriate cases do it through an enforcement agency, as defined in the Act, which would probably include the police. That is the only matter I wanted to correct.

Mr DRAPER: Do you think that the process of investigating complaints has led to improvements in practices and procedures and can the process of those investigations be further improved?

Mr COOPER: Well, if you are talking about investigations generally or investigations that I am concerned with, because the investigations I am concerned with is limited to complaints against ICAC and involve me inquiring as to whether ICAC has been guilty of a particular form of misconduct, as defined in the Act, so I am not really investigating the primary complaint made to ICAC, I am investigating whether in its dealing with that complaint, ICAC has been--

Mr DRAPER: Well, that is what I would like to hear about.

Mr COOPER: Well, in the 12 months that I have had this office, I cannot point to anything where I have said to the ICAC, "Yes, you have gone wrong here," and they have fixed it up. I suppose what I am is like a policeman looking over the shoulder of a motorist. You observe the speed limits when you know there is a policeman following you, and I think that is probably what I am.

Now, if I were not there I am not suggesting for one moment that ICAC would fall into complete chaos, but the mere fact that there is an Inspector is part of the overall scheme of transparency that is required, starting off from the ICAC itself, the Inspector, and then the Inspector being answerable to the Joint Parliamentary Committee, which is the same as with the Ombudsman and the Police Integrity Commission.

Mr KERR: In relation to complaints, I wonder whether you would provide the ICAC with a copy of the original complaint on commencing a complaint investigation?

Mr COOPER: No, I do not, because the complaints I receive are not usually in a coherent form where they set out a complaint. Very often you

have to interview the person, either in person or by correspondence, to get the details of the complaint. Where there is a specific complaint, for example if it is alleged that an officer of ICAC has assaulted someone, clearly then you would let them know and then there would be a process of interviewing various people to determine where the truth lay on that allegation, but in general most of my complaints are from people who have made a complaint to ICAC, and ICAC has declined to deal with the matter for one reason or another, and then they are asking me to revisit the complaint.

CHAIR: During the conduct of an investigation, would you provide a complainant with information you provide to ICAC or provided to you by ICAC?

Mr COOPER: Yes, provided it is not part of the internal workings of ICAC. In general, yes, I do tell them what ICAC has decided, why it has decided it, but then in fairness to ICAC, they have already done that and I then look at it and see well, ICAC has made a decision, does that decision or the reasoning behind it indicate any misconduct, as defined in the Act, on the part of ICAC. That is what I am looking for.

Mr KERR: The majority of complaints have been that ICAC has not acted upon the complaint. What is the nature of other complaints that have been made to you? Have there been any others?

Mr COOPER: Well, without being specific.

Mr KERR: Just in general terms.

Mr COOPER: In general terms misconduct on the part of an individual officer.

Mr KERR: Any relating to unfair procedures or procedural fairness?

Mr COOPER: Yes, there was one that related to that or, rather, two and we went into it. As far as I was concerned there was no basis to it but, yes, there were complaints of that type.

CHAIR: So when ICAC does an investigation relating to an individual, does that individual get the format of the complaint against them at the beginning of the investigation, or some time through that investigation? Do they front up to ICAC without knowing what the issue is?

Mr COOPER: Well, there you are asking me about the procedures of ICAC and I would rather not go into details of that because, frankly, I do not know all of the details. I think that is really a question you would have to address to ICAC.

The Hon. CHARLIE LYNN: Where the views of an Inspector or a commission officer differ over a complaint report, by what means might these differences be given recognition?

Mr COOPER: Well, you mean if I disagree with something ICAC has done?

The Hon. CHARLIE LYNN: Yes, a difference between you and the commission?

Mr COOPER: Well, in that particular case I would certainly write and say, "Look, you have reasoned it out this way. I think, with respect, you are wrong." I would reason it that way. "Would you please have another look at it." Now, then that is assuming that I disagree with what they have done, but I am not prepared to find that it is misconduct, that they have indulged in any misconduct. If I find that they have indulged in misconduct, then of course I would put that to them and go further.

Mr KERR: Just in relation to the conduct of ICAC and procedures and I think, Inspector, you said that you are not familiar with their procedures of investigation, is that correct?

Mr COOPER: Well, I am not as familiar as they are and therefore what I say may not be entirely accurate and I really feel questions of their procedures should be addressed to them, rather than to me, except insofar as I have come across them.

The Hon. CHARLIE LYNN: Are there any complaints made to you in regard to what ICAC does not investigate, for example, if somebody lodges a complaint with them and ICAC comes back and says no, we do not think that is worthy of investigation?

Mr COOPER: That sort of thing probably comprises the majority of the complaints made to me.

The Hon. CHARLIE LYNN: And why is that, do you think, that they do not investigate?

Mr COOPER: Well, it probably is because people become unhappy with or, rather, people become preoccupied with the righteousness of their own cause, to the extent that they cannot see any merit in an opposing point of view, and so when someone makes a complaint to ICAC, and ICAC says we are not going to investigate this for some reason or another, they immediately assume that that is misconduct on the part of ICAC and then if I say look, there is no misconduct, back comes the answer, ICAC is corrupt, you are corrupt, I am going to complain to my Member of Parliament.

CHAIR: I hear what you are saying and I agree with you. All of those other people are wrong, except me and you, okay?

Mr COOPER: Yes, that is right.

The Hon. CHARLIE LYNN: Is there a difference between a weighting

given between the investigations in regard to an act of corruption or what you have termed endemic corruption?

Mr COOPER: No. If it is a act of corruption it will be stamped on, an act of corruption within ICAC, most certainly it will be stamped on.

The Hon. CHARLIE LYNN: Do you think ICAC has the resources to handle all of the complaints that they get?

Mr COOPER: I am sorry, but I think that is a question which should be addressed to ICAC, not to me.

Mr PEARCE: You note that there is a difference between the nature of the complaints received by the Inspector of the ICAC and the Inspector of the PIC. People dissatisfied with the ICAC's refusal to investigate their complaint generally complain to you, and police officers adversely named in reports generally contact the PIC Inspector. Do you think this could make for different practices and procedures in examining these complaints? For example, the police officers contacting the Inspector have already undergone a legal process, leading to substantial amounts of legal paperwork, while your complainants have generally only entered into correspondence with the ICAC?

Mr COOPER: Sure, that is one of the problems. Also police officers are usually far better able to collate evidence and collate material than Mr and Mrs Average.

Mr PEARCE: How would you see this being resolved?

Mr COOPER: Well, the way I try to resolve it is to get together with the complainant, sit down with them, have an interview, and then go through what I have got, go through the material they hand me, get hold of the ICAC files, go through what is in the ICAC files and then try to sort it out myself.

Mr PEARCE: As a comment, what sort of success rate do you have?

Mr COOPER: Well, as a comment I think I have a good success rate in sorting out what the basis of their complaint is. That does not mean that the complaint is necessarily justified. There have been a couple of cases where I have been frustrated, where I have had a torrent of letters complaining about the ICAC, all sorts of allegations made, and then I have said look, let's get together and work out what are the facts upon which you base your allegations and they say: I am not going to come to you, you are part of the corrupt system, and that is what worries me when I have that sort of answer. Fortunately it has only happened a couple of times, but it still concerns me.

The Hon LYNDA VOLTZ: If you were going to make a special report to Parliament regarding a complaint against the ICAC, do you think it would be important, or would it be necessary to allow the ICAC's response to the

complaint to be part of that report?

Mr COOPER: Definitely. That's part of procedural fairness, or at least to say in the course of the findings that ICAC has been invited to make submissions. It has made submissions A, B, C. I am satisfied that there is no merit to those submissions, words to that effect, but you have to do that. If I did not, I think ICAC could have the finding set aside by the Supreme Court.

Mr DRAPER: ICAC provided the Committee with a copy of the Memorandum of Understanding that was developed between themselves and the former ICAC Inspector. Do you think that MOU is useful in clarifying aspects of complaints handling between the two agencies?

Mr COOPER: Yes, it has worked very, very well.

Mr DRAPER: Are there further improvements that could be developed or is it where we need to be?

Mr COOPER: At the moment I have had excellent cooperation from ICAC. I will give you an example. Last week on Monday I faxed off a request for a file. It was sitting on my desk on Thursday. Now I regard that as pretty good, and this is the type of cooperation I have had from them. You can have all sorts of Memoranda of Understanding but you really have to have the will to cooperate and certainly that has been evidenced by the way in which they have conducted themselves.

Mr DRAPER: That is encouraging.

CHAIR: Would it be fair to say that the Commission and yourself get on quite well about any issues?

Mr COOPER: There have been no issues, no issues that we cannot work out.

Mr KERR: Your predecessor as Inspector, are you aware of any disagreements between him and ICAC?

Mr COOPER: I think there was one over the Breen report.

Mr KERR: Did you have any discussions with your predecessor?

Mr COOPER: I did not go into any details with him but I am aware that ICAC was somewhat hurt by the findings, even though they were glad that there were findings of no misconduct, but that is all.

Mr KERR: Are you familiar with his findings in relation to the Breen matter?

Mr COOPER: Yes, they are published.

Mr KERR: Did you have a view on them?

Mr COOPER: No, because I had not looked at the evidence. I had not heard the evidence, therefore I felt it would be quite improper for me to express any view of them.

Mr KERR: Did you form any view in relation to his criticisms, whether they were justified or not justified?

Mr COOPER: I did not indulge myself that luxury.

CHAIR: It might be best left to the ICAC Committee to ask those questions.

The Hon. CHARLIE LYNN: But it was well handled.

CHAIR: Very well handled.

Mr COOPER: Can I add two things which are shortcomings in my ability to investigate. The first one relates to recent amendments to the federal Telecommunications (Interception and Access) Act, which prohibits ICAC from giving to me information received as a result of telephone intercepts so that I can do an audit on them. I cannot do any audit on them because of that. I can only inspect the results of those intercepts if I am doing a targeted investigation of a particular complaint, and that is a matter that concerns me.

Mr PEARCE: Just on that, with your comment about the auditing, when you wish to do an audit on these, what exactly are you looking for, whether it has carried out an appropriate procedure, whether it has been reasonably so, or is it something else?

Mr COOPER: Not only the proper procedures, but also the way in which those procedures are conducted, that they do not result in any undue invasion of the rights of an individual and also that they are appropriate, that they are not motivated by some improper motive, and that is what concerns me, particularly with regard to telephone intercepts, where the person whose phone is being intercepted does not know about it so therefore is not in a position to make a complaint.

There is a similar position, not quite as bad, under the Surveillance Devices Act. There the ICAC is precluded from revealing to me any information obtained as a result of a surveillance device warrant, unless the ICAC Commissioner certifies that it is in the public interest to do so.

Mr PEARCE: Do you feel you need necessarily to get the actual information?

Mr COOPER: Not only I do, but the ICAC Act specifically says I have

the power to do so and ICAC must obey that.

Mr PEARCE: So the Federal Telecommunications Act effectively precludes you from acting in accordance with the powers that are granted under State legislation?

Mr COOPER: It does, and also the State Surveillance Devices Act does likewise, because it is an amendment. The State Surveillance Devices Act is a New South Wales legislation, but it is an amendment after the Act which gave me the powers.

Mr PEARCE: So it effectively negates that power.

Mr COOPER: I might say these particular views are subject to debate, but we have had independent people look at it and as far as I am concerned I think those opinions are probably right and I am certainly not going to throw away \$10,000 or \$20,000 on a challenge in the Supreme Court over it.

Mr PEARCE: Would you be able to supply to this Committee the nature of your view on that and where the problem lies?

CHAIR: We, as a Committee, can write to the ICAC Committee raising the issue but it will have to come back to the Federal legislation rather than the State. We have to amend ours.

Mr PEARCE: We have struck before inconsistencies between the two tiers of the legislation.

CHAIR: I would encourage you to write.

Mr PEARCE: There is a problem in trying to make sure everyone is going in the same direction.

Mr COOPER: I have made submissions to my Joint Parliamentary Committee.

CHAIR: Could we have a copy of those submissions please, Inspector?

Mr COOPER: Yes, I do not see why not.

CHAIR: The more the merrier.

Mr COOPER: We have written to several people pointing out the problems and I would be quite happy to add you to the list.

(The witness withdrew)

JOHN WILLIAM PRITCHARD, Commissioner of the Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney and

Michelle Margaret O'Brien, Solicitor to the Police Integrity Commission, Level 3, 111 Elizabeth Street, Sydney, affirmed and examined:

CHAIR: The Committee has received your answers to the questions on notice. Would you like to make an opening statement?

Mr PRITCHARD: No, Mr Chair, I am happy to use the time to answer questions from the Committee.

CHAIR: Michelle?

Ms O'BRIEN: No, thank you.

Mr PEARCE: You have stated that the recent complaints of a denial of procedural fairness dealt with by the Inspector, the first written notification of the complaints came when you received a draft report or draft document. Would it have been more efficient for the Commission to be notified earlier of the allegation of a denial of procedural fairness?

Mr PRITCHARD: I should just qualify that premise by saying as we indicated in the answers, the Inspector, in the two matters in particular, indicated during our weekly meetings that he had received a complaint from persons and thereby orally advised of the nature of the complaint, but not in any great detail, so the first written notification in relation to the Brazel and Young complaints in particular was in the form of a rather lengthy draft document, but we certainly suggested, I think in relation to the Young matter in particular, that there might be a step involved whereby the nature of the complaint is given to us to respond to on that basis first and there is a phase of, I suppose, collecting a response from the Commission to the actual allegations before any sort of draft report is moved to, if that is what you mean in relation to your question.

The written notification, the first written notification we received of the complaint was in the form of what was referred to as a draft report or a draft document for comment and the process would move on from there.

Mr PEARCE: At the time you raised this with the Inspector, what was his response to that?

Mr PRITCHARD: We raised it directly in relation to the Young complaint at some stage during the course of the correspondence and I do not really think we got a response. We raised it again, I think, during the Brazel one and suggested that perhaps it might be something we could discuss as a matter of procedure once the issues were finished, but other than that, it really has not been canvassed any further.

I think, as we indicated in the response to the answers to question on notice, there has been a slight variation with the current complaint in relation to the Rani report, where there was a slight change in the process whereby the first initial document indicated that the purpose was to, I suppose, elicit from the parties or settle a factual background in relation to certain issues before proceeding to prepare a report that might contain something in the way of preliminary views or thoughts about the complaint itself.

Mr PEARCE: With the procedures for establishing the factual background, is there an agreed procedure between yourself and the Inspector? A lot of the correspondence we got seemed to be to some extent questioning the basic facts that everyone was operating under.

Mr PRITCHARD: No, there is not. That process, I should also point out, is probably peculiar to those complaints that the Inspector has received alleging a denial of procedural fairness. Your ordinary common garden variety complaint, if I can call it that, does not take that course. For example, picking up what the ICAC Inspector said, if there are complaints from persons complaining that their complaint has not been investigated, then normally it is usually just a letter from the Inspector with the complaint document from the complainant, seeking a response and that tends to be about the only inquiry that is made of us before we receive something from the Inspector saying that he has resolved it.

Mr PEARCE: Given the nature of the issues you have been confronting on this, do you think there is a necessity to get an agreed set of procedures between yourself and the Inspector, because this appears to be an issue which the Inspector is clearly very concerned about, otherwise it would not have got to the point it has got to.

Mr PRITCHARD: There are certainly some views that the Inspector holds about the rules of procedural fairness as they apply to Commissions of Inquiry, such as the Commission, with which we do not, I suppose, agree but as was indicated in the responses, the occasion for that or scope for that disagreement is abating. We have taken on board some of the views that the Inspector has, and changed and amended procedures and approaches to take some of those matters into account if only to try to forestall similar complaints.

Whether it is necessary to settle on some sort of agreed procedure to deal specifically with complaints of that kind, I would hope that as the occasion for them is diminishing, that that might also have in turn an effect on the need to put procedures in place to specifically deal with complaints of those kind. As we have indicated in the answers, there have not been any further complaints referred to the Commission since the existing ones, which now go back to reports that are coming up to two years old, so I think we have both adjusted, if I can say that, in ways that take account the different views that may be held about this area in such a way that our responses reflect that, if you like.

CHAIR: I think that the meeting that Mr Pritchard and Mr Moss had, where I attended, I think the outcome was that there will always be some differences in some respects, but they are liveable differences. I think that was the terminology.

Mr PRITCHARD: Yes, I think that is probably right. There may well always be scope for disagreement between us, particularly in relation to issues such as procedural fairness. It is a legal concept to a large extent and lawyers are wont to disagree on things like this. They are matters upon which reasonable minds can differ and to that extent, particularly in light of the legislation for the PIC, which talks about it being permitted to express opinions, that by itself suggests that others may hold opinions different to those of the Commission, but ultimately under the Act it is to the Commission that permission is given to express opinions of misconduct.

Others may have a different view on the evidence, or have a different view as to a procedure which was taken, which may be perfectly consistent or there may be room within which two competing opinions can be held, such that one thereby is not excluded. As Mr Chair said, there has to be recognition that there may still be that scope for different opinions to be held on the same set of facts about something. I do not know whether there is a solution to that, that means that that can always be resolved.

Mr KERR: I take it that you have read the Inspector's annual report to Parliament, have you?

Mr PRITCHARD: Yes.

Mr KERR: Did that give rise to any concerns, or were you happy with that report.

Mr PRITCHARD: I cannot remember it word for word now. There were some issues about it that the Inspector consulted us on before he published the report, particularly a section of the report entitled The Use of Suppression Orders by the Commission, which the Inspector gave us a draft of to comment on, and we made some response to what we thought about the draft. The ultimate section of the report did not vary a great deal, although it did take into account some of the matters we raised. I have read it. I do not remember every piece of detail in it. Whether I disagree or agree with it to a large extent is probably by the way.

Mr KERR: I take it if you disagreed violently you would remember.

Mr PRITCHARD: Yes, I might, yes. Certainly I did not disagree to the point where I felt that there was a need to do something. The Inspector does his annual report and we do ours, but I certainly do not remember anything and I certainly did not read anything that suggested to me that there might be any point in agitating for anything further.

CHAIR: Your response states that no complaints have been referred

to the Commission by the Inspector in relation to the most recent public hearings or related investigations since those to do with operations Rani and Mallard. Why do you think this is the case?

Mr PRITCHARD: Certainly in relation to aspects of report writing, since those complaints we have changed some procedures about preparing reports to reflect some of the views of the Inspector. Whether that has helped or not I do not know. Those matters, in particular, I suppose are contentious. The Rani matter was a contentious matter in relation to some of the issues that were canvassed during it. The Mallard one to a large extent was, I suppose, a side issue, if I could put it that way, without meaning to downplay it. Ms Brazel was not a major focus of investigation in the Mallard matter in relation to the major officer in that matter.

The issue that generated the complaint, I suppose, was a pretty narrow one in the scheme of things. It is difficult to say, to a large extent, Mr Chair. I could not really answer that with any degree of certainty or exactitude.

Ms O'BRIEN: Perhaps I might assist the Committee by saying in my assessment the compass of factual issues that the Commission had to address in the most recent two public hearings was much narrower than that which the Commission had to address in the Rani and the Mallard matters. There were more witnesses in those matters. There were a lot more areas that gave rise to difficult arguments and difficult questions of where the balance should lie, whereas in the most recent two investigations that the Commission has done it has recommended prosecution against a number of people and the evidence is a lot more clear-cut and it would be reasonable to expect that the factual circumstances in those last two matters would be less likely to give rise to arguments about the way witnesses were treated before the Commission, so probably some insight can be gained from that, I think.

CHAIR: Do you think that the process of investigating complaints has lead to improvements in practices and procedures?

Mr PRITCHARD: The process of investigating complaints by the Inspector?

CHAIR: And the Commission.

Mr PRITCHARD: I wouldn't quibble over the use of the word "improvements". Changes, yes. Whether they have been necessary is probably a point of contention, but they are the sorts of changes that, as I said, if they serve to forestall complaints then I am all for them. If they do not compromise our ability to do our job, then it would be silly to stick our heads in the sand and ignore some views that the Inspector has, simply out of some sort of pique, or pride, or what have you. Some minor changes have been made, reflecting that the Inspector has some views and to the extent, as I said, they have not compromised or they do not unduly put us to any sort of onerous requirement, or compromise our ability to do what effectively is our core function.

Mr DRAPER: You have mentioned operation Rani a couple of times. In your first reference to it you mentioned that there was a variation as to normal procedure, a variation when the initial complaint document was provided to the Commission. Was that a useful variance?

Mr PRITCHARD: It is difficult to say at this stage because it has not concluded. I do not think it has made much difference. It just simply meant that we still have not been provided with the actual primary source complaint material which may assist in disclosing what is the real gravamen of the complaint to the Commission but, look, I do not think it has made any substantial appreciable difference. There is still a process we are going through of providing information in response to certain requests with a view to, as the Inspector said in his third document, seeking to establish the factual situation.

The Hon. CHARLIE LYNN: Commissioner, have you read *Enemies of the State* by Tim Priest?

Mr PRITCHARD: No.

The Hon. CHARLIE LYNN: You have not read it?

Mr PRITCHARD: I am aware of it, but I have not read it.

The Hon. CHARLIE LYNN: Have any issues been raised to you about it?

Mr PRITCHARD: An issue has been raised about a suggestion of two breaches of suppression orders from the Royal Commission, but I should say self-initiated on that front, but other than that, no. I have read some reviews of the book but I have not read it myself.

Mr KERR: Can I just clarify that, Commissioner? There were some issues or concerns raised with you about the suppression orders from the Royal Commission that were self-initiated. I did not quite follow the sequence.

Mr PRITCHARD: One of my officers brought to my attention that there appears to be two instances of breaches of suppression orders which are still in place in relation to persons who gave evidence before the Royal Commission, who are named in the book, who are still subject to having their names and identities suppressed.

The Hon. CHARLIE LYNN: Has that been investigated?

Mr PRITCHARD: Well, to the extent that on the face of it there might be something to it. It has only recently been brought to my attention and it is one of those issues where I am, together with Ms O'Brien, assessing whether it is something that calls for action. Some of these things are best left alone,

if I could put it that way.

Mr LYNCH: Can I ask if Ms O'Brien has read the book?

Ms O'BRIEN: No, I have not.

CHAIR: If we have any further questions can we give them to you on notice?

Mr PRITCHARD: Yes, definitely.

(The witnesses withdrew)

(Short adjournment)

LEONARD WILLIAM ROBERTS-SMITH, Commissioner, Corruption and Crime Commission of Western Australia, 186 St Georges Terrace, Perth, sworn and examined via video conferencing:

CHAIR: Would you like to make an opening statement?

Mr ROBERTS-SMITH: Mr Chair, perhaps it is important that I make the point at the outset that I do not appear before the Committee for the purpose of making a submission, but rather because I was asked by the Committee to do so, to answer questions of the Committee. I am happy to do that.

The second point I should make is that an issue which bears in some way at least on the terms of reference of this Committee is the statutory relationship between the Parliamentary Inspector of the Corruption and Crime Commission of Western Australia and the Corruption and Crime Commission itself and the proper scope and exercise of the powers and jurisdiction of the WA Parliamentary Inspector over the Commission.

Various events in 2008 raised those issues in a number of ways, as a result of which our own Parliamentary Committee, the Joint Standing Committee on the Corruption and Crime Commission, conducted some private hearings with the Parliamentary Inspector, me and other persons and an approach was adopted to deal with the statutory and jurisdictional issues which had been raised.

In those circumstances and given that those matters are the subject of continuing consideration by the West Australian Joint Standing Committee it would not be appropriate for me to say anything here about those particular matters or issues and I do not propose to do so. Subject to that, Mr Chair, I am pleased to answer the Committee's questions.

CHAIR: Mr Roberts-Smith, could you please outline to the Committee the process and procedures undertaken by your organisation on being notified by the Parliamentary Inspector of a complaint against the CCC?

Mr ROBERTS-SMITH: Perhaps there are two points that ought to be made about that to begin with. The first is that, unlike section 89(2) of the Police Integrity Commission Act 1996, section 195(2)(c) which is, I think, comparable to the provision in the Corruption and Crime Commission Act, does not use the word "complaint". The Corruption and Crime Commission Act, instead of saying that the functions of the Inspector may be exercised in response to a complaint made to the Inspector as the PIC Act does, the Corruption and Crime Commission Act says the functions of the Parliamentary Inspector may be performed "in response to a matter reported to the Parliamentary Inspector".

The Corruption and Crime Commission Act was the latter act, being enacted in 2003, and Parliamentary Council obviously drew from the provisions of the

PIC Act as well as equivalent legislation in other Australian jurisdictions. That would suggest, I think, that the different form or words in section 195(2)(c) of the CCC Act was deliberate.

The second point flows from the first point and the statutory context. What the Corruption and Crime Commission Act contemplates is that the report of a matter to the Parliamentary Inspector may occasionally exercise by the Parliamentary Inspector of his functions under subsection (1) of section 195 of the CCC Act. That is in, again, relatively similar terms to the provisions of the PIC Act and I will not go through those now. I am sure the Committee has reference to that material but what it means, I would suggest, is that the Parliamentary Inspector in that way is exercising his statutory oversight role, not a complaint resolution role, so when I speak of a complaint in response to the Committee's question, I do so in the context as I have explained it, and I use the word complaint in its ordinary sense.

The question that I have been asked, Mr Chair, is one about the process and procedures the Commission undertakes on being notified by the Parliamentary Inspector of a complaint against it. To some extent that depends upon the nature of the complaint and the approach the Parliamentary Inspector takes to it. There are three categories of complaint we could talk about here which bear upon the processes and procedures which would be applied in response to them.

The first category, I would suggest, is a complaint alleging misconduct by the Corruption and Crime Commission or one or more of its officers. The second would be a complaint concerning the way in which the Commission itself has dealt with an allegation of misconduct by a public officer and that may be because, for example, the complainant is aggrieved with a decision to call them for examination in a public hearing, or because the Corruption and Crime Commission said there was no substance to, or it would not take action on their own allegation, being an allegation of misconduct against a public officer or, for example, a claim that the Commission failed to comply with procedural fairness in some way. In other words, general complaints of virtually any kind.

Certainly one of the most common complaints in this category is a decision by the Corruption and Crime Commission not to investigate an allegation or to take no further action in respect of it.

The third category of complaints really, I think, would be about Corruption and Crime Commission reports, Parliamentary reports, becoming public because they are tabled in the Parliament and most of those complaints would be specifically about opinions of misconduct in relation to particular individuals and those individuals would say that those opinions ought not to have been expressed or reached.

Against that background we come to the nature of the Parliamentary Inspector's inquiry into complaints. That inquiry may be first by an exchange of correspondence and an examination of records of the Commission, or

talking to officers of the Commission, obtaining information in any of those ways, and they are an exercise of the Parliamentary Inspector's powers under section 196(3)(a) and (b), which talk about the Parliamentary Inspector investigating any aspect of the Commission's operations or any conduct of officers and being entitled to full access to the records of the Commission.

In those circumstances obviously where the Parliamentary Inspector raises with me a matter which can be dealt with by exchange of correspondence and an exchange of information, then that would be the way it is dealt with.

The next way in which the Parliamentary Inspector may seek to deal with a complaint is by the conduct of a more formal inquiry, for example, calling Corruption and Crime Commission officers and requiring production of documents and so forth, broadly being the exercise of his powers under section 196(3)(b), (c) and (d) of our Act.

Finally, there is the option of a full formal inquiry with the Parliamentary Inspector exercising the powers of a Royal Commission and that is provided for in section 197 and that is probably most likely to occur where there is a need to examine persons who are not Corruption and Crime Commission officers, or to obtain evidence from other bodies, or where the allegation is particularly serious, an allegation of serious misconduct or corruption, for example.

I think it is probably self-evident what the processes and procedures of the Commission would be in responding to the way in which complaints are being investigated, or dealt with might be a better word, by the Parliamentary Inspector. The processes would also be conditioned to some extent or dependent upon the potential outcome of the Parliamentary Inspector's action and the possible outcomes which may result from the Parliamentary Inspector's action here, maybe making recommendations to the Commission, that is section 195(1)(d) of our Act. It may be that he might wish to make a report to the Parliament or the Joint Standing Committee. That report may be tabled in the Parliament in which case it would become a public document, or it may be tabled to the Joint Standing Committee in private session, in which case it would not be public. That process is dealt with in section 199 of our Act.

Where the Parliamentary Inspector proposes to table a report, he is required under section 200 of the Corruption and Crime Commission Act to give the Commission or any relevant officer a notice of any adverse matter and a reasonable opportunity to respond to it. Obviously therefore one anticipates that after an exchange of correspondence, formal or otherwise, and to conduct of such inquiry, of whatever formality the Parliamentary Inspector may wish to make, if he considers that the situation calls for a report to the Parliament or the Joint Standing Committee in which he proposes to make or contemplates making some comment adverse to the Commission or one of its officers, then he would provide a draft copy of that report to the Commission, or the officer, or both, to enable them to respond to it before he finalises the report.

I should say just in passing that that reflects the process and procedure which the Commission itself is required to follow when preparing a report for tabling in the Parliament in connection with the conduct of public officers.

There are some constraints on the information which the Parliamentary Inspector may include in a Parliamentary report and those are set out in section 205 of our Act.

I think, again as I said, it is probably self-evident then the processes the Commission would follow. We would respond in whatever way was appropriate, depending upon the nature of the inquiry and the way it was being made by the Parliamentary Inspector.

I can make the general observation, that generally the process of responding to the Parliamentary Inspector can be time consuming and involve significant Commission effort and resources. The present Parliamentary Inspector has asked that where his requests are likely to involve significant effort or resources by the Corruption and Crime Commission, I advise him what that would be. It is a matter for him whether, in light of that, he considers the seriousness or importance of his request is such that the Corruption and Crime Commission should comply with his request notwithstanding and that seems to me a reasonable and appropriate approach.

I think probably, Mr Chair, that covers the process of responding, at least I trust it does.

CHAIR: Thank you, Commissioner, for your very detailed response. I will throw it open to the Committee for questions.

The Hon. CHARLIE LYNN: Commissioner, as a general rule, does the Parliamentary Inspector provide the Corruption and Crime Commission with a copy of the original complaint document and can you think of any circumstance where this might be inappropriate?

Mr ROBERTS-SMITH: That practice has varied in the past. Usually, I think it is probably fair to say, what the Commission has received in the past has been a letter from the Parliamentary Inspector which summarises the nature of the complaint. I suppose in some circumstances that it may well be because the letter of complaint contains a number of matters, only some of which perhaps the Parliamentary Inspector considers it necessary or appropriate to pursue with the Commission.

In other instances the Parliamentary Inspector has provided a copy of the correspondence, or the letter from the complainant to him, and sought the Commission's response to that. Whether there are circumstances in which it ought not to be provided, I cannot particularly think of them off-hand, but I guess that is a matter which would depend upon the content of the document and the view that the Parliamentary Inspector takes of it.

Mr PEARCE: Mr Commissioner, following up on what you have just said there in response to Mr Lynn, in the circumstances where a letter goes to the Inspector, which may contain matters which are potentially defamatory of individuals, is that privileged?

Mr ROBERTS-SMITH: Yes.

Mr PEARCE: You have said in your earlier answer and earlier comment that the practice is to provide a copy of a report the Inspector is going to make to Parliament if there is likely to be any adverse comment on any individual or persons to that, so that comment can be sought back from the individual or the Commission. Is there any obligation for the Inspector to note the response made by any individual in the report to Parliament?

Mr ROBERTS-SMITH: Before I get to the latter point, can I perhaps just make one qualification to the first part of the question, the first question as to whether a complaint to the Parliamentary Inspector is privileged, there are provisions in our Act which deal with the making of vexatious or malicious complaints, so my answer needs to be taken subject to that. It is an offence under the Act for a person to knowingly make a false or malicious complaint either to the Commission or the Parliamentary Inspector, in which case obviously that would not be protected by any form of privilege.

In relation to the second part of the question, there is no specific legal requirement, in the sense of anything in the Act or otherwise, which requires the Parliamentary Inspector to include responses but certainly the present Parliamentary Inspector, who I observe is now here this afternoon as well and can no doubt speak for himself on these matters, has taken the view, as I understand it, that if there is anything potentially adverse in a report which he may seek to table in the Parliament he would, having obtained the response of the Commission to it, reflect the Commission's response in his report and address those issues which may have been raised by the Commission.

Mr DRAPER: In your opinion is there any way that the existing process could be improved?

Mr ROBERTS-SMITH: As I have indicated, the existing process has a feature, I think, that the prescription of it is only in its fundamentals. In other words, the requirements in the Act, reflected in section 86 in the case of the Commission and section 200 in the case of the Parliamentary Inspector, those provisions which relate to giving somebody potentially adversely affected notice of those adverse matters and a reasonable opportunity to respond.

In terms of the wider questions which the Committee has asked this afternoon, in terms of the processes around how the Parliamentary Inspector would deal with a complaint, it seems to me it is best not to have those embodied in legislation but to leave them to be worked out in a flexible manner as between the Parliamentary Inspector and the Commission,

dependent upon the nature of the complaint or the nature of the issues, the seriousness of them and all those other matters I mentioned.

In terms of whether the process could be improved, I think there are probably only two aspects that I would mention there. The first is that it would be helpful, I think, for the legislation to provide for the capacity of the Parliamentary Inspector, the Commissioner, or both, to refer a question of law to the Supreme Court for determination where an issue arises between them in a particular instance about the proper construction of the Corruption and Crime Commission Act. That, I think, would be helpful given that obviously by virtue of their statutory functions, each of the Commissioner and the Parliamentary Inspector are exercising administrative not judicial authority and any view they express about anything really can only be an opinion, not a binding judicial determination, so that if there were to be a conflict between them as to the proper construction, for example of the Corruption and Crime Commission Act, if they were not able to reach an agreement or an accommodation on that, then the position would be that there would simply be two opinions about what that meant and it seems to me it would be helpful to have a way of resolving that situation were it to arise.

The second suggestion I would make is that I think there is a perception sometimes that the Parliamentary Inspector can overturn decisions or opinions of the Corruption and Crime Commission. That certainly is not the view of the current Parliamentary Inspector but nonetheless I think there is often a perception out there in the wider community that that can be done.

For myself I think it would be desirable if the legislation were to expressly state that the Parliamentary Inspector is not an appeal body and nor does he review Commission decisions or opinions and nor does he have a complaints resolution function, and I adverted to that at the outset.

I suggest that in both the Police Integrity Commission Act and the Corruption and Crime Commission Act the role of the Inspector is an oversight role, to ensure the Commission does not abuse or act outside its powers and that its procedures are appropriate and effective, in short, that the Parliamentary Inspector's role has to do with the process not outcomes.

(The witness withdrew)

CHRISTOPHER DAVID STEYTLER, Parliamentary Inspector of the Corruption and Crime Commission of Western Australia, Locked Bag 123, Perth Business Centre, affirmed and examined via video conferencing:

CHAIR: Inspector, the Committee has received your answers to the questions on notice. Would you like to make an opening statement?

Mr STEYTLER: No, there is nothing that I would wish to add to what I have already put in writing, thank you.

CHAIR: Would you provide the CCC with a copy of the original complaint on commencing a complaint investigation, Inspector, and could you think of any circumstances where this might be inappropriate?

Mr STEYTLER: Well, ordinarily I would provide the Commission with a copy of a written complaint. I would not do so necessarily if the complaint was a very lengthy one and I thought that only one aspect of it was worthy of consideration, nor would I necessarily do so if I was asked to maintain confidentiality of particular background evidence which was considered not to be directly relevant to the complaint, but in other circumstances I can see no reason for not making known the whole of the complaint to the Commission.

CHAIR: Inspector, during the conduct of an investigation would you provide the complainant with information provided to you by the CCC?

Mr STEYTLER: I do not provide the complainant with copies of the correspondence sent to me by the CCC because the Commissioner has expressed to me the opinion that he would prefer that I do not do that as it might inhibit frankness between us in our exchanges and I readily accept that, so what I ordinarily do, where I can, without crossing the border of that arrangement, quote a particular extract or extracts from the letter to me. I might do that but more often than not I would simply summarise the gist of the Commission's response to the complaint.

Mr DRAPER: Would you agree, as a general principle, that in providing the complainant with information from the CCC about their complaint, that the complainant should not be given access to information that would otherwise not be available to them?

Mr STEYTLER: I certainly agree with that and I would not, as a matter of ordinary prudence, give information to a complainant that the complainant did not need in order to further the complaint, or to understand the response to it. In those very rare instances where it may be necessary to make known confidential information to a complainant, simply in order to explain the position that I have taken up, I would do that as broadly as I could and I would inform the complainant of the secrecy requirements under the Act.

The Hon. CHARLIE LYNN: Where your views as Parliamentary

Inspector and the CCC differ over a complaint report, what means do you use to satisfy these differences, or come to terms with them?

Mr STEYTLER: Well, as matters stand, the Commissioner and I have regular discussions with each other and there has not in my time as Inspector been a situation in which we have not been able to reach agreement on any particular matter where we may initially have disagreed, or even potentially disagreed, so my first step in any such instance would be to make known the respects in which I disagree with the Commissioner. His response would almost invariably be to invite me to have a discussion with him concerning any matter of difference and until now we have almost always, in fact I think I could say always, been able to agree on the relevant issue, if not necessarily always on the more peripheral issues.

CHAIR: Just for your information you may see some photos being taken. This is the first time we have used video conferencing in this Parliament, so if you see any photos being taken, that is what it is about.

Mr PEARCE: In your letter to us, on page two, the heading: Section 2, "From the CCC itself", you state there at page three that:

Under s196(7) of the Act, if the CCC has made a determination about the matter prior to my removal of it, I have authority to...

and then you state that you have three different options. From that, what is the status of the actual original determination that the CCC made, should you choose to act in any of those given manners?

Mr STEYTLER: Well, I am sure that the Committee appreciates this, but this relates only to the situation where the Commission notifies me under section 197(4) of an allegation concerning an officer and under subsection (7) of section 197 I have the power either to annul the Commissioner's determination and substitute another, or make any decision that the Parliamentary Inspector might have made had I exercised an original jurisdiction, or make any ancillary order with a final provision that is remedial or compensatory, so in a situation where I disagreed with the Commission's decision I would annul the decision in most instances.

In fact that situation has never arisen and the reason it has not arisen is because the Commissioner currently takes the view when there is an allegation concerning a particular officer he almost always refers it to me immediately and sometimes, depending on the nature of the allegation, asks me to take over the investigation. Alternatively, if I think it is appropriate that I do so, I tend to take it over before any final outcome is arrived at. There may be many circumstances, I would imagine, where the complaint is very minor and it is best dealt with by the Commissioner himself.

Mr PEARCE: The New South Wales Independent Commission Against Corruption has a Memorandum of Understanding between itself and the Inspector of the ICAC. The Memorandum of Understanding outlines points of contact between the two offices as well as the ICAC's process for notifying the Inspector of complaints against its officers. Do you think such

an agreement is a useful thing?

Mr STEYTLER: I doubt that it is necessary under our legislation. The position is spelt out at some length and it operates perfectly well as things stand. It might be a preferable option though, than framing the whole issue in legislation, because it would give the parties a greater degree of flexibility.

CHAIR: Are there any other matters you would like to draw the Committee's attention to?

Mr STEYTLER: Only the point that I have made in my letter, which is that it seems to me to be very important to leave the whole process as flexible as possible to cater for the wide range of circumstances that can eventuate.

While I was waiting to give my evidence I was able to listen to the last few minutes of the Commissioner's evidence and I heard him suggest that it would be a useful option to have the Commissioner and the Inspector jointly to frame questions for resolution by the court when there are differences of interpretation. I agree with what he said in that respect.

(The witness withdrew)

The Committee adjourned at 4.37 p.m.