



**CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

**Opening Remarks To a Hearing of the Joint Standing
Committee on the Corruption and Crime Commission**

Wednesday 19 October 2005

By Commissioner Kevin Hammond

Chairman and Members, it is my pleasure to appear before the Committee this morning and I seek leave to make a short opening statement by way of introduction.

I formally introduce to the Committee the following persons who have accompanied me this morning. Firstly, the Executive Director of the Commission Mr Mike Silverstone; as well as Mr Nick Anticich, the Director of Operations, formerly General Manager of Western Operations for the Australian Federal Police; Dr Irene Froyland, formerly of Edith Cowan University who is the Director of Corruption Prevention, Education and Research; and Mr Michael Cashman, Director of Legal Services for the Commission; and finally Mr Alan Abraham (formerly of the Department of Treasury and Finance) who is deputising for Ms Vanessa Grant, Director of Business Services, who is currently overseas on leave.

When I spoke to this Committee on 6 July 2004, I said that it was “appropriate to look forward to the next nine months ending in April of next year as being a period of consolidation. It is to be hoped that earlier in this next period we will see recruitment completed and we will then be able to develop strategic and business plans which are of course necessary in an organisation such as the Commission, whereby effectiveness and cohesion are important. It will be necessary to see to the implementation of document and complaint reception and to tighten up processes and procedures.”

And indeed the year just past has been a very busy year for the Commission. We have been called upon to finalise investigations received from the Kennedy Royal Commission and various matters inherited from our predecessor the Anti Corruption Commission, and of course, as I said last year, there is work coming in the door all the time. We have received and assessed, in this past year under review, some 2,410 allegations

and notifications of misconduct and reviewed 1,212 'other agency' misconduct investigations.

One direct consequence of these assessment and reviews is that we have charged seven people with 43 criminal offences. Of course the Commission's efforts and energies are not solely focused on prosecutions or disciplinary action but also upon its review functions. The Corruption Prevention, Education and Research function ensures a much broader focus which looks toward implementation of systemic change across the public sector with the ultimate aim of reducing the incidence of misconduct in this regard.

Dr Froyland and her team have delivered some 34 seminars to a variety of government agencies across the State with in excess of 1,300 attendees. It has also developed and delivered specific presentations for ministerial staffers, following an investigation into allegations of misconduct by a senior ministerial officer.

I respectfully commend for detailed reading Chapter 2 of the report which summarises the year in brief. One matter I could advert to is the increase in staff with long term contracts from 16 to 130 which increase took place in the year last past.

Members will recall that the Committee established by the Department of Premier and Cabinet that was in operation prior to even my arrival upon the scene in January 2004 had established a proposed framework and structure for the Commission with a ceiling of 153 people and it is pleasing to see that we are well within that limit.

I would also make one other comment concerning the recruitment of staff.

My personal involvement in this area was limited to the appointment and selection of the Directors of the Commission, but thereafter the Commission has followed, in my view meticulously and, as I have said before, excruciatingly, the Public Sector Management rules as to the employment of staff and staff selection.

Panels have almost invariably included people from outside the Commission, or people from other public sector organisations and the processes involved in selection of staff have in my respectful view being totally transparent and open to audit. On all occasions of panel selection there is gender balance and in the vast majority of cases an external human resource consultant is engaged to ensure required procedures are followed and to write the selection report.

In the year last past much has been done to lay foundations for the future. We have relocated to the new premises at 186 St Georges Terrace, Perth. We have spent considerable time developing and implementing a Strategic Plan and acquired and installed a range of computer systems and applications for it. I am very grateful indeed to those members of our IT branch and Business Services that have really had to work very hard in a very taxing year.

As noted in this Committee and in other forums, the Commission has very considerable powers to use or available to it in the performance of its purposes under the Act and during the reporting period the Commission approved 436 applications for use of various statutory powers. These powers have included the conduct of a number of examinations of witnesses by way of private and public hearings.

The public hearings themselves have the added benefit of allowing the broader community and the public sector to see and examine the work of the Commission.

I am always very mindful of the limitations which are placed upon the Commissioner by Section 140 of the Act when I consider whether or not a public hearing is in the public interest. As a black letter lawyer I go back to Section 140 and very carefully weigh my responsibilities in this connection as I see the decision to 'go public' as it were is one that I must make and live with.

I have also noted in the report and it is appropriate to mention it at this stage that while the CCC Act contains no major flaws I have experienced concern and I now express concern with respect to two particular areas of the legislation.

The Act's definition of 'misconduct' and 'public officer' are extremely convoluted definitions which in some ways restrict the capacity of the Commission to deal with misconduct matters and in this year's Report you will see identified the Commission's particular concern with those definitions.

The second area of concern is associated with the Commission's organised crime function. Members will remember that the Commission's involvement has been described as that of a gate keeper whereby the Commission receives and considers applications by the Commissioner of Police for the ability to utilise the extraordinary powers which are possessed by the Commission but not by the Commissioner of Police.

There has only been one application in the reporting period and that suggests to me that the statutory approach laid down in the Act is not as effective in comparison to Queensland and New South Wales jurisdictions where the legislation permits the bodies equivalent to this Commission to work in joint task force arrangements with respective state police forces. There was no application to the Commission for any fortification notices during the reporting period.

Organisational Changes

The Commission's Act describes what we do and prescribes how we are to do it. Prior to its establishment the organisational structure and resources of the Commission were designed in draft by a Committee established, as I mentioned earlier, by the Department of Premier and Cabinet.

Further, the organisation was designed and recruitment started against positions within that organisational structure prior to the arrival of the majority of the Commission executive.

As the Commission has settled to its work it has reviewed its Act, policy, processes, procedures and structure, and as a consequence has made adjustments. For example, the Commission early in the reporting period shifted the Security function out of Operations into the Business Services Directorate. Second, with regards to its legal advice, the Commission took the decision to employ Ms Patti Chong as General Counsel from the end of October 2004 for a 12-month period. We have recently renegotiated that secondment with the DPP and Ms Chong will remain with the Commission for a further 12 months on what could be described as a sensible shared engagement with the Director of Public Prosecutions.

A major decision by the Commission has been to disband the Special Operations Directorate. This Directorate was originally formed to comprise the Special Services Unit and the Electronic Collection Unit. Following a review of that function, the Commission decided to place the Special Services Unit, renamed the Operations Support Unit within the Operations Directorate.

Additionally, the Electronic Collection Unit will transfer to the Business Services Directorate next month.

Within the Operations Directorate the Commission also established an intelligence function, not provided for in the initial structure of the organisation. In addition to that and since the end of this last reporting period in June 2005, the Operations Directorate has also taken steps to increase the number of investigators available to it from 13 to 20.

All of these changes, particularly with regard to the Operations Directorate, are focussed on delivering more resources in order to improve the effectiveness of the Commission's performance of its misconduct function.

Finally, with regard to Corruption Prevention, Education and Research, the Commission has recently taken the decision to restructure this important area and to expand its staff from 8 to 13 positions.

It's clear, that the Commission has continued to evolve and has undertaken considerable organisational change in terms of its structure. It has done this in order to deliver the outcomes required by the Parliament as expressed in its Act in the most effective and efficient way possible.

As a result, the Commission has shifted resources in order to focus on the two Directorates most directly concerned with the Commission's misconduct and prevention and education functions. These Changes have occurred within its personnel ceiling of 153.

Although not in the reporting period, I refer to the issue of the resignation of Ms Rayner, the former Acting Commissioner.

This was a distressing incident that in the upshot has taken a lot of time and effort by the officers of the Commission, who were required to attend upon and assist firstly the Parliamentary Inspector and then the Police officers investigating at the direction of the DPP. At the end of the day however I firmly believe the Commission acted with speed and total propriety in dealing with this issue. The Commission was prohibited by its Act from investigating this matter.

Its obligation was to report its concerns to the Parliamentary Inspector and then to provide the information and assistance required by the Inspector, the Director of Public Prosecutions and the Western Australia Police.

The simple fact of the matter is this. The Commission found a problem, dealt with the problem and dealt with it promptly and entirely in accordance with the law. Its processes were open and its actions will, as ever, be accountable to the people of Western Australia through the reporting mechanism to the Inspector, the Parliamentary Committee and the Parliament.

The eventual judgment on Ms Rayner's actions will be for others to make. I know I speak for all at the Commission when I say that we intend to move on to continue the task that Parliament has given us.

Morale within the Commission is at a high level notwithstanding the events of the past two months and as I have said work is coming through the door on a daily basis. It is my hope and expectation that the Rayner affair will not in the long run harm the Commission because the Commission acted, without fear or favour to protect its integrity.

The question has and could well be asked as to whether or not the Commission is noticing any trends in misconduct, notifications or occurrences.

The high profile provided by the media to the Commission hearings and investigations has raised the awareness of the public sector and the public of the Commission and its activities. This combined with the Commission's education programs have had a positive result.

It appears that there has been an increase in both the number and significance of misconduct matters reported to the Commission. This is particularly apparent from the areas of local government and increasingly from education.

There is no doubt that the message that there is a duty on notifying authorities to report incidents of suspected misconduct is being more widely accepted throughout the public sector community in many areas although it is possible to conclude that there remain areas of considerable under-reporting.

The Commission's present perception is that many government agencies are generally not well equipped to detect and manage misconduct and its consequences and that many of the Commission's more serious cases have developed in fact as a consequence of accidental discovery or a third party report or as a result of a pro-active investigations based on intelligence.

I am happy to say that there are some early indicators of very positive changes in this respect because we are now noting that public sector agencies are frequently seeking advice and or assistance from the Commission on matters that they are suspicious of or unsure as to whether its constitutes misconduct, and the Commission is only too happy to assist in what I would call these 'over the counter' inquiries.

Additionally, the Commission is contemplating the development of tailored notification guidelines which are specifically directed towards particular areas of the public sector. We propose to speak regularly to the public sector, possibly by way of a newsletter.

There are constant checks upon the number of matters in assessment and review and the business of the Commission overall has become more pro-active.

The Commission has also contributed and provided major and detailed submissions to both the Mahoney Inquiry and the current Department of Education and Training review of its complaints management process.

Broadly speaking, the Commission's view is to encourage major public sector organisations to improve misconduct management by establishing professional standards portfolios ensuring that the misconduct management function is appropriately resourced and that their staff are aware of the risks associated with misconduct and how and where to report it if they suspect that it is occurring.