



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT

Commonwealth unexplained wealth legislation and arrangements

FRIDAY, 9 SEPTEMBER 2011

PERTH

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PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT

Friday, 9 September 2011

Members in attendance: Mr Hayes and Mr Keenan.

Terms of reference for the inquiry:

To inquire into and report on:

- (a) the effectiveness and operation of current Commonwealth unexplained wealth legislation and associated administrative arrangements and whether they are working as intended in countering serious and organised crime;
- (b) the likely effectiveness of proposed Commonwealth unexpected wealth legislation;
- (c) the effectiveness of and potential changes to unexplained wealth legislation and associated administrative arrangements in other countries;
- (d) the extent and effectiveness of international agreements and arrangements for law enforcement activities in relation to unexplained wealth;
- (e) the interaction of Commonwealth, state and territory legislation and law enforcement activity in relation to the targeting of criminal assets of serious and organised criminal networks; and
- (f) the need for any further unexplained wealth legislative or administrative reform.

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McKENZIE, Acting Detective Inspector Hamish Leith, Officer in Charge, Proceeds of Crime Squad, Western Australia Police

Committee met at 09:56

CHAIR (Mr Hayes): I declare open this public hearing of the Parliamentary Joint Committee on Law Enforcement. The committee is hearing evidence into its inquiry into the Commonwealth unexplained wealth legislation and arrangements. I welcome all here today. Before the committee starts taking evidence, I remind all witnesses giving evidence to the committee that they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. The committee prefers all evidence to be given in public, but under a Senate resolution witnesses have the right to request to be heard in private session. It is important that a witness giving evidence to the committee gives notice if they intend to ask to give evidence in camera.

Noting that officers of a department or agency of a state are appearing by invitation, if a witness objects to answering a question, the witness should state the ground upon which the objection is taken. I remind committee members that the Senate has resolved that an officer of a department or agency of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of an officer to superior officers or a minister. On behalf of the committee, I think those who have sent representatives here today for their cooperation in this inquiry.

Welcome. With me is Mr Michael Keenan, who, apart from being the member for Stirling, is a very proud Western Australian and strong advocate of law enforcement in Western Australia. He is also the shadow justice minister. I would invite you, Assistant Commissioner, to make a short statement. Then we might ask you a few questions.

Mr Anticich: Firstly, thank you very much for the invitation to be here. WA Police is here to answer any questions that the committee may ask of us. We appear here with, I believe, 10 years of experience under our Criminal Property Confiscation Act, which was passed in 2000. Effectively we have had unexplained wealth provisions that have applied here in this state under that particular act, so I am hoping we will be able to draw on some of that experience and hopefully answer the questions that the committee may have of us. It certainly will be our intention to express some of that experience in our own words and hopefully assist the committee in its decisions about where the Commonwealth is to take these particular provisions.

That was really all I wanted to say in opening. I open it to any questions that the committee may have.

CHAIR: As I understand, your unexplained wealth legislation is subject to laws that were introduced in Western Australia in 2002—or at least they were proclaimed in 2002. Are you able to give us an overview—and I know the Western Australian police force has done this before—of the unexplained wealth provisions that have been enacted in Western Australia?

Mr Anticich: Certainly. I might defer to Mr McKenzie, who has a more intimate knowledge of those particular provisions as they are being exercised by the WA police.

Det. Insp. McKenzie: Thank you, Mr Anticich. Mr Chair, I will give you a brief overview of the unexplained wealth laws and how the WA police apply those laws. The WA police, in consultation with the state DPP confiscation team, work in partnership to target individuals who we believe may have unexplained wealth. It is the role of the WA Police to identify those targets and prepare a file which we then refer to the DPP. I have been the officer in charge of the police Proceeds of Crime Squad for about three and a half years now. In that time there has been very little progress in relation to unexplained wealth for a number of matters. Some of those are in relation to legislative impediments that I believe prevent us from applying the full intent of the Criminal Property Confiscation Act, and others relate to the separate model of the police investigating and then the DPP doing the litigation as such. The criminal side of the DPP have acknowledged that they should keep the investigative side at arm's length, for obvious reasons—they do not want the prosecution to be influenced by investigators. But in relation to the civil confiscation, which is what we are working at here with the Criminal Property Confiscation Act, there needs to be that one continuous group or body that is investigating it. We find, from a police point of view, that the model of two agencies is not the best model to use for unexplained wealth. As a result, in my

experience there have been very few unexplained wealth matters that have been finalised in the state courts. The WA Police have a number of matters at the moment that are sitting with the state DPP and that we are trying to progress, and for other reasons—legislative reasons being among them them—we have been unsuccessful.

CHAIR: As I recall, when your legislation was originally enacted—it was pretty groundbreaking in this country—it was primarily based on being able to restrict the assets of a criminal enterprise being reinvested into crime and therefore being a deterrent to the reinvestment into criminal activity. That was seen to be attacking the business model underpinning crime itself. So, from what you are saying, if the legislation is not working effectively to apply to unexplained wealth as it was originally intended, I imagine those original objects of this legislation have not been addressed effectively.

Det. Insp. McKenzie: Not in respect of unexplained wealth, and there are other provisions of the act which are more successful—our drug trafficker provisions, for example, which are highly successful. In relation to the unexplained wealth, there are some serious legislative impediments which prevent us from realising the full potential.

CHAIR: I think your colleagues in the Northern Territory rectified some of those impediments when they introduced their legislation up there, and I think the investigative approach of their police works more closely with that arm of the DPP in terms of using the legislation to prosecute the original intent—that is, to restrict reinvesting into organised crime activity.

Det. Insp. McKenzie: It is always an advantage to have a model, and you can see the problems in an existing model and then you add your bits to it to make it a successful working model.

CHAIR: We have only 22 million people in this country, so it beggars belief to think that criminals are going to look at the Constitution or look at geography to determine where they are going to conduct criminal enterprises. You would have to think that we do need to harmonise many of our laws, particularly in the criminal areas.

Mr Anticich: I agree. Whilst we think there are legislative impediments I think there are also some philosophical differences. I know that in the proposed Commonwealth model the intent is that the Federal Police Commissioner can initiate actions. Where we strike the major difficulty is that we develop cases, which we forward to the DPP, that we cannot proceed on without his approval. It is at that particular point that we tend to get into the morass of being able to advance these things. We very much take the view that it is an inquisitorial process with a reverse onus on those people we seek this information from, yet we are being fundamentally driven by requirements to say that we need to answer these questions before we ask them of these individuals. That process of putting together in-depth financial profiles and answering all the questions before we ask them consumes enormous amounts of time for us. We do not believe that was the intent of the legislation. Our belief is that it was a case of being able to pull these people in to examine them and ask them to answer those questions. It is not for us to develop those answers.

CHAIR: Is it right to say that the original intent of the legislation was not so much to catch criminals but to ensure that monies from criminal enterprises were not being reinvested into the growth of organised crime. It was therefore designed to protect the community by taking the reinvestment of criminal assets out of the community to stop reinvestment in crime. It seems to us that in moving down this path, as you did in 2002, unless it is going to be effective in deterring crime it could have just been left as proceeds of crime legislation.

Mr Anticich: The realities are that because of the shortfall, the inability for us to advance unexplained wealth, we are forced to take alternative methods. We rely quite heavily on the Australian Taxation Office, to whom we refer quite a number of matters. But there are still a number of individuals whom we suspect are engaged in organised crime, but at some length—organised crime is generally conspiratorial in nature—and often the people who are at the top of the tree are at arms length and further from the actual criminal activities that we see. These are the organisers and often the facilitators. It is difficult to build conspiratorial types of briefs of evidence against them. We believe that this was a significant weapon by which we could attack the Mr Bigs in organised crime. Unfortunately, it has not translated to that in reality.

CHAIR: Regarding the Commonwealth legislation, there is a view, and it underpins this actual inquiry, that the legislation, whilst it has not been around all that long, it is not being used in respect of law enforcement to deter criminal enterprises. Do you have any views about the application of the Commonwealth laws?

Mr Anticich: From what I have seen of what is proposed, because we are unable to advance matters within our own state legislation it would be our intention to rely on the Commonwealth provisions. I think we have done that already to date: we have gone to some of the provisions available there as it currently stands. If the Commonwealth were to engage and roll out these unexplained wealth provisions and we were able to connect

with that by virtue of a federal aspect—and we quite often work with our federal counterparts—then the intention would be to rely heavily on that legislation. To be brutally frank, we are not so much concerned about who is able to use this form of attack as long as we are able to have an impact on those criminal entities involved. My bottom line would be that if this committee can guide the Commonwealth to come up with an effective model that is pragmatic in its application and use, I would hope, through our partnership relations—whether it be through the AFP or the Australian Crime Commission, and that federal aspect—that we could utilise them as well.

CHAIR: I suppose, to make it constitutional, it would have to be very much linked to either a Commonwealth crime or a crime affecting an area of the Commonwealth. From a policing perspective, would you see that as a step in the right direction and one which may lead to the harmonisation of unexplained wealth legislation through Commonwealth and state and territory bodies?

Mr Anticich: Absolutely. There are a number of models that are currently operating across the states, including ours, and I suggest that all of them have strengths and weaknesses. I think it is a great opportunity for the Commonwealth and this committee to show some leadership and come up with a pragmatic model that will hopefully guide others. The reality is that the intent is quite genuine but in translating it into some sort of workable balance we have created a very complex model that does not really work. To a large degree, it has turned the process into a lawyer's picnic that is difficult for practitioners and investigators like us to have any real effect on.

CHAIR: If we did get it right, and established a consistent regime in respect of unexplained wealth, what impact do you think that would have on finding corruption?

Mr Anticich: There is empirical evidence and data to indicate that high-level organised crime engages and uses officials in various government and other departments. What this will enable us to do is penetrate the higher or upper echelons of organised crime. As we do that, we are likely to see more corruption at a much higher level. Corruption is very much like organised crime, in my experience. It is disguised and done in such a way that it will not be detected. It often takes very deep penetration to actually uncover this type of activity. I suggest that, the higher up the echelon we are able to get in organised crime, the more likely we are to uncover corruption within government and other agencies.

CHAIR: I know that the Law Council of Australia has been quite critical of the unexplained wealth legislation. They say that it tramples on one's liberties. I guess it does, to that extent, but do you see that the benefits to the community that we could obtain out of properly administered unexplained wealth provisions would outstrip that?

Mr Anticich: Absolutely, on a number of fronts. It will send a clear message to those involved in organised crime at the upper levels that they are not untouchable and that, in fact, law enforcement has the capacity to engage them. It will also send a message that organised crime, as it designs and forms itself in such a way that these people distance themselves from the criminality, is no longer a protection and that they will be vulnerable. I also think that, if we are able to remove assets that have been acquired through illicit activities well after the event, that sends a really powerful message. It has been my experience that incarceration, imprisonment and other forms of more legitimate punishment for offences often do not have as great an effect as the removal of assets and wealth from these particular individuals. My sense would be that, if the Commonwealth can get this model right and if it can play out across the nation, it will be a significant step forward in the fight against organised crime.

CHAIR: This is really giving law enforcement the proper tools that they need to protect the community, in effect.

Mr Anticich: Absolutely. There is also an economic benefit from this. Looking at some of the figures quoted regarding organised crime and its value, if we are able to return that money to the funds that are available for the community and for other uses, it is going to be extremely beneficial and a real, tangible measure for the community in terms of the effect.

Mr KEENAN: Thanks very much, gentlemen, for coming and appearing before us today. Why is the DPP reluctant to take action?

Assistant Commissioner Anticich: If I could be brutally frank—

Mr KEENAN: That it is always good.

Assistant Commissioner Anticich: I have engaged with the DPP on a number of occasions around this particular issue. In my humble assessment, I think it comes down to philosophical differences around the process. The Director of Public Prosecutions are very proficient and their home ground is the prosecution of criminal offences, proof beyond a reasonable doubt and the presentation of cases against an accused. This particular piece of legislation is about civil based inquisitorial processes in establishing fact at that civil based level. It is not about

prosecution beyond a reasonable doubt. It is often about negotiation around the terms of settlement, and it is an area that—I do not mean this in any pejorative sense—I do not think DPP prosecutors are comfortable with. To be fair, I think it is a different skill set that is required here—the examination process, the ability to extract fact and then put together a profile or details of individuals. To be fair to the DPP, I think it is a skill set that they are not well versed in.

Mr KEENAN: If you do not feel comfortable answering this, that would be fine, but how would you get around that if you were to reframe the legislation? You are talking about philosophical differences. Whenever there is a sort of advance on a law-and-order basis, you will find lawyers up and arms and what have you, and that always is in a good indicator that what you are doing is a good thing, in my view. Are those the sorts of philosophical differences you are worried about with the DPP—that they feel that the legislation might trample on people's rights? Or are they concerned because they just do not have the skill set to pursue it?

Assistant Commissioner Anticich: It is as simple as this. In part of the process it would be trying to determine an individual's wealth. We take the view that it is simply a case of summoning that person before a hearing, obviously getting all the right processes and asking that person to provide the details of what they are and what their worth is. To date, the process has largely been the DPP coming back to us and saying: 'No. You put together that information before we conduct the investigation.' They are two quite philosophically different approaches to the same result at the end of the day. But the difference is this. It is a significant burden on police. There are legislative problems in terms of getting information in a timely manner from those people that hold it and it is a massive program that really goes to answering questions that we could quite easily get, we believe, from those people who are subject of the examination. We have not got past that particular point in the process. Many of our matters are advanced to a particular point and all that we are asked to do is continually add more and more information to the basis on which we could examine. Mr McKenzie, is that a true summation of where we are at the moment?

Det. Insp. McKenzie: That is absolutely correct. It takes a lot of time for my investigators to put matters together—several years in some instances where matters are still unfortunately still languishing at the DPP with no feedback as to how to better our cause or how to improve the file so we can get it to that next step.

Assistant Commissioner Anticich: We think that there are three possible ways to resolve the issue. One would be for, as is proposed in the Commonwealth legislation, that the Police Commissioner be given the right to initiate proceedings—so in other words we would actually have the authority to advance matters and we would go about those examinations.

Mr KEENAN: So the police would take on the—

Assistant Commissioner Anticich: That is correct, as I think is proposed in the Commonwealth legislation. So we would get around this hump over getting the approval from the DPP. We would be able to get from our commissioner and advance those matters. The other would be the creation of a specialised court or agency to deal with such matters independent of all. Thirdly, perhaps we could enhance some of the capacities within the estate of some other agencies. We have a Corruption and Crime Commission, for example, that is currently under review terms of its role and function, and that could be a role and function that we could ask them to look at.

I have been talking very closely with the DPP on this matter and in fact conferred with them prior to giving evidence here today. We are both of the opinion that there is a way to develop a much better system. Coming back to my opening comments, I believe it is open to this committee and the Commonwealth to lead the way. If you can get a model up that is pragmatic and will work, I think others will follow, and I think we may well be one of those jurisdictions that will do the same.

Mr KEENAN: What are the other legislative holes you have found for the Western Australian regime beyond the matters you have raised about the DPP?

Assistant Commissioner Anticich: I might throw to Mr McKenzie.

Det. Insp. McKenzie: There are some issues. One of the major issues we have with our act is that, whilst we can request information from financial institutions, there are no time frames for when information comes to us. It is very important in any investigation, whether criminal or civil based, that there be timeliness with the information coming to us. Sometimes we can wait up to three months for financial information to come back from a bank, for example.

Mr KEENAN: What do you put that reluctance down to?

Det. Insp. McKenzie: Their other workloads. They have other agencies and organisations which request information from them. Some of those organisations have time frames within their legislation, so our requests just

go to the bottom of the pile. That is just the way it is. I certainly do not begrudge the financial institutions. They obviously have to prioritise their work.

In relation to the unexplained wealth legislation in particular, the act does not capture any benefits derived from capital appreciation. For example, say an organised crime target we are looking at purchases a house with unexplained wealth—unlawfully obtained money—and that house increases in value, for example from \$100,000 to \$700,000. The unexplained wealth parts of our act say that we can only take a portion of that. We cannot take the \$700,000; we can only take the portion that that person put into it—the core money that went into buying that particular asset. For us, that is a huge issue with the act because then you are legitimising \$600,000 worth of unexplained wealth, basically.

The reversal of onus of proof is often talked about. In reality, as Mr Lawler from the ACC has said in his written submission, that standard of proof can be discharged at what we consider to be a very low level. For example, a person could come before a court and say, 'The unexplained funds in my bank account I received as a result of doing my job.' Then the onus is then back on the prosecution to prove that that is not the case, and that is at a very high standard. So, whilst the reversal of onus within the act is talked about, in reality it is a lot harder. I know a representative from the state DPP, Mr Ian Jones, will be giving evidence before this committee if he has not already. He could probably explain it a bit better than I can. But they are certainly some of the legislative impediments that we face.

Mr KEENAN: Is there a move to overhaul the legislation in Western Australia at the moment?

Det. Insp. McKenzie: Amendments were forwarded to the previous state government about six years ago. I understand they are still with the A-G's office. As far as I am aware, they have not been progressed.

Assistant Commissioner Anticich: Certainly recently I have advanced these issues through our minister and they have made their way to the Attorney for his consideration. So we have not sat on our hands with the issue; it is now with the Attorney for consideration.

Mr KEENAN: The flaws in the regime include the involvement of the DPP, who has been reluctant to assist. Is there anything you would like to add to the points that have been made about the flaws or do you think that covers them?

Assistant Commissioner Anticich: I think that, philosophically, this is a great initiative and certainly something that law enforcement wants, but it is a matter of getting a model that will actually work and getting the balance, with the rights of individuals, correct. We start off with a fairly altruistic cause and intent, but then in the process of getting that balance right we create a whole heap of conditions and other things that we need to satisfy along the way and end up with something that is rather impractical to implement and unworkable. As I said, we are at the stage now where we have had these powers for quite some time but they have had very little effect.

Mr KEENAN: It is younger than the West Australian legislation, but I am not sure exactly when it was enacted.

Mr Anticich: Right. Another issue we have is that because we have not been able to progress matters sufficiently we have had no contest or trial of issues, so there is no precedent. Much of this is subject to views, and often differing views between us and the DPP. We have not really tested these at law.

Mr KEENAN: As a West Australian, you often read in the paper, for instance, about figures who are identified as being crime figures. I will not mention any names but most West Australians would be able to name them.

Mr Anticich: Yes.

Mr KEENAN: It is always curious to me as to how it is that everyone seems to know that they are a criminal, yet they are still walking around.

Mr Anticich: Yes, and that is most probably the very nature of organised crime. Often we end up engaging at the enforcement and prosecution level those people who are hands-on, who actually do these things that are tasked. Organised crime is conspiratorial in nature. Somewhere up the chain someone is giving people instructions. It is very difficult to catch those people unless we make protracted, long-term investigations to actually take out entire syndicates. More often than not we tend to get the lower-level doers, sometimes the mid-level organisers and, if we are lucky, we tend to get up into those echelons if we run those jobs correctly.

But what we do not have in this state, and that limits our capability, is controlled operations legislation. Hopefully, we are going to get that very shortly. We rely on partnership with the Commonwealth to be enabled to do that. In order to take out those high-level conspirators, quite often we have to enable, or allow, criminal conduct to occur in order for that chain to link and for us to take these people out. If we take people out in

possession then that is generally it. If we want to take out the conspirator often we have to allow that narcotic or drug to run to the next level, or to allow the money to make its way up the chain before we can actually arrest and charge those people with criminal offences.

Mr KEENAN: You mentioned the tax office before. It is well known that the tax office has powers that no other government agency seems to have; their powers are incredibly extensive. Why could you not just refer the information that you have about people's wealth to the tax office and allow them to pursue some of these matters?

Mr Anticich: We do on almost every occasion. Unfortunately, we do not report that because of the secrecy provisions of the tax office. We are currently in negotiation so that we are able to inform that. But in almost every case of organised crime where we target high-level players we engage the tax office. They do their business and we have no visibility as to what they do.

Mr KEENAN: Do you have any anecdotal evidence that you would be prepared to share with the committee about whether they have pursued and successfully recouped some of these—

Mr Anticich: Enormously successful—in the tens of millions of dollars in cases where we have been unable to initiate criminal prosecutions. In one case—39?

Det. Insp. McKenzie: \$34 million.

Mr Anticich: \$34 million. We were unable to initiate a criminal prosecution, but tax was able to issue assessments to the tune of \$34 million.

Mr KEENAN: What is wrong with just pursuing that avenue? Does that not have the same effect?

Mr Anticich: That is certainly the ultimate that we have, but I do not think that it is necessarily the absolute answer. We operate with what we currently have, but I actually believe that if we can get this capability right then it is going to be a much more powerful tool.

A lot of what tax does is veiled by secrecy. People do not know, as by the question you have asked, what goes on. I do not know if we get the message out there to those people involved in organised crime that they will be at loss. That happens below the surface, and it is not seen. I think it would be a good thing to be able to tell the public that we are actually taking these actions and redeeming these monies from people involved in crime, both for the public and for those others engaged in organised crime.

Mr KEENAN: And what you have just said there, I suppose, is that with proceeds of crime you can get exactly the same results with the tax office, but that it is better for the PR in that it sends a message to the criminals that they cannot benefit from their criminal activities. But for us to legislate we would have to have more than that.

Mr Anticich: There is one significant difference. From the law enforcement perspective, organised crime is a priority for us; from a Taxation Office perspective, they have competing priorities. I know that organised crime is important for them but it is not their only one. The difference, of course, is that what we think is important in our world may not necessarily be important in the tax world. In the tax world, generally speaking, on my understanding, they are driven by the numbers and the amount, and quite often they will look at tax and other frauds of potentially much more significant amounts than in organised crime. Therefore, our priority of organised crime is not as important to them as it is to us.

Mr KEENAN: Tax have powers that no other law enforcement agency will ever dream of getting; they really do. It would be easy to direct the tax office to take these things more seriously and to change their charter or the way they prioritise these things. Could you not achieve exactly the same result by doing that rather than legislating specifically for proceeds of crime? I am playing devil's advocate here, I suppose, to get your opinion.

Mr Anticich: If I put it into the real world now, we currently are doing that with tax and we are referring matters to them. But, for example, I think we have about seven or matters that are extant that we would say are cases we would like to run as unexplained wealth. I think we are only talking in each case of millions of dollars. I do not think we would excite the interest of tax in those types of events. I think they are more attuned to tens and hundreds of millions of dollars and not just millions of dollars. So right now as we speak there are a number of cases that are sitting dormant that more likely than not tax would not be particularly interested in, yet we would by nature of the criminality and the people who we say are involved in a significant role in organised crime.

Mr KEENAN: Okay. Thanks very much.

CHAIR: Just following on from that question about taxation, I also understand that what smart criminals do these days is declare much of their money for tax purposes, as whilst they are paying tax on it they are trying to ensure a safeguard with what you were just saying—so as to not have a referral to taxation and be caught for tax avoidance.

I would like to cut through everything that has been said here and one of the things that comes through to me. I have the submission from the Law Council and I understand the position from a lawyer's perspective—that is, after a crime is committed, if the police have the necessary information they will conduct an inquiry, after which charges will be laid or it will be referred to the DPP for them to lay charges and the courts will make a determination and punishment.

I guess that that is the traditional concept of policing but, in terms of unexplained wealth, it seems to me that what Western Australia attempted to do back in 2002 was put a regime in place that actually deterred and disrupted criminal enterprise. It was about doing things before further crimes were commissioned or committed and, as a consequence, protecting our community. The two concepts are incompatible, and I think one is a leap ahead if we are serious about community protection.

Mr Anticich: I would agree with those comments. The reality is that in one regard the concept is sound and makes sense. From another perspective, it is difficult to come up with a model that achieves what is intended and balances those rights. My only advice to the committee is this: do not come up with a model that tries to satisfy both and end up with something that is impractical and does not work. We claim to have had the legislation for 10 years but to naught effect.

CHAIR: So, in other words, you would draft the intentions first and then make the legislation around it.

Mr Anticich: I would think that that would be a commendable approach.

CHAIR: Thank you very much for coming in. This is the first of our hearings in relation to this. We hope to get around and take evidence from each of the police forces. As I indicated at the start, there are 22 million of us out there, and I know we have 55,000 police trying to protect the community. We are trying to ensure that they have the tools and resources to actually do that, so we appreciate your candour and we will do our best to try and get something that works.

Mr Anticich: Thank you.

Proceedings suspended from 10:30 to 10:52

HERRON, Mr Mark, Acting Commissioner, Corruption and Crime Commission of WA

SUTTON, Mr Robert John, Acting Director Operations, Corruption and Crime Commission of WA

WHITE, Mr Paul Anthony, Senior Financial Investigator, Corruption and Crime Commission of WA

CHAIR: Having reconvened, I welcome the representatives from the Corruption and Crime Commission of Western Australia. I remind the witnesses that this is being recorded and transmitted back to Canberra. I will not go through the long process which you have read to you before. Acting Commissioner, I invite you to make a statement at the conclusion of which my colleague Michael Keenan and I will ask you questions.

Mr Herron: Certainly. As I understand it, there are two hearings and this hearing relates to unexplained wealth legislation. I think there is probably very little we can offer in that regard because the commission does not have an investigative role in relation to organised crime. Our powers in relation to organised crime are somewhat limited, to grant extraordinary powers to the police if the police make application to us for the use of extraordinary powers. So the police do the investigation and we grant to the police, if it is appropriate, the ability to use extraordinary powers. We then have a compulsory examination process. We mainly get involved in investigating misconduct within the public sector and the matters that we are dealing with are misconduct matters rather than organised crime matters. We, I am told, have had one limited involvement in unexplained wealth. It was a very limited focused matter on one particular individual. We do get involved with proceeds of crime—we pursue matters in relation to proceeds of crime rather than unexplained wealth. It is for that reason I say I am not sure to what extent we can offer much assistance in relation to the issues being examined at the moment. In relation to that one particular matter, Paul, who has the expertise in this area, can answer any technical questions that the committee might have.

Our involvement in proceeds of crime happens at a pretty early stage, but we work very closely with the state DPP. It is the state DPP who make the application and they take any court proceedings; we do not actually take the court proceedings. If we think there are grounds for making an application under the Proceeds of Crime Act we will make submissions to the DPP and work closely with them. It is very much Paul's expertise that is relied upon to analyse the evidence and set out the groundwork and then the DPP make a decision.

The DPP has a guideline in relation to the victim of the crime. Sometimes the crime arises out of misconduct, but we are not so much concerned about the crime, more the misconduct. The DPP's policy or guideline is that it goes first to the victim and allows the victim to make a decision whether they themselves want to pursue an application for property. If they want to do that, the DPP does not have any involvement; it gives the victim the first right to determine. So the victim has to decide they do not want to pursue any action, and then decisions are made as to whether to pursue it. As I say, there is a very limited role we have to play in that.

ACTING CHAIR: I suppose to that extent your commission would get involved on a matter after a crime has been committed if there is going to be an issue of proceeds of crime, and you could use your extraordinary coercive powers in that respect.

Mr Herron: No, our extraordinary powers are used to identify what has happened and we do not use those examination powers all the time. We are not a court in that sense. We are what we are trying to do is find out what happened. To 'get to the truth of the matter' is an expression we often use. If as a part of our inquiries, our investigations, a crime is revealed we will then make decisions about whether those people should be prosecuted, but that is not what we are there for. We are there to identify what has happened and prove matters. We are not there to prosecute. We are not there to identify crime.

ACTING CHAIR: Some of the submissions made so far take the view that unexplained wealth provisions would be a further step along from proceeds of crime. In my opinion they are diametrically opposed. Proceeds of crime is an action that may follow after a crime has been committed and, as you correctly point out, a victim may have certain interests in that; whereas unexplained wealth is a strategy which, if deployed properly, is a disincentive for criminal activity.

Mr Herron: That may be right. Given our inexperience in using that legislation because we are not a prosecuting authority, we do not get involved in making decisions ourselves under that legislation.

ACTING CHAIR: It does seem there are probably certain impediments in that the unexplained wealth legislation that does exist in Western Australia is heavily tied to a prosecutorial proceedings. From my perspective, that is one of the reasons it may not have been well used since 2002.

Mr Herron: I am afraid I cannot offer any useful response in relation to that. I have not personally had any involvement with the legislation. As you are aware, I am an acting commissioner and at the moment an acting or part-time barrister, so it is balancing those roles, but in my private capacity I have not had any involvement in the

legislation and the commission has only had this one limited involvement relatively recently. But, as I say, the commission very much works hand in hand with the DPP and to some extent we are beholden to the DPP in terms of how that works.

Mr KEENAN: How do you define the role of the CCC? Do you see that it has any role in relation to organised crime? I know the high-profile cases you have been pursuing here in Western Australia have nothing to do with that. Do you see that the CCC has a role in relation to organised crime?

Mr Herron: There is much media commentary at the moment about proposed amendments to our act. The government have publicly announced that they propose to give the commission an organised crime role so that we get more involved in investigating organised crime rather than merely granting the police the power, so we get more involved in the investigative side of things. It is not for the commission to say whether they should or should not do that; it is a matter for parliament of course. Certainly if we are granted an organised crime role that will inevitably change the focus of the commission. Also it has been publicly announced that we would retain a role in relation to serious misconduct and certainly misconduct in relation to Western Australian Police, but matters of minor misconduct would go to the Public Sector Commissioner. I think that is what has been announced publicly.

We understand that it is proposed to introduce the bill in the current session of the state parliament, but again we do not know much more than what has been publicly announced. We are aware of some draft legislation but to what extent that reflects what will be introduced, we simply do not know. It is very hard to comment about what our role will be, but certainly the government have announced publically that they want us to get more involved in organised crime working hand-in-hand with WA Police in relation to that. There are those issues to be worked through as to how, given we are an oversight body of police, we also work in partnership with the police in investigating organised crime. There are a number of matters to be worked through no doubt.

Mr KEENAN: If that does come to pass then I am sure you will take a keener interest in the unexplained wealth. Given what you have said to us this morning, there probably is not much point in pursuing these questions with you.

Mr Herron: You ask what our role is. It is defined in section 7A of our act. There are two main purposes. One is 'to combat and reduce the incidence of organised crime', but we do not really play any role in that. As I said, we are dependent on the police making application to us to grant them the extraordinary powers. We do not have an investigative role in that. Our main role at the moment—and it is in section 7A(b)—is 'to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector'. That is our main role. As a part of that we have a significant corruption prevention education role. We research systems, processes and cultures of organisations and make recommendations to them to have ways, as part of their core business, of identifying risks which might then give rise to misconduct and trying to prevent misconduct arising and, if it does arise, how they should best deal with it.

Mr KEENAN: What is the nature of the extraordinary powers that you can allow the police to exercise?

Mr Herron: Under our act police have to in effect come to us and say, 'Our normal policing methods are not working in being able to properly investigate crime.' The extraordinary powers we can grant them are to basically search premises without a warrant, to force people to answer questions and to serve notices on them requiring them to produce documentation. The main extraordinary power that police have sought to use is our compulsory examination power. Under our act, we have the power to compel people to come to private examinations and to answer questions on oath that they cannot refuse to answer. Those examinations are in private. It is an offence to tell other people that you have been brought to a private examination. From memory the definition of organised crime is 'three or more people acting in concert basically for a common purpose'. It has certain defined offences. They have to be together for those defined offences. You bring people to examine them independently of each other about what they know or do not know about an offence, and they cannot refuse to answer questions. If they do, that is an offence. That is a power that police do not have.

Mr KEENAN: Could those powers be used to probe where people have got their wealth from?

Mr Herron: Not as currently worded. You have to reference access to those powers by an offence having been committed, reasonably suspected of having been committed or about to be committed. You are investigating the commission of crime, or criminal matters that have happened, not so much unexplained wealth. You would have to extend the definition of it. I do not make any comment about whether that is desirable.

Mr KEENAN: Sure. That is probably all we can ask you then.

Mr Herron: As I said, given we do not have any involvement in it, there is not much assistance we can provide. Certainly, we are in a better position to offer some comments in relation to integrity testing programs.

CHAIR: Thank you for your time.

Committee adjourned at 11:07