



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE AUSTRALIAN CRIME
COMMISSION

Reference: Review of the Australian Crime Commission Act 2002

FRIDAY, 28 OCTOBER 2005

MELBOURNE

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**JOINT STATUTORY COMMITTEE ON THE
AUSTRALIAN CRIME COMMISSION**

Friday, 28 October 2005

Members: Senator Santoro (*Chair*), Mr Kerr (*Deputy Chair*), Senators Ferris, Ludwig and Polley and Mrs Gash, Mr Hayes, Mr Richardson and Mr Wood

Members in attendance: Senators Kerr, Polley and Santoro

Terms of reference for the inquiry:

To inquire into and report on:

The operation of the *Australian Crime Commission Act 2002*, with particular reference to:

the effectiveness of the investigative, management and accountability structures established under the Act, including:

- the Australian Crime Commission;
- the Chief Executive Officer;
- the Examiners;
- the Australian Crime Commission Board;
- the Intergovernmental Committee; and
- the Parliamentary Joint Committee on the Australian Crime Commission.

whether the roles, powers and structure granted to the Australian Crime Commission under the Act and associated legislation remain appropriate and relevant to meeting the challenge of organised crime in the 21st century.

The need for amendment of the Act.

Any other related matter.

WITNESSES

**WALSHE, Mr Kieran James, Assistant Commissioner, Ethical Standards Department, Victoria
Police 1**

Committee met at 12.10 pm**WALSHE, Mr Kieran James, Assistant Commissioner, Ethical Standards Department, Victoria Police**

CHAIR (Senator Santoro)—I declare open this public hearing of the parliamentary Joint Committee on the Australian Crime Commission. I welcome everybody here today. This is the seventh hearing in the committee's review of the Australian Crime Commission Act 2002. The review is being conducted under section 61A of the Australian Crime Commission Act 2002, which provides for a review of the operation of the ACC Act either by the minister or a parliamentary committee. The terms of reference call for the committee to review the operation of the Australian Crime Commission Act 2002, with particular reference to:

the effectiveness of the investigative, management and accountability structures established under the Act ...

whether the roles, powers and structure granted to the Australian Crime Commission under the Act and associated legislation remain appropriate and relevant to meeting the challenge of organised crime in the 21st century.

The need for amendment of the Act.

Any other related matter.

I welcome Assistant Commissioner Kieran Walshe. Information on parliamentary privilege and the protection of witnesses in evidence has been provided to you, sir?

Mr Walshe—It has.

CHAIR—As you are a public servant you are reminded that you are not required to answer questions relating to policy matters and will be given the opportunity to refer such questions to either the minister or superior officers. I now invite you to make a such introductory statement, after which we will move to some general questions and discussion.

Mr Walshe—Thank you very much. I appear before you today on behalf of Chief Commissioner Christine Nixon. Victoria Police, through the chief commissioner, did make a written submission to the committee. I advise that we have nothing further to add to that submission.

I appear here today at the request of the chief commissioner to address the committee and to talk in response to some comment that was made by Mr Faris when he appeared before the committee, particularly Mr Faris's comment:

I think there's a huge amount of corruption in the Victoria Police that's never been addressed. When the balloon went up about the drug squad, that was only a small part of the corruption, and all the rest has never been looked at, it's all been swept under the carpet.

Could I firstly say that on two occasions the chief commissioner has corresponded with Mr Faris about comments he has made alleging corruption within Victoria Police. On both those

occasions he has chosen not to respond or to acknowledge receipt of those letters from the chief commissioner.

It would be naive of me, on behalf of Victoria Police, to come before you today and state that there is no corruption within Victoria Police. It would be naive of any law enforcement agency to do so. Whilst we recognise there is an element of corruption within Victoria Police, we certainly do not endorse the comments of Mr Faris as to his belief about the level of corruption.

If I can refer to the drug squad, which Mr Faris also referred to when he appeared before you: there was a major investigation undertaken by the ethical standards department a number of years ago. That particular investigation identified some corrupt activities of members of the drug squad. Those particular members of the drug squad are now serving terms of imprisonment as a result of that investigation.

Once that investigation was concluded, the chief commissioner determined it was necessary to do a complete review of the activities of the drug squad. As a result of that a number of administrative procedures and policies have been changed within Victoria Police. We then undertook a very significant investigation with a task force named Ceja. That Ceja task force has now been in operation for three years and currently has a number of police people before courts on a varying number of criminal charges relative to drug activity.

I was appointed to the ethical standards department in June last year. I was asked to go there by the chief commissioner to address the operational strategic direction of the department and how the department could best be structured to meet the needs of Victoria Police. We have been going through an extensive review of the activities of the ethical standards department and how it best would meet the needs of Victoria Police, the Victorian government and, most importantly, the Victorian community. We have determined that our strategic direction with regard to the activities of the ethical standards department will be to focus on criminality, corruption and very serious misconduct. We have taken a decision, which is endorsed by the Victoria Police corporate committee, to move away from a large degree of reactive investigation activity which traditionally has been done, and we are focusing now on targeted operations to identify corrupt activities, corrupt practices and corrupt police. We have accordingly restructured our department and we now have a division of detectives to focus on targeted operations; they are actually doing targeted profiles. We have established a risk mitigation division to undertake risk profiles on individuals, activities and workplaces within Victoria Police. We have determined that we need to have a more contemporary focus on our investigative framework and our investigative processes and we have, as I said, moved away from a lot of reactive work which we have determined should be best dealt with in the local management environment.

It was with those issues in mind that the chief commissioner felt that it was probably appropriate that we took the opportunity to advise the committee as to what Victoria Police is doing with regard to corruption and to clearly indicate what we have identified and what we have dealt with in recent times—certainly in the last five or six years. Certainly if you take the drug squad activity away—and it was not everybody in the drug squad; I must emphasise that it was a small number of people within the drug squad who were involved in corrupt activity relative to drug distribution or the distribution of precursor chemicals—the level of corruption in Victoria Police is certainly not to the level that was expressed in the opinion of Mr Faris.

CHAIR—Thank you, Mr Walshe. We appreciate your comments and your opening statement. You mentioned that the chief commissioner wrote to Mr Faris on several previous occasions when he had made similar statements. What did she say to Mr Faris in that correspondence, if you are able to tell us?

Mr Walshe—I do not know exactly what the chief commissioner said. I am aware that she did write. The actual content of the letter I am unaware of. I could speculate but I do not think it would be appropriate for me to do that.

CHAIR—From the comments that you have made, you would be very dismissive of Mr Faris's claims?

Mr Walshe—I would be dismissive to the extent that corruption in Victoria Police is not at the level he indicated to this committee.

CHAIR—Why would he be making such strong and, from a corporate point of view, potentially defamatory statements about the Victorian police service?

Mr Walshe—I do not know why he would. I do not know what evidence he has that would underpin such an opinion. I can only assume that he has an opinion that we in Victoria Police have not been able to explore with him and that we have not been able to detail to him, explain to him or discuss with him the level of activity that we undertake within Victoria Police to identify and eradicate corrupt activity.

CHAIR—Would my understanding be reasonable when I put to you that Mr Faris has not provided you with any evidence of these allegations?

Mr Walshe—That is correct.

CHAIR—Can you describe the processes in place in the Victoria Police to assess the suitability of potential secondees to the ACC.

Mr Walshe—Yes. The ethical standards department carries the responsibility for undertaking all probity checking for secondees to the ACC or to any other external agency and also for promotion or the awarding of honours within Victoria Police. We have extensive access to a number of databases and we in Victoria Police retain all investigation complaint files. We do not destroy anything. We will talk about someone on secondment to the ACC. If we receive a request for a probity check to be done, we would be given the details of that particular member, we would then access our databases and search them to identify any unethical or unprofessional behaviour and the level of complaint that that particular individual has received over the passage of time. If there are complaint files in existence, we then go to the complaint file and look at the final report—the findings, conclusions and recommendations—to ascertain the genesis of the complaint and whether it has been substantiated, unfounded or there was proven to be no complaint.

We then would also undertake an intelligence assessment from the intelligence databases we have, to identify whether there has been any unconfirmed or unsubstantiated intelligence or information that has been received relative to a particular member. We would then provide a

written response on that assessment, providing all the details of whatever we have identified, and we would provide that then back to the assistant commissioner at the crime department for his assessment as to the suitability of the person to be appointed to a secondment position with the ACC.

CHAIR—During the process that you describe, which seems to be a very comprehensive process of checking and vetting and ascertaining suitability, in your experience or from memory—or maybe you do have specific data—how many potential secondees have been excluded from consideration for appointment to the ACC?

Mr Walshe—That I could not answer. I do not know.

CHAIR—Would you be able to ascertain that statistic for us and provide it to the committee?

Mr Walshe—I could certainly do that, yes. I could certainly inquire as to those people who have been nominated for consideration for secondment—

CHAIR—And not proceeded.

Mr Walshe—and as to how many, if any, have been identified and been excluded from the process.

CHAIR—Are you confident that all secondees to the ACC therefore have been free of any taint or suspicion of corruption?

Mr Walshe—I am quite confident that, for any person from Victoria Police who has been seconded to the ACC, there has been no identifiable evidence of corruption, complaint or unprofessional behaviour that would impinge upon their ability or their suitability to undertake a role with the ACC.

CHAIR—I appreciate that answer. Why has there been a reluctance by your chief commissioner to appear before this committee?

Mr Walshe—I cannot answer that. The chief commissioner was going to endeavour to be here today but, unfortunately, other impacting commitments did not allow that. When I spoke to Mr Curtis about appearing, I gave some dates and times and I did advise the chief commissioner's office of those, but unfortunately because of prior commitments she is unable to be here today. But when I spoke to her about it she did express a desire, if she could, to come along.

Mr KERR—Thank you very much. We are placed in a position where we are asking questions about the integrity of the police force, which is not the direct subject of our inquiry. Excuse us for that. The relevance is some concern that obviously flows from Mr Faris's evidence and the implication that perhaps people who emerge from what he called a culture of corruption would then be operating in joint operations with the Australian Crime Commission. One of the difficulties in this area is that parliamentary committees really cannot do more than accept at face value the assertions put to them about integrity checking.

I am sure the serving parliamentarians in New South Wales and Queensland received similar sorts of assurances before their royal commissions. Indeed, probably many of the members of the police force themselves were surprised—those who were ethical—about the degree in which unethical behaviour occurred. There was obviously very strong resistance to the establishment of an external royal commission body in Victoria and, informally, I have been advised of the reasons for that. But I think it would be helpful to put on the record why the police believed it would be inappropriate because from an external point of view people might say, ‘Well, with so many people involved in the drug squad being shown to have acted in a corrupt way, and for a relatively long period of time, that disinclination to have an external royal commission suggests a degree of cover-up.’

I do not want to say that I adhere to that view, because I am pretty sceptical of it, to be honest. I understand what you are saying. But I do think, in terms of us feeling that the ACC is operating effectively, at least we need to have on the record the rationale for not having an external inquiry.

Mr Walshe—Ultimately the decision with regard to an external inquiry rested with government. Having said that, if you look at the issues of the drug squad and look at the people who have been charged out of the drug squad, that was an investigation that was undertaken by Victoria Police and it was Victoria Police who identified that level of corruption and took action to institute and proceed with criminal charges against a number of people out of the drug squad. Our position is that we have been successful in identifying and dealing with corruption. Our belief is that we will continue to do so. We believe that we have the right structures in place within Victoria Police to do that.

Part of my role was to review and contemporise our focus with regard to corrupt activity and the identification of corrupt activity in Victoria Police. Our position has been that this has been identified by Victoria Police and we have, in our view, demonstrated our success in identifying and dealing with corruption.

Mr KERR—I deliberately make no criticism of the position you advance. But West Australia has had a public and independent external examination, as well as New South Wales and Queensland. All the issues that you have put before us would suggest, on one view, why not have an independent examination, if only to tick off the legitimacy of the assertions that are, quite properly, put forward by you? I may be wrong, but my understanding was that Victoria Police had a view that a royal commission in the circumstances and at the time would have distracted their capacity to undertake significant investigations into what were then a series of quite dramatically public events and may have impacted adversely on law enforcement.

I think that was suggested informally in discussions with me, because it does seem to me to be odd—given the degree of exposed corruption, notwithstanding the point you make—that there has not been an external process. I was really trying to draw out the reason for opposition to that, given that whenever in most jurisdictions it has been held in that way, it has exposed more corruption than good and decent police believed actually existed.

Mr Walshe—I take your point. From a personal point of view, my belief was that, had a decision been taken to have a royal commission, that royal commission could have had a significant effect on our major corruption investigation being undertaken by the Ceja task force.

At that point in time—and I hark back to May, June, July 2004—there were some very significant activities being undertaken by the Ceja task force, focusing and targeting some members of Victoria Police. Had there been a royal commission instituted at that point in time, it is my belief that that royal commission would have impacted upon those investigations and may have prevented us getting to the point where we are now having some people charged and being before the criminal court. That is my personal view.

With regard to a royal commission, had there been a decision to undertake a royal commission, Victoria Police of course would have openly cooperated with that commission. But again I say that our position as an organisation was that we had demonstrated a degree of success in identifying and addressing corruption.

Mr KERR—My own personal understanding is that that is a genuinely articulated view of those with responsibility in Victoria Police, so do not understand this as a criticism.

Mr Walshe—I appreciate that.

Mr KERR—But it may well be that once those circumstances change, it is in the best interests of everybody to have an external examination. This is perhaps stepping outside of the brief that I have, but it is not only Faris who said it. We had Sir Edward Woodward in October of this year saying that he believed corruption in Victoria was worse than ever. On their face, these are people of substance. I do not purport to judge those comments or what motivates them, but as a federal parliamentary committee looking at an organisation that depends on effective integration between federal and state police forces, it is concerning; as it was in my time when I was a minister and corruption allegations were occurring in New South Wales. There was considerable difficulty in effective arrangements between the federal and state law enforcement agencies in New South Wales at that time; the interrelationship was very difficult.

Mr Walshe—At this point in time, I would judge the relationship between law enforcement agencies and other agencies to be probably the best it has ever been. We currently have joint arrangements with the Australian Federal Police, ASIO and other agencies dealing with counter-terrorism issues. We have joint counter-terrorism task forces operating around the country. The relationship between the states, territories and the Commonwealth has been considerably enhanced through the establishment of the National Counter-Terrorism Committee, and I am a member of that committee. The relationships and the working and cooperation between agencies and police jurisdictions now is better than it has ever been.

Mr KERR—On that point, the Australian Federal Police Association expressed concern that the databases that are established nationally are not receiving the full cooperation of various state jurisdictions. You are indicted as one of the parties that does not cooperate, particularly with ACID and the Violent Crime Linkage Analysis System. I am wondering whether that is under review and why data is not being transferred effectively.

Mr Walshe—I could not comment on that. It is outside my area of responsibility and I would only be speculating. It would be unwise for me to speculate on that. I am not aware of any reasons why those sorts of things are not taking place.

Mr KERR—In New South Wales the Police Integrity Commission just reported on Abelia. There were a number of strategies articulated in relation to probity and integrity codes, including random and mandatory drug testing, self-reporting and various other recruitment strategies. To what extent does Victoria's framework that you are responsible for implement consistently what most people would say now are best practice provisions?

Mr Walshe—One of my researchers is evaluating the issues in those comments that have come out of the Abelia report. He is due to report back to me later on this year with regard to what recommendations we have not already picked up. I will just go away from Abelia for a second. We have already been through a process whereby we catalogued all the recommendations out of the Fitzgerald, Wood and Kennedy royal commissions. Then we have looked at every one of those recommendations to see how they are applicable to Victoria Police. The majority of them were already in place within Victoria Police. There is work in progress on other matters.

With regard to drug and alcohol testing, Victoria Police has developed a very robust policy. At government level there has been a review of the Police Regulation Act and a new act is being written. A part of that act is also to give us the statutory power to undertake drug and alcohol testing. Whilst we have the policy already in place, we need to wait for the legislation to enable us to undertake that. We are moving down that particular track. We have a very firm belief that our people should also be subject to drug and alcohol testing.

Mr KERR—What will be the management response to something that law enforcement may wish it not be so: that occasional personal recreational use of drugs may show up in these kinds of things? Young police officers are part of the community as much as they are part of law enforcement.

Mr Walshe—The primary focus of our policy is welfare based and wellbeing based. The first element of the policy is encouraging employees—and when I say 'employees' I am talking about both the sworn and unsworn component of employees—to self-refer and to seek medical assistance. There is another element of our policy to enable our supervisors, should they have a suspicion, to make a referral. The next elements relate to involvement in critical incidents. If any member or any employee is involved in a critical incident there will be a compulsory test.

Mr KERR—I do not understand what a critical incident is.

Mr Walshe—It could be a police shooting—fatal or not fatal—or a police pursuit. Those are the sorts of things we refer to as critical incidents. The next element is that there will be targeted testing based on intelligence. If the ethical standards department became aware or received intelligence for us to have a strong belief that a particular individual or individuals at a particular police location were using drugs, we would then go and do a targeted test. The final element is random testing, where a group of people will arrive at a police location and test everybody in that particular venue.

Our attitude to members using drugs is no different to our attitude to members of the community using drugs. If members of Victoria Police are identified or found to be using drugs, they will be subject to the same processes as any member of the community. They would be subject to criminal charges. If there was not sufficient evidence for a 'beyond reasonable doubt'

but a balance of probabilities, they would be subject to disciplinary process within Victoria Police.

Mr KERR—There are a large number of other questions I would like to ask relating to institutional matters but they are not within your bounds. They are the matters that Christine Nixon wrote to us about. Thank you for your frankness. One of the things that is inevitably troubling about the work of the national law enforcement framework is that it does expose young men and women to an environment where their peers may have different social behaviour and where they are exposed to the possibility of becoming immensely rich very quickly. At a very simple social level is the temptation to be just one of your peers. On another level the capacity to enrich yourself emerges. It is a difficult ethical environment to work within. I appreciate your evidence and thank you for it.

Mr Walshe—Thank you.

Senator POLLEY—Just following up what Mr Kerr asked in relation to the participation in gathering and sharing information through the database, I appreciate that that is out of your area of expertise but I was wondering if that could be followed through because I have great interest in the use of that database. It is relevant because of the evidence other witnesses have given to us on the benefits and the way that it is used. The rest of the questions I had for today would have been more appropriately answered by the commissioner herself.

CHAIR—Thank you, Senator Polley. ACLEI is to be created. Could you provide any insights or experience about the relationship between an ethical standards department, the ombudsman and the equivalent in a parliamentary committee, particularly in terms of information flows and powers.

Mr Walshe—I am aware of the ACLEI being established. We did make a submission at that particular time. Our view was that whilst we supported the establishment of that body and that Victoria Police would cooperate, Victoria Police would ask if there are any investigations to be undertaken of Victoria Police personnel who are on secondment to the ACC and subject to investigation or action by the ACLEI, that Victoria Police participate in that as well. It is clearly our view that we would like to be cooperative and work in partnership. With the establishment of the Director of Police Integrity and the Office of Police Integrity here in Victoria, we have a very cooperative partnership and working relationship with the OPI.

We do work on joint investigations together, we contribute to policy considerations together and we share intelligence and information, so Victoria Police would certainly be cooperative and willing to be in a partnership with the ACLEI.

CHAIR—Does the ESD receive reports from the Victorian DPP of any allegations of misconduct in relation to evidence addressed in criminal trials?

Mr Walshe—Yes, it does. Any criminal trials that have any indication of any improper, unethical, unprofessional or corrupt behaviour by Victoria Police is referred by the Director of Public Prosecutions to the chief commissioner and that ultimately comes to my department and becomes the subject of evaluation, assessment and investigation.

CHAIR—Commissioner, you also may be aware that Mr Bob Bottom gave evidence to the committee in Brisbane and provided submissions to this inquiry. In his submission he mentions that Victoria was introducing a Vagrancy (Repeal) and Summary Offences (Amendment) Bill and that the bill would include consorting legislation as a means of targeting activities that could be a prelude to organised crime. Can you tell the committee about the progress of this bill and what effect you think the use of consorting offences will have on organised crime?

Mr Walshe—I am not aware of the progress of the bill. But some years ago in Victoria we did have consorting provisions within the act. Those provisions were quite a good tool for police to take action against criminals who were consorting, conspiring together, in the belief of the member of the police force that they were going to undertake criminal activity. Based on the success, in my view, of consorting legislation in the past, I would say that it would be a good tool for the future to address issues of organised crime; certainly to put on notice those people who are involved at that sort of level of activity that they are under the notice of Victoria Police, and that they would then be issued with notices relative to their consorting. But I am unable to give you advice on the progression of the bill at this stage.

CHAIR—Thank you for that. Are you aware of any consideration to introduce US style racketeer influence and corrupt organisations—or RICO legislation as it is referred to—as an alternative?

Mr Walshe—No, I am not.

Mr KERR—One of the issues that has emerged—I would not necessarily say it was a problem but simply a dilemma, I suppose—is the way in which the ultimate responsibility for seconded officers operates within the Australian Crime Commission. The question of who ultimately is the body responsible for any disciplinary proceedings or accountability has been raised with us. In practice, how does that work out in the relationship between the Australian Crime Commission and VicPol—with police? If a member of VicPol serving as a seconded officer becomes the subject of allegations, how does that intersect between yourself and the ACC?

Mr Walshe—Should that arise, we would be asking the ACC to enable Victoria Police to be actively involved in the investigation. We have a belief that, whilst they are Victoria Police people, that Victoria Police should hold the responsibility for addressing their unethical or unprofessional behaviour, whether it be in the course of their duties with another agency or when they are off duty. We do not resile from that. They are Victoria Police people and they are subject to the Police Regulation Act. If an incident or issue arose or an investigation was initiated through the ACC, we would be certainly asking to be a part of that. We would offer to take the responsibility for dispensing any disciplinary action that may result from any investigation.

Mr KERR—Would that ever create a view that it diminished the capacity of the Australian Crime Commission, through its executive officer, to effectively ensure the integrity of his own organisation?

Mr Walshe—No. We would not want to do anything that would affect the integrity of the ACC. The position that I would put in my role would be that, if there was improper behaviour at the ACC by a member from Victoria Police, Victoria Police should allow the ACC to undertake

their investigation relative to the issues that concern the ACC. But in terms of the ongoing secondment, Victoria Police would be taking steps to withdraw that individual from the secondment, on the basis that that individual has breached our disciplinary code or our ethical standards. That individual would be returned to Victoria Police. We would await the outcome of the ACC investigation and, if that investigation resulted in any criminal proceedings being undertaken, we would fully support that and allow that action to take its course.

We do that in a normal sense here in Victoria. If we charge a member of Victoria Police with a criminal offence, we pursue that offence and, at the completion of investigations—whether it is an acquittal or a conviction—we initiate disciplinary proceedings also. That would be our position. We would not want to impinge upon anything to do with the integrity of the ACC; in fact, we would support them in what they need to do at their end. But we would say that ultimately that person is going to return to Victoria Police, because they would have breached, in our view, the rules of secondment in that they have not been professional and ethical in their performance. Victoria Police would then need to deal with that in terms of disciplinary action under the police regulations.

Mr KERR—There is one area that is uncertain. The Ombudsman has a responsibility to address complaints, both with respect to the Australian Federal Police and the Australian Crime Commission. There have been circumstances where he has reached a point where people who have been with the ACC and been seconded have returned to their own jurisdictions and, I think the evidence is—and I may need to check it—that, in practical terms, those matters cannot be pursued further because he then does not have an effective capacity to examine those matters because those officers are not part of his jurisdiction any more. That does seem to be a bit of a gap in the federal oversight situation. Has that matter ever come to your attention? Even if it has not, is there any way in which the problem could be overcome that would be cooperative between yourselves and the federal sector?

Mr Walshe—It has never come to my attention, but the Victoria Police position would be that we would cooperate. We would provide documentation, statements, or whatever that we were able to acquire to the federal Ombudsman, because of that particular individual returning to our jurisdiction.

Mr KERR—We will make that available to the Ombudsman, because my recollection of the evidence was that he felt that he could not proceed further in relation to some matters in respect of which he had had complaints.

Mr Walshe—We certainly would not want to be a hindrance to any particular process that was being taken out of issues arising from a member being in that particular jurisdiction. From my position—and I am sure the chief commissioner would support my position—we would be cooperative. We would assist.

CHAIR—Thank you, Mr Kerr. Commissioner Walshe, the committee is particularly grateful for your attendance, for your frank and helpful advice and for answers to our questions. The committee was particularly keen to afford the Victorian police service every opportunity to respond to statements that have been made by various witnesses in relation to aspects of the operations of the Victorian police service and statements that reflected on the reputation of the

Victorian police service. We are grateful that you, representing the service, were able to assist the committee in its inquiry. We thank you for your attendance here today.

That concludes today's hearing. I thank everyone, including Hansard and those committee members who attended today and have cooperated with the hearing. I declare the hearing closed.

Committee adjourned at 12.56 pm