



Joint Standing Committee on the Corruption and Crime Commission

**Annual reports prepared by the Corruption and
Crime Commission on the use of covert powers by
WA Police, the Department of Fisheries and the
Australian Crime Commission**

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Joint Standing Committee on the Corruption and Crime Commission

Annual reports prepared by the
Corruption and Crime Commission
on the use of covert powers by
WA Police, the Department of
Fisheries and the Australian Crime
Commission

Report No. 32

Presented by

Hon Nick Goiran, MLC and Mr Peter Watson, MLA

Laid on the Table of the Legislative Assembly and Legislative Council
on 16 November 2016

Chairman's Foreword

The *Criminal Investigation (Covert Powers) Act 2012* (CICP Act) provides for the self-authorisation and conduct of covert law enforcement operations by WA Police (WAPOL), the Department of Fisheries and the Australian Crime Commission (ACC). Section 41 of the CICP Act provides for the Corruption and Crime Commission (CCC) to regularly audit and inspect the records of these three agencies to determine that they have complied with provisions within the Act. The CICP Act requires the audits to be conducted at least once every 12 months. The Act also requires the CCC to report annually to the Minister for Police and the Minister for Fisheries on the use of the covert powers provisions by these three agencies.

To date there have been three compliance reports tabled in the WA Parliament for each agency allowed to access the powers of the CICP Act. This report by the Joint Standing Committee provides the Parliament with an overview of the first three years of the CCC auditing WAPOL, the Department of Fisheries and the ACC.

The first CCC reports for the period 2012-13 found that only WAPOL made use of the CICP Act's provisions to undertake controlled operations. The CCC found that all of these operations complied with the requirements of the CICP Act. The Committee was told by then-Commissioner Roger Macknay QC that the Commission undertook an approach of compliance auditing of the three agencies every quarter and their processes were based on those used in other jurisdictions, especially the NSW Ombudsman. When pressed by the Committee about the need to look at the merits of these applications, the Commissioner assured the Committee that "I will certainly take on board your point."¹

In its report for the 2013-14 period, the CCC found again that the ACC did not make use of the CICP Act covert power provisions while the Department of Fisheries completed only one controlled operation. WAPOL used the provisions of the CICP Act to undertake 48 controlled operations. In its annual report for WAPOL, the Commission identified a number of defects and administrative errors in relation to the records held by WAPOL.

It was the Commission's view that these defects did not invalidate any controlled operation application or authority and it was satisfied that WAPOL had retained all necessary documentation pursuant to section 39 of the CICP Act. Similarly, the Commission also found there were defects in the Department of Fisheries' record keeping but found that these were not sufficient to invalidate the sole controlled operation conducted by that agency.

1 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 23 October 2013, p5.

The latest reports prepared by the Commission are for the period 2014-15. The ACC is still yet to make use of the CACP Act provisions while the Department of Fisheries completed two controlled operations in this period, which were found to be fully compliant with the requirements of the CACP Act.

WAPOL used the provisions of the CACP Act at a similar level to that for the previous year and conducted 49 controlled operations. Again the Commission identified areas of non-compliance by WAPOL with the CACP Act. The Commission made three recommendations to WAPOL to improve the administration of their processes to ensure its compliance with the CACP Act.

The Commission noted in the Executive Summary of each of the three annual reports prepared for the 2014-15 period that it had changed its approach to its CACP Act audit function:

*Previous Annual Reports produced by the CCC were produced from a compliance perspective. The CCC has since widened its scope of consideration of agency controlled operation records. The modified approach gives consideration to all aspects of Part 2 of the CACP Act and considers if an authority to engage in controlled conduct has been exercised in conformity with statutory criteria, is reasonable, necessary, proportionate and justified. The CCC also considers whether the conduct of the controlled operation was consistent with the authorisation and in compliance with the legislation.*²

The CCC Commissioner told the Committee after the tabling of these annual reports that WAPOL had responded positively to the Commission's comments in its 2014-15 annual report. He had written to the Commissioner of Police on 16 February 2016 stating that "I am confidently of the view that the concerns expressed in this Annual Report are a matter for history, ... I expect the next Annual Report will reflect this."³

Of particular note is that this latest report prepared by the Commission reporting WAPOL's controlled operations contained a significant number of redactions made by WAPOL before the report was tabled in Parliament by the Minister for Police, Hon Liza Harvey MLA. Such redactions were not applied by WAPOL in the two previous CCC compliance reports, nor do they occur in similar annual compliance reports tabled in Parliament in other Australian jurisdictions.

2 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Department of Fisheries, Report for the Minister for Fisheries*, Perth, 30 November 2015, pp ii-iii.

3 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 10 May 2016.

The Committee sought to have these redactions justified. In letters dated 24 June 2016 and 8 August 2016 the Minister said that the redactions were made by WAPOL in accordance with section 38(2) of the CICIP Act. WAPOL considered the redacted information as sensitive and might be expected to prejudice an investigation or prosecution, or compromise its operational activities.⁴

The Committee also sought a copy of the unredacted report from the Commission. Commissioner McKechnie wrote to the Committee on 13 September 2016 similarly declining to provide the Committee the report, “unless summonsed under section 5 of the Parliamentary Privileges Act 1891 or directed under the Standings Orders of the Legislative Assembly.”⁵

The Committee has made a finding that the Corruption and Crime Commission’s 2014-15 audit report on the use by WA Police of covert powers under the *Criminal Investigation (Covert Powers) Act 2012* has been redacted by the Minister for Police on advice from the Commissioner for Police, and these redactions make it difficult for the Committee and the Parliament to undertake their oversight function.

In response to being provided with this draft finding, the Minister for Police said “the redactions ... were made in accordance with the *Criminal Investigation (Covert Powers) Act 2012* and the oversight scheme established by Parliament when the Act was passed.”⁶

Faced with the Parliament rising in November 2016 for the 2017 State election, the Committee has resolved to table this report without sighting the original unredacted version.

The Committee has made three recommendations that:

- i. the Corruption and Crime Commission in its future annual reports should report on whether agencies have adopted recommendations made in previous annual reports.
- ii. the Corruption and Crime Commission return to its previous practice of detailing every covert operation’s compliance with the relevant sections of the *Criminal Investigation (Covert Powers) Act 2012*.
- iii. the Committee in the 40th Parliament should consider conducting an annual review of the Corruption and Crime Commission’s annual audit reports on the

4 Hon Liza Harvey MLA, Minister for Police, Letter, 8 August 2016.

5 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 13 September 2016.

6 Hon Liza Harvey MLA, Deputy Premier and Minister for Police, Letter, 31 October 2016.

use of covert powers by WA Police, the Department of Fisheries and the Australian Crime Commission.

I would like to thank my fellow Committee Members for their input on this report; the Committee's Deputy Chairman, the Member for Albany, Mr Peter Watson MLA; the Member for Forrestfield, Mr Nathan Morton MLA, and the Member for the South West Region, Hon Adele Farina MLC. The Committee members were ably supported by the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan.

A handwritten signature in blue ink, consisting of a stylized 'N' followed by a horizontal stroke and a vertical stroke.

HON NICK GOIRAN, MLC
CHAIRMAN

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Findings and Recommendations

Finding 1

Page 3

In 2011 the then-Parliamentary Inspector of the Corruption and Crime Commission, Hon Christopher Steytler QC, was concerned that the proposed offences that the *Criminal Investigation (Covert Powers) Bill 2011* applied to had been set too low and warned a Parliamentary Committee about the nature of the new powers being provided to WA Police and the Department of Fisheries.

Finding 2

Page 5

The Criminal Investigation (Covert Powers) Act 2012 removes the right of Western Australians to apply for information about covert operations conducted under its provisions under either the *State Records Act 2000* or the *Freedom of Information Act 1992*.

Finding 3

Page 12

In the first four months of operation, the powers within the *Criminal Investigation (Covert Powers) Act 2012* were not used by the Australian Crime Commission or the Department of Fisheries, and 20 authorities were granted to operations conducted by WA Police.

Finding 4

Page 13

For the period 1 March to 30 June 2013, the Corruption and Crime Commission found that the General Registers of both the Australian Crime Commission and Department of Fisheries complied with the requirements of section 40 of the *Criminal Investigation (Covert Powers) Act 2012*.

Finding 5

Page 14

The Corruption and Crime Commission implemented Recommendation 3 from the Joint Standing Committee's Report 10 to ensure that their annual compliance reports on the use of the *Criminal Investigation (Covert Powers) Act 2012* identify the date they have been provided to the relevant Minister.

Finding 6

Page 15

In reviewing the first period of operation of the *Criminal Investigation (Covert Powers) Act 2012*, the Corruption and Crime Commission undertook their audits on a compliance-basis to ascertain if the statutory processes had been followed by WA Police, the Department of Fisheries and the Australian Crime Commission.

Finding 7 **Page 15**

In reviewing the first period of operation of the *Criminal Investigation (Covert Powers) Act 2012* by WA Police, the Corruption and Crime Commission found that they had met all of their responsibilities under the Act.

Finding 8 **Page 17**

In the second year of operation, the powers within the *Criminal Investigation (Covert Powers) Act 2012* were not used by the Australian Crime Commission, were used once by the Department of Fisheries, and 49 authorities were granted to operations conducted by WA Police.

Finding 9 **Page 18**

For the 2013-14 annual reports, both the Minister for Police and the Minister for Fisheries complied with the reporting requirements contained in section 38(4) of the *Criminal Investigation (Covert Powers) Act 2012*.

Finding 10 **Page 19**

In preparing the annual reports for the 2013-14 period, the Corruption and Crime Commission committed to widening and deepening their audits from a compliance-based approach to a merit-based one.

Finding 11 **Page 22**

The Corruption and Crime Commission determined that for the 2013-14 period WA Police met all of their reporting requirements under the *Criminal Investigation (Covert Powers) Act 2012* but it made five recommendations for administrative improvement.

Finding 12 **Page 23**

The Corruption and Crime Commission has not reported on whether WA Police has accepted the five recommendations for improvement in regard to its administrative practices made in the 2013-14 audit report.

Finding 13 **Page 23**

The Corruption and Crime Commission concluded that for the 2013-14 period, the Department of Fisheries had retained all the necessary documentation pursuant to the requirements of section 39 of the *Criminal Investigation (Covert Powers) Act 2012* and made two recommendations for administrative improvement.

Finding 14 **Page 23**

The Corruption and Crime Commission has not reported on whether the Department of Fisheries has accepted the two recommendations for improvement it made in the 2013-14 audit report.

Recommendation 1**Page 23**

The Corruption and Crime Commission in its future annual reports should report on whether agencies have adopted recommendations made in previous annual reports.

Finding 15**Page 24**

The Corruption and Crime Commission determined that for the 2013-14 period the Australian Crime Commission's General Register fully catered for the legislative requirements set out in section 40 of the *Criminal Investigation (Covert Powers) Act 2012*.

Finding 16**Page 26**

In the third reporting year of operation, the powers within the *Criminal Investigation (Covert Powers) Act 2012* resulted in the Department of Fisheries completing two operations, WA Police being granted 47 authorities to conduct controlled operations and were not used by the Australian Crime Commission.

Finding 17**Page 26**

For the 2014-15 reporting period, the Minister for Police and the Minister for Fisheries complied with the requirements of section 38(4) of the *Criminal Investigation (Covert Powers) Act 2012* regarding the tabling in Parliament of reports prepared by the Corruption and Crime Commission.

Finding 18**Page 27**

The Corruption and Crime Commission has widened and deepened its auditing of the use of the powers in the *Criminal Investigation (Covert Powers) Act 2012*, especially in its auditing of the use of them by WA Police.

Finding 19**Page 30**

The Corruption and Crime Commission's 2014-15 audit report on the use by WA Police of covert powers under the *Criminal Investigation (Covert Powers) Act 2012* provides less information than previous reports as it only lists those operations that did not comply with a particular section of the Act.

Recommendation 2**Page 30**

The Corruption and Crime Commission return to its previous practice of detailing every WA Police covert operation's compliance with the five relevant sections of the *Criminal Investigation (Covert Powers) Act 2012* that were listed in the 2012-13 and 2013-14 reports.

Finding 20**Page 32**

In preparing the 2014-15 audit report on the use by WA Police of covert powers under the *Criminal Investigation (Covert Powers) Act 2012*, the Corruption and Crime

Commission was acutely aware of any sensitivities WA Police might have had with the content of the report.

Finding 21

Page 32

The Corruption and Crime Commission had formed the view that the information that was contained in the 2014-15 audit report on the use by WA Police of covert powers under the *Criminal Investigation (Covert Powers) Act 2012* provided to the Minister for Police was not sensitive in any way to police operations.

Finding 22

Page 33

The Corruption and Crime Commission's 2014-15 audit report on the use by WA Police of covert powers under the *Criminal Investigation (Covert Powers) Act 2012* has been redacted by the Minister for Police on advice from the Commissioner for Police, and these redactions make it difficult for the Committee and the Parliament to undertake their oversight function.

Finding 23

Page 34

The equivalent annual covert powers reports prepared by oversight agencies in other Australian jurisdictions are not redacted when they are tabled in parliament.

Finding 24

Page 38

The Corruption and Crime Commission determined that for the 2014-15 period WA Police met all of their reporting requirements under the *Criminal Investigation (Covert Powers) Act 2012* but it made three recommendations for administrative improvement.

Finding 25

Page 39

The Commissioner of the Corruption and Crime Commission is satisfied with the approach of WA Police in adopting proposed recommendations for improvements to its administrative processes in using the covert powers provided for in the *Criminal Investigation (Covert Powers) Act 2012*.

Finding 26

Page 40

The Corruption and Crime Commission found that for the 2014-15 period, the two authorities raised by the Department of Fisheries under the *Criminal Investigation (Covert Powers) Act 2012* complied with the legislated criteria and the Department's General Register specified all of the information required under the Act.

Finding 27

Page 40

For the 2014-15 period, as the Australian Crime Commission did not conduct any controlled operations, the Corruption and Crime Commission did not inspect any of its documents other than its General Register, which it found to be structured to fully

cater for the legislative requirements set out in the *Criminal Investigation (Covert Powers) Act 2012*.

Recommendation 3

Page 41

The Joint Standing Committee on the Corruption and Crime Commission in the 40th Parliament should consider conducting an annual review of the Corruption and Crime Commission's annual audit reports on the use of covert powers contained in the *Criminal Investigation (Covert Powers) Act 2012* by WA Police, the Department of Fisheries and the Australian Crime Commission.

Chapter 1

Review of the CCC's annual Covert Powers Reports

These are extraordinary powers and they should be used in extraordinary circumstances... and abuse becomes more likely over time as people get used to these powers. Hon Christopher Steytler QC, then-Parliamentary Inspector of the CCC.

Introduction

The *Criminal Investigation (Covert Powers) Act 2012* (CICP Act) was proclaimed on 1 March 2013.⁷ The Act provides for the self-authorisation and conduct of covert law enforcement operations by three agencies- two State and one Federal. Section 41 of the CICP Act provides for the Corruption and Crime Commission (CCC) to regularly audit and inspect the records of WA Police (WAPOL), the Department of Fisheries and the Australian Crime Commission (ACC) to determine that they have complied with provisions within the Act. During the first three years of operation, WAPOL has made the greatest use of the covert power provisions contained within the CICP Act.

Section 41 of the CICP Act requires the CCC to inspect and audit the records of each agency at least once every 12 months to determine the extent of their compliance with Part 2 of the CICP Act. Section 38(1) requires the Commission to report to the Minister for Police and the Minister for Fisheries as soon as practicable after the end of the previous financial year on these three agencies' use of the provisions contained within the CICP Act, and the reports are then tabled in Parliament at a later date by the Ministers.⁸

This report by the Joint Standing Committee provides the Parliament with an overview of the reports prepared by the CCC on the first three years of the operation by these agencies using the covert power provisions provided under the CICP Act.

Background to the introduction of the CICP Act

The then-Minister for Police introduced the *Criminal Investigation (Covert Powers) Bill 2011* (CICP Bill) into the Legislative Assembly on 18 August 2011. It was read a second time in the Legislative Council on 1 November 2011. The CICP Act was given Royal Assent on 3 December 2012.

⁷ AustLII, *Criminal Investigation (Covert Powers) Act 2012*, nd. Available at: www.austlii.edu.au/au/legis/wa/num_act/cipa201255o2012456/. Accessed on 4 May 2016.

⁸ Ibid.

Chapter 1

In introducing the new legislation, the Police Minister said it was:

...part of a national project to develop model laws that aid criminal investigation across state and territory borders. The task of developing the model laws was given to a national joint working group established by the Standing Committee of Attorneys-General and the then-Australasian Police Ministers' Council. The joint working group was chaired by the Commonwealth and included representatives of police and justice agencies from each jurisdiction.

The objective of the model laws is to enable seamless cross-border investigation of serious offences. Under these model laws, officers in this state will be able to continue their investigations in another state or territory under an authorisation issued in this state, instead of having to seek a fresh authorisation in each new jurisdiction they enter. Organised criminal networks, such as drug cartels and motorcycle gangs, operate with relative ease across jurisdictional borders. The bill addresses this emerging threat.⁹

The Police Minister said that prior to the development of the proposals contained in the Bill:

... police in this State have been hampered by a lack of broad statutory covert powers and presently rely on a patchwork of restrictive provisions in the Corruption and Crime Commission Act 2004, Prostitution Act 2000 and Misuse of Drugs Act 1981 to conduct controlled operations, administrative arrangements to authorise assumed identities and the common law to regulate the protection of a law enforcement operative's identity in court. The Bill remedies this situation by repealing the undercover provisions in the Misuse of Drugs Act 1981 and Prostitution Act 2000...¹⁰

The CICP Bill implemented provisions provided for in a Model Law now enacted into legislation in all Australian jurisdictions, as well as additional clauses unique to Western Australia. The Model Law reflected the Commonwealth and State and Territories Agreement on Terrorism and Multi-jurisdictional Crime dated 5 April 2002, which was made at a Ministerial level but never signed.¹¹

9 Hon Rob Johnson MLA, Minister for Police, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 18 August 2011, p6223.

10 Ibid.

11 Standing Committee on Uniform Legislation and Statutes Review, *Criminal Investigation (Covert Powers) Bill 2011*, WA Parliament, Perth, March 2012, p2. Available at:

The Legislative Council's Standing Committee on Uniform Legislation and Statutes Review (SCULSR) undertook an inquiry into the Bill and reported that there were two impetuses to the Ministerial Agreement reached in 2002:

1. the belief among Australian anti-crime organisations that organised crime groups have reached 'macro-economic proportions' and are an 'ever evolving transnational phenomenon of immense size'; and
2. the High Court of Australia decision in 1995 in *Ridgeway v The Queen*. John Ridgeway was arrested by the Australian Federal Police (AFP) with possessing heroin and later convicted of possessing a prohibited import. The prosecution alleged that Ridgeway had initiated a deal to import heroin into Australia and to purchase the drug when it arrived. The importation of the drug had been undertaken by an informer with the assistance of the AFP and the Malaysian Police in a 'controlled delivery'.¹²

In evidence to SCULSR, then-Parliamentary Inspector of the Corruption and Crime Commission, Hon Christopher Steytler QC, was concerned that the proposed offences that the Bill applied to had been set too low. He was worried that the limit was applied to offences that carried a penalty of three years, as there are "many, many offences that carry a penalty of three years that would be comparatively trivial offences."¹³ He also warned the Committee about the nature of the new powers being provided to WAPOL and the Department of Fisheries:

*These are extraordinary powers and they should be used in extraordinary circumstances. There is always a risk when you grant extraordinary powers that each time you grant one, people become used to that power and it becomes easier to grant the next and abuse becomes more likely over time as people get used to these powers.*¹⁴

Finding 1

In 2011 the then-Parliamentary Inspector of the Corruption and Crime Commission, Hon Christopher Steytler QC, was concerned that the proposed offences that the *Criminal Investigation (Covert Powers) Bill 2011* applied to had been set too low and warned a Parliamentary Committee about the nature of the new powers being provided to WA Police and the Department of Fisheries.

SCULSR found that the CACP Bill:

[www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/C84A3EA0193849AE482579BB0010906C/\\$file/us.cov.120306.rpf.069.xx.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/C84A3EA0193849AE482579BB0010906C/$file/us.cov.120306.rpf.069.xx.pdf). Accessed on 4 May 2016.

12 Ibid, pp8-9.

13 Ibid, p23.

14 Ibid, pp52-53.

Chapter 1

...proposes a uniform scheme of extraordinary law enforcement powers for Western Australia Police, the Department of Fisheries and the Australian Crime Commission. These powers will be used for both local and cross-border covert 'controlled' operations under the supervision of those agencies' respective chief officers.¹⁵

Need for transparency

The CICIP Bill, unlike most other jurisdictions, removed the right of Western Australians to apply for information about covert operations conducted under the Bill's provisions under either the *State Records Act 2000* (SR Act) or the *Freedom of Information Act 1992* (FOI Act). SCULSR reported that both the Information Commissioner and the State Archivist were of the view that the FOI Act and the SR Act should not be excluded so that records of controlled operations and assumed identities be subject to the same record keeping accountability and compliance requirements as other government records.

The State Archivist referred to government organisations such as the CCC, the Director of Public Prosecutions and Department of Premier and Cabinet which:

...create and keep highly sensitive information and are subject to the State Records Act 2000 and operate approved record keeping plans and retention and disposal schedules with appropriate and approved restrictions on access to certain categories of State Archives such as investigations, prosecutions and Cabinet documents.¹⁶

Similarly, the Information Commissioner referred SCULSR to a range of exemptions set out in clauses 1 to 15 in Schedule 1 of the FOI Act which are designed to protect significant public interests that compete with the public interest in the openness and accountability of government and its agencies.¹⁷

SCULSR was advised by WAPOL that up to 2011, there was no record of any freedom of information applications being made to WAPOL for access to documents concerning covert operations conducted under either the *Prostitution Act 2000* or *Misuse of Drugs Act 1981*.¹⁸

SCULSR recommended that this exemption from the SR Act and FOI Act be removed from the Bill¹⁹, however, the Government did not support it.

15 Ibid, pi.

16 Ibid, p31.

17 Ibid.

18 Ibid, p32.

19 Ibid, p34.

Finding 2

The Criminal Investigation (Covert Powers) Act 2012 removes the right of Western Australians to apply for information about covert operations conducted under its provisions under either the *State Records Act 2000* or the *Freedom of Information Act 1992*.

Amendments to the Bill

In its report, SCULSR made four Findings, three narrative-form Recommendations and 25 statutory-form Recommendations. During the Committee stage of the Debate in the Legislative Council there were 158 proposed amendments to the Bill. One amendment that was adopted by the Government was for a review of the CICIP Act after five years from the date the Act received Royal Assent. This means that a Review of Parts 2 and 3 of the Act should commence as soon as is practicable after December 2017.²⁰

The two most significant changes accepted by the Government after debate in the Council, and the tabling of SCULSR's report, were the move of the oversight of the agencies from the Ombudsman to the CCC, and the empowerment of the Commissioner of Police to be the approving entity for the Department of Fisheries applications to carry out covert operations.

Oversight provisions

The original proposed Model Law included provisions for the Ombudsman to oversee the activities of WAPOL, the ACC and the Department of Fisheries. This has been implemented in other jurisdictions, such as in NSW's *Law Enforcement (Controlled Operations) Act 1997*. In submissions to the Standing Committee, both WAPOL and the Joint Standing Committee on the CCC of the 38th Parliament proposed that instead the CCC undertake the oversight functions required in the Bill.²¹

The CCC initially rejected this proposal saying that its role was one of facilitation, not oversight, and that the role would be better suited to the Ombudsman.²² The Government agreed with the Standing Committee's recommendation and amended the Bill. It later provided the CCC with two additional FTE, but no additional funds, to

20 AustLII, *Criminal Investigation (Covert Powers) Act 2012*, nd. Available at: www.austlii.edu.au/au/legis/wa/num_act/cipa201255o2012456/s107.html. Accessed on 4 May 2016.

21 Standing Committee on Uniform Legislation and Statutes Review, *Criminal Investigation (Covert Powers) Bill 2011*, WA Parliament, Perth, March 2012, p45. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/C84A3FA0193849AE482579BB0010906C/\\$file/us.cov.120306.rpf.069.xx.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/C84A3FA0193849AE482579BB0010906C/$file/us.cov.120306.rpf.069.xx.pdf). Accessed on 4 May 2016.

22 Ibid.

Chapter 1

undertake the required oversight and reporting functions required under the CICP Act.²³

Department of Fisheries

SCULSR noted in its report that no other jurisdiction includes their fisheries departments in the equivalent definition of 'law enforcement agency', although the Model Law allows for other agencies to be so prescribed. The Department of Fisheries also disclosed to SCULSR that its need was not so much for powers to conduct controlled operations, but for the Part 3 provisions for assumed identities, as it "is the underpinning tool that we need to do this type of work."²⁴

Prior to the introduction of the CICP Act, the Department operated under a Ministerial exemption to conduct controlled or covert operations pursuant to section 7(2)(g) of the *Fish Resources Management Act 1994* (FRM Act).²⁵ Between 2007 and 2011, the Department of Fisheries Serious Offences Unit (SOU) undertook seven covert operations of which four resulted in successful prosecutions of breaches of provisions of the FRM Act.²⁶

SCULSR recommended that the Department of Fisheries should not be included as a law enforcement agency under the Bill due to its small number of covert operations and the Commissioner of Police's personal reservations about how the Bill will operate in practice with the Department.²⁷ It said that the implementation of the policy to include the Department of Fisheries in the definition of 'law enforcement agency' was "ill-considered and unprepared."²⁸

The Government did not agree with SCULSR's recommendation, however, it did agree to amend the Bill so that the Commissioner of Police was to be the 'approving entity' for the Department of Fisheries. The Minister representing the Attorney General in the Legislative Council, Hon Peter Collier MLC, told Parliament that:

23 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 23 October 2013, p5.

24 Standing Committee on Uniform Legislation and Statutes Review, *Criminal Investigation (Covert Powers) Bill 2011*, WA Parliament, Perth, March 2012, p18. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/C84A3EA0193849AE482579BB0010906C/\\$file/us.cov.120306.rpf.069.xx.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/C84A3EA0193849AE482579BB0010906C/$file/us.cov.120306.rpf.069.xx.pdf). Accessed on 4 May 2016.

25 AustLII, *Fish Resources Management Act 1994*, 4 March 2016. Available at: www.austlii.edu.au/au/legis/wa/consol_act/frma1994256/s7.html. Accessed on 4 May 2016.

26 Standing Committee on Uniform Legislation and Statutes Review, *Criminal Investigation (Covert Powers) Bill 2011*, WA Parliament, Perth, March 2012, p10. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/C84A3EA0193849AE482579BB0010906C/\\$file/us.cov.120306.rpf.069.xx.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/C84A3EA0193849AE482579BB0010906C/$file/us.cov.120306.rpf.069.xx.pdf). Accessed on 4 May 2016.

27 Standing Committee on Uniform Legislation and Statutes Review, *Criminal Investigation (Covert Powers) Bill 2011*, WA Parliament, Perth, March 2012, p20.

28 Ibid, p21.

Under the Bill, the Director General of the Fisheries Department is authorised to approve controlled operations for that Department. The Director General is also authorised to approve the use and acquisition of assumed identities by the Department. The amendments have been drafted on the supplementary notice paper to, instead, make the Commissioner of Police the approving entity for controlled operations conducted by the Fisheries Department and to approve the use or acquisition of assumed identities by the Department.

In this regard, the Commissioner of Police will also be the designated person to approve relevant variations or cancellations of such authorities and any retrospective approvals of controlled operations conducted by the Fisheries Department. Other administrative or record-keeping requirements contained in parts 2 and 3 of the Bill will still be the responsibility of the Director General of the Fisheries Department.

A Memorandum of Understanding between the Commissioner of Police and the Director General of the Fisheries Department will provide for exchange of information et cetera so that both officers can adequately carry out their respective functions under parts 2 and 3 of the Bill.²⁹

Overview of the powers contained in the CICP Act

The CICP Act enables the Chief Executive Officer or the delegate of a prescribed law enforcement agency to self-authorise the conduct of a ‘controlled operation’ for a ‘relevant offence’ within the State. The limits of these powers include:

- a) offences punishable by imprisonment for 3 years or more; or
- b) an offence not covered by paragraph (a) that constitutes a ‘relevant offence’ under a range of Western Australian Acts, including-
 - i. *The Classification (Publications, Films and Computer games) Enforcement Act 1996*;
 - ii. *The Criminal Code*;
 - iii. *Firearms Act 1973*;
 - iv. *Fish Resources Management Act 1994*;

29 Hon Peter Collier MLC, Minister for Energy, Western Australia, Legislative Council, *Parliamentary Debates* (Hansard), 14 June 2012, p3672.

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- v. *Misuse of Drugs Act 1981*;
- vi. *Prostitution Act 2000*;
- vii. *Weapons Act 1999*.³⁰

An authority to conduct a controlled operation may be made in two ways. Normally a formal application is made in writing and signed by an applicant of these three agencies. An urgent application, however, can be made to the Chief Executive Officer in person, by telephone or other electronic means. In either circumstance, section 10 of the CICP Act states that an application must contain sufficient information for a Chief Executive Officer to make an informed decision prior to approving a controlled operation, and must state whether the application is the subject of a variation to a previous application, and whether that application had been granted.³¹

A variation to an existing authority can be granted to:

- extend the period of validity of the authority;
- authorise additional or alternative persons to engage in controlled conduct;
- authorise participants to engage in additional or alternative controlled conduct;
- identify new suspects; or
- identify a new Principal Law Enforcement Officer (PLEO).³²

The CICP Act recognises the corresponding controlled operation laws of the Commonwealth. The three Western Australian controlled operations authorities are only recognised in other jurisdictions, however, if that State or Territory has first recognised the CICP Act as 'corresponding legislation'. The interstate Acts recognised by the CICP Act, and the agencies to which they apply, are:

- **Commonwealth**
Crimes Act 1914 (Cth) - Part IAB [AFP, Police force of State/Territory, Australian Border Force, ACC, ACLEI]
- **ACT**
Crimes (Controlled Operations) Act 2008 (ACT) [AFP, ACC]

30 AustLII, *Criminal Investigation (Covert Powers) Act 2012*, nd. Available at: www.austlii.edu.au/au/legis/wa/num_act/cipa201255o2012456/. Accessed on 4 May 2016.

31 Ibid, section 10.

32 Ibid, section 18.

- **NSW**
Law Enforcement (Controlled Operations) Act 1997 (NSW) [NSW Police, ICAC, NSWCC, PIC, AFP, ACC, Australian Border Force]
- **Queensland**
Police Powers and Responsibilities Act 2000 (Qld) [Qld Police, CCC]
- **South Australia**
Criminal Investigation (Covert Operations) Act 2009 (SA) [SA Police]
- **Tasmania**
Police Powers (Controlled Operations) Act 2006 (Tas) [Tasmania Police, ACC]
- **Victoria**
Crimes (Controlled Operations) Act 2004 (Vic) [Victoria Police, IBAC]³³

Reports to date

To date there have been three compliance reports tabled in the WA Parliament for each agency allowed to access the powers of the CICP Act. The first of the annual reports prepared by the CCC was for the year 2012-13. They reported on the activities covered by the CICP Act for the shortened period between 1 March 2013 to 30 June 2013 as the CICP Act was proclaimed on 3 December 2012.

The latest annual reports tabled in early 2016 were for the period between 1 July 2014 and 30 June 2015. The CCC annual reports for each of the three agencies are analysed in the following chapters.

33 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, Report for the Minister for Police*, Perth, November 2013, p5.

Chapter 2

Analysis of published CCC Covert Powers Reports: 2012-13

*WAPOL met all their reporting requirements under the [CICP] Act.
Corruption and Crime Commission, Annual Compliance Report into the Criminal
Investigation (Covert Powers) Act 2012, Report for the Minister for Police.*

CCC Covert Powers Reports for the period 1 March to 30 June 2013

Table 1 below indicates that in this reporting period only WAPOL made use of the Act's provisions to undertake controlled operations. Twenty authorities for operations were granted to WAPOL but only five operations were conducted. Four of the five operations resulted in charges being laid for the 'sale or supply of prohibited drugs'.³⁴ The CCC found that all of the five operations complied with the requirements of sections 10, 12, 14, 15 and 36 of the CICP Act.³⁵

The Commission concluded its report on WAPOL's activities that:

[45] It is apparent that all agencies are providing good records of their activities, providing a reasonable basis to suspect an offence on which the controlled operation is to be carried out; as well as being aware of the matters to be taken into account by the authorising officer and addressing these matters prior to submission of their application.

...

[49] The general register maintained by WAPOL is detailed and comprehensive. It is structured to provide the mandatory information detailed in section 37(2) to be included in the Chief Officers report to the Commission, thus the report was adequate.

[50] WAPOL met all their reporting requirements under the Act.³⁶

34 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, Report for the Minister for Police*, Perth, November 2013, p19.

35 Ibid, p11.

36 Ibid, p13.

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Table 1- Number of authorities and controlled operations- 2012-13 (4 month period)

	WA Police ³⁷	Fisheries ³⁸	ACC ³⁹
Authorities granted	20	0	0
Controlled operations completed	5	0	0
Variations granted	0	0	0

Finding 3

In the first four months of operation, the powers within the *Criminal Investigation (Covert Powers) Act 2012* were not used by the Australian Crime Commission or the Department of Fisheries, and 20 authorities were granted to operations conducted by WA Police.

Despite the ACC and the Department of Fisheries (DoF) not using the powers of the CICP Act in this reporting period, the CCC inspected their General Registers that are required to be maintained under section 40 of the CICP Act, to ensure their structure complied with the Act.⁴⁰ The Commission's inspection found that the ACC had complied with the requirements of the Act and the "records kept in relation to controlled operations under the Act were comprehensive and adequate."⁴¹

Similarly, the Commission was:

*...satisfied that the DoF are providing good records of their activities, providing a reasonable basis to suspect an offence on which the controlled operation is to be carried out; as well as being aware of the matters to be taken into account by the authorising officer and addressing these matters prior to submission of their application.*⁴²

37 Ibid, p9.

38 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, Report for the Minister for Fisheries*, Perth, November 2013.

39 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, Report for the Minister for Police Regarding the Australian Crime Commission*, Perth, November 2013.

40 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, Report for the Minister for Police Regarding the Australian Crime Commission*, Perth, November 2013, pvii.

Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, Report for the Minister for Fisheries*, Perth, November 2013, pvii.

41 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, Report for the Minister for Police Regarding the Australian Crime Commission*, Perth, November 2013, pvii.

42 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, Report for the Minister for Fisheries*, Perth, November 2013, p10.

Finding 4

For the period 1 March to 30 June 2013, the Corruption and Crime Commission found that the General Registers of both the Australian Crime Commission and Department of Fisheries complied with the requirements of section 40 of the *Criminal Investigation (Covert Powers) Act 2012*.

Reporting requirements of the CICP Act

While all three reports compiled by the CCC were dated November 2013, each was tabled on different dates by the appropriate Minister:

- ACC- tabled by the Minister for Police on 26 November 2013;
- CCC- tabled by the Minister for Fisheries on 18 February 2014; and
- WAPOL- tabled by the Minister for Police on 1 April 2014.⁴³

Section 38(1) of the CICP Act requires the Commission to, as soon as possible after 30 June each year, prepare a report of the activities of the three ‘law enforcement agencies’ covered by the CICP Act for the preceding 12 months, and provide a copy of it to the Minister and to the chief officer of each agency. Section 38(4) requires the Minister to table a copy of the report before each House of Parliament within 15 sitting days from the day on which the report was received by them.

The first reports prepared by the Commission did not include the date on which their reports were provided to the Ministers for Police and Fisheries, so it was not possible to confirm that each Minister had complied with their obligations under section 38(4) of the Act. The Joint Standing Committee tabled its Report 10, *WA Police’s use of Part 4 ‘exceptional powers’ in the Corruption and Crime Commission Act 2003*, on 10 April 2014 and its recommendation three was that:

*The Corruption and Crime Commission ensure that their annual compliance reports on the use of the Criminal Investigation (Covert Powers) Act 2012 identify the date it has been provided to the relevant Minister.*⁴⁴

43 Parliament of WA, *Papers Tabled in the Legislative Assembly*. Available at: [www.parliament.wa.gov.au/Test/Tables.nsf/\(searchLATAbledPapersDesc\)?SearchView&Query=covert%20powers%20and%20\(\(%5BDDateTabled%5D%3E=1/11/2013\)and\(%5BDDateTabled%5D%3C=1/07/2014\)\)&Start=1&SearchOrder=4&SearchWV=TRUE&sWord=covert%20powers&sPageNumber=&sPaperName=&sStartDate=1/11/2013&sEndDate=1/07/2014&sWordVar=1&sFuzzy=&sMaxResults=All&sSortOrd=0&sAdv=1](http://www.parliament.wa.gov.au/Test/Tables.nsf/(searchLATAbledPapersDesc)?SearchView&Query=covert%20powers%20and%20((%5BDDateTabled%5D%3E=1/11/2013)and(%5BDDateTabled%5D%3C=1/07/2014))&Start=1&SearchOrder=4&SearchWV=TRUE&sWord=covert%20powers&sPageNumber=&sPaperName=&sStartDate=1/11/2013&sEndDate=1/07/2014&sWordVar=1&sFuzzy=&sMaxResults=All&sSortOrd=0&sAdv=1). Accessed on 5 May 2016.

44 Joint Standing Committee on the Corruption and Crime Commission, *WA Police’s use of Part 4 ‘exceptional powers’ in the Corruption and Crime Commission Act 2003*, Legislative Assembly, Parliament of Western Australia, Perth, 10 April 2014, p30. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/2C6EE74D72B](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/2C6EE74D72B)

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As shown in Tables 3 and 5 (see Chapters 3 and 4), the annual reports prepared by the Commission for the subsequent two periods identified the date on which the reports had been provided to the relevant Minister.

Finding 5

The Corruption and Crime Commission implemented Recommendation 3 from the Joint Standing Committee's Report 10 to ensure that their annual compliance reports on the use of the *Criminal Investigation (Covert Powers) Act 2012* identify the date they have been provided to the relevant Minister.

Commission's approach to its auditing role

In preparing Report 10, the Joint Standing Committee heard evidence in a hearing with then-CCC Commissioner, Mr Roger Macknay QC, about the process the Commission was using to audit the three agencies and prepare their annual compliance reports. The Committee was told that the Commission had employed two new staff to undertake the compliance auditing of the three agencies required by the CICP Act⁴⁵, and they undertook quarterly audits of these agencies.⁴⁶

The Committee also heard that "[t]here has been a significant amount of negotiation between us and the organisations about how we go about these audits and the consequences for them and us."⁴⁷ Then-Commissioner Macknay told the Committee:

*The Commission is not conducting an audit on a worthiness basis, if I can put it that way. The Commission is not looking to see if it is of a similar view to the issuing authority, but rather to see whether the statutory processes have been followed.*⁴⁸

When pressed by the Committee about the change from the previous process of WAPOL applying to the CCC for the approval to use the exceptional powers contained in Part 4 of the then-*Corruption and Crime Commission Act 2003*, the Commissioner said that the CCC's processes were based on those used in other jurisdictions, especially the NSW Ombudsman. He told the Committee that the resource consequences for the Commission of looking at the merits of each of these applications would be "significant and substantial." Commissioner Macknay said that the

[5438D48257CB500222A1/\\$file/Report%2010-%20Exceptional%20Powers-final-%20April%202014.pdf](#). Accessed on 2 May 2016.

45 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 23 October 2013, p5.

46 Mr Roger Watson, Director, Corruption Prevention, Corruption and Crime Commission, *Transcript of Evidence*, 23 October 2013, p4.

47 Ibid.

48 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 23 October 2013, p4.

implications for the Commission of moving to a more detailed audit of the merits of each application for exceptional powers under the CACP Act:

...depending on how active in particular the Commissioner of Police was, that would involve someone necessarily with some, if not legal, considerable investigative experience, examining every application on its merits so to speak in the event that there were—I think we anticipated perhaps 45 cases a year initially, and it would be a very time consuming process.⁴⁹

The Commission's then-Director of Corruption Prevention, explained to the Committee:

*In any review audit reconsideration of decisions made by a law enforcement authority that involves the exercise of the power, one of the questions that we would consistently and rigorously ask is not simply whether the power has been exercised lawfully, but whether the **power has been exercised reasonably**.(emphasis added) If it has been exercised unreasonably, that raises real questions about the abuse of power. ... If the power does not appear to have been exercised unreasonably, there would be no basis for us to pursue it any further. If it appeared to be exercised unreasonably or we suspected that, we would consider it in some detail.⁵⁰*

The Commissioner concluded his evidence on this matter by assuring the Committee that "I will certainly take on board your point."⁵¹

Finding 6

In reviewing the first period of operation of the *Criminal Investigation (Covert Powers) Act 2012*, the Corruption and Crime Commission undertook their audits on a compliance-basis to ascertain if the statutory processes had been followed by WA Police, the Department of Fisheries and the Australian Crime Commission.

Finding 7

In reviewing the first period of operation of the *Criminal Investigation (Covert Powers) Act 2012* by WA Police, the Corruption and Crime Commission found that they had met all of their responsibilities under the Act.

49 Ibid, p5.

50 Mr Roger Watson, Director, Corruption Prevention, Corruption and Crime Commission, *Transcript of Evidence*, 23 October 2013, p5.

51 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 23 October 2013, p5.

Chapter 3

Analysis of published CCC Covert Powers Reports: 2013-14

We have had another look at [our auditing approach] and the decision that I have made is that we will go beyond compliance. Then-CCC Commissioner Mr Roger Macknay QC.

CCC Covert Powers Reports for the period 1 July 2013 to 30 June 2014

The reports for the period 2013-14 were the second series of annual reports prepared by the CCC. Once again during this period the ACC did not make use of the CICP Act provisions while the Department of Fisheries completed only one controlled operation. During this first full reporting period, WAPOL's use of the CICP Act provisions were about three times the level to that for the four-month period in 2012-13, as shown in Table 2.

Table 2- Number of authorities and controlled operations- 2013-14

	WA Police ⁵²	Fisheries ⁵³	ACC ⁵⁴
Authorities granted	49	1	0
Controlled operations completed	48	1	0
Variations granted	13	0	0

Finding 8

In the second year of operation, the powers within the *Criminal Investigation (Covert Powers) Act 2012* were not used by the Australian Crime Commission, were used once

52 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2013 - 30 June 2014, Western Australia Police, Report for the Minister for Police*, Perth, 6 February 2015, piii.

53 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2013 - 30 June 2014, Department of Fisheries, Report for the Minister for Fisheries*, Perth, 6 February 2015, piii.

54 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2013 - 30 June 2014, Australian Crime Commission, Report for the Minister for Police*, Perth, 6 February 2015, piii.

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by the Department of Fisheries, and 49 authorities were granted to operations conducted by WA Police.

Reporting requirements of the CICP Act

Section 38(1) of the CICP Act requires the Commission to, as soon as possible after 30 June each year, prepare a report of the activities of the three 'law enforcement agencies' covered by the CICP Act for the preceding 12 months and give a copy of it to the Minister and to the chief officer of each agency. Section 38(4) requires the Minister to table a copy of the report before each House of Parliament within 15 sitting days from the day on which the report was received by them.

Table 3 provides the dates on which each of the reports was provided to the relevant Minister by the CCC, and when they were tabled. Both the Minister for Police and the Minister for Fisheries complied with section 38(4) of the CICP Act.

Table 3- Dates for the provision of the 2013-14 annual reports and their tabling

	Date provided to the Minister	Date Tabled by the Minister	Sitting Days
WA Police	6 February 2015	24 March 2015 ⁵⁵	13
Fisheries	6 February 2015	24 February 2015 ⁵⁶	4
ACC	6 February 2015	24 March 2015 ⁵⁷	13

Finding 9

For the 2013-14 annual reports, both the Minister for Police and the Minister for Fisheries complied with the reporting requirements contained in section 38(4) of the *Criminal Investigation (Covert Powers) Act 2012*.

Commission's approach to its auditing role

In February 2014, during a closed hearing with the Joint Standing Committee, then-Commissioner Mr Roger Macknay QC told the Committee that the Commission had changed its approach to its auditing role under the CICP Act since its previous hearing with the Committee in October 2013:

55 Available at: [www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3912741afffaa34f190d5dfa48257e120028dc9a/\\$file/2741.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3912741afffaa34f190d5dfa48257e120028dc9a/$file/2741.pdf). Accessed 3 June 2016.

56 Available at: [www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3912617a9056a19b463db45848257df6002b2e90/\\$file/2617.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3912617a9056a19b463db45848257df6002b2e90/$file/2617.pdf). Accessed 3 June 2016.

57 Available at: [www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3912740a68404468cb437f7248257e120028dc90/\\$file/2740.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3912740a68404468cb437f7248257e120028dc90/$file/2740.pdf). Accessed 3 June 2016.

I think when we were up here at some point last year, there was a discussion about what policy we had adopted in relation to looking at these things, whether it would be compliance-based or whether it would be more than that. We have had another look at that and the decision that I have made is that we will go beyond compliance.

I noted the concerns expressed by the Committee on the previous occasion and there will be a greater level of supervision, if you like, within the Commission than was previously intended in relation to these matters and a greater degree of oversight. In other words, the process that will be put in place will be for the Commissioner and others to be kept aware of matters where there is any degree of concern about them.⁵⁸

The Commission outlined the change in its auditing approach in the Executive Summary of the three reports it published for the 2014-15 period:

The modified approach gives consideration to all aspects of Part 2 of the CICP Act and considers if an authority to engage in controlled conduct has been exercised in conformity with statutory criteria, is reasonable, necessary, proportionate and justified. The CCC also considers whether the conduct of the controlled operation was consistent with the authorisation and in compliance with the legislation.⁵⁹

Finding 10

In preparing the annual reports for the 2013-14 period, the Corruption and Crime Commission committed to widening and deepening their audits from a compliance-based approach to a merit-based one.

Use of the CICP Act provisions by WAPOL

In an earlier hearing with then-Commissioner Macknay, QC during the first year of operation of the CICP Act, the Committee was told that the Commission expected WAPOL to initially undertake about 45 covert operations a year using the provisions of the Act.⁶⁰ In the annual report for the period 2013-14 the CCC reports that WAPOL used the provisions of the CICP Act to conduct 48 covert operations. The Committee

58 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Closed Hearing, Transcript of Evidence*, 19 February 2014.

59 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015*, Department of Fisheries, Report for the Minister for Fisheries, Perth, 30 November 2015, piii.

60 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 23 October 2013, p5.

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heard evidence from then-Commissioner Macknay QC in early 2014 that, by comparison, in the two year period between 2008 and 2010 WAPOL had applied to the CCC to carry out nine operations using the Part 4 exceptional powers contained in the CCC Act, of which the CCC approved eight.

The Committee raised this apparent disparity in use of covert powers with then-Commissioner Macknay and was told that the majority of WAPOL's operations using the powers of the CACP Act were for illicit drug matters that previously would have been provided for by powers contained in the *Misuse of Drugs Act 1981*, not the CCC Act.⁶¹

In its annual report, the Commission identified a number of defects and administrative errors in relation to the records held by WAPOL. It was the Commission's view that these defects did not invalidate any controlled operation application or authority and it was satisfied that WAPOL had retained all necessary documentation pursuant to the requirements of section 39 of the CACP Act.⁶²

Arrests and charges followed from 26 (54%) of WAPOL's controlled operations during this reporting period.⁶³ The Commission noted that the range of criminal activity targeted by WAPOL in 2013-14 was more extensive than the previous year and that the controlled operations they conducted pursued more than one type of criminal activity. Drug related offences were the target of a significant portion of WAPOL's controlled operations and the annual report categorised the focus of the controlled operations as follows⁶⁴:

- Drug related offences (50%)
- Receiving stolen property (12%)
- Firearms offences (12%)
- Burglary (5%)
- Stealing (4%)
- Robbery (3%)
- Racial harassment and incite racial animosity (3%)

61 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Closed Hearing, Transcript of Evidence*, 19 February 2014.

62 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2013 - 30 June 2014, Western Australia Police, Report for the Minister for Police*, Perth, 6 February 2015, piii.

63 Ibid, p12.

64 Ibid, p10-11.

- Corruption (2%)
- Unlicensed possession of dangerous goods (Aggravated) (2%)
- Criminal damage (2%)
- Gaming and wagering offences (1%)
- Possessing thing for applying graffiti (1%)
- Property laundering (1%)
- Trespass (1%)
- Unlawful use of computer access (1%)

The Commission concluded its annual report by finding that WAPOL fully complied with the record keeping requirements of the CICIP Act⁶⁵ and that its General Register was structured to fully cater for the legislative requirements set out in the Act.⁶⁶ It noted that WAPOL's controlled operation records are retained within its Special Operations Applications Unit (SOAU), except controlled operations conducted as part of an Internal Affairs Unit (IAU) investigation. Records for the controlled operations by IAU are retained within that Unit.⁶⁷

The Commission noted that legal advice would be provided and reported on in the next annual report (2014-15) in respect to:

- the conducting of geographical controlled operations under the CICIP Act;
- the use of two separate authorities given for one application in respect of the same operation; and
- the presence of human sources at the initial exchange of illicit goods during controlled operations, in circumstances where they are not authorised participants in the operation.⁶⁸

65 Ibid, p17.

66 Ibid, p20.

67 Ibid, p22.

68 Ibid, p32.

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Finally, the CCC made five recommendations to WAPOL in regard to its administrative practices:

1. that the Chief Officer's report is submitted to the Commission no later than two months and two weeks after 30 June and 31 December each year;
2. that WAPOL review their practice and procedures to ensure that the Chief Officer's reports accurately describe the nature of the controlled conduct engaged in, pursuant to section 37(2)(d) of the CICIP Act;
3. that WAPOL consider adopting as best practice, endorsement of the General Register with the reason for an authorisation to vary an authority;
4. that WAPOL review their practice and procedures to ensure that the Principal Law Enforcement Officer's reports accurately reflect the nature of the controlled conduct engaged in; and
5. that WAPOL review their procedures to ensure that the IAU submit a timely section 37 report when an IAU controlled operation has been completed in the relevant period.⁶⁹

Finding 11

The Corruption and Crime Commission determined that for the 2013-14 period WA Police met all of their reporting requirements under the *Criminal Investigation (Covert Powers) Act 2012* but it made five recommendations for administrative improvement.

The Commission has not reported, in either its 2013-14 or 2014-15 reports, on whether WAPOL has accepted these five recommendations. Its report for the 2014-15 period noted a number of discussions between the Commission and WAPOL over improvements which WAPOL had agreed to make during that year. It concluded:

*WAPOL responded positively to the feedback provided by the CCC. The CCC and WA Police have forged a positive working relationship concerning the requirements of the CICIP Act and controlled operations. The CCC is confident that the initiatives instigated by WA Police will improve compliance. Both agencies are committed to improving work in this area.*⁷⁰

⁶⁹ Ibid, p33.

⁷⁰ Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015*, Western Australia Police, Report for the Minister for Police, Perth, 15 January 2016, p14.

Finding 12

The Corruption and Crime Commission has not reported on whether WA Police has accepted the five recommendations for improvement in regard to its administrative practices made in the 2013-14 audit report.

Use of the CICP Act provisions by the Department of Fisheries

The Commission's audit of the Department of Fisheries (DoF) identified several defects in its record keeping but in its view these did not invalidate the sole controlled operation's application or authority. The Commission was satisfied that the DoF retained all the necessary documentation pursuant to the requirements of section 39 of the CICP Act.⁷¹

In its report, the Commission made two recommendations to DoF:

1. that the Department of Fisheries review its practice and procedures in relation to completed operations, and consider adopting a similar process to WAPOL, in cancelling completed controlled operations if they concluded prior to the expiration of the authorisation; and
2. that the Chief Officer's report is submitted to the Commission no later than two months and two weeks after 30 June and 31 December each year.⁷²

Finding 13

The Corruption and Crime Commission concluded that for the 2013-14 period, the Department of Fisheries had retained all the necessary documentation pursuant to the requirements of section 39 of the *Criminal Investigation (Covert Powers) Act 2012* and made two recommendations for administrative improvement.

The Commission has not reported, in either its 2013-14 or 2014-15 reports, on whether the Department of Fisheries has accepted these two recommendations.

Finding 14

The Corruption and Crime Commission has not reported on whether the Department of Fisheries has accepted the two recommendations for improvement it made in the 2013-14 audit report.

Recommendation 1

The Corruption and Crime Commission in its future annual reports should report on whether agencies have adopted recommendations made in previous annual reports.

71 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2013 - 30 June 2014, Department of Fisheries, Report for the Minister for Fisheries*, Perth, 6 February 2015, piii.

72 Ibid, p17.

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Use of the CICP Act provisions by the ACC

The Commission's audit of the ACC found that, although no controlled operations were completed during 2013-14, their General Register was inspected and found to fully cater for the legislative requirements set out in section 40 of the CICP Act.⁷³

Finding 15

The Corruption and Crime Commission determined that for the 2013-14 period the Australian Crime Commission's General Register fully catered for the legislative requirements set out in section 40 of the *Criminal Investigation (Covert Powers) Act 2012*.

73 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2013 - 30 June 2014*, Australian Crime Commission, Report for the Minister for Police, Perth, 6 February 2015, p11.

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Analysis of published CCC Covert Powers Reports: 2014-15

The WA Police and [the] Commission have forged a robust and positive working relationship concerning the requirements of the CICP Act and controlled operations, which we anticipate will continue into the future. Hon John McKechnie QC, Commissioner, Corruption and Crime Commission.

CCC Covert Powers Reports for the period 1 July 2014 to 30 June 2015

This chapter assesses the latest reports prepared by the Commission. The ACC is still yet to make use of the CICP Act provisions while the Department of Fisheries completed two controlled operations. During this reporting period WAPOL's use of the CICP Act provisions were at a similar level to that for the previous year, as shown in Table 4.

Table 4- Number of authorities and controlled operations- 2014-15

	WA Police ⁷⁴	Fisheries ⁷⁵	ACC ⁷⁶
Authorities granted	47	3	0
Controlled operations completed	49 [#]	2	0
Variations granted	14	0	0

[#] One controlled operation was subject to two authorities. Some controlled operations authorised in the 2013-14 period were completed in the 2014-15 period, while others authorised in 2014-15 were completed in the following period.⁷⁷

74 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Western Australia Police, Report for the Minister for Police*, Perth, 15 January 2016, p3.

75 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Department of Fisheries, Report for the Minister for Fisheries*, Perth, 30 November 2015, p2.

76 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Australian Crime Commission, Report for the Minister for Police*, Perth, 30 November 2015, p2.

77 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 28 October 2016.

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Finding 16

In the third reporting year of operation, the powers within the *Criminal Investigation (Covert Powers) Act 2012* resulted in the Department of Fisheries completing two operations, WA Police being granted 47 authorities to conduct controlled operations and were not used by the Australian Crime Commission.

Reporting requirements of the CICP Act

Section 38(4) of the CICP Act requires the relevant Minister to table a copy of a CCC report before each House of Parliament within 15 sitting days from the day on which the report was received by them. Table 5 below provides the dates on which each of the reports was provided to the relevant Minister by the CCC, and when they were tabled. Both the Minister for Police and the Minister for Fisheries were compliant with section 38(4) of the CICP Act. The WAPOL report was tabled on the last sitting day allowed for by the CICP Act.

Table 5- Dates for the provision of the 2014-15 annual reports and their tabling

	Date provided to the Minister	Date Tabled by the Minister	Sitting Days
WA Police ⁷⁸	15 January 2016	7 April 2016	15
Fisheries ⁷⁹	30 November 2015	16 February 2016	1
ACC ⁸⁰	30 November 2015	16 February 2016	1

Finding 17

For the 2014-15 reporting period, the Minister for Police and the Minister for Fisheries complied with the requirements of section 38(4) of the *Criminal Investigation (Covert Powers) Act 2012* regarding the tabling in Parliament of reports prepared by the Corruption and Crime Commission.

Commission's approach to its auditing role

The Commission noted in the Executive Summary of each of the three annual reports prepared for the 2014-15 period that it had changed its approach to its CICP Act audit function:

78 Available at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914072a051d5490a1c63d1548257f8e000e5330/\\$file/4072.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914072a051d5490a1c63d1548257f8e000e5330/$file/4072.pdf). Accessed 3 June 2016.

79 Available at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913717a9950dd66ceedb95948257f5b0048ec5f/\\$file/3717.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913717a9950dd66ceedb95948257f5b0048ec5f/$file/3717.pdf). Accessed 3 June 2016.

80 Available at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913716a41cd83ebfa74da5d48257f5b0048ec5f/\\$file/3716.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3913716a41cd83ebfa74da5d48257f5b0048ec5f/$file/3716.pdf). Accessed 3 June 2016.

Previous Annual Reports produced by the CCC were produced from a compliance perspective. The CCC has since widened its scope of consideration of agency controlled operation records. The modified approach gives consideration to all aspects of Part 2 of the CICIP Act and considers if an authority to engage in controlled conduct has been exercised in conformity with statutory criteria, is reasonable, necessary, proportionate and justified. The CCC also considers whether the conduct of the controlled operation was consistent with the authorisation and in compliance with the legislation.⁸¹

The Commissioner told the Committee that it retained its quarterly audits of WAPOL's records but had moved to a bi-annual review of the Department of Fisheries records and an annual review of the ACC records due to their low level of use of the covert power provisions of the CICIP Act.⁸² Commissioner McKechnie told the Committee about his approach to auditing the use of covert powers for WAPOL to undertake controlled operations in the period 2014-15:

I think we all agree they [covert powers] are absolutely necessary, but their chance of abuse and going wrong is very high. My view is that it was appropriate that controlled operations be authorised by someone else—either the Commission, a court or someone. Now throughout Australia, I think that power has been given directly to the police. So I take very seriously the Commission's role in really monitoring and reviewing the exercise of that power by police.

... I regard this as a very important role. It is Parliament's assurance that these very considerable powers are being used effectively.⁸³

Finding 18

The Corruption and Crime Commission has widened and deepened its auditing of the use of the powers in the *Criminal Investigation (Covert Powers) Act 2012*, especially in its auditing of the use of them by WA Police.

Use of the CICIP Act provisions by WAPOL

Almost all of the authorities for controlled operations using the powers of the CICIP Act each year are raised by WAPOL. No urgent authorities were granted and two controlled

81 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Department of Fisheries, Report for the Minister for Fisheries*, Perth, 30 November 2015, piii.

82 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 28 October 2016.

83 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Closed Hearing, Transcript of Evidence*, 19 August 2015.

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operations were refused authority during the 2014-15 period. This year's annual report again noted that areas of non-compliance or concern were identified by the CCC. The Commission reported that:

WA Police responded positively to CCC feedback. The CCC and WA Police have forged a good working relationship concerning the requirements of the CACP Act and controlled operations. The CCC is confident initiatives instigated by WA Police will improve compliance.⁸⁴

Of the 49 controlled operations conducted in 2014-15 by WAPOL, the CCC reports that 54% related to the manufacture, supply or sale of prohibited drugs. In total 2.7kg of methamphetamine was seized by WAPOL, along with 0.4kg of cocaine and 100gm of cannabis. Of the operations conducted in 2014-15, 19 (39%) resulted in arrests or charges, compared to 26 (54%) in the previous year.⁸⁵

Changes to this year's WAPOL annual report

Less information provided

The CCC's report for WAPOL's controlled operations in 2014-15 included two significant changes in formatting the information it contained. The previous two years' reports included a table that listed all of the WAPOL operations and indicated if each complied with five sections of the CACP Act (s10, s12, s14, s15 and s36(1)), as shown below in Figure 1, using an excerpt from the 2013-14 report.

84 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Western Australia Police, Report for the Minister for Police*, Perth, 15 January 2016, px.

85 Ibid, pp4-5.

Figure 1. 2013-14 table summarising WAPOL's compliance with the CICP Act⁸⁶ (p14)

Controlled operation reference number	Application meets s10 requirements	Authorising officer considered s12 criteria	States local or cross-border operation s14	Form meets s15 criteria	PLEO report submitted within two months s36(1)
IAU	✓	✓	✓	✓	✓
13001-00	✓	✓	✓	✓	✓
13002-00	✓	✓	✓	✓	✓
13002-V1	✓	✓	✓	✓	✓
13005-00	✓	✓	✓	✓	✓
13006-00	✓	✓	✓	✓	✓
13007-00	✓	✓	✓	✓	✓
13009-00	✓	✓	✓	✓	✓
13010-00	✓	✓	✓	✓	✓

The 2013-14 WAPOL report also had a second table demonstrating the documentation retained by WAPOL for each covert operation in respect to the requirements of section 39 of the CICP Act, as shown in Figure 2 below.

Figure 2. 2013-14 table summarising WAPOL's compliance with s39 of the CICP Act⁸⁷

[52] The table below demonstrates the documentation retained by WA Police in respect of section 39 of the Act for each controlled operation.

Controlled Operation Reference Number	Application by a law enforcement officer	Granted Authority	Variation Application	Variation Authority	Cancelled Authority	Retrospective Authority	PLEO Report
IAU	✓	✓	x	x	x	x	✓
13001-00	✓	✓	x	x	x	x	✓
13002-00	✓	✓	13002-V1	13002-V1	x	x	✓
13005-00	✓	✓	x	x	✓	x	✓
13006-00	✓	✓	x	x	✓	x	✓
13007-00	✓	✓	x	x	x	x	✓
13009-00	✓	✓	x	x	x	x	✓

The Commission's WAPOL report for 2014-15 includes in Appendix A a list of every operation and the criminal activity that was targeted, and the results of the operations in terms of arrests and seizures. The body of the report only lists those operations that did not comply with a particular section of the CICP Act, and what actions WAPOL undertook to correct a non-compliance (or 'defect'), rather than detailing every

86 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2013 - 30 June 2014, Western Australia Police, Report for the Minister for Police*, Perth, 6 February 2015, p14.

87 Ibid, p18.

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operation's compliance with five sections of the CICIP Act (s10, s12, s14, s15 and s36(1)).

A sample from this new table of non-compliance is shown below in Figure 3.

Figure 3. New table summarising WAPOL's non-compliance with the CICIP Act in 2014-15⁸⁸

s. 12(1)(d) An authority to conduct a controlled operation must not be granted unless the Authorising Officer is satisfied on reasonable grounds: that the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons, other than law enforcement officers, at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation.	
Operation Number	Defect
[REDACTED]	<p>The CCC looked for confirmation that the Authorising Officer has considered s. 12 requirements. The Form of Authority did not make reference to whether the Authorising Officer was satisfied in relation to the criteria in s. 12(1)(d).</p> <p>The CCC could, therefore, not be satisfied that the Authorising Officer was satisfied on reasonable grounds that this criteria was fulfilled.</p> <p>Action taken by WA Police</p> <p>WA Police developed a checklist for affidavit deponents to apply on completion of the application to address this issue.</p>

Finding 19

The Corruption and Crime Commission's 2014-15 audit report on the use by WA Police of covert powers under the *Criminal Investigation (Covert Powers) Act 2012* provides less information than previous reports as it only lists those operations that did not comply with a particular section of the Act.

Recommendation 2

The Corruption and Crime Commission return to its previous practice of detailing every WA Police covert operation's compliance with the five relevant sections of the *Criminal Investigation (Covert Powers) Act 2012* that were listed in the 2012-13 and 2013-14 reports.

In his response to the Committee's draft recommendation, the Commissioner said "[i]f the Committee would like the Commission to replicate the table appearing in the 2013-14 report in future Commission reports, we are happy to oblige."⁸⁹


⁸⁸ Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Western Australia Police, Report for the Minister for Police*, Perth, 15 January 2016, p18.

⁸⁹ Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 28 October 2016.

Redaction of information







The second change in this year's WAPOL report was the use of redactions. The information redacted from the report included the WAPOL controlled operation reference number (as shown above in Figure 3) or particular information about an operation (as shown below in Figure 4).

Figure 4. Example of a redaction in the 2014-15 WAPOL report⁹⁰

	<p>The senior officer has considered the response by WA Police to the matter to prevent re-occurrence.</p> <p>Action taken by WA Police includes the following.</p> <ul style="list-style-type: none"> •  <p>The CCC is giving consideration to this proposed action by WA Police.</p> <ul style="list-style-type: none"> • A pre-application stage administrative checklist is now utilised by a
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The redactions applied by WAPOL to the Commission's report occur on 30 of the report's 49 pages, or about 60% of the pages. Some of the redactions are so severe that the Commission's description of the defect in the operation make no sense, as shown in Figure 5 below.

Figure 5. Example of a severe redaction in the 2014-15 WAPOL report⁹¹

Operation Number	Defect
	    <p>Although the Forms of Authority reflect that the Authorising Officer was satisfied in relation to the requirements of s. 12, the CCC was not shown any further documentary evidence that demonstrated the Authorising Officer's specific considerations of the risks involved prior to granting the authorities. The Authorising Officer did not apply any conditions to the authorities in relation to potential risks to members of the public.</p> 

⁹⁰ Ibid, p28.

⁹¹ Ibid, p19.

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In accordance with subsection 38(1) of the CACP Act, the Commission provides a copy of the WA Police report to the Minister for Police and the Commissioner of Police.

Pursuant to subsection 38(2) of the CACP Act, the Commissioner of Police must advise the Minister of any information in the report that, in the opinion of the Commissioner of Police, should be excluded before the report is laid before each House of Parliament on grounds that the information, if made public, could reasonably be expected to endanger a person's safety, prejudice an investigation or prosecution, or compromise the operational activities or methodologies of WA Police.⁹²

The Commissioner told the Committee in a closed hearing that an unredacted copy of the WA Police report is provided each year and the Commission plays no part whatsoever in any redactions.⁹³

The Commission had noted the redactions when the report was tabled by the Minister for Police, but it did not have a view as to their appropriateness. The Commissioner said that when preparing the report it was 'acutely' aware of any sensitivities WAPOL might have had with the content of the report. He agreed that the Commission had formed the view that the information that was contained in the report provided to the Minister for Police was not sensitive in any way to police operations.⁹⁴

Finding 20

In preparing the 2014-15 audit report on the use by WA Police of covert powers under the *Criminal Investigation (Covert Powers) Act 2012*, the Corruption and Crime Commission was acutely aware of any sensitivities WA Police might have had with the content of the report.

Finding 21

The Corruption and Crime Commission had formed the view that the information that was contained in the 2014-15 audit report on the use by WA Police of covert powers under the *Criminal Investigation (Covert Powers) Act 2012* provided to the Minister for Police was not sensitive in any way to police operations.

92 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 28 October 2016.

93 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Closed Hearing, Transcript of Evidence*, 11 May 2016.

94 Ibid.

The redacted version of the WAPOL annual report tabled by the Deputy Premier and Minister for Police, Hon Liza Harvey MLA, included a tabling letter that she had written to the Speaker of the Legislative Assembly providing the report and explaining the redactions:

I have been provided with advice from the Commissioner of Police, prepared in accordance with section 38(2) of the [CICP] Act, to exclude certain information from the Annual Report.

*I am satisfied with the advice provided by the Commissioner of Police and, in accordance with the Act, I have excluded such information from the Annual Report.*⁹⁵

Finding 22

The Corruption and Crime Commission's 2014-15 audit report on the use by WA Police of covert powers under the *Criminal Investigation (Covert Powers) Act 2012* has been redacted by the Minister for Police on advice from the Commissioner for Police, and these redactions make it difficult for the Committee and the Parliament to undertake their oversight function.

Response to draft finding by the Minister for Police

In response to being provided with the draft finding above, Hon Liza Harvey MLA, Deputy Premier and the Minister for Police, said "the redactions ... were made in accordance with the *Criminal Investigation (Covert Powers) Act 2012* and the oversight scheme established by Parliament when the Act was passed."⁹⁶ Her letter is included in Appendix 3.

The non-use of redactions in other jurisdictions

This use of redactions for the first time is unusual when compared to other jurisdictions. For example, the NSW Ombudsman, the Victorian Inspectorate and the Queensland Parliamentary Crime and Corruption Commissioner do not apply redactions to their annual reports to Parliament on the use of covert powers by the NSW Police under the *Law Enforcement (Controlled Operations) Act 1997*,⁹⁷ the

95 Parliament of Western Australia, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Western Australia Police, Report for the Minister for Police, 15 January 2016*, Parl. Paper 4072, Perth, 7 April 2016. Available at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914072a051d5490a1c63d1548257f8e000e5330/\\$file/4072.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914072a051d5490a1c63d1548257f8e000e5330/$file/4072.pdf). Accessed 3 June 2016.

96 Hon Liza Harvey MLA, Deputy Premier and Minister for Police, Letter, 31 October 2016.

97 NSW Ombudsman, *Law Enforcement (Controlled Operations) Act 1997, Annual Report 2014–2015*, Sydney, February 2016. Available at: www.ombo.nsw.gov.au/_data/assets/pdf_file/0013/30811/Law-Enforcement-Controlled-Operations-Act-1997-Annual-Report_2014-2015.pdf. Accessed on 8 June 2016.

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Victorian Police under the *Crimes (Controlled Operations) Act 2004*,⁹⁸ and Queensland's Crime and Corruption Commission under the *Police Powers And Responsibilities Act 2000*.⁹⁹ In NSW the audit reports for NSW Police are prepared by the Ombudsman who tables them directly in Parliament, not through a Minister.¹⁰⁰ In Queensland and Victoria, the Controlled Operations Committee and the Inspector of the Victorian Inspectorate respectively, provide their reports on their police forces to their Minister for Police.¹⁰¹

Finding 23

The equivalent annual covert powers reports prepared by oversight agencies in other Australian jurisdictions are not redacted when they are tabled in parliament.

Previous WAPOL redactions to a CCC report

In the first half of 2012 the CCC conducted its first review, at the request of the Joint Standing Committee of the 38th Parliament (JSCCC 38th) of the misconduct risks associated with the deployment of undercover police officers pursuant to the *Prostitution Act 2000* and the *Misuse of Drugs Act 1981*. The Commission provided its final, redacted, report of the review, *Report on the review of misconduct risks associated with the deployment of undercover police officers pursuant to the Prostitution Act 2000 and the Misuse of Drugs Act 1981* ('Redacted Report'), to the JSCCC 38th on 6 November 2012.

The CCC had provided a draft copy of its report to the Commissioner of Police, Dr Karl O'Callaghan, on 17 August 2012 and invited him to make representations about it. The Police Commissioner responded to the CCC on 7 September 2012 and submitted that:

...the Report contains material which is considered operationally sensitive and which, if released, would be detrimental to ... [Western

98 Victorian Inspectorate, *Victorian Inspectorate Report to the Parliament of Victoria on Victoria Police pursuant to section 39 Crimes (Controlled Operations) Act 2004*, Melbourne, 23 October 2015. Available at: www.parliament.vic.gov.au/file_uploads/VI_Report_pursuant_to_Crimes_Controlled_Operations_Act_re_Victoria_Police_2014-2015_Zfy0nVYc.pdf. Accessed on 8 June 2016.

99 Parliamentary Crime and Corruption Commissioner, *Report of the Work and Activities of the Crime and Corruption Commission under Chapter 11 of the Police Powers And Responsibilities Act 2000*, Brisbane, November 2015. Available at: www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2015/5515T1761.pdf. Accessed on 8 June 2016.

100 AustLII, *Law Enforcement (Controlled Operations) Act 1997 (NSW)- Sect 23*, nd. Available at: www.austlii.edu.au/au/legis/nsw/consol_act/leoa1997391/s23.html. Accessed on 14 October 2016.

101 AustLII, *Police Powers and Responsibilities Act 2000 (QLD)- Sect 269*, nd. Available at: www.austlii.edu.au/au/legis/qld/consol_act/ppara2000365/s269.html and AustLII, *Crimes (Controlled Operations) Act 2004 (VIC) - Sect 39*, nd. Available at: www.austlii.edu.au/au/legis/vic/consol_act/coa2004312/s39.html. Accessed on 14 October 2016.

Australia] *Police, in particular to the business of the Undercover Policing Unit (UPU) ... [therefore it] is requested that such information be redacted from the Report so that it does not become publicly known.*¹⁰²

As a consequence of the Police Commissioner's request, a number of sections of the original report were redacted to prevent the identification of operationally sensitive WAPOL information. The CCC, however, did not accede to all the requests for redaction as it did not consider that some of them gave rise to any difficulties. In providing the Redacted Report to the JSCCCC 38th, the then-CCC Commissioner, Mr Roger Macknay QC, requested that the Redacted Report should not be made public, even in its redacted form.

The JSCCCC 38th considered the Redacted Report and wrote to the Acting Parliamentary Inspector, Mr Craig Colvin SC, seeking his comments, especially in respect to the question as to whether or not the redactions were appropriate and whether the report ought to be made public. Mr Colvin replied to the JSCCCC 38th on the 30 November 2012 that he was "satisfied that the redactions have been made for appropriate reasons" but he did not address whether the report should be made public.¹⁰³

Hon Michael Murray QC was appointed Parliamentary Inspector of the Corruption and Crime Commission (PICCC) in January 2013. He wrote to the Committee in regard to the Redacted Report, following up the earlier letter by Mr Colvin. At the time of his letter, the WA Parliament had been prorogued in preparation for the State election on 9 March 2013. In his letter, the PICCC said:

*On balance, even given the fact that some 18 months have passed since the date of the Committee's Report of 16 June 2011, my inclination is that the redacted report of the Commission dated 6 November 2012 **could be published without appreciable risk that future police operations might be compromised.***¹⁰⁴ (emphasis added)

The PICCC's letter in regard to the Redacted Report was not considered until the new Joint Standing Committee in the 39th Parliament first met on 22 May 2013. The Committee published its report on its deliberations on this matter on 26 June 2014, including the final redactions applied to the Commission's report. In its Report No. 14,

102 Corruption and Crime Commission, *Report on the Review of Misconduct Risks Associated with the Deployment of Undercover Police Officers Pursuant to the Prostitution Act 2000 and the Misuse of Drugs Act 1981*, Perth, 6 November 2012, p1.

103 Mr Craig Colvin SC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 30 November 2012.

104 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 5 February 2013.

Chapter 4

Corruption and Crime Commission review of misconduct risks associated with the deployment of undercover police officers, the Committee noted that it had:

- obtained four copies of the original unredacted report after approval was provided by the Commissioner of Police at a hearing on 21 October 2013;
- held two closed hearings with WAPOL over the redactions that it had requested; and
- held a closed hearing with the CCC over redactions that WAPOL had agreed could now be made public.¹⁰⁵

The Commission's original Redacted Report had 111 redactions. The Committee's Report No. 14 contained only 79 redactions.

Committee request to the Minister for Police and CCC Commissioner

Given that the 2014-15 report was the first year that WAPOL had in effect applied redactions to the Commission's annual report, the Joint Standing Committee wrote to the Minister for Police, Hon Liza Harvey MLA, on 13 May 2016 seeking a copy of the original, unredacted, version of the WAPOL 2014-15 annual report as it had been provided by the CCC, and also requested an explanation for each redaction made by WAPOL to the original report.

In letters dated 24 June 2016 (see Appendix 1) and 8 August 2016 (see Appendix 2) the Minister said that the redactions were made by WAPOL in accordance with section 38(2) of the CACP Act and that WAPOL considered the redacted information as sensitive and might be expected to prejudice an investigation or prosecution, or compromise its operational activities.¹⁰⁶

The Committee also sought a copy of the unredacted report from the Commission. Commissioner McKechnie wrote to the Committee on 13 September 2016 (see Appendix 3) similarly declining to provide the Committee the report, "unless summonsed under section 5 of the Parliamentary Privileges Act 1891 or directed under the Standings Orders of the Legislative Assembly."¹⁰⁷

¹⁰⁵ Joint Standing Committee on the Corruption and Crime Commission, *Corruption and Crime Commission review of misconduct risks associated with the deployment of undercover police officers*, Parliament of Western Australia, Perth, 26 June 2014, p4. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/43CDB79FE6BD43D648257D000007F709/\\$file/Report-%20CCC%20Redacted%20Report-%20June%202014%20Final.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/43CDB79FE6BD43D648257D000007F709/$file/Report-%20CCC%20Redacted%20Report-%20June%202014%20Final.pdf). Accessed on 9 June 2016.

¹⁰⁶ Hon Liza Harvey MLA, Minister for Police, Letter, 8 August 2016.

¹⁰⁷ Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 13 September 2016.

The Committee's view on the redacted report for 2014-15

The Committee has had regard for the evidence from Commissioner McKechnie that he was acutely aware of any sensitivities WAPOL might have had with the content of its annual report. Further, the Committee notes the Commissioner had formed the view that the information that was contained in the report was not sensitive in any way to Police operations. Additionally, the Committee noted the fact that equivalent annual reports in other Australian jurisdictions are not redacted when they are tabled in parliament. The Committee considers that the use of these extraordinary powers warrant stringent oversight and transparency. In the absence of express words in the *Criminal Investigation (Covert Powers) Act 2012*, the Committee's responsibility to oversee the CCC fulfilling its functions should not be fettered.

Faced with needing to consider summoning the unredacted report whilst finalising two other inquiries, and with the Parliament rising in November 2016 for the 2017 State election, the Committee has resolved to table this report without sighting the original unredacted version. The Committee was mindful of the protracted process that occurred when it last scrutinised a report redacted at the request of WA Police in 2014 and has considered this best left to the Committee in the 40th Parliament.

Legal issues outstanding from the 2013-14 WAPOL annual report

As noted above in Chapter 3, in its annual report for WAPOL for 2013-14, the CCC indicated that legal advice was being sought in respect to three issues:

- the conducting of geographical controlled operations under the CACP Act;
- the use of two separate authorities given for one application in respect of the same operation; and
- the presence of human sources at the initial exchange of illicit goods during controlled operations, in circumstances where they are not authorised participants in the operation.¹⁰⁸

Chapter 5 of the Commission's 2014-15 annual report for WAPOL's operations is devoted to providing that advice. The Commission was not in a position to fully report on the third issue of the presence of human sources as "work within this area is ongoing. If necessary, the issue will be further reported on in the Annual Report for 2015-2016."¹⁰⁹

108 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2013 - 30 June 2014, Western Australia Police, Report for the Minister for Police*, Perth, 6 February 2015, p32.

109 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Western Australia Police, Report for the*

Commission's recommendations to WAPOL in the 2014-15 report

The CCC concluded its 2014-15 annual report on WAPOL's use of covert powers with three recommendations in regard to its administrative practices:

1. Before an undercover operative is deployed in a controlled operation, the undercover operative reads the authority to ensure that he/she is listed as an authorised law enforcement participant and is fully aware of the scope of the authority;
2. WA Police advise the CCC in a timely manner when a participant engages in unlawful conduct outside the scope of the authority; and
3. Only authorised participants are deployed in a controlled operation to reduce any risk of unauthorised law enforcement officers or civilian participants engaging in unlawful conduct.¹¹⁰

Finding 24

The Corruption and Crime Commission determined that for the 2014-15 period WA Police met all of their reporting requirements under the *Criminal Investigation (Covert Powers) Act 2012* but it made three recommendations for administrative improvement.

'A robust and positive working relationship'

The CCC Commissioner provided additional information to the Committee on WAPOL's response to the Commission's 2014-15 covert powers annual report. The Commissioner said that WAPOL had responded positively to the Commission's comments in its annual report and that he had written to the Commissioner of Police on 16 February 2016 stating that "I am confidently of the view that the concerns expressed in this Annual Report are a matter for history, ... I expect the next Annual Report will reflect this."¹¹¹

Two of the changes that WAPOL have introduced to reduce the number of defects in its approval process for controlled operations are the completion of a 'pre-deployment checklist' by the controller of the undercover operative and the Authorising Officer ensuring that WAPOL operatives are aware of any restrictions on their operations.¹¹²

Minister for Police, 15 January 2016, Parl. Paper 4072, Perth, 7 April 2016, pp45-46. Available at: [www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3914072a051d5490a1c63d1548257f8e000e5330/\\$file/4072.pdf](http://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/3914072a051d5490a1c63d1548257f8e000e5330/$file/4072.pdf). Accessed 3 June 2016.

110 Ibid, p43.

111 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 10 May 2016.

112 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Western Australia Police, Report for the Minister for Police, 15 January 2016*, Parl. Paper 4072, Perth, 7 April 2016, p27. Available at:

The Commissioner noted that WAPOL had reported to the CCC changes to its practices and policies as a result of issues identified by the Commission, to avoid similar issues in the future. He gave as an example of the improved performance of WAPOL:

*...the most recent Chief Officer's Report submitted to the Commission pursuant to s.37 CICP Act (received 3 March 2016), all reporting requirements were met and no defects were identified. In a subsequent letter sent to the Commissioner of Police on 3 May 2016, [I] noted "there appears to be a significant improvement in the accuracy of controlled operation records and the Chief Officer [R]eport which is a positive reflection of the process that WA Police have adopted to address previously identified matters."*¹¹³

The Commissioner concluded his evidence to the Committee on this matter, that "[t]he WA Police and [the] Commission have forged a robust and positive working relationship concerning the requirements of the CICP Act and controlled operations, which we anticipate will continue into the future."¹¹⁴

Finding 25

The Commissioner of the Corruption and Crime Commission is satisfied with the approach of WA Police in adopting proposed recommendations for improvements to its administrative processes in using the covert powers provided for in the *Criminal Investigation (Covert Powers) Act 2012*.

Use of the CICP Act provisions by the Department of Fisheries

Of the two controlled operations conducted by the Department of Fisheries (DoF) in 2014-15, the Commission reported that one resulted in criminal charges and a decision in respect to criminal charges has not yet been made in respect to the other. Seizure of illicit goods (rock lobster) occurred as a direct result of one of the controlled operations.¹¹⁵

The Commission found that the DoF Chief Officer's reports were in compliance with the CICP Act and were comprehensive and adequate¹¹⁶; their authorities complied with the

[www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914072a051d5490a1c63d1548257f8e000e5330/\\$file/4072.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3914072a051d5490a1c63d1548257f8e000e5330/$file/4072.pdf). Accessed 3 June 2016.

113 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 10 May 2016.

114 Ibid.

115 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Department of Fisheries, Report for the Minister for Fisheries*, Perth, 30 November 2015, p3.

116 Ibid, p4.

Chapter 4

legislated criteria¹¹⁷; and the DoF General Register specified all of the information required under the CICP Act.¹¹⁸

Finding 26

The Corruption and Crime Commission found that for the 2014-15 period, the two authorities raised by the Department of Fisheries under *the Criminal Investigation (Covert Powers) Act 2012* complied with the legislated criteria and the Department's General Register specified all of the information required under the Act.

Use of the CICP Act provisions by the ACC

The Commission's audit of the Australian Crime Commission (ACC) for 2014-15 found that no controlled operations were completed during this period. The ACC reported to the CCC that it exercised powers under Commonwealth controlled operation legislation, and not the CICP Act.¹¹⁹ This was confirmed by the Commissioner in a closed hearing with the Committee, that "I think that they can use certain other Commonwealth powers and it is just easier for a Commonwealth agency."¹²⁰

As the ACC did not make use of the provisions of the CICP Act, the CCC did not inspect any documents other than its General Register, which it found to be structured to fully cater for the legislative requirements set out in the CICP Act.¹²¹

Finding 27

For the 2014-15 period, as the Australian Crime Commission did not conduct any controlled operations, the Corruption and Crime Commission did not inspect any of its documents other than its General Register, which it found to be structured to fully cater for the legislative requirements set out in the *Criminal Investigation (Covert Powers) Act 2012*.

117 Ibid, p8.

118 Ibid, p13.

119 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Australian Crime Commission, Report for the Minister for Police*, Perth, 30 November 2015, p3.

120 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Closed Hearing, Transcript of Evidence*, 11 May 2016.

121 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012, 1 July 2014 - 30 June 2015, Australian Crime Commission, Report for the Minister for Police*, Perth, 30 November 2015, p4.

Conclusion

The oversight by the Joint Standing Committee during this 39th Parliament of the fulfilment by the CCC of its auditing obligations under the CICP Act has resulted in:

1. Improved transparency on the timeliness of the tabling of annual reports by the Minister for Police and the Minister for Fisheries.
2. A wider and deeper auditing regime being implemented by the CCC of the WA Police administration of its activities, with flow-on benefits of greater accountability by WA Police of its use of the special powers available under the CICP Act.

Recommendation 3

The Joint Standing Committee on the Corruption and Crime Commission in the 40th Parliament should consider conducting an annual review of the Corruption and Crime Commission's annual audit reports on the use of covert powers contained in the *Criminal Investigation (Covert Powers) Act 2012* by WA Police, the Department of Fisheries and the Australian Crime Commission.

A handwritten signature in blue ink, consisting of a stylized 'N' and 'G' intertwined.

HON NICK GOIRAN, MLC
CHAIRMAN

Appendix One

Minister for Police's letter- 24 June 2016

Gen Corro 688



Deputy Premier of Western Australia
Minister for Police; Road Safety;
Training and Workforce Development; Women's Interests

Our Ref: 45-42130

Hon Nick Goiran MLC
Chairman
Joint Standing Committee on the Corruption and Crime Commission
Parliament House
PERTH WA 6000



Dear Mr Goiran *Nick*

**CRIMINAL INVESTIGATION (COVERT POWERS) ACT 2012 ANNUAL REPORT,
1 JULY 2014 – 30 JUNE 2015**

I refer to the request of 13 May 2016 from the Joint Standing Committee on the Corruption and Crime Commission (the Committee) to be provided with:

- (1) a copy of the original, un-redacted version of the above mentioned Report;
and
- (2) an explanation of the redactions made in the Report.

The redactions were made in accordance with section 38(2) of the *Criminal Investigation (Covert Powers) Act 2012* (the Covert Powers Act). The redacted information is considered sensitive and which if made public could reasonably be expected to prejudice a WA Police investigation or prosecution, or compromise police operational activities or methodologies.

In relation to (1) above, Western Australia Police have sought legal advice from the State Solicitor's Office regarding the provision of an un-redacted version of the Report to the Committee. I will await that advice before determining whether to provide an un-redacted copy of the Report to the Committee.

In relation to (2) above, Western Australia Police are preparing a document which sets out the explanation of the redactions made to the Report and I am willing to provide that to the Committee subject to being given an assurance that this information will be kept confidential and would not, at any time, be disclosed publicly.

Yours sincerely

**LIZA HARVEY MLA
DEPUTY PREMIER; MINISTER FOR POLICE; ROAD SAFETY;
TRAINING AND WORKFORCE DEVELOPMENT; WOMEN'S INTERESTS**

Telephone: +61 8 6552 5900 Facsimile: +61 8 6552 5901 Email: Minister.Harvey@dpc.wa.gov.au

24 JUN 2016

Appendix Two

Minister for Police's letter- 8 August 2016



Deputy Premier of Western Australia
Minister for Police; Road Safety;
Training and Workforce Development; Women's Interests

Our Ref: 45-42728; 45-42130

Hon Nick Goiran MLC
Chairman
Joint Standing Committee on the Corruption and Crime Commission
Parliament House
PERTH WA 6000

Nick
Dear Mr Goiran

**CRIMINAL INVESTIGATION (COVERT POWERS) ACT 2012 ANNUAL REPORT 1
JULY 2014 – 30 JUNE 2015**

I refer to my previous correspondence of 24 June 2016 regarding your request for a copy of the original, un-redacted version of the abovementioned Report.

I have also received your correspondence of 30 June 2016 requesting my attendance before the Committee.

As I undertook in my letter, I have now received legal advice from the State Solicitor's Office regarding the provision of an un-redacted copy of the Report. In accordance with that advice, I am now of the view that I am unable to provide a copy of the un-redacted Report given the terms of the *Criminal Investigation (Covert Powers) Act 2012* (the Act), specifically section 38.

This section of the Act deals with the preparation of a report annually and requires me to exclude information from the report if satisfied, on the advice of the Police Commissioner, of any of the grounds set out in section 38(2).

When the redacted version of the Report was tabled in Parliament on 7 April 2016, I was satisfied that the redactions should be made, based on the advice provided by the Commissioner of Police. Once I was so satisfied, it was not within my discretion to include that material in the Report tabled in Parliament nor, I am advised, to provide that information to a Committee of Parliament.

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When the Act received passage through Parliament, it contemplated how it could be properly informed as to the work and activities undertaken pursuant to the Act whilst properly keeping some information private to ensure that it does not endanger a person's safety, prejudice an investigation or compromise WA Police's operational activities or methodology. The terms of section 38, including the statement I inserted into the Report before I tabled it in Parliament, was Parliament's scheme for balancing those competing interests.

I am advised that it would not be appropriate for me to deviate from that scheme by providing information to a Committee of Parliament which was otherwise properly excluded from the Report when it was tabled before Parliament.

I trust this information is of assistance.

Yours sincerely



**LIZA HARVEY MLA
DEPUTY PREMIER; MINISTER FOR POLICE; ROAD SAFETY;
TRAINING AND WORKFORCE DEVELOPMENT; WOMEN'S INTERESTS**

8 AUG 2016

Appendix Three

Minister for Police's letter- 31 October 2016



Deputy Premier of Western Australia
Minister for Police; Road Safety;
Training and Workforce Development; Women's Interests

Our Ref: 45-44442

Hon Nick Goiran MLC
Chairman
Joint Standing Committee on the Corruption and Crime Commission
Parliament House
PERTH WA 6000


Dear Mr Goiran

RE: INVITATION TO COMMENT ON JOINT STANDING COMMITTEE'S REPORT FINDING

I refer to your letter dated 19 October 2016 requesting comment on the Joint Standing Committee's Report Finding. Following consideration of the Committee's Finding, I provide the following response.

As stated in my previous response of 8 August 2016, the redactions made to the Corruption and Crime Commission's 2014-15 Audit Report were made in accordance with the *Criminal Investigation (Covert Powers) Act 2012* and the oversight scheme established by Parliament when the Act was passed.

Thank you for your advice regarding the committee's finding and I trust that this information reiterates my earlier responses of 24 June 2016 and 8 August 2016.

Yours sincerely



**LIZA HARVEY MLA
DEPUTY PREMIER; MINISTER FOR POLICE; ROAD SAFETY;
TRAINING AND WORKFORCE DEVELOPMENT; WOMEN'S INTERESTS**



31 OCT 2016

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Appendix Four

CCC Commissioner's letter- 13 September 2016


Gen Corro 724



**CORRUPTION
AND CRIME
COMMISSION**

Our Ref: 03126/2015 KAN

13 September 2016



Hon. Nick Goiran MLC
Chairman
Joint Standing Committee on the
Corruption and Crime Commission
Level 1, 11 Harvest Terrace
WEST PERTH WA 6005

Dear Chairman


REQUEST FOR COPY OF WAPOL CICP ACT REPORT FOR 2014-15

Thank you for your letter of 18 August 2016 requesting a copy of the *Criminal Investigation (Covert Powers) Act 2012 Annual Report 1 July 2014 - 30 June 2015 Western Australian Police - Report for Minister for Police* ('the Annual Report') provided to the Police Minister on 15 January 2016.

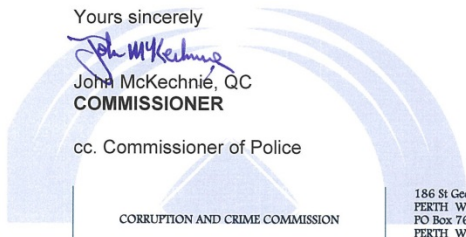
Section 35(2) *Criminal Investigation (Covert Powers) Act 2012* (CICP Act) prohibits the disclosure of the un-redacted Annual Report unless, relevantly, required by law. Accordingly, I am precluded from complying with your request unless summonsed under section 5 of the *Parliamentary Privileges Act 1891* or directed under the Standings Orders of the Legislative Assembly.

I note the Annual Report provided to the Minister contains "operational information" which was subsequently redacted prior to the Report being tabled in Parliament on 7 April 2016. If the Joint Standing Committee pursues the production of the un-redacted Annual Report, I suggest the report be received by the Committee in camera.

You have also asked whether it is standard procedure to provide a draft copy of the Annual Report to the Police Commissioner for comment before it is presented to the Minister. To date it has not been. However, I indicated to WA Police earlier this year that I will do so in the future.

Yours sincerely

John McKechnie, QC
COMMISSIONER

cc. Commissioner of Police



CORRUPTION AND CRIME COMMISSION

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Appendix Five

Committee's functions and powers

On 21 May 2013 the Legislative Assembly received and read a message from the Legislative Council concurring with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- c) carry out any other functions conferred on the Committee under the *Corruption, Crime and Misconduct Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.