

41ST PARLIAMENT



Joint Standing Committee on the
Corruption and Crime Commission

Report 15

WHO GUARDS THE GUARDIANS?

Parliamentary and Parliamentary Inspector oversight of the Ombudsman

Presented by

Mr M. Hughes, MLA and Hon Dr S.C. Thomas, MLC

November 2024

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Published and printed by the authority of the Joint Standing Committee on the Corruption and Crime Commission, Parliament of Western Australia

November 2024

ISBN: 978-1-922759-44-3

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Joint Standing Committee on the Corruption and Crime Commission. Report 15)

328.365



Joint Standing Committee on the Corruption and Crime Commission

Who guards the guardians?

**Parliamentary and Parliamentary Inspector
oversight of the Ombudsman**

Report No. 15

Presented by

Mr M. Hughes, MLA and Hon Dr S.C. Thomas, MLC

Laid on the Table of the Legislative Assembly and Legislative Council on
14 November 2024

Chair's foreword

The Corruption and Crime Commission, in its *Report on the Western Australian Parliamentary Commissioner for Administrative Investigations (Ombudsman)* tabled on 8 October 2024, respectfully recommended:

[T]hat Parliament consider establishing a bipartisan joint committee to oversee the Parliamentary Commissioner for Administrative Investigations. [The commission] recommends that the functions of the Parliamentary Inspector of the Corruption and Crime Commission be expanded to include oversight of the Ombudsman and the OWA [Office of the Ombudsman WA].¹

This followed the commission's investigation into allegations of serious misconduct by the Ombudsman, Christopher Field PSM. The commission formed an opinion of serious misconduct against Mr Field. After 17 years, Mr Field resigned from this high public office.

In its report, the commission observed that the independence of the office of the Ombudsman 'can only be assured if there is appropriate accountability'.² The commission's report highlighted why more robust accountability and oversight of the Ombudsman and OWA is desirable; and recommended two additional layers of accountability.

It is essential that the Ombudsman, an independent statutory office holder who reports directly to Parliament, is accountable to the Parliament and public of Western Australia. The public increasingly expects greater accountability and transparency from agencies who expend public funds, including statutory office holders and their accountability and integrity agencies.

The committee recommends that the Parliament of Western Australia enhance the rigour of committee oversight of the Ombudsman and OWA. The committee's preference is for Parliament to establish a bipartisan joint committee focused on overseeing the Ombudsman and other statutory office holders. Other options are noted in this report.

The committee also recommends that the Government examine whether additional oversight of the Ombudsman is necessary including by the Parliamentary Inspector or an alternative oversight office; and that the tenure of the Ombudsman be limited to 10 years.

The committee thanks the commission for bringing the above to the attention of Parliament.



MR M. HUGHES, MLA

CHAIR

1 Corruption and Crime Commission, *Report on the Western Australian Parliamentary Commissioner for Administrative Investigations (Ombudsman)*, 8 October 2024, p 124.

2 *ibid*, p 122.

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Ministerial response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Premier, Attorney General and Leader of the House report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the committee.

Recommendations

Recommendation 1

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That the Parliament of Western Australia enhance the rigour of committee oversight of the Western Australian Parliamentary Commissioner for Administrative Investigations (Ombudsman) and the Office of the Ombudsman.

The committee's preference is to establish a bipartisan joint committee to oversight the Ombudsman and other statutory office holders. Other options are noted in this report.

Recommendation 2

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That the Government examine whether additional oversight of the Ombudsman is necessary including by the Parliamentary Inspector or an alternative oversight office.

Recommendation 3

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That the tenure of the office of the Ombudsman be limited to 10 years.

This could be done a number of ways. For example, by legislating that the Ombudsman may hold office for a period of five years and is eligible for reappointment once.

Who guards the guardians?

Quis custodiet ipsos custodes?

[Who will guard the guardians themselves?/Who will watch the watchmen?]

Juvenal, Roman poet, 1st – 2nd century

Introduction

The Corruption and Crime Commission (commission), in its *Report on the Western Australian Parliamentary Commissioner for Administrative Investigations (Ombudsman)* (Report on the Ombudsman) tabled on 8 October 2024, respectfully recommended:

[That] Parliament consider establishing a bipartisan joint committee to oversee the Parliamentary Commissioner for Administrative Investigations. [The commission] recommends that the functions of the Parliamentary Inspector of the Corruption and Crime Commission be expanded to include oversight of the Ombudsman and the OWA [Office of the Ombudsman WA].³

This recommendation arose from the commission's investigation into allegations of serious misconduct by the Parliamentary Commissioner for Administrative Investigations (Ombudsman), Christopher Field PSM. The commission formed the opinion that Mr Field engaged in serious misconduct. Mr Field resigned as Ombudsman, after a 17-year tenure.

The commission observed that Mr Field 'has faced little scrutiny over the years', and the independence of the office of the Ombudsman 'can only be assured if there is appropriate accountability'.⁴ The need for integrity agencies to be accountable was also highlighted in 2013 when Hon Wayne Martin AC KC, then Chief Justice of Western Australia, spoke of the need for these agencies to be independent *and* accountable.⁵

Oversight is a core function of Parliament.⁶ As well as holding the executive branch of government to account, Parliaments in Australia oversee (monitor) and hold statutory office holders, including the Ombudsman, to account. Statutory office holders, officers established by statute, are independent of the government and report directly to Parliament.⁷ Their offices are also called independent entities, or accountability or integrity agencies.

3 Corruption and Crime Commission, *Report on the Western Australian Parliamentary Commissioner for Administrative Investigations (Ombudsman)*, 8 October 2024, p 124.

4 *ibid*, pp 119, 122.

5 Hon Wayne Martin AC KC, 'Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government', 2013 Whitmore Lecture, Sydney, 1 August 2013, pp 32–34.

6 In addition to Parliament's lawmaking and representation functions.

7 Legislation establishing the offices of statutory office holders provide that they are not part of the executive, for example, in providing that 'The office is not an office in the Public Service' or the '*Public Sector Management Act 1994* does not apply' or similar, and that the office reports directly to Parliament: *Parliamentary Commissioner for Administrative Investigations Act 1971*, ss 5, 10, 27, 28; *Public Sector Management Act 1994*, ss 16(2), 22F(1); *Inspector of Custodial Services Act 2003*, ss 6(2), 33(1), 35(1); *Commissioner for Children and Young People Act 2006*, ss 6; 29(1) (also s 26); *Freedom of Information Act 1992*, ss 55(2), 111(1). The legislation establishing the Parliamentary Inspector and Auditor General expressly provide that they are 'an officer of Parliament' (Inspector) and an

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In Western Australia, accountability agencies include the Office of the Ombudsman WA (OWA), and the offices of the Public Sector Commissioner, Information Commissioner, Inspector of Custodial Services, Auditor General, Corruption and Crime Commissioner, Parliamentary Inspector of the Corruption and Crime Commission, and Commissioner for Children and Young People. The above report to different Parliamentary committees.⁸

In October 2024, the Joint Standing Committee on the Corruption and Crime Commission (committee) held separate closed hearings with the commission and Parliamentary Inspector of the Corruption and Crime Commission to discuss the commission's recommendation. That evidence remains closed. As is evident in this report, the committee also analysed how other jurisdictions oversight the Ombudsman.

The Ombudsman in Western Australia

The Western Australian Parliamentary Commissioner for Administrative Investigations (Ombudsman), established under the *Parliamentary Commissioner Act 1971*, was the first Ombudsman office in Australia.

Over time, the functions of this office have broadened beyond what could be considered its traditional function – investigating complaints about public authorities and undertaking own motion inquiries to improve public administration.

The Ombudsman's functions also include:

- reviewing certain child deaths, and family and domestic violence fatalities
- receiving public interest disclosures
- receiving and investigating complaints about charitable trusts
- inspecting the records of the Western Australia Police Force (WA Police) and commission to ascertain the extent of compliance with telecommunications interception legislation
- scrutinising WA Police powers in relation to unlawful consorting and prohibited insignia
- since 2023, monitoring, overseeing and reviewing how organisations investigate allegations of, and convictions for, child abuse by their staff under the 'reportable conduct scheme'.⁹

The Ombudsman is also the Energy and Water Ombudsman, and the Chair of the State Records Commission. OWA employs 92 staff.¹⁰

'independent officer of Parliament' (Auditor General): *Corruption, Crime and Misconduct Act 2003*, s 188(4); *Auditor General Act 2006*, s 7(1).

8 The Corruption and Crime Commission, and Parliamentary Inspector of the Corruption and Crime Commission report to the Joint Standing Committee on the Corruption and Crime Commission; the Commissioner for Children and Young People reports to the Joint Standing Committee on the Commissioner for Children and Young People; and the Auditor General reports to three standing committees – the Legislative Assembly Public Accounts Committee, Legislative Council Estimates and Financial Operations Committee and the Joint Audit Committee. The others report to the Legislative Council's Standing Committee on Public Administration (see below in this report).

9 The [Reportable Conduct Scheme](#) implements key recommendations of the *Royal Commission into Institutional Responses to Child Sexual Abuse*. This scheme expanded on 1 January 2024.

10 As at 30 June 2024, 81.9 FTEs: Ombudsman of Western Australia, [Annual Report 2023–2024](#), p 191.

Parliamentary committee consultation with, and oversight of, the Ombudsman

Western Australia – committee ‘consultation’ with the Ombudsman

In Western Australia, limited oversight of the Ombudsman (and other statutory office holders) is provided under the functions of the Legislative Council Standing Committee on Public Administration (LC PAC).

Since 2005, the functions of LC PAC have been as follows:¹¹

The functions of the Committee are to –

- (a) inquire into and report on –
 - (i) the structure, efficiency and effectiveness of the system of public administration;
 - (ii) the extent to which the principles of procedural fairness are embodied in any practice or procedure applied in decision making;
 - (iii) the existence, adequacy, or availability, of merit and judicial review of administrative acts or decisions; and
 - (iv) any Bill or other matter relating to the foregoing functions referred by the Council;

and

- (b) consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Public Sector Commissioner, the Information Commissioner, the Inspector of Custodial Services, and any similar officer. [Our emphasis]

Under its ‘public administration’ function in (a)(i), LC PAC undertakes inquiries and reports to the Legislative Council on a broad range of important matters. The Legislative Council may also refer inquiries to LC PAC.

Under function (b), which requires LC PAC to ‘consult’ with statutory office holders, it conducts and reports to the Legislative Council on public hearings with these officers, currently once every one or two years.¹²

Enhancing the rigour of Parliamentary committee oversight of the Ombudsman

In the committee’s view, it is in the public interest to enhance the rigour of Parliamentary oversight and scrutiny of the Ombudsman (and therefore OWA) at this time.

The Report on the Ombudsman highlights why more robust oversight is desirable. Further, the public increasingly expects greater accountability and transparency from public agencies, including independent agencies such as OWA that expend public funds.

Public confidence in our institutions is critical. More rigorous Parliamentary oversight promotes public confidence. More rigorous oversight of the Ombudsman should deliver greater accountability on how OWA functions and exercises its powers. It could also provide the public with an avenue to confidentially refer any concerns about OWA.

¹¹ [Legislative Council Standing Orders](#), Sch 1, cl 5. Under function (a) the committee self initiates inquiries.

¹² See, for example, Legislative Council, Standing Committee on Public Administration, Report 38, [Consultation with Statutory Office Holders](#), February 2023.

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A committee expressly charged with overseeing (or ‘monitoring and reporting on’) the Ombudsman and preferably other statutory office holders can focus its resources on their performance and reports, identify issues of concern, and, if its functions permit, inquire into a range of issues related to the work of these agencies and make recommendations for improvement.

A new bipartisan *and* joint committee would enhance scrutiny of the Ombudsman and preferably other statutory office holders, who are accountable to, and report to, both Houses of Parliament and the people of Western Australia.

Parliamentary committee oversight in other jurisdictions

No Parliamentary committee in Australia oversees only the Ombudsman.

Parliaments in Australia have established committees dedicated to overseeing its Ombudsman and similar accountability agencies.¹³ For example:

- The Parliament of New South Wales Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission (LECC) and the Crime Commission reviews and reports on the performance of eight agencies, and on their annual and other reports.¹⁴ Further to the agencies named in its title, this committee oversees the Information Commissioner, Privacy Commissioner, Inspector of the LECC, Inspector of Custodial Services, and NSW Public Service Commissioner.
- The Parliament of Victoria Joint Integrity and Oversight Committee monitors and reviews the Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Ombudsman, the Office of the Victorian Information Commissioner and the Victorian Inspectorate. Its functions include examining agency reports, reporting on agencies’ performance, and undertaking inquiries into issues related to the work of the agencies and making recommendations for improvements.¹⁵

Parliamentary committee oversight options

Enhancing the rigour of Parliamentary committee oversight of the Ombudsman may be actioned in a number of ways. Establishing a joint committee will require a resolution of both Houses.

One option is for Parliament to establish a committee, preferably a bipartisan joint committee, dedicated to overseeing only the Ombudsman (and therefore OWA).¹⁶

Despite the Report on the Ombudsman, the committee questions if this is the best use of

13 In jurisdictions such as the Commonwealth, Australia Capital Territory and Northern Territory, the Ombudsman reports to the executive, not the Parliament, and there is no committee oversight.

14 Parliament of New South Wales, Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, accessed 1 October 2024, <[Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission \(nsw.gov.au\)](https://www.parliament.nsw.gov.au/committees/committee-on-the-ombudsman-the-law-enforcement-conduct-commission-and-the-crime-commission)>. Note: The New South Wales Crime Commission is not the NSW Independent Commission Against Corruption (ICAC). The NSW Parliament’s Joint Committee on the ICAC oversees ICAC.

15 Parliament of Victoria, Integrity and Oversight Committee, accessed on 1 October 2024, <[Integrity and Oversight Committee \(parliament.vic.gov.au\)](https://www.parliament.vic.gov.au/committees/integrity-and-oversight-committee)>.

16 If the Parliament establishes a new committee dedicated to overseeing statutory office holders or similar officers, it follows that the Legislative Council should consider amending LC PAC’s functions.

Parliament and public resources. This is not the committee's preference. And if the remit of the Parliamentary Inspector is expanded to include the Ombudsman (see below), this option is less desirable. As noted above, no other Parliamentary committee oversees only the Ombudsman.

A second option is for Parliament to establish a bipartisan joint committee dedicated to overseeing the Ombudsman and other statutory office holders currently within the remit of LC PAC (function (b)). That is, the Public Sector Commissioner, Inspector of Custodial Services, Information Commissioner and 'any similar officer.' These statutory office holders undertake a broad range of essential functions, exercise significant powers on behalf of the public, and expend public funds.

There is a strong argument that it would be more effective and a better use of resources for any new committee to oversee a number of statutory office holders and provide adequate oversight of these officers. This is consistent with the approach in most jurisdictions in Australia. This is the committee's preference.

There is a compelling argument that any committee should be a bipartisan joint committee. A bipartisan joint committee is preferable to a bipartisan committee of one House as the Ombudsman and other statutory office holders report to both Houses of Parliament. A joint committee allows both Houses to be directly informed of the committee's work through its reports, and for members of both Houses to speak to committee reports. It is common for committees in Western Australia and other jurisdictions that oversee statutory office holders to be bipartisan joint committees.

It is also important that a committee's membership be bipartisan as members undertake their oversight and accountability role on behalf of the Parliament and people of Western Australia. A bipartisan joint committee can be trusted by the Government, Opposition and other members of Parliament, and should serve to create public confidence in the oversight role of that committee.¹⁷

A third option is for the Legislative Council to amend LC PAC's function (b) to delete the requirement that it 'consult regularly' with the Ombudsman and other statutory office holders, and provide that it 'monitor and report to Parliament on the exercise of the functions of' named statutory office holders. This terminology is consistent with our committee's functions and, in our view, imposes a more rigorous level of oversight than the requirement to 'consult regularly with' these officers. There may be resource implications for LC PAC, and this option may affect its ability to focus on inquiries under function (a)(i).

The final option to enhance Parliamentary oversight of the Ombudsman is to expand the functions of the Joint Standing Committee on the Corruption and Crime Commission to include the requirement for it to 'monitor and report to Parliament' on the exercise of the functions of the Ombudsman.

17 Legislative Council, Standing Committee on Legislation, Report 21, *Report of the Standing Committee on Legislation in relation to the Corruption and Crime Commission Act 2003 and Corruption and Crime Commission Amendment Bill 2003*, December 2003, p 120.

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The committee does not support this option or any action that will diminish the committee's ability to focus on the commission. Parliament's oversight of the commission must remain robust.

It is important to emphasise that the committee, like similar committees in most Australian jurisdictions, is focused on monitoring the functions of the commission (and, by extension, the Parliamentary Inspector.) This is because Parliament has vested the commission with extraordinary powers that go well beyond the powers of other statutory office holders; and these powers are exercised to expose serious misconduct by public officers and combat organised crime. For example, the commission is vested with immense compulsive and investigative powers, often operates covertly, and may publish reports.¹⁸ The commission's extraordinary powers impact on the rights and liberty of citizens.

Recommendation 1

That the Parliament of Western Australia enhance the rigour of committee oversight of the Western Australian Parliamentary Commissioner for Administrative Investigations (Ombudsman) and the Office of the Ombudsman.

The committee's preference is to establish a bipartisan joint committee to oversight the Ombudsman and other statutory office holders. Other options are noted in this report.

The remit of the Parliamentary Inspector

In the Report on the Ombudsman, the commission also recommended that 'the functions of the Parliamentary Inspector of the Corruption and Crime Commission be expanded to include oversight of the Ombudsman and the OWA'.

It is important to note that the Office of the Parliamentary Inspector is a small office consisting of two officers (1.2 full time equivalents), with administrative support from the Department of Justice.

This office undertakes important and sometimes resource intensive investigations, audits the commission, reports to Parliament, and is also 'responsible for assisting the Standing Committee in the performance of its functions.'¹⁹

18 Hon Michael Mischin MLC, Attorney General, highlighted these points in his evidence to the Legislative Assembly Standing Committee on Procedure and Privileges during its inquiry into the Joint Standing Committee on the Corruption and Crime Commission's terms of reference. The Labor Government did not implement the committee's recommendation to expand the jurisdiction of the committee to monitor and report on the Public Sector Commissioner in relation to functions under the *Corruption, Crime and Misconduct Act 2003*.: Legislative Assembly, Report 11, *Closing the Oversight Gap: Joint Standing Committee on the Corruption and Crime Commission – Terms of Reference*, November 2016, pp 8, 10, 11. In 1997, Hon Derek Tomlinson MLC, Chair of the Joint Standing Committee on the Anti-Corruption Commission also noted that because the commission 'has such extensive powers, [it] is accountable to Parliament. The Joint Standing Committee is the agent of that accountability.': Joint Standing Committee on the Anti-Corruption Commission, Report 1, *Confidentiality and Accountability: Parliamentary Supervision of Anti-Corruption and/or Law Enforcement Agencies in Australia*, 23 October 1997, p iv.

19 The functions of the Parliamentary Inspector are set out in section 195 of the *Corruption, Crime and Misconduct Act 2003*. See also section 188(4).

The Parliamentary Inspector currently deals with the Ombudsman and OWA officers, but only to the extent that it deals with serious misconduct by these officers. What is recommended involves greater oversight of the work of the Ombudsman and OWA.

In most Australian jurisdictions, the remit of the Parliamentary Inspector or equivalent is solely that of the oversight of the performance of its equivalent to the commission, except in Victoria and South Australia. The Victorian Inspectorate monitors its Ombudsman, Independent Broad-based Anti-corruption Commission (IBAC), Auditor General and others.²⁰

The commission's recommendation to expand the role of the Parliamentary Inspector would require legislative change, which may include amendments to the *Corruption, Crime and Misconduct Act 2003* or the new Act.

If the Government, and Parliament of Western Australia, expand the jurisdiction of the Parliamentary Inspector, it is essential to consult with the Parliamentary Inspector about his resource needs.

It is essential that the Parliamentary Inspector's oversight of the commission is not diminished.

Recommendation 2

That the Government examine whether additional oversight of the Ombudsman is necessary including by the Parliamentary Inspector or an alternative oversight office.

The tenure of the Ombudsman

Mr Field was Ombudsman for 17 years. Having been initially appointed in 2007, he was reappointed to a successive fourth 5-year term in 2022. He resigned on 8 October 2024.

In Western Australia there is no limit to the tenure of the Ombudsman; to how often they may be reappointed to that office.

In most other Australian jurisdictions the Ombudsman has a maximum tenure of 10 years.²¹

In Western Australia, the Commissioner and Deputy Commissioner of the commission, and Parliamentary Inspector, may only hold office for a total of 10 years. They hold office for a period of five years and are only eligible for reappointment once.²²

20 Victorian Inspectorate, 'About the Victorian Inspectorate', accessed 24 October 2024, <vicinspectorate.vic.gov.au>. As at 30 June 2024, the Victorian Inspector was supported by 30 staff (27.9 FTE): *Annual Report 2023–24*, p 6.

21 Victoria (*Ombudsman Act 1973* (Vic), s 3(4)), South Australia (*Ombudsman Act 1972* (SA), ss 10(1), 10(1a)), Queensland (*Ombudsman Act 2001* (Qld), ss 61(1), 61(4)), Tasmania (*Ombudsman Act 1978* (Tas), s 5(2)), and the Northern Territory (*Ombudsman Act 2009* (NT), ss 134(1), 134(2)) all have term/s that cannot exceed 10 years in total. Either by way of one term of 10 years (Victoria), or an initial five year or seven year term with reappointment to a total tenure of 10 years. On the other hand, in New South Wales (*Ombudsman Act 1974* (NSW), s 6(2)), the Commonwealth (*Ombudsman Act 1976* (Cth), s 22(1)), and the Australian Capital Territory (*Ombudsman Act 1989* (ACT), s 23) there is an initial appointment of seven years and there is no limit on the total tenure of the Ombudsman.

22 *Corruption, Crime and Misconduct Act 2003*, s 5(3) ('shall be appointed for a term of 5 years'); sch 2, cl 1 (Commissioner); sch 2A, cl 1 (Deputy Commissioner); sch 3, cl 1 (Parliamentary Inspector).

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It is in the public interest to limit the tenure of a person appointed to high public office such as the office of the Ombudsman. This promotes renewal in how the agency exercises its critical functions and powers on behalf of the public.

Recommendation 3

That the tenure of the office of the Ombudsman be limited to 10 years.

This could be done a number of ways. For example, by legislating that the Ombudsman may hold office for a period of five years and is eligible for reappointment once.

A handwritten signature in blue ink, appearing to read "Mr. Hughes".

MR M. HUGHES, MLA
CHAIR

Appendix 1

Committee's functions and powers

By concurrence between the Legislative Assembly and the Legislative Council, the Joint Standing Committee on the Corruption and Crime Commission was established on 25 May 2021.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-292 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:

1. 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
2. inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector
3. 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.



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