



**Joint Standing Committee on the Corruption and Crime Commission**

**A suppression order in regard to  
two former officers of the Corruption and  
Crime Commission**

**Report No. 29  
August 2016**

Parliament of Western Australia

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# **Joint Standing Committee on the Corruption and Crime Commission**

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## **A suppression order in regard to two former officers of the Corruption and Crime Commission**

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Report No. 29

Presented by

**Hon Nick Goiran, MLC and Mr Peter Watson, MLA**

Laid on the Table of the Legislative Assembly and Legislative Council  
on 25 August 2016



## Chairman's Foreword

This report by the Joint Standing Committee provides the Western Australian Parliament with information concerning the granting of a suppression order in relation to the identities of two former officers of the Corruption and Crime Commission (CCC). The order was granted on 20 November 2014 in the Perth Magistrates Court by Deputy Chief Magistrate Woods and remains in place.

The two former officers were charged by WA Police (WAPOL) on 14 August 2014 on charges relating to the false accounting and reporting of a \$1,000 cash advance in May 2011 which, instead of being used for official purposes, was given by one of the accused to the other. One of the accused was also charged with giving false evidence to the CCC during a private hearing inquiring into the matter.

The matters leading to the charges have previously been reported to Parliament by the Joint Standing Committee. The Committee's report No. 19, *Parliamentary Inspector's report on misconduct and related issues in the Corruption and Crime Commission*, outlined 23 allegations of misconduct that had been made against Commission staff and investigated by WAPOL. This report, and the later Report No. 25, *Parliamentary Inspector's Report on Allegations of Misconduct Made Against Officers in the Corruption and Crime Commission's Electronic Collection Unit*, garnered widespread public attention.

The Committee was concerned that the Western Australian public who had read or heard about these allegations would wish to know of any later charges and prosecution of officers of the Commission. The public's trust in the State's integrity system relies on knowing that Commission officers who have broken the law are charged, prosecuted and punished, like any other member of the public.

At their initial hearing, an application was made by lawyers for each of the accused, without notice, for a suppression order pursuant to section 171(4)(b) of the *Criminal Procedure Act 2004*. The accused lawyers' submitted that any identification of the accused as former CCC employees would subject them and their families to significant risk to their personal safety from unidentified people who were the subject of CCC investigations they had participated in.

Information gathered by the Commission during an adjournment of the hearing could not rule out the possibility the two accused former officers may at some time have followed members of organised crime or bikies, but this was thought unlikely.

It is the Committee's recommendation that for any future court cases involving serving, or former officers of the CCC, the Commission prepare detailed briefing notes for the

prosecution on the officer's tasks and roles within the Commission so they can properly present the facts to the court should a suppression order be applied for.

A draft of the Committee's report was provided for comment to the Parliamentary Inspector of the Corruption and Crime Commission (PICCC), Hon Michael Murray QC; the CCC Commissioner, Hon John McKechnie QC; and the Director of Public Prosecutions (DPP), Mr Joseph McGrath SC. The PICCC and the DPP had no comment to make on the draft report. A copy of the CCC Commissioner's response is included in Appendix 4 and the Committee has taken that response into account when adopting this final report.

I would like to thank my fellow Committee Members for their input to 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's Secretariat, Dr David Worth and Ms Jovita Hogan, provided the Committee members with timely support.

A handwritten signature in blue ink, consisting of several overlapping loops and a horizontal line, identifying the signatory as Hon Nick Goiran, MLC.

**HON NICK GOIRAN, MLC**  
**CHAIRMAN**

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# Findings and Recommendations

## **Finding 1**

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At the commencement of the court hearing on 25 September 2014 to hear charges against former officers of the Corruption and Crime Commission there were no Commission legal officers present to assist the Director of Public Prosecutions' prosecutor with evidence to make a submission against an application for a suppression order.

## **Finding 2**

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The Corruption and Crime Commission's legal staff were unable to provide the Director of Public Prosecutions' prosecutor with information about the nature of the matters in which the accused had previously been involved in at the Commission.

## **Recommendation 1**

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For any future court hearings involving serving or former officers of the Corruption and Crime Commission, the Commission should prepare detailed briefing notes for the prosecution on the officer's tasks and roles within the Commission, and ensure a legal officer from the Commission is present for the hearing and has the authority to provide relevant information to assist the prosecutor oppose any application for a suppression order.

## **Recommendation 2**

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The Corruption and Crime Commission develop a Memorandum of Understanding with the WA Police and the Office of the Director of Public Prosecutions so that the Commission is notified of any future court hearings which involve serving or former officers of the Commission.

## **Finding 3**

**Page 9**

As of 16 June 2016, the Corruption and Crime Commission has a written policy regarding Commission officers making and responding to applications for suppression orders in criminal proceedings where the Commission is a party, or where the Commission has an interest and is represented by another agency (eg the ODPP or State Solicitors Office).



# Chapter 1

## A suppression order in regard to two former officers of the CCC

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*Having regard to all of these matters, the State does not currently consider it has sufficient prospects of a successful application to revoke or vary the orders for it to be in the public interest for it to make any such application. Mr Joseph McGrath SC, Director of Public Prosecutions.*

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### Introduction

On the 17 June 2015 the Joint Standing Committee tabled an important report prepared by the Parliamentary Inspector of the Corruption and Crime Commission (PICCC), Hon Michael Murray QC, on a number of serious allegations of misconduct made against officers of the Corruption and Crime Commission (CCC). These allegations centred on the Operational Support Unit (OSU) at the CCC.

The Committee's Report No. 19, *Parliamentary Inspector's report on misconduct and related issues in the Corruption and Crime Commission*<sup>1</sup>, outlined 23 allegations of misconduct that had been made against Commission staff which had been investigated by WA Police (WAPOL). The PICCC described the allegations as "among the most worrying allegations I have encountered in the short time I have been in office".<sup>2</sup>

The Committee first became aware of the allegations in September 2013 and was kept informed of developments by the PICCC. It also gathered information during closed hearings with the PICCC, the CCC and WAPOL. WAPOL handed their final report to the PICCC on these matters on 27 March 2015.

The PICCC wrote to the Committee on 10 November 2015 to say that the CCC Commissioner, Hon John McKechnie QC, had advised him that two former officers of the Commission had been charged as a result of the WAPOL investigation of the allegations, as reported in Report 19, and had been sentenced.

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1 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's report on misconduct and related issues in the Corruption and Crime Commission*, 17 June 2015. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/FE9089F3B8F3E67A48257E67001CC065/\\$file/JSCCCC%20Report%2019-%20CCC%20misconduct%20allegations-%20June%202015.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/FE9089F3B8F3E67A48257E67001CC065/$file/JSCCCC%20Report%2019-%20CCC%20misconduct%20allegations-%20June%202015.pdf). Accessed on 18 February 2016.

2 Ibid, p4.

## Chapter 1

The PICCC later told the Committee that the first of the two former officers had pleaded guilty to the charges and was sentenced in the District Court on 24 March 2015 to a term of six months and one day imprisonment, suspended for 12 months, on one count of falsifying a record, and to 18 months imprisonment, suspended for 12 months, on one count of giving false testimony to the Commission, with both sentences to be served concurrently.<sup>3</sup>

Hon Michael Murray QC reported that the second former officer, who had originally pleaded not guilty to two counts of corruptly falsifying records contrary to section 85(c) and 85(e) of the *Criminal Code*, changed his plea to guilty shortly before his trial began. He was sentenced in the District Court by Judge Petrusa SC to 18 months imprisonment on each count, suspended for 12 months, to be served concurrently.<sup>4</sup>

The PICCC also noted in his letter to the Committee that:

*...a suppression order continues in the District Court with respect to the publication of names or identifying details of the offenders, including information which relates to the former officers' workplace. I therefore ask the Committee to refrain from any wider publication of the matter while the suppression order remains in force.*<sup>5</sup>

### **Details of the suppression order**

The Committee had been unaware that a suppression order had been issued in regard to these two former Commission officers. It wrote on 13 November 2015 to the CCC Commissioner and on the 2 December 2015 to the PICCC seeking further information about this issue, including whether the Commission had requested the suppression order be made and the precise terms of the suppression order.

The Commissioner, Hon John McKechnie QC, responded to the Committee on the same day to advise that the Commission had not requested the suppression order, and that:

*The suppression order was issued at 4:05 p.m. on 25 September 2014 before Magistrate Woods and continues, as no application has been made to "lift" it. The terms of the suppression order are:*

Not publish name or worked formerly at CCC. Not to photograph. Not to publish any identifying details.<sup>6</sup>

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3 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 10 November 2015.

4 Ibid.

5 Ibid.

6 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 13 November 2015.

On the 16 December 2015 the Committee wrote to the Director of Public Prosecutions (DPP), Mr Joseph McGrath SC, seeking:

- a chronology of the events surrounding the court case that led to the suppression order being imposed by Magistrate Woods;
- his comments as to whether the ODPP intended to seek to have the order lifted at any later date; and
- advice on whether there were any other current suppression orders regarding the prosecution of current or former officers of the Commission.

The DPP's responded to the Committee's request on 3 February 2016, and the letter is contained in Appendix 1.

Following the receipt of the DPP's letter, the Committee wrote to the PICCC and the CCC Commissioner on 22 February 2016 advising that it was minded to table a report in Parliament on the matter and inviting them to make a submission on the issue. The CCC Commissioner provided his submission on 16 March 2016, and it is included in Appendix 2. The PICCC responded on 12 April 2016, and his submission is included in Appendix 3.

## **The importance of transparency**

The allegations against Commission officers contained in the Committee's Report No. 19, *Parliamentary Inspector's report on misconduct and related issues in the Corruption and Crime Commission* and its later Report No. 25, *Parliamentary Inspector's Report on Allegations of Misconduct Made Against Officers in the Corruption and Crime Commission's Electronic Collection Unit*, garnered widespread public attention. Media comment on Report 19 included an editorial in *The West Australian* on 20 June 2015 saying that:

*The success of a public corruption agency depends to a large degree on it retaining the confidence of the public. These revelations make that task harder.*<sup>7</sup>

Another editorial in *The West Australian* followed the release of Report 25 in December 2015:

*Those officers may have gone, but the mind still boggles that WA's corruption watchdog, with its enormous powers and protections, could have employed and allowed to flourish a significant number of people who were willing to behave in such a manner.*

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7 'Leadership, clear focus needed to get CCC on track', *The West Australian*, 20 June 2015, p30.

## Chapter 1

*The cultural and systemic issues must have run so deep it is difficult to have confidence even now.*<sup>8</sup>

The Committee was concerned that the Western Australian public who had read or heard about these allegations would wish to know of any later charges and prosecution of former officers of the Commission in regard to the allegations of misconduct that had been investigated by the PICCC. The public's faith and trust in the State's integrity system relies on knowing that Commission officers who have broken the law are charged, prosecuted and punished, like any other member of the public.

### **Application in the Magistrate Court for a suppression order**

According to the information provided to the Committee by the DPP, Mr Joseph McGrath SC, the two officers were charged by WAPOL on 14 August 2014 after receipt of advice from the Office of the DPP as to the appropriate charges flowing from the available admissible evidence. The charges related to the false accounting and reporting of a \$1,000 cash advance in May 2011 which, instead of being used for official purposes, was given by one of the accused to the other. One of the accused was also charged with giving false evidence to the CCC during a private hearing inquiring into the matter.<sup>9</sup>

On 25 September 2014 the two accused first appeared in the Perth Magistrates Court before Deputy Chief Magistrate Woods 'for mention' and to agree on bail conditions before an adjournment to 20 November 2014 for a hearing of the charges.

An application was made by lawyers for each of the accused, without notice, for a suppression order pursuant to section 171(4)(b) of the *Criminal Procedure Act 2004*:

*(4) On an application by a party to the case, or on its own initiative, a court may, if satisfied it is in the interests of justice to do so —*

*... (b) make an order that prohibits the publication outside the courtroom of the whole of the proceedings, or a part or particular of them specified by the court;*<sup>10</sup>

According to the DPP, the application made by the lawyers for the two accused was not in writing, was not supported by any oral or affidavit evidence, and was not specific in its terms. He said the application was aimed at preventing the publication of the names of the accused in connection with the charges they faced and any identification of them as having worked at the CCC. The accused lawyers submitted that any identification of

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8 'McKechnie must ensure CCC culture has changed', *The West Australian*, 9 December 2015, p26.

9 Mr Joseph McGrath SC, Director of Public Prosecutions, Letter, 3 February 2016, p1.

10 AustLII, *Criminal Procedure Act 2004 - sect 171*, nd. Available at: [www.austlii.edu.au/au/legis/wa/consol\\_act/cpa2004188/s171.html](http://www.austlii.edu.au/au/legis/wa/consol_act/cpa2004188/s171.html). Accessed on 21 April 2016.

them as former CCC employees would subject them and their families to significant risk to their personal safety from unidentified people who were the subject of CCC investigations, past or present (which were also not identified).<sup>11</sup>

The hearing of the application was adjourned to later that day to allow the Magistrate to consider the application, and for the DPP prosecutor to consult the CCC's legal representatives, including Mr Paul O'Connor, then-Director Legal Services. The CCC Commissioner told the Committee that Mr O'Connor had spoken with then-Acting Commissioner Douglas and it was determined that Mr O'Connor should appear at the adjourned hearing, not to support or oppose the application, but to assist the court in clarifying issues raised in the application for a suppression order.

Further information was gathered by the Commission during the adjournment that could not rule out the possibility the two accused former officers may at some time have followed members of organised crime or bikies, but this was likely to have been very rare.<sup>12</sup>

After hearing the prosecutor's submissions, Deputy Chief Magistrate Woods granted the application, being satisfied that there was a sufficient basis for the making of the order under the *Criminal Procedure Act 2004*. No application was made during the course of the committal proceedings in the Magistrates Court to vary or lift the suppression order. The DPP told the Committee that the suppression order remains in place as "[t]here had been no change in circumstances which warranted re-litigation of the matters determined by the Deputy Chief Magistrate."<sup>13</sup>

## **Evidence from the DPP**

The Director of Public Prosecutions, Mr Joseph McGrath SC, provided his response to the Committee's request for information in February 2016. Disappointingly, he said that the original CCC officer present for the court hearing was only able to provide 'limited information' to the DPP prosecutor for the case, Ms Amanda Forrester, "apparently due to the confidential nature of CCC investigations as well as his role at the CCC."<sup>14</sup> This information seems to infer that the CCC officer was not from the Commission's Legal Services unit.

On resumption of the hearing, Mr Paul O'Connor, then-Director of the Commission's Legal Services, was present and permitted to remain in Court for the hearing. The DPP said, however, that while the application for a suppression order was opposed by the DPP prosecutor:

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11 Mr Joseph McGrath SC, Director of Public Prosecutions, Letter, 3 February 2016, p2.

12 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Submission, 16 March 2016, p1.

13 Mr Joseph McGrath SC, Director of Public Prosecutions, Letter, 3 February 2016, p2.

14 Ibid.

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*The State was not in a position to adduce positive evidence of the nature of the matters in which the accused had previously been involved, as no such evidence had been provided. Such information was also unlikely to be provided in the future, due to the sensitive nature of that information.*<sup>15</sup>

### Finding 1

At the commencement of the court hearing on 25 September 2014 to hear charges against former officers of the Corruption and Crime Commission there were no Commission legal officers present to assist the Director of Public Prosecutions' prosecutor with evidence to make a submission against an application for a suppression order.

### Finding 2

The Corruption and Crime Commission's legal staff were unable to provide the Director of Public Prosecutions' prosecutor with information about the nature of the matters in which the accused had previously been involved in at the Commission.

In regard to these two findings, the CCC Commissioner responded to the Committee's draft report (see Appendix 4) by noting that the prosecution of the two former officers:

- was not one commenced or conducted by the CCC;
- arose from a WA Police investigation;
- the charges were laid by the WA Police after receiving advice from the Office of the Director of Public Prosecutions (ODPP); and
- the prosecutor was an officer of the ODPP, instructed by WA Police.<sup>16</sup>

The Commissioner further noted that the suppression order application was made "on the day of the hearing without notice, without supporting evidence, on grounds submitted from the bar table", and that:

*Had the prosecution arisen from a Commission investigation, or the application for the suppression order been made with notice, there most certainly would have been a Commission legal officer present at the commencement of the hearing to assist the prosecutor, equipped with the necessary information to do so.*<sup>17</sup>

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15 Ibid.

16 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 1 August 2016.

17 Ibid.

### **Recommendation 1**

For any future court hearings involving serving or former officers of the Corruption and Crime Commission, the Commission should prepare detailed briefing notes for the prosecution on the officer's tasks and roles within the Commission, and ensure a legal officer from the Commission is present for the hearing and has the authority to provide relevant information to assist the prosecutor oppose any application for a suppression order.

The Commissioner responded to the Committee's draft recommendation:

*...as the Commission will not be a party to any proceedings brought against former Commission officers, the Commission will not necessarily be aware of the charges or proceedings, unless advised by the WA Police or ODPP.*

...

*I can confirm that, subject to s152 CCM Act, if requested by the WA Police or the ODPP the Commission would prepare detailed briefing notes for the prosecution on a former officer's tasks and roles within the Commission.*

*In addition, if the prosecution was on notice that an application for a suppression order was to be made on grounds relevant to the Commission, we would ensure a legal officer from the Commission was present for the hearing and had the authority to provide relevant information, subject to s152 CCM Act, to assist the prosecutor to oppose an application for a suppression order, if appropriate.<sup>18</sup>*

In light of the Commissioner's response, the Committee makes the following recommendation.

### **Recommendation 2**

The Corruption and Crime Commission develop a Memorandum of Understanding with the WA Police and the Office of the Director of Public Prosecutions so that the Commission is notified of any future court hearings which involve serving or former officers of the Commission.

## **Earlier evidence from the Commissioner**

On 11 May 2016 the Committee held a closed hearing with the Commissioner, Hon John McKechnie QC. During this hearing the Committee sought clarification as to

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18 Ibid.

## Chapter 1

whether the Commission had a capacity to intervene in future court cases in order to make a submission about an application for a suppression order in regard to the name of a current or former Commission officer. The Commissioner said that the CCC would not have standing to intervene in a criminal prosecution unless the Commission was conducting the prosecution itself.

Mr McKechnie commented on the successful application for the suppression order in regard to the two former officers, where the prosecution was conducted by the DPP, that:

*...we would make representations to the DPP either one way or another. My view, as I think I have expressed to the Committee, is I am a strong believer in open justice. Obviously there are exceptions, which is why there is a judicial thing. It is pointless to debate the thing that has gone; it has gone. I am not sure whether I would have agreed to a suppression order in that case but that one has gone. I generally think that open justice means just that. There has to be very good reason to suppress. That is not to say there may be a genuine risk to people's safety at some point but I am not a fan of suppression.<sup>19</sup>*

The Commissioner told the Committee that it was the CCC's practice to have a solicitor present ready to instruct the DPP in all court cases where it had prepared a brief of evidence. Mr McKechnie agreed that this was a long-standing practice but there was not a written policy in regard to the Commission's approach. He said that the Commission's lawyers "know what the party line is on suppression orders; namely, we oppose them unless there is good reason and they have to get direction from me." The Committee put to the Commissioner the value of having a written policy, to which the Commissioner agreed.<sup>20</sup>

The Commissioner later provided the Committee with a copy of a new Commission policy titled *Suppression Orders in Criminal Proceedings*, which was effective from 16 June 2016.<sup>21</sup>

In his response to the Committee's draft report, the Commissioner said that its draft Finding 3 in regard to this new policy "was not entirely correct" and explained that:

*The policy states that a Commission initiated application for a suppression order will only be made in exceptional circumstances, where it is in the interests of justice to do so, and must be approved by*

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

20 Ibid.

21 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 27 June 2016.

*the Commissioner. An application for a suppression order by another party will be opposed unless it is clearly in the interests of justice that the order be made and the Commissioner directs the application not be opposed.*

*Where an application is made in proceedings in which the Commission has an interest and is represented by another agency, the policy states that the agency must be made aware of the Commission's views about the application, in line with the above paragraph.<sup>22</sup>*

Having taken into account all the aforementioned matters, the Committee now makes this Finding.

### **Finding 3**

As of 16 June 2016, the Corruption and Crime Commission has a written policy regarding Commission officers making and responding to applications for suppression orders in criminal proceedings where the Commission is a party, or where the Commission has an interest and is represented by another agency (eg the ODP or State Solicitors Office).

### **Sentencing hearings in the District Court**

On 20 November 2014 one accused entered a 'fast track' plea of guilty. On 24 March 2015 the offender was sentenced in the District Court. At this sentencing hearing, District Court Judge Keen continued the suppression order in relation to this individual, on the basis that "[j]ustice can be seen to be done by the facts and by the sentence at the end of the day without naming the offender in that regard."<sup>23</sup>

The other accused originally entered a plea of not guilty in the Magistrates Court and was due to appear in the District Court for trial on 9 November 2015. However, on that date this individual entered a plea of guilty and was then sentenced by District Court Judge Petrusa SC.

The DPP, Mr Joseph McGrath SC, told the Committee that "[t]he State has no present intention to apply to have the suppression order in relation to either accused lifted or varied."<sup>24</sup> The Parliamentary Inspector, Hon Michael Murray QC, agreed that he:

*... would not dissent from the view expressed by Mr McGrath that there appears to be no ground to support an application by the DPP to set the orders aside and it is certainly well past the time when an*

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22 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 1 August 2016.

23 Mr Joseph McGrath SC, Director of Public Prosecutions, Letter, 3 February 2016, p3.

24 Ibid.

## Chapter 1

*appeal to the Court of Appeal (if there is such a right by leave in a case such as these) might be launched.*<sup>25</sup>

The DPP also provided the Committee with an update in regard to the status of the suppression order:

*The State still has no information to enable it to challenge the basis upon which the orders were made. In addition, the risks (as found to exist by Deputy Chief Magistrate Woods and, by implication, Keen DCJ) remain unchanged by the relatively brief amount of time which has passed [since the sentencing].*

...

*Having regard to all of these matters, the State does not currently consider it has sufficient prospects of a successful application to revoke or vary the orders for it to be in the public interest for it to make any such application.*<sup>26</sup>

The DPP reported to the Committee that his office did not compile which of its prosecutions are in respect of current or former employees of the CCC and is therefore unable to identify which matters, if any, are subject to current suppression orders.<sup>27</sup>

The CCC Commissioner drew to the attention of the Committee that any contravention of the current suppression order in regard to the former officers, made in the Magistrates Court and continued by the District Court, would be a contempt.<sup>28</sup>

### **Media reporting of the charges and court cases**

The CCC issued no media release when the charges were laid nor during the court hearings its former officers faced. *The West Australian* reported on the day after the charges were laid that “[a] former Corruption and Crime Commission officer has been charged with falsifying records and giving false evidence to an internal inquiry investigating his actions.” It identified the former officer as “[t]he 43-year-old man is one of six CCC staff members who have either been sacked or quit since allegations relating to the misappropriation of funds surfaced late last year.”<sup>29</sup>

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25 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Submission, 12 April 2016, pp1-2.

26 Mr Joseph McGrath SC, Director of Public Prosecutions, Letter, 3 February 2016, p3.

27 Ibid.

28 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Submission, 16 March 2016, p2.

29 Mr Grant Taylor, 'CCC man charged', *The West Australian*, 15 August 2014, p26.

The DPP told the Committee that:

*At no time has there been a prohibition on reporting the charges, convictions and/or sentences of either accused. The prohibition was only on identifying the accused (now offenders). As far as I am aware, no media outlet reported on either matter at the time of any of the appearances. Further, no media outlet made any objection to the orders or sought their variation or removal at any point during the proceedings in either Court.<sup>30</sup>*

### **Legal aspects of the application of a suppression order**

In his submission to the Committee about this matter, the Parliamentary Inspector, Hon Michael Murray QC, said that he “thought that the case for suppression orders was weak, but it is no part of my purpose here to pass judgment upon the question whether the exercise of discretion by the learned Magistrate was sustainable.”<sup>31</sup>

The PICCC provided on 25 September 2014 a copy of the transcript of the hearing in the Magistrate Court of the two former officers. In providing her reasons for the granting of a suppression order, Deputy Chief Magistrate Woods acknowledged the weakness of the application:

*Part of my difficulty is that I don't think these charges are so significant as to usually warrant any suppression order, however, there may be some connection found or some recognition by persons that would be undesirable in relation to [redacted] and [redacted] being identified by these people as officers from the CCC who partook in some of these covert activities.*

*So, in those circumstances, what I intend to do is make the suppression order that their details not be published being their name and any other identifying details, not to be photographed, and information relating to their workplace ...With their former workplace or current workplace not to be reported or disclosed.<sup>32</sup>*

The PICCC explained in his submission to the Committee that such applications were granted if the court is “satisfied it is in the interests of justice to do so.”<sup>33</sup> He stressed that it was important to note that section 171(2) of the *Criminal Procedure Act 2004*

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30 Mr Joseph McGrath SC, Director of Public Prosecutions, Letter, 3 February 2016, p3.

31 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 12 April 2016, p2.

32 Ibid, p20.

33 Ibid, p2.

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states the general principle of fundamental importance to the administration of justice in Western Australia, that:

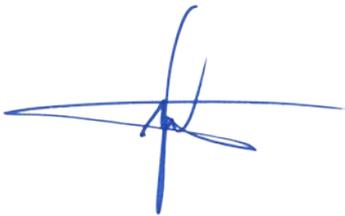
*Subject to this section, all proceedings in a court are to be in open court and the courtroom where the court sits is to be open to the public unless this Act or the rules of court or another written law provides otherwise.*<sup>34</sup>

The PICCC concluded his submission to the Committee that:

*...although the discretion to make an order is couched in wide terms it is accepted that such an order should only be made in exceptional circumstances where demanded by the interests of justice and, if an order is made it should be formulated in terms no wider than absolutely required.*<sup>35</sup>

## Conclusion

A draft of this report was provided for comment to the PICCC, Hon Michael Murray QC; the CCC Commissioner, Hon John McKechnie QC; and the Director of Public Prosecutions (DPP), Mr Joseph McGrath SC. The PICCC and the DPP had no comment to make on the draft report. A copy of the CCC Commissioner's response is included in Appendix 4 and the Committee has taken that response into account when adopting this final report.

A handwritten signature in blue ink, consisting of a large, stylized 'N' and 'G' intertwined, with a horizontal line crossing through the middle.

**HON NICK GOIRAN, MLC**  
**CHAIRMAN**

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34 AustLII, *Criminal Procedure Act 2004 - sect 171*, nd. Available at: [www.austlii.edu.au/au/legis/wa/consol\\_act/cpa2004188/s171.html](http://www.austlii.edu.au/au/legis/wa/consol_act/cpa2004188/s171.html). Accessed on 21 April 2016.

35 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 12 April 2016, p2.

# Appendix One

DPP's letter of 3 February 2016



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DIRECTOR OF PUBLIC PROSECUTIONS  
for WESTERN AUSTRALIA

Level 1, 26 St Georges Terrace, PERTH WA 6000

## Office of the Director

Our Ref: ADM2013/355:JMG:AF:yab  
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The Hon Mr Nick Goiran MLC  
Chairman  
Joint Standing Committee on the Corruption and Crime Commission  
Parliament of Western Australia  
Parliament House  
PERTH WA 6000

Dear Hon Mr Goiran

### **SUPPRESSION ORDER IN REGARD TO A FORMER CCC OFFICER – JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION**

I refer to your letter dated 16 December 2015 and my letter of 22 December 2015.

The proceedings to which you refer involved two former Corruption and Crime Commission ("CCC") officers (one represented by Ms Manson-Grumley and one represented by Mr Noble). The relevant appearance was before Deputy Chief Magistrate Woods on 25 September 2014.

The former officers were charged by the Western Australian Police on 14 August 2014 after receipt of advice from my Office as to the charges which were potentially disclosed by the available admissible evidence.

The charges related to the false accounting and reporting in relation to a \$1,000 CCC cash advance which, instead of being used for official purposes, was given by one of the accused to the other as reimbursement for personal funds stolen from the latter whilst both were away on official business. One of the accused was also charged with giving false evidence to the CCC in a private hearing about the matter.

On 25 September 2014 the accused first appeared in the Perth Magistrates Court before Deputy Chief Magistrate Woods. On that date, an application was made by each of the accused, without notice, for a suppression order.

An application for a suppression order is able to be made pursuant to section 171 of the *Criminal Procedure Act 2004*.

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The application was not in writing, was not supported by any oral or affidavit evidence, and was not specific in its terms. This is not uncommon in Magistrates Court proceedings. However, it did become clear that the application was to prevent publication of the names of the accused in connection with the charges or any identification of them as having an association with the CCC.

In summary, it was submitted on behalf of the accused that any identification of them as former CCC employees would subject them and their families to significant risk to their personal safety from people (who were not identified) who were the subject of CCC investigations, past or present (which were also not identified).

The hearing of the application was adjourned to 2.15pm to be heard. Ms Amanda Forrester, Consultant State Prosecutor at the ODPP, was not privy to the nature of the targets of any investigations in which the accused had been involved, or the investigations themselves. Ms Forrester discussed the issue with a representative of the CCC, Mr Barry O'Connor, who was present at the hearing and had heard the submissions made on behalf of the accused to that point. However, there was limited information which Mr Barry O'Connor was able to provide, apparently due to the confidential nature of CCC investigations as well as his role at the CCC.

On resumption of the hearing at 2.15pm, Mr Barry O'Connor and Mr Paul O'Connor, a legal representative from the CCC, were present and permitted to remain in Court for the hearing.

The application for a suppression order was opposed by Ms Forrester on the basis that such an order was not necessary to protect the safety of the accused.

The State was not in a position to adduce positive evidence of the nature of the matters in which the accused had previously been involved, as no such evidence had been provided. Such information was also unlikely to be provided in the future, due to the sensitive nature of that information. For a similar reason, the State had limited ability to refute the assertions made on behalf of the accused by way of submission. Accordingly, there was a limit to which the matters put on behalf of the accused could be challenged.

It is noted that no evidence was adduced on behalf of the accused. The assertions as to the danger faced by them were by way of submission only.

After hearing submissions, Deputy Chief Magistrate Woods granted the application, being satisfied that there was a sufficient basis for the making of the order under the legislation.

The order granted, as written, in respect of each of the accused, was in the following terms -

"Not to publish the name or worked formerly [sic] at CCC. Not to photograph. Not to publish any identifying details."

No application was made during the course of the committal proceedings in the Magistrates Court to vary or lift the suppression orders made. There had been no change in circumstances which warranted re-litigation of the matters determined by the Deputy Chief Magistrate.

On 20 November 2014 one of the accused entered a "fast track" plea of guilty. On 24 March 2015 he was sentenced. On that date, Keen DCJ continued the suppression order in relation to that accused, on the basis that –

"Justice can be seen to be done by the facts and by the sentence at the end of the day without naming the offender in that regard."

The other accused entered a plea of not guilty and was due to appear for trial on 9 November 2015. However, on that date, he entered a plea of guilty and the trial dates were vacated. He was sentenced on that date.

No application was made on the part of the State to vary or remove the suppression order. The State still had no evidence to challenge the basis on which the order had been made and, further, it was appropriate to have regard to Keen DCJ's determination on 24 March 2015 in relation to the other accused.

The State has no present intention to apply to have the suppression order in relation to either accused lifted or varied.

The State still has no information to enable it to challenge the basis upon which the orders were made. In addition, the risks (as found to exist by Deputy Chief Magistrate Woods and, by implication, Keen DCJ) remain unchanged by the relatively brief amount of time which has passed.

Further, the comments made by Keen DCJ in continuing the suppression order are apposite. At no time has there been a prohibition on reporting the charges, convictions and/or sentences of either accused. The prohibition was only on identifying the accused (now offenders). As far as I am aware, no media outlet reported on either matter at the time of any of the appearances. Further, no media outlet made any objection to the orders or sought their variation or removal at any point during the proceedings in either Court.

Having regard to all of these matters, the State does not currently consider it has sufficient prospects of a successful application to revoke or vary the orders for it to be in the public interest for it to make any such application.

Unfortunately, my Office does not specifically record which prosecutions are in respect of current or former employees of the CCC, or able to identify which matters, if any, are subject to current suppression orders. Accordingly, I am unable to provide you with the information you seek as to the number of current suppression orders or those specifically relating to the prosecution of current or former employees.

Should you have any further queries please do not hesitate to contact me.

Yours sincerely



Joseph McGrath SC  
DIRECTOR OF PUBLIC PROSECUTIONS

3 February 2016



# Appendix Two

## CCC Commissioner's submission of 16 March 2016



Your Ref: -  
Our Ref: 00582/2011 WEB/JMcK

16 March 2016

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

Dear Mr Goiran

### **REQUEST FOR SUBMISSION ON PROPOSED COMMITTEE REPORT - SUPPRESSION ORDER IN REGARD TO FORMER CCC OFFICERS**

Thank you for your letter of 22 February 2016.

As previously advised, the Commission did not request the suppression order and was not a party to the proceedings.

The letter to you dated 3 February 2016 from the Director of Public Prosecutions, Mr Joseph McGrath SC, confirms that.

The contemporaneous notes of the then Director Legal Services, Mr Paul O'Connor, records the events of 25 September 2014 as follows:

- Mr O'Connor was contacted by Ms Forrester of the ODPP on that date seeking Commission representation at 2.15pm in relation to an application for a suppression order based on the accused officers' exposure to organised crime and bikies;
- Mr O'Connor spoke with the then Acting Commissioner and it was determined Mr O'Connor should appear, not to support or oppose the application, but to assist the court in clarifying any issues;
- Mr O'Connor met with Commission officer Barry O'Connor and was told he could not rule out the possibility the accused officers may at some time have followed members of organised crime or bikies, but this was likely to have been very rare;
- Mr (Paul) O'Connor attended at the Magistrates Court at 2.15pm;
- The accused officers sought suppression of their identity and the nature of their duties;

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- The DPP agreed suppression of the nature of their duties was appropriate;
- The defence made reference to the nature of the duties of an undercover officer, that they had access to OMCG members and to certain named individuals;
- The DPP noted one of the officers had booked the accommodation in question in his own name using his own credit card and had a prominent Facebook page. The DPP noted the nature of the charge of "falsifying a travel claim" did not provide a link to the accused officers' actual duties, and pointed out that the Commission did not have power to investigate organised crime.
- Deputy Chief Magistrate Woods adjourned the application to 4pm; and
- Ms Forrester telephoned Mr O'Connor after 4pm and advised Deputy Chief Magistrate Woods reluctantly made the order suppressing both the accused officers' names and that they were employed by the Commission.

The only other points worth noting not specifically mentioned in the DPP letter to you are that:

- The DPP were instructed by the WA Police, not the Commission, in this prosecution; and
- Any contravention of the current suppression order, made in the Magistrates Court and continued by the District Court, would be a contempt.

To be clear on the Commission's position in relation to suppression orders, the principles of open justice are recognised to be such that applications for suppression orders by the Commission are likely to be rare.

In fact, I note for your reference the Commission's recent application to the Court of Appeal to have a suppression order made Justice Kenneth Martin in proceedings to which the Commission is a respondent set aside or revoked.

If any further information would assist your deliberations, I would be happy to engage in further discussions with you.

Yours sincerely



John McKechnie, QC  
**COMMISSIONER**

# Appendix Three

PICCC's submission of 12 April 2016



**PARLIAMENTARY INSPECTOR  
OF THE CORRUPTION AND CRIME COMMISSION  
OF WESTERN AUSTRALIA**

12 April 2016

The Hon Nick Goiran MLC  
Chairman  
Joint Standing Committee of the  
Corruption and Crime Commission

Dear Chairman

**REQUEST FOR SUBMISSION re SUPPRESSION ORDERS**

Thank you for your letter dated 22 February 2016, which raises the matter of suppression orders made in criminal proceedings against the former Commission officers, [names redacted] who were charged with and ultimately convicted of two offences of corruptly falsifying records in one case, and one such offence and giving false testimony to the Commission in the case of the other man.

Both men ultimately pleaded guilty in the District Court and were sentenced to terms of 18 months imprisonment suspended for 12 months.

The proceedings which attracted the interest of the Committee were those conducted in the Magistrates Court before her Honour Deputy Chief Magistrate Woods on 25 September 2014, well before the matters were committed to the District Court. Her Honour made orders, which as I understand it continue today, that there was to be no publication of any part of the proceedings which might identify either offender by name or otherwise, or which might reveal that they were formerly employed as officers of the Commission. There was to be no photograph published which might have either effect.

When I say that the orders continue today, I mean, of course, that, as the Director of Public Prosecutions observes in his letter to the Committee dated 3 February 2016, they were continued by the judges of the District Court in passing sentence and they have not been varied or terminated upon the application of the prosecutor or the Commission.

In his letter, Mr McGrath SC notes that Keen DCJ observed that in the view of his Honour justice could be seen to be done in the case before him without naming the offender. No contrary view appears to have been expressed by the other sentencing judge, her Honour Petrusa DCJ.

I would not dissent from the view expressed by Mr McGrath that there appears to be no ground to support an application by the DPP to set the orders aside and it is certainly

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well past the time when an appeal to the Court of Appeal (if there is such a right by leave in a case such as these) might be launched.

I should therefore focus my attention on the decision of the Deputy Chief Magistrate which was made after hearing submissions from both defence counsel and the prosecutor. In case you do not have it, I attach a copy of the transcript of the proceedings in the Magistrates Court on 25 September 2014.

No evidence was called by any party, but that does not appear to have caused difficulty because the basic facts upon which the applicants, the defendants, relied were not contested by the prosecution. The case for the defendants was presented by Mr Noble, who appeared for [redacted]. His submissions were adopted by Ms Manson-Grumley, appearing for [name redacted].

The application was developed at pp 6-10. I shall return to its basis in law, but the law was correctly stated by counsel. The ground relied on was that both men had been employed in the Commission as undercover operatives doing covert surveillance work using assumed identities, concerning the activities of “organised crime figures”, “outlaw motorcycle gangs”, and if they were able to be identified their personal safety, even their lives, would be put in jeopardy.

The prosecutor, the Police for whom the DPP acted, was represented by Ms Forrester. She submitted that there was no evidence to support the grant of the applications. The defendants were not covert operatives; they were engaged in surveillance activities. There was no evidence that they were exposed to any organised crime or bikie figures, they could not have been directly investigating organised crime figures and they did not take great care to keep their true identities secret in their ordinary lives.

Her Honour Magistrate Woods, in providing short ex tempore reasons (see p 17), accepted the submissions of the applicants and, as we have seen, made the orders in the terms sought. For my part I would have thought that the case for suppression orders was weak, but it is no part of my purpose here to pass judgment upon the question whether the exercise of discretion by the learned Magistrate was sustainable.

The applications were made under the *Criminal Procedure Act 2004* s 171(4)(b) which empowers the court to make an order which prohibits the publication outside the courtroom of the whole or a specified part of the proceedings, “if satisfied it is in the interests of justice to do so.” It is important to note that s 171(2) states the general principle, from which such an order is a derogation, that:

*Subject to this section, all proceedings in a court are to be in open court and the courtroom where the court sits is to be open to the public unless this Act or the rules of court or another written law provides otherwise.*

In short the principle is of fundamental importance to the administration of justice and, although the discretion to make an order is couched in wide terms it is accepted that such an order should only be made in exceptional circumstances where demanded by the interests of justice and, if an order is made it should be formulated in terms no wider than absolutely required.

A good discussion of the general principle and the circumstances in which it may be necessary to depart from it to secure the equally fundamental right of an accused to a fair trial is to be found in the judgment of Buss JA, McLure P and Newnes JA agreeing, in *AW v Rayney* (No 4)[2012] WASCA 117 at [27]-[33]. I attach a copy of the decision for ease of reference by the Committee.

More akin to the facts of this case is the case of *Hopley v State of WA* [2014] WASCA 30, which concerned the question of the suppression of the identifying particulars of two police officers, one of whom was the accused in a case of dangerous driving causing death and the other of whom was a passenger in the car and, therefore, a witness for the prosecution. Both officers were members of the Police "gang crime squad". There is a convenient statement of the general principles under s 171 of the CPA in the judgment of McLure P, Buss and Mazza JJA agreeing, at [20]-[22]. Again, it is convenient to attach a copy of the reasons.

The Committee has only said that it is contemplating tabling a report in Parliament, having regard to the content of the letter of the DPP dated 3 February 2016. I have no submission to make but thought it was important that the applicable law be stated as fully and clearly as I could for the information of the Committee.

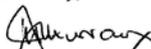
In closing may I also make the obvious point that the question of suppression orders which arose in the cases concerning the two former Commission officers had to be dealt with by the parties and the courts in the context of a clear and fundamental principle of criminal justice.

The question was totally different from that which has been debated by Commissioner McKechnie and me in respect of the circumstances which will justify me, in reporting to the Committee and to the Parliament to name and provide identifying particulars of officers and former officers of the Commission who are the subject of adverse comment. That arose most recently in my Report upon allegations of misconduct, including alleged criminal conduct, concerning officers in the Commission's Electronic Collection Unit. That report became the subject of the Committee's Report No 25 dated November 2015 and the discussion appears at pp 15-16.

Reference may also be made to my letter dated 15 October 2015 and the discussion of s 205 which appears at pp 81-82 of Report No 25. I need not here repeat the last paragraph on p 82 which summarises my view and to which I adhere.

Please do not hesitate to call upon me for any further assistance the Committee may require.

Yours sincerely,

  
**HON MICHAEL MURRAY AM QC**  
**PARLIAMENTARY INSPECTOR**

**Cc Mr J McKechnie QC**  
**Commissioner, Corruption and Crime Commission.**



# Appendix Four

## CCC Commissioner's response to draft report- 1 August 2016



Your Ref: -  
Our Ref: 00582/2011

1 August 2016

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

Dear Mr Goiran

### **RESPONSE TO DRAFT REPORT NO. 29 - A SUPPRESSION ORDER IN REGARD TO TWO FORMER OFFICERS OF THE CORRUPTION AND CRIME COMMISSION**

Thank you for the opportunity to comment on the Committee's draft Report No. 29, *A suppression order in regard to two former officers of the Corruption and Crime Commission*.

My comments in relation to each finding and the recommendation contained in the draft Report follow.

#### **Finding 1**

*At the commencement of the court hearing on 25 September 2014 to hear charges against former officers of the Corruption and Crime Commission there were no Commission legal officers present to assist the Director of Public Prosecutions' prosecutor with evidence to make a submission against an application for a suppression order.*

This is correct, but not surprising.

As advised in my submission dated 16 March 2016 and the submission of the Director of Public Prosecutions (DPP) dated 3 February 2016, this was not a prosecution commenced or conducted by the CCC. The prosecution arose from a WA Police investigation; the charges were laid by the WA Police after receiving advice from the Office of the Director of Public Prosecutions (ODPP); and the prosecutor was an officer of the ODPP, instructed by WA Police. Further, as advised by the DPP in his submission, the suppression order application was made on the day of the hearing without notice, without supporting evidence, and on grounds submitted from the bar table.

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Had the prosecution arisen from a Commission investigation, or the application for the suppression order been made with notice, there most certainly would have been a Commission legal officer present at the commencement of the hearing to assist the prosecutor, equipped with the necessary information to do so.

**Finding 2**

*The Corruption and Crime Commission's legal staff were unable to provide the Director of Public Prosecutions' prosecutor with information about the nature of the matters in which the accused had previously been involved in at the Commission.*

The information the Commission's legal officer was able to obtain and provide to the prosecutor in the time available and in the particular circumstances is set out in my submission dated 16 March 2016.

Again, had the prosecution arisen from a Commission investigation, or the application for the suppression order been made with notice, and/or had more time been available in this particular case, the Commission's legal officer would have undoubtedly been in a position to provide the prosecutor with the required information.

**Finding 3**

*As of 16 June 2016 there is a written Corruption and Crime Commission policy for the handling of applications for suppression orders in regard to either its current or former staff, or WA Police officers.*

This is not entirely correct. As of 16 June 2016 there is a written Corruption and Crime Commission policy regarding Commission officers making and responding to applications for suppression orders in criminal proceedings where the Commission is a party, or where the Commission has an interest and is represented by another agency (eg the ODPP or State Solicitors Office).

The policy states that a Commission initiated application for a suppression order will only be made in exceptional circumstances, where it is in the interests of justice to do so, and must be approved by the Commissioner. An application for a suppression order by another party will be opposed unless it is clearly in the interests of justice that the order be made and the Commissioner directs the application not be opposed.

Where an application is made in proceedings in which the Commission has an interest and is represented by another agency, the policy states that the agency must be made aware of the Commission's views about the application, in line with the above paragraph.

**Recommendation 1**

*For any future court hearings involving service of former officers of the Corruption and Crime Commission, the Commission prepare detailed briefing notes for the prosecution on the officer's tasks and roles within the Commission, and ensure a legal officer from the Commission is present for the hearing and has the authority*

*to provide relevant information to assist the prosecutor oppose any application for a suppression order.*

This recommendation raises several issues.

Firstly, as the Commission will not be a party to any proceedings brought against former Commission officers, the Commission will not necessarily be aware of the charges or proceedings, unless advised by the WA Police or ODPP.

Secondly, applications for suppression orders are not sought in every case involving former Commission officers and it will not necessarily be practicable for the Commission to have a legal officer present on every occasion a former Commission officer is in court (if known) on the chance such an application may be made.

Thirdly, there are strict statutory prohibitions imposed on Commission officers (including Commission lawyers) concerning the disclosure of official information: section 152 *Corruption, Crime and Misconduct Act 2003* (CCM Act). Where the purpose of the disclosure is not for a prosecution instituted as a result of an investigation conducted by the Commission under the CCM Act, or a prosecution in relation to misconduct as defined in the Act, the information may only be disclosed once the Commission has certified that disclosure is necessary in the public interest: section 152(4) CCM Act. This statutory framework affects what information can be disclosed and how quickly.

I can confirm that, subject to s152 CCM Act, if requested by the WA Police or the ODPP the Commission would prepare detailed briefing notes for the prosecution on a former officer's tasks and roles within the Commission.

In addition, if the prosecution was on notice that an application for a suppression order was to be made on grounds relevant to the Commission, we would ensure a legal officer from the Commission was present for the hearing and had the authority to provide relevant information, subject to s152 CCM Act, to assist the prosecutor to oppose an application for a suppression order, if appropriate.

Yours sincerely



John McKechnie, QC  
**COMMISSIONER**



## Appendix Five

### Committee's functions and powers

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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.