



Joint Standing Committee on the Corruption and Crime Commission

**Suspension of the Committee's Inquiry
into the CCC being able to prosecute its own charges**

**Report No. 23
August 2015**

Parliament of Western Australia

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Report No. 23

Presented by

Hon Nick Goiran, MLC and Mr Peter Watson, MLA

Laid on the Table of the Legislative Assembly and Legislative Council
on 13 August 2015

Chairman's Statement

The Joint Standing Committee commenced an *Inquiry into the Corruption and Crime Commission being able to prosecute its own charges* on 26 June 2014. It was due to report to Parliament on this matter by 30 December 2015. The Committee had hoped to identify during the Inquiry:

- a) the operation of the State's prosecution system in relation to Corruption and Crime Commission matters;
- b) whether there is a need to create new criminal offences that capture corrupt conduct; and
- c) arrangements for the prosecution of corrupt conduct and misconduct in other jurisdictions.

The subject matter of this inquiry has been a matter of interest to the Committee for some time. Some preliminary enquiries were made by the Committee in the 38th Parliament as far back as 2010, however the Committee's significant workload at that time prevented a full inquiry being commenced. Hence it was not until this 39th Parliament that a further opportunity arose to consider this matter once more.

Currently the Corruption and Crime Commission (CCC) has acted on the basis that it has the power to charge an accused with relevant criminal charges. Many of these charges are laid on the advice of the Director of Public Prosecutions (DPP), but the matters are then conducted in the superior courts by the DPP.¹ In the past, the CCC has not proceeded with charges where it has been advised by the DPP that they should not be laid. In other cases, the DPP has discontinued cases where charges had been laid by the CCC.²

Then-Commissioner Roberts-Smith QC told the Committee in the 38th Parliament that the Commission's prosecution policy "is that, in the usual course, the Commission will determine whether a criminal charge will be preferred arising out of an investigation. A prosecution is therefore usually commenced without any involvement by the DPP."³

Chapter 23 of the Archer Review of the *Corruption and Crime Commission Act 2003* (CCC Act) in 2008 outlined the basis for the commencement and conduct of prosecutions by the Commission since its establishment:

1 Hon Len Roberts-Smith QC, Commissioner, Corruption and Crime Commission, Letter, 3 June 2010, p1.

2 Ibid, p2.

3 Hon Len Roberts-Smith QC, Commissioner, Corruption and Crime Commission, Letter, 8 June 2010, p2.

*The first is that the Commission and its officers are able to prosecute as authorised persons under the Criminal Procedure Act 2004; the second is that authorised officers of the Commission were hitherto able to do so exercising the powers of a special constable under s.184(3) of the CCC Act; the third is that Commission officers may now do so as public officers exercising police powers under s.184(3c) of the CCC Act; and finally, those Commission officers who hold individual appointments as special constables under s.35 of the Police Act 1892 may do so in that capacity.*⁴

The CCC submitted to the Archer Review that it had the power to prosecute its own charges and to eliminate any uncertainty, the CCC sought a declaratory amendment to the Act to confirm that it (both itself and by its authorised officers) has, and has had, the power to commence and conduct prosecutions in the Magistrates Court. The then-Parliamentary Inspector (Mr Christopher Steytler QC) supported amending the Act to “make it clear that the CCC does have (and always had) this power.”⁵

Recommendation 55 of the Archer Review was that the CCC Act “be amended to make it clear that the CCC has, and has always had, the power to commence and conduct prosecutions in the Magistrates Court.”⁶ Ms Archer reported that the situation in regard to the CCC power to prosecute be clarified, and that any amendment to the CCC Act needed to make it clear that the CCC “not only has that power but has always had that power. Otherwise, problems could arise in respect of matters prosecuted by the CCC prior to the amendment coming into operation.”⁷

The CCC Act was not amended as recommended in the Archer Review. The Committee commenced this Inquiry to review the matter and to evaluate if any amendment to the CCC Act was still required.

Since the Inquiry commenced in 2014, the Committee has received information on whether police oversight bodies in other jurisdictions in Australia and overseas prosecute their own charges. This information was provided in briefings the Committee undertook to also gather evidence for its *Inquiry into improving the working relationship between the Corruption and Crime Commission and the Western Australia Police*.

The Joint Standing Committee has now resolved on 12 August 2015 to cease its *Inquiry into the Corruption and Crime Commission being able to prosecute its own charges*.

4 Ms Gail Archer SC, *Review of the Corruption & Crime Commission Act 2003*, Perth, February 2008, para 801, p258.

5 Ibid, para 802, p258.

6 Ibid, p259.

7 Ibid.

The Committee became aware through an article in *The West Australian* newspaper of an appeal to the Supreme Court which would examine the power of the Corruption and Crime Commission (CCC) to start and continue prosecutions.⁸ This appeal will review whether the CCC has the power to prosecute offences, including those under the Criminal Code, which are outside the specific offences created by the provisions of the *Corruption, Crime and Misconduct Act 2003*.

The Committee is concerned that by continuing with its Inquiry at this time it will inevitably overlap with matters now being considered by the Court of Appeal.

At the conclusion of the case currently before the Court of Appeal, the Committee will re-examine the issue and consider whether to reinstate its Inquiry into this matter with the current, or modified, terms of reference.

A handwritten signature in blue ink, consisting of a vertical line with a horizontal stroke crossing it, and a long horizontal line extending to the right.

HON NICK GOIRAN, MLC
CHAIRMAN

8 Ms Amanda Banks, "Cop facing charges challenges CCC", *The West Australian*, 25 July 2015, p11.

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Appendix One

Committee's functions and powers

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

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

It is the function of the Joint Standing Committee to -

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

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