



THIRTY-NINTH PARLIAMENT

REPORT 42

**STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES**

**JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION —
TERMS OF REFERENCE**

Presented by Hon Barry House MLC (Chair)

October 2016

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Date first appointed: 24 May 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

‘1. Procedure and Privileges Committee

- 1.1 *A Procedure and Privileges Committee* is established.
- 1.2 The Committee consists of 5 Members, including the President and the Chair of Committees, and any Members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chair, and the Chair of Committees is the Deputy Chair, of the Committee.
- 1.3 With any necessary modifications, SO 163 applies to a co-opted Member.
- 1.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the Council or its Committees.’

Members as at the time of this inquiry:

Hon Barry House MLC (Chair)

Hon Adele Farina MLC (Deputy Chair)

Hon Martin Aldridge MLC

Hon Kate Doust MLC

Hon Nick Goiran MLC

Staff as at the time of this inquiry:

Nigel Pratt (Clerk of the Legislative Council) Paul Grant (Deputy Clerk)

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REPORT OF THE STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES
IN RELATION TO THE JOINT STANDING COMMITTEE ON THE CORRUPTION
AND CRIME COMMISSION — TERMS OF REFERENCE

1 REFERENCE AND PROCEDURE

- 1.1 On 19 October 2015 the Chair of the Joint Standing Committee on the Corruption and Crime Commission (the “JSCCCC”) wrote to the Chair of the Legislative Council *Procedure and Privileges Committee* (“the PPC”) to bring to the PPC’s attention Recommendation No. 1 contained in the JSCCCC’s 21st report.
- 1.2 On 23 March 2016 the PPC met to consider the correspondence from the Chair of the JSCCCC. Following the consideration of this correspondence, on 27 April 2016 the PPC agreed to commence an inquiry into the terms of reference of the Joint Standing Committee on the Corruption and Crime Commission.
- 1.3 This report canvasses the PPC’s deliberations and recommendation in relation to its *Inquiry into the Joint Standing Committee on the Corruption and Crime Commission — Terms of Reference*.

2 BACKGROUND TO THE REFERENCE

- 2.1 In December 2014 the Parliament passed the Corruption and Crime Commission Amendment (Misconduct) Bill 2014. During the introductory second reading speech in the Legislative Council the Attorney General advised the Council that the purpose of the Bill was to:

... amend the Corruption and Crime Commission Act 2003 to transfer the oversight of minor misconduct by public officers from the CCC to the Public Sector Commissioner. The CCC’s misconduct prevention and education function will also be transferred to, and exercised by, the Public Sector Commissioner.¹

- 2.2 On 18 June 2015 the Joint Standing Committee on the Corruption and Crime Commission tabled its Report No. 21 entitled *Recent amendments to the Corruption and Crime Commission Act 2003: Some Implications for Western Australia’s integrity*

¹ Western Australia, *Parliamentary Debates*, Legislative Council, 16 October 2014, 7408 (Hon Michael Mischin MLC, Attorney General).

framework.² The report of the JSCCCC contained the following Recommendation No. 1:

The Standing Committees on Procedure and Privileges in the Houses consider inquiring into amending their Standing Orders describing the functions of the Joint Standing Committee on the Corruption and Crime Commission so that it is expressly empowered to oversee the activities of the Public Sector Commission in relation to education and minor misconduct matters it will have responsibility for in the Corruption, Crime and Misconduct Act 2003.

2.3 On 17 September 2015 the response to this recommendation was included with the Governments' Response to Report No. 21 of the JSCCCC which was tabled in the Council by the Attorney General.³ The response to Recommendation 1 was as follows:

It is considered that current oversight over the activities of the Public Sector commissioner by both the Executive and the Parliament is adequate and no additional oversight of the Public Sector Commissioner by the Joint Standing Committee on the Corruption and Crime Commission (CCC) is warranted.

2.4 Following the tabling of this response, on 19 October 2015 the Chair of the JSCCCC wrote to the Chairs of the Procedure and Privileges Committees ("the PPCs") in each House requesting that the PPCs take note of the JSCCCC's recommendation, and consider inquiring into amending the respective Standing Orders of each House in relation to the terms of reference for the JSCCCC.

2.5 The JSCCCC's contention is that its current terms of reference restrict its capacity to oversee the education and minor misconduct matters ceded to the Public Sector Commission. The amendments requested to the Standing Orders of each House would provide the JSCCCC with oversight of the activities of the Public Sector Commission in relation to education and minor misconduct matters transferred to it following the passage of the *Corruption and Crime Commission Amendment (Misconduct) Act 2014*.

3 APPROACH BY THE COMMITTEE

3.1 The report of the JSCCCC and its requests to the PPCs of each House arose as a result of amendments made to the *Corruption and Crime Commission Act 2003*, now renamed to the *Corruption, Crime and Misconduct Act 2003 (the "CCM Act")*.

² See Tabled Paper No. 3014.

³ See Tabled Paper No. 3288.

- 3.2 As the JSCCCC is a joint committee of both Houses, and each of the PPCs had received similar correspondence from the Chair of the JSCCCC and would likely be inquiring into the same matter, the PPC considered whether it would be beneficial to explore a procedure allowing the two committees to confer for the purpose of streamlining any inquiry.
- 3.3 The PPC noted that Legislative Council Standing Order 166(b) provides that a committee shall have the power to confer with a similar committee of the Assembly considering similar matters. Likewise, the Standing Orders of the Legislative Assembly provide a similar power under their SO 281.
- 3.4 On 5 April 2016 the PPC wrote to the Chair of the LA PPC suggesting a procedure that would dispense with the need for the two Houses to establish a joint PPC, and provide a mechanism for the two PPCs to confer for the purpose of obtaining the relevant evidence that each committee would require to proceed with separate, though parallel, inquiries.
- 3.5 Having obtained the agreement of the LA PPC, the PPC resolved to conduct an inquiry into the terms of reference of the JSCCCC and hold a public hearing to obtain the required evidence. On the day of the hearing, and following the private deliberations of the PPC, the members of the LA PPC were invited to attend the public hearing at which time the PPC granted leave to the LA PPC members to ask questions of the witnesses.
- 3.6 Following the hearing, the two PPCs had the necessary evidence to pursue their individual inquiries.

4 WITNESSES

- 4.1 On 27 April 2016 the PPC agreed to conduct a public hearing on Monday, 20 June 2016 at 2.00pm and invited the following witnesses to attend the hearing and provide evidence:
- the Public Sector Commissioner;
 - the Commissioner for the Corruption and Crime Commission;
 - the Attorney General; and
 - the Chair of the Joint Standing Committee on the Corruption and Crime Commission.
- 4.2 The members of the LA PPC were advised of the hearing date and time and invited to attend the hearing in accordance with the agreed procedures.

- 4.3 The Commissioner of the Corruption and Crime Commission provided a submission to the PPC in lieu of attending the hearing to provide evidence in person. The PPC acknowledged the Commissioner's demanding schedule and thanks the Commissioner for his submission which is attached at Appendix 1.
- 4.4 On Monday, 20 June 2016 the Public Sector Commissioner ("the PSC"), Mr Mal Wauchope, and the Attorney General, Hon Michael Mischin MLC, attended the hearing and provided evidence to the PPCs. Hon Nick Goiran MLC, as a member of the LC PPC and also the Chair of the JSCCCC, provided his submission on the matters to the joint PPCs in a private session following the hearing.

5 HEARING WITH THE PPCS

Functions of the PSC under the CCM Act

- 5.1 The Public Sector Commissioner, Mr Mal Wauchope, advised the two PPCs at the hearing that he has essentially two broad functions under the *CCM Act* that began upon the commencement of the *Corruption and Crime Commission Amendment (Misconduct) Act 2014* on 1 July 2015. These functions were described by Mr Wauchope as follows:

To assess minor misconduct and to deal with those matters ... but also to undertake a prevention and education function, which is basically, amongst other things, a capacity-building and an awareness-raising program, right across the public authorities⁴

- 5.2 Prior to 1 July 2015 these functions came within the jurisdiction of the CCC and any allegations of misconduct were dealt with by the CCC and were subject to the oversight of the Parliamentary Inspector of the Corruption and Crime Commission ("the PICCC") and the JSCCCC.
- 5.3 The Attorney General explained the rationale for the transfer of these functions to the Public Sector Commissioner as follows:

It allowed, in the government's view, for the CCC to prioritise and focus on serious misconduct, police oversight, and assisting the police with reducing organised crime, and for the Public Sector Commissioner, who already had a role in advising, education and training in respect of disciplinary matters in the public sector, to deal

⁴ Evidence to Standing Committee on Procedure and Privileges, Legislative Council, Perth, 20 June 2016, 2 (Mal Wauchope).

*with minor misconduct by public officers and to take on the corruption prevention and education function.*⁵

Oversight

- 5.4 The JSCCCC reasoned that the transfer of minor misconduct matters to the PSC left a gap in the oversight of the handling of such matters whereas this oversight was previously captured by the terms of reference of the JSCCCC as resolved by the two Houses and established under s 216A of the CCC Act. Following the transfer to the PSC, no formal mechanism was provided for an agency or body to oversee the PSC’s activities relating to minor misconduct matters.
- 5.5 The PPC noted that the JSCCCC terms of reference at 9.2(b)⁶ currently provides sufficient scope regarding the oversight of the PSC’s activities relating to its prevention and education functions. As to the oversight of the PSC’s handling of its minor misconduct functions, and whether the absence of a formal oversight mechanism creates a deficiency in the scrutiny of these functions, the Attorney General made the following general comments relating to the purpose of the JSCCCC’s establishment in the first place:

Hon NICK GOIRAN: The only thing that would appear to be missing is oversight over the minor misconduct function.

*Hon MICHAEL MISCHIN: If you say by “missing” that it is something that ought to be included in it, then yes, but the question is whether that was the purpose of the joint standing committee in the first place. I would suggest that that was not.*⁷

...

The point of creating a joint standing committee of Parliament, I would suggest, is because of the extraordinary powers that were vested by the then Corruption and Crime Commission Act on the Corruption and Crime Commissioner—powers that indeed go well beyond the sorts of powers available to the Public Sector Commissioner and heads of the public service; powers that indeed go beyond that of the police commissioner in many respects. It is a body that was established with enormous compulsive powers—the ability, and indeed the necessity in many respects, to operate covertly, and to

⁵ Evidence to Standing Committee on Procedure and Privileges, Legislative Council, Perth, 20 June 2016, 2 (Hon Michael Mischin MLC, Attorney General).

⁶ See Appendix 2.

⁷ Ibid 4.

*exercise powers and functions that are not amenable to oversight by any other body other than establishing the Parliamentary Inspector of the Corruption and Crime Commission, who exercises some oversight, but then, knowing that this person, or both of them, are in a sense working outside the ordinary public service system and the ordinary means of oversight because of the sensitivity of the matters that they are dealing with, and the enormous powers that they carry, need some watching of the watchers.*⁸

5.6 In essence, the evidence of the Attorney General reaffirmed the Government's view that current arrangements for oversight by the Executive and the Parliament of the minor misconduct matters transferred to the PSC was sufficient.

5.7 In relation to the oversight of the PSC's handling of allegations of misconduct under the current arrangements, Mr Wauchope expressed the view that while he had no objection to the PICCC, and thus the JSCCCC, having a role in the oversight of the PSC's treatment of these functions, his understanding was that there is currently no statutory provision made for this oversight under the Act. In place of this oversight, Mr Wauchope advised that a protocol was signed between the PSC and the PICCC in November 2015:

*The origins of this, in fact, if my memory serves me correctly, came from the inspector himself. He thought it was an important thing to have where an allegation received by myself involved an officer of the CCC. Again, the idea was to be able to refer it to the parliamentary inspector at the earliest convenient opportunity.*⁹

5.8 As to other bodies or agencies that oversight the PSC, Mr Wauchope provided the following advice:

Mr J.R. QUIGLEY: ... what transparent process is there at the moment to check that your assessment of the investigations conducted by the agency has been both fulsome and forensically justified in the result?

Mr Wauchope: I go back to my original point—that is, Parliament at any time could require me to appear before it and justify what we have done. As I said, I am appearing before another committee on Wednesday. I could equally be asked that question by that committee

⁸ Ibid 2.

⁹ Evidence to Standing Committee on Procedure and Privileges, Legislative Council, Perth, 20 June 2016, 4 (Mal Wauchope).

as well. So, the answer is Parliament has the power to satisfy itself if it should so wish.¹⁰

...

Hon NICK GOIRAN: Commissioner, you mentioned that you are subject to the oversight of other bodies and that Parliament can bring you in at any time. Can you just elaborate to the committee who those bodies are?

Mr Wauchope: Certainly, I have appeared from time to time in front of the Standing Committee on Public Administration ... In my statutory officer role, obviously I have appeared before the joint standing committee on at least one occasion. Obviously, I appear before the estimates committee at least once a year. I have provided material to the Education and Health Standing Committee. Again, that is more by way of responding to written requests by that committee, which I have provided.¹¹

The PSC's handling of allegations of misconduct

- 5.9 Prior to the commencement of the *Corruption and Crime Commission Amendment (Misconduct) Act 2014* on 1 July 2015 allegations of misconduct were referred directly to the CCC. In the evidence to the PPCs Mr Wauchope discussed the PSCs handling of investigations regarding notifications of minor misconduct received by the PSC since 1 July 2015:

The SPEAKER: I have a question, Mr Wauchope. How many notifications of minor misconduct have you received for 2015–16, and, of these notifications with respect to the pyramid of effort, how many of these have required the Public Sector Commission to be actively involved in conducting an investigation or assisting the relevant agency in a material way in conducting an investigation?

Mr Wauchope: We have received to date 428 matters which have contained 727 allegations. I think that is at the end of May. We undertook a preliminary investigation in relation to one matter and once we had done that, we did not take it any further. We have not undertaken any investigations ourselves.

¹⁰ Ibid 8.

¹¹ Ibid 9.

The SPEAKER: *So you have just handed them back to wherever they came from to investigate. Is that what happens?*

Mr Wauchope: *What we are required to do is assess every notification that we get to form a view whether or not it falls within the definition of minor misconduct. We do that on a daily basis. One of our intentions is to do that as quickly as we can and get it into the hands of where it should be. Some have not made the threshold and those ones we send back to the agencies saying, “It’s not minor misconduct; you get on with it.” A number have fallen into the serious misconduct category or we considered it did. We have had discussions with the CCC and again have moved those across to the CCC as quickly as we can, and vice versa; the CCC have had notifications which they have assessed as minor and have moved that across to us. Where we do assess it as minor misconduct, we do send it back to the public authority to deal with. We require advice of what the outcome is once they have dealt with it, and from time to time we require a report on what they have done. There are several levels of involvement.¹²*

- 5.10 The PPC noted the advice of Mr Wauchope and the Attorney General regarding further avenues of oversight regarding the PSC’s handling of a minor misconduct matter:

Hon NICK GOIRAN: *Commissioner, if someone has a complaint about the handling of a minor misconduct matter, what avenue is available to the complainant?*

Mr Wauchope: *Again, without wanting to give a definitive answer, my actions are reviewable by—obviously, depending on what it is, the Auditor General can look at my actions in relation to how I spend money. My administrative actions could be looked at by the Ombudsman. In relation to the actual treatment of a minor misconduct complaint, I could not give you a definitive answer, but I am happy to take that away and come back to you.*

Hon NICK GOIRAN: *It is of interest to the committee because obviously, previously, if someone had a complaint about the handing of a misconduct matter, it was very simple for them; they could go to the Parliamentary Inspector of the Corruption and Crime Commission, but at the moment it looks like we are not really sure who we can go to.*

¹² Ibid 1.

*Mr Wauchope: I can certainly take that on board.*¹³

...

Mr J.R. QUIGLEY: The Public Sector Commissioner, Mr Wauchope, whose evidence you doubtless heard, said that he does not conduct investigations of the matters referred to him but refers them back to the agency and that some of those matters, whilst defined as minor misconduct, are certainly more than minor matters, but they are investigated by the agency. Without an oversight committee, how can the Parliament and the community satisfy itself that those investigations conducted by the agency of allegations of misconduct within the agency are being thoroughly investigated?

*Hon MICHAEL MISCHIN: It is my understanding that the Ombudsman has broad powers to investigate the manner in which authorities conduct themselves, and there may be scope for other avenues of appeal or review to be established ...*¹⁴

- 5.11 In relation to the number of complaints received by the Ombudsman regarding the Public Sector Commissioner's or an agency's dealings with an allegation of minor misconduct, the Ombudsman advised that he had not received any complaints to date. The advice from the Ombudsman is attached at Appendix 1.

6 SUMMARY

- 6.1 Having considered the evidence from Mr Wauchope and the Attorney General relating to the oversight of the PSC's handling of allegations of misconduct, and noting that the PSC raises no objections to the JSCCCC having oversight of this function, the PPC finds no reason why the terms of reference of the JSCCCC should not be amended to capture this function which is now the responsibility of the PSC.
- 6.2 The PPC notes the views of the Government as expressed by the Attorney General and contained in the government response to the JSCCCC Report No. 21. However, the PPC considers that the matter of appropriate arrangements for the oversight of the Public Sector Commissioner's processes for dealing with minor misconduct is appropriately a matter for the Parliament to determine and not the Executive.

¹³ Ibid 8.

¹⁴ Evidence to Standing Committee on Procedure and Privileges, Legislative Council, Perth, 20 June 2016, 6 (Hon Michael Mischin MLC, Attorney General).

7 RECOMMENDATION

7.1 Accordingly, having consulted with the members of the LA PPC, the PPC recommends that the Standing Orders of the Legislative Council be amended at Schedule 1: Committees as follows:

Recommendation 1:

- (1) That **Schedule 1: Committees, Item 9.2(a)** be deleted and the following substituted —
 - (a) monitor and report to Parliament on the exercise of the functions of the —
 - (i) Corruption and Crime Commission;
 - (ii) Parliamentary Inspector of the Corruption and Crime Commission; and
 - (iii) Public Sector Commissioner in relation to functions under the *Corruption, Crime and Misconduct Act 2003*;
- (2) That the Legislative Assembly be acquainted accordingly and be invited to pass a similar resolution.



Hon. Barry House MLC

Chair

13 October 2016

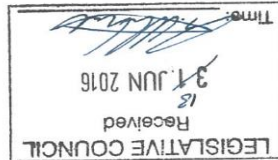
APPENDIX 1

CORRESPONDENCE

SUBMISSION FROM THE COMMISSIONER OF THE CORRUPTION AND CRIME COMMISSION



Your Ref:
Our Ref: JMcK:LR



9 June 2016

Mr Grant Hitchcock
Usher of the Black Rod
Legislative Council
Parliament House
PERTH WA 6000

Dear Mr Hitchcock

PROCEDURE AND PRIVILEGES COMMITTEE HEARING

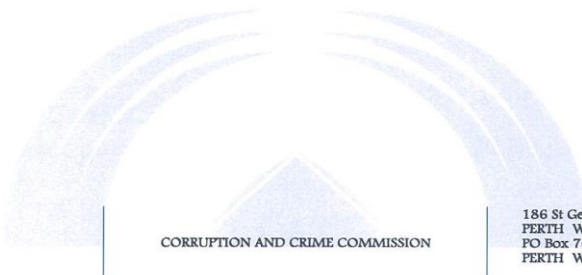
I refer to the email correspondence with my Associate during my time on leave.

Having now further considered the matter, I do not believe that there is anything of value I could add by way of submission. The Commission is not affected one way or another by the answer to the question whether the Public Sector Commission should report to the Joint Standing Committee.

I would however, respectfully draw the Committee's attention to the fact that under the *Corruption, Crime and Misconduct Act 2003* the Parliamentary Inspector's functions and powers do not extend to the Public Sector Commission.

Yours sincerely

John McKechnie, QC
COMMISSIONER



CORRUPTION AND CRIME COMMISSION

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CORRESPONDENCE FROM THE OMBUDSMAN

Ombudsman Western Australia
 Serving Parliament - Serving Western Australians

21 September 2016

Mr Grant Hitchcock
 Usher of the Black Rod
 Legislative Council of Western Australia
 Parliament House
 Harvest Terrace
 WEST PERTH WA 6005

Dear Mr Hitchcock

REFERRALS RELATING TO ALLEGATIONS OF MINOR MISCONDUCT

Thank you for your letter dated 9 September 2016. In your letter you indicate that:

During the hearing the Attorney General provided advice to the committees that "a complainant can lodge a complaint with the Ombudsman if they are unhappy with the Public Sector Commissioner's or an agency's dealing with an allegation of minor misconduct."

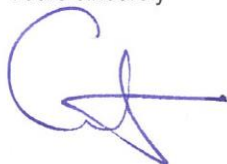
The Committee has resolved to write to you requesting answers to the following two questions arising out of the public evidence received from the Attorney General:

- (1) *How many complaints in the last 12 months have been received by the Ombudsman and how many of those complaints has the Ombudsman actually had the capacity to investigate?*
- (2) *What is the time delay in undertaking those investigations?*

I can advise the Standing Committee on Procedure and Privileges that I have not received any complaints.

If I can assist in any other way, I am delighted to be contacted on 9220 7579 (Direct).

Yours sincerely



Chris Field
OMBUDSMAN



APPENDIX 2

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION — TERMS OF REFERENCE

9. Joint Corruption and Crime Commission Committee

- 9.1 *A Joint Corruption and Crime Commission Committee is established.*
- 9.2 It is a 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*.
- 9.3 The Joint Standing Committee will consist of 4 Members, of whom –
- (a) 2 will be Members of the Assembly; and
 - (b) 2 will be Members of the Council.
- 9.4 A report of the Joint Standing Committee will be presented to the Assembly and Council by Members of the Joint Standing Committee nominated by it for that purpose.
- 9.5 Without limiting the effect of anything contained in Assembly Standing Orders 289 to 292, the Standing Orders of the Assembly relating to standing and select committees will be followed as far as they can be applied.