



***JOINT STANDING COMMITTEE ON  
THE CORRUPTION AND CRIME  
COMMISSION***

**HEARING WITH THE PARLIAMENTARY  
INSPECTOR OF THE CORRUPTION AND  
CRIME COMMISSION ON 12 DECEMBER  
2006**

**Report No. 19  
in the 37<sup>th</sup> Parliament**

**2007**

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Joint Standing Committee on the Corruption and Crime Commission

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2006**

**Report No. 19**

Presented by:

**Mr John Hyde, MLA and Hon. Ray Halligan, MLC**

Laid on the Table of the Legislative Assembly and Legislative Council  
on 22 March 2007



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## COMMITTEE'S FUNCTIONS AND POWERS

On 31 May 2005 the Legislative Council concurred 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.



## CHAIRMAN'S FOREWORD

Under Section 195 (2) (d) of the *Corruption and Crime Commission Act 2003*, the JSCCCC is able to refer matters relating to the performance of the Corruption and Crime Commission to the Parliamentary Inspector of the Corruption and Crime Commission for assessment. This is essential because it enables closer examination of certain operational matters critical to the JSCCCC's monitoring and reviewing of the performance of the Corruption and Crime Commission. Obviously as the Commission has evolved, more information on operational matters has entered the public domain, engendering debate, particularly on the Commission's procedures and use of special powers. The JSCCCC's use of references to the Parliamentary Inspector of the Corruption and Crime Commission has therefore increased.

A few critical issues were the focus of this hearing. The first relates to the concept of timely follow-through on matters assumed by the Corruption and Crime Commission from previous related Commissions and the need to ensure the adequacy of the Corruption and Crime Commission's procedures in progressing these outstanding matters. The second relates to the disclosure and secrecy provisions of the *Corruption and Crime Commission Act 2003* and the requirement of all persons/agencies subject to Commission inquiries to be adequately informed of their rights and obligations under the legislation. There was also brief debate around the complexities inherent in imposing certain limitations on disclosure by certain witnesses. The final point pertained to the possibility of collateral damage to the reputations of innocent parties as a consequence of 'public' investigations by the Corruption and Crime Commission. The JSCCCC has therefore requested that the Parliamentary Inspector of the Corruption and Crime Commission give due attention to these and other matters detailed within this report.

The JSCCCC looks forward to his detailed response at the next quarterly hearing in early 2007.

MR JOHN HYDE, MLA  
CHAIRMAN



## ABBREVIATIONS AND ACRONYMS

“ACC”	Anti-Corruption Commission
“CCC”	Corruption and Crime Commission
“CCC Act”	<i>Corruption and Crime Commission Act 2003</i>
“DET”	Department of Education and Training
“JSCCCC”	Joint Standing Committee on the Corruption and Crime Commission
“KRC”	Kennedy Royal Commission
“OCC”	Official Corruption Commission



## **CHAPTER 1 INTRODUCTION**

### **1.1 Background**

Under its terms of reference the Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) is required, amongst other tasks, to monitor the ‘exercise of the functions of the Parliamentary Inspector of the Corruption and Crime Commission’ (Parliamentary Inspector). In line with this mandate, the JSCCCC holds regular quarterly hearings with Mr Malcolm McCusker, the incumbent Parliamentary Inspector.

The JSCCCC convened a hearing with Mr McCusker on 12 December 2006. The evidence was taken in both open and closed session, the latter given determination by the Committee that the purported substance of the hearing required a certain level of confidentiality. Where considered appropriate for the purposes of public accountability and where such information is unlikely to hamper the operational performance of the Parliamentary Inspector, the JSCCCC has provided detail of its closed session examination. As most of the open session evidence pertains to a review of the Parliamentary Inspector’s Annual Report 2005-2006, the majority evidence will be both appended to, and considered in the context of, that report.

### **1.2 Implementation of the recommendations of the Kennedy Royal Commission**

The final report of the Kennedy Royal Commission (KRC) in 2004<sup>1</sup> recommended that the Corruption and Crime Commission (CCC) oversight the implementation of the KRC recommendations by the Western Australia Police (WA Police). Further, any unresolved matters (investigations) arising from the KRC were forwarded to the CCC and in turn, a substantial proportion of these, by the CCC, to police. The CCC retained some of the more serious investigations. The Police subsequently formed a Royal Commission Investigation Team as part of its Internal Affairs Unit, tasked with sole responsibility for investigating these matters. Completed investigations were, in line with all Police internal complaint investigations, forwarded to the CCC for review.

On dissolution of the Anti-Corruption Commission (ACC) in 2004, the CCC assumed responsibility for all outstanding investigations, including that of Andrew Petrelis, a protected witness admitted to this State’s Witness Protection Program in May 1995 and found deceased in his unit shortly after relocation to Queensland. A report of an investigation into Andrew Petrelis had been completed by the ACC and forwarded to the Queensland Coroner who was charged with investigating his death in 2001. The CCC released a further copy of the report to the Coroner in 2006. The Coroner’s findings were released in November 2006.

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<sup>1</sup> Royal Commission Into Whether There Has Been Corrupt or Criminal Conduct by Any Western Australian Police Officers.

In 2004 the KRC examined the Petrelis matter but only with reference to whether WA Police officers improperly accessed and disclosed Petrelis' covert details; whether such access was linked to the death of Mr Petrelis and whether WA Police took timely and appropriate action in regard to the latter.

The JSCCCC in a report tabled in Parliament just prior to release of the Coroner's report gave some credence to comments made by WA Police and the CCC regarding progress in related investigations in this State being hampered by delays in release of the Coroner's report. The JSCCCC recommended however that both agencies review their processes regarding cross-border investigations in the event of another extended interstate jurisdictional matter. The JSCCCC also recommended that the Parliamentary Inspector of the CCC audit the implementation of the KRC recommendations, including any undisclosed investigatory reports of the ACC and its predecessor the Official Corruption Commission (OCC) to ensure that the CCC has fulfilled its responsibilities under the *Corruption and Crime Commission Act 2003* (CCC Act).

On release of the Coroner's report, the Committee noted the following comment:

*Relevant crime authority bodies interested in the deceased as being a prospective witness were the National Crime Authority, the Australian Federal Police and the Western Australian Police. It seems quite unusual that in the event of the death of such an important witness, in suspicious circumstances, that law enforcement agencies of such stature would not thoroughly investigate the matter both in the terms of the relevant death and with a view to the prevention of further deaths of a similar nature in the future.*

*It is therefore recommended that in the event of a death of such an important witness as a protected witness that such a death be thoroughly investigated by the relevant law enforcement agency.<sup>2</sup>*

The JSCCCC views that the Coroner's comments have been addressed previously by virtue of the above cited recommendation regarding review of processes in cross border investigations.

The JSCCCC reiterated at hearing with the Parliamentary Inspector, a requirement to audit the CCC's management of investigations carried over from the KRC and ensure that processes and procedures in place for the conduct of those matters are appropriate. The Committee contends that this should, as stated on 7 November 2006, also extend to an overall assessment of the implementation of the KRC recommendations and the conduct of investigations handed over by the ACC and its predecessor, the OCC. This includes the Petrelis matter. Keeping in mind that the CCC is charged with oversight of the implementation of the recommendations of the KRC, the Parliamentary Inspector will need to look at the effectiveness of the CCC's oversight which in turn will reflect the efficacy of police governance of the implementation of those recommendations.

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<sup>2</sup> Office of the State Coroner, Queensland Government Available at: <http://www.justice.qld.gov.au/courts/coroner/findings/petrelis1106.pdf> Accessed on 2/02/2007.



### 1.3 Appointment of a second Acting Commissioner, CCC

As per Section 14 (2a) of the CCC Act, the JSCCCC is required to provide majority and bipartisan support for an Acting Commissioner whose name appears on a list of 3 persons eligible for appointment submitted to the Premier by the Nominating Committee.<sup>3</sup> On 23 November 2006 the JSCCCC following further interview and assessment provided support regarding the appointment of Mr Neil McKerracher QC. Mr McKerracher's appointment occurred as a consequence of an increased workload placing an onerous level of responsibility on Mr Hammond, Commissioner, CCC.

### 1.4 CCC Website

As noted in the quarterly hearing with the Parliamentary Inspector on 16 August 2006, the JSCCCC perceives that there is a lack of clarity on the CCC website regarding the basis on which complaints can be made to the CCC and the Parliamentary Inspector. The Committee views that if this is clearly defined from the outset, it may avoid confusion on the part of the public regarding the management of their complaints by either agency politic. The JSCCCC reiterated its request for the Parliamentary Inspector to review this aspect of the website.

### 1.5 Complaints management

The JSCCCC reviewed the procedural status of certain investigations that had come to its attention, together with one matter of public interest.

### 1.6 Disclosure and secrecy provisions of the *Corruption and Crime Commission Act 2003*

The JSCCCC expressed concern regarding a lack of clarity in relation to issues of disclosure or secrecy of information for agencies or individuals involved in CCC investigations.

The Committee referred indirectly to debate that arose as a consequence of the CCC's tabling on 16 October 2006 of a report entitled *Sexual Contact with Children by Persons in Authority in the Department of Education and Training of Western Australia*.<sup>4</sup> This pertained to what extent Section 152 and 153 of the *Corruption and Crime Commission Act 2003* precluded the then Director General of the Department of Education and Training (DET) from conveying detailed information about the matters under investigation to the then responsible Minister. This resulted in the CCC providing clarification on the issue to all Departmental Chief Executive Officers.

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<sup>3</sup> A committee consisting of the Chief Justice, the Chief Judge of the District Court, and a person appointed by the Governor to represent the interests of the community.

<sup>4</sup> Corruption and Crime Commission, *Sexual Contact with Children by Persons in Authority in the Department of Education and Training of Western Australia*, Corruption and Crime Commission, Perth, 16/10/2006.

This debate occurred in the context of proceedings of a Select Committee of the Legislative Council<sup>5</sup> which examined amongst other issues, whether the Minister had been informed of the CCC's investigations and in turn, whether that had occurred in an appropriate manner. Although noting that this had not occurred to a level of sufficiency, the Select Committee concluded that written information provided to the DET by the CCC prior to the report's release regarding DET's ability to disclose information regarding the CCC's investigations was unclear and confusing. The report recommended '*...that the Government clarify, through legal advice and/or legislative amendment, the anti-disclosure provisions of the Corruption and Crime Commission Act 2003 so as to enable public sector chief executive officers to be able to freely discuss with their Ministers all matters relevant to the Minister's portfolio.*'<sup>6</sup>

Although noting the synergy between the views of the Select Committee and the JSCCCC and the parameters of the Select Committee's Inquiry, the JSCCCC views the issue to be pertinent to all persons called before or a party to investigations by the CCC. The JSCCCC noted an example whereby a person is called before the Commission but is unable to discuss this 'summons' with either his/her employer or other relevant persons (not otherwise prescribed in the legislation). This example was intended to highlight the complexities inherent in the disclosure and secrecy provisions of the Act and the confusion caused for those affected. The JSCCCC view that disclosure of certain information should not be dependent on clarification with a CCC officer on a particular day. Rather, it should be clearly articulated both in writing and verbally at the outset of contact. The JSCCCC has sought the opinion of the Parliamentary Inspector on these matters.

## **1.7 CCC Hearings/Transcripts - the public impact**

The JSCCCC discussed the impact of public hearings and transcripts on the reputations of persons peripheral to an inquiry by virtue of their mention within these mediums. This is particularly relevant when transcripts include Telecommunications Interception recordings of conversations that do not directly relate to the subject inquiry. Although a right of reply exists in relation to CCC reports, it does not in circumstances such as this. In this instance, the JSCCCC were referring to the inquiry into the Canal Rocks development, Smiths Beach, Yallingup.

The JSCCCC reflected on the notion of the need to balance transparency and public interest with maintaining public integrity and confidence. The JSCCCC view that further consideration needs to be given to opting for private hearings in circumstances where the information likely to be obtained is not directly relevant to the investigation at hand and where it is probable that it will damage the reputation of 'innocent' parties. The JSCCCC notes that the Commissioner, CCC, has the option of taking relevant matters that arise within private hearings to public hearing if required.

The JSCCCC has raised this issue with Mr Hammond, Commissioner, CCC, however also view this as an issue that requires ongoing monitoring by the Parliamentary Inspector of the CCC. Some

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<sup>5</sup> Select Committee into the Department of Education and Training, Report of the Select Committee into the Department of Education and Training Legislative Council, Parliament House, Perth, December 2006.

<sup>6</sup> Ibid.,pi.

consideration may need to be given to the development of protocols around circumstances deemed appropriate for matters to be made public.

A further issue raised was that of the definition of ‘public interest’. Does ‘public interest’ relate to the fact that an investigation should take place rather than the publication of that investigation? There is also the question of when, if deemed to be in the public interest, it is appropriate to publish that information, particularly in light of any charges that may be laid and subsequent trial.

## **1.8 Appointment of an assistant to the Parliamentary Inspector of the CCC**

This matter was also referenced in the 16 August 2006 quarterly hearing with the Parliamentary Inspector.

Section 195 of the CCC Act prescribes the functions of the Parliamentary Inspector. Critical to the efficacy of the role is the conduct of a number of audits of the operations of the CCC in terms of compliance with relevant legislation, as well as the functioning of the CCC’s procedures and its Act. Under Section 210 of the CCC Act, the Parliamentary Inspector may appoint staff to assist him in the conduct of his duties.

The Parliamentary Inspector provided a progress report to the JSCCCC in relation to the proposed appointment of an assistant, principally for the conduct of audits. The JSCCCC views this as an extremely positive move as it would enable more streamlined processes to be established within the Office of the Parliamentary Inspector and more thorough examination of the use of exceptional and special powers.

The JSCCCC and the Parliamentary Inspector acknowledged the absence of a definition of ‘audit’ within the legislation. The Parliamentary Commissioner of the Crime and Misconduct Commission has a fairly thorough audit process in place, some aspects of which may be transferable to this State.

## **1.9 Agreed actions by the Parliamentary Inspector.**

The following is a summary of actions agreed to by the Parliamentary Inspector at the Public Hearing:

- (i) Audit the CCC's management of investigations carried over from the KRC and establish the suitability of processes and procedures in place for the conduct of those matters;
- (ii) Audit the CCC's management of investigations handed over by the ACC and in turn, its predecessor, the OCC, including the Petrelis matter;
- (iii) Review information on the CCC Website with respect to complaint processes, with particular attention given to whether that information adequately reflects the basis on which complaints can be made to the CCC and the Parliamentary Inspector;
- (iv) Consider the matters raised within this report regarding the disclosure/secretcy provisions of the CCC Act, more particularly how individuals or agencies a party to investigatory action by the CCC may be more adequately informed on these issues; and
- (v) Consider the issue of the effective use of public versus private hearings in order to minimise collateral damage to the reputation of persons not subject to investigation. This may involve the development of associated protocols in conjunction with the CCC.

# APPENDIX ONE

## *BRIEFINGS HELD*

<b>Date</b>	<b>Name</b>	<b>Position</b>	<b>Organisation</b>
12 December 2006	Mr Malcolm McCusker QC	Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission