



Joint Standing Committee on the Corruption and Crime Commission

Guarding the guardians

**Report No. 29
August 2012**

Parliament of Western Australia

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Joint Standing Committee on the Corruption and Crime Commission

Guarding the guardians

Report No. 29

Presented by

Hon Nick Goiran, MLC and John Hyde, MLA

Laid on the Table of the Legislative Council and
Legislative Assembly on 16 August 2012

Chairman's Foreword

Quis custodiet ipsos custodes? In *The Republic*, Plato asserted – through Socrates – that executive power in just society would be inherently trustworthy, and that this would obviate the need for oversight. Indeed, in one poignant passage of dialogue, Plato's brother Glaucon agrees with Socrates that "it would be absurd that a guardian should need a guard."¹

While most strive to emulate Plato's vision, it is today an accepted, albeit unfortunate, reality that some individuals are unable to resist the temptation of profit through trespass. This is what Roman satirist Juvenal observed – half a century after Plato – when, in reference to the fallibility of all human beings, he asked "who will guard the guards themselves?" Juvenal's rhetorical aphorism encapsulated what has become a central tenet of contemporary democracy: that vigilant oversight is a core component of executive accountability.

It is ostensibly for this reason that the *Corruption and Crime Commission Act 2003*, in addition to establishing the Corruption and Crime Commission, also established the Office of the Parliamentary Inspector of the Corruption and Crime Commission, and indeed the Joint Standing Committee on the Corruption and Crime Commission. By section 195 of the CCC Act, the Parliamentary Inspector performs the functions of auditing the operation of the Act and the operations of the CCC, monitoring compliance by the CCC and its officers with the laws of Western Australia (including the CCC Act itself), and dealing with matters of misconduct on the part of CCC officers.² Oversight, however, takes many forms. In addition to specifying functions to be performed by the Parliamentary Inspector that most closely satisfy the concern expressed by Juvenal, the CCC Act also requires the Parliamentary Inspector to assess the effectiveness and appropriateness of the CCC's procedures, to make recommendations to the Commission, independent agencies and appropriate authorities, and to report and make recommendations to Parliament, either directly to either House or else through the Committee.

The principal role of the Committee, as laid out by Standing Order 289 of the Legislative Assembly, is to "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."³ In line with this role, it has been the practice of the Committee in this current Parliament to convene regular, closed "review hearings," attended by the CCC Commissioner and Executive Staff, and (usually separately) by the Parliamentary Inspector and his Assistant. These review hearings are, of course, in addition to sporadic hearings that take place in aid of various Committee inquiries; the

¹ As quoted by Leonid Hurwicz in his speech to accept the 2007 Nobel Memorial Prize in Economic Sciences, available at <http://www.nobelprize.org/nobel_prizes/economics/laureates/2007/hurwicz_lecture.pdf> (accessed 10 August 2012).

² The Parliamentary Inspector is also responsible for dealing with matters of misconduct on the part of employees of his own office, which is outside the jurisdiction of the CCC.

³ The full *Standing Orders of the Legislative Assembly of the Parliament of Western Australia*, as amended on 18 June 2008, are available at <<http://www.parliament.wa.gov.au>> (accessed 10 August 2012).

Committee also convenes regular public hearings with the Parliamentary Inspector and (again, separately) the CCC Commissioner in November each year so as to examine the respective annual reports of both agencies. It is through these regular hearings that the Committee remains acutely aware of the work being performed by both the CCC and the Office of the Parliamentary Inspector, and of various specific challenges that these agencies face from time to time. The Committee prides itself on its persistent and vigilant oversight of the role and work of both the Corruption and Crime Commission and the Office of the Parliamentary Inspector through this process, and oftentimes this results in the Committee reporting the outcome of certain matters to Parliament before those matters become the subject of public concern.

On 20 March 2012 the then Parliamentary Inspector, the Honourable Chris Steytler QC, advised the Committee of his intention to retire with effect from 30 June 2012.⁴ Subsequent to this, I wrote to the Parliamentary Inspector on 29 March 2012, seeking his attendance before one final closed hearing on 20 June 2012, so that the Committee could be apprised of the work performed by his Office in the 2011/12 financial year, and of any matters that might remain outstanding subsequent to his retirement and would therefore require the attention of his replacement.

During that hearing the Committee was very pleased to be informed of a number of positive developments in the approach to the CCC's oversight of the WA Police that had been taken since the appointment of the current CCC Commissioner, the Honourable Roger Macknay QC. The CCC is to be commended for the steps that it has recently taken in this area.

Also during the hearing, discussion turned toward prospective reform to the *Corruption and Crime Commission Act 2003*, as it appeared that amendments to that Act were likely imminent and, while serving as Parliamentary Inspector, Mr Steytler had consistently expressed concern at the prospect of widening the jurisdiction of the CCC. Rather than responding immediately, Mr Steytler took my question on notice; he then provided a fulsome response in the ensuing days. Having received and considered this response, the Committee resolved to prepare and table this report, so as to ensure that debate in aid of the *Corruption and Crime Commission Bill 2012* – a Bill that was introduced to Parliament the day after the hearing – is informed by the most recent and well-articulated thoughts of the now former Parliamentary Inspector.

⁴ This was the subject of the Committee's report *The intention of the Parliamentary Inspector of the Corruption and Crime Commission to retire*, which was tabled in Parliament on 21 March 2012.

In his letter Mr Steytler offered his views, based upon an assumed widening of the CCC's jurisdiction, on two specific matters: whether the CCC's capacity to investigate organised crime ought to be restricted, and how the investigation of organised crime might be segregated from the CCC's police oversight role. In considering the former, Mr Steytler expressed the view that "the Commission's functions in respect of organised crime should be distanced, as far as possible, from areas in which it will work closely with police officers undertaking investigations of that kind."⁵

This observation echoed sentiments most recently expressed by the Committee in its twenty-eighth report in the current Parliament, *Unexplained wealth and proceeds of crime: A role for the Corruption and Crime Commission?* Put simply, amendments that might see CCC investigators working in concert with WA Police officers in the fight against organised crime will compromise the ability of those CCC investigators (at the very least) to objectively discharge the CCC's police oversight function. With this in mind, the Committee re-asserts its belief that if the CCC is to be directly engaged in the fight against organised crime, the CCC's activity in this area should be confined to specific crime-fighting strategies that are currently not satisfactorily pursued in Western Australia, such as the investigation of unexplained wealth under the provisions of the *Criminal Property Confiscation Act 2000*.

As to the question of how the organised crime investigative function might be segregated within the CCC, the view expressed by the Parliamentary Inspector is that each function to be performed by the CCC ought to come under the leadership of a distinct Assistant Commissioner or Director, and that these persons should be appointed anew, having had no prior association with either the WA Police or the CCC. The Committee wholeheartedly concurs with this proposition: it is very clear that any widening of the CCC's jurisdiction will require significant physical and logistical changes within the CCC in terms of both its current premises and staff.

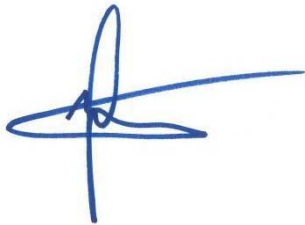
A final positive consequence of this report is that it affords the Committee the opportunity to pay public tribute to Mr Steytler for his work in the role of Parliamentary Inspector. It is worth noting that Section 188(4) of the *Corruption and Crime Commission Act 2003* states that:

*The Parliamentary Inspector is an officer of Parliament and is responsible for assisting the Standing Committee in the performance of its functions.*⁶

⁵ The Honourable Chris Steytler QC, Parliamentary Inspector of the Corruption and Crime Commission *Letter: Questions on notice from private hearing on 20 June 2012*, 26 June 2012, p 1.

⁶ Section 188(4) *Corruption and Crime Commission Act 2003*.

It is without doubt that in his three-and-a-half year tenure, Mr Steytler provided significant and invaluable assistance to this Committee, which very much aided and enhanced both the work that we have produced and the functions that we have performed. I note that on 11 June 2012 Mr Steytler was awarded an Officer (AO) in the General Division of the Order of Australia, for his “distinguished service to the judiciary and to the law, to the advancement and protection of human rights, to legal education, and to professional ethics and standards.”⁷ This is an excellent and appropriate acknowledgement of the service that Mr Steytler has given to Western Australian society over the duration of his career. Having epitomised exactly why Socrates so vehemently espoused the inherent societal value of justice, as Parliamentary Inspector Mr Steytler will be extremely difficult to replace.

A handwritten signature in blue ink, consisting of a stylized 'N' and 'G' followed by a horizontal line extending to the right.

Hon Nick Goiran, MLC
Chairman

⁷ Detailed in *The Queen's Birthday 2012 Honours Lists*, available at [http://www.gg.gov.au/res/file/2012/honours/qb2012/Media%20Notes%20AO%20\(final\).pdf](http://www.gg.gov.au/res/file/2012/honours/qb2012/Media%20Notes%20AO%20(final).pdf) (accessed 10 August 2012).

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Chapter 1

Sage advice

...in the CCC Act it actually specifically refers to the Parliamentary Inspector having a role to assist the Committee, and I think I speak on behalf of all of my colleagues in saying that you certainly have assisted this committee.

Hon Nick Goiran MLC, Committee Chairman, to the then Parliamentary Inspector,
the Honourable Chris Steytler QC, Wednesday 20 June 2012

Closed hearing with the then Parliamentary Inspector

The Honourable Chris Steytler QC assumed the role of Parliamentary Inspector of the Corruption and Crime Commission on 1 February 2009, and in March this year he wrote to the Committee advising of his decision to retire from the role with effect from 30 June 2012. Accordingly, the Committee requested his attendance before a final closed review hearing on 20 June 2012, so as to discuss the work performed by his office since the Committee last convened a similar review hearing in October 2011, and so that the Committee could be appraised of what matters under present consideration by his office would remain outstanding in the wake of his retirement.

The Honourable Mr Steytler began the hearing by updating the Committee as to the work performed by his office during the 2011/12 financial year:

I will begin by providing some statistics relating to the work of my office for the financial year to date. In this financial year, my office has undertaken 41 new matters, which is 11 fewer than last year. By 30 June, I anticipate that we will have closed about 40 matters for this financial year, which is the same as last year. The total number of matters I will have closed during my term will be 180. That will leave seven matters outstanding. One of these has been around for some time. It involves a complaint of the use of excessive force by two police officers against a woman in her own home. It has been, and still is, held in abeyance by the commission pending resolution of civil proceedings that have been instituted by the woman against the police. The second matter is awaiting further correspondence from a complainant who appears to have lost interest in pursuing his complaint, but we have not yet closed the file. The third matters is an ongoing analysis of the commission's statistics involving a number of warrants issued under the TI act and the rate of charges and convictions for those offences nominated in the commission's supporting affidavits. The fourth matter is an investigation into alleged

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misconduct that I commenced in May this year. The final three matters are all matters that are awaiting further investigations by the commission.

The audit statistics relating to the four categories of routinely-audited commission activities for the year's first three quarters are as follows: there have been seven surveillance device warrants obtained by the commission, as opposed to three in the previous financial year; there has been one controlled operation, as opposed to five in the previous financial year; there were no assumed name authorisations, as opposed to 10 in the previous financial year; and there have been no organised crime authorisations, as opposed to one in the previous financial year.⁸

Some more general insights into the work and role of the Office of the Parliamentary Inspector were then articulated by the Honourable Mr Steytler:

The work in my office has been consistently busy over much of the three and a half years of my term. But there have been fewer complaints and consequently less work over the last three months. That should, I hope, mean a relatively trouble-free handover for my successor—I hope that is not the kiss of death!

The commission has generally been cooperative in dealings with my office and I have currently no complaints on that account. I believe that the appointment of Commissioner Macknay has been a positive move for the commission. He is a man of integrity, who brings with him a principled approach, and he has been active in the first months in office in improving processes of the commission concerning such matters as legal professional privilege and the commission's hearing procedures. He has also implemented a number of reforms in the way in which the commission addresses allegations concerning the use of excessive force by police.⁹

The Honourable Mr Steytler concluded his opening address to the Committee by offering some thoughts as to how the role of Parliamentary Inspector might change if the CCC jurisdiction were to be widened:

Looking ahead, a lot depends on the commission's future jurisdiction, which will of course impact on the way my office responds. If the

⁸ The Honourable Chris Steytler QC, Parliamentary Inspector, and Mr Murray Alder, Assistant to the Parliamentary Inspector, *Transcript of Evidence*, 20 June 2012, pp 1-2.

⁹ *Ibid.*, p 2.

commission is to investigate organised crime or even only unexplained wealth, that will result in its moving into long and resource-intensive covert operations, and it will undertake fewer misconduct investigations. That will almost inevitably mean fewer complaints to my office and perhaps the need for it to be more proactive in overseeing commission operations. Certainly there will be a need to expand the existing audit practices so as to encompass relevant aspects of the commission's altered jurisdiction. It is difficult to see how this will work in practice until we know a bit more about what the commission will be doing and how it will be going about that. My principal concern remains the standard of oversight by the commission of police integrity. My experience has been that this has been the most problematic area of the commission's work. The new commissioner has noted a priority to address this. But it is difficult to see how there can be any sustained improvement if the commission is to collaborate with police in investigating organised crime. In fact the situation is likely to worsen in my opinion, and that seems to me to be the biggest challenge facing the commission, and consequently my own office, and of course this committee as well.¹⁰

Oversight of the WA Police by the CCC

One of the more significant issues raised by the Parliamentary Inspector over the course of the past year was the apparent reluctance by the CCC to undertake independent investigations into allegations of misconduct by officers of the WA Police.¹¹ This had been further remarked upon by the CCC Commissioner, the Honourable Roger Macknay QC, during a hearing of the Legislative Assembly Estimates Committee on 30 May 2012. During that hearing, Commissioner Macknay said:

The commission in the past has always adopted quite a high profile in the review of investigations by police internal investigators, but did not in practice investigate a great number itself. Since I have become commissioner, we have undertaken independent investigations of eight matters over the past six months.¹²

¹⁰ *Ibid.*

¹¹ This gave cause for the Parliamentary Inspector to prepare and present a report to the Committee entitled "The procedures adopted by the CCC when dealing with complaints of the use of excessive force by police," on 11 August 2011; this report was then tabled by the Committee in Parliament on 8 September 2011 as the key component of the Committee's 18th report, entitled *Parliamentary Inspector's report concerning the procedures adopted by the Corruption and Crime Commission when dealing with complaints of the excessive use of force by police.*

¹² *Legislative Assembly Estimates Committee, Hansard, "Division 28: Corruption and Crime Commission," 30 May 2012, p 340b-350a.*

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This evidence was raised during the hearing by the Committee Chairman, Hon Nick Goiran MLC, who asked the Honourable Mr Steytler whether in his opinion the apparent change of focus of the CCC had been an encouraging development. This prompted the Honourable Mr Steytler to update the Committee as to “a number of changes to processes,” that had been made within the CCC by Commissioner Macknay since his appointment:

He had told me that he is implementing a process in which every excessive force allegation and accompanying documentation and recommendation for action is provided to the commissioner himself for consideration and decision; he has enhanced the consultative process between the corruption division and the operations directorate, particularly in relation to excessive force allegations before those matters are presented to him for consideration; he has introduced an enhanced assessment process to ensure that there is appropriate scrutiny and resources are provided in the case of allegations of serious misconduct, including excessive force; he has dedicated experienced officers within the team that deals with allegations and oversees appropriate authority investigations to deal exclusively with police matters; he has created a police capacity development team for the sole purpose of increasing the capacity of WA Police to prevent, identify and deal with misconduct generally, including allegations of excessive force; he has introduced a new process for conducting police systems-based evaluations, with a greater emphasis on organisational systems and police culture; and he has created a research team comprising officers experienced in research to conduct research, in consultation with the police capacity development team, into specific matters relating to policing, and that team is currently conducting research into the use of force by police. He tells me that since he has taken office, the commission has assessed 81 allegations of excessive force by police. He has personally finalised the assessment of each one of those allegations, and of the 81 he has told me seven were identified for commission investigation pursuant to the act, and 42 for review by the commission following investigations by police; and the remaining 32 he said did not require further action. Of the seven commission investigations undertaken, five have been finalised with the outcomes being either no misconduct or that the evidence was inconclusive or unable to sustain the allegation. He says that the commission research project, to which I referred, has identified three matters in which excessive force by police was suspected, and they are

*under investigation at the present time. This is his latest report to me on this topic, dated 14 June this year.*¹³

The Committee found this information to be encouraging. While on the topic of the CCC's oversight of the WA Police, the Chairman then sought to discuss the recent CCC report into the Perth hills bushfire:

The CHAIRMAN: *So, taking that a little bit further, inspector, with regard to the Perth hills bushfire inquiry, there has been some commentary in the media from some individuals that the CCC perhaps ought to have acted quicker. For what it is worth, I think it is a fine line between acting quickly and acting thoroughly, and this seems to me to be perhaps one matter where, no matter what the commission may have done, it would have been open to criticism for either not doing something thoroughly enough or not doing it quickly enough. Nevertheless, there is always a balancing act to be had there, so do I take it from your comments this morning that you are satisfied with the timeliness of that matter?*

Mr Steytler: *I have spoken to the commissioner about that and he himself is not satisfied with the timeliness, and he has told me that he has made some improvements to process and that things took longer than he would have liked. But I am satisfied that he did everything that he reasonably could to progress that inquiry and the publication of his report.*

The CHAIRMAN: *Okay. So given the commissioner's record to date, we can have some confidence that this will also improve things for the future.*

Mr Steytler: *Yes, I think so.*¹⁴

As a result of that discussion, the Chairman asked the Honourable Mr Steytler to clarify when and under which circumstances it might be expected that the CCC would table a report in Parliament as a result of a particular misconduct investigation:

The CHAIRMAN: *Inspector, on that issue, then, it is true to say that not every complaint put to the CCC results in a report.*

Mr Steytler: *That is true.*

¹³ The Honourable Chris Steytler QC, Parliamentary Inspector, and Mr Murray Alder, Assistant to the Parliamentary Inspector, *Transcript of Evidence*, 20 June 2012, p 3.

¹⁴ *Ibid.*, p 4.

The CHAIRMAN: *And I think it is fair to say that not every investigation by the CCC culminates in a report.*

Mr Steytler: *That is correct.*

The CHAIRMAN: *In this instance, the decision was made to table a report on the bushfire matter, I imagine, because the bushfire matter was something that affected a number of individuals within the state, and so quite a number of individuals within the public were affected by that bushfire. So that might justify the tabling of a report. Is it then that case that the justification for not tabling a public report on the credit card matter is because it does not have that same wide consequential effect?*

Mr Steytler: *I think that has certainly been a part of the commissioner's thinking. The other part is that the fire and emergency services report was a matter that had attracted considerable public interest and public notoriety and, therefore, there was a real interest in the public to know what had transpired in respect of it...¹⁵*

The prospect of amendment to the *Corruption and Crime Commission Act 2003*

The 20 June 2012 hearing with the then Parliamentary Inspector took place, as it transpired, the very day before the Premier, the Honourable Colin Barnett MLA, introduced the *Corruption and Crime Commission Amendment Bill 2012* into the Legislative Assembly. Although the specific content of the Bill was not known on 20 June, both the Committee and the Parliamentary Inspector were aware of the Government's stated intention to widen the jurisdiction of the CCC, so as to enable it to directly investigate organised crime in Western Australia in collaboration with the WA Police. As such, the Chairman took the opportunity to speak with the Honourable Mr Steytler about this prospect for one final time:

The CHAIRMAN: *Inspector, I did want to just, if we can, turn our minds to the prospective reforms. Certainly, we know your clear position in relation to that matter, which obviously the committee agrees with, specifically in relation to the prospective jurisdiction to investigate organised crime. However, what I would like to get your views on this morning is a question assuming that such a jurisdiction will come to fruition... In the event that that happens, Inspector, would you be able to offer any advice as to things you would like to see in that Bill to restrict the capacity to investigate independently organised crime; and, secondly, to create some form of Chinese firewall within the*

¹⁵ *Ibid.*, pp 4-5.

Commission to ensure at least that the problems that you and this committee have articulated previously are mitigated to the greatest extent? I might add, Inspector, given I have provided you no notice of that, if it is something you wanted to take notice of, that would be more than acceptable.

Mr Steytler: *I think it is something I would like to take notice of soon. It is a difficult topic and my first reaction is that there is nothing that Parliament can do that will safeguard the process sufficiently, but there are some things that can presumably be done to mitigate it. My immediate reaction is that much would depend on the person who is in charge of the section for overseeing police misconduct and the person who is in charge of the section for investigating organised crime. They would need to be separate persons of at least equal status. I think that the reporting capacities would have to be looked at, and there may even be provision for separate reporting in respect of this oversight.*

The CHAIRMAN: *Inspector, you are referring to something that is the equivalent of what they have in Queensland where there are, as I understand it, two assistant commissioners who are respectively responsible for each silo.*

Mr Steytler: *Yes.*

The CHAIRMAN: *If I can take it a little bit further then, if we were to assume something like that was to come to fruition, do you think it is important that the assistant commissioner who oversees the organised crime silo is prohibited from ever acting as the assistant commissioner investigating police?*

Mr Steytler: *Yes, I would suggest that that should unquestionably be the position.*

The CHAIRMAN: *Is it again the case that the reverse would apply? In other words, the assistant commissioner overseeing misconduct should also distance him or herself from the organised crime investigations?*

Mr Steytler: *Yes, he or she should.*

The CHAIRMAN: *Therefore, the only person with capacity to peer over both silos would be the commissioner himself?*

Mr Steytler: *Yes.*

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The CHAIRMAN: *So, you are happy, inspector, to take that further on notice and —*

Mr Steytler: *Yes, I would be.*

The CHAIRMAN: *— hopefully get back to us within the next 10 days?*

Mr Steytler: *Yes!*¹⁶

Finally, the Chairman closed the hearing by paying a final tribute to the Parliamentary Inspector:

*...before I close proceedings this morning, inspector, can I reciprocate by expressing on behalf of the committee our overwhelming gratitude for your time as parliamentary inspector. I noted recently that in the CCC Act it actually specifically refers to the parliamentary inspector having a role to assist the committee, and I think I speak on behalf of all of my colleagues in saying that you certainly have assisted this committee. It has been greatly appreciated and we acknowledge and respect your decision to take your retirement from this position at this time, albeit that we do so respectfully, but without enthusiasm! So we thank you very much for your contribution and in some respects, it is unfortunate that this is a closed hearing because I think the contribution has been significant and ought to be acknowledged publicly. Both my colleague in the Legislative Council Hon Matt Benson-Lidholm and I have had the opportunity in recent weeks to express some comments in the Council about that, which were well endorsed, including by the previous chair of this committee Hon Ken Travers. On behalf of the committee we thank you for that and we certainly wish you the very best in your retirement. Should you ever wish to return to this sphere, I am sure that the committee would warmly encourage it!*¹⁷

Letter from the then Parliamentary Inspector of 26 June 2012

Subsequent to the hearing, the Committee received a letter from the then Parliamentary Inspector on 26 June 2012. On the assumption that the proposed widening of the CCC's jurisdiction will, in due course, occur, the letter explored two specific matters: whether specific restrictions ought to be placed upon the CCC's capacity to investigate organised crime, and the optimum method by which the incongruous tasks of working with police to investigate criminal activity and that of

¹⁶ *Ibid.*, pp 6-7.

¹⁷ *Ibid.*, p 8.

oversighting police officers to guard against misconduct might be kept separate within the overall CCC charter.

As to whether the CCC's capacity to investigate organised crime may benefit from restricting the CCC to investigating specific aspects of organised crime, the Honourable Mr Steytler offered the following observations:

It seems to me to be plain that the Commission's functions in respect of organised crime should be distanced, as far as possible, from areas in which it will work closely with police officers undertaking investigations of that kind. That is so for all of the reasons that have previously been elaborated by the Joint Standing Committee in its various reports to Parliament in this respect, most recently in its report suggesting a possible role for the Commission in addressing proceeds of crime and unexplained wealth.

I appreciate that separation is likely to prove difficult to implement in practice. However, if the Commission was to be restricted to conducting unexplained wealth investigations into organised crime targets identified by the W A police, this might minimise joint investigation, although information sharing would undoubtedly be necessary and some overlap in investigative work would be inevitable. I endorse the Committee's own views in this respect, to the effect that a limited transfer of power to the Commission in relation to unexplained wealth investigations would enable it to perform a valuable function, while minimising the risk of damaging its fundamentally important police oversight function as well as the risk of corruption within the agency itself.

If, notwithstanding the Committee's views (with which I am entirely in agreement), the Commission is to be given a wider jurisdiction, much will inevitably have to be left to the discretion of the proposed reference group. In this last event, it might be possible to provide guidelines, in the enabling legislation, which the reference group would be obliged to consider in making its decisions. The precise nature of any such guidelines could, I think, only be formulated after consultations with police and the Commission concerning the practicalities involved.¹⁸

¹⁸ The Honourable Chris Steytler QC, Parliamentary Inspector of the Corruption and Crime Commission *Letter: Questions on notice from private hearing on 20 June 2012, 26 June 2012*, pp 1-2.

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Regarding adequate methodology for ensuring a separation between the CCC's misconduct function with respect to the WA Police and a move into investigating organised crime alongside the police, the Honourable Mr Steytler gave the following advice:

As the Committee is aware, I very much doubt that it is possible to create an effective Chinese wall. That said, I am not sure that I am sufficiently qualified to suggest the optimum means of attempting to do so. I understand that you are proposing to travel to Queensland in order to speak to persons who have experience with the Queensland model in an attempt to learn its strengths and weaknesses. In my respectful opinion, that is the best way forward in this respect.

Otherwise, I can do no more than repeat, subject to some revision, my earlier suggestion that Assistant Commissioners of equal status be appointed to oversee each 'silo', with each reporting directly to the Commissioner and with neither being eligible for appointment to the other position, whether on a permanent or temporary basis.

The need for revision arises out of a recent discussion with the Commissioner of the Corruption and Crime Commission, who is opposed to the suggestion, essentially for four reasons. The first is that the Commission is too small for the appointment of two Assistant Commissioners, resulting in 'overkill' and unnecessary expense. The second is that, if this device were to be adopted, the Commissioner would himself become largely redundant. The third is that persons with an operations background are likely to be more effective in overseeing the two divisions than persons having the statutory qualifications required for appointment as Assistant Commissioners (which, he tells me, will be eligibility to be appointed as a judge of the Supreme Court). The fourth is that the Assistant Commissioner responsible for the organised crime division is likely to be underemployed for some time, as it will take time for the Commission to 'get into' its organised crime role.

I would be in respectful disagreement with the Commissioner's second reason. It seems to me that the Commissioner, being ultimately responsible for both divisions, would have his hands filled by the task of ensuring that both operated effectively and appropriately. The fourth reason can be very simply addressed by appointing some-one to act in a part-time role until a full time position becomes necessary. As regards the first reason, it seems to me that the money would be well

spent. However, I believe that there is substance to the third reason and it is this that gives rise to my revised suggestion.

It seems to me that the problem raised by the Commissioner could be addressed by changing the qualifications for appointment as an Assistant Commissioner or by having each division overseen by a Director rather than by an Assistant Commissioner. The second of these options would be my preferred option. However, it would seem to me to be preferable that both appointments, however described, should be made from persons outside the Commission who do not have any prior association with the WA Police.

I have given some thought to the question whether it would be possible to physically isolate the organised crime division from the remainder of the organisation, but it seems very probable that this would prove impracticable from a cost perspective, even if complete separation was otherwise achievable.¹⁹

As debate pertaining to the *Corruption and Crime Commission Bill 2012* is imminent, the Committee provides this report to Parliament so as to ensure that the debate around amending the work and role of the CCC is informed by the former Parliamentary Inspector's experience and wisdom.

¹⁹ *Ibid.*, pp 2-3.

Appendix One

Letter of 26 March 2012 from the then Parliamentary Inspector
of the Corruption and Crime Commission



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

26 June 2012

The Hon Nick Goiran MLC
Chairman
Joint Standing Committee of the Corruption and
Crime Commission of Western Australia
Level 1, 11 Harvest Terrace
PERTH WA 6000

Dear Mr Chairman

QUESTIONS ON NOTICE FROM PRIVATE HEARING ON 20 JUNE 2012

I refer to your two questions on notice concerning the Commission's possible new organised crime function.

The first question is whether I would recommend that restrictions be placed on the Commission's capacity to investigate organised crime, assuming that its jurisdiction is to be expanded in that direction.

It seems to me to be plain that the Commission's functions in respect of organised crime should be distanced, as far as possible, from areas in which it will work closely with police officers undertaking investigations of that kind. That is so for all of the reasons that have previously been elaborated by the Joint Standing Committee in its various reports to Parliament in this respect, most recently in its report suggesting a possible role for the Commission in addressing proceeds of crime and unexplained wealth.

I appreciate that separation is likely to prove difficult to implement in practice. However, if the Commission was to be restricted to conducting unexplained wealth investigations into organised crime targets identified by the WA police, this might minimise joint investigation, although information sharing would undoubtedly be necessary and some overlap in investigative work would be inevitable. I endorse the Committee's own views in this respect, to the effect that a limited transfer of power to the Commission in relation to unexplained wealth investigations would enable it to perform a valuable function, while minimising the risk of damaging its fundamentally important police oversight function as well as the risk of corruption within the agency itself.

If, notwithstanding the Committee's views (with which I am entirely in agreement), the Commission is to be given a wider jurisdiction, much will inevitably have to be left to the discretion of the proposed reference group. In this last event, it might be possible to

provide guidelines, in the enabling legislation, which the reference group would be obliged to consider in making its decisions. The precise nature of any such guidelines could, I think, only be formulated after consultations with police and the Commission concerning the practicalities involved.

The second question related to the optimum means of creating a Chinese wall between the Commission's organised crime division, on the one hand, and its misconduct division (including police oversight), on the other.

As the Committee is aware, I very much doubt that it is possible to create an effective Chinese wall. That said, I am not sure that I am sufficiently qualified to suggest the optimum means of attempting to do so. I understand that you are proposing to travel to Queensland in order to speak to persons who have experience with the Queensland model in an attempt to learn its strengths and weaknesses. In my respectful opinion, that is the best way forward in this respect.

Otherwise, I can do no more than repeat, subject to some revision, my earlier suggestion that Assistant Commissioners of equal status be appointed to oversee each 'silo', with each reporting directly to the Commissioner and with neither being eligible for appointment to the other position, whether on a permanent or temporary basis.

The need for revision arises out of a recent discussion with the Commissioner of the Corruption and Crime Commission, who is opposed to the suggestion, essentially for four reasons. The first is that the Commission is too small for the appointment of two Assistant Commissioners, resulting in 'overkill' and unnecessary expense. The second is that, if this device were to be adopted, the Commissioner would himself become largely redundant. The third is that persons with an operations background are likely to be more effective in overseeing the two divisions than persons having the statutory qualifications required for appointment as Assistant Commissioners (which, he tells me, will be eligibility to be appointed as a judge of the Supreme Court). The fourth is that the Assistant Commissioner responsible for the organised crime division is likely to be underemployed for some time, as it will take time for the Commission to 'get into' its organised crime role.

I would be in respectful disagreement with the Commissioner's second reason. It seems to me that the Commissioner, being ultimately responsible for both divisions, would have his hands filled by the task of ensuring that both operated effectively and appropriately. The fourth reason can be very simply addressed by appointing some-one to act in a part-time role until a full time position becomes necessary. As regards the first reason, it seems to me that the money would be well spent. However, I believe that there is substance to the third reason and it is this that gives rise to my revised suggestion.

It seems to me that the problem raised by the Commissioner could be addressed by changing the qualifications for appointment as an Assistant Commissioner or by having each division overseen by a Director rather than by an Assistant Commissioner. The second of these options would be my preferred option. However, it would seem to me to be preferable that both appointments, however described, should be made from persons outside the Commission who do not have any prior association with the WA Police.

I have given some thought to the question whether it would be possible to physically isolate the organised crime division from the remainder of the organisation, but it seems very probable that this would prove impracticable from a cost perspective, even if complete separation was otherwise achievable.

I hope that these few comments are of some assistance.

Yours faithfully,



C D STEYTLER QC
PARLIAMENTARY INSPECTOR

Appendix Two

Hearing

Date	Name	Role	Organisation
20 June 2012	The Honourable Chris Steytler QC	Parliamentary Inspector	Office of the Parliamentary Inspector of the CCC
	Mr Murray Alder	Assistant to the Parliamentary Inspector	

Appendix Three

Committee's functions and powers

On 25 November 2008 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.