



11<sup>th</sup> August 2016

David McKenzie  
4 Riley Rd  
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Honourable Nick Goiran MLC  
Chairman,  
Joint Standing Committee on the Corruption and Crime Commission  
Parliament of Western Australia  
Level 1, 11 Harvest Tce  
WEST PERTH WA 6005

Dear Mr Goiran,

**RE: Inquiry into the Corruption and Crime Commission being able to prosecute its own Charges**

I refer to your invitation to make submission on the above mentioned matter and indicate that I have read the advertisement placed by your committee in the media.

I firmly oppose any move to allow the CCC to prosecute criminal cases in Western Australian Courts. In that respect, I advise that I have read a summary of the Court of Appeal decision in *A v Maughan* (2016) WASCA and note that such a power was never enacted or implied in the CCC's Act of Parliament. I have also read a copy of comments by Mr Jack Gregor, the former Chairman of the Commission on Government, who was involved with the drafting of the initial legislation which formed a template for the CCC Act. Mr Gregor appears to be firmly of the view that it was inappropriate and dangerous for the CCC to have such powers.

It is my unfortunate lot, to have had extensive experience with the CCC. My company Canal Rocks Pty Ltd made up of Mum and Dad investors, laboured through years of the torturous bureaucratic planning process to endeavour to set up a world class tourist facility at Smiths Beach, in the South West of Western Australia. The subject land had been the only location designated by a Department of Planning study for a new substantial tourist facilities on the South West Coast.

As you probably know, the proposed development became the subject of a major CCC investigation and subsequently no development has taken place on the subject land.

In the CCC inquiry, which extended over 3 years with an unfortunate aftermath of charges on technical matters (mostly allegations of misleading evidence) for some years after that, I came to appreciate how the concentration of powers in one body could be so thoroughly and easily abused.

The facts suggest that the CCC investigation began sometime in 2005 and the first concrete knowledge I had of it was when I was summoned to give evidence in private hearings in March 2006. However, whilst such hearings were intended to be confidential, there was in truth a story in the *West Australian* on the 14<sup>th</sup> of January 2006, by Amanda Banks indicating that a corruption investigation was under way and naming Brian Burke, Julian Grill and myself as subjects of the investigation. The information on which the story was based was clearly leaked in some form or fashion from the CCC, as there was no other person or body that had access to such information. I

submit that this was an avenue for abuse of power. As far as I am aware there was no query from the CCC as to how confidential information concerning the private hearings was published in the Busselton Margaret River Times.

Although I cooperated fully with the CCC in its private investigation in March 2006, my barrister and I were highly disturbed by the fact that when I gave evidence, every common law protection normally available to an accused person was stripped from me. I was given no idea and the CCC actively worked to ensure that I was not aware of the matters on which I would be questioned or of any allegations which were being levelled at me. I was not permitted to give evidence in my own right outside of answering questions put by the CCC.

In respect to the Smiths Beach Development, the project ran into planning and environmental road blocks at Federal Government, State Government and Local Government level. A self-interested lobby group made up essentially of other developers in the area, arranged strong opposition to the project and I understand that it was this group that made an initial complaint to the CCC.

Whilst there are some safeguards in the CCC Act to protect witnesses like myself, they appear not to be effective or are not policed.

The narrative behind the matter at the core of the CCC project was that my company realised that the protest group that I have mentioned had considerable influence over Councillors of the Shire of Busselton. To overcome that opposition, it was decided to investigate a strategy and process to support candidates in the forthcoming Shire of Busselton Council elections. This strategy and procedure was presented to a highly respected QC who advised that the process was entirely proper and was not in breach of the Local Government Act. On the basis of that advice, my company proceeded with this process and in due course three of the candidates were elected. It was essentially this outcome that gave rise to the CCC investigation.

Notwithstanding the fact, that I had answered all questions in the private hearing the CCC proceeded with a public hearing into the matter, which commenced in late 2006. At the hearings, the matter was sensationalised by the strong suggestion from Counsel Assisting that the support of the candidates as mentioned above, amounted to a form of bribery. Electrifying headlines were created. Other hair raising allegations were made. None of these allegations were ever correct. It is my belief that given that well over 12 months of investigation of the matter, including the private hearings and very extensive electronic eavesdropping and surveillance on myself and some of my consultants, that the suggestions of crime and corruption which came out of the public hearings, were never sustainable. My barrister always shared that view. However, notwithstanding that the said insinuations and allegation of criminality were ultimately dropped by the CCC, they none the less caused massive injury to myself personally, my standing in the community, the success of my real estate business and on my family dynamic. I will not detail here the trauma that my family and I suffered, but let me just assure you that it was very substantial and long term.

It is my submission to your committee, that the power of the CCC, to strip me of my normal legal rights and to pursue outrageous allegations of criminality and corruption in circumstances where they could never be sustained in a court of law or anywhere else, was an abuse of privilege and power.

The next area where the CCC has potential to abuse its power is in the framing of its report to Parliament. In the case of Smiths Beach it was handed down in late 2007. By that time, the CCC had

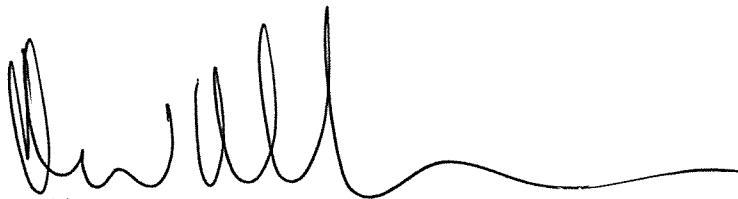
obviously become aware that it could not sustain the false allegations it had brought up in the public hearings and without apology or explanation, simply dispensed with them. However, to cover its tracks, it made new unsustainable allegations that my consultants and myself had improperly influenced Public Servants to make improper decisions to benefit the project. The CCC ordered that the unfortunate public servants be prosecuted pursuant to the Public Service Act. In all cases, with the help of the Parliamentary Inspector, the charges against the Public Servants failed or were shown to be without merit. None the less, the damage that they created was devastating and enduring. I was never able to defend myself against the so called findings in the CCC Report as there is no venue for that. This is in itself, a substantial injustice.

The CCC, notwithstanding that it had not been able to prove crime or corruption in respect to my activities, proceeded to charge me and others associated with the project with giving false testimony. I won't go into details of the allegations that gave rise to the charges of false testimony but I would advise that they were both of a technical nature and insignificant. In due course, I was acquitted. It is hard to escape the conclusion that the CCC only brought these charges as a punitive instrument, when it's much vaunted and highly publicised public hearings, turned up empty handed. Once again, I suggest the bringing of the charges was an abuse of power.

I mention all of these instances, where the CCC exercise extraordinary power together with the assumed power of prosecution, simply turns it into an instrument of unanswerable devastation. The ability to prosecute on top of the other privileges is not acceptable in my experience. There is an old adage about judge, jury and executioner and the CCC is a prime example of unhealthy centralisation of supremacy.

In summary, I submit that it has already been demonstrated that the potential for substantial injustice in the current CCC processes is very significant indeed and to add to that potential the ability for the CCC to prosecute its own cases extends that potential for injustice far too far.

Yours faithfully,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

David McKenzie