



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

Our ref: 645/16

21 June 2016

The Hon Nick Goiran MLC
Chairman
Joint Standing Committee of the
Corruption and Crime Commission

Dear Chairman

COMMITTEE INQUIRY – APPOINTMENT PROCESSES UNDER ACT

Thank you for the invitation to make a submission to the Committee (the JSC) upon the above Inquiry into the current operation of the provisions of the *Corruption, Crime and Misconduct Act 2003* (the Act) relative to the processes of appointment of the Parliamentary Inspector (PI), Acting Inspectors, the Commissioner, and Acting Commissioners. The JSC is also inquiring into “the role played by each of the agencies in discharging their responsibilities” under the relevant provisions.

I accept the invitation and make this submission, focussing particularly upon the provisions in so far as they affect my office, but I would also propose to make some observations about the position of the Commission (CCC) as I have observed it.

I am aware that the JSC has sought submissions from the Parliamentary Inspectors of NSW, Victoria and Queensland and I discussed the matter with them, or their representatives, at the annual meeting of Parliamentary Inspectors which was held in Sydney on 8 June 2016. I need only say that their statutes seem to me to provide some variations in the statutory appointment process, but nothing of a radically different nature to which I should refer here.

Each of the Parliamentary Inspectors in the states mentioned proposes to write directly to the JSC to describe and comment upon their legislation.

I put to one side the provisions in respect of the first appointments of the PI and Commissioner, which may now be repealed.

The foundation stone upon which the nature of my office depends is the fact that I do not occupy an office which is a statutory corporation. It is a personal appointment as an officer of the

PO Box 5817, Perth, St George's Terrace, PERTH WA 6831
Telephone: (08) 9264 9570
Email: piccc@piccc.wa.gov.au

Parliament, entirely independent of the government of the day, and not an office in the Public Service. I am answerable to the Parliament, to which I report, either directly or via the JSC, and an important responsibility is to provide assistance to the JSC, as required, in the performance of its function of oversight of the CCC: s 188.

In my view it is imperative that the appointment process reflects these matters, and the JSC will recall that early in my occupancy of the office of PI I sought to achieve independence from the agencies of government in every respect, including my accommodation.

The essential feature of the appointment, apart from the necessity for an appointee to be appropriately qualified to discharge the functions of the office, is that an appointment of a PI and Acting PI should have the bipartisan support of the Parliament as reflected in the decision of the JSC: ss 189(3)(b), 193(2a). This requirement should be retained as it underlines the status of the appointee as an officer of the Parliament.

When my predecessor, the Honourable Christopher Steytler QC, retired from the office there was a considerable delay in making a new appointment. It was occasioned by the need to establish a nominating committee (in fact chaired by the Chief Justice), for the committee to call for expressions of interest in the position, invite individuals to apply, or receive applications for appointment, for it to make a list of three persons and submit it to the Premier, and for the Premier to engage the JSC to perform its task, before the Premier could make a recommendation to the Governor via the Executive Council.

In my view this is an unnecessarily convoluted and protracted process, which could be improved by removing the formal nominating committee process and the list of three persons and replacing it with a simple requirement for the Premier to consult upon a proposed recommendation before it is submitted to the Parliament via the JSC for consideration of bipartisan support. Of course, the JSC may not be inclined to provide such support, and in that event time will not be saved to the same extent as I have supposed as the process described above would need to be repeated.

The qualifications for appointment as PI and Acting PI are the same: ss 190 and 193(1), and refer also to Schedule 3 of the Act. In effect, the person is to be a serving or retired judge or a senior member of the legal profession and, that being so, I recommend that the requirement for consultation should be with the Chief Justice, who might himself consult more widely before advising the Premier about an identified applicant for the position.

A convenient statutory precedent for the type of provision I have in mind is s 108 of the *State Administrative Tribunal Act 2004*. Section 108(4) provides:

Before recommending a person for appointment as the President, the Minister is to consult the Chief Justice of Western Australia.

The process of appointment of the PI and an Acting PI would then be by the Governor as now, on the recommendation of the Premier, after he or she has consulted the Chief Justice and submitted the proposed appointment to the JSC to determine if it would have bipartisan support in the Parliament. I would make no other change to s 189 or s 193, except that, in relation to term

of reference (b) of the Inquiry, I would recommend amendment of s 193(1) to widen the circumstances in which an Acting PI may be asked to act in the office.

The problem arises in respect of para (b). If I wish to take some leave, but do not leave the State am I unable to perform the functions of the office so that I may act under s 193(1)(b)? So far I have taken the view that I should simply utilise available means of communication between myself and my assistant and legal officer, Mr Alder, so that I may perform at least some of the functions of the office, but the position is uncertain.

Further, in my view I should have the capacity, budgetary considerations allowing, to call upon an Acting PI to assist me to perform the functions of the office when the pressure of business requires, so that I may continue to act in a timely way.

At present, from time to time, I simply have to give priority to matters which I consider to be of greater urgency at the expense of less pressing matters. That, in the context of the fact that I am appointed on a part-time basis, is less than satisfactory from the point of view of the CCC and other persons interested in matters which have to take a back seat.

The problems to which I have referred would be solved, without changing s 193(1)(a) or (c), and without altering s 193(1)(b) in so far as it applies when I am out of the State, by the addition, by way of amendment, of a capacity for me to utilise the services of one or both Acting PIs to perform all or part of the functions of the office when I determine that it is necessary to obtain their assistance to enable the functions of the office to be fully and appropriately performed.

I should mention, in passing, the provisions of Cls 1 of Schedules 2 and 3 of the Act which deal with the "reappointment" of the Commissioner and PI upon the expiry of a five year term. I would recommend that each clause should be amended, for the avoidance of doubt, to make it clear that the reappointment process is to be the same as the process of appointment.

I turn finally and briefly to the position with respect to the appointment and performance of the offices of Commissioner and Acting Commissioners of the CCC, merely to observe that I can see no reason for a different approach in respect of the current requirement for a nominating committee to submit a list of three persons. I leave to others the question whether the Premier should consult more widely than is provided by s 9(4).

I note that s 14(1) is expressed in the same terms as s 193(1) and, for my part, I would have thought that the provision should be amended in the same way as the recommendations set out above.

In the performance of my office during the period following the resignation of Commissioner Macknay QC and since the appointment of Commissioner J R McKechnie QC I have had the advantage of regular (weekly or fortnightly) consultation on the work and demands of the office of Commissioner, which do not appear to have diminished appreciably since the extensive amendments made to the Act with effect from 1 July 2015.

That being so, I wish to raise for consideration the question of the provision in the Act of the capacity to make an appointment of a Deputy Commissioner on a full or part-time basis.

I do not, of course, make a submission that there is or may be a business case to support an appointment of a Deputy Commissioner, a capacity which is not now provided for in the Act, but it does seem to me that to add that capacity to the statutory scheme would add useful flexibility which might be called upon when the need arose.

The appointment process should, in my view, be the same as that provided for the appointment of a Commissioner and to amend the Act now to add the capacity to make such an appointment would obviate the need to reopen the question of statutory amendment in respect of the making of appointments of the kind which are the subject of this Inquiry, at some future time.

Yours sincerely,

HON MICHAEL MURRAY AM QC
PARLIAMENTARY INSPECTOR

cc: Mr J R McKechnie QC
Commissioner
Corruption and Crime Commission