



ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our Ref: 44-18216

Mr Nick Goiran
Chairman
Joint Standing Committee on the Corruption and Crime Commission
Parliament House
Harvest Terrace
PERTH WA 6000

Dear Chairman

RESPONSE TO JOINT STANDING COMMITTEE REPORT NO. 21 ON CORRUPTION AND CRIME COMMISSION ACT 2003: SOME IMPLICATIONS FOR WESTERN AUSTRALIA'S INTEGRITY FRAMEWORK

I note the tabling of the Joint Standing Committee Report No. 21 on *Recent amendments to the Corruption and Crime Commission Act 2003: Some implications for Western Australia's integrity framework* in Parliament on 18 June 2015.

My response on behalf of the Government is as follows:

Recommendation 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 [PSC] in relation to the education and minor misconduct matters it will have responsibility for in the Corruption, Crime and Misconduct Act 2003.

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.

Recommendation 2

Proclamation of the remaining sections of the Corruption and Crime Commission Amendment (Misconduct) Act 2014 [Amendment Act] should only occur once the Public Sector Commission's computer system has been enhanced so that it can record the additional information that is required to be collected under the new Corruption, Crime and Misconduct Act 2003 [CCM Act] and its database fields match those of the computer system used by the Corruption and Crime Commission.

The remaining sections of the Amendment Act were proclaimed and came into effect on 1 July 2015. Any delay would have been unnecessary as the two agencies worked together to ensure necessary systems were established since the Amendment Act was assented to in December 2014.

The PSC is satisfied that its databases and systems are able to capture all relevant data necessary for the new functions. Importantly, the information stored by the PSC will be accessible and useable by the CCC and ongoing refinements will be made over time.

There are some differences between the database fields adopted by the PSC and the CCC. However, this is reflective of the differences in jurisdiction and, consequently, notification requirements between the two agencies. The focus to date has been on the exchange of information to support the serious misconduct oversight functions of the CCC and the new oversight function of the PSC.

The unified approach to information sharing agreement between the two agencies is set out in a Memorandum of Understanding, which reaffirms the intention of the PSC to provide information to the CCC relevant to the CCC's serious misconduct, capacity development and organised crime functions. At this stage, in the spirit of cooperation and collaboration, neither agency foresees any difficulty in meeting the information requirements of the other.

Recommendation 3

The Attorney General propose an amendment to the Corruption, Crime and Misconduct Act 2003 to empower the Corruption and Crime Commission to receive allegations of minor misconduct against the Public Sector Commissioner.

There are already a number of frameworks available for an independent examination of allegations against the Public Sector Commissioner:

- the investigative framework of the *Public Interest Disclosure Act 2003*, whereby allegations can be made to the CCC, Police, Auditor General or Ombudsman;
- the Auditor General and the Ombudsman under their inherent jurisdiction outside the public interest disclosure regime;
- the ability of any member of Parliament to move a motion for suspension or removal of the Public Sector Commissioner, thereby triggering the removal process provided for in section 18(3) of the *Public Sector Management Act 1994* (PSM Act); and
- the Governor's power to suspend the Public Sector Commissioner from office, such as if satisfied the Public Sector Commissioner has been guilty of misconduct or neglect of duty.

Recommendation 4

The Corruption and Crime Commission should develop a Protocol with the Public Sector Commissioner, in a similar fashion to the one it has developed with the Parliamentary Inspector, to ensure that there is oversight of the Public Sector Commissioner's investigation of minor misconduct matters.

and

Recommendation 5

In future Annual Reports, the Corruption and Crime Commission should report on:

- 1. the effectiveness of the Protocol referred to in Recommendation 4 of this report; and*
- 2. the effectiveness of its oversight of the Public Sector Commissioner's investigation of minor misconduct matters.*

The CCC's oversight of the PSC's investigation of minor misconduct would contradict the primary objective of the 2014 amendments to refocus the CCC's efforts to serious misconduct and police misconduct.

It would also be inconsistent with the framework for co-operation between the agencies which the Act contemplates.

Furthermore, the PSC will only address matters of minor misconduct and not possess the same intrusive powers as the CCC. This diminishes the need for any additional oversight. Rather, the PSC's functions are performed using the existing powers of investigation and inquiry under the PSM Act, which have not been subject to any additional oversight mechanism since their conferral in 2010.

The PSC is also already overseen by parliamentary committees and other integrity agencies, such as the Auditor General (who can undertake both financial and performance audits of the PSC) and the Ombudsman (who can investigate any matter of administration).

Recommendation 6

In future Annual Reports, the Parliamentary Inspector of the Corruption and Crime Commission include a report on the effectiveness of section 45T(1)(b) referrals on his capacity to use his powers in matters involving allegations of minor misconduct against an officer of the Corruption and Crime Commission.

The Government is advised that the Parliamentary Inspector, the Commissioner of the CCC and the Public Sector Commissioner are currently developing a written protocol to formalise their shared view that allegations of minor misconduct on the part of a CCC officer received by the PSC will be referred to the CCC under section 45T(1)(b) of the CCM Act, so as to enliven the Parliamentary Inspector Commissioner's oversight jurisdiction. This arrangement is entirely consistent with the Government's view that all alleged misconduct concerning CCC officers was intended by the Parliament to remain, as it has always been, subject to oversight by the Parliamentary Inspector.

In the course of consultation with the PSC regarding recommendation 6 of the Committee's report, the Parliamentary Inspector, the Hon Michael Murray AM QC, confirmed his willingness to report on the operation of this protocol in future Annual Reports.

Recommendation 7

Proclamation of the remaining sections of the Corruption and Crime Commission Amendment (Misconduct) Act 2014 take place only once the joint engagement and communication strategy to be used to educate the 138,000 public servants in Western Australia, as well as those employed in the State's local governments, universities and Government Trading Enterprises, on the new arrangements for reporting minor misconduct to the Public Sector Commissioner is ready for implementation.

The remaining sections of the CCM Act were proclaimed and came into effect on 1 July 2015. Any delay in the proclamation of the remaining provisions of the CCM Act would have been unnecessary.


Both the PSC and the CCC have undertaken an extensive education programme since the passage of amendments in December 2014, including;

- The Public Sector Commissioner conducting 18 meetings (including 7 in regional areas) with representatives of bodies not previously within the PSC's jurisdiction, to ensure that they are informed of the PSC's new minor misconduct jurisdiction;
- A joint communication strategy between the PSC and CCC. A Joint Information Resource has been prepared by the two agencies, in consultation with key stakeholders, which outlines the framework for notification of misconduct allegations under the new arrangements;
- A series of joint CCC and PSC workshops on the framework which commenced in late June 2015 and are open to all public authorities across WA;
- An information session attended by the Chief Executive Officers of public sector agencies, Government Trading Enterprises, local government officers and universities on 3 July 2015 which provided an overview of the new arrangements; and

- A program of additional information sessions targeted at key notifiers, who currently make the bulk of misconduct notifications to the CCC, in relation to the new arrangements for reporting minor misconduct.

I am confident that the two Commissioners are fully aware of their respective statutory responsibilities and in the light of their competence and experience, can be relied upon to discharge them in such manner as to achieve Parliament's, the Government's, and the public's expectations.

Yours sincerely

A handwritten signature in black ink, appearing to read "Mischin". The signature is fluid and cursive, with a large initial "M" and "S" that are connected.

Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

16 SEP 2015