



**Joint Standing Committee on the Corruption and Crime
Commission**

WA Police's use of Part 4 'exceptional powers' in the *Corruption and Crime Commission Act 2003*

Report No. 10
April 2014

Parliament of Western Australia

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**WA Police's use of Part 4
'exceptional powers' in the
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Report No. 10

Hon Nick Goiran, MLC and Mr Peter Watson, MLA

Laid on the Table of the Legislative Assembly and Legislative Council
on 10 April 2014

Chairman's Foreword

In its 2012-13 Annual Report, the Corruption and Crime Commission (CCC) noted that in the previous year it had received no applications from WA Police (WAPOL) for an “exceptional powers finding and nil applications for a fortification warning notice.”¹ The Report confirmed in regard to this issue that “[a]s a result one of the two main purposes of the CCC Act, to combat and reduce the incidence of organised crime, was not achieved.”²

Following this statement, the Joint Standing Committee resolved to inquire into the reasons for WAPOL's underuse of the ‘exceptional powers’ provisions of the *Corruption and Crime Commission Act 2003* and why WAPOL were instead applying to the Australian Crime Commission (ACC) for powers to undertake coercive hearings with suspected organised crime participants.

The Commissioner of Police, Dr Karl O'Callaghan, told the Committee that there were three main issues that, if they were addressed, would enable WAPOL to more frequently make use of the CCC Act's Part 4 powers:

- an amendment to the definition of ‘organised crime’ under the CCC Act;
- changes to the process used by the CCC to approve WAPOL applications for use of the exceptional power provisions as currently they are “overly legalistic and complex, and it makes it difficult for Police to mount an application”; and
- the cost to WAPOL of utilising the CCC process.³

Of these issues, Dr O'Callaghan confirmed that legislative change to the definition of ‘organised crime’ was the most important factor.⁴

The Joint Standing Committees in the two previous Parliaments have also addressed the issue of WAPOL's use of the Part 4 powers of the CCC Act. The JSCCCC in the 37th Parliament tabled its Report 31, *Inquiry into Legislative Amendments to the Corruption and Crime Commission Act 2003 - The Role of the Corruption and Crime Commission in*

1 Corruption and Crime Commission, *Annual Report 2012-2013*, 27 September 2013, pxvii. Available at: www.ccc.wa.gov.au/Publications/Reports/Annual%20Reports/Corruption%20and%20Crime%20Commission%20Annual%20Report%202012-2013.pdf. Accessed on 11 March 2014.

2 Ibid, p25.

3 Dr Karl O'Callaghan, Commissioner, WA Police, *Transcript of Evidence (Closed)*, 13 November 2013, p7.

4 Ibid, p8.

*Investigating Serious and Organised Crime in Western Australia.*⁵ The first recommendation from this report was to amend the definition of organised crime in the CCC Act.

The matter of an amended definition of organised crime was also addressed by the JSCCCC in the following Parliament. The JSCCCC in the 38th Parliament tabled its Report 10, *How the Corruption and Crime Commission can best work together with the Western Australian Police Force to combat organised crime.*⁶ The second recommendation from this report also recommended an amendment to the definition of organised crime in the CCC Act.

In addition, an amendment to the definition of organised crime was also recommended in the statutory review of the CCC Act undertaken by Ms Gail Archer SC in February 2008.

In addressing the other impediments to the more frequent use of the 'exceptional powers' provisions, the CCC proposed, by way of submission, that the current process could be improved if the CCC Act was amended

*...to enable the Commission to facilitate and support police access to and use of the powers to assist its investigations. This would include providing relevant advice and support to enable the effective preparation for and conduct of examinations to include briefing and the providing of Counsel Assisting. Police would retain overall responsibility for the conduct of the relevant investigations.*⁷

The Committee has refrained from making a recommendation in accordance with this submission by the CCC as it is mindful that the CCC has an important role as a 'gatekeeper' of the exceptional powers, and that this role warrants independence and impartiality- both perceived and real.

5 Joint Standing Committee on the Corruption and Crime Commission, *Inquiry into Legislative Amendments to the Corruption and Crime Commission Act 2003 - The Role of the Corruption and Crime Commission in Investigating Serious and Organised Crime in Western Australia*, 15 November 2007. Available at: www.parliament.wa.gov.au/LACO%20pdfs/report31/JSCCCC%20Report%2031.pdf. Accessed on 11 March 2014.

6 Joint Standing Committee on the Corruption and Crime Commission, *How the Corruption and Crime Commission can best work together with the Western Australian Police Force to combat organised crime*, 9 September 2010. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/00A697A1AC8EB562482578310040D2A1/\\$file/Report+How+the+CCC+can+best+work+with+the+WA+Police+t+o+combat+organised+crime.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/00A697A1AC8EB562482578310040D2A1/$file/Report+How+the+CCC+can+best+work+with+the+WA+Police+t+o+combat+organised+crime.pdf). Accessed on 11 March 2014.

7 Ibid, 26.

The Commissioner agreed with the Chairman's comments that since the enactment of the *Criminal Investigation (Covert Powers) Act 2012* (CICP Act)⁸, many of the exceptional powers contained in Part 4 of the CCC Act are now available to WA Police (WAPOL) directly, leaving only the coercive examination, search, and anti-fortification powers needing to be applied for from the CCC.⁹ The CICP Act requires the CCC to inspect WAPOL's records in order to determine the extent of its compliance with the CICP Act. In the course of its Inquiry, the Committee found that the CCC's policy for the auditing of WAPOL's self-authorising of covert activities to be in line with this Committee's expectations.

I would like to acknowledge the work on this report by my Committee colleagues: Mr Paul Papalia CSC MLA, Member for Warnbro, (who resigned from the Committee on 7 February 2014) and Mr Peter Watson MLA, Member for Albany, (who joined the Committee on 11 February 2014), the Member for Churchlands, Mr Sean L'Estrange MLA, (who resigned from the Committee on 18 March 2014), the Member for Forrestfield, Mr Nathan Morton MLA, (who joined the Committee on 18 March 2014), and the Member for the South West Region, Hon Adele Farina MLC. Finally, I wish to thank the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan, for their efforts in completing this Inquiry in a timely fashion.



HON NICK GOIRAN, MLC
CHAIRMAN

8 AustLII, *Criminal Investigation (Covert Powers) Act 2012*, nd. Available at: www.austlii.edu.au/au/legis/wa/num_act/cipa201255o2012456/. Accessed on 17 March 2014.

9 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p12.

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Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Minister representing the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

Findings and Recommendations

Finding 1

Page 4

The Joint Standing Committee in both the 37th and 38th Parliaments recommended that the definition of organised crime in the *Corruption and Crime Commission Act 2003* should be amended.

Finding 2

Page 5

The statutory review of the *Corruption and Crime Commission Act 2003* (the CCC Act) by Ms Gail Archer SC in February 2008 recommended that the CCC Act's definition of organised crime be amended as proposed in the JSCCCC's Report 31 in the 37th Parliament.

Finding 3

Page 8

The previous State Government introduced a Bill to Parliament in 2012 to amend the *Corruption and Crime Commission Act 2003* (the CCC Act) which included an amendment to the definition of organised crime that had been developed with the assistance of the Commissioner of Police and the Commissioner of the Corruption and Crime Commission. This proposed amendment would have implemented the recommendations of this Joint Standing Committee in the previous two Parliaments, and the Archer statutory review of the CCC Act.

Finding 4

Page 10

The Corruption and Crime Commission has received no applications from WA Police for the use of the exceptional powers provisions contained within the *Corruption and Crime Commission Act 2003* in this and the previous two financial years.

Finding 5

Page 11

The Police Commissioner provided evidence to the Committee that the chief impediments to the regular, efficient and effective use by WA Police (WAPOL) of the Part 4 powers contained in the *Corruption and Crime Commission Act 2003* (the CCC Act) were:

- the definition of organised crime in the CCC Act;
- the application process required by the Corruption and Crime Commission for WAPOL to follow; and
- the cost to WAPOL of using the current Commission process.

Finding 6**Page 12**

An amended definition of organised crime within the *Corruption and Crime Commission Act 2003* (the CCC Act) would encourage WA Police to make greater use of the Part 4 powers in the CCC Act.

Recommendation 1**Page 14**

The Attorney General should amend the definition of organised crime within the *Corruption and Crime Commission Act 2003*. A new definition should allow WA Police to apply for Part 4 powers to include suspected crime or a crime that is likely to occur.

Finding 7**Page 14**

WA Police has made 13 applications since 2002 to the Australian Crime Commission to hold coercive hearings using powers contained in the *Australian Crime Commission Act 2002*. This is the same number of applications for exceptional powers it has made to the Corruption and Crime Commission.

Finding 8**Page 20**

WA Police are currently utilising the power to hold coercive examinations from the Australian Crime Commission due to its less-complex and perceived more-timely outcome than the process used by the Corruption and Crime Commission.

Finding 9**Page 22**

The Corruption and Crime Commission (CCC) has recommended that the *Corruption and Crime Commission Act 2003* be amended to allow the CCC to facilitate and support WA Police's access to and use of the Part 4 exceptional powers to assist its investigations by allowing the CCC to provide relevant advice and support to WA Police to enable it to effectively prepare for and conduct coercive examinations.

Finding 10**Page 24**

Historically, one reason why WA Police have preferred applying to the Australian Crime Commission for the power to hold coercive hearings is police culture and the tensions raised when working with the Corruption and Crime Commission.

Finding 11**Page 25**

Fortification warning notices in Part 4 Division 6 of the *Corruption and Crime Commission Act 2003* are a useful power for WA Police actions against organised crime groups.

Finding 12**Page 25**

It is a shortcoming of the *Corruption and Crime Commission Act 2003* that it fails to discourage organised crime groups from re-fortifying premises previously dismantled by WA Police.

Recommendation 2**Page 25**

The Attorney General amend the *Corruption and Crime Commission Act 2003* to prevent the re-fortification of premises previously dismantled by WA Police.

Finding 13**Page 27**

The enactment of the *Criminal Investigation (Covert Powers) Act 2012* is another factor that has led to a reduction in applications from WA Police to the Corruption and Crime Commission for the use of exceptional powers contained in the *Corruption and Crime Commission Act 2003*.

Recommendation 3**Page 30**

The Corruption and Crime Commission ensure that their annual compliance reports on the use of the *Criminal Investigation (Covert Powers) Act 2012* identify the date it has been provided to the relevant Minister.

Finding 14**Page 30**

Corruption and Crime Commissioner Macknay has appropriately determined that the Commission's ongoing auditing of WA Police's self-authorised covert activities under the *Criminal Investigation (Covert Powers) Act 2012* will be rigorous and more than just compliance-based.

Chapter 1

Inquiry overview

There have been no applications for access to the exceptional powers provisions of the CCC Act since March 2012. As a result one of the two main purposes of the CCC Act, to combat and reduce the incidence of organised crime, was not achieved.

Mr Roger Macknay QC, CCC Commissioner.

Introduction

The Joint Standing Committee attended the *International Serious and Organised Crime Conference 2013* in Brisbane in late July 2013. Discussions with attendees from other jurisdictions at this conference led the Committee to discuss how Western Australian agencies were addressing the threats arising from organised crime. Subsequently, the Committee resolved on the 26 August 2013 to commence an inquiry into *The Current Use of the Exceptional Powers Provisions of the CCC Act 2003*, and report to Parliament on:

- a) the extent of the use of the Part 4 powers ("Part 4 Powers") under the *Corruption and Crime Commission Act 2003* ("the CCC Act");
- b) the availability to WA Police of any other avenues to access powers substantially similar to the Part 4 Powers;
- c) the impact of the *Criminal Investigation (Covert Powers) Act 2012* on the use of the Part 4 Powers;
- d) the current impediments to the regular, efficient and effective use of the Part 4 Powers;
- e) the steps that can reasonably be taken to remove such impediments; and
- f) the likely use of the Part 4 Powers in the event the current impediments are removed.

The Committee originally planned to table its report by the end of December 2013 but, due to its workload, extended the tabling date to 15 May 2014.

Committee hearings

WA Police's (WAPOL) use of the Part 4 powers of the CCC Act were initially discussed with the Commissioner of the Corruption and Crime Commission (CCC), Mr Roger

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Macknay QC, on 23 October 2013 during a hearing with the Committee on the CCC's *2012-13 Annual Report*.¹⁰ The Committee raised these issues during its hearing with the Commissioner as it was concerned about public commentary suggesting that the CCC had "waved the white flag"¹¹ in regard to its fight against organised crime. In its Annual Report, the CCC had noted that in the previous year it had received no applications from WA Police for an "exceptional powers finding and nil applications for a fortification warning notice."¹² The Report confirmed in regard to this issue that:

*There have been no applications for access to the exceptional powers provisions of the CCC Act since March 2012. As a result one of the two main purposes of the CCC Act, to combat and reduce the incidence of organised crime, was not achieved.*¹³

A hearing with the Commissioner of Police, Dr Karl O'Callaghan APM, and WAPOL senior staff was held on 13 November 2013. This hearing included a public session¹⁴ as well as a closed session to discuss operational aspects of their use of the Part 4 powers.

The Inquiry's final hearing was a closed hearing with the CCC Commissioner and his staff, and was held on 19 February 2014.¹⁵ At this hearing the CCC provided a submission which the Committee later resolved to make public.¹⁶

Appendix Four lists the witnesses who attended these two hearings.

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- 10 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 23 October 2013, pp9-11. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/E62BB20140F5C54E48257C1200078B49/\\$file/20131023-+CCC-+annual+review-public-+FINAL.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/E62BB20140F5C54E48257C1200078B49/$file/20131023-+CCC-+annual+review-public-+FINAL.pdf). Accessed on 11 March 2014.
- 11 Mr Daniel Emerson, 'We can't win war on organised crime: CCC', *The West Australian*, 17 October 2013, p4.
- 12 Corruption and Crime Commission, *Annual Report 2012-2013*, 27 September 2013, pxvii. Available at: www.ccc.wa.gov.au/Publications/Reports/Annual%20Reports/Corruption%20and%20Crime%20Commission%20Annual%20Report%202012-2013.pdf. Accessed on 11 March 2014.
- 13 Ibid, p25.
- 14 Dr Karl O'Callaghan, Commissioner, WA Police, *Transcript of Evidence*, 13 November 2013. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/1DFB67911A281D3A48257C23000CAED7/\\$file/67733540.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/1DFB67911A281D3A48257C23000CAED7/$file/67733540.pdf). Accessed on 11 March 2014.
- 15 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 19 February 2014.
- 16 Corruption and Crime Commission, *Submission to the Joint Standing on the Corruption and Crime Commission*, 19 February 2014. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/D488165824B7D25248257CA0001169EA/\\$file/19613674.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/D488165824B7D25248257CA0001169EA/$file/19613674.pdf). Accessed on 19 March 2014.

Previous Committee inquiries on this matter

The Joint Standing Committees in the two previous Parliaments have also addressed the issue of WAPOL's use of the Part 4 powers of the CCC Act. In September 2007, the JSCCCC in the 37th Parliament tabled its Report 31, *Inquiry into Legislative Amendments to the Corruption and Crime Commission Act 2003 - The Role of the Corruption and Crime Commission in Investigating Serious and Organised Crime in Western Australia*.¹⁷ The first recommendation from this report was to change the definition of organised crime. It proposed a new definition adapted from the *Australian Crime Commission Act 2002 (Cth)*¹⁸ and the *Australian Crime Commission (Western Australia) Act 2004*. This proposed definition was based on a joint submission from WAPOL and the CCC to the Committee's inquiry, and is included in Appendix Three.¹⁹

The matter of an amended definition of organised crime was also addressed by the JSCCCC in the following Parliament. In September 2010, the JSCCCC in the 38th Parliament tabled its Report 10, *How the Corruption and Crime Commission can best work together with the Western Australian Police Force to combat organised crime*.²⁰ The Committee had anticipated the State Government's move to place a Bill before Parliament to expand the CCC's jurisdiction to include working with WAPOL to combat organised crime.

Chapter 2 of Report 10 focused on WAPOL's use of the exceptional powers included in Part 4 of the CCC Act. The Committee found that WAPOL's use of these powers had fallen "into abeyance after the failure of the contempt proceedings in *Aboudi v*

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- 17 Joint Standing Committee on the Corruption and Crime Commission, *Inquiry into Legislative Amendments to the Corruption and Crime Commission Act 2003 - The Role of the Corruption and Crime Commission in Investigating Serious and Organised Crime in Western Australia*, 15 November 2007. Available at: www.parliament.wa.gov.au/LACO%20pdfs/report31/JSCCCC%20Report%2031.pdf. Accessed on 11 March 2014.
- 18 AustLII, *Australian Crime Commission Act 2002 - Sect 4*, nd. Available at: www.austlii.edu.au/au/legis/cth/consol_act/acca2002289/s4.html. Accessed on 17 March 2014.
- 19 Joint Standing Committee on the Corruption and Crime Commission, *Inquiry into Legislative Amendments to the Corruption and Crime Commission Act 2003 - The Role of the Corruption and Crime Commission in Investigating Serious and Organised Crime in Western Australia*, 15 November 2007, pp63-65. Available at: www.parliament.wa.gov.au/LACO%20pdfs/report31/JSCCCC%20Report%2031.pdf. Accessed on 11 March 2014.
- 20 Joint Standing Committee on the Corruption and Crime Commission, *How the Corruption and Crime Commission can best work together with the Western Australian Police Force to combat organised crime*, 9 September 2010. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/00A697A1AC8EB562482578310040D2A1/\\$file/Report+How+the+CCC+can+best+work+with+the+WA+Police+to+combat+organised+crime.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/00A697A1AC8EB562482578310040D2A1/$file/Report+How+the+CCC+can+best+work+with+the+WA+Police+to+combat+organised+crime.pdf). Accessed on 11 March 2014.

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*Hammond*²¹, [but] has been utilised by the WA Police in the last 18 months during Operation Jupiter.”²² Recommendation 2 of the report addressed a key factor raised by WAPOL during the inquiry as to matters that limit their use of the Part 4 powers:

*The definition of ‘organised crime’ in the Corruption and Crime Commission Act 2003 be expanded so as to accommodate the concerns of the WA Police and the CCC that the present definition is unduly restrictive and prevents the WA Police from accessing the Exceptional Powers under Part 4 of the Corruption and Crime Commission Act 2003.*²³

Finding 1

The Joint Standing Committee in both the 37th and 38th Parliaments recommended that the definition of organised crime in the *Corruption and Crime Commission Act 2003* should be amended.

The statutory review of the CCC Act by Ms Gail Archer SC in February 2008 also highlighted the under-use of the Part 4 powers by WAPOL. She reported that between 2004 and 2006 WAPOL had not made any applications to the CCC to utilise these powers.²⁴ Ms Archer acknowledged the productive efforts of the JSCCCC’s Report 31 in the 37th Parliament in exploring the issue of the effectiveness of the Part 4 powers to combat organised crime.²⁵ Ms Archer recommended that the CCC Act’s definition of organised crime be amended as proposed in the JSCCCC’s Report 31 in the 37th Parliament:

Recommendation 3

That the Act be amended:

*(a) in accordance with Recommendations 1, 2, 3 and 4 of the JSCCCC Report No. 31;...*²⁶

21 In *Hammond v Aboudi* (2005) 31 WAR 533, the Court of Appeal of the Supreme Court of Western Australia found that the CCC had failed to establish that two witnesses in an organised crime examination had committed contempt under section 160(1)(b) of the CCC Act.

22 Joint Standing Committee on the Corruption and Crime Commission, *How the Corruption and Crime Commission can best work together with the Western Australian Police Force to combat organised crime*, 9 September 2010, p97. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/00A697A1AC8EB562482578310040D2A1/\\$file/Report+How+the+CCC+can+best+work+with+the+WA+Police+to+combat+organised+crime.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/00A697A1AC8EB562482578310040D2A1/$file/Report+How+the+CCC+can+best+work+with+the+WA+Police+to+combat+organised+crime.pdf). Accessed on 11 March 2014.

23 Ibid, p98.

24 Ms Gail Archer SC, *Review of the Corruption and Crime Commission Act 2003*, Perth, February 2008, p39.

25 Ibid, p40.

26 Ibid, p47.

Finding 2

The statutory review of the *Corruption and Crime Commission Act 2003* (the CCC Act) by Ms Gail Archer SC in February 2008 recommended that the CCC Act's definition of organised crime be amended as proposed in the JSCCC's Report 31 in the 37th Parliament.

Exceptional powers contained in the CCC Act

Part 4 of the CCC Act contains the exceptional powers which WAPOL can apply to the CCC to access. Division 1 in Part 4 sets out the criteria that the CCC must be satisfied of before an exceptional powers finding can be made. The powers available under the CCC Act are:

- Coercive examinations before the CCC (Division 2);
- Entry, search and related matters (Division 3);
- Assumed identities (Division 4); and
- Controlled operations and integrity testing (Division 5).²⁷

The CCC said in its submission that it can make a finding for WAPOL to use these exceptional powers if it is satisfied that there are grounds for:

- *suspecting that a section 5 offence has been, or is being, committed;*
- *suspecting that there might be evidence or other information relevant to the investigation of the offence that can be obtained using the exceptional powers; and*
- *believing that use of the powers would be in the public interest having regard to a number of factors set out in the CCC Act.*²⁸

The CCC also submitted that:

*The exceptional powers do not include the fortification removal powers which are contained in Division 6. An application in respect of the latter must satisfy different statutory criteria from that which is required for the exercise of exceptional powers. However "organised crime" is an element of both.*²⁹

²⁷ AustLII, *Corruption and Crime Commission Act 2003*, nd. Available at: www.austlii.edu.au/au/legis/wa/consol_act/cacca2003338/index.html. Accessed on 11 March 2014.

²⁸ Submission No. 1 from Corruption and Crime Commission, 19 February 2014, p5.

²⁹ Ibid.

Chapter 1

The definition of organised crime in the CCC Act

In the current CCC Act, 'organised crime' is defined as the:

...activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences are committed, the commission of each of which involves substantial planning and organisation.³⁰

The CCC told the Committee that this definition originated from the one used in the State's *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*.^{31 32}

In its Report 31, the JSCCC in the 37th Parliament noted a submission from the CCC about the inadequacies of the definition of organised crime in the CCC Act:

The Commission has, from the start, had reservations about the definition of organised crime, which is so circular and difficult to fathom that, in the Commission's view, the implementation of the organised crime function has always been vulnerable to legal challenge.³³

The CCC raised another problem associated with the current definition and that is the limited range of offences in Schedule 1 of the CCC Act which can be used to invoke the exceptional powers:

The listed offences tend to reflect the traditional concept of organised crime and it is clear from the parliamentary debates to the CIEPFR Act that the legislation was targeted primarily at the 'bikies' and drug traffickers - the two classes of people regarded as likely to be involved in organised crime.³⁴

The CCC said that the modern organised crime environment involves criminal networks that operate far more fluidly. The current definition of organised crime:

...prevents the proper investigation of the range of offences in which organised crime elements engage. For example, conspiracy is not included in the list yet is an offence widely considered by many,

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- 30 AustLII, *Corruption and Crime Commission Act 2003 - SECT 3*, nd. Available at: www.austlii.edu.au/au/legis/wa/consol_act/cacca2003338/s3.html. Accessed on 11 March 2014.
- 31 Submission No. 1 from Corruption and Crime Commission, 19 February 2014, p19.
- 32 AustLII, *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002- Sect 3*, nd. Available at: www.austlii.edu.au/au/legis/wa/num_act/cipafra200221o2002719/s3.html. Accessed on 20 March 2014.
- 33 Submission No. 1 from Corruption and Crime Commission, 19 February 2014, p20.
- 34 Ibid.

*including the Police, to be engaged in by persons involved in organised crime.*³⁵

In responding to the recommendations contained in the JSCCC in the 38th Parliament Report 10, the then-Attorney General, Hon Christian Porter, said that the Government proposed to prepare a Bill and:

*Such a Bill would introduce amendments to the CCC Act to confer on the Corruption and Crime Commission an organised crime investigative function, enabling the Corruption and Crime Commission an increased jurisdiction to assist police investigations into organised crime.*³⁶

The *Corruption and Crime Commission Amendment Bill 2012* was introduced on 21 June 2012 by the Premier, Hon Mr Colin Barnett, but it did not pass through Parliament before the 2013 State election.³⁷ The Bill proposed a new definition of organised crime:

6A. Organised crime

(1) Organised crime is the activities of a group (however organised and whether or not having an identifiable organisational structure) of 2 or more persons (whether or not all or any of those persons are in the State) who act in concert for the purpose of committing one or more serious offences.

*(2) For the purposes of subsection (1), a serious offence is an offence punishable by 2 or more years' imprisonment.*³⁸

The CCC Commissioner, Mr Roger Macknay QC, confirmed to the Committee that he had conversations with the then-Attorney General and special counsel Mr Robert Cock, QC, in relation to drafting the *Corruption and Crime Commission Amendment Bill 2012*.³⁹

The police were significantly involved in that process:

...they were not left out at all. I think it is not without relevance that no change was apparently sought, as far as I am aware, or certainly no

35 Ibid.

36 Hon Christian Porter, MLA, Attorney General, Letter, 18 May 2011, p2.

37 Parliament of WA, *Corruption and Crime Commission Amendment Bill 2012*, 2012. Available at: www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=5BE1B95B35BF034348257A240011530E. Accessed on 11 March 2014.

38 Parliament of WA, *Corruption and Crime Commission Amendment Bill 2012*, 2012. Available at: [www.parliament.wa.gov.au/Parliament/bills.nsf/5BE1B95B35BF034348257A240011530E/\\$File/Bill275-1.pdf](http://www.parliament.wa.gov.au/Parliament/bills.nsf/5BE1B95B35BF034348257A240011530E/$File/Bill275-1.pdf), p52. Accessed on 11 March 2014.

39 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p3.

Chapter 1

*change was made to that part of the process [getting a finding from the CCC], but rather it was the definition that was changed.*⁴⁰

During this current inquiry, both Mr Macknay and Dr O'Callaghan raised the issue of the definition of organised crime as being a factor limiting the current use of Part 4 powers by WAPOL. Their evidence on this, and other limiting factors, are detailed in Chapters 2 and 3 below.

Finding 3

The previous State Government introduced a Bill to Parliament in 2012 to amend the *Corruption and Crime Commission Act 2003* (the CCC Act) which included an amendment to the definition of organised crime that had been developed with the assistance of the Commissioner of Police and the Commissioner of the Corruption and Crime Commission. This proposed amendment would have implemented the recommendations of this Joint Standing Committee in the previous two Parliaments, and the Archer statutory review of the CCC Act.

40 Ibid.

Chapter 2

Evidence on strategies to increase the use of the Part 4 powers

I think on a scale one to three, the first thing [to change] is the legislative change, the second is the process itself and the third would be, if possible, to address the cost issues. Dr Karl O'Callaghan, Police Commissioner.

Introduction

WA Police's (WAPOL) Deputy Commissioner, Mr Chris Dawson, confirmed to the Committee that the last time that WAPOL applied for powers to hold a coercive hearing under the *Corruption and Crime Commission Act 2003* was in April 2012. It was refused by the Corruption and Crime Commission (CCC).⁴¹ The last time that WAPOL applied to the CCC for a fortification warning notice was in January 2011. This was approved.⁴² Since these applications WAPOL has instead applied to the Australian Crime Commission for approval for coercive hearings with suspected organised crime participants. In its submission to this Inquiry, the CCC said:

*The powers are exercised on a rather infrequent and sporadic basis with the Commission receiving a total of three applications and making two findings in the past three financial years.*⁴³

There were no applications made for Part 4 powers under the CCC Act in 2003 and 2004. A listing of WAPOL's 13 applications between 2005 and 2013, of which 11 were successful, are included in Appendix One.

The most widely exercised exceptional power by WAPOL has been to conduct coercive examinations, as shown in Table 1 below.⁴⁴ WA Police have never requested the use of the powers for assumed identities or integrity testing programs.⁴⁵

41 Mr Chris Dawson, Deputy Commissioner, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, p3.

42 Ibid.

43 Submission No. 1 from Corruption and Crime Commission, 19 February 2014, p3.

44 Ibid, p9.

45 Ibid, p10.

Chapter 2

Table 1- WAPOL's use of Part 4 Division 2 powers- coercive examinations [as at 19 February 2014]⁴⁶

Financial year	Persons examined	Days of examination
2003/04	0	0
2004/05	15	6
2005/06	0	0
2006/07	0	0
2007/08	0	0
2008/09	21	14
2009/10	2	2
2010/11	41	13
2011/12	0	0
2012/13	0	0
2013/14	0	0
TOTAL	79	35

Finding 4

The Corruption and Crime Commission has received no applications from WA Police for the use of the exceptional powers provisions contained within the *Corruption and Crime Commission Act 2003* in this and the previous two financial years.

Main priorities for change to the CCC process

The Police Commissioner told the Committee that there were three main issues that, if they were changed, would enable WAPOL to apply “more often” for the CCC Act’s Part 4 powers:

- the definition of organised crime under the CCC Act;
- the process used by the CCC, which “is overly legalistic and complex, and it makes it difficult for Police to mount an application”; and
- the cost of the CCC process, “which is expensive”.⁴⁷

Dr O’Callaghan confirmed for the Committee that of these, his priorities were:

*I think on a scale one to three, the first thing is the legislative change, the second is the process itself and the third would be, if possible, to address the cost issues.*⁴⁸

46 Ibid, p8.

47 Dr Karl O’Callaghan, Commissioner, WA Police, *Transcript of Evidence (Closed)*, 13 November 2013, p7.

48 Ibid, p8.

The CCC Commissioner proposed that Part 4 of the CCC Act needed to be amended if WA Police were to be encouraged to make greater use of the exceptional powers provisions. These amendments would need to:

- *expand the breadth of offences which can be investigated using the exceptional powers;*
- *expand the scope of the powers so they may be used to investigate offences that are likely to occur;*
- *simplify the overall definition of "organised crime"; and*
- *provide the Commission with the capacity to provide legal, analytical and technical support in the preparation for and conduct of examinations.*⁴⁹

Finding 5

The Police Commissioner provided evidence to the Committee that the chief impediments to the regular, efficient and effective use by WA Police (WAPOL) of the Part 4 powers contained in the *Corruption and Crime Commission Act 2003* (the CCC Act) were:

- the definition of organised crime in the CCC Act;
- the application process required by the Corruption and Crime Commission for WAPOL to follow; and
- the cost to WAPOL of using the current Commission process.

The definition of organised crime in the CCC Act

Deputy Commissioner Dawson said that the main reason why WAPOL had not applied for the use of Part 4 powers more often was “the historical legacy primarily associated with the definition of organised crime within the Act.”⁵⁰ An overview of the efforts of the JSCCC in the 37th and 38th Parliaments to have the Government amend the definition in the CCC Act was provided in Chapter 1 above. Importantly, both the Corruption and Crime Commissioner, Mr Roger Macknay QC, and the Police Commissioner, Dr Karl O’Callaghan, worked with the then-Attorney General in drafting a new definition of organised crime within the *Corruption and Crime Commission Amendment Bill 2012*.

49 Submission No. 1 from Corruption and Crime Commission, 19 February 2014, p27.

50 Mr Chris Dawson, Deputy Commissioner, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, p2.

Chapter 2

The CCC Commissioner and the Police Commissioner agreed on the importance of amending the definition of organised crime within the CCC Act if WAPOL was to make greater use of the Part 4 powers. Mr Macknay told the Committee:

... it seems very much that the most significant factor, in my view at least...is that the definition of organised crime is really very convoluted and an extremely high bar to achieve, and if there was going to be one relatively simple step taken that is likely to make the option of coming to us far more attractive, in my view at least, it would be to change the definition.⁵¹

Finding 6

An amended definition of organised crime within the *Corruption and Crime Commission Act 2003* (the CCC Act) would encourage WA Police to make greater use of the Part 4 powers in the CCC Act.

One of the main reasons why WAPOL turns to the ACC for the powers to hold coercive hearings was that the current definition in the CCC Act does not allow WAPOL to apply for Part 4 powers where it suspects a crime is about to be committed:

...if the definition were broadened to include suspected crime or crime that may be about to occur or is likely to occur, ..., our intelligence and/or evidence that we collect can often lead us to very firm grounds to make an application ..., we could put that before a Commission to say we have got strong intelligence and/or evidence that a crime is suspected or about to be committed. That would be very useful to interdict crime.⁵²

The Police Commissioner outlined other limitations of the current definition:

It does not include ancillary offences, which ... [are] acts that contribute to the commission of the crime such as aiding or procuring; that would assist us as well. The definition does not include an incidental offence, which would enable the investigation of an offence that is directly or indirectly connected with or may be part of a course of activity involving the commission of an offence.⁵³

51 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p2.

52 Mr Chris Dawson, Deputy Commissioner, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, pp6-7.

53 Dr Karl O'Callaghan, Commissioner, WA Police, *Transcript of Evidence (Closed)*, 13 November 2013, p7.

The definition of organised crime developed by Dr O'Callaghan and the then-CCC Commissioner, Hon Len Roberts-Smith RFD QC, for an inquiry by the JSCCCC in the 37th Parliament included the following definition of ancillary and incidental offences as part of a new definition of organised crime:

Ancillary Offence

ancillary offence, in relation to an offence (the **primary offence**), means:

- (a) an offence of conspiring to commit the primary offence; or
- (b) an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of the primary offence; or
- (c) an offence of attempting to commit the primary offence.

Incidental Offence

If the head of an (sic) CCC operation/investigation suspects that an offence (the incidental offence) that is not a relevant crime may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a relevant crime (whether or not the head has identified the nature of that (relevant crime), then the incidental offence is, for so long only as the head so suspects, taken, for the purposes of this Act, to be a relevant crime.

Relevant crime has the meaning prescribed under s.4(1) of the Australian Crime Commission Act 2002 (Cth) as follows:

relevant crime means:

- (a) serious and organised crime; or
- (b) Indigenous violence or child abuse.⁵⁴

54 Joint Standing Committee on the Corruption and Crime Commission, *Inquiry into Legislative Amendments to the Corruption and Crime Commission Act 2003 - The Role of the Corruption and Crime Commission in Investigating Serious and Organised Crime in Western Australia*, 15 November 2007, pp65-66. Available at: www.parliament.wa.gov.au/LACO%20pdfs/report31/JSCCCC%20Report%2031.pdf. Accessed on 11 March 2014.

Chapter 2

Recommendation 1

The Attorney General should amend the definition of organised crime within the *Corruption and Crime Commission Act 2003*. A new definition should allow WA Police to apply for Part 4 powers to include suspected crime or a crime that is likely to occur.

The complexity of the current application process

The Police Commissioner outlined to the Committee how WAPOL had made 13 applications to hold coercive hearings since 2002 to the Australian Crime Commission (ACC) for powers under the *Australian Crime Commission Act 2002* (ACC Act).⁵⁵ This is the same number it has made to the CCC. The ACC requires applications to address one of the national determinations established by its Board but they do not have to be a federal offence.⁵⁶ A list of the applications that WAPOL have made to the ACC is included in Appendix Two.

Finding 7

WA Police has made 13 applications since 2002 to the Australian Crime Commission to hold coercive hearings using powers contained in the *Australian Crime Commission Act 2002*. This is the same number of applications for exceptional powers it has made to the Corruption and Crime Commission.

The complexity of the CCC process does not finish once an application has been made by WAPOL. In its submission the CCC said that a “finding in and of itself does not automatically enable the police to exercise the powers” as in most cases preconditions must still be met:

before an examination can be held, the Commissioner of Police must apply for an organised crime summons pursuant to sections 48 and 96 of the CCC Act;

before a controlled operation can be conducted, the WA Police must present a proposal to the Commission for the authority to conduct a controlled operation addressing the matters listed in section 121(3) and 122 of the CCC Act;

55 AustLII, *Australian Crime Commission Act 2002*, nd. Available at: www.austlii.edu.au/au/legis/cth/consol_act/acca2002289/. Accessed on 17 March 2014. The commencement of the ACC Act coincided with the repeal of the *National Crimes Commission Act 1982*.

56 Mr Scott Higgins, Acting Commander, State Crime WA Police, *Transcript of Evidence (Public)*, 13 November 2013, p9.

*before an assumed identity can be authorised, an application for assumed identity approval must be submitted for the Commission's approval.*⁵⁷

Additionally, WAPOL's exercise of any of the powers in Divisions 3 to 5 may be limited by the CCC under section 51 of the CCC Act. The CCC may also revoke an exceptional powers finding at any time by notice to the Commissioner of Police.⁵⁸

Determinations under the ACC Act

Under sections 7C(2) and 7C(3) of the ACC Act, the Board of the ACC may make a determination, in writing, that an intelligence operation is a special operation, or an investigation into matters relating to a federally relevant criminal activity is a special investigation. Before making these determinations, it must consider whether ordinary police methods of investigation are likely to be effective. Such a special determination has effect immediately after it is made (section 7C(6)) and the Chair of the ACC Board must within the period of seven days give a copy of the determination to the ACC's Inter-Governmental Committee (IGC) (section 7C(5)). The IGC is composed of the Federal and State ministers (section 8(1)).

Under section 7C(4), a special determination must:

- a) describe the general nature of the circumstances or allegations constituting the federally relevant criminal activity; and
- b) state that the relevant crime is, or the relevant crimes are or include, an offence or offences against a law of the Commonwealth, a law of a Territory or a law of a State but need not specify the particular offence or offences; and
- c) set out the purpose of the operation or investigation.⁵⁹

The applications to the ACC do not need to be for an actual offence, but a crime being investigated by WAPOL has to fall within one of these determinations.⁶⁰ The Committee was told by WAPOL that this type of process was also more useful to WAPOL from an intelligence gathering point of view.⁶¹

57 Submission No. 1 from Corruption and Crime Commission, 19 February 2014, p6.

58 Ibid.

⁵⁹ AustLII, *Australian Crime Commission Act 2002*, nd. Available at: www.austlii.edu.au/au/legis/cth/consol_act/acca2002289/s7c.html. Accessed on 17 March 2014.

60 Australian Crime Commission, *Determinations*, nd. Available at: www.crimecommission.gov.au/organised-crime/determinations. Accessed on 17 March 2014.

61 Mr Scott Higgins, Acting Commander, State Crime, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, p9.

Chapter 2

Less-complex process using the ACC

WAPOL told the Committee that the process for approaching the ACC for exceptional powers was less-complex than for applying to the CCC:

There is no affidavit. The grounds are pretty much the same as those that would be needed for a search warrant, which is why you have to satisfy it to a legal level, but you do not have to look at 30 or 40 pages of affidavit and associated documentation, which is what is required by the CCC.⁶²

The current process used by the CCC was established in June 2011 by then-Acting Commissioner Herron. It is more formal than the previous process used by the CCC which required the Police Commissioner to provide the CCC with a covering letter and a statutory declaration annexing all relevant exhibits.⁶³

While the ACC process was now being used by WAPOL instead of using the CCC Act, the Police Commissioner said that the CCC Act needed to work properly as the ACC determinations do not cover every criminal situation faced by WAPOL.⁶⁴

The CCC Commissioner, Mr Roger Macknay QC, agreed with comments made by the Police Commissioner to the Committee that WAPOL's enthusiasm for use of the ACC process was partly explained by the fact that the ACC provide counsel. Mr Macknay told the Committee that the ACC "do everything, essentially":

I think the Western Australia Police officer turns up and provides an indication of what it is they are interested in and the ACC go away, do the analysis, intelligence, brief counsel and run the thing, yes.⁶⁵

The Police Commissioner detailed for the Committee the actual process they use in applying to the ACC:

...the ACC Act provides for the use of examinations which are held in private before an Examiner and during which witnesses can be compelled to answer particular questions (ACC Examinations). For WA Police to make use of the ACC examination process, it is necessary for

62 Ibid, p8.

63 Joint Standing Committee on the Corruption and Crime Commission, *Revocation of Exceptional Powers*, 29 March 2012, p3. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/A13A7FBFD844FE5A482579D0000B8716/\\$file/20120321+JSCCCC+38th+Parl+Report+no+26+Revocation+of+exceptional+powers+\(3\).pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/A13A7FBFD844FE5A482579D0000B8716/$file/20120321+JSCCCC+38th+Parl+Report+no+26+Revocation+of+exceptional+powers+(3).pdf). Accessed on 31 March 2014.

64 Dr Karl O'Callaghan, Commissioner, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, p10.

65 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p4.

WA Police to refer the matter to the ACC. For the referral to be accepted, the matter for examination must fall within the parameters of an existing Special Investigation or Special Operation Determination. The matter is then given an operational name.

Once the referral is accepted, and the operation is established, the ACC will prepare the witness summons on behalf of the WA Police. WA Police is expected to provide sufficient material to ensure that the summons is both lawful and reasonable in the circumstances.

Once the Examiner has signed the summons, it is served on the witness.

During the ACC Examinations, Counsel Assisting, who is a member of ACC staff, is tasked with assisting the Examiner. During the Examination, Counsel Assisting will ask the majority of questions, however it is still expected that the referring agency staff are present and instruct Counsel Assisting accordingly.⁶⁶

Length of time to complete the CCC and ACC processes

WAPOL's Deputy Commissioner outlined the need for a speedy process to acquire these powers:

If a very serious crime has just occurred, you do not want to wait for days and days and days to hear long legal procedural argument. ...

You have gathered the evidence and then you set it out in a full prosecution brief. ... In the case of CCC applications, a lot of that work done is prior to the examination so you do not have the luxury of time on your side; ... you need to get it done within a tight time frame because evidence might be escaping, persons might be fleeing the State or further offences could be being committed. Time is of the essence in a lot of these operations.⁶⁷

The CCC, however, disagreed that affidavits required for applications for Part 4 powers needed to be long and complex. The Commission explained to the Committee the CCC's goal of processing applications within two weeks, "ideally sooner than that", and reported that the formal documentation submitted to the Commission by WAPOL in its last application was an affidavit which ran to 75 pages. This made it difficult for the CCC to process the application within a two-week period as "there was too much material

66 Dr Karl O'Callaghan, Commissioner, WA Police, Letter, 25 November 2013, pp2-3.

67 Mr Chris Dawson, Deputy Commissioner, WA Police, *Transcript of Evidence (Closed)*, 13 November 2013, p1.

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provided.” This delayed the Commission’s response longer than their goal of two weeks as they had to analyse the material against the Commission’s criteria.⁶⁸

The CCC’s Director of Operations was previously employed at WAPOL. He provided evidence that during the height of WAPOL’s Jupiter task force activities, an application was made by WAPOL that consisted of “a one-page application to the [CCC] Commissioner and then I gave oral testimony.”⁶⁹

The Police Commissioner took on notice a request to gather WAPOL’s experience in how long it took to apply to the CCC for exceptional powers. He responded to the Committee:

We have been unable to determine exactly how long each decision took to deliver, due to the 8-year time frame over which these applications were made, and the varying manner in which the investigative actions were recorded.

However, anecdotal evidence from several investigators indicates that on average, a decision was provided within one week. Their recollections were that the major delay was in the preparation of the applications, including negotiations with CCC management and counsel. Once an application was submitted, a response was reasonably prompt.⁷⁰

The CCC highlighted to the Committee that the ACC process had the potential for taking longer than the CCC’s process:

You have to rely on them having an examiner, having a determination and able to work in to their calendar. That does not facilitate good investigation strategies within WA—within our jurisdiction—because you do not have the flexibility to bring forth matters when it suits your investigation concept.⁷¹

The likely problems in WAPOL using the ACC process particularly related to their provision of examiners for coercive hearings. ACC examiners are based in the eastern states and work for the ACC, it is understood, on a sessional basis, and the CCC

68 Mr Paul O’Connor, Director Legal Services, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, pp5-6.

69 Mr Kim Papalia, Director Operations, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p6.

70 Dr Karl O’Callaghan, Commissioner, WA Police, Letter, 25 November 2013, p6.

71 Mr Kim Papalia, Director Operations, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p8.

Commissioner said that “I suppose it would be a matter of finding somebody who has got some time in his diary, so to speak—or her diary.”⁷²

Another problem with the ACC process, as proposed by the CCC, was that the CCC Act and the ACC Act had different purposes.

The CCC Commissioner said:

An examination under our Act— the evidence has the same status as it would with a public or private hearing run by us in that if somebody gives evidence before us and then goes into a court and gives different evidence, what was said before us can be used as evidence as a prior inconsistent statement. That is not the situation with the ACC. What is said to an examiner in the ACC cannot be used elsewhere. ...

Except for proceedings for perjury... It is only in relation to an allegation that evidence was false that that evidence can be produced. To that extent, it is a hearing process of a slightly different nature and I suppose it is perhaps more of an intelligence-gathering process, whereas, as I say, ours does have that dual as well as being an intelligence process, it locks people in to a story, if they are ever going to give evidence in court anyway.⁷³

The Commission said a specific advantage of using the CCC process was that:

...within a day, or even sometimes on the same day, we [WAPOL] would be provided transcripts because it was perceived as being a WA Police process as opposed to the ACC. With all candour, you may wait six months before receiving a transcript from the ACC, and then you may not receive it at all, if they determine they will not give it to you.⁷⁴

In its submission to the Inquiry, the CCC identified an important advantage to WAPOL of using the process under the CCC Act as “the investigation remains a WA Police investigation” while under the ACC Act the investigation is jointly run with the ACC.⁷⁵

The submission, however, also listed the advantages to WAPOL of using the ACC as:

- *the ACC's definition of "serious and organised crime" is simpler to work with and encapsulates a broader range of offences;*

72 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p9.

73 *Ibid*, p4.

74 Mr Kim Papalia, Director Operations, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p8.

75 Submission No. 1 from Corruption and Crime Commission, 19 February 2014, p13.

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- *the ACC's powers can be used to investigate offences which have not yet occurred ("may in future be committed");*
- *the ACC's powers can be used to investigate cross-border offences; [and]*
- *the ACC's powers can be used for intelligence operations.*⁷⁶

Finding 8

WA Police are currently utilising the power to hold coercive examinations from the Australian Crime Commission due to its less-complex and perceived more-timely outcome than the process used by the Corruption and Crime Commission.

The cost of the process

The Police Commissioner explained to the Committee that one of the main differences between the process that was needed to comply with the CCC Act compared to the ACC Act was the cost to WAPOL of obtaining external legal representation for undertaking the examinations of the witnesses:

*If you apply to the ACC, it pays for counsel. If you get senior counsel in WA to do this for you, it is very, very expensive. That is an issue for us. It also provides analysts for us as well, which the CCC does not do. There is a substantial cost to making an exceptional powers application. It is not the determinant of going to the ACC, but it is a factor we take into account obviously.*⁷⁷

The Deputy Commissioner explained that internal counsel are used on some occasions, "but they are not always sufficiently senior. We do not have any QCs on our internal staff."⁷⁸ The Police Commissioner said there was a need for obtaining counsel from the independent bar to appear for WAPOL during the examinations:

We also do that on advice from the State Solicitor because they ultimately determine how we go into those sorts of scenarios. We get advice and do what they ask. They are also keen that when we go in we do not lose. We are actually looking for the best possible counsel.

⁷⁶ Ibid, p14.

⁷⁷ Dr Karl O'Callaghan, Commissioner, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, p8.

⁷⁸ Mr Chris Dawson, Deputy Commissioner, WA Police, *Transcript of Evidence (Closed)*, 13 November 2013, p3.

Within the employment scope of the Western Australia Police you can only employ counsel at a certain level.⁷⁹

In answer to a question on notice following his hearing, Dr O'Callaghan confirmed that counsel is not used during the application to the CCC for exceptional powers as:

... the process for an application for CCC exceptional powers is usually dealt with "on the papers" provided by WA Police and heard in chambers by the CCC Commissioner. There is no requirement for a formal appearance by senior counsel at that stage and the legal negotiations are carried out by internal WA Police legal officers.⁸⁰

He also provided the following information about the costs of using the CCC process to examine witnesses, during which WAPOL utilise the services of external senior counsel:

Changes in WA Police financial accounting processes over the past eight years mean that the manner in which payments to external legal counsel were recorded has also changed. Accordingly, it has proved extremely difficult to provide a definitive figure on costs to WA Police for the exceptional powers.

By way of indicative figures, WA Police paid \$60,600 to external legal counsel to appear and represent the Commissioner of Police in the hearings held between December 2010 and February 2011 in respect of the investigation into the fracas at the Kwinana Motorplex.

A sum of \$5,000 was paid for legal expenses incurred in the coercive hearing held 11 June 2009, although I am unable to confirm whether that is the total cost incurred for legal expenses for that matter.⁸¹

In its submission, the CCC noted that one of the problems with WAPOL engaging external counsel was that they tended to be conducting examinations of this kind for the first time. Given the CCC's quasi-judicial role under the CCC Act, it is precluded from providing assistance to WAPOL, such as training counsel to undertake examinations and represent the Commissioner of Police, to any greater extent than it already does.⁸²

The CCC said:

It would be ideal if the police were able to brief the same barristers at the bar each time they applied for the use of these powers. However

79 Dr Karl O'Callaghan, Commissioner, WA Police, *Transcript of Evidence (Closed)*, 13 November 2013, p4.

80 Dr Karl O'Callaghan, Commissioner, WA Police, Letter, 25 November 2013, p2.

81 Ibid.

82 Submission No. 1 from Corruption and Crime Commission, 19 February 2014, p24.

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*experience has shown that the quality of counsel is dependent on whoever is available to conduct the examination at that particular time. This means that counsel may not always be knowledgeable in how best to utilise the coercive examination power to maximum advantage.*⁸³

The CCC suggested that it was open for WAPOL to “utilise their own legal officers in an organised crime examination and build up the skills and knowledge from within the agency.” The CCC had recently, as part of the implementation of a formal application procedure, developed:

*...an information sheet which was intended to provide any police officer new to exceptional powers with a clearer understanding of the CCC Act's requirements and the Commission's expectations when making an application.*⁸⁴

The CCC proposed that the current process, and subsequent greater use by WAPOL, could be improved if the CCC Act was amended:

*...to enable the Commission to facilitate and support police access to and use of the powers to assist its investigations. This would include providing relevant advice and support to enable the effective preparation for and conduct of examinations to include briefing and the providing of Counsel Assisting. Police would retain overall responsibility for the conduct of the relevant investigations.*⁸⁵

Finding 9

The Corruption and Crime Commission (CCC) has recommended that the *Corruption and Crime Commission Act 2003* be amended to allow the CCC to facilitate and support WA Police's access to and use of the Part 4 exceptional powers to assist its investigations by allowing the CCC to provide relevant advice and support to WA Police to enable it to effectively prepare for and conduct coercive examinations.

The CCC, in performing its functions under the organised crime functions of the CCC Act, operates as the ‘gatekeeper’ of these exceptional powers. This provides independence and impartiality to ensure that the law is being properly adhered to.

83 Ibid, p23.

84 Ibid.

85 Ibid, 26.

This position was affirmed by Commissioner Macknay when he agreed with the Committee Chairman's description of the role of 'gatekeeper', by saying:

[t]he Act, as it is presently drawn, creates what has previously been described as a quasi-judicial hearing in which the Commission does, as you rightly point out, act as a gatekeeper, if you like, an impartial umpire, for the purposes of the proceeding. Certainly, the ACC is quite different to that.⁸⁶

Police culture

The CCC Commissioner proposed to the Committee that a number of factors contribute to the lack of use of the exceptional powers provisions of the CCC Act by WAPOL:

In part, we would suggest that it is police culture because of the unusual nature of the required activity. It [the use of exceptional powers] is something that is not likely to be at the forefront of the mind of an investigating operational police officer.⁸⁷

Another aspect of police culture and the ACC processes was raised by the CCC Commissioner with the Committee:

...the Corruption and Crime Commission is an independent body. The ACC is a law-enforcement agency with embedded police officers. So within the ACC model you have Western Australian police officers attached, so there is a personal relationship there to facilitate engagement to ascertain whether a determination will meet the requirements of your investigation on this case. That contributes to decisions about where you go. It is by no means problematic to go to the ACC. You have to rely on them having an examiner, having a determination and able to work in to their calendar.⁸⁸

In September 2009 the Police Commissioner confirmed to the JSCCCC in the 38th Parliament that there were aspects of police culture at play. He said WAPOL was making substantially more applications to the CCC for access to exceptional powers and this was increasing the cooperation between WAPOL and the CCC. He said:

Something like 29 coercive hearings have been implemented since we put Operation Jupiter on the ground. Operation Jupiter has been the catalyst for increasing the cooperation between Western Australia

86 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p4.

87 *Ibid*, p2.

88 *Ibid*, p8.

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Police and the Corruption and Crime Commission. It is fair to say that in the early days there was a reticence for the two agencies to work together. The police were not accessing the powers. There were issues of trust, issues of perceived competence and, I suppose, issues of culture to stop those things from occurring.

Since Jupiter has been in place, we have sought extraordinary powers under division 2, the examination of witnesses before the commission; division 3, the power of entry, search and related matters; and division 5, the power to undertake controlled operations. ...Jupiter has made six applications for a full suite of powers, all of which have been granted.⁸⁹

Finding 10

Historically, one reason why WA Police have preferred applying to the Australian Crime Commission for the power to hold coercive hearings is police culture and the tensions raised when working with the Corruption and Crime Commission.

Powers to remove fortifications

WAPOL gave evidence to the Committee that the Part 4 Division 6 powers for them to apply to the CCC for a fortification warning notice were “useful” as they were not a power they could apply to the ACC for. They have, however, only been used twice (in 2004 and 2011) because the organisations which had fortified premises were “by their very nature, quite litigious. They exercise all court avenues open to them.”⁹⁰

WAPOL has identified one shortcoming in the CCC Act in regard to fortifications and that was the Act does not prevent organisations replacing fortifications once they have been removed by police:

...there is nothing to prevent a party, once having complied with a fortification [warning notice]— if they have complied, it could simply be reconstructed the following day, and [police] would then have to make a fresh application again. So that, of itself, is very problematic.⁹¹

89 Dr Karl O’Callaghan, Commissioner, WA Police, *Transcript of Evidence*, 23 September 2009, p7.

90 Mr Chris Dawson, Deputy Commissioner, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, pp3-4.

91 *Ibid*, p4.

The Police Commissioner told the Committee that an amendment to the CCC Act to address the issue of re-fortification of premises, “I would not think it is a major priority for us?”⁹²

Finding 11

Fortification warning notices in Part 4 Division 6 of the *Corruption and Crime Commission Act 2003* are a useful power for WA Police actions against organised crime groups.

Finding 12

It is a shortcoming of the *Corruption and Crime Commission Act 2003* that it fails to discourage organised crime groups from re-fortifying premises previously dismantled by WA Police.

Recommendation 2

The Attorney General amend the *Corruption and Crime Commission Act 2003* to prevent the re-fortification of premises previously dismantled by WA Police.

CCC efforts to overcome WAPOL reticence in using Part 4 powers

The CCC Commissioner told the Committee of various initiatives to educate WAPOL officers about the process to apply for exceptional powers under Part 4 of the CCC Act. This included him meeting the Commissioner of Police following which Dr O’Callaghan invited Ms Michelle Harries, the CCC’s general counsel, to address a formal gathering of senior police officers in relation to the issue.⁹³

The CCC’s Director Legal Services, Mr Paul O’Connor, has also had follow-up meetings of staff from WAPOL’s legal services. He has also met with the head of WAPOL’s Police Intelligence and Information Division on several occasions to discuss the Part 4 process.⁹⁴ Mr O’Connor also said:

There have been instances over recent years where [WAPOL] gang crime officers have come to us and said that they are thinking about [an] exceptional powers application or they would like some coercive hearings. We took them through the steps in relation to the legislation and offered them general guidance whilst maintaining some separation in terms of us not preparing documents for them but providing quite specific guidance. ...

92 Dr Karl O’Callaghan, Commissioner, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, p4.

93 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p9.

94 Mr Paul O’Connor, Director Legal Services, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p9.

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*In January this year I was invited to give a presentation to a conference at the Police Academy organised by the organised crime branch. ... and tried to address some of the perceptions and demystify some of the processes. I think the lack of recent experience within police is aggravating their view of the process.*⁹⁵

The CCC said that in 2013 it worked with WAPOL and the ACC to prepare a “compare and contrast chart” setting out the processes of the CCC and the ACC to provide WAPOL with exceptional powers. This chart was prepared “as ... there is considerable lore around this and some perceptions persist [in WAPOL].”⁹⁶

The CCC Commissioner later clarified that the chart was “in fact a 12-page document entitled *Coercive-Type Hearings Information Guide: Corruption and Crime Commission Exceptional Powers or Australian Crime Commission Examinations.*”⁹⁷ The Committee was provided a copy of this information guide by the Police Commissioner.⁹⁸

95 Ibid.

96 Ibid.

97 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 17 March 2014, p1.

98 Dr Karl O’Callaghan, Commissioner, WA Police, Letter, 21 March 2014.

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Use of the *Criminal Investigation (Covert Powers) Act 2012*

We have had another look at that and the decision that I have made is that we will go beyond compliance. Mr Roger Macknay QC, CCC Commissioner.

Introduction

Since the enactment of the *Criminal Investigation (Covert Powers) Act 2012* (the CICIP Act)⁹⁹, many of the exceptional powers contained in Part 4 of the CCC Act are now available to WAPOL directly, leaving only the coercive examination, search and anti-fortification powers needing to be applied for from either the CCC or ACC.¹⁰⁰

Under the CICIP Act, the Commissioner of Police can authorise a controlled operation if a relevant offence has been, is being or is likely to be committed. In its submission, the CCC said that the CICIP Act offers three significant advantages over the CCC Act:

- *A controlled operation can be conducted in relation to a broader range of offences. A "relevant offence" in the CICIP Act is defined as "an offence against the law of this jurisdiction punishable by imprisonment for 3 years or more" or a prescribed offence (cf the discrete number of offences listed in Schedule 1 of the CCC Act).*
- *A controlled operation can be conducted in relation to an offence that is likely to be committed.*
- *The Commissioner of Police can authorise cross-border controlled operations.*¹⁰¹

Finding 13

The enactment of the *Criminal Investigation (Covert Powers) Act 2012* is another factor that has led to a reduction in applications from WA Police to the Corruption and Crime

99 AustLII, *Criminal Investigation (Covert Powers) Act 2012*, nd. Available at:

www.austlii.edu.au/au/legis/wa/num_act/cipa201255o2012456/. Accessed on 17 March 2014.

100 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p12.

101 Submission No. 1 from Corruption and Crime Commission, 19 February 2014, pp16-17.

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Commission for the use of exceptional powers contained in the *Corruption and Crime Commission Act 2003*.

Use of Covert Powers Act

In the year since the CICIP Act was given Royal Assent on 3 December 2012, the Police Commissioner has authorised 37 covert operations, which he said is more than the total number of exceptional power applications made to the CCC and the ACC in the nine years since 2005.¹⁰²

This number of approved covert operations under the CICIP Act is about 50% higher than the average for the eight years between 2004-11. Prior to the operation of the CICIP Act, police were undertaking covert operations under either the *Prostitution Act 2000*¹⁰³ or the *Misuse of Drugs Act 1981*.¹⁰⁴ Between 2004-11 there were on average 25 covert operations approved annually under these two Acts.¹⁰⁵ The WAPOL Deputy Commissioner explained the difference in the rate of approval since the CICIP Act commenced:

...the present legislation, effective from 1 March, also broadens it out to a more broad Criminal Code-type of operations. The types of operations which we have traditionally exercised powers, such as possession of drugs, to procure drugs and things like that, we would be able to do that under our previous operations which, as the commander has already said, were not required to be recorded as such.

*But there were also different exercises of powers where we get assumed identities. That is a power which we previously did not have and so the legislation brings that into focus as well. So there are other operations that have been authorised since 1 March that go beyond the Misuse of Drugs Act and the Prostitution Act, so they would be more broader powers.*¹⁰⁶

102 Dr Karl O'Callaghan, Commissioner, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, p5.

103 AustLII, *Prostitution Act 2000*, nd. Available at: http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/. Accessed on 17 March 2014.

104 AustLII, *Misuse of Drugs Act 1981*, nd. Available at: www.austlii.edu.au/au/legis/wa/consol_act/moda1981184/. Accessed on 17 March 2014.

105 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, Letter, 4 April 2014.

106 Mr Chris Dawson, Deputy Commissioner, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, p6.

The current procedure requires WAPOL investigators and:

...the State Intelligence Division to put in place the applications for controlled operations, so they are complying with the legislation up to that stage. I could not tell you exactly how many operations were run prior and after, but the legislation requires those applications to be submitted to the Deputy Commissioner [for approval].¹⁰⁷

CCC auditing of the use of the Covert Powers Act

The CACP Act requires the CCC to inspect WAPOL's records in order to determine the extent of its compliance with the CACP Act. The CCC Commissioner described the process used by the CCC to ensure WAPOL has complied with the CACP Act:

We are obliged as soon as practicable after 30 June, once we get the [Police Commissioner's] report, to do a report ourselves. We have done one of those and we also conduct on-site inspections on a quarterly basis. We provide an annual report, and then we carried out inspections in December last year and January this year of controlled operations documentation at WAPOL internal affairs and also WAPOL... special operations. That is the extent of our activities thus far.¹⁰⁸

The Commissioner said that the CCC had completed an annual report on this oversight function for WAPOL for the period to 30 June 2013, as well as for the ACC and the Department of Fisheries. The compliance reports for the ACC and the Department of Fisheries were tabled in Parliament on 26 November 2013 and 18 February 2014 respectively.¹⁰⁹ Neither of these agencies made use of the covert powers contained in the CACP Act during that period.

The WAPOL compliance report was tabled in Parliament on 1 April 2014. It shows that WAPOL approved 20 covert operations between 1 March -30 June 2013, five of which had concluded in that time.¹¹⁰

107 Mr Scott Higgins, Acting Commander, State Crime, WA Police, *Transcript of Evidence (Public)*, 13 November 2013, p5.

108 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p12.

109 Corruption and Crime Commission, November 2013. Available at: www.parliament.wa.gov.au/Test/Tables.nsf/screenLATabledPapersByDate?openform, Tabled Papers 1209 and 1280. Accessed on 21 March 2014.

110 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012 – Report for the Minister for Police*, November 2013. Available at: www.parliament.wa.gov.au/Test/Tables.nsf/screenLATabledPapersByDate?openform, Tabled Paper 1488. Accessed on 2 April 2014.

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The Committee notes that section 38(4) of the CICIP Act requires such reports to be tabled by the relevant Minister within 15 sitting days from the day on which the report is received by the Minister.¹¹¹ The Committee notes that the above mentioned reports do not identify the date that they were received by the relevant Minister, rather the reports are simply dated November 2013.

Recommendation 3

The Corruption and Crime Commission ensure that their annual compliance reports on the use of the *Criminal Investigation (Covert Powers) Act 2012* identify the date it has been provided to the relevant Minister.

The CCC did not envisage that its role in overseeing the use of powers within the CICIP Act by WAPOL would impact on the use of these exceptional powers by WAPOL¹¹², but the Commissioner told the Committee that:

*...there was a discussion about what policy we had adopted in relation to looking at these things, whether it would be compliance-based or whether it would be more than that. We have had another look at that and the decision that I have made is that we will go beyond compliance. I noted the concerns expressed by the Committee on the previous occasion and there will be a greater level of supervision, if you like, within the Commission than was previously intended in relation to these matters and a greater degree of oversight. In other words, the process that will be put in place will be for the Commissioner and others to be kept aware of matters where there is any degree of concern about them.*¹¹³

Finding 14

Corruption and Crime Commissioner Macknay has appropriately determined that the Commission's ongoing auditing of WA Police's self-authorized covert activities under the *Criminal Investigation (Covert Powers) Act 2012* will be rigorous and more than just compliance-based.

In light of this decision, the Committee will be maintaining a watching brief on the CCC's implementation of Commissioner Macknay's direction on their auditing process.

111 AustLII, *Criminal Investigation (Covert Powers) Act 2012*- Sect 38. Available at: www.austlii.edu.au/au/legis/wa/num_act/cipa201255o2012456/s38.html. Accessed on 2 April 2014.

112 Submission No. 1 from Corruption and Crime Commission, 19 February 2014, p18.

113 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence (Closed)*, 19 February 2014, p13.

Appendix One

WAPOL applications to CCC for exceptional powers, 2005-13

THE EXTENT OF THE USE OF PART 4 POWERS UNDER THE CORRUPTION AND CRIME COMMISSION ACT 2003

Between 2003 and 13 November 2013, WA Police has applied for exceptional powers findings on 13 occasions. Of these applications, 11 were granted and 2 were refused. There have been 2 successful applications under the anti fortification provisions.

APPLICATIONS FOR EXCEPTIONAL POWERS

	DATE OF DETERMINATION		PART 4 POWER	COMMENT
1	25/02/2005	granted	Coercive Hearings	Operation Gift
2	30/07/2008	granted	Controlled Operation Search Powers	Operation Surgeon
2a	18/12/2008	extension	Controlled Operation Search Powers	Operation Surgeon
3	27/10/2008	granted	Coercive Hearing Search Powers Controlled Operation	Operation Vulture
4	27/10/2008	granted	Coercive Hearing Search Powers Controlled Operation	Operation Seahawk
5	27/03/2009	granted	Coercive Hearings Search Powers Controlled operations	Operation Seahawk 6
6	11/06/2009	granted	Coercive Hearings	Operation Gumboot
7	04/09/2009	granted	Coercive Hearings	Operation Condor 13
8	16/09/2009	granted	Coercive Hearings	Operation Condor
9	26/03/2010	granted	Coercive hearings	Operation Maplesville
10	02/05/2010	not granted	Coercive hearings	Operation Hecate
11	24/01/2011	granted	Coercive Hearings	Operation Vulture 33
12	13/05/2011	granted	Search Powers	Operation Eagle
13	12/04/2012	not granted	Coercive Hearings	Operation Eagle 2

APPLICATIONS TO ISSUE FORTIFICATION WARNING NOTICES

1	31/03/2004	granted		
2	24/01/2011	granted		Operation Vulture 14

Appendix Two

WAPOL applications to the ACC for examinations, 2002-13

The Police Commissioner provided the following list of WAPOL applications to the ACC for examinations.¹¹⁴

USE OF THE EXAMINATION POWERS

	<u>Year</u>	<u>Topic</u>
1	2002 to 2006	Drugs
2	2003	Firearms
3	2005	Firearms
4	2006	Money Remitters
5	2007	OMCG
6	2007	Gang related shooting
7	2008	Drugs
8	2010	Drugs
9	2010	Card skimming
10	2010	Drugs
11	2010	Target Development
12	2012	Money Laundering
13	2013	Firearms

¹¹⁴ Dr Karl O'Callaghan, Commissioner, WA Police, Letter, 25 November 2013, p3.

Appendix Three

Definition of organised crime proposed by WAPOL and the CCC in 2007

The definition of organised crime proposed by WAPOL and the CCC to the JSCCCC 37th Parliament was:¹¹⁵

serious and organised crime means an offence:

- a) that involves 2 or more offenders and substantial planning and organisation; and
- b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
- c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and
- d) that is a confiscation offence within the meaning of the *Criminal Property Confiscation Act 2000*, an offence of a kind prescribed by the regulations or an offence that involves any of the following:
 - (i) theft;
 - (ii) fraud;
 - (iii) (state) tax evasion;
 - (iv) property laundering;
 - (v) illegal drug dealings;
 - (vi) illegal gambling;
 - (vii) obtaining financial benefit by vice engaged in by others;
 - (viii) extortion;

¹¹⁵ Joint Standing Committee on the Corruption and Crime Commission, *Inquiry into Legislative Amendments to the Corruption and Crime Commission Act 2003 - The Role of the Corruption and Crime Commission in Investigating Serious and Organised Crime in Western Australia*, 15 November 2007, pp63-65. Available at: www.parliament.wa.gov.au/LACO%20pdfs/report31/JSCCCC%20Report%2031.pdf. Accessed on 11 March 2014.

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- (ix) violence;
- (x) bribery or corruption of, or by, an officer of the State;
- (xi) perverting the course of justice;
- (xii) harbouring of criminals;
- (xiii) firearms;
- (xiv) armament dealings;
- (xv) fauna trafficking;
- (xvi) cybercrime;
- (xvii) paedophilia;
- (xviii) terrorism
- (xix) matters of the same general nature as one or more of the matters listed above; and

(da) that is:

- (i) punishable by imprisonment for a period of 3 years or more; or
- (ii) a confiscation offence within the meaning of the Criminal Property Confiscation Act 2000; but:

(e) does not include an offence committed in the course of a genuine dispute as to matters pertaining to the relations of employees and employers by a party to the dispute, unless the offence is committed in connection with, or as part of, a course of activity involving the commission of a serious and organised crime other than an offence so committed; and

(f) does not include an offence the time for the commencement of a prosecution for which has expired.

Appendix Four

Hearings

Date	Name	Position	Organisation
13 November 2013	Dr Karl O'Callaghan	Commissioner	WA Police
	Mr Christopher Dawson	Deputy Commissioner	
	Mr Scott Higgins	Acting Commander, State Crime	
19 February 2014	Mr Roger Macknay, QC	Commissioner	Corruption and Crime Commission
	Mr Mike Silverstone	Executive Director	
	Mr Paul O'Connor	Director Legal Services	
	Ms Michelle Harries	General Counsel	
	Mr Kim Papalia	Director of Operations	

Appendix Five

Committee's functions and powers

On 21 May 2013 the Legislative Assembly received and read a message from the Legislative Council concurring 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.