



***JOINT STANDING COMMITTEE
ON THE CORRUPTION AND CRIME
COMMISSION***

***ANALYSIS OF RECOMMENDED
REFORMS TO THE CORRUPTION AND
CRIME COMMISSION ACT 2003***

**Report No. 13
in the 38th Parliament**

2011

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Joint Standing Committee on the Corruption and Crime Commission

Analysis of Recommended Reforms to the *Corruption and Crime Commission Act 2003*

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CRIME COMMISSION ACT 2003***

Report No. 13

Presented by:

Hon Nick Goiran, MLC and John Hyde, MLA

Laid on the Table of the Legislative Council and Legislative Assembly
on 17 February 2011

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COMMITTEE'S FUNCTIONS AND POWERS

On 25 November 2008 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

CHAIRMAN'S FOREWORD

Section 226 of the *Corruption and Crime Commission Act 2003* requires that a review of its operation and effectiveness be carried out “as soon as practicable after the expiration of 3 years after its commencement.”¹ This requirement was met in March 2008, when a comprehensive report prepared by Gail Archer SC on proposed amendments to the Act was tabled in Parliament.

The report prepared by Ms Archer contained 58 recommendations concerning potential amendments to the Act. These recommendations ranged from the maximum tenure of Corruption and Crime Commission (CCC) staff to the jurisdiction of the CCC.

Since May 2009 the Committee has steadfastly worked its way through Ms Archer's report. This process has been undertaken in consultation with the Commissioner and senior staff members of the CCC, the Parliamentary Inspector and Ms Archer herself who, subsequent to the tabling of her report, has served as an Acting Commissioner of the CCC.

Accordingly, the following report is a summary of the responses of the Committee, the CCC and the Parliamentary Inspector to each of the 58 recommendations set out in Ms Archer's report.

The Committee supports 26 of the recommendations, and offers qualified support for a further nine recommendations contained within the report.

The Committee trusts that this report will prove to be a useful aid to Parliament, if and when the government seeks to amend the *Corruption and Crime Commission Act 2003*.

The Committee expresses its deep appreciation for the work performed by Ms Archer SC, whose report was extremely well researched and written.



HON NICK GOIRAN, MLC
CHAIRMAN

¹ *Corruption and Crime Commission Act 2003*, s 226.

GLOSSARY

Throughout this report, the *Review of the Corruption & Crime Commission Act 2003*, prepared by Ms Gail Archer SC and tabled in the Legislative Assembly on 18 March 2008, is referred to as the ‘Archer Report.’

MINISTERIAL RESPONSE

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Committee directs that 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.

CHAPTER 1 THE RECOMMENDATIONS

1.1 Recommendation 1 - The definition of 'misconduct'

(a) Archer Report recommendation

That the definition of misconduct in section 4 of the Act be clarified as follows:¹

Clarification of misconduct

That the definition of misconduct in section 4 of the Act be clarified.

CCC Act s 4 - Term "misconduct"

Misconduct occurs if — [...]

- (d) *a public officer engages in conduct that —*
- (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial proper performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
 - (ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial proper;*
 - (iii) *constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*
 - (iv) *involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,*
- and constitutes or could constitute —*
- (v) *an offence against the Statutory Corporations (Liability of Directors) Act 1996 or any other written law; or*
 - (vi) *a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

¹ Archer Report, p 17.

(b) CCC response

The CCC recommends an amendment to this recommendation, such that parts (v) and (vi) be deleted and replaced with the following:²

- (v) *a disciplinary offence that, if proved, could provide reasonable grounds for dismissal of a public service officer under the Public Sector Management Act 1994, or an offence against any written law;*
- (vi) *paragraph (v) applies whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct.*

(c) PI response

The Parliamentary Inspector agrees with the amendment suggested by the CCC.

(d) Committee response

The JSCCCC regards recommendation 1 to be obsolete (see Recommendation 43).

² Submission No. 1 from the Corruption and Crime Commission, 17 June 2009.

ORGANISED CRIME

1.2 Recommendation 2 - Establishment of a Reference Group

(a) Archer Report recommendation

That the Act be amended in accordance with Recommendations 5³ and 6⁴ of the JSCCCC Report No. 31.⁵

(b) CCC response

The CCC offers qualified support for this recommendation:

*This recommendation is supported by the CCC and is the subject of a report by a Working Group consisting of the Director of Public Prosecutions and senior staff from the Department of the Attorney General, State Solicitor's Office, CCC, WA Police and the Department of the Premier and Cabinet (now Public Sector Commission).*⁶

(c) PI response

The Parliamentary Inspector indicated he had no comment regarding this recommendation in his submission, but said the following in closed hearing:

The reason that I am reluctant to comment on it is really twofold. Firstly, it is a matter at the end of the day for Parliament and, secondly, I am not sure that I have enough information of the kind that I would like to have before giving an informed opinion of it.

³ JSCCCC Report 31 Recommendation 5 - That the *Corruption and Crime Commission Act 2003* be amended to enable the establishment of a reference group comprised of the Commissioner of Western Australia Police and the Commissioner of the Corruption and Crime Commission. The reference group will provide bipartisan support to serious and organised crime references and determine organised crime priorities and related terms of reference; and that provision be made for delegation of responsibility to the Acting Commissioner in exceptional circumstances when either the Commissioner of the Western Australia Police or the Commissioner of the Corruption and Crime Commission is unable to participate in a reference group meeting.

⁴ JSCCCC Report 31 Recommendation 6 - That the *Corruption and Crime Commission Act 2003* be amended to enable the Corruption and Crime Commission to have the necessary powers to conduct serious and organised crime investigations, either jointly with the Western Australia Police or independently, subject to bipartisan support from the reference group; and that without limiting the circumstances in which this may apply, this include:

- enabling the Corruption and Crime Commission to assist Western Australia Police in the conduct of crime examinations; and
- the pursuit of serious and organised crime encountered in the course of public sector misconduct.

⁵ Archer Report, p 43.

⁶ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

However, what seemed to me to be the issues with recommendations of this kind is the question of why it is necessary to have somebody other than the police have a function in respect of organised crime. Once that first answer has been identified, the second question is whether the Corruption and Crime Commission is the solution to the problem that has been identified. The other considerations that seem to me to be relevant when considering something like this are questions of efficiency. I think it is notorious that where two or three bodies have overlapping jurisdictions, there is often competition between them and in fact increased inefficiency, rather than greater effectiveness. As I understand the position, the mechanism that is designed to overcome that problem is the reference group, which consists of the Commissioner of Police and the Commissioner of the Corruption and Crime Commission. Whether that will work, I think I would have to say, I am not in a position to judge. I would like to know a lot more than I do about the background of the problems and about even the personalities, perhaps, before I could express any sensible opinion on that. Therefore, rather than express an opinion that may be not helpful, I would prefer to leave it to others.⁷

In closed hearing, the Commissioner of the CCC said the following regarding this recommendation:

As I understand it, we are not actually talking about powers here. Certainly, the joint proposal that was put by the commission and the police to the committee and both the previous government and the current government contemplates the commission exercising the powers it currently has but in relation to serious and organised crime. It is not a question of giving the commission additional power; it is a question of jurisdiction. I suggest that if that were to be adopted, it should be amended by deleting the words “to have the necessary powers” and inserting instead “jointly with any other state or commonwealth agency to conduct serious and organised crime investigations”; or, as the parliamentary inspector suggests, substitute “jurisdiction” for “powers”, so it would read, “to have the necessary jurisdiction to conduct serious and organised crime investigations”. That would work.

Even if WAPOL was not the agency with which the commission was then working, it would still be done only by way of a reference from the Commissioner of Police and the Commissioner of the Corruption and Crime Commission and there would still be a WAPOL representative on the next level down, the joint management group. WAPOL would be involved all the way through, whether we were working with it on a particular investigation or with some other agency, such as the AFP, for example, or Customs or something like that.⁸

(d) Committee response

The JSCCCC is strongly opposed to this recommendation, and refers to its 10th Report in the 38th Parliament, tabled on 9 September 2010.

⁷ Hon Chris Steytler QC, Parliamentary Inspector, Transcript of Evidence, 17 June 2009.

⁸ Hon Len Roberts-Smith RFD QC, Commissioner, Corruption and Crime Commission, Transcript of Evidence, 17 June 2009.

1.3 Recommendation 3 - The definition of 'organised crime'

(a) Archer Report recommendation

That the Act be amended:

- (a) in accordance with Recommendations 1,⁹ 2,¹⁰ 3¹¹ and 4¹² of the JSCCCC Report No. 31; and
- (b) to make it clear that:
 - (i) a reference to organised crime includes suspected organised crime; and
 - (ii) a reference to serious crime includes suspected serious crime.¹³

(b) CCC response

The CCC supports this recommendation:

⁹ JSCCCC Report 31 Recommendation 1 - That the definition of organised crime in the *Corruption and Crime Commission Act 2003* be amended to more effectively meet the intent of the Act under Section 7A (a). Further, that consideration be given to including the following proposed definition of organised crime which has been adapted from the *Australian Crime Commission Act 2002* (Cth) and the *Australian Crime Commission (Western Australia) Act 2004* to more appropriately align with the requirements of this State.

¹⁰ JSCCCC Report 31 Recommendation 2 - That the CCC Act be amended to include a definition of serious crime, that being a criminal activity that involves an indictable offence punishable by a specific term of imprisonment and that further consideration needs to be given to what the specific term should be.

¹¹ JSCCCC Report 31 Recommendation 3 - That the CCC Act be amended to include a definition of "Incidental Offence" to enable the investigation of less serious offences identified in connection with an offence of serious or organised crime, and that consideration be given to the following terminology:

Incidental Offence - If the head of a Corruption and Crime Commission operation/investigation suspects that an offence (the incidental offence) that is not a serious or organised crime offence may be directly or indirectly connected with, or may be part of, a course of activity involving the commission of a serious or organised crime offence (whether or not the head has identified the nature of that serious or organised crime offence) then the incidental offence is, for so long only as the head so suspects, taken, for the purposes of the Act, to be a serious or organised crime offence.

¹² JSCCCC Report 31 Recommendation 4 - That the *Corruption and Crime Commission Act 2003* be amended to include a definition of "Ancillary Offence" to enable the investigation of prescribed activities contributory to the commission of a serious or organised crime offence, and that consideration be given to the following terminology:

Ancillary Offence, in relation to an offence (the primary offence), means:

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

¹³ Archer Report, p 47.

This recommendation is supported by the CCC and is the subject of a report by a Working Group consisting of the Director of Public Prosecutions and senior staff from the Department of the Attorney General, State Solicitor's Office, CCC, WA Police and the Department of the Premier and Cabinet (now Public Sector Commission).¹⁴

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation in principle; the definition of organised crime must be expanded to accommodate the concerns of the CCC and the WA Police.

¹⁴ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

1.4 Recommendation 4 - Changes to reporting requirements

(a) Archer Report recommendation

That, if Parliament considers the prescriptive reporting requirements should be amended to incorporate express reference to new functions of the CCC:

- (a) section 91(2)(b)¹⁵ be amended to add the phrase '*or by the Commission and the police service jointly*' at the end of that paragraph; and
- (b) a new paragraph be inserted into section 91(2) that states:

*A description of each reference approved by the Crime Reference Group, including its status.*¹⁶

(b) CCC response

The CCC offers the following comments in relation to this recommendation:

The CCC has a particular concern, which was raised in conjunction with WAPOL to the Working Group, about Recommendation 4(b). The concern is that such reporting may impose the potential for considerable risk to extant serious crime and organised crime investigations.

First, such a reporting regime could prejudice the covert nature of extant investigations, thus compromising the likelihood of their success.

Second, there is the potential for such reports to prejudice the safety and well being of victims, witnesses and confidential sources.

Last, there may be prejudice to the judicial process in relation to the prosecution of criminal charges arising from the investigations.

The CCC accepts, without qualification, the importance of reporting and accountability. It notes the Parliamentary Inspector (PI) (s 195(1)(a), (cc) and (c) of the CCC Act) will have a continuing role auditing the Commission, and where appropriate reporting to the Parliament and the Joint Standing Committee on the CCC, in regards to:

- *the Commission's compliance with the laws of the State,*
- *the operations associated with these investigations to ensure that they are carried out pursuant to the powers conferred or or made available by the CCC Act, and*
- *assessing the effectiveness and appropriateness of the CCC's procedures.*

¹⁵ CCC Act s 91(2)(b) - contains a description of the types of investigations carried out by the Commission.

¹⁶ Archer Report, p 49.

Consequently, the CCC believes that it is important to balance the need for accountability against the avoidance of prejudice if Ms Archer's recommendation at Recommendation 4(b) of her review is adopted. If Recommendation 4(b) is adopted then it should require a report that avoids prejudicing extant investigations, individuals and the judicial process."¹⁷

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation in principal, subject to the concerns offered by the CCC being catered for.

1.5 Recommendation 5 - Reference Group oversight

(a) Archer Report recommendation

That the Act be amended in accordance with Recommendation 8¹⁸ of the JSCCCC's Report No. 31.¹⁹

(b) CCC response

The CCC does not support this recommendation:

The role of the Commissioner of the CCC on the Reference Group would be subject to audit and scrutiny by the PICCC under the Act as it stands; it would be completely inappropriate and anomalous for the Commissioner of Police to be subject to the jurisdiction of the PICCC.²⁰

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation. The PI should not be constrained in any way from exercising his oversight on the operations of the CCC.

¹⁷ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

¹⁸ JSCCCC Report 31 Recommendation 8 - That the CCC Act be amended to enable the Parliamentary Inspector of the Corruption and Crime Commission to undertake appropriate monitoring and auditing of the reference group

¹⁹ Archer Report, p 50.

²⁰ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

ORGANISATIONAL STRUCTURE

1.6 Recommendation 6 - Deputy and Assistant Commissioners

(a) Archer Report recommendation

That the Act be amended to:

- (a) allow for the appointment of deputy commissioners to whom specific functions may be delegated by the Commissioner, and who are able to act as the Commissioner in the Commissioner's absence; and
- (b) allow for the appointment of assistant commissioners to whom specific functions may be delegated by the Commissioner as the need arises, and who may be appointed on a full-time or part-time basis.²¹

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

²¹ Archer Report, p 57.

1.7 Recommendation 7 - Lawyers to conduct examinations

(a) Archer Report recommendation

That the Act be amended to allow the Commissioner to appoint a legal practitioner of not less than five years' standing to be an examiner for a particular inquiry or part of an inquiry, provided that such a person may only preside over private hearings.²²

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

1.8 Recommendation 8 - Creation of a special independent prosecutor

(a) Archer Report recommendation

That Parliament consider whether to amend the Act to provide for a special prosecutor with prosecutorial independence of the CCC and the DPP.

(b) CCC response

The CCC supports this recommendation (see next).

(c) PI response

The Parliamentary Inspector believes recommendations 8 and 9 may be unnecessary (see next).

(d) Committee response

The JSCCCC does not support this recommendation (see next).

²² Archer Report, p 61.

1.9 Recommendation 9 - Implementation of a special independent prosecutor

(a) Archer Report recommendation

That, if a special prosecutor is established, section 25(6) of the Act be amended to delete 'Director of Public Prosecutions' and substitute 'Special Prosecutor'.²³

(b) CCC response

The CCC supports this recommendation:

*This recommendation complements recommendation 8 and is supported.*²⁴

(c) PI response

The Parliamentary Inspector believes this recommendation may be unnecessary:

*Recommendations 8 and 9 may be unnecessary. It is important that the prosecutorial function be independent of the CCC. The creation of a 'Special Prosecutor' risks undermining this (even if that office is said to be independent).*²⁵

During closed hearing, the Parliamentary Inspector added the following comments:

*I understand the problem that has led to the recommendation and sympathise with it, but my concern is that when we have a body such as the Corruption and Crime Commission, it is fundamentally important to maintain a system of checks and balances to ensure—this is no criticism—that it does not get out of hand. One of the checks and balances is an independent prosecutor—not the most important check but, nonetheless, an important check. Independence has to be there not only in full but in substance. My concern is that if we create an office that prosecutes exclusively for the commission, we may have independence in full but not in substance. That is the concern that I have.*²⁶

During closed hearing, the Commissioner of the CCC responded to the PI's comments in the following terms:

The concept there was to have a statutorily independent special prosecutor, in effect exercising the functions of the DPP in relation to commission prosecutions. The purpose of that would be to enable commission prosecutions to be dealt with expeditiously but, at the same time, with the same degree of independence as the DPP exercises in relation to them at the moment. We have certainly encountered practical difficulties over the years in relation to the work of the DPP's office, and I do not think there is any surprise about that.

²³ Archer Report, p 63.

²⁴ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

²⁵ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

²⁶ Hon Chris Steytler QC, Parliamentary Inspector, Transcript of Evidence, 17 June 2009.

Understandably perhaps, the DPP takes the view that his office has a very high workload and it deals with, as he puts it, serious crimes—things like murders, serious sexual assaults and so forth. As a consequence of that, commission work gets accorded relatively low priority.

In addition, there is a degree of specialisation involved in the sorts of criminal offences that we would ordinarily be dealing with that would primarily revolve around corruption-type offences as such, which are notoriously difficult to prosecute in any event. Perhaps that may be another reason why there is a degree of reluctance on the part of the DPP's office to deal with those prosecutions. We were seeking to have that professional assistance available to the commission in an independent way. Whether the office of the special prosecutor would be with the commission or independently physically located somewhere else or with the DPP's office itself is not something that we have any particular view about; it is the notion of having access to a prosecutor whose primary role in terms of workload and access would be designated to be doing Corruption and Crime Commission prosecutions. There is the notion that if that person was not busy doing that 100 per cent of the time, he or she could then become available to the DPP to conduct DPP-type prosecutions.

So far as the independence is concerned, I would have thought that if one had a provision in our act—a separate part in our act, for example, similar to the part that deals with the parliamentary inspector—one could create a statutory office of special prosecutor in exactly the same way and give that office that statutory independence. Gail's report refers to the experience with the Fitzgerald royal commission and the commonwealth legislation that brought in a special prosecutor to deal with prosecutions arising out of that.²⁷

(d) Gail Archer commentary

During closed hearing, Ms Archer SC added the following comments:

When I went around [gathering evidence for the Gail Archer Report], I do not recollect anyone speaking about special prosecutors. This issue arose for our organisation, the CCC, not because of any deficiency in the legislation or anything peculiar to the investigation of misconduct but because of a resource issue within the DPP. That is just a uniquely Western Australian issue that the Director of Public Prosecutions is apparently under-resourced, coupled with him attributing a lower level of priority to CCC prosecutions. As the commissioner says, he is dealing with murders and serious sex assaults. We can have some sympathy for him prioritising them in that way.²⁸

(e) DPP commentary

The Committee wrote to the Director of Public Prosecutions, Mr Joseph McGrath, on 13 October 2010 seeking his analysis of recommendations 8 and 9. In responding to this request, the DPP stated:

²⁷ Hon Len Roberts-Smith RFD QC, Commissioner, Corruption and Crime Commission, Transcript of Evidence, 17 June 2009.

²⁸ Gail Archer SC, Acting Commissioner, Corruption and Crime Commission, Transcript of Evidence, 17 June 2009.

I am in agreement with the view expressed by the Parliamentary Inspector, Hon Chris Steytler QC. Both Recommendations 8 and 9 are unnecessary. Further, it is important that the prosecutorial function be independent from the CCC. The creation of a "Special Prosecutor" risks undermining the actual independence of the prosecution function of the State. Further, the proposal risks undermining the appearance of the independence of the prosecuting function.

A criminal justice system should be characterised by a diffusion of responsibility. The separation of the prosecution function from the investigative role of the CCC is essential for the actual independence (and the appearance of independence) of the exercise of the prosecution discretion on behalf of the State.²⁹

(f) Committee response

The JSCCCC does not support this recommendation. If there is a problem with the capacity of the DPP then that problem should be addressed, not circumvented.

1.10 Recommendation 10 - Increased tenure for CCC staff

(a) Archer Report recommendation

That section 179(2) of the Act be amended to read:

*A member of staff is not to be appointed for a term exceeding **5 eight** years and is eligible for reappointment.³⁰*

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

²⁹ Submission No. 1 from the Director of Public Prosecutions, 13 December 2010.

³⁰ Archer Report, p 64.

1.11 Recommendation 11 - CCC staff returning to the Public Sector

(a) Archer Report recommendation

Subject to a considered evaluation of the economic consequences and any administrative difficulties, the Act be amended to ensure that staff return to the public sector at the level they reached in the CCC.³¹

(b) CCC response

The CCC offers the following comments in relation to this recommendation:

*The Public Sector Commissioner has addressed this issue in Circular 2009-35 Re-Employment of Public Service Officers Employed in Statutory Offices, effective 6 July 2009. This represents an acceptable outcome for the CCC.*³²

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC regards this recommendation as obsolete.

³¹ Archer Report, p 65.

³² Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

1.12 Recommendation 12 - The CCC and the *Public Sector Management Act 1994*

(a) Archer Report recommendation

That the Act be amended to clarify that while the CCC is not subject to the Public Sector Management Act, it is subject to PSMA principles:

That, after the CCC has been given more time to consider its position, Parliament consider:

- (a) *prescribing the CCC as a PSMA Schedule 1 entity; and*
- (b) *amending the Act by:*
 - (i) *deleting section 178;*³³
 - (ii) *amending section 179 to provide that the CCC is bound to comply with the PSMA principles;*
 - (iii) *amending section 195(1) to provide that the PICCC's functions include monitoring the CCC's compliance with the PSMA principles.*³⁴

(b) CCC response

The CCC offers the following comments in relation to this recommendation:

*The CCC supports this recommendation but having regard to the view of the PICCC, the CCC would not support recommendation 12(iii). Instead, the CCC suggests a model whereby the OPSSC be given statutory jurisdiction to oversight its compliance with the PSMA principles even though the CCC is not subject to the PSM Act.*³⁵

(c) PI response

The Parliamentary Inspector is opposed to this recommendation.

(d) Committee response

The JSCCCC supports this recommendation in principle, on the basis of the caveat proffered by the CCC being implemented.

³³ *The Commission is not, and is not to become, an SES organisation under the Public Sector Management Act 1994.*

³⁴ Archer Report, p 67.

³⁵ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

1.13 Recommendation 13 - Monitoring CCC compliance with Public Sector Management Act principles

(a) Archer Report recommendation

That, if the CCC is prescribed as a PSMA Schedule 1 entity and the amendments in Recommendation 12 are made, consideration be given as to whether the PICCC requires additional resources in order to monitor the CCC's compliance with the PSMA principles.³⁶

(b) CCC response

The CCC offers the following comments in relation to this recommendation:

*The CCC submits that it should be subject to oversight from the OPSSC if it is subject to the PSMA principles.*³⁷

(c) PI response

The Parliamentary Inspector is opposed to this recommendation:

*Recommendations 12(b)(iii) (which would presently be subject to s 196(9) of the Act) and 13 will impose obligations on my office (presently undertaken by the Public Sector Commissioner under Part 2 of the Public Sector Management Act 1994) beyond its competency (such as ensuring proper standards of financial management, accounting, human resource management, equal opportunity and occupational health and safety). These recommendations are therefore opposed.*³⁸

In closed hearing, the Parliamentary Inspector offered the following additional comments:

*The difficulty is that under the recommendation, my office would monitor the CCC's compliance, which appears in the principles. They are set out in sections 7, 8 and 9 of the Public Sector Management Act. The first set of principles relates to general principles of public administration and management, the second set of principles in section 8 deals with general principles of human resource management and the third set in section 9 deals with general principles of official conduct. The third set is something we probably do anyway but the first two—public administration and management and human resource management—are really beyond my competence, and they are certainly beyond the resources of my office to manage. Mr Alder has spoken to the Public Sector Commissioner, Ruth Shean, in that respect. She likewise takes the view that it is beyond the ability of my office to carry out those functions.*³⁹

³⁶ Archer Report, p 67.

³⁷ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

³⁸ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

³⁹ Hon Chris Steytler QC, Parliamentary Inspector, Transcript of Evidence, 17 June 2009.

(d) Committee response

The JSCCCC is opposed to this recommendation, on the basis of the Parliamentary Inspector's comments above.

APPOINTMENT ISSUES

1.14 Recommendation 14 - The definition of 'bipartisan support'

(a) Archer Report recommendation

That the definition of 'bipartisan support' in section 3⁴⁰ of the Act be clarified.

(b) CCC response

The CCC has no comment regarding this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC is opposed to this recommendation. The JSCCCC believes that the existing definition of bipartisan support is both appropriate and proper.

⁴⁰ CCC Act, s 3 provides:

'Bipartisan support' means the support of -

- (a) *members of the Standing Committee who are members of the party of which the Premier is a member; and*
- (b) *members of the Standing Committee who are members of the party of which the Leader of the Opposition is a member.*

1.15 Recommendation 15 - Response to appointment nomination

(a) Archer Report recommendation

That the Act be amended to require the JSCCCC to respond to a nomination for appointment within 14 days, or within a further 30 days if it notifies the Minister within the first 14 day period that it requires more time.⁴¹

(b) CCC response

The CCC has no comment regarding this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC is opposed to this recommendation. The JSCCCC regards this recommendation as unnecessary.

1.16 Recommendation 16 - Number of candidates for the position of CCC Commissioner

(a) Archer Report recommendation

That section 9(3a)⁴² of the Act be amended to require the nominating committee to provide a list of up to three persons eligible for appointment.⁴³

(b) CCC response

The CCC has no comment regarding this recommendation.

⁴¹ Archer Report, p 70.

⁴² CCC Act, s 3 provides:

Except in the case of the first appointment, the Premier is to recommend the appointment of a person -

- (a) whose name is on a list of up to 3 persons eligible for appointment that is submitted to the Premier by the nominating committee; and*
- (b) who, if there is a Standing Committee, has the support of the majority of the Standing Committee and bipartisan support.*

⁴³ Archer Report, p 72.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

1.17 Recommendation 17 - Remuneration of ex-judges serving as the CCC Commissioner**(a) Archer Report recommendation**

That clause 3(1) of Schedule 2⁴⁴ of the Act be amended by adding the words 'Subject to clause 4(1)' at the beginning of clause 3(1).⁴⁵

(b) CCC response

This recommendation is supported by the CCC.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

⁴⁴ CCC Act Schedule 2 - Remuneration, leave and entitlements

3(1) - *Subject to clause 4(1) the Commissioner is entitled to be paid remuneration and to receive allowances or reimbursements at the same rate as a puisne judge of the Supreme Court.*

CCC Act Schedule 2 - Provisions where Commissioner was a judge

4(1) - *If a person who, immediately before appointment to the office of Commissioner, was a judge of the Supreme Court, is appointed as Commissioner, that person is to be paid the same remuneration and have the same other rights or privileges as if the person had continued to be the holder of that judicial office.*

4(2) - *For the purposes of the Judges' Salaries and Pensions Act 1950, the service as Commissioner of a former judge is taken to be service as the holder of the same judicial office as the office that person held before appointment as Commissioner.*

4(3) - *The person's service as Commissioner is, for all purposes, taken to be service as the holder of that judicial office.*

⁴⁵ Archer Report, p 74.

1.18 Recommendation 18 - Reappointment of judge after serving as the CCC Commissioner

(a) Archer Report recommendation

That clause 4 of Schedule 2 be amended so as to ensure that:

- (a) a person who was a judge immediately before being appointed Commissioner is entitled to be reappointed as a judge at the expiration of that person's term of office as Commissioner, and
- (b) the person's service as Commissioner does not affect the person's rank, title, status or other rights or privileges as the holder of that judicial office.⁴⁶

(b) CCC response

This recommendation is supported by the CCC.

(c) PI response

The Parliamentary Inspector offers qualified support for this recommendation:

The position taken in respect of recommendations 18 and 19 should be the same. However, there may be problems with the implementation of these recommendations. For example, they would have the consequence that the current Parliamentary Inspector would be entitled, at the expiration of his term, to be re-appointed as President of the Court of Appeal. That could plainly not be appropriate.⁴⁷

(d) Committee response

The JSCCCC supports this recommendation, subject to the observation offered by the Parliamentary Inspector being catered for.

⁴⁶ Archer Report, p 78.

⁴⁷ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

1.19 Recommendation 19 - Ex-judge serving as the Parliamentary Inspector

(a) Archer Report recommendation

That clause 4 of Schedule 3⁴⁸ be amended so as to ensure that, where a person was a judge immediately before being appointed a PICCC, the person's service as PICCC does not affect the person's rank, title, status or other rights or privileges as the holder of that judicial office.⁴⁹

(b) CCC response

This recommendation is supported by the CCC.

(c) PI response

The Parliamentary Inspector offers qualified support for this recommendation (see Recommendation 18).

(d) Committee response

The JSCCCC supports this recommendation, subject to the observation offered by the Parliamentary Inspector being catered for.

⁴⁸ CCC Act Schedule 3 - Provisions where Parliamentary Inspector was a judge

- 4(1) *If a person who, immediately before appointment to the office of Parliamentary Inspector, was a judge of the Supreme Court or the District Court, is appointed as Parliamentary Inspector, that person is to be paid the same remuneration and have the same other rights or privileges as if the person had continued to be the holder of that judicial office.*
- 4(2) *For the purposes of the Judges' Salaries and Pensions Act 1950, the service as Parliamentary Inspector of a person referred to in subclause (1) is taken to be service as the holder of the same judicial office as the office that person held before appointment as Parliamentary Inspector.*
- 4(3) *The person's service as Parliamentary Inspector is, for all purposes, taken to be service as the holder of that judicial office.*
- 4(4) *If the term of office of a person referred to in subclause (1) who was a judge of the Supreme Court expires by effluxion of time and he or she is not reappointed as Parliamentary Inspector, that person is entitled to be appointed as a judge of the Supreme Court.*
- 4(5) *If the term of office of a person referred to in subclause (1) who was a judge of the District Court expires by effluxion of time and he or she is not reappointed as Parliamentary Inspector, that person is entitled to be appointed as a judge of the District Court.*

⁴⁹ Archer Report, p 79.

1.20 Recommendation 20 - Locating candidates for the position of Acting CCC Commissioner

(a) Archer Report recommendation

That the Act be amended to permit the reappointment of acting commissioners and assistant commissioners without the need to advertise for expressions of interest.⁵⁰

(b) CCC response

This recommendation is supported by the CCC.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

⁵⁰ Archer Report, p 79.

THE PARLIAMENTARY INSPECTOR

1.21 Recommendation 21 - Remuneration of the Parliamentary Inspector

(a) Archer Report recommendation

That clause 4 of Schedule 3 be amended so as to provide that a PICCC appointed on a part-time basis who was, immediately before his or her appointment, a judge be paid on a pro rata basis.⁵¹

(b) CCC response

The CCC endorses the comments of the Parliamentary Inspector.

(c) PI response

The Parliamentary Inspector regards this recommendation as unnecessary:

*Recommendations 21 and 22 may be unnecessary. These appear to be covered by existing clauses - respectively clauses 4 and 3(4) of Sch 3 of the Act.*⁵²

(d) Committee response

The JSCCCC is opposed to this recommendation on the basis of the Parliamentary Inspector's belief that it is unnecessary.

⁵¹ Archer Report, p 81.

⁵² Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

1.22 Recommendation 22 - Remuneration of the Parliamentary Inspector

(a) Archer Report recommendation

That clause 4 of Schedule 3 be amended so as to provide that where a PICCC is appointed who was, immediately before his or her appointment, entitled to a judicial pension, the rate of pay payable to the PICCC will be reduced by the rate of the pension.⁵³

(b) CCC response

The CCC endorses the comments of the Parliamentary Inspector.

(c) PI response

The Parliamentary Inspector regards this recommendation as unnecessary (see Recommendation 21).

(d) Committee response

The JSCCCC is opposed to this recommendation on the basis of the Parliamentary Inspector's belief that it is unnecessary.

1.23 Recommendation 23 - The independence of the Parliamentary Inspector

(a) Archer Report recommendation

That:

- (a) the issue of the PICCC's independence of the JSCCCC be monitored; and
- (b) if the recommendation that there be a further review is accepted, the next review be required to consider that issue.⁵⁴

(b) CCC response

The CCC offers the following comments in relation to this recommendation:

⁵³ Archer Report, p 82.

⁵⁴ Archer Report, p 84.

*The CCC considers that whatever the position, it could be useful for the next review to examine and report upon it.*⁵⁵

(c) PI response

The Parliamentary Inspector regards this recommendation as unnecessary:

*Recommendation 23 has been considered by the Committee in its Report on the relationship between the Parliamentary Inspector and the Commissioner of the CCC (Report No 2 tabled on 19 March 2009). There is no need to revisit this.*⁵⁶

(d) Committee response

The JSCCCC supports this recommendation.

⁵⁵ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

⁵⁶ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

A PUBLIC INTEREST MONITOR

1.24 Recommendation 24 - Creation of a Public Interest Monitor

(a) Archer Report recommendation

That the Act be amended to provide for a Public Interest Monitor to represent the public interest in applications for surveillance device warrants.⁵⁷

(b) CCC response

This recommendation is opposed by the CCC:

The views of the CCC are adequately expressed in the Archer report at pp 100-101.⁵⁸

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

⁵⁷ Archer Report, p 106.

⁵⁸ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

WITNESS PROTECTION

1.25 Recommendation 25 - The CCC and witness protection services**(a) Archer Report recommendation**

That the CCC be declared to be an 'approved authority' under section 7 of the *Witness Protection (Western Australia) Act 1996*.^{59, 60}

(b) CCC response

The CCC supports this recommendation:

*The provision of witness protection services will become important if the Commission is granted a serious and organised crime function.*⁶¹

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC is opposed to this recommendation, on the basis that witness protection is an extremely costly exercise. In addition the Committee refers to findings and recommendations contained within the 26th Report of the Joint Standing Committee on the Corruption and Crime Commission in the 37th Parliament, tabled on 14 June 2007.

⁵⁹ *Witness Protection (Western Australia) Act s 7 - Authorisation of approved authorities*

(1) *The Minister, by notice published in the Gazette, may authorise an approved authority to perform functions conferred on the Commissioner under this Act for the purposes of any arrangement entered into by the Commissioner under section 6 or the corresponding provision of a complementary witness protection law.*

(2) *The Minister, by notice published in the Gazette, may amend or cancel such an authorisation.*

⁶⁰ Archer Report, p 117.

⁶¹ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

1.26 Recommendation 26 - Disclosure of sensitive material

(a) Archer Report recommendation

That section 138 of the *Criminal Procedure Act 2004*⁶² be amended to provide that, in exercising the Court's discretion under subsection (3), relevant considerations include, but are not limited to, the risk that a person may be harmed by the disclosure of the material and the risk that disclosure may inhibit future witnesses from fully cooperating with investigatory or prosecuting bodies.⁶³

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The PI supports this recommendation

(d) Committee response

The JSCCCC supports this recommendation.

⁶² *Criminal Procedure Act s 138(3) - Disclosure requirements, orders as to*

A court may, in respect of a disclosure requirement, make an order —

(a) *that dispenses with all or part of the requirement, if it is satisfied —*

(i) *there is a good reason to do so; and*

(ii) *no miscarriage of justice will result;*

(b) *that shortens or extends the time for obeying the requirement;*

(c) *that amends or cancels an order made previously under this section, whether by the court or some other court; or*

(d) *as to any other matter that the court considers is just.*

⁶³ Archer Report, p 120.

1.27 Recommendation 27 - Confiscation of assets

(a) Archer Report recommendation

That:

- (a) the *Criminal Property Confiscation Act 2000* be amended to give the CCC the same powers as are given to the WAPOL under that Act.
- (b) the *Criminal Property Confiscation Act 2000* be amended to allow the CCC to apply for unexpected wealth declarations, criminal benefits declarations and crime-used property substitution declarations;
- (c) the question of whether the DPP's functions under the *Criminal Property Confiscation Act 2000* should be transferred to the CCC be reconsidered within five years; and
- (d) if the recommendation that there be a further review is accepted, the next review be required to consider that question.⁶⁴

(b) CCC response

The CCC supports this recommendation:

*The power to confiscate assets will become important if the Commission is granted a serious and organised crime function.*⁶⁵

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation in principle, and flags its intent to conduct an inquiry into this matter in the near future.

⁶⁴ Archer Report, p 132.

⁶⁵ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

PRIVATE ENTITY JURISDICTION

1.28 Recommendation 28 - Misconduct in non-public offices

(a) Archer Report recommendation

That a full investigation be conducted into the resource implications of extending the jurisdiction of the CCC to particular classes of persons who perform functions similar to those performed by public officers.⁶⁶

(b) CCC response

The CCC supports this recommendation:

*The definition of “public official” in section 3 of the Independent Commission Against Corruption Act 1988 (NSW) uses a suitable form of words to achieve the result.*⁶⁷

(c) PI response

The Parliamentary Inspector offers qualified support for this recommendation:

*Recommendation 28 is supported only if its operation is expressly restricted to cases in which public functions have been delegated to persons who are not defined as public officers (being, as I understand the position, the intention underpinning this recommendation). Careful drafting would be required.*⁶⁸

(d) Committee response

The JSCCCC supports this recommendation in principle. The JSCCCC recommends that any review of the CCC Act should include a review of the definition of a public officer, especially in light of the trend toward greater private sector involvement in the public service in Western Australia.

⁶⁶ Archer Report, p 137.

⁶⁷ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

⁶⁸ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

PUBLIC vs PRIVATE HEARINGS

1.29 Recommendation 29 - The desirability of public hearings

(a) Archer Report recommendation

That, if the recommendation to hold a further review is accepted, the next review be required to consider whether the Act requires amendment in relation to public hearings.⁶⁹

(b) CCC response

The CCC regards this recommendation as unnecessary:

*The Commission believes that the current provisions are adequate.*⁷⁰

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation in principle, and flags its intent to conduct an inquiry into this matter in the near future.

⁶⁹ Archer Report, p 158.

⁷⁰ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

CONTEMPT POWERS

1.30 Recommendation 30 - Failure to answer during a CCC hearing

(a) Archer Report recommendation

That section 160(1)(b) be amended to provide that it is a contempt if a person fails to answer any question put to the person by the Commission.⁷¹

(b) CCC response

The CCC offers qualified support for this recommendation:

*The Commission's position is that a person should be held to be in contempt if they fail to answer any question which the Commission considers relevant and which the Commission requires them to answer. The Commission therefore offers qualified support for this recommendation.*⁷²

(c) PI response

The Parliamentary Inspector offers qualified support for this recommendation:

*Recommendation 30 is supported only if the words 'that is relevant or potentially relevant to the investigation' are added.*⁷³

(d) Committee response

The JSCCCC regards this recommendation as unnecessary. The JSCCCC believes that the existing legislation is adequate, and refers to the 10th Report of the Committee, tabled in the 38th Parliament on 9 September 2010. See also the JSCCCC's response to Recommendation 31.

⁷¹ Archer Report, p 164

⁷² Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

⁷³ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

1.31 Recommendation 31 - CCC to issue a warrant for contemptor's arrest

(a) Archer Report recommendation

That the Act be amended by inserting a new section 163A that provides:

- (1) *In the case of any alleged contempt of the Commission, the Commissioner may summon the offender to appear before the Commission at a time and place named in the summons to show cause why the offender should not be dealt with under section 163 for the contempt.*
- (2) *The summons is to set out the details of the alleged contempt.*
- (3) *If the offender fails to attend before the Commission in obedience to the summons, and no reasonable excuse to the satisfaction of the Commissioner is offered for the failure, the Commissioner may, on proof of the service of the summons, issue a warrant to arrest the offender and bring the offender before the Commissioner to show cause why the offender should not be dealt with under section 163 for the contempt.*
- (4) *No summons need be issued against an offender committing a contempt in the face or hearing of the Commission, but the offender may, after being advised of the details of the alleged contempt, be taken into custody in a prison or elsewhere then and there by a member of the Police Force and called upon to show cause why the offender should not be dealt with under section 163 for the contempt.*
- (5) *The Commissioner may issue a warrant to arrest the offender while the offender (whether or not already in custody under this section) is before the Commission and to bring the offender forthwith before the Supreme Court.*
- (6) *The warrant is sufficient authority to detain the offender in a prison or elsewhere, pending the offender being brought before the Supreme Court.*
- (7) *The warrant is to be accompanied by the contempt of the Commission certificate in which the Commissioner sets out the details of the act or omission that the Commission considers constitutes the alleged contempt.*
- (8) *The Commissioner may revoke the warrant at any time before the offender is brought before the Supreme Court.*
- (9) *When the offender is brought before the Supreme Court, the Court may, pending determination of the matter, direct that the offender be kept in such custody as the Court may determine or direct that the offender be released.⁷⁴*

⁷⁴

Archer Report, p 169.

(b) CCC response

The CCC offers the following comments in relation to this recommendation:

*The Commission supports this recommendation in principle but prefers the model used in the Royal Commissions Act 1968 (WA).*⁷⁵

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The Committee is opposed to this recommendation. The Committee believes that this recommendation is unnecessary in the wake of the conviction of a number of members of the Finks Motorcycle Club on 13 December 2010 for contempt of the CCC, after these men had in November 2010 refused to testify before a hearing of the CCC. On 4 February 2011, Supreme Court Chief Justice Wayne Martin sentenced three of the contemptors to two years imprisonment, and one contemptor to two years three months imprisonment.⁷⁶

1.32 Recommendation 32 - Section 217(3) of the Act**(a) Archer Report recommendation**

That section 217(3) of the Act⁷⁷ be deleted.

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation; s 217(3) duplicates s 163(2) of the Act and is therefore unnecessary.

⁷⁵ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

⁷⁶ *Corruption and Crime Commission vs Allbeury, Silvestro, Chikonga, Smith [No 2]* [2011] WASC 26.

⁷⁷ CCC Act, s 217(3) provides:

In contempt proceedings under Part 10, a certificate of the Commission stating any fact relevant to those proceedings is sufficient evidence of the fact stated

CCC INVESTIGATIONS AND REPORTS

1.33 Recommendation 33 - CCC to determine claims of privilege

(a) Archer Report recommendation

That the Act be amended to provide a mechanism for the CCC to determine claims of privilege, and which gives the CCC a discretion to appoint an independent adjudicator if it considers it appropriate to do so.⁷⁸

(b) CCC response

The CCC supports this recommendation:

*The Commission supports this recommendation and favours the model adopted in the Royal Commissions Act 1902 (Cth).*⁷⁹

(c) PI response

At the request of the Committee, the Parliamentary Inspector provided a submission pertaining to recommendation 33:

It... seems to me that some reform might be desirable. In an ideal world, claims of LPP should, as a matter of course, be referred to the Supreme Court for determination. It is undesirable that the investigator should itself determine claims of LPP, particularly when the determination cannot adequately be made without examining the material that is said to be privileged. However, a requirement of that kind is likely to add significantly to the cost of inquiries and to result in significant delays. It would also be susceptible to abuse by the more unscrupulous members of the community. Accordingly, some other mechanism might be preferable.

One possibility is to create a mechanism whereby claims of LPP are to be determined by the Commissioner or, in his or her absence or unavailability, an Acting Commissioner, but subject to a right of appeal to the Supreme Court if the claim should be determined adversely to the claimant.

I appreciate that this kind of provision, too, is likely to be productive of some delay and expense (and to be subject to abuse). However, these consequences might be ameliorated by a requirement first to obtain leave to appeal, which might be granted only if the court is satisfied that the appeal has a reasonable prospect of success or that there is a matter of public importance to be resolved. This would be broadly similar to the procedure which, according to the Archer Report, exists in Queensland (although, in the case of misconduct

⁷⁸ Archer Report, p 180.

⁷⁹ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

investigations by the CMC, claims of LPP are referred to the Supreme Court), There might also be a requirement that the application for leave to appeal be lodged within 7 days.

It also seems to me to be desirable to empower the Commissioner to refer any claim of LPP to an independent adjudicator and, perhaps, to require him or her to do so in any case in which adjudication of the claim cannot adequately be carried out without inspecting the material in question. Security concerns can be addressed by appropriate confidentiality requirements.⁸⁰

(d) Committee response

The Committee supports this recommendation.

1.34 Recommendation 34 - Opinions on conduct falling short of misconduct

(a) Archer Report recommendation

That the Act be amended to expressly provide that the CCC has the power to report opinions as to conduct that falls short of 'misconduct'.⁸¹

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector regards this recommendation as unnecessary (see next).

(d) Committee response

The JSCCCC supports this recommendation subject to the inclusion of provisions as follows:

- the objective facts which are relied upon to conclude that the behaviour was inappropriate are expressly stated so as to enable anyone reading the report to form their own views; and
- there is clear acknowledgement and emphasis that the conduct was not “misconduct”.

⁸⁰ Submission No. 2 from the Office of the Parliamentary Inspector, 23 December 2010.

⁸¹ Archer Report, p 196.

1.35 Recommendation 35 - Reporting on the conduct of non-public officers

(a) Archer Report recommendation

That the Act be amended to make it clear that the CCC may report on the conduct of non-public officers in discharging its misconduct function.⁸²

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector regards this recommendation as unnecessary:⁸³

There is no need for recommendations 34 and 35. However, they give rise to no difficulty if, in each case, they are qualified by the words 'where that is necessary to explain its reasoning when reporting in the exercise of its misconduct function'.

(d) Committee response

The JSCCCC supports this recommendation subject to the proviso that any such reporting be relevant to a specific public sector investigation.

⁸² Archer Report, p 197.

⁸³ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

1.36 Recommendation 36 - Findings of fact

(a) Archer Report recommendation

That the Act be amended to make it clear that the CCC may include findings of fact in its reports.⁸⁴

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector regards this recommendation as unnecessary.

(d) Committee response

The JSCCCC supports this recommendation.

⁸⁴ Archer Report, p 198.

1.37 Recommendation 37 - Response by the CCC to a report of the Parliamentary Inspector

(a) Archer Report recommendation

That the Act be amended by:

- (a) amending section 195(4) to replace 'powers' with 'Powers under Part 6';
- (b) inserting a new section 88(2) that reads, 'The Commission may, at any time, prepare a special report on any matter raised by the PICCC in a report that has been prepared by the PICCC under Division 3 of Part 13.'; and
- (c) renumbering current section 88(2) to 88(3).^{85, 86}

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector is opposed to this recommendation:

Recommendation 37(a) is opposed. The rationale underpinning it is presumably that it is inappropriate for a Parliamentary Inspector to be investigated by a body that might have an interest in discrediting him or her. That rationale is sound. Misconduct by a Parliamentary Inspector can be investigated by others. Recommendations 37(b) and (c) have already been considered by the Committee in Report No 2. There is no need to re-visit them.⁸⁷

⁸⁵ Archer Report, p 204.

⁸⁶ CCC Act, s 195: *Functions [of the Parliamentary Inspector]*

(4) *The Commission is not to exercise any of its powers Powers under Part 6 in relation to the Parliamentary Inspector.*

CCC Act, s 88: *Special reports to Parliament on policy matters*

(1) *The Commission may, at any time prepare a special report on any administrative or general policy matter relating to the functions of the Commission.*

(2) *The Commission may, at any time, prepare a special report on any matter raised by the Parliamentary Inspector in a report that has been prepared by the Parliamentary Inspector under Division 3 of Part 13.*

(3) *The Commission may cause the special report to be laid before each House of Parliament or dealt with under section 93.*

⁸⁷ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

(d) Committee response

The JSCCCC is opposed to this recommendation. The JSCCCC regards every point raised within this recommendation as unnecessary. The JSCCCC refers to its second Report, tabled in the 38th Parliament on 19 March 2009.

1.38 Recommendation 38 - Disputes between the CCC Commissioner and the Parliamentary Inspector**(a) Archer Report recommendation**

That:

- (a) the issue of whether a formal dispute resolution procedure is required be monitored; and
- (b) if the recommendation that there be a further review is accepted, the next review be required to consider that issue.⁸⁸

In closed hearing, the following observations were made:

*JSCCCC Secretariat:*⁸⁹ *I make the point that the committee's intention was to allow or request the two entities to go away for six months and come back with agreed amendments to the act concerning the very difficult issues of law raised by the stoush between Mr McCusker and the Corruption and Crime Commission. The committee's intention was that these difficult questions of law get solved in the context of amendments to the act. A difficult job needs to be done within the six-month period and not left to a mechanism to deal with it as and when it arises again. There is a distinct set of questions of law that we would like to see resolved by way of amendment to the act and maybe have this as an addition to deal with it, but not in addition to solving the original subset of problems.*

*Parliamentary Inspector:*⁹⁰ *I was going to say what has just been said by Mr [Scott] Nalder [JSCCCC Principal Research Officer]. What he says is correct. I did not envisage this mechanism as something designed to replace any other dispute resolution mechanism that we might agree upon, but simply as a supplementary thing. Whatever legislation we have, there is always the prospect that it will give rise to difficulty, whether in a particular instance that cannot be cured by legislation because it would not be retrospective in its operation or generally. It is just a means of having a quick and comparatively inexpensive option other than going to the courts. For myself, I could not agree more with the philosophy that says that it is bad to have one emanation of the state suing another emanation of the state at the cost of the public purse. I think the commissioner would*

⁸⁸ Archer Report, p 208

⁸⁹ Scott Nalder, Principal Research Officer, Joint Standing Committee on the Corruption and Crime Commission, Transcript of Evidence, 17 June 2009.

⁹⁰ Hon Chris Steytler QC, Parliamentary Inspector, Transcript of Evidence, 17 June 2009.

absolutely agree with that. What we could still do, consistent with what we previously agreed to do, is that when we get to the end of the six-month period, which is not far off now, we could come back with some suggestions for amendment if we think it is necessary.

I suspect that we would not come back with the same suggestions for amendment, but we could come back with our respective suggestions for amendment if that was thought appropriate.

(b) CCC response

The CCC endorses the Parliamentary Inspector's comments regarding this recommendation.

(c) PI response

The Parliamentary Inspector regards this recommendation as unnecessary:⁹¹

The same is true of recommendation 38 [it has already been considered by the Committee in Report No 2]. However, it may be appropriate to give to the Commissioner of the CCC and the Parliamentary Inspector a power jointly or singly to refer a question of law concerning the operation of the Act to the Supreme Court of WA.

(d) Committee response

The JSCCCC is opposed to this recommendation. The JSCCCC believes that the Act should indeed be amended in this respect, but believes the model outlined in its second Report in the 38th Parliament, tabled on 19 March 2009, to be superior, and refers to this report.

⁹¹ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

1.39 Recommendation 39 - Service of notice

(a) Archer Report

That the Act be amended so as to provide that a person will have been given reasonable opportunity under section 86(1)⁹² if the CCC sends the adverse comment notice to the address given to the CCC by the person.⁹³

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector offers qualified support for this recommendation:

Recommendation 39 is supported if it is expressly limited to cases of personal service (or, perhaps, service by registered mail where the recipient has been told that this might be done and has been advised of the consequences of service by that means).⁹⁴

(d) Committee response

The JSCCCC has no comment regarding this recommendation.

⁹² CCC Act, s 86: *Person subject to adverse report, entitlement of*

Before reporting any matters adverse to a person or body in a report under section 84 or 85, the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.

⁹³ Archer Report, p 209.

⁹⁴ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

1.40 Recommendation 40 - CCC reports concerning commissioned police officers

(a) Archer Report recommendation

That:

- (a) section 90(3) be amended by deleting 'or a commissioned police officer'; and
- (b) section 90(4) be amended to provide (amendments underlined):
 - (4) *A report about a person proposed to be appointed as a commissioned police officer, a non-commissioned police officer, or a constable may be given to:*
 - (a) *the Commissioner of Police or the Minister responsible for the administration of the Police Act 1892 or both of those persons; and*
 - (b) *if the report is given to the Minister responsible for the administration of the Police Act 1892, any other Minister that that Minister considers has a relevant interest in the report.*^{95, 96}

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

⁹⁵ Archer Report, p 211.

⁹⁶ CCC Act, s 90: *Reports about people proposed as police officers or CEOs*

- (3) *A report about a person proposed to be appointed as Commissioner of Police or a commissioned police officer may be given to —*
 - (a) *the Minister responsible for the administration of the Police Act 1892; and*
 - (b) *any other Minister that the Minister responsible for the administration of the Police Act 1892 considers has a relevant interest in the report.*
- (4) *A report about a person proposed to be appointed as a commissioned police officer, a non-commissioned police officer or a constable may be given to —*
 - (a) *the Commissioner of Police or the Minister responsible for the administration of the Police Act 1892 or both of those persons; and*
 - (b) *if the report is given to the Minister responsible for the administration of the Police Act 1892, any other Minister that that Minister considers has a relevant interest in the report.*

PARLIAMENT AND THE CCC

1.41 Recommendation 41 - Article 9 of the *Bill of Rights 1689*

(a) Archer Report recommendation

Assuming that Parliament continues to consider that the CCC should be constrained by Article 9 of the *Bill of Rights*, the Act should be amended to make that clear.⁹⁷

(b) CCC response

The CCC supports this recommendation:

*The Commission considers it is bound by Article 9 of the Bill of Rights but in the interests of clarity supports the recommendation.*⁹⁸

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC is opposed to this recommendation, on the basis that it is unnecessary. The Committee believes that it is already clear that the CCC is constrained by Article 9 of the *Bill of Rights*, and the CCC regards this as being the case in any event.

1.42 Recommendation 42 - The Speaker of the Legislative Assembly and the President of the Legislative Council to be notifying authorities

(a) Archer Report

That the definition of 'notifying authority' in section 3 of the Act be amended by:

- (a) adding a new subparagraph (f) which states 'the President of the Legislative Council';
- (b) adding a new subparagraph (g) which states 'the Speaker of the Legislative Assembly';

⁹⁷ Archer Report, p 221

⁹⁸ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

- (c) deleting the words 'but does not include the President of the Legislative Council or the Speaker of the Legislative Assembly'; and
- (d) inserting the phrase 'but does not include the Clerk of the Legislative Council or the Clerk of the Legislative Assembly'.^{99, 100}

(b) CCC response

The CCC has no comment regarding this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC is opposed to this recommendation. Any move to make the President and Speaker notifying authorities would both compromise their independence and politicise their roles, and the Committee regards this as being unacceptable.

⁹⁹ Archer Report, p 223.

¹⁰⁰ CCC Act s 3: *notifying authority means* —

- (a) *a department or organisation as defined in the Public Sector Management Act 1994;*
- (b) *an entity in respect of which a declaration is in effect under section 56(2) of the Financial Management Act 2006;*
- (c) *a statutory authority as defined in the Financial Management Act 2006;*
- (d) *an authority to which the Parliamentary Commissioner Act 1971 applies;*
- (e) *a person or body, or holder of an office —*
 - (i) *under whom or which a public officer holds office or by whom or which a public officer is employed; or*
 - (ii) *who or which is prescribed for the purposes of this subparagraph,*

but does not include the President of the Legislative Council or the Speaker of the Legislative Assembly;

- (f) *the President of the Legislative Council;*
- (g) *the Speaker of the Legislative Assembly;*

but does not include the Clerk of the Legislative Council or the Clerk of the Legislative Assembly.

1.43 Recommendation 43 - References to 'honest or impartial' to be removed

(a) Archer Report recommendation

That section 4(d)¹⁰¹ be amended by deleting the phrase 'honest or impartial' wherever it appears and substituting that phrase with the word 'proper'.¹⁰²

(b) CCC response

This recommendation is opposed by the CCC.

(c) PI response

This recommendation is opposed by the Parliamentary Inspector:

*The word 'proper' introduces a concept that is too uncertain. The existing formulation is adequate and preferable. It would have no application to the proper performance of Parliamentary duties.*¹⁰³

(d) Gail Archer commentary

Gail Archer informed the Committee that she no longer supported this recommendation:

I wrote this report a long time ago and at a time when I was not a member of the Corruption and Crime Commission and that having had the benefit of a meeting on Monday there are a couple of things said in the report that I am now persuaded are perhaps not good recommendations. In that regard I am referring particularly to changing

¹⁰¹ CCC Act, s 4 provides inter alia:

Misconduct occurs if — [...]

- (d) *a public officer engages in conduct that —*
 - (v) *an offence against the Statutory Corporations (Liability of Directors) Act 1996 or any other written law; or*
 - (vi) *a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*
 - (v) *in relation to members of Parliament, an offence against a written law or a substantial breach of the applicable code of conduct;*
 - (vi) *in relation to all other public officers, an offence against a written law or a disciplinary breach that, if proved, would provide reasonable grounds for dismissal.*

¹⁰² Archer Report, p 227.

¹⁰³ Submission No. 1 from the Office of the Parliamentary Inspector, 17 June 2009.

“honest or impartial” to “proper”. This is still in the definition of section 4(d). My reason for recommending the change in the first place was the concern expressed by politicians that the section could capture the proper discharge of parliamentary duties because they are inherently partial. The section is not aimed at politicians who are doing their job properly but at those politicians who are doing bad things—or anybody else who is doing bad things.

*Therefore, I thought that a way to solve that and to make it clear that what you were looking at was improper performance of functions was that those words could be replaced with “proper”. Having spoken to the other three sitting on my right, I am persuaded that that is not necessary and in fact will make the phrase even woollier than it is now, and that the phrase “honest or impartial” in this context would not capture the partial but proper performance of a politician’s role. **Perhaps I can just indicate that I have moved away from the original recommendation in that regard.** [emphasis added]¹⁰⁴*

(e) Committee response

The JSCCCC regards both Recommendations 1 and 43 to be obsolete, and recommends that the Attorney General consult with Gail Archer on the suggestion put forward by the CCC and supported by the Parliamentary Inspector with respect to Recommendation 1.

¹⁰⁴ Gail Archer SC, Acting Commissioner, Corruption and Crime Commission, Transcript of Evidence, 17 June 2009.

1.44 Recommendation 44 - A code of conduct for Members of Parliament

(a) Archer Report recommendation

That Parliament consider:

- (a) creating a comprehensive code of conduct for members of Parliament; and
- (b) amending section 4(d) by:
 - (i) deleting section 4(d)(v) and (vi); and
 - (ii) substituting the following new paragraphs:
 - (v) in relation to members of Parliament, an offence against a written law or a substantial breach of the applicable code of conduct;
 - (vi) in relation to all other public officers, an offence against a written law or a disciplinary breach that, if proved, would provide reasonable grounds for dismissal.¹⁰⁵

(b) CCC response

The CCC has no comment regarding this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC regards this recommendation as being irrelevant to the review of the CCC Act. It is properly a matter for the Privileges Committees of both Houses.

¹⁰⁵ Archer Report, p 232.

1.45 Recommendation 45 - The distinction between 'serious misconduct' and 'misconduct'

(a) Archer Report

That section 27A be amended by deleting the words 'not being serious misconduct'.^{106, 107}

(b) CCC response

The CCC has no comment regarding this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation, on the proviso that Recommendations 46 and 47 are also implemented.

¹⁰⁶ Archer Report, p 235.

¹⁰⁷ CCC Act, s27A: *Allegations involving parliamentary privilege*

(1) *Despite any contrary provision in this Act, an allegation of misconduct, **not being serious misconduct** —*

(a) *made against a member of the Legislative Council or the Legislative Assembly in the performance by him or her of the functions of that office; or*

(b) *made against an officer liable to be removed from office under section 35 of the Constitution Act 1889,*

is to be referred by the Commission to the presiding officer. (emphasis added)

1.46 Recommendation 46 - Privileges Committees to have discretion as to when to engage the CCC

(a) Archer Report recommendation

That section 27B(2)¹⁰⁸ be amended to replace 'must' with 'may'.¹⁰⁹

(b) CCC response

The CCC has no comment regarding this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

¹⁰⁸ CCC Act, s 27B(2) provides:

(2) *If the Privileges Committee resolves to carry out its own inquiry, it must may do so by directing the Commission to act on its behalf*

¹⁰⁹ Archer Report, p 237.

1.47 Recommendation 47 - Referral of allegations to Privileges Committees

(a) Archer Report recommendation

That section 27B(1)(a)¹¹⁰ be amended to provide:

*where the allegation is made under paragraph (a), refer the allegation to a committee of the House whose functions include considering matters relating to the practice, procedure and privileges of the House (the 'Privileges Committee') to determine whether or not it will inquire into the matter.*¹¹¹

(b) CCC response

The CCC has no comment regarding this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

¹¹⁰ CCC Act, s 27B(1)(a) provides:

(1) *The presiding officer, on receipt of a referral made under section 27A(1), must —*

(a) *where the allegation is made under paragraph (a), require a committee of the House whose functions include considering matters relating to the practice, procedure and privileges of the House (the Privileges Committee), to inquire into the matter; refer the allegation to a committee of the House whose functions include considering matters relating to the practice, procedure and privileges of the House (the 'Privileges Committee') to determine whether or not it will inquire into the matter.*

¹¹¹ Archer Report, p 237.

1.48 Recommendation 48 - Estimated reporting dates

(a) Archer Report recommendation

That the Act be amended to provide that, when the CCC receives a referral under section 27B, it must notify the Privileges Committee of its estimated report date.¹¹²

(b) CCC response

The CCC offers the following comments in relation to this recommendation:

CCC Comment: This recommendation is problematic. Experience has shown that providing an estimated date for a report is fraught with difficulties. The need to provide procedural fairness to persons who are adversely affected by a Commission report is a constant cause of delay. Moreover, at the time that the CCC receives a referral under section 27B the investigation will not yet have commenced and it will be difficult to provide an estimate for the length of the investigation, let alone an estimated completion date for the final report.

Another issue that arises is the interaction between the proposed amendment and current section 27B(3)(f). Section 27B(3)(f) says that the Commission is to report to the presiding officer and the Privileges Committee when so requested or at predetermined intervals or both. The Commission suggests that consideration be given to amending section 27B(3)(f) to accommodate the Privileges Committee's concern, rather than introduce a new provision (which will create two reporting requirements and might cause some uncertainty). Alternatively, if a new provision is to be introduced, s 27B(3)(f) should be repealed.¹¹³

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC is opposed to this recommendation, as it is unnecessary.

¹¹² Archer Report, p 239.

¹¹³ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

1.49 Recommendation 49 - CCC referrals to independent agencies and recommendations to the DPP

(a) Archer Report recommendation

That section 27B¹¹⁴ be amended by:

- (a) adding at the beginning of subsection (8) the words 'Subject to subsection (9)'; and
- (b) inserting a new subsection (9) that provides:

*Nothing in section 27A or this section affects the Commission's power to institute a prosecution or to make a recommendation to the Director of Public Prosecutions that consideration be given to the prosecution of a particular person.*¹¹⁵

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

¹¹⁴ CCC Act, s 27B (8) and (9) provides:

- (8) *Subject to subsection (9) The Commission must not make a recommendation to an independent agency under section 43(4) unless expressly authorised by resolution of the House.*
- (9) *Nothing in section 27A or this section affects the Commission's power to institute a prosecution or to make a recommendation to the Director of Public Prosecutions that consideration be given to the prosecution of a particular person.*

¹¹⁵ Archer Report, p 240.

1.50 Recommendation 50 - Reporting dates of Privileges Committees

(a) Archer Report recommendation

That section 27B(7)¹¹⁶ be amended to read:

*The Privileges Committee must present to the House a report provided under subsection (6), in the form in which it was received, on a sitting day within 14 sitting days of its receipt.*¹¹⁷

(b) CCC response

The CCC has no comment regarding this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

¹¹⁶ CCC Act, s 27B(7) provides:

The presiding officer must present to the House a report provided under subsection (6), in the form in which it was received, on the sitting day next following its receipt. The Privileges Committee must present to the House a report provided under subsection (6), in the form in which it was received, on a sitting day within 14 sitting days of its receipt.

¹¹⁷ Archer Report, p 241.

1.51 Recommendation 51 - Section 27A of the Act

(a) Archer Report recommendation

That section 27A(3)¹¹⁸ be amended to replace 'Part 2' with 'Part 3'.¹¹⁹

(b) CCC response

The CCC offers the following comments in relation to this recommendation:

*This amendment was made by Act No 8 of 2009.*¹²⁰

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

This recommendation is obsolete.

¹¹⁸ CCC Act, s 27A(3) provides:

Section 22(3) and Division 4 of Part 2 Part 3 are excluded in their operation with respect to an allegation made under subsection (1).

¹¹⁹ Archer Report, p 246.

¹²⁰ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

THE NEED FOR SECURITY

1.52 Recommendation 52 - Minister-CEO disclosure

(a) Archer Report

That consideration be given to further clarifying the ability of CEOs to discuss CCC issues with their Ministers.¹²¹

(b) CCC response

The CCC offers the following comments in relation to this recommendation:

The Commission has now adopted a practice whereby it informs a CEO to whom information is disclosed whether they can or cannot discuss that information with their Minister. In cases where telling the Minister might compromise an investigation, the CEO is told that he or she cannot discuss the matter with their Minister. Otherwise the CEO is told that he or she can talk to their Minister. Accordingly, the Commission submits that this recommendation is unnecessary.

If however this recommendation is implemented, the relevant provision should allow the Commission to prohibit a CEO from talking to their Minister in cases where that might compromise an investigation.¹²²

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation in principle; clarification of this issue would be helpful and on this basis further consideration should be devoted to this area.

¹²¹ Archer Report, p 253.

¹²² Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

1.53 Recommendation 53 - Disclosure of information

(a) Archer Report recommendation

That the Act be amended to restrict disclosure of information provided to a person in confidence, provided that the person was made aware that the information was confidential and was not to be further disclosed.¹²³

(b) CCC response

The CCC supports this recommendation:

*This recommendation will fix the loophole in section 153 and is supported by the Commission.*¹²⁴

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

¹²³ Archer Report, p 254.

¹²⁴ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

1.54 Recommendation 54 - Communication with persons under CCC investigation

(a) Archer Report recommendation

That section 152 of the Act be amended to insert a new subsection which provides:

A relevant person must not, either directly or indirectly, communicate with any person known or suspected by the relevant person to be or be likely to be under investigation or surveillance by the Commission, unless:

- (i) *it is in connection with the performance of the relevant person's duties under this Act, or*
- (ii) *the relevant person has the prior written permission of the Commissioner.*

*Penalty: Imprisonment for 3 years and a fine of \$60,000.*¹²⁵

(b) CCC response

The CCC believes this recommendation may be unnecessary:

*The Commission is concerned that this penal provision might expose officers of the Commission to the possibility of criminal prosecution in cases where communication is inadvertent and/or innocuous. The real mischief here is the potential for officers of the Commission to divulge "official information". The disclosure of this kind of information is already governed by section 152 of the Act. Accordingly, the Commission submits that the current provisions are adequate. In this case the cure would be worse than the problem it attempts to remedy.*¹²⁶

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC is opposed to this recommendation. The concerns informing this recommendation are already catered for in section 152 of the Act.

¹²⁵ Archer Report, p 257.

¹²⁶ Submission No. 2 from the Corruption and Crime Commission, 28 August 2009.

OTHER AMENDMENTS

1.55 Recommendation 55 - The ability of the CCC to conduct prosecutions in the Magistrates Court

(a) Archer Report recommendation

That the Act be amended to make it clear that the CCC has, and has always had, the power to commence and conduct prosecutions in the Magistrates Court.¹²⁷

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

In the event that Parliament decides that the CCC should have the power to prosecute, the JSCCCC supports this recommendation.

¹²⁷ Archer Report, p 259.

1.56 Recommendation 56 - The definition of 'principal officer of a notifying authority'

(a) Archer Report recommendation

That in the definition of 'principal officer of a notifying authority':

- (a) the following paragraph be added:

for the purposes of subparagraph (d)(i), more than one person can be prescribed as a principal officer of the notifying authority, or of notifying authorities of that class.

and

- (b) subparagraph (d)(ii) be amended to read (amendments underlined):

if no person is specified in the regulations under subparagraph (i), any person who is the head of that notifying authority, its most senior officer, its chief executive officer or the person normally entitled to preside at its meetings, and for the purposes of this subparagraph, there may be more than one principal officer.¹²⁸

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector has no comment regarding this recommendation.

(d) Committee response

The JSCCCC supports this recommendation, and refers to the Committee's 10th Report in the 37th Parliament.

¹²⁸ Archer Report, p 262.

1.57 Recommendation 57 - Making false or misleading reports

(a) Archer Report recommendation

That section 25(5) of the Act be amended to provide:

*A person who knowingly, maliciously or recklessly makes a report which is false or misleading in a material respect, is guilty of a crime.*¹²⁹

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation.

¹²⁹ Archer Report, p 264.

1.58 Recommendation 58 - Further review of the Act

(a) Archer Report recommendation

A further review be conducted of the Act eight years after its commencement.¹³⁰

(b) CCC response

The CCC supports this recommendation.

(c) PI response

The Parliamentary Inspector supports this recommendation.

(d) Committee response

The JSCCCC supports this recommendation in principle but, noting the time elapsed, supports a further review five years hence.

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

HON NICK GOIRAN, MLC
CHAIRMAN

¹³⁰ Archer Report, p 265.