



**Joint Standing Committee on the
Anti-Corruption Commission**

**THE SECOND WORKING GROUP MEETING
OF PARLIAMENTARY COMMITTEES WITH
A ROLE TO OVERSEE CRIMINAL JUSTICE
AND LAW ENFORCEMENT BODIES**

Sixth Report
In the Thirty-Fifth Parliament

DECEMBER 1998

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Sixth Report
In the Thirty-Fifth Parliament

Presented by
Mr W. Thomas, MLA
Laid on the Table of the Legislative Assembly on 23 December 1998

ORDERED TO BE PRINTED

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*Joint Standing Committee on the Anti-Corruption Commission***TERMS OF REFERENCE**

On Wednesday 18 June 1997 the Legislative Assembly and the Legislative Council agreed to establish the Joint Standing Committee on the Anti-Corruption Commission with the following Assembly Standing Orders –

415B The functions of the Committee shall be —

- (a) to monitor and review the performance of the functions of the Anti-Corruption Commission established under the Anti-Corruption Commission Act 1988;
- (b) to consider and report to Parliament on issues affecting the prevention and detection of “corrupt conduct”, “criminal conduct”, “criminal involvement” and “serious improper conduct” as defined in section 3 of the Anti-Corruption Commission Act 1988. Conduct of any of these kinds is referred to in this resolution as “official corruption”;
- (c) to monitor the effectiveness or otherwise of official corruption prevention programs;
- (d) to examine such annual and other reports as the Joint Standing Committee thinks fit of the Anti-Corruption Commission and all public sector offices, agencies and authorities for any matter which appears in, or arises out of, any such report and is relevant to the terms of reference of the Joint Standing Committee;
- (e) in connection with the activities of the Anti-Corruption Commission and the official corruption prevention programs of all public sector offices, agencies and authorities, to consider and report to Parliament on means by which duplication of effort may be avoided and mutually beneficial co-operation between the Anti-Corruption Commission and those agencies and authorities may be encouraged;
- (f) to assess the framework for public sector accountability from time to time in order to make recommendations to Parliament for the improvement of that framework for the purpose of reducing the likelihood of official corruption; and
- (g) to report to Parliament as to whether any changes should be made to relevant legislation.

415C The Joint Standing Committee shall not -

- (a) investigate a matter relating to particular information received by the Anti-Corruption Commission or particular conduct or involvement considered by the Anti-Corruption Commission;
- (b) reconsider a decision made or action taken by the Anti-Corruption Commission in the performance of its functions in relation to particular information received or particular conduct or involvement considered by the Anti-Corruption Commission; or
- (c) have access to detailed operational information or become involved in operational matters.

415D The Joint Standing Committee consist of 8 members, of whom -

- (a) 4 shall be members of the Legislative Assembly; and
- (b) 4 shall be members of the Legislative Council.

415E No Minister of the Crown or Parliamentary Secretary to a Minister of the Crown be eligible to be a member of the Joint Standing Committee.

415F A quorum for a meeting of the Joint Standing Committee be 5 members, each House of Parliament being represented by at least one member.

415G The Joint Standing Committee have power to send for persons, papers and records, to adjourn from time to time and from place to place, and, except as hereinafter provided, to sit on any day and at any time and to report from time to time.

415H The Joint Standing Committee not sit while either House of Parliament is actually sitting unless leave is granted by that House.

415I A report of the Joint Standing Committee be presented to each House of Parliament by a member of the Joint Standing Committee nominated by it for that purpose.

415J In respect of matters not provided for in this resolution, the Standing Orders of the Legislative Assembly relating to select committees be followed as far as they can be applied.

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SECOND MEETING OF THE WORKING GROUP OF PARLIAMENTARY COMMITTEES WITH A ROLE TO OVERSEE CRIMINAL JUSTICE AND LAW ENFORCEMENT BODIES

In May of this year, the Committee tabled in Parliament its Second Report, which set out the origins of the Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice and Law Enforcement Bodies and provided information about the Group's inaugural meeting.

Over 5 and 6 November of this year, the Joint Standing Committee on the Anti-Corruption Commission hosted the second meeting of the Working Group. The meeting was held in the Legislative Assembly chamber, Parliament House, Perth.

The theme of the meeting was *The Effectiveness of Standing Commissions and the Relationship between Parliamentary Oversight Committees and the Agencies they Oversight*.

The meeting was very successful, as had been the first annual meeting held in Brisbane. All those Committees which had participated in the inaugural meeting of the Working Group were again represented in Perth. The Working Group also welcomed the participation of representatives of the Northern Territory and South Australian Parliaments.

During the first session, papers were delivered by each Committee on the theme of the meeting and the Working Group discussed the various matters raised in those papers.

A range of speakers provided diverse perspectives on the role, effectiveness and accountability of the Anti-Corruption Commission (ACC) and agencies like it over the remaining sessions of the meeting.

Members of the ACC and its staff, Commodore David Orr, R.A.N. Retd, who had recently stepped down as an ACC Commissioner, Police representatives, Mr Jack Gregor, who had been the Chairman of the Commission of Government, Mr Michael Barker, who had acted as Counsel Assisting the Royal Commission into Commercial Activities of Government and Other Matters, and the Director of Public Prosecutions all made presentations to the Working Group.

A panel made up of the ACC Commissioners, Commodore Orr, the ACC's Chief Executive Officer and the ACC's Director of Investigations took questions from the Working Group during the Thursday afternoon session of the meeting.

The proceedings of Working Group meetings are confidential as this provides the opportunity to members of participating parliamentary oversight committees to openly discuss the many common issues faced by such committees.

A Communiqué from the November meeting has been prepared which gives an overview of Working Group and the matters addressed at the meeting. It lists those Committees which participated, briefly outlines the subject matter of each of the papers presented to the Working Group and offers an assessment of the value of the meeting to participants (Appendix One).

The Committee has now been involved in two Working Group meetings. Each has been informative, constructive and of great assistance to the continuing work of the Committee in supervising the performance by the ACC of its functions. For visitors from other Australian jurisdictions, the Perth meeting was able to give a clear view of how the ACC works, while at the same time raising, and providing information on, a range of issues relevant to parliamentary oversight committees in Australia.

APPENDIX ONE

Communiqué

Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice and Law Enforcement Bodies

The Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice and Law Enforcement Bodies held its second meeting on 5 and 6 November 1998.

The meeting was held in the Legislative Assembly chamber, Parliament House, Perth.

The theme of the meeting was *The Effectiveness of Standing Commissions and the Relationship between Parliamentary Oversight Committees and the Agencies they Oversight.*

The parliamentary committees represented at the Working Group meeting were:

- the New South Wales Parliamentary Joint Committee on the Independent Commission Against Corruption;
- the New South Wales Parliamentary Joint Committee on the Office of the Ombudsman and the Police Integrity Commission;
- the Commonwealth Joint Committee on the National Crime Authority;
- the Queensland Parliamentary Criminal Justice Committee, which oversees the Criminal Justice Commission; and
- the Western Australian Joint Standing Committee on the Anti-Corruption Commission.

The primary function of these committees is to monitor and review the performance of the agencies they oversee and to report to their respective parliaments.

The purpose of the Working Group is to provide a forum for the open exchange of views and ideas between members of parliamentary oversight committees in Australia. The Working Group represents an invaluable opportunity for the members of such committees to come together to discuss the many common issues they face and to hear from speakers presenting a wide range of views.

The Working Group welcomed the participation of representatives from the South Australian Parliament and the Northern Territory Parliament.

It is hoped that representatives of State and Territory Parliaments that have not passed laws establishing specialist criminal justice or law enforcement agencies supervised by parliamentary oversight committees will continue to participate in the Working Group.

Committee Perspectives

Following the opening of the meeting by the Hon. George Strickland, Speaker of the Legislative Assembly, on the Thursday morning, each Committee Chairman presented a paper related to the theme of the meeting and questions and discussion followed.

The matters raised in those papers and in discussion included:

- developing appropriate performance measures for specialist criminal justice and law enforcement bodies;
- the role and effectiveness of parliamentary oversight committees;
- the role and effectiveness of other external accountability mechanisms such as judicial review, operational review committees, independent inspectors and parliamentary commissioners or inspectors;
- the manner in which complaints against an agency or its officers can best be dealt with; and
- the relative merits of an agency conducting its inquisitorial work in public or in private.

One persistent theme which emerged from the discussion was the importance of maintaining, and in some cases strengthening, the oversight authority of Parliaments.

Guest Speakers

A number of guest speakers presented papers at the meeting addressing a range of issues relevant to the theme of the meeting. The speakers were:

- Commissioner Jack Gregor
Western Australian Industrial Relations Commission
Previously Chairman of the Western Australian Commission on Government
- Commodore David Orr, R.A.N. Retd.
Retired Commissioner
Anti-Corruption Commission
- Mr Terry O'Connor QC
Chairman
Anti-Corruption Commission

- Mr Graeme Charlwood
Director of Investigations
Anti-Corruption Commission
- Mr Michael Barker QC
Barrister
- Mr Peter Alexander
President
Police Federation of Australia
- Mr Mark Burgess
President
Police Association of New South Wales
- Mr John McKechnie QC
Director of Public Prosecutions

Commissioner Jack Gregor

Mr Gregor is a Commissioner of the Western Australian Industrial Relations Commission. He is also a member of the bench of the Australian Industrial Relations Commission.

In 1994, he was appointed as Chairman of the Commission on Government (COG), which presented a series of reports over the two years of its existence on a range of matters to do with government and public administration in Western Australia. Among the matters it examined was the prevention and exposure of corrupt, illegal or improper conduct in government. In particular, it examined the role, powers and functions of the Official Corruption Commission and recommended an alternative model.

Mr Gregor presented a paper in which he looked at the reasons why agencies like the Anti-Corruption Commission (ACC) should be subject to operational review and the ways in which that might be achieved.

Mr Gregor argued there is a need for a commission with wide investigative powers, but, in recognition of the fact that those powers might be abused and the importance of ensuring public confidence in the commission and its processes, there also needed to be effective mechanisms through which the commission's exercise of power could be reviewed.

He considered that the present means of review are cumbersome. He suggested that an operations review committee, constituted by five members with rolling three-year terms, would provide a mechanism through which the operations of a commission like the ACC could be continually monitored and complaints addressed, and which could assist the commission in the discharge of its functions.

Commodore David Orr, R.A.N. Retd

Commodore Orr has been involved with the Anti-Corruption Commission (ACC) and its predecessor, the Official Corruption Commission (OCC), since the OCC was established in 1989. Following a distinguished career in the Navy, he was appointed Executive Officer of the OCC in August 1989. He held that position until June 1996. He was subsequently appointed as a Member of the newly formed Anti-Corruption Commission in October 1996. He has recently retired from the Commission.

Given his long involvement with the Commission, Commodore Orr has a unique knowledge and understanding of the Commission and its evolution. Drawing on this, he presented an historical overview of the ACC to the Working Group. He explained the reasons for the OCC's creation in 1989, the manner in which it operated, and the various changes made to the *Official Corruption Commission Act 1988* which culminated in the establishment of the ACC, a much more powerful body than the original OCC.

Mr Terry O'Connor QC

Mr O'Connor, a prominent Perth Barrister and an active member of the Western Australian community, was appointed Chairman of the ACC just over twelve months ago.

Mr O'Connor outlined how the ACC operates under its Act. He also addressed a number of particular matters regarding the operation of the ACC which have arisen in the course of the ACC establishing itself over the past two years. These included:

- how the secrecy provisions in the Act worked;
- the nature of the ACC's powers; and
- the role of the Joint Standing Committee and the ACC's relationship with the Committee.

Mr Graeme Charlwood

Mr Graeme Charlwood was appointed as Director of Anti-Corruption Commission Investigations in December 1997. At the time of his appointment, Mr Charlwood was an Assistant Commissioner of the Northern Territory Police.

Mr Charlwood spoke to the Working Group about the logistics of ACC investigations and gave an overview of the ACC's investigations directorate. The main part of his address, however, was concerned with ACC Special Investigations. He outlined the manner in which such investigations are undertaken and the planning, preparation and resources that goes into them.

Mr Michael Barker QC

Mr Barker practices as a Barrister at the Independent Bar in Perth. In 1991 and 1992 he was one of the Counsel assisting the Royal Commission into Commercial Activities of Government and Other Matters, which made certain recommendations regarding the establishment of an independent anti-corruption agency with wide ranging powers.

Not long before the Working Group meeting, Mr Barker had presented a paper on judicial oversight of the ACC to the WA Chapter of the Australian Institute of Administrative Law. Mr Barker spoke to that topic when addressing the Working Group.

He referred to cases involving the ACC which had gone before the Western Australia Supreme Court over the previous year and dealt, in particular, with *Parker v Miller* (unreported judgement of the Full Court of the WA Supreme Court, 8 May 1998, No. 980249), in which the Full Court held that neither a Special Investigator, nor the Commission, had power to make findings of guilt.

Mr Barker noted that such agencies are not laws unto themselves and that the Courts will interpret the powers of such agencies narrowly, unless Parliament very clearly spells out the breadth of those powers.

Mr Peter Alexander and Mr Mark Burgess

Mr Alexander has been President of the Police Federation of Australia since 1991. Mr Burgess was elected to the position of President of the NSW Police Association in May 1998.

Mr Alexander and Mr Burgess each presented a paper to the Working Group in which they addressed the theme of the meeting from the perspective of the Police.

While acknowledging the right of agencies such as the ACC to exist, they also noted the importance of recognising the right of honest police to fair processes.

The outcome of the Wood Royal Commission in New South Wales and the reform process undertaken in the New South Wales Police Service was also examined in terms of what that might say about the most effective ways of ensuring integrity within police services.

They concluded by recommending that all parliamentary oversight committees should establish mechanisms to ensure that the agencies they oversight carry out their functions in an ethical way, while obtaining maximum value for taxpayers' money.

Mr John McKechnie QC

Mr McKechnie was appointed Director of Public Prosecutions (DPP) in 1991.

Mr McKechnie addressed the theme of the Working Group meeting from the perspective of a prosecutor.

He focussed on the following three things in his address:

- the role of the ACC as an investigator, especially in the light of recent Supreme Court decisions;
- the role of the DPP in prosecution following a report to the DPP from the ACC; and
- the problems of using evidence gathered by the ACC in prosecutions.

Panel Discussion

Following the addresses by Commodore Orr, Mr O'Connor and Mr Charlwood, a panel, which included these three speakers and Mr Donald Doig, ACC Commissioner, and Mr Wayne Mann, ACC Chief Executive Officer, took questions from the participants in the meeting.

Professor Geoffrey Bolton

On the Thursday evening, Professor Geoffrey Bolton, Senior Scholar in Residence, Murdoch University and Emeritus Professor, Murdoch and Edith Cowan Universities, presented an entertaining and thought provoking after dinner speech.

Assessment

The specialist criminal justice and law enforcement commissions which have been established in Australia are still in the process of evolving. Some of the difficulties faced by these commissions, both politically and in the courts, are indicative of that evolutionary process. Parliamentary oversight committees have a crucial task to perform in this process. Responsible for supervising such agencies and, in particular, their functions and role, and reporting to the parliaments to which these agencies are responsible, such committees will necessarily play an integral part in setting the direction these agencies take in the future.

The meeting confirmed the value of the Working Group. Invariably, the committees who participated found they faced similar or analogous issues and problems, some of which may have been addressed in other jurisdictions; others which not all the committees may have foreseen; and others still which are known but remain unresolved. The Working Group is a forum through which members of oversight committees can exchange information and experience, allowing each committee to better undertake its oversight role, to find out about or develop effective means of addressing particular issues and to be mindful of future challenges.

The Working Group intends to meet again in September of next year.