



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

# **The efficiency and timeliness of the current appointment process for Commissioners and Parliamentary Inspectors of the CCC**

**Report No. 1  
September 2017**

Parliament of Western Australia

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	Mr Matthew Hughes, MLA Member for Kalamunda

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## **The efficiency and timeliness of the current appointment process for Commissioners and Parliamentary Inspectors of the CCC**

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Report No. 1

Presented by

**Ms M.M. Quirk, MLA and Hon J.E. Chown, MLC**

Laid on the Table of the Legislative Assembly and Legislative Council  
on 14 September 2017



## Chair's Foreword

**R**eport number 31 of the Joint Standing Committee of the Corruption and Crime Committee in the 39<sup>th</sup> Parliament (39<sup>th</sup> JSCCCC) was laid on the Table of the Legislative Council and the Legislative Assembly on 15 November 2016. Titled *The efficiency and timeliness of the current appointment process for Commissioners and Parliamentary Inspectors of the CCC*, it contained 25 Findings and three Recommendations.<sup>1</sup>

Due to the prorogation of the Parliament and the dissolution of the Legislative Assembly on 30 January 2017, the Attorney General and Premier did not have the opportunity to respond to the recommendations of the 39<sup>th</sup> JSCCCC.

Given the importance of these recommendations, the Joint Standing Committee on the Corruption and Crime Commission resolved to bring them to the new Government's attention by tabling them in the 40<sup>th</sup> Parliament.

An expedient government response is particularly important to ensure an efficient appointment process is in place when it will be needed at the end of 2017 following the expiration of the current Parliamentary Inspector on the Corruption and Crime Commission's five year term.



MS M.M. QUIRK, MLA  
CHAIR

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<sup>1</sup> This report can be viewed at:

[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/8793B5A4B30A864948258067000C94C2/\\$file/57181463.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/8793B5A4B30A864948258067000C94C2/$file/57181463.pdf)



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## **Ministerial Response**

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



# Findings and Recommendations

## **Finding 1**

Of the 22 appointments to the roles of Commissioner, Acting Commissioner, Parliamentary Inspector and Acting Parliamentary Inspector during the past 12 years, just three appointees have been women.

## **Finding 2**

The definition of 'bipartisan support' in the *Corruption, Crime and Misconduct Act 2003* has not proved to be of concern to the current Committee.

## **Finding 3**

It continues to be unnecessary to amend the *Corruption, Crime and Misconduct Act 2003* to mandate a response from the Joint Standing Committee to any correspondence from the Premier in regard to proposed appointments.

## **Finding 4**

Despite amendments in regard to remuneration for a Commissioner made to the then-*Corruption and Crime Commission Act 2003*, it is too early to judge whether this has increased the number of expressions of interest for the role of Commissioner.

## **Finding 5**

The issue of the remuneration of ex-judges serving as the Commissioner has been resolved with the amendments included in the *Corruption and Crime Commission Amendment (Misconduct) Act 2014*.

## **Finding 6**

None of the Commissioners have returned to judicial office since the Corruption and Crime Commission was established in January 2004.

## **Finding 7**

None of the Parliamentary Inspectors have returned to judicial office since January 2004.

## **Finding 8**

Sections 9(3b) and 14(2a) of the *Corruption, Crime and Misconduct Act 2003* still require the position of Acting Commissioner to be nationally advertised when the current office holder is seeking to have their contract extended for another term.

### **Finding 9**

There has not been a comprehensive full review of the *Corruption, Crime and Misconduct Act 2003* since that of Ms Gail Archer SC in February 2008.

### **Finding 10**

The Parliamentary Inspector (PICCC) recommends that the current process for appointing a PICCC or Acting PICCC be improved by removing the nominating committee and the requirement that it provide a list of three nominees to the Premier.

### **Finding 11**

The Parliamentary Inspector prefers that the process for appointing a PICCC or Acting PICCC be that the Premier consult upon a proposed recommendation, including with the Chief Justice, before the recommendation is submitted to the Parliament via the Joint Standing Committee.

### **Finding 12**

The creation of the role of a Deputy Commissioner is supported by the Commissioner, the Parliamentary Inspector, and multiple past Acting Commissioners, and would be consistent with the models used in the anti-corruption agencies in New South Wales, Victoria, Queensland and South Australia.

### **Recommendation 1**

The Attorney General prepare an amendment to the *Corruption, Crime and Misconduct Act 2003* to allow for the appointment of a Deputy or Assistant Commissioner to assist the Commissioner in the day to day work of the Corruption and Crime Commission.

### **Finding 13**

In New South Wales, the Independent Commission Against Corruption (ICAC) Commissioner and Inspector of the ICAC are appointed by the Governor after a nominee is proposed by the Premier to the NSW Parliament's Committee on the ICAC, which has the power to veto an appointment. The Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission, however, does not have a role in the appointment of the Police Integrity Commissioner.

### **Finding 14**

The appointment in Victoria of the Commissioner of the Independent Broad-based Anti-corruption Commission (IBAC) and the Inspector of the Victorian Inspectorate are Governor in Council appointments on the recommendation of a Minister. The recommendation is subject to a time-limited veto power by the Parliament of Victoria's IBAC Committee.

**Finding 15**

In Queensland, the Parliamentary Crime and Corruption Committee (PCCC) undertakes on behalf of the Speaker the selection process for the Parliamentary Crime and Corruption Commissioner. The Attorney-General appoints the senior positions at the Crime and Corruption Commission after the nominees are interviewed by the PCCC in order to obtain its bipartisan support.

**Finding 16**

The appointment in South Australia of the Independent Commissioner Against Corruption is a Governor in Council appointment made on the recommendation of the Attorney-General subject to a time-limited approval process by the South Australian Parliament's Statutory Officers Committee.

**Finding 17**

The appointment in Tasmania of the Integrity Commissioner and the Parliamentary Standards Commissioner are Governor in Council appointments made on the recommendation of the Attorney-General after consultation with the Joint Standing Committee on Integrity.

**Finding 18**

Western Australia is the only Australian jurisdiction that utilises a nominating committee tasked with supplying a list of suitable candidates to the Executive on who should fill the role of inspector and commissioner of its anti-corruption agency.

**Finding 19**

The legislation establishing the previous State anti-corruption agencies have included, since 1988, a form of selection or nominating committee involving the Chief Justice and the Chief Judge.

**Finding 20**

The *Corruption and Crime Commission Bill 2003* proposed doing away with a nominating committee and intended to make the appointment of a Commissioner or Parliamentary Inspector an Executive decision, after consultation by the Attorney General with leaders of the other political parties represented in the Parliament.

**Finding 21**

The Chief Justice and the Chief Judge do not support the inclusion of serving judicial officers in the appointment process for Commissioners and Parliamentary Inspectors, for reasons including the undesirability of involving judges in executive functions that are unrelated to the work of the courts.

### **Finding 22**

There are no limits imposed by Chapter III of the Constitution of the Commonwealth that impact on section 3 of the *Corruption, Crime and Misconduct Act 2003* that requires the Chief Justice and the Chief Judge of the District Court to participate in a nominating committee.

### **Finding 23**

No legislative amendments to the *Corruption, Crime and Misconduct Act 2003* are required in order to keep serving judges involved in the nominating committee process, however it would be prudent to include them in this process by *ad hoc* appointment in which case their consent would also be required, further minimizing any risk of offending the *Kable* principle.

### **Finding 24**

The process in Western Australia for appointing a Royal Commissioner is uncomplicated and efficient. It does not include a nominating committee.

#### **Recommendation 2**

The Attorney General prepare an amendment to sections 9(3a)(a) and 9(3b) of the *Corruption, Crime and Misconduct Act 2003* to:

1. remove the role of a nominating committee in the appointment process for Commissioners and Parliamentary Inspectors; and
2. in lieu thereof, mandate that the Premier propose one name from a list of three people to the Committee for its bipartisan and majority support.

### **Finding 25**

The greatest delay in the current processes of appointing Commissioners and Parliamentary Inspectors is the time taken by the Premier's office to process the recommendations received from the nominating committee to providing the information and preferred candidate to the Joint Standing Committee for its consideration.

#### **Recommendation 3**

The Premier undertake a review of the internal processes for managing the appointments of Commissioners and Parliamentary Inspectors, with the aim of ensuring that they are more timely and efficient.

# Appendix One

## Committee's functions and powers

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By concurrence between the Legislative Assembly and the Legislative Council, the Joint Standing Committee on the Corruption and Crime Commission was established on 15 June 2017.

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, Crime and Misconduct Act 2003*.

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