



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

**Report on the Operational
Accountability of the Anti-Corruption
Commission and the Protection of
Rights Under the Anti-Corruption
Commission Act 1988**

Fourth Report
In the Thirty-Fifth Parliament

Presented by:
**Hon. Derrick Tomlinson, MLC and
Mr W. Thomas, MLA**

Laid on the Table of the Legislative Council and the Legislative Assembly
on 29 October 1998

Further copies are available from -

State Law Publisher
10 William Street
PERTH WA 6000

Telephone: (08) 9321 7688
Facsimile: (08) 9321 7536
E-mail: sales@mpc.wa.gov.au



Published by the Legislative Assembly, Perth, Western Australia 6000



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

**Report on the Operational
Accountability of the Anti-Corruption
Commission and the Protection of
Rights Under the Anti-Corruption
Commission Act 1988**

**Fourth Report
In the Thirty-Fifth Parliament**

Presented by:

**Hon. Derrick Tomlinson, MLC and
Mr W. Thomas, MLA**

Laid on the Table of the Legislative Council and the Legislative Assembly
on 29 October 1998

COMMITTEE MEMBERS

Chairman	Hon. Derrick Tomlinson, MLC
Deputy Chairman	Mr W. Thomas, MLA
Members	Mr R. Bloffwitch, MLA Dr E. Constable, MLA Hon. J. Cowdell, MLC Hon. M. Montgomery, MLC Hon. N. Griffiths, MLC Mr M. Trenorden, MLA

COMMITTEE STAFF

Clerk to the Committee	Mr Peter Frantom
Research Officer	Mr Alphonse de Kluyver
Secretary/Stenographer	Mrs Patricia Roach

Committee Address

Legislative Assembly	Contact: Mr Peter Frantom
Parliament of Western Australia	<i>Telephone: (08) 9222 7486</i>
Harvest Terrace, PERTH WA 6000	<i>Fax: (08) 9222 7804</i>
	<i>E-mail: pfrantom@parliament.wa.gov.au</i>

*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.

TABLE OF CONTENTS

	<i>Page No.</i>
TERMS OF REFERENCE	iii
CHAIRMAN'S FOREWORD	vii
EXECUTIVE SUMMARY	ix
MINISTERIAL RESPONSE	xv
CHAPTER ONE	1
<u>The Inquiry Process</u>	
Background	1
Discussion Paper	1
The Coombs' Investigation	2
Hearings	2
CHAPTER TWO	3
<u>The Committee's Conclusions and Recommendations</u>	
1. Operational Accountability and Dealing with Complaints Against the ACC	
The Committee's Conclusion and Recommendation	3
Explanation	7
Independence and Operational Integrity	7
Accountability	8
Redress of Grievances	10
Office of Parliamentary Inspector	12
2. Procedural Fairness and the Protection of Rights	13
The Committee's Conclusion and Recommendation	13
Explanation	14
Constraints on the Exercise of Power by the ACC	14
Administration of the Rights Protections Under the Act	16
3. Secrecy and Confidentiality	18
The Committee's Conclusion and Recommendation	18
Explanation	19
The Purposes Served by Secrecy and Confidentiality Under the Act	19
Section 54	20
TABLE OF CASES	23
TABLE OF STATUTES	25
REFERENCES	27
APPENDIX ONE	29

CHAIRMAN'S FOREWORD

The *Anti-Corruption Commission Act 1988* (“the Act”) gives the Commission access to very wide powers for the conduct of independent investigation into allegations of corruption, crime and serious improper conduct by public officers. Some of those powers are outside the common law acceptance of the rule of law. For example, by section 37, the Commission in making a preliminary enquiry may request any person or body to supply information. By section 38, it may request any person or body to produce such document or other thing as is requested. The penalty for failure to comply with either request is a fine of \$8,000 or imprisonment for two years.

These provisions override section 81 of the Criminal Code (Official Secrets) and much of the law relating to public document privilege. It also transcends the powers of the police in that the request is not required to be authorised by court order nor by search warrant. It is a coercive power and in the wrong hands could be an oppressive power.

Under Part IV, a Special Investigator has all the powers of a Royal Commissioner which include powers of coercion in relation to the production of documents and the answering of questions. A witness is not excused from answering a question or producing a document even on the ground that it might be self-incriminatory. The Special Investigator has power to enter premises without warrant, and to take documents away. Any question of privilege is negated by section 45. Likewise the requirements to answer questions and produce documents have effect despite any duty of secrecy or other restriction imposed under a written law.

All information provided to the Commission is confidential. Except in the performance of their duties, members or officers of the Commission are prohibited from disclosing any information or producing any documents received in an official capacity. Similar requirements of confidentiality apply to Special Investigators. For example, section 42 provides that any evidence taken under the provisions of Part IV must be taken in private.

These provisions of confidentiality have proven to be a two-edged sword. It is easy to represent the ACC as a clandestine body. In fact, in the eleven months since the completion of the Miller Report, there have been several allegations that the Commission has exceeded its powers, or has used them in ways not intended by Parliament. Some of the accusations give rise to serious reconsideration of the effect of the Commission’s powers on civil liberties.

Because it operates under statutory obligations of confidentiality, the Commission is constrained in its ability to defend itself publicly against claims made against it, or to enter into the public debate about the extent of its powers. The Joint Standing Committee on the Anti-Corruption Commission (“the Committee”) has entered the public debate. In its First Report, *Confidentiality and Accountability: Parliamentary Supervision of Anti-Corruption and/or Law Enforcement Agencies in Australia (October 1997)*, the Committee examined tensions between the confidentiality requirements relating to current operational material and the need for parliamentary committees to be sufficiently well informed to ensure that an agency is properly accountable. In April 1988, the Committee published a discussion paper, *Secrecy Under the Anti-Corruption Commission Act*, to elicit public comment on the appropriateness and effectiveness of the secrecy and confidentiality provisions of the Act.

This Report should be read with those two previous papers. They canvass many of the issues in more detail than is presented here. The purpose of this Report is to present the Committee's conclusions and recommendations to amend the Act where the Committee has decided change is necessary. The amendments recommended are not intended to limit the powers of the ACC. The difficulty of investigating public sector corruption means that extraordinary powers must, at times, be used to expose it and to bring offenders to justice. Rather than constrain those powers, the Committee has sought to find a means of ensuring that the ACC must account for its operations. The recommendations presented here also seek to ensure that persons with genuine complaints against their treatment by the Commission or any of its officers have access to an independent authority for hearing and, if warranted, redressing their grievances.

HON DERRICK TOMLINSON MLC
CHAIRMAN
JOINT STANDING COMMITTEE ON THE ANTI-CORRUPTION COMMISSION

EXECUTIVE SUMMARY

OPERATIONAL ACCOUNTABILITY

The ACC is responsible for investigating corruption and serious improper conduct in the public sector and, under the Act, it functions independently of the executive arm of Government. While the Committee acknowledges that independence and operational integrity are necessary for the effective functioning of the ACC, the Committee maintains also that, because of the nature of powers it may exercise, the ACC must be accountable for its operations.

At present there is no continuing, independent mechanism through which the ACC's operations can be audited. Apart from resort to judicial redress of grievances, there is no mechanism for ensuring that the powers of the ACC are exercised lawfully. Nor is there authority for reviewing the appropriateness of operational procedures, or for addressing complaints against the ACC or its officers.

The lack of independent scrutiny is a significant gap in accountability. If a mechanism is not established through which the operations of the ACC can be fully and independently scrutinised the ACC will remain vulnerable to criticism that it functions as a "star chamber" and that complaints about the fairness of its procedures or the conduct of its officers cannot be answered.

After examining agencies operating in New South Wales and Queensland, and reviewing responses to the Discussion Paper, including those from the Chairman of the ACC, Commissioner of Police and the President of the WA Police Union of Workers, the Committee has concluded that the most appropriate way to provide for the operational accountability of the ACC is to establish an independent office with extensive powers to –

- audit the operations of the ACC;
- investigate complaints against the ACC or its officers; and
- evaluate the effectiveness and appropriateness of the ACC's procedures.

Such an office should have full access to the operational files and the staff of the ACC, and be established in such a way as to protect the operational integrity of the ACC and the confidentiality of witnesses and informants.

To achieve these ends, the Committee recommends that an Office of Parliamentary Inspector of the Anti-Corruption Commission be established.

Recommendation One

The Committee recommends –

- (i) That an Office of Parliamentary Inspector of the Anti-Corruption Commission be created under the Act.**
- (ii) That the Office of Parliamentary Inspector of the Anti-Corruption Commission be filled by a person who has held office as a Judge or District Court Judge or is eligible for appointment as a Judge.**
- (iii) That the Parliamentary Inspector of the Anti-Corruption Commission be appointed by the Governor on the recommendation of the Standing Committee.**
- (iv) That provision be made under the Act for the suspension or removal of the Parliamentary Inspector from his office to be on similar grounds to those applying to the Parliamentary Commissioner of Administrative Investigations under section 6 of the *Parliamentary Commissioner Act 1971*.**
- (v) That the Parliamentary Inspector of the Anti-Corruption Commission perform the following functions –**
 - auditing the operations of the ACC;**
 - investigating and reporting on complaints against the ACC, its officers or a Special Investigator; and**
 - assessing the effectiveness and appropriateness of the ACC's procedures.**
- (vi) That the functions of the Inspector can be exercised –**
 - on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference from the Ombudsman, the ACC, the Standing Committee or any other agency; or**
 - as directed by the Standing Committee.**

(vii) That the Parliamentary Inspector of the Anti-Corruption Commission have the power to –

- **make or hold inquiries and for this purpose to the exercise the powers of a Royal Commission and a Chairman of a Royal Commission under the applied provisions as provided for and modified under Part IV of the Act;**
- **investigate any aspect of the ACC’s operations, the conduct of its officers or the conduct of a Special Investigator;**
- **have full access to the records of the ACC and to have copies made of any records;**
- **require the ACC, officers of the ACC or a Special Investigator to supply information or produce documents or other things about any matter relating to the ACC’s operations or any conduct of its officers or a Special Investigator;**
- **require the ACC, officers of the ACC or a Special Investigator to attend before the Inspector and answer any questions or produce documents or other things relating to the ACC’s operations or any conduct of its officers;**
- **investigate and assess complaints about the ACC, its officers or a Special Investigator;**
- **refer matters relating to the ACC, its officers or a Special Investigator for consideration or action; and**
- **recommend disciplinary action or criminal prosecution against officers of the ACC or a Special Investigator**

(viii) That the Parliamentary Inspector of the Anti-Corruption Commission –

- **prepare an Annual Report on the Inspector’s operations to be presented to each House of Parliament;**
- **report on a regular basis to the Standing Committee on the Inspector’s general activities and operations;**
- **report to the Standing Committee in response to a direction from the Standing Committee; and**

- **may report on any matters relating to the functions of the Inspector as set out in Clause (v) of this recommendation to the Standing Committee, or, if the Committee is not constituted, the Presiding Officer of each House of Parliament.**
- (ix) **That the Terms of Reference of the Standing Committee be amended so that its functions extend to monitoring and reviewing the performance of the functions of the Inspector.**

PROCEDURAL FAIRNESS AND THE PROTECTION OF RIGHTS

Within the scheme of the Act, the extensive coercive powers granted the ACC are balanced by constraints upon the exercise of those powers. The policy of the Act seeks an equilibrium amongst coercion, procedural fairness and protecting individual rights. It is consistent with that policy for written guidelines to be developed governing the practice and procedures of the Commission in its investigative function. Such guidelines would promote consistent and effective protection of the individual rights and obligations which the Act requires of the ACC.

The Committee is not convinced that such guidelines should be prescribed in Rules of Parliament. The ACC is still evolving and shaping its functions and procedures and the development of guidelines for the administration of the Act is an ongoing process. However, the Committee is of the opinion that a statement for witnesses should be prepared which makes clear their rights and responsibilities in their interaction with the Commission. That statement should be provided to all persons interviewed by the ACC, its officers or an ACC Special Investigator.

Recommendation Two

The Committee recommends that -

- (i) **the ACC should continue to develop and refine guidelines governing the application of the rights protections provided under the Act; and**
- (ii) **the ACC should prepare a statement for witnesses to be provided to all persons brought before the ACC or an ACC Special Investigator detailing their rights and responsibilities.**

SECRECY AND CONFIDENTIALITY

The Committee has concluded that the secrecy and confidentiality provisions in the Act should be maintained. While the ACC should conduct its work with as much openness as possible, given

its primary investigative focus, operational secrecy is essential. Moreover, the protection afforded the privacy of individuals subject to investigation by the ACC through the secrecy and confidentiality provisions is highly desirable. Without such protection the reputations of persons may be unfairly damaged from the unwarranted or premature release of information.

No submissions to the Committee, including those from the Chairman of the ACC, the Commissioner of Police and the WA Police Union of Workers, advocated change to the secrecy and confidentiality provisions which detracted from the operational secrecy of the ACC or the confidentiality of witnesses and informants.

There have been questions raised about whether the extent to which section 54 of the Act prevents public disclosure of material relating to allegations before the ACC is appropriate. The Committee concludes that the more liberal interpretation now adopted by the ACC allows for more openness without compromising the privacy protections afforded by section 54. While the operation of this section should be monitored, there is presently no need for the section to be amended. Should legislative amendment become necessary, no change should be made which is inconsistent with the purpose underlying the provision: protecting the confidentiality of persons who are subject to allegations before the ACC.

Recommendation Three

The Committee recommends that –

- (i) the secrecy and confidentiality provisions in the Act should be maintained;**
- (ii) no amendment should be made at present to Section 54 of the Act, though the operation of the provision should be monitored; and**
- (iii) if legislative amendment to section 54 becomes necessary, any amendment made should be consistent with the purpose underlying the provision: protecting the confidentiality of persons who are subject to allegations before the ACC.**

MINISTERIAL RESPONSE

In accordance with Standing Order 378 of the Legislative Assembly, the Committee directs the Premier, “within not more than three months, or at the earliest opportunity after that time if Parliament is in adjournment or recess, to report to the House as to the action, if any, proposed to be taken by the Government with respect to the recommendations”.

CHAPTER ONE

THE INQUIRY PROCESS

BACKGROUND

Over the past twelve months there has been considerable public comment regarding the Anti-Corruption Commission (“the ACC”). Uncertainty and concern have been expressed over the operation of the secrecy and confidentiality provision in the *Anti-Corruption Commission Act 1988* (“the Act”), in particular. Errors in the interpretation of the Act regarding the capacity of the ACC or an ACC Special Investigator to make findings based on evidence assembled during an investigation have been revealed in the Supreme Court and have heightened uncertainty about how the ACC has exercised its powers. This uncertainty has been used to discredit the ACC and its work. Underlying this is the contention that the ACC is an unaccountable body operating in secret like a “star chamber” in which due process and the rights of individuals are routinely infringed.

There are genuine issues relating to the accountability of the ACC, the means through which complaints against the ACC or its Officers can be addressed and the level of protection afforded the rights of those subject to complaint before the ACC. These issues are the subject of this report by the Joint Standing Committee on the Anti-Corruption Commission (“the Committee”).

DISCUSSION PAPER

To assist in the Committee’s deliberations and to encourage informed public discussion the Committee released a Discussion Paper titled *Secrecy Under the Anti-Corruption Act* in April 1998. That Paper outlined the secrecy and confidentiality provisions in the Act and the purposes those provisions are intended to serve. It further addressed in detail issues of accountability and the protection of rights under the Act.

In response to the Discussion Paper the Committee received submissions from the following organisations and individuals –

- Mr Terry O’Connor QC
Chairman
The Anti-Corruption Commission
- Mr Robert Falconer APM
Commissioner of Police
Western Australian Police Service
- The Western Australian Police Union of Workers

-
- Associate Professor Allan Peachment
School of Marketing
Curtin University of Technology.

THE COOMBS' INVESTIGATION

Following the release of the Discussion Paper, the Committee conducted an extensive investigation into complaints made by Det. Sgt Peter Coombs against the ACC, Special Investigator Geoffrey Miller QC and others (JSCACC 1998b). The Report of that investigation was tabled in Parliament on 18 June 1998.

Apart from the specific matters addressed in that report, the Committee considered how complaints against the ACC should be addressed. The Committee examined the role of the Commission and its own role in dealing with such complaints in the light of its experience in conducting the investigation into Det. Sgt Coombs' complaints. The Committee further outlined alternative mechanisms through which complaints against the ACC could be addressed. The Committee concluded that the existing processes were unsatisfactory and it indicated that it would bring down a recommendation for an appropriate complaints mechanism at the conclusion of its inquiry into secrecy under the Act.

HEARINGS

In a number of hearings conducted by the Committee during the period of the inquiry the Committee took evidence relevant to the central issues of the inquiry.

Matters arising from the Discussion Paper were discussed with Assistant Commissioner Jack MacKaay, who is responsible for the Professional Standards Portfolio of the Western Australian Police Service, in *in camera* evidence taken from the Assistant Commissioner on 8 April 1998.

Similarly, the Committee discussed matters relevant to the inquiry with the ACC in its quarterly *in camera* meetings with the Commission on 14 May 1998 and 26 August 1998.

Evidence was also taken from Mr Michael Dean, President of the WA Police Union of Workers on 16 September 1998.

On 29 June 1998, the Chairman of the Committee held separate meetings with Judge P. D. Urquhart QC, Commissioner of the Police Integrity Commission (PIC) in New South Wales, and the Hon. Mervin Findlay, Inspector of the Police Integrity Commission. The purpose of the meetings was to discuss generally issues of accountability and the nature of the relationship between the PIC, the Inspector and the Parliamentary Committee.

In addition, since its establishment, the Committee has held a range of meetings with organisations and individuals involved in dealing with public sector corruption in other jurisdictions in Australia and overseas which have informed the Committee's deliberations in this inquiry.

CHAPTER TWO

THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

1. OPERATIONAL ACCOUNTABILITY AND DEALING WITH COMPLAINTS AGAINST THE ACC

THE COMMITTEE'S CONCLUSION AND RECOMMENDATION

The ACC is responsible for investigating corruption and serious improper conduct in the public sector and, under the Act, it functions independently of the executive arm of Government. While the Committee acknowledges that independence and operational integrity are necessary for the effective functioning of the ACC, the Committee maintains also that, because of the nature of powers it may exercise, the ACC must be accountable for its operations.

At present there is no continuing, independent mechanism through which the ACC's operations can be audited. Apart from resort to judicial redress of grievances, there is no mechanism for ensuring that the powers of the ACC are exercised lawfully. Nor is there authority for reviewing the appropriateness of operational procedures, or for addressing complaints against the ACC or its officers.

The lack of independent scrutiny is a significant gap in accountability. If a mechanism is not established through which the operations of the ACC can be fully and independently scrutinised the ACC will remain vulnerable to criticism that it functions as a "star chamber" and that complaints about the fairness of its procedures or the conduct of its officers cannot be answered.

A number of criticisms expressing this common theme have been made over the past twelve months. Some have been the subject of Supreme Court action. In a case which went before the Full Court of the Supreme Court in April of this year findings made by ACC Special Investigator Geoffrey Miller QC and adopted by the Commission were held to be beyond power and unlawful.¹ The scope of the Terms of Reference given to Special Investigator Mr George Tannin has also been the subject of challenge before the Supreme Court.² So too has the validity of search warrants issued to the Commission.³ In a case yet to be heard by the Full Court, a new

¹ *Parker and Others v Miller and Others* Unreported decision of the Full Court, Supreme Court of Western Australia, delivered 8 May 1998, Lib. No. 980249.

² *Western Australian Police Union of Workers and Others v Anti-Corruption Commission and Tannin* Unreported decision, Supreme Court of Western Australia, Murray J, delivered 11 September 1998, Lib. No. 980519. Justice Murray ruled three of the four Terms of Reference were valid.

³ *Ibbotson v Chaney and ACC and Others* Unreported decision of the Full Court, Supreme Court of Western Australia, delivered 26 June 1998, Lib. No. 980370. The Court ruled the search warrants were valid. An application for special leave to appeal to the High Court is pending.

report presented to the Commissioner of Police by the ACC based on evidence assembled by Mr Miller will be challenged.⁴ Allegations of improper conduct have been made to this Committee against an ACC Special Investigator. The Committee found there was no substance to these allegations (JSCACC 1998b). In the submission of the WA Police Union of Workers to the Committee, concern is expressed about the practical application of the rights protections contained in the Act.⁵ Such matters and others have been, and continue to be, the subject of considerable publicity, often critical of the ACC.

The Committee refers to these matters not to pass judgement on them, but rather to illustrate two issues central to this inquiry. First, persistent publicity of this kind causes public disquiet, undermines public confidence, and diminishes the capacity of the ACC to perform its statutory functions. Second, and perhaps more important, the ACC and Special Investigators it appoints may exercise powers which override certain traditional protections, such as the privilege against self-incrimination. Such powers are granted the ACC to serve the public interest in minimising corruption, but the exercise of those powers can impact adversely upon the rights of individuals, and upon public expectations about justice and fairness. Therefore, it is essential that those rights and expectations are protected by making the ACC accountable when it exercises coercive powers.

After examining agencies operating in New South Wales and Queensland, and reviewing responses to the Discussion Paper, including those from the Chairman of the ACC, Commissioner of Police and the President of the WA Police Union of Workers, the Committee has concluded that the most appropriate way to provide for the operational accountability of the ACC is to establish an independent office with extensive powers to –

- audit the operations of the ACC;
- investigate complaints against the ACC or its officers; and
- evaluate the effectiveness and appropriateness of the ACC's procedures.

Such an office should have full access to the operational files and the staff of the ACC, and be established in such a way as to protect the operational integrity of the ACC and the confidentiality of witnesses and informants.

To achieve these ends, the Committee recommends that an Office of Parliamentary Inspector of the Anti-Corruption Commission be established.

⁴ Justice Parker ruled on 27 August 1998 that the officers have an arguable case (*Parker and Others v Anti-Corruption Commission* Unreported decision, Supreme Court of Western Australia, Parker J, delivered 27 August 1998, Lib. No. 980509).

⁵ The comments of the Police Union are discussed further at pp.16 -17 of the Report.

Recommendation One

The Committee recommends –

- (i) That an Office of Parliamentary Inspector of the Anti-Corruption Commission be created under the Act.**
- (ii) That the Office of Parliamentary Inspector of the Anti-Corruption Commission be filled by a person who has held office as a Judge or District Court Judge or is eligible for appointment as a Judge.**
- (iii) That the Parliamentary Inspector of the Anti-Corruption Commission be appointed by the Governor on the recommendation of the Standing Committee.**
- (iv) That provision be made under the Act for the suspension or removal of the Parliamentary Inspector from his office to be on similar grounds to those applying to the Parliamentary Commissioner of Administrative Investigations under section 6 of the *Parliamentary Commissioner Act 1971*.**
- (v) That the Parliamentary Inspector of the Anti-Corruption Commission perform the following functions –**
 - auditing the operations of the ACC;**
 - investigating and reporting on complaints against the ACC, its officers or a Special Investigator; and**
 - assessing the effectiveness and appropriateness of the ACC's procedures.**
- (vi) That the functions of the Inspector can be exercised –**
 - on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference from the Ombudsman, the ACC, the Standing Committee or any other agency; or**
 - as directed by the Standing Committee.**

(vii) That the Parliamentary Inspector of the Anti-Corruption Commission have the power to –

- **make or hold inquiries and for this purpose to exercise the powers of a Royal Commission and a Chairman of a Royal Commission under the applied provisions as provided for and modified under Part IV of the Act;**
- **investigate any aspect of the ACC's operations, the conduct of its officers or the conduct of a Special Investigator;**
- **have full access to the records of the ACC and to have copies made of any records;**
- **require the ACC, officers of the ACC or a Special Investigator to supply information or produce documents or other things about any matter relating to the ACC's operations or any conduct of its officers or a Special Investigator;**
- **require the ACC, officers of the ACC or a Special Investigator to attend before the Inspector and answer any questions or produce documents or other things relating to the ACC's operations or any conduct of its officers;**
- **investigate and assess complaints about the ACC, its officers or a Special Investigator;**
- **refer matters relating to the ACC, its officers or a Special Investigator for consideration or action; and**
- **recommend disciplinary action or criminal prosecution against officers of the ACC or a Special Investigator**

(viii) That the Parliamentary Inspector of the Anti-Corruption Commission –

- **prepare an Annual Report on the Inspector's operations to be presented to each House of Parliament;**
- **report on a regular basis to the Standing Committee on the Inspector's general activities and operations;**

- **report to the Standing Committee in response to a direction from the Standing Committee;**
 - **may report on any matters relating to the functions of the Inspector as set out in Clause (v) of this recommendation to the Standing Committee, or, if the Committee is not constituted, the Presiding Officer of each House of Parliament.**
- (ix) **That the Terms of Reference of the Standing Committee be amended so that its functions extend to monitoring and reviewing the performance of the functions of the Inspector.⁶**

EXPLANATION

Independence and Operational Integrity

So that the ACC may be, and may be seen to be, impartial, it is established by the Act as a functionally autonomous agency of the Parliament, independent of the Executive. The key to the Commission's independence lies in its operational integrity. Whether and what further action is taken on allegations before the Commission are decisions for it to make in accordance with the Act. The Commission cannot be directed to undertake or cease an investigation. Moreover, subject to constraints on releasing information which might interfere with "investigatory or other action" (section 52(4)) or reveal an informant's identity (section 52(5)(b)), the Commission controls what information it will release about its operations.

Under the reporting provisions contained in divisions 6 and 7 of the Act and the provisions in section 52 which permit the ACC to divulge information, determinations as to whether such reports or disclosures are made, and what detailed information they might contain, are within the Commission's discretion. The only report the Commission is obliged to make is its Annual Report under the *Financial Administration and Audit Act 1985*. Section 32 of the Act provides that the Annual Report shall include statistics, "and such information of a general nature as it thinks fit", regarding the allegations which have come before the Commission over the previous year.⁷ In all other pertinent respects, the Commission may choose what it might report, even to the Parliament. Under section 34, Rules of Parliament may require the Commission to report to each House of

⁶ In formulating this recommendation the Committee used as a foundation the provisions in the *Police Integrity Commission Act 1996* through which the Office of Inspector of the Police Integrity Commission in New South Wales is established. The Committee also looked to amendments made to the Queensland *Criminal Justice Act 1989* earlier this year through which an Office of Parliamentary Criminal Justice Commissioner was created. The provisions relating to these offices are reproduced in Appendix One.

⁷ The reporting provisions and the secrecy and confidentiality provisions in the Act are outlined in detail at pages 5-8 of the Discussion Paper (JSCACC 1998a).

Parliament or the Committee, but the Commission cannot be required to provide in such reports detailed operational information.

In its First Report the Committee discussed the tension between operational confidentiality and accountability (JSCACC 1997).

Accountability

There are two aspects to the accountability of an agency like the ACC. The first is administrative accountability. With respect to the ACC this is provided through the overarching supervisory role performed by this Committee. In fulfilling this role the Committee is required to ensure that the ACC generally performs its functions effectively and in a manner consistent with the policy of the Act, and to recommend, where appropriate, legislative change. The second, operational accountability, requires detailed scrutiny of an agency's operations to ensure that an agency is complying with the terms of its Act and the policies and procedures through which the Act is administered, and that the rights of persons affected by the agency are not infringed. Under the present framework of its Act, the Commission itself is supposed to perform this role.

Administrative Accountability

The primary accountability mechanism for the ACC is the Joint Standing Committee on the Anti-Corruption Commission. The Commission is an agency of the Parliament, not the Executive, and it is intended that it should account to Parliament, either directly or through a standing committee. This process is designed to offer the ultimate safeguard against the abuse of power by the ACC.

The relationship which has developed between the Commission and the Committee has proven mutually beneficial. The Commission has responded positively to requests for information relevant to the Committee's purpose to "monitor and review the functions of the Anti-Corruption Commission" and has sought to brief the Committee about matters of current interest. Hence, the Committee has been advised about the functions of the ACC, and the Commission, in turn, has the confidence that its processes and activities are open to an accountable authority. From time to time, consistent with section 52(7) of the Act, this process of exchange has extended to sharing confidential information about particular matters. The use the Committee may make of that information in public reports or in response to general or particular criticism directed by others against the ACC is limited by requirements of operational confidentiality.

Although envisaged by the Act, the Committee is not established by statute. It is constituted by resolution of both Houses of Parliament and functions under Standing Orders of the Legislative Assembly. The Committee has broad Terms of Reference which extend its oversight role to the whole framework of public sector integrity. It is, however, given the specific function of monitoring and reviewing the performance of the functions of the ACC.

Under the Standing Orders and the Act the Committee is prevented from having access to "detailed operational information" or becoming involved in operational matters (Standing Order 415C(c) and section 34 of the Act). Because "detailed operational information" is not defined, the determination as to what constitutes "detailed operational information" is in practice for the Commission to make.

The Commission is permitted to inform the Committee about sensitive matters (section 52(7)), but it is not required to do so. The Committee, therefore, may be given information about the ACC's current operations. When such information is given, members of the Committee, are bound by the same prohibitions on the disclosure as apply to members, officers or servants of the Commission (section 52(8)).⁸

Under the Standing Orders the Committee also is prevented from investigating a matter "relating to particular information received by the ACC or particular conduct or involvement considered by the ACC", or from reconsidering "a decision made or action taken by the ACC ..." (Standing Order 415C (a) and (b)).

While the Act entertains that the Commission will account to the people of Western Australia through a standing committee and Parliament, the Act and Standing Orders also make it clear the Committee shall not be involved in the operational accountability of the ACC. Its role is confined to administrative accountability, involving the Committee in such matters as overseeing the policies and procedures of the ACC, assessing the ACC's effectiveness and recommending changes to the Act where that is appropriate.

That role was envisaged for such a committee by the Royal Commission into Commercial Activities of Government and Other Matters (1992), the Commission on Government (COG) (1995), and the Select Committee on the Official Corruption Commission Act (1992). Each, in examining or recommending the establishment of an anti-corruption agency, proposed that a parliamentary oversight committee be created. All recommended against such a committee having involvement in operational matters.

The Royal Commission stated –

Whilst the agency should conduct its operations as openly as possible, it must necessarily, in relation to operational matters, act confidentially in order to protect, not only the integrity of its investigations, but also the interests of those who might be directly or indirectly affected by investigations. It would be incompatible with the protection of these interests for members of Parliament, including those serving on the Joint Parliamentary Committee, to be acquainted with operational matters (Royal Commission into Commercial Activities of Government and Other Matters 1992: 4.25).

As to why that might be the case, the COG said –

Parliamentarians have party affiliations and there is a strong temptation to use allegations of impropriety or corruption that affect one's political opponents, for political advantage, meanwhile the original complaint may get lost, subsumed by the political process (COG 1995: No. 2 Part 1, 105).

The Committee does not agree that Parliamentarians have a propensity to misuse information, but agrees that its functions should not include detailed scrutiny of operational matters. It would be incompatible, as the Royal Commission suggested, with the provisions in the Act which protect the confidentiality of witnesses and informants. Most important, it would detract from the Committee's performance of its general supervisory function. It also could be seen to detract

⁸ There is some doubt as to whether this provision would prevail over the *Parliamentary Privileges Act 1891*.

from the ACC's independence. While such access would not necessarily result in political interference in the work of the Commission, access by the Committee to detailed operational information might, in some circumstances, be interpreted as politicising the Commission.

Operational Accountability

The only mechanism presently existing through which the ACC may be accountable for its operations is the Commission itself. In a submission to the Committee, the Chairman of the Commission, Mr Terry O'Connor QC, suggested the three part-time Anti-Corruption Commissioners "are supposed to represent the public interest and ensure that the ACC acts appropriately in exercising its functions". The Commissioners perform a similar function to that of the part-time Commissioners who assist the Chairman of the Criminal Justice Commission (CJC) in Queensland and, to a lesser extent, the Operations Review Committee (ORC) established under the *Independent Commission Against Corruption Act 1988*. Like the members of the ACC, the CJC Commissioners and members of the ORC notionally represent the communities from which they are drawn and are involved in making and reviewing operational decisions.

Special Investigators are, in a significant way, independent of the Commission. They operate under applied powers of the Royal Commissions Act. This separation permits the Commission to perform an oversight role with respect to Special Investigations. This role was referred to in the second reading speeches supporting the *Official Corruption Commission Amendment Bill 1996* through which the ACC was created –

The fact that the Commission will appoint special investigators to exercise royal commission powers, rather than doing so itself, provides an important level of accountability The special investigator will be required to report to the Commission. The Commission will be able to appoint different persons to be special investigators in different investigations. This will not only enable the Commission to appoint persons who have relevant expertise in an area, but also reduce the possibility of allegations that there is a perception of predetermined bias on the part of a person who has presided at other hearings (Hansard, 19 June and 3 July 1996, pp 2869 and 3779).

Within the existing framework, the Anti-Corruption Commissioners are intended to perform the complementary accountability role which the Committee has recommended should be undertaken by the Office of Parliamentary Inspector of the Anti-Corruption Commission.

In the Committee's view, that is an unsatisfactory arrangement; not because the Commissioners are incapable of properly performing this function, or that they have not done so satisfactorily in the past, but because it does not overcome the perception that they are judges in their own cause.

Redress of Grievances

Following completion of the Special Investigation by the then Mr Geoffrey Miller QC in December 1997, a number of complaints regarding the conduct of the Special Investigation were made by police officers against whom there were adverse findings. Other concerns have been levelled against procedures followed in the ACC's Special Investigation by Mr George Tannin. The complaints raise a number of issues ranging from procedural fairness and the protection of rights, to the scope of the inquiries undertaken by the Special Investigator.

Some of those issues have been or are being tested in Supreme Court challenges. For instance, the officers suspended by the Commissioner of Police as a result of the findings contained in the Report by Mr Miller following the completion of his Special Investigation, commenced a Supreme Court action against Mr Miller, the ACC and the Commissioner of Police. They successfully challenged the findings made against them and their suspension by the Commissioner of Police on the basis of those findings.⁹ Mr Tannin's authority to summons witnesses and inquire into certain allegations was challenged in the Supreme Court on the basis that his Terms of Reference were too broad and unspecific. Only the fourth and final Term of Reference was held invalid.¹⁰

Judicial Review, however, is an expensive and technical process and the basis for review is limited. Moreover, the information supplied applicants by the ACC or otherwise made available to the Court may be limited.

Under the present system the only body which has the access to the operational files and staff of the ACC and which can deal with complaints is the Commission itself. Performing such a role comes within the broad function of the Commissioners to ensure the ACC acts appropriately. As noted above, confidence in self-regulation may be undermined by the perception that the Commissioners are judges in their own cause.

Other mechanisms of review are available and have been utilised. These include the following –

From time to time the Committee has received unsolicited complaints against the ACC or its officers. The limitations imposed on the Committee by Standing Orders generally prevent it from undertaking an independent investigation of such complaints. The Committee is neither entitled to have access to detailed operational information, nor can it review matters already investigated by the Commission.

The Committee did conduct a lengthy inquiry into complaints made by Det. Sgt Coombs against the ACC, Special Investigator Geoffrey Miller QC and others (JSCACC 1998b). In conducting that inquiry, while the Committee is satisfied that it was able to undertake a thorough investigation of the matters raised by Det. Sgt. Coombs, it relied on the co-operation of the ACC to supply certain highly confidential information.

⁹ *Parker v Miller, supra* note 1.

The officers were suspended for a second time by the Commissioner of Police relying on a new Report by the ACC based on the evidence assembled by Mr Miller during his investigation. The officers are again challenging in the Supreme Court the authority of the ACC and the decision of the Commissioner of Police to suspend them. Justice Parker ruled on 27 August 1998 that the officers have an arguable case and it is to go before the Full Court (*Parker v The Anti-Corruption Commission, supra* note 4). In the meantime four of the officers have been reinstated.

¹⁰ *Western Australian Police Union of Workers v Anti-Corruption Commission, supra* note 2.

Apart from the fact that such inquiries, quite rightly, would not usually come within the scope of the Committee's Terms of Reference, prohibitions on the Committee's access to operational information and its reliance on the co-operation of the ACC in supplying such information, limit the Committee's capacity to conduct such inquiries.

The general policy of the Committee, consistent with the present structure of the Act, is to refer such complaints to the Commission and to request a report. It is obliged to accept the Commission's response in good faith.

Complaints may also be directed to the responsible Minister. Under the *Public Sector Management Act 1994* the Minister may appoint a Special Inquirer to investigate and report on matters as directed by the Minister.

Mr Trevor Boucher was appointed in July 1998 under these provisions to investigate allegations against the ACC and its officers by the WA Police Union of Workers and individual complainants.

Through these mechanisms the ACC has been held to account and the rights of persons affected by ACC investigations have been asserted. None, however, constitutes a continuing, independent mechanism through which the ACC is fully accountable for its operations. That is unsatisfactory.

Office of Parliamentary Inspector

The Committee has concluded that the most appropriate way in which the accountability gap can be filled is through the establishment of an independent office with powers to audit and review the operations of the ACC. Those powers should include investigating complaints against the ACC and assessing the effectiveness and appropriateness of the ACC's procedures. Such an office should have full access to the operational files of the ACC and its staff, and should be established in such a way as to maintain the operational confidentiality of the ACC and the confidentiality of witnesses and informants.

The Committee is recommending the establishment of an Office of Parliamentary Inspector of the Anti-Corruption Commission. A Parliamentary Inspector could provide an appropriate level of accountability without compromising the operational integrity of the ACC. Moreover, the Office would protect the rights of individuals subject to investigation by the ACC by providing an independent mechanism for addressing complaints. More important, it should enhance public confidence in the functioning of the Commission.

While the Office of Parliamentary Inspector of the Anti-Corruption Commission should carry substantial powers, the functions of the Office must be specific, reflecting the concerns which gave rise to this inquiry. The role the Committee envisages for the Inspector, like that of the Inspector of the Police Integrity Commission in NSW, is to review the operations of the ACC and to protect against the infringement of civil liberties. Such operational accountability would complement the Committee's role of administrative accountability.

The recommendation of the Committee departs from the New South Wales model of the Inspector of the Police Integrity Commission in important ways. In particular, it is recommended that the

Inspector of the ACC be an officer of the Parliament appointed by the Governor on the recommendation of the Committee, thereby providing a direct connection to the Committee, and through the Committee to Parliament. Drawing in part on the Queensland model of a Parliamentary Criminal Justice Commissioner, the further recommendations of the Committee regarding the reports of the Inspector and the capacity of the Committee to direct the Inspector to undertake an audit or inquiry, are intended to reflect the overarching supervisory function of the Committee and the principle that the Inspector be responsible to Parliament.

In the submissions made to the Committee various comments were made regarding establishing such an office. Only the submission from the Police Union advocated that a separate, independent body be established to audit the ACC's operations. The other submissions, where they dealt with this matter, expressed caution about setting up another oversight body. For the reasons outlined above, however, the Committee believes it is essential that such an office be created. Its recommendation that an Office of Parliamentary Inspector of the Anti-Corruption Commission be established is consistent with the policy underlying the Act and will, in the Committee's view, see that policy better realised. The creation of an Office of Parliamentary Inspector of the Anti-Corruption Commission would be an important and constructive addition to the framework in which the ACC operates rather than a substantial alteration of it.

2. PROCEDURAL FAIRNESS AND THE PROTECTION OF RIGHTS

THE COMMITTEE'S CONCLUSION AND RECOMMENDATION

Within the scheme of the Act, the extensive coercive powers granted the ACC are balanced by constraints upon the exercise of those powers. The policy of the Act seeks an equilibrium amongst coercion, procedural fairness and protecting individual rights. It is consistent with that policy for written guidelines to be developed governing the practice and procedures of the Commission in its investigative function. Such guidelines would promote consistent and effective protection of the individual rights and obligations which the Act requires of the ACC.

The Committee is not convinced that such guidelines should be prescribed in Rules of Parliament. The ACC is still evolving and shaping its functions and procedures and the development of guidelines for the administration of the Act is an ongoing process. However, the Committee is of the opinion that a statement for witnesses should be prepared which makes clear their rights and responsibilities in their interaction with the Commission. That statement should be provided to all persons interviewed by the ACC, its officers or an ACC Special Investigator.

If the Committee's recommendation for the creation of an Office of Parliamentary Inspector is accepted, the Inspector, in performing the function of assessing the effectiveness and appropriateness of the procedures of the ACC, would have the benefit of the Commission's own guidelines as a benchmark. For those affected by ACC investigations, the guidelines would complement their rights and protections as defined in the Act. It would provide an additional level of protection of the proper administration of the those statutory rights, as well as clear expectations to be addressed in the redress of grievances.

Recommendation Two

The Committee recommends that -

- (i) the ACC should continue to develop and refine guidelines governing the application of the rights protections provided under the Act; and**
- (ii) the ACC should prepare a statement for witnesses to be provided to all persons brought before the ACC or an ACC Special Investigator detailing their rights and responsibilities.**

EXPLANATION**Constraints on the Exercise of Power by the ACC**

To enable it to carry out its primary functions of investigating public sector corruption and bringing to justice those engaged in corrupt activities, the ACC has been granted substantial coercive powers. Among other things, those powers override the traditional protection afforded individuals to refuse to give evidence which may be self-incriminating. The secrecy and confidentiality provisions in the Act also require that the work of the ACC be conducted in secret, thereby denying the conventional right of the accused to confront their accusers. This is the case even when an ACC Special Investigator is appointed.¹¹

An ACC Special Investigator may exercise the powers of a Royal Commissioner and may conduct hearings, but, unlike a Royal Commissioner, cannot hold public hearings (section 42(1)). Consequently, individuals under investigation may not necessarily know in detail what evidence, if any, has been presented against them, nor do they have the opportunity to cross-examine witnesses who have given such evidence.

In the interests of procedural fairness and individual rights, certain structural and other constraints are imposed upon the exercise of these coercive powers. In the first instance, the exercise of powers is moderated by the requirement for the ACC to conduct or initiate different kinds of investigations according to the nature of matters before it. The Commission may conduct preliminary inquiries and, in doing so, may request any person or body to supply it with information (section 37), or produce a document or other thing (section 38). In many cases, however, the investigation will be referred to another agency or appropriate authority.

¹¹ The powers exercised by specialist anti-corruption agencies and the impact they may have upon individual rights is discussed in the Committee's Discussion Paper (JSCACC 1998a) and literature on this subject is noted. That literature includes Corns (1994), McClellan (1991), Priest (1993), Ransley (1994), Roser (1992), Rozenes (1995) and Sturgess (1994).

In making the decision as to what further action is to be taken, the Commission is required to take into account the following matters –

- (a) the seniority of any public officer to whom the allegation relates;
- (b) the seriousness of the conduct or involvement to which the allegation relates;
- (c) the need for there to be an independent investigation rather than an investigation by a public authority with which any public officer to whom the allegation relates is connected by membership or employment or in any other respect (section 18).¹²

This requirement represents a limit upon the use of the coercive powers available to the ACC or an ACC Special Investigator. Only serious cases are investigated by the ACC itself. Where the Commission decides to conduct its own investigation, it may request by written notice that a public authority or public officer produce a statement of information (section 44(1)), and may enter premises used or occupied by a public authority or public officer in that capacity for the purpose of inspecting the premises or anything in them and may take copies of documents held on those premises (section 45(1)). The powers of a Royal Commissioner provided for under Part IV of the Act are available only to Special Investigators appointed by the Commission.¹³ Where agencies or authorities investigate matters at the ACC's request or direction they exercise only the powers usually available to them. No additional powers are conferred because matters are before the ACC.

Apart from these structural constraints, the Act contains the following procedural requirements and protections for the rights of individuals –

While hearings conducted by a Special Investigator are conducted in private and witnesses may not cross-examine other witnesses on the evidence they present, they are entitled to legal representation (section 42(2)), and to know the general nature of the investigation before evidence is taken on oath (section 43).

While a witness may not rely upon the privilege against self-incrimination, the Act provides for a use immunity so that information supplied under coercion by a witness cannot be admitted in evidence in any civil or criminal proceedings against that witness, except in contempt proceedings or proceedings for an offence against the Act (sections 37(3) and 44(6)).

¹² Consistent with section 18, the ACC has stated the following general rule –

... the only matters the ACC will investigate, using its own investigators, are those involving politicians, senior public officers (CEOs) and senior police. Other matters which, by their very nature, demand an inquiry which is not only independent, but also seen to be independent, may also be referred by the Commission to its own investigators (ACC 1997).

¹³ The provisions in the Act relevant to how the ACC deals with allegations and the powers it may exercise are discussed in detail in the Discussion Paper at pages 8-12 (JSCACC 1998a).

Reports made to Parliament or the Minister cannot contain facts adverse to a person or body unless that person or body has been given reasonable opportunity to make representations with respect to those facts (section 30(1)).

The Commission cannot divulge information under section 52(3) containing adverse findings against a person unless that person has first been given an opportunity to make submissions with respect to those findings (section 52(6)).

The decision as to whether a person is to be prosecuted for a criminal offence on the basis of evidence assembled by the ACC is solely for the Director of Public Prosecutions to make.

Where, under Division 6, the Commission makes a report to Parliament, the Presiding Officers, the Minister or the Standing Committee, on action it has taken, the Commission may report on the facts disclosed (section 27(a)), but it cannot recommend that a person be prosecuted for a criminal offence (section 30(2)).

A person whose alleged conduct or involvement is to be referred to in a report to the Parliament or Minister may request that the facts in the report be publicly disclosed (sections 27(b) and 28(1)(b)).

Administration of the Rights Protections Under the Act

These constraints upon exercise of the powers of the ACC provide a framework which protects the interests of those subject to investigation. However, a number of the specific protections are administered in a manner determined by the ACC itself. One of the concerns expressed about the operations of the ACC following the completion of the Special Investigation by Mr Miller was the apparent lack of clear guidelines or protocols for the administration of those specific protections. This matter was raised by the WA Police Union of Workers in their submission to Committee.

A number of sections in the Act permit the Commission a significant degree of discretion about how they are to be applied. This is both necessary and appropriate, but in some circumstances it also would be appropriate for formal guidelines to be developed. The Act provides for such procedures to be formalised through Rules of Parliament –

Rules of Parliament may be made for prescribing procedures to be adopted by the Commission in the performance of its functions under the Act and for prescribing any other matter necessary or convenient for the due administration of this Act (section 56(1)).

The practical application of four of the sections granting specific rights and procedural protections discussed above is determined by the Commission. They are as follows –

- the provision in section 42(2) through which a witness called to appear before a Special Investigator is entitled to legal representation;

- the provision in section 43 through which a witness called before a Special Investigator “is entitled to be informed of the general scope and purpose of the investigation”;
- the section 30(1) requirement that reports made to Parliament or the Minister cannot contain facts adverse to a person or body unless that person or body has been given reasonable opportunity to make representations with respect to those facts; and
- the section 52(6) requirement that the Commission cannot divulge information under section 52(3) containing adverse findings against a person unless that person has first been given an opportunity to make submissions with respect to those findings.

The Police Union suggested in its submission to the Committee that Rules of Parliament be made with respect to these provisions, “so as to remove the existing uncertainty about an individual’s rights under those sections and, generally, in the interests of affording procedural fairness to an individual”.

The Commission has prepared guidelines for the conduct of witness interviews by its investigators. They outline the information to be given to witnesses about the interview process and their obligations under the Act. The Commission notes, however, that the guidelines are not “totally prescriptive”. For example, the information supplied to witnesses about allegations will vary according to the reasons for the witness being interviewed and the nature of the allegation(s) under investigation.

With respect to legal representation, legal advice may be sought by witnesses before interview and witnesses may have counsel with them during interview. Interpreters are also used during interviews where that is required and witnesses with special needs may have a friend or companion present when interviewed.

Special Investigators are to some extent independent from the Commission. For this reason, the procedures adopted with respect to witnesses called may vary between Special Investigators. As with the information supplied to witnesses by the Commission’s investigators, the particular circumstances of a hearing may also have some affect on the information supplied to a witness by a Special Investigator. The Commission notes, however, that Special Investigators must comply with the terms of the Act and the applied provisions of the *Royal Commissions Act 1968*.¹⁴

In the Committee’s opinion, it is consistent with the policy of the Act for written guidelines to be developed governing the practice and procedure of the ACC. The development of such guidelines will assist in promoting consistent and effective application of those protections. The Committee is not convinced that such guidelines can practically be described in Rules of Parliament, but recommends that a statement for witnesses should be prepared which sets out clearly their rights and responsibilities. That statement should be provided to all persons interviewed by the ACC, its officers or an ACC Special Investigator.

¹⁴ Information about advice given witnesses interviewed by the ACC or an ACC Special Investigator was supplied in a letter dated 6 October 1998 from the Chairman of the ACC, Mr Terry O’Connor QC, in response to a request from the Committee for that information.

3. SECRECY AND CONFIDENTIALITY

THE COMMITTEE'S CONCLUSION AND RECOMMENDATION

The Committee has concluded that the secrecy and confidentiality provisions in the Act should be maintained. While the ACC should conduct its work with as much openness as possible, given its primary investigative focus, operational secrecy is essential. Moreover, the protection afforded the privacy of individuals subject to investigation by the ACC through the secrecy and confidentiality provisions is highly desirable. Without such protection the reputations of persons may be unfairly damaged from the unwarranted or premature release of information.

No submissions to the Committee, including those from the Chairman of the ACC, the Commissioner of Police and the WA Police Union of Workers, advocated change to the secrecy and confidentiality provisions which detracted from the operational secrecy of the ACC or the confidentiality of witnesses and informants.

There have been questions raised about whether the extent to which section 54 of the Act prevents public disclosure of material relating to allegations before the ACC is appropriate. The Committee concludes that the more liberal interpretation now adopted by the ACC allows for more openness without compromising the privacy protections afforded by section 54. While the operation of this section should be monitored, there is presently no need for the section to be amended. Should legislative amendment become necessary, no change should be made which is inconsistent with the purpose underlying the provision: protecting the confidentiality of persons who are subject to allegations before the ACC.

Recommendation Three

The Committee recommends that –

- (i) the secrecy and confidentiality provisions in the Act should be maintained;**
- (ii) no amendment should be made at present to Section 54 of the Act, though the operation of the provision should be monitored; and**
- (iii) if legislative amendment to section 54 becomes necessary, any amendment made should be consistent with the purpose underlying the provision: protecting the confidentiality of persons who are subject to allegations before the ACC.**

EXPLANATION

The Purposes Served by Secrecy and Confidentiality Under the Act

While an ACC Special Investigator may exercise the powers of a Royal Commissioner, the ACC does not operate like a Royal Commission. The primary purpose of a Royal Commission is to expose the truth of matters under review. Assembling evidence which may be used in subsequent criminal prosecutions is not the primary aim. Unlike the Independent Commission Against Corruption (ICAC) in New South Wales, for instance, which is based on the Royal Commission model and was established on the premise that “the solution to corruption lies in systemic reform and not criminal prosecution” (Sturgess 1994: 113), the ACC was established to detect and investigate serious public sector corruption and to assemble evidence which may be admissible in the criminal prosecution of a person. It also assembles evidence of serious improper conduct and may pass such evidence on to appropriate authorities or independent agencies for further action to be taken according to relevant laws.

Referring to the premise on which the ACC was established, it was said in the second reading speeches supporting the amendments through which the ACC was created –

[w]here crimes have been committed, the primary object should be to bring offenders to justice rather than merely report findings of fact (Hansard, 19 June and 3 July 1996, pp 2867 and 3777).

The Act provides that ACC investigations be conducted in secret. Public disclosure of operational matters during an investigation could, for obvious reasons, undermine an investigation. Confidentiality is essential where investigative agencies like the police or the ACC undertake covert operations. Operational secrecy has also been justified on the basis that it encourages witnesses and informants to provide information. They know their identity and the information they provide is protected. Special Investigator Geoffrey Miller QC specifically referred to the role confidentially played in his investigation into police corruption. In his report to the Commission he said –

I am firmly of the view that it was only the fact of confidentiality which led police officers, public officers and civilians to speak of acts of corruption within the Police Service of which they were aware, or of which they reasonably suspected.

Observations by witnesses on police culture in relation to matters of corruption or alleged corruption were freely forthcoming from some witnesses, and they were matters that could never have been the subject of a public hearing.

In short, much of the evidence taken by me would simply have been unavailable had I been forced to conduct public hearings (ACC Media Statement, Tuesday 9 December 1998).

Confidentiality also protects against the disclosure of information which may prejudice the fair trial of a person prosecuted following an ACC investigation.

Moreover, while Royal Commissions can be successful at exposing the truth of the matters under review, there is potential in that process for the reputations of innocent people to be damaged (Rozenes 1995). This has been the experience of the New South Wales ICAC, which conducts much of its inquisitorial work in public (Rozenes 1995; and Sturgess 1994). Confidentiality

protects the reputations of people from evidence which may be malicious, defamatory or just simply wrong.

It is the Committee's view that there are no compelling reasons for amending the secrecy and confidentiality provisions in the Act. They serve important purposes in enhancing the ACC's capacity to investigate public sector corruption and in protecting individual rights. This view appeared to be shared by those who made submissions to the Committee: none supported any change to the secrecy and confidentiality provisions in the Act which detracted from the confidentiality of witnesses and informants or the operational secrecy of the ACC.

Insofar as there has been uncertainty about the operation of the secrecy and confidentiality provisions in the Act, the Committee hopes its Discussion Paper and this report have gone some way to addressing that uncertainty by explaining the purposes those provisions serve and how they fit within the overall scheme of the Act. Insofar as the operation of those provisions has been related to concern over the accountability of the ACC, the Committee believes that if its recommendation to establish an Office of Parliamentary Inspector of the Anti-Corruption Commission is accepted, then the thrust of much of that concern will be addressed.

Section 54

One specific matter relating to the secrecy and confidentiality provisions raised by the Committee in its Discussion Paper concerned section 54 and the question of whether change to the section was required to clarify its meaning.

Section 54 was included in the Act to protect the privacy of individuals against whom allegations have been made. It prohibits a person from publishing or causing to be published in a newspaper or other written publication or by radio or television information regarding allegations received or initiated by the Commission, unless that information has already been made public under the Act or in its execution. The section was included on the recommendation of the Select Committee on the Official Corruption Commission Act. In its 1992 report the Select Committee said –

The Select Committee is keen to protect informers but it is just as concerned to protect individuals from malicious complainants and being defamed as a result of another person reporting to the media that they have made a complaint to the Commission about a particular person. Therefore, the Select Committee believes it should be an offence to publish that a complaint has been made to the Commission about any matter (Select Committee on the Official Corruption Commission Act 1992: 17).

In response to criticism that the section 54 prohibition on publication was too restrictive, the ACC released a policy statement in March of this year which offered a more liberal interpretation of section 54 than had been previously accepted.

In that statement the Commission expressed the view that section 54 prevents the publication of the fact that information or an allegation has been received or initiated by the Commission.

However, the Commission said it would not regard –

publication of details of the information or allegation, *not accompanied by publication of the fact that it has been received or initiated by the Commission, ... as an offence under section 54 (ACC Policy Statement, March 1998).*¹⁵

The Commission’s conclusion regarding this interpretation is that it allows –

full discussion in the media of particular issues, whilst at the same time protecting the rights of people who are the subject to complaint to the ACC (ACC Policy Statement, March 1998).

In other words, information about alleged corruption or misconduct may be published, but the fact that those allegations have been reported to, or are under investigation by, the ACC may not be published.

No submissions suggested the removal of section 54 or alteration to the protection it affords individuals subject to complaint to the ACC. The Commissioner of Police suggested that section 54 could be amended “to allow the Commission, and Chief Executive Officers (CEO), greater latitude of disclosure” without compromising the protection provided by the section. The WA Police Union of Workers, however, expressed the view that section 54 should not be amended, and if it is amended, the protection it offers should be strengthened.

The interpretation of section 54 by which the ACC is now guided does allow greater public discussion of matters referred to another agency or authority by the ACC, whilst protecting the privacy of those the subject of complaint to the ACC. It is the Committee’s view that no changes should be made to section 54 which compromise the protection it offers.

The Committee has also received the following advice from the ACC –

There are no notable problems with the practical operation and interpretation of the Commission’s policy on Section 54 and the policy appears to have achieved what it was originally intended to achieve.¹⁶

Even so, the Committee believes the operation of section 54 should continue to be monitored. If the application of the section becomes uncertain, or if section 54 is subject to an interpretation in the courts contrary to the Commission’s interpretation, dependent on the nature of the interpretation, legislative amendment may be required. At present, however, the Committee finds there are no compelling reasons to make changes to section 54.

¹⁵ The emphasis is included in the original statement.

¹⁶ Letter dated 6 October 1998 from the Chairman of the ACC, Mr Terry O’Connor QC, providing information about section 54 in response to a request from the Committee.

TABLE OF CASES

Ibbotson v Chaney and ACC and Others Unreported decision of the Full Court, Supreme Court of Western Australia, delivered 26 June 1998, Lib. No. 980370.

Parker and Others v Miller and Others Unreported decision of the Full Court, Supreme Court of Western Australia, delivered 8 May 1998, Lib. No. 980249.

Parker and Others v Anti-Corruption Commission Unreported decision, Supreme Court of Western Australia, Parker J, delivered 27 August 1998, Lib. No. 980509.

Western Australian Police Union of Worker and Others v Anti-Corruption Commission and Tannin Unreported decision, Supreme Court of Western Australia, Murray J, delivered 11 September 1998, Lib. No. 980519.

TABLE OF STATUTES

Anti-Corruption Commission Act 1988 (WA)

Criminal Justice Act (1989) (QLD)

Financial Administration and Audit Act 1985 (WA)

Independent Commission Against Corruption Act 1988 (NSW)

Parliamentary Commissioner Act 1971 (WA)

Parliamentary Privileges Act 1891 (WA)

Police Integrity Commission Act 1996 (NSW)

Public Sector Management Act 1994 (WA)

Royal Commissions Act 1968 (WA)

REFERENCES

- Anti-Corruption Commission (1997), *Annual Report 1996-1997*.
- Anti-Corruption Commission (1998), *Anti-Corruption Commission Policy on the Interpretation of the Secrecy Provisions of Section 54 of the ACC Act*, Policy Statement.
- Commission on Government (COG) 1995, *Report No. 2 Part 1*, Perth.
- Corns, C (1994), 'The 'Big Four': Privileges and Indemnities', 27 *The Australian and New Zealand Journal of Criminology* 133.
- Joint Standing Committee on the Anti-Corruption Commission, Parliament of Western Australia (JSCACC) (1997), *Confidentiality and Accountability: Parliamentary Supervision of Anti-Corruption and/or Law Enforcement Agencies in Australia*, First Report, Perth.
- Joint Standing Committee on the Anti-Corruption Commission, Parliament of Western Australia (JSCACC) (1998a), *Secrecy Under the Anti-Corruption Act*, Discussion Paper, Perth.
- Joint Standing Committee on the Anti-Corruption Commission, Parliament of Western Australia (JSCACC) (1998b), *Report on Complaints Made by Detective Sergeant Peter Coombs Against the Anti-Corruption Commission, Special Investigator Geoffrey Miller QC and Others*, Third Report, Perth.
- McClellan, P (1991), 'ICAC - A Barrister's Perspective', 2 *Current Issues in Criminal Justice* 17.
- Priest, M (1993), *Royal Commissions into Corruption and Statutory Commissions of Investigations - A Law Unto Themselves? Judicial Libertines?*, Honours Thesis (UWA).
- Ransley, J (1994), 'The Powers of Royal Commissions and Controls Over Them' in P. Weller (ed), *Royal Commissions and the Making of Public Policy* Melbourne: MacMillan Education Australia.
- Roser, W G (1992), 'The Independent Commission Against Corruption: A New Star Chamber?', 16 *Criminal Law Journal* 225.
- Royal Commission into Commercial Activities of Government and Other Matters (1992), *Report of the Royal Commission into Commercial Activities of Government and Other Matters*, Part II, Perth.
- Rozenes, M. (1995), 'Crime Commissions and the Criminal Trial', 19 *Criminal Law Journal* 65.
- Select Committee on the Official Corruption Commission Act, Legislative Assembly of Western Australia (1992), *Report*, Perth.

Sturgess, G. (1994), 'Guarding the Polity: The NSW Independent Commission Against Corruption' in P. Weller (ed), *Royal Commissions and the Making of Public Policy* Melbourne: MacMillan Education Australia.

APPENDIX ONE**PROVISIONS FOR AN INSPECTOR OF THE POLICE
INTEGRITY COMMISSION IN NEW SOUTH WALES AND
FOR A PARLIAMENTARY CRIMINAL JUSTICE
COMMISSIONER IN QUEENSLAND****1. INSPECTOR OF THE POLICE INTEGRITY COMMISSION****POLICE INTEGRITY COMMISSION ACT 1996 (NSW)****Part 6 Inspector of the Police Integrity
Commission****88 Inspector of the Police Integrity Commission****(1) Appointment**

The Governor may appoint an Inspector of the Police Integrity Commission.

(2) Schedule of provisions relating to Inspector

Schedule 2 has effect.

89 Principal functions of Inspector**(1) the principal functions of the Inspector are:**

(a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and

(b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and

(c) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

(2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Ombudsman, the ICAC, the New South Wales Crime Commission, the Joint Committee or any other agency.

(3) The Inspector is not subject to the Commission in any respect.

90 Powers of Inspector

- (1) The Inspector:
 - (a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and
 - (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and
 - (c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and
 - (d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and
 - (e) may investigate and assess complaints about the Commission or officers of the Commission, and
 - (f) may refer matters relating to the Commission or officers of the Commission to other agencies for consideration or action, and
 - (g) may recommend disciplinary action or criminal prosecution against officers of the Commission.

91 Inquiries (cf Omb Act s 19 (1) (2))

- (1) For the purposes of the Inspector's functions, the Inspector may make or hold inquiries.
- (2) For the purposes of any inquiry under this section, the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923* and that Act (section 13 excepted) applies to any witness summoned by or appearing before the Inspector in the same way as it applies to a witness summoned by or appearing before a commissioner.

92 Staff of Inspector

- (1) Such staff as may be necessary to assist the Inspector may be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Inspector may also employ staff. Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of any such staff.
- (3) The Inspector may engage persons as consultants to the Inspector or to perform services for the Inspector.
- (4) The Inspector may arrange for the use of the services of:

- (a) any staff or facilities of the Commission, a government department or a local or public authority, or
 - (b) any staff who are employed by or for or assigned to the person who is Inspector, in his or her capacity as the holder of some other position (for example, as a Judge).
- (5) Police officers and former police officers cannot be appointed to, employed or engaged by, or seconded to the service of, the Inspector, nor (without limiting the foregoing provisions of this subsection) can arrangements be made under subsection (4) for the use of their services.
- (6) Such provisions of this Act as are prescribed by the regulations apply to persons referred to in subsections (1)-(4) in the same way as they apply to staff of the Commission, with any necessary adaptations and with such modifications as are prescribed.

93 Incidental powers

The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions. Any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this section.

Division 2 Reports by Inspector

101 Special reports

The Inspector may, at any time, make a special report to the Presiding Officer of each House of Parliament on:

- (a) any matters affecting the Commission, including, for example, its operational effectiveness or needs,
- (b) any administrative or general policy matter relating to the functions of the Inspector.

102 Annual reports

The Inspector is required to prepare, within the period of 4 months after each 30 June, a report of the Inspector's operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.

Divisions 3 General

103 Provisions relating to reports (cf ICAC Act s 78)

- (1) A copy of a report furnished to the Presiding Officer of a House of Parliament is to be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.

-
- (2) In the case of a report of the Commission, the Commission may include in a report a recommendation that the report be made public forthwith. In the case of a report of the Inspector, the Inspector may include in it a recommendation that the report be made public forthwith.
 - (3) If a report includes a recommendation that the report be made public forthwith, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.
 - (4) If such a report is made public by a Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.
 - (5) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

2. THE QUEENSLAND PARLIAMENTARY CRIMINAL JUSTICE COMMISSIONER

CRIMINAL JUSTICE ACT 1989 (QLD)

PART 4A— PARLIAMENTARY CRIMINAL JUSTICE COMMISSIONER

Division 1—Parliamentary criminal justice commissioner

Office of Parliamentary criminal justice commissioner

118G.(1) There must be appointed, as an officer of Parliament, a commissioner to be known as the Parliamentary Criminal Justice Commissioner.

(2) Appointment of the parliamentary commissioner may be on a part-time basis.

Qualification for appointment as parliamentary commissioner

118H. The parliamentary commissioner must be a person who has served as, or is qualified for appointment as, a judge of—

- (a) the Supreme Court of Queensland; or
- (b) the Supreme Court of another State.

Disqualifications as parliamentary commissioner

118.(1) A person is disqualified for appointment as parliamentary commissioner if the person—

- (a) holds a judicial appointment; or
- (b) is a member of the Legislative Assembly or the Executive Council; or
- (c) is a commissioner or officer of the commission or has been a commissioner or officer of the commission within the 5 years before the time at which the person's qualification for appointment arises; or
- (d) holds the appointment, director of public prosecutions; or
- (e) is a member of the police service, or has been a member within the 5 years before the time at which the person's qualification for appointment arises; or
- (f) holds an appointment in a unit of public administration or on the staff of a Minister; or

-
- (g) is a member, appointed by the Governor in Council, of a statutory body (other than a person who is automatically a member because the person is the holder of another office), or an employee of a statutory body.

(2) An educational institution is not a unit of public administration for subsection (1)(f) or a statutory body for subsection (1)(g).

(3) The parliamentary commissioner is not eligible for appointment as a member mentioned in subsection (1)(g) and a purported appointment is invalid.

Selection for appointment of parliamentary commissioner

118J.(1) With a view to the selection of a person for appointment as parliamentary commissioner, the Speaker of the Legislative Assembly must cause notification of the parliamentary committee's intention to make a selection to be advertised nationally, calling for applications from suitably qualified persons to be considered for selection.

(2) Subsection (1) does not apply to the reappointment of a person as the parliamentary commissioner.

(3) A person must not be appointed to act as the parliamentary commissioner unless the person's appointment is supported by the members of the parliamentary committee unanimously or by a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly.

Appointment of parliamentary commissioner

118K.(1) The parliamentary commissioner must be appointed by the Speaker of the Legislative Assembly as an officer of the parliamentary service under the *Parliamentary Service Act 1988*.

(2) However—

(a) the parliamentary commissioner cannot be dismissed or suspended without the approval of the parliamentary committee; and

(b) the *Parliamentary Service Act 1988*, sections 43 and 44 do not apply to the position of parliamentary commissioner.

(3) An approval under subsection (2) (a) must not be given unless the approval is supported by the members of the parliamentary committee unanimously or by a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly.

(4) Within 7 sitting days of the appointment of the parliamentary commissioner, the Speaker must table in the Legislative Assembly notice of the appointment.

Acting parliamentary commissioner

118L.(1) The Speaker of the Legislative Assembly may appoint a person qualified to be the parliamentary commissioner to act as the parliamentary commissioner.

(2) A person must not be appointed to act as the parliamentary commissioner unless the person's appointment is supported by the members of the parliamentary committee unanimously or by a majority of the members, other than a majority consisting wholly of members of the political parties in government in the Legislative Assembly.

(3) The Speaker must appoint a person to act as the acting parliamentary commissioner if—

- (a) the parliamentary commissioner is absent on leave or because of illness; or
- (b) the position of parliamentary commissioner is vacant.

Duration of appointment

118M.(1) The parliamentary commissioner may be appointed for a term not less than 2 years and no longer than 5 years.

(2) If a term of appointment is not stated in the appointment—

- (a) the appointment is valid; and
- (b) the appointment is, subject to subsections (3) and (4), taken to be for a term of 5 years.

(3) If the appointment does not state a term of appointment, the Speaker of the Legislative Assembly may at a later time decide the term of appointment.

(4) The parliamentary commissioner may be appointed for a further term if qualified for appointment and the requirements of this part are met but must not service as the parliamentary commissioner for more than a total of 5 years.

Vacation of office

118N. The office of the parliamentary commissioner becomes vacant if the commissioner—

- (a) completes the parliamentary commissioner's term of appointment without reappointment or dies; or
- (b) resigns by signed notice of resignation given to the chairperson of the parliamentary committee; or
- (c) becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (d) becomes an undischarged bankrupt or takes advantage of the laws in force relating to bankrupt debtors; or
- (e) becomes disqualified for appointment as parliamentary commissioner as prescribed in section 118I; or

-
- (f) is convicted of an indictable offence (whether on indictment or summarily) or of an offence defined in section 132:¹⁷ or
 - (g) is removed from office by the Speaker on a recommendation of the parliamentary committee supported by all or a majority of the committee, being a majority other than one consisting wholly of members of the political party or parties in government in the Legislative Assembly.

Remuneration of parliamentary commissioner

118O. The parliamentary commissioner—

- (a) is to be paid a salary at the rate approved by the Speaker of the Legislative Assembly; and
- (b) is entitled to the allowances for reasonable travelling and other expenses approved by the Speaker.

Oath of parliamentary commissioner

118P.(1) Before entering on the performance of duties as parliamentary commissioner, the commissioner must take an oath or affirmation that he or she—

- (a) will faithfully and impartially perform the duties of the office; and
- (b) will not, except as provided under this Act, disclose any information received under this Act.

(2) The oath or affirmation is to be administered by the Speaker of the Legislative Assembly.

Administrative and support service for parliamentary commissioner

118Q.(1) To help the parliamentary commissioner in performing the parliamentary commissioner's functions under this or another Act, by arrangement with the Speaker of the Legislative Assembly, officers or employees of the parliamentary service may be assigned and other administrative and support services may be provided to the parliamentary commissioner.

(2) If asked by the parliamentary committee, the Speaker may engage legal practitioners and other suitably qualified persons to provide the parliamentary commissioner with services, information or advice.

(3) Before a person first acts under subsection (1) or (2), the person must take an oath or affirmation, to be administered by the parliamentary commissioner, that the person will not, except as provided under this Act, disclose any information received under this part while helping the parliamentary commissioner.

Division 2—Functions and powers of parliamentary commissioner**Functions of parliamentary commissioner**

118R.(1) The parliamentary commissioner has the functions given to him or her under this or another Act.

(2) the parliamentary commissioner has the functions, as required by the parliamentary committee, to do the following—

- (a) conduct audits of records kept by the commission and operational files and accompanying documentary material held by the commission, including current sensitive operations, including for the purpose of deciding the following—
 - (i) whether the way the commission has exercised power is appropriate;
 - (ii) whether matters under investigation are appropriate for investigation by the commission or are more appropriately the responsibility of another law enforcement agency;
 - (iii) whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers;
 - (iv) whether required authorisations for the exercise of power has been obtained;
 - (v) whether the policy and procedures guidelines set by the commission have been strictly complied with;
- (b) investigate, including by access to operational files of the commission to which the parliamentary committee is denied access, complaints made against, or concerns expressed about, the conduct or activities of—
 - (i) the commissioner; or
 - (ii) a commissioner; or
 - (iii) an officer of the commission; or
 - (iv) a person engaged by the commission under section 66;¹⁸
- (c) independently investigate allegations of possible unauthorised disclosure of information or other material that, under this Act, is to be treated as confidential;
- (d) inspect the register of confidential information kept under section 27(6) to verify the commission's reasons for withholding information from the parliamentary committee.
- (e) review reports given by the commission to the parliamentary committee to verify their accuracy and completeness, particularly in relation to any operational matter;

-
- (f) report to parliamentary committee on the results of carrying out the functions mentioned in paragraphs (a) to (e);
 - (g) help the parliamentary committee with the preparation of—
 - (i) the 3 yearly review of the activities of the commission under section 118(1)(f); and
 - (ii) other reports of the committee;
 - (h) perform other functions the parliamentary committee considers necessary or desirable.

(3) A decision of the committee to make a requirement under subsection (2) must be made unanimously or by a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly.

Parliamentary commissioner cannot be required to disclose particular information

118S. The parliamentary commissioner cannot be required by the parliamentary committee to disclose to the committee information lawfully withheld from the committee by the commission under section 27(2) or otherwise.

Powers of the parliamentary commissioner

118T.(1) The parliamentary commissioner has power to do all things necessary or convenient for the performance of his or her functions.

(2) For the performance of the parliamentary commissioner's functions, the parliamentary commissioner may, by giving written notice to the chairperson, require the chairperson or another commissioner or officer of the commission to do one or more of the following—

- (a) produce to the parliamentary commissioner, or allow the parliamentary commissioner access to, all records, files and documents in the commission's possession, custody or control;
- (b) give to the parliamentary commissioner all reasonable help in connection with the parliamentary commissioner discharging his or her functions;
- (c) appear before the parliamentary commissioner for examination on oath or affirmation.

(3) For subsection (2)(c), the parliamentary commissioner may administer an oath or affirmation.

(4) If documents are produced to the parliamentary commissioner under this part, the parliamentary commissioner may keep the documents for the period the parliamentary commissioner considers necessary for the parliamentary commissioner's functions.

(5) While the parliamentary commissioner has possession of a document under subsection (4), the parliamentary commissioner must permit a person who would be entitled to inspect the document if it were in the possession of the commission, to inspect it at all reasonable times.

(6) A person required by a notice under subsection (2) to do something must comply with the requirement.

(7) Subsections (2) to (6) do not limit the powers conferred on the parliamentary commissioner under section 118W or another provision of this or another Act.

Parliamentary commissioner to have custody of and deal with records of the CJC inquiry

118U.(1) Possession, custody and control of all records of the CJC inquiry vest in the parliamentary commissioner.

(2) The parliamentary commissioner must secure the records in the parliamentary commissioner's possession, custody or control so that only persons who satisfy the parliamentary commissioner that they have a legitimate need of access to the data and the records are able to have access to them.

(3) The parliamentary commissioner must review the records with a view to deciding if the records disclose any matter that should be investigated by an appropriate agency (an **“investigation matter”**).

(4) If the parliamentary commissioner considers the records disclose an investigation matter, the parliamentary commissioner must refer the matter, and give access to records about the matter, to the appropriate agency for investigation.

(5) In this section—

“appropriate agency” means the parliamentary committee, the commission, the Queensland police service, another law enforcement agency, the parliamentary commissioner for administrative investigations, the Auditor-General or other agency the parliamentary commissioner considers appropriate.

“CJC inquiry” means the commission within the meaning of the *Commissions of Inquiry Act 1950* constituted by order in council of 7 October 1996 published in the *Gazette* of that date at pages 475 and 476.

Relinquishment of records of CJC inquiry

118V.(1) A person in possession, custody or control of records of the CJC inquiry mentioned in section 118U must, on receiving the written request of the parliamentary commissioner, deliver possession, custody and control of the records to the parliamentary commissioner.

(2) The acknowledgement of receipt by the parliamentary commissioner of the records delivered under subsection (1) is a sufficient discharge to the person making delivery from all responsibility for the records.

Parliamentary commissioner has powers under *Commissions of Inquiry Act 1950*

118W. For an investigation under this part—

- (a) the parliamentary commissioner has and may exercise all the powers, rights and privileges under the *Commissions of Inquiry Act 1950*, of a commission and the chairperson of a commission within the meaning of the Act; and
- (b) the *Commissions of Inquiry Act 1950* applies to the parliamentary commissioner, the investigation and the subject matter of the investigation as if the matter were one into which a commission constituted by the parliamentary commissioner was appointed to make an inquiry under that Act.

Confidentiality obligations not to apply

118X. No obligation to maintain secrecy or other restriction on the disclosure of information in the possession, custody or control of—

- (a) the commission; or
- (b) a person because the person is or was a commissioner, officer of the commission or a person engaged by the commission under section 66; whether imposed under this or another Act or by a rule of law, applies to the disclosure of information under this part.

Commission not entitled to privilege

118Y. The commission is not entitled, in relation to an investigation under this part, to any privilege in relation to the production of documents or the giving of evidence allowed by law in legal proceedings.

Investigations closed to the public unless authorised by parliamentary committee

118Z.(1) An investigation by the parliamentary commissioner is to be closed to the public unless the parliamentary committee authorises the investigation to be open to the public.

(2) In considering whether the investigation should be open to the public, the committee must have regard to—

- (a) the subject matter of the investigation; and
- (b) the nature of the information expected to be disclosed.

(3) A decision of the parliamentary committee to authorise the investigation to be open to the public must be supported by all or a majority of the committee, being a majority other than one consisting wholly of members of the political party or parties in government in the Legislative Assembly.

Protection of parliamentary commissioner and officers etc.

118ZA.(1) A parliamentary commissioner officer is not liable to an action or other proceeding for damages for or in relation to anything done or omitted to be done in good faith and without negligence in the performance, or purported performance, of a function, or in the exercise or purported exercise of a power under this part.

(2) No civil or criminal proceedings may be brought against a parliamentary commissioner officer for an act mentioned in subsection (1) without the leave of the Supreme Court.

(3) The Supreme Court may give leave under subsection (2) only if satisfied there is substantial ground for claiming that the person to be proceeded against has not acted in good faith or has acted negligently.

(4) A parliamentary commissioner officer may not be called to give evidence or produce any document in any court, or in any judicial proceedings, in relation to any matter coming to the officer's knowledge while performing functions under this part.

(5) In this section—

“parliamentary commissioner officer” means—

- (a) the parliamentary commissioner; or
- (b) an officer or employee of the parliamentary service assigned to the parliamentary commissioner; or
- (c) a person engaged to provide the parliamentary commissioner with services, information or advice.