

**GOVERNMENT RESPONSE TO THE JOINT STANDING COMMITTEE ON THE ANTI-CORRUPTION COMMISSION'S ELEVENTH REPORT ENTITLED "THE INVESTIGATIVE POWERS AND OPERATIONAL ACCOUNTABILITY OF THE ANTI-CORRUPTION COMMISSION"**

The Joint Standing Committee on the Anti-Corruption Commission ('the Joint Standing Committee') tabled its Eleventh Report ('the Report') on 10 August 2000 in the Legislative Council and the Legislative Assembly. The Committee directed the Premier to "*within not more than three months, or at the earliest opportunity after that time if the Assembly is adjourned or in recess, to report to the Assembly as to the action, if any, proposed to be taken by the Government in respect of the recommendation.*" pursuant to Standing Order 277 of the Legislative Assembly

The Report by the Joint Standing Committee made the following three Recommendations:

**Recommendation 1**

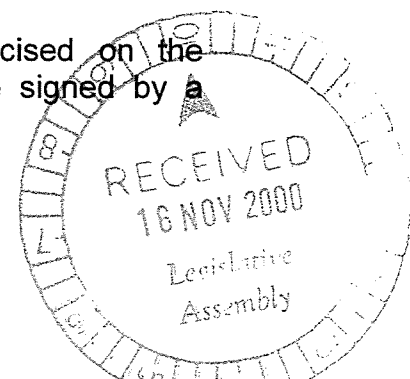
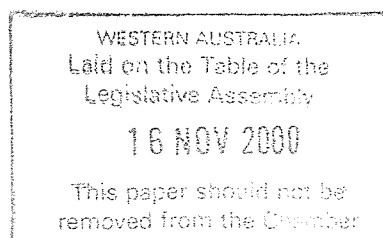
The Committee recommends that -

- 1.1 For the purposes of Part IV investigations, the ACC be given additional powers of investigation equivalent to those that it now exercises at preliminary inquiry. It should be clear that under those powers the ACC can compel any person to provide information at an examination before an officer or officers of the Commission
- 1.2 For the purposes of preliminary inquiry, the compulsion which attaches to the powers of preliminary inquiry be removed. Section 37(2) and 38(2) should be removed from the ACC Act.
- 1.3 Amendment be made to the wording of the preliminary inquiry powers so it is clear on the face of the relevant provisions that the Commission may request any person or body supply information or produce documents or other things "at such place" as specified in the request.
- 1.4 Amendment be made to section 37, the preliminary inquiry power to request information, to clarify that each question to be asked need not be in writing, but that a request for information must specify the matters under investigation about which information is sought.

**Recommendation 2**

The Committee recommends that -

- 2.1 The additional powers of investigation only be exercised on the authorisation of the Commission and by written notice signed by a commissioner.



- 2.2 The power to issue a notice under the additional powers of investigation be a non-delegable power of the Commission.
- 2.3 It be required that a signed notice under the additional powers of investigation specify -
- (i) the time and place of the examination or the time and place at which the documents or other things are to be produced;
  - (ii) the matters under investigation about which information is sought; and
  - (iii) the witness's rights and obligations under the ACC Act.
- 2.4 Section 44(7) of Part IV of the ACC Act be repealed.
- 2.5 The provision, section 46, *Duty of secrecy not to apply to disclosure of information to the Commission*, under Part IV of the ACC Act, be extended to apply to the additional powers of investigation.
- 2.6 The additional powers of investigation be made subject to the inclusion of a sunset clause in the ACC Act requiring their expiry two years from their commencement.

### **Recommendation 3**

The Committee recommends that -

- 3.1 The additional power of investigation to request information be subject to the protection that compelled evidence cannot be used in subsequent civil or criminal proceedings, except contempt proceedings or proceedings for an offence against the ACC Act, as is presently required with respect to the ACC's power to request information under section 37.
- 3.2 The provision, section 47, *Legal professional privilege*, under Part IV of the ACC Act, be extended to apply to the additional powers of investigation.
- 3.3 The additional powers of investigation also be subject to the following protections-
- (i) a witness shall be required to only answer questions relevant to the matters under investigation as specified in the written notice;
  - (ii) statutory protection from the subsequent use of evidence against a witness from whom evidence is compelled under the proposed additional power of investigation to request information

shall extend to disciplinary and related proceedings and action taken under section 8 of the *Police Act 1892 (WA)*;

- (iii) a witness compelled to provide evidence to the Commission or its officers shall be entitled to know the general scope and purpose of the inquiry;
  - (iv) a witness compelled to provide evidence at an examination shall be entitled to have a lawyer present for the purpose of representing that witness; and
  - (v) an examination by the Commission or its officers of a witness shall only take place in private.
- 3.4 The ACC be granted the additional powers of investigation only if an Office of Parliamentary Inspector is established as recommended in the Joint Standing Committee's Fourth Report.
- 3.5 The ACC be required to furnish to the Parliamentary Inspector, immediately following the issue of a written notice under the additional powers of investigation-
- a copy of the written request; and
  - the reasons the ACC issued the notice.
- 3.6 The Parliamentary Inspector's functions include receiving and maintaining records of written requests to supply information or produce documents or other things issued by the ACC under the additional powers of investigation.
- 3.7 The Parliamentary Inspector's powers include the power to attend any investigation or to be present during an investigation for the purpose of performing the Inspector's functions.
- 3.8 The Parliamentary Inspector be required to include with his or her Annual Report to each House of Parliament, a report on the use by the ACC of its additional powers of investigation, the frequency of that use and compliance with the terms of the ACC Act.
- 3.9 The report of the Parliamentary Inspector on the use by the ACC of its additional powers should not disclose information that may reveal the identity of a person who has been, is, or is to be investigated, or who is a complainant to, or a witness or informant of, the ACC, or indicates that a particular investigation has been, is, or is to be conducted.

## **Government Response**

With regard to Recommendations 1 (excluding 1.2), 2, 3.1, 3.2 and 3.3 (excluding 3.3(ii)) in the Report, the Government supports the Recommendations of the Committee and the Government will be amending the Act to implement those recommendations.

### **Recommendation 1.2**

The Government considered recommendation 1.2 of the Joint Standing Committee, which recommended that *for the purposes of preliminary inquiry the compulsion which attaches to the powers of preliminary inquiry be removed. Section 37(2) and 38(2) should be removed from the ACC Act.*

The Government does not support this recommendation due to concerns that it may reduce the efficiency of the ACC at the preliminary inquiry stage.

### **Recommendation 3.3(ii)**

With regard to Recommendation 3.3(ii) the Commissioner of Police was consulted. The Commissioner proposed that one of the functions of the ACC is to provide information to appropriate authorities, including the Police Service, about corruption and serious misconduct so that action can be taken in the public interest. If upon receipt of information from the ACC the Commissioner of Police is unable to use that information, a primary purpose of the ACC Act is thwarted. In addition, the Commissioner suggested that he would be in the invidious position of having to manage officers he knows to be corrupt while protecting the community and honest officers, as best he can, from those officers.

The Commissioner of Police is of the opinion that public interest dictates that the community's right to be served by only honest police officers outweighs the rights of an individual officer to freedom from self incrimination in relation to disciplinary proceedings and proceedings under section 8 of the *Police Act 1892*. Given the Commissioner's concerns relating to Recommendation 3.3(ii), the Government does not propose to amend the ACC Act pursuant to Recommendation 3.3(ii) at this stage. The Chairman of the ACC concurs with this position.

### **Recommendation 3.4 to 3.9**

In relation to Recommendations 3.4 to 3.9 the Government has previously indicated that it does not consider it necessary to establish a watcher to watch the watcher. There is an obvious reluctance to appoint yet another oversight body after the ACC has recently been given the power to become the peak anti-corruption body in the state.

The Government intends to give the Parliamentary Commissioner for Administrative Investigations jurisdiction over the Anti-Corruption Commission in order to address the types of concerns which gave rise to Recommendations 3.4 to 3.9.