



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

**THE INVESTIGATIVE POWERS
AND OPERATIONAL ACCOUNTABILITY OF THE
ANTI-CORRUPTION COMMISSION**

REPORT NO. 11

August 2000

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ANTI-CORRUPTION COMMISSION**

REPORT NO. 11

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

Laid on the Table of the Legislative Council and Legislative Assembly
on 10 August 2000

ORDERED TO BE PRINTED

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THE INVESTIGATIVE POWERS AND OPERATIONAL ACCOUNTABILITY
OF THE ANTI-CORRUPTION COMMISSION

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THE INVESTIGATIVE POWERS AND OPERATIONAL ACCOUNTABILITY
OF THE ANTI-CORRUPTION COMMISSION

RECOMMENDATIONS

The rationale for the investigation and accountability provisions in the *Anti-Corruption Commission Act 1988* (“the ACC Act”) is clear; but in practice they have not worked well. The provisions for preliminary inquiry are simply unsatisfactory. The Joint Standing Committee’s recommendations in this report address the problems in these areas and can be practically implemented within the context of the ACC Act as it stands. A more substantial review and overhaul of the Act is for a future Parliament to undertake, preferably before the expiry of any additional powers the Anti-Corruption Commission (“the ACC”) may be granted. Even so, the Joint Standing Committee believes that the following recommendations, if accepted in their entirety, will make the ACC a more effective organisation and will better realise the policy underlying the Act; that being to create an independent agency able to ensure the effective investigation of allegations of official corruption and misconduct within its jurisdiction, while also providing appropriate protection for individual rights.

RECOMMENDATION ONE

Preliminary Inquiries and Formal Investigations

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. Sections 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 TWO

Extension of the Powers of Investigation

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 THREE

Rights Protections and Operational Accountability

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.

* It may also be necessary for the applied provisions of the *Royal Commissions Act 1968* to be modified through amendment to Part IV of the ACC Act so as to provide the same level of protection where hearings are conducted by a special investigator.

- 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.

MINISTERIAL RESPONSE

In accordance with Standing Order 277 of the Legislative Assembly, the Joint Standing Committee directs the Premier, “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 with respect to the recommendations”.

THE INVESTIGATIVE POWERS AND OPERATIONAL ACCOUNTABILITY
OF THE ANTI-CORRUPTION COMMISSION

THE INVESTIGATIVE POWERS AND OPERATIONAL ACCOUNTABILITY OF THE ANTI-CORRUPTION COMMISSION

INTRODUCTION

In September 1998, the Anti-Corruption Commission (“the ACC”) made submissions to the Premier on changes it believed should be made to the Anti-Corruption Commission Act 1988 (“the ACC Act”). In those submissions, among other things, the ACC argued that it should have power during an investigation to compel persons to provide information at an examination before an officer or officers of the Commission. Incongruously, the ACC has that power when it conducts a preliminary inquiry, but not when it conducts an investigation. The ACC’s submission was that its powers of preliminary inquiry should be extended to full investigations.

The Joint Standing Committee responded to that submission in its Fifth Report.¹ It recommended against the ACC’s powers of preliminary inquiry being extended to full investigations. Indeed, the Joint Standing Committee concluded that coercive powers of interrogation should not be exercised except by a special investigator and recommended further, therefore, that the powers of preliminary inquiry be repealed and replaced with the more limited powers presently available to the ACC during investigations.²

The Joint Standing Committee has reconsidered those recommendations. It has concluded that, for the purposes of preliminary inquiries, the element of compulsion should be removed, whereas, for the purposes of Part IV investigations, the ACC should be able to use authorised powers to compel any person or body to provide information or produce documents or other things.

Increasing the ACC’s investigative powers in this way would allow the ACC to exercise powers of coercion over, not only public officers, but also citizens generally. The Joint Standing Committee recommends that change only on condition that safeguards are put in place to protect against abuse of power. Any increase in the ACC’s coercive powers should be subject to the protection of specific rights, a sunset clause, by which those powers would cease to have effect two years from their commencement, and establishment of an Office of Parliamentary Inspector of the Anti-Corruption Commission, as recommended in the Joint Standing Committee’s Fourth Report.³

¹ Joint Standing Committee on the Anti-Corruption Commission, *Amending the Anti-Corruption Commission Act 1988*, Fifth Report, Parliament of Western Australia, Perth, 1998.

² The ACC responded by submission dated 20 April 1999 to the Joint Standing Committee’s Fifth Report and expanded upon its arguments that its investigative powers be increased – Anti-Corruption Commission, *Submission to the Joint Standing Committee on the Anti-Corruption Commission on Extending the Investigative Powers of the ACC*, 20 April 1999. Those submissions were included again in further submissions presented to the Committee at hearings held on 5 May 2000. A report on the hearings, which is substantially the transcript of those hearings, was recently tabled in both Houses of Parliament – Joint Standing Committee on the Anti-Corruption Commission, *Report on the Hearings Held by the Joint Standing Committee on the Anti-Corruption Commission in the Legislative Council Chamber, Parliament House, Perth on 5 May 2000*, Report No. 10, Parliament of Western Australia, June 2000.

³ 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*, Parliament of Western Australia, Perth, 1998.

THE ANTI-CORRUPTION COMMISSION'S POWERS: PRELIMINARY INQUIRY AND FORMAL INVESTIGATION

Under the ACC's powers of preliminary inquiry, the ACC is given power to request, "orally or in writing, any person or body to supply to the Commission such information as is specified in that request in such manner, and within such period, as is so specified".⁴ It also may request orally or in writing that any person or body produce documents or other things in such manner and within such period as specified.⁵ Failure to comply with a request in writing under these provisions without reasonable excuse constitutes an offence punishable by an \$8 000 fine or two years imprisonment.⁶

These powers were introduced in the *Official Corruption Commission Act 1988* by amendment in 1994 in accordance with the recommendations of two Legislative Assembly Select Committees.⁷ The report of the first of those committees cited the explanation offered by the then Chairman of the Official Corruption Commission ("the OCC"), Justice Wickham, as to why they were needed -

... an ad hoc power to obtain documents and, through the police, to search and seize documents would be desirable. It is not that we particularly want to extend our coercive powers, but we have had examples of some cases where a particular complaint could be cleared up very quickly if we could ring up a department and ask for a particular document or report to be sent to us. A matter could be cleared up straight away and need not go any further if we could get immediate access to a report or something of that sort.⁸

In the debate in the Legislative Assembly over the 1994 amendments, the Deputy Chairman of the Select Committees, Mr Bill Thomas, MLA, explained the reason for the recommendation that those powers be included in the Act -

Although, the select committee did not recommend that the Official Corruption Commission should have exhaustive powers to investigate, it was considered that the commission should be able to make preliminary inquiries to form an opinion on whether a matter was worth taking any further.⁹

The context in which those powers were included is also important. The OCC had no powers or resources through which it could conduct investigations. The OCC's function was to consider whether allegations it received warranted referral to another agency or authority to take investigative or related action. Even though those powers were potentially broad, the OCC was necessarily limited in how it could exercise them. That is not the case with the ACC. It has a substantial independent investigative capacity that can be brought to bear where preliminary inquiries are

⁴ Section 37(1) of the ACC Act.

⁵ Section 38(1) of the ACC Act.

⁶ Sections 37(2) and 38(2) of the ACC Act.

⁷ The Select Committee on the Official Corruption Commission Act, *Report*, Parliament of Western Australia, Perth, March 1992 and the Select Committee on the Official Corruption Recommendations, *Report*, Parliament of Western Australia, Perth, September 1992.

⁸ *Ibid*, p. 14.

⁹ Western Australia, Parliamentary Debates, Legislative Assembly, Thursday, 25 November 1993, p. 8203.

conducted. With the ACC, the potential of those powers is realised in a way well beyond what was originally intended when they were included in the Act.

Within the overall scheme of the ACC Act the coercive authority in the preliminary inquiry powers is incongruous and anomalous: incongruous because those provisions allow the ACC to exercise powers similar to those of standing commissions before it conducts an investigation, but not in an investigation; and anomalous because the exercise of those powers is inconsistent with the policy of the Act, which limits the use of coercive powers of interrogation to special investigations, where applied provisions of the *Royal Commissions Act 1968* apply.

The Commission's main argument in submissions to the Joint Standing Committee is that its own investigations cannot be effective unless the Commission has the power to compel persons to provide information to its officers at an examination. In the Commission's view, its own investigative powers are in real terms no greater than those of the police, and these, given the secretive nature of much corruption and the particular difficulties associated with investigating police, are inadequate.¹⁰

It is generally acknowledged that official corruption poses particular investigative difficulties. As Peter Grabosky and Peter Larmour say in a recent Australian Institute of Criminology paper, "[d]etection and prosecution are inherently difficult as corruption is, by definition, secret and often consensual".¹¹ Specialist agencies such as the ACC are established because traditional forms of policing have not been effective in dealing with such conduct. In Australia, most such agencies may exercise coercive information gathering powers similar to those of royal commissions. In the case of the ACC, however, those powers are not exercised directly by the ACC. The ACC performs the role of gatekeeper and must appoint a special investigator to bring them into play.

In the ACC's most recent submissions, the ACC, through its Chairman, Mr Terence O'Connor QC, has suggested endemic corruption exists in parts of the Police Service. The Chairman stated -

... the Commission does not believe there is endemic or systemic corruption within the public sector.

The situation is different within the Police Service. The Commission believes there are significant problems in the Police Service, mainly centred on the self-appointed elite, the detective cohort, what used to be called the CIB. By and large the uniformed officers seem to be honest and hard working. Regrettably for a number of detectives it is not possible to reach the same conclusion.¹²

Those claims remain to be tested. However, if there is substance in them, there is a serious problem to be resolved. Special powers may need to be exercised.

¹⁰ Anti-Corruption Commission, *opcit*, note 2.

¹¹ Grabosky G and P Larmour (2000), *Public Sector Corruption and its Control*, Paper 143 in Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology, p. 6.

¹² Anti-Corruption Commission, *Submission by the Anti-Corruption Commission*, 5 May 2000, p. 5.

The Commission has suggested that the special investigation process is an unwieldy and ineffective way to conduct investigations. It notes that if investigations were to be conducted only by special investigators, several would have to operate at the same time and the associated costs in resources would require an exponential increase in its budget. Special investigations also, in the Commission's experience, take considerably longer to complete than normal investigations. The Commission's view is that, were it able to exercise the coercive powers during an investigation that it does during a preliminary inquiry, its own investigations would be far more efficient and effective than special investigations.¹³

The Joint Standing Committee's conclusion is that the ACC should now be given those powers.

To resolve the present anomaly in the Act, the ACC should be able to exercise, for the purposes of Part IV investigations, powers equivalent to those that it now exercises at preliminary inquiry. In particular, the ACC should be able to compel any person to provide information at an examination before an officer or officers of the Commission.

For the purposes of preliminary inquiry, however, the existing preliminary inquiry powers should remain, but no compulsion should attach to them. Sections 37(2) and 38(2) should be removed from the Act.

The Joint Standing Committee notes that amendment should be made to the wording of the preliminary inquiry powers to remove ambiguity in their meaning. The preliminary inquiry provisions do not expressly allow the Commission to request that a person or body supply information or produce documents or other things "at such place" as specified in the request. That should be clear on the face of the provisions.

It has been suggested that the section 37 preliminary inquiry power to request information can be read as meaning each question to be asked must be in writing.¹⁴ The ACC does not agree with that interpretation. If the literal interpretation of section 37 were applied, every person whom the Commission sought to interview would need to be given a set of questions in advance. An interview could not depart from those questions. The uncertainty should be removed. The Joint Standing Committee's view is that to require each question be in writing is to require too great a degree of specificity. What should be required under section 37 is that the ACC must specify the matters under investigation about which information is sought.

¹³ The Anti-Corruption Commission, *opcit*, note 2.

¹⁴ Anti-Corruption Commission, *opcit*, note 12, Appendix 2, p. 6.

RECOMMENDATION ONE

Preliminary Inquiries and Formal Investigations

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. Sections 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.**

EXTENSION OF POWERS OF FORMAL INVESTIGATION

The Joint Standing Committee recommends the ACC’s investigative powers be increased. This amendment will allow the ACC to compel any person to answer questions at an examination by an officer or officers of the Commission. That is a power greater than the current section 44(1) power of investigation by which the ACC may require a public officer to produce a statement of information. The proposed amendment is not limited in its application to public officers: any person may be called upon to answer questions under compulsion.

The ACC argues that this extension of powers is necessary. While the ACC’s jurisdiction covers conduct by public officers, it has jurisdiction also over matters concerning criminal involvement; that is involvement by a person other than a public

officer in criminal conduct engaged in by a public officer.¹⁵ Persons other than public officers will have information important to ACC investigations that they might not reveal otherwise than under compulsion.

The Joint Standing Committee accepts that coercive powers such as those it has recommended be granted the ACC are considered an important element in investigating official corruption and misconduct. However, it is mindful that such powers derogate from traditional common law rights and allow intrusion into the privacy of citizens.

To protect against their potential abuse, the additional powers of investigation should not be exercised except on the authorisation of the Commission and by written notice signed by a commissioner of the ACC. The following matters should be specified in the notice -

- (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.

The power to issue a notice under the additional powers of investigation should be among the non-delegable powers of the Commission.

The additional powers of investigation should be subject to a sunset clause by which those powers will expire two years from the date of their commencement. A sunset clause will give Parliament the opportunity to reconsider those powers in the light of both their effectiveness and their impact on civil liberties.

If the Joint Standing Committee's recommendation to extend the ACC's investigative powers is adopted, some further amendments to Part IV of the ACC Act should be made.

Section 46, *Duty of secrecy not to apply to disclosure of information to the Commission*, should be amended so that it applies to the additional powers of investigation.

Section 44(7) should be removed. Under section 44(7), the preliminary inquiry power to require the production of documents or other things is substantially imported into Part IV of the Act. If the Joint Standing Committee's recommendations to increase the ACC's powers of investigation are accepted, the ACC will have that power, but subject to protections against abuse of power that do not currently apply.

¹⁵ Section 13(1)(b) of the ACC Act.

RECOMMENDATION TWO

Extension of the Powers of Investigation

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.**

RIGHTS PROTECTIONS AND OPERATIONAL ACCOUNTABILITY

In addition to a sunset clause and the requirement that the Commission authorise by notice in writing the use of the additional powers of investigation, certain specific protections for witnesses compelled to give evidence should apply. They are as follows -

- (i) a witness should be required to only answer questions relevant to the matters under investigation as specified in the written notice;**

- (ii) statutory protection from the use of evidence taken from a witness under the additional power of investigation to request information against that witness in subsequent criminal or civil proceedings;
- (iii) statutory protection from the use of evidence taken from a witness under the additional power of investigation to request information against that witness in subsequent disciplinary proceedings or action taken under section 8 of the *Police Act 1892* (“the Police Act”);
- (iv) an entitlement to know the general scope and purpose of the inquiry;
- (v) a witness compelled to provide evidence at an examination should be entitled to have a lawyer present for the purpose of representing that witness;
- (vi) an entitlement to claim legal professional privilege, except any privilege of a public authority or public officer in that capacity; and
- (vii) a requirement that evidence taken at examination only be taken in private.

These protections reflect those that are already provided under the ACC Act and others that are included in other Australian jurisdictions where specialist agencies exercise powers similar to those sought by the ACC.

The Joint Standing Committee has concluded that the statutory protection against the use of compelled testimony in civil and criminal proceedings should be extended for reasons of fairness to disciplinary proceedings and action taken under section 8 of the Police Act. The ACC’s functions extend to assembling evidence in regard to conduct that may be the subject of disciplinary proceedings or action taken under section 8 of the Police Act. Neither may come within a protection that extends only to civil and criminal proceedings, even though the consequences for a public officer who is forced to make self-incriminating admissions that are used in such proceedings or action may be far-reaching.

It may be necessary for the applied provisions of the *Royal Commissions Act 1968* to be modified through amendment to Part IV of the ACC Act so as to provide the same level of protection where hearings are conducted by a special investigator.

If those rights are to be effective and are to be seen to be effective, the ACC must be accountable for its operations and those with complaints must be able to have those complaints independently assessed. However, the Joint Standing Committee concluded in its Fourth Report that under the present system the ACC is not accountable. In that report it said -

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.¹⁶

To make the ACC accountable the Joint Standing Committee recommended that an Office of Parliamentary Inspector of the Anti-Corruption Commission be established with full access to the operational files and staff of the ACC, and extensive powers to -

- (i) audit the operations of the ACC;
- (ii) investigate complaints against the ACC or its officers; and
- (iii) evaluate the appropriateness of the ACC’s procedures.

Under the present scheme of the ACC Act, the three part-time ACC Commissioners who constitute the ACC are responsible for oversight of its operations and deal with complaints against the Commission. That is one reason why royal commission powers are not granted directly to the Commission, but only to a special investigator. That is an unsatisfactory situation for both the Commission and those with grievances against it.

In the Joint Standing Committee’s view, the notion that creating a body with extensive powers to perform its primary investigative functions, including coercive information gathering powers that must be exercised in secret, while also making it responsible for oversight of its operations, is misconceived. At best, it leaves the Commission in the position that it is perceived as judge in its own cause. Far from promoting public confidence in the ACC, such a perception will undermine it. That, in fact, has been the experience of the ACC over the first three years of its existence.

Setting up a powerful, impartial and independent external body to provide for the operational accountability of the ACC will overcome that perception and make the ACC not only accountable, but also more effective. For those reasons, the Joint Standing Committee recommended that an Office of Parliamentary Inspector of the Anti-Corruption Commission be established.

If the ACC’s investigative powers are increased then the establishment of such a body, with specific functions and powers to audit the ACC’s use of those powers, becomes imperative. Increased powers should not be given the ACC without their being subject to effective oversight and a mechanism existing for those aggrieved to have their complaints independently assessed. Other like agencies in Australia that may exercise powers comparable to those sought by the ACC, such as the Criminal Justice Commission in Queensland and the Police Integrity Commission (“the PIC”) in New South Wales, are subject to external oversight of their operations. One that is not is the Independent Commission Against Corruption (“the ICAC”) in New South Wales. However, in a recent report, the Committee on the ICAC has recommended to the New South Wales Parliament that an Inspector of the ICAC be established.¹⁷

¹⁶ Joint Standing Committee on the Anti-Corruption Commission, *opcit*, note 3, p. 3.

¹⁷ Committee on the ICAC, *The ICAC: Accounting for Extraordinary Powers*, Report No. 2/52nd Parliament, Parliament of New South Wales, May 2000.

The Commissioner of the PIC, Judge P.D. Urquhart, recently gave evidence to the Joint Standing Committee on the role of the Inspector of the Police Integrity Commission. He noted -

The Commission believes that its success as an independent anti-corruption agency is tied to the perception and reality of the Inspector's independence and power to effectively oversight the Commission's work. This clearly demonstrates to the community of New South Wales that the Police Integrity Commission is – and can be held to be – accountable for what it does and how it does it.¹⁸

A Parliamentary Inspector of the Anti-Corruption Commission would ensure that the ACC performs its functions and exercises its powers lawfully and with due regard to the rights of individuals, and would remove any perception that the ACC is judge in its own cause.

RECOMMENDATION THREE

Rights Protections and Operational Accountability

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)*;^{*}**

^{*} It may also be necessary for the applied provisions of the *Royal Commissions Act 1968* to be modified through amendment to Part IV of the ACC Act so as to provide the same level of protection where hearings are conducted by a special investigator.

¹⁸ Judge P.D. Urquhart QC, *Effectiveness of the Anti-Corruption Commission*, Address to the Joint Standing Committee's open hearing on the Anti-Corruption Commission, 5 May 2000, p. 13.

- (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.**

APPENDIX ONE

The Joint Standing Committee's Functions and Powers

Joint Standing Committee on the Anti-Corruption Commission

On Wednesday 18 June 1997 the Legislative Assembly and the Legislative Council agreed to establish the Joint Standing Committee on the Anti-Corruption Commission. The Joint Standing Committee's functions and powers are set out as follows under Legislative Assembly Standing Orders 284, 285 and 264 -

- 284.** At the commencement of every Parliament, a Joint Standing Committee on the Anti-Corruption Commission will be appointed by resolution of the Assembly forwarded to the Council for its concurrence.
- 285.** (1) It is the function of the Committee -
- (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 Standing Order 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 other functions 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.
- (2) The Joint Standing Committee will 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.

264. A committee has power to send for persons, papers and records.

The Legislative Council has agreed to a resolution which has the same functions and powers as set out in the above Standing Orders of the Legislative Assembly.