



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

MINISTERIAL RESPONSE TO THE COMMITTEE'S RECOMMENDATIONS

Eighth Report
In the Thirty-Fifth Parliament

JUNE 1999

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Eighth Report
In the Thirty-Fifth Parliament

Presented by
Mr W. Thomas, MLA
Laid on the Table of the Legislative Assembly on 3 June 1999

ORDERED TO BE PRINTED

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
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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>

TABLE OF CONTENTS

	<i>Page No.</i>
COMMITTEE MEMBERS	i
MINISTERIAL RESPONSE TO THE COMMITTEE'S RECOMMENDATIONS	1
APPENDICES	
1. Recommendations in the Committee's Fourth Report	3
2. Recommendations in the Committee's Fifth Report	7
3. The Committee's Terms of Reference	19

MINISTERIAL RESPONSE TO THE COMMITTEE'S RECOMMENDATIONS

On 29 October 1998 the Committee tabled its Fourth Report, entitled *Report on the Operational Accountability of the Anti-Corruption Commission and the Protection of Rights Under the Anti-Corruption Act 1988*, in the Legislative Council and the Legislative Assembly.

On 22 December 1998 in the Legislative Council and on 23 December 1998 in the Legislative Assembly the Committee tabled its Fifth Report entitled *Amending the Anti-Corruption Commission Act 1988*.

Both reports contained a number of recommendations. Those recommendations are appended to this report.

In each report, in accordance with Standing Order 378 of the Legislative Assembly, the Committee directed the Premier, as the responsible Minister, "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".

In respect of the Committee's Fourth Report, pursuant to Standing Order 378, the three month period in which to respond to the Committee's recommendations ended on 29 January 1999. As Parliament was in recess at that time, the earliest opportunity for the Premier to respond would have been when Parliament recommenced sitting on 9 March 1999.

In respect of the Committee's Fifth Report, the three month period in which to respond to the Committee's recommendations ended on 23 March 1999. Parliament was sitting at that time.

On 10 March 1999, the Committee wrote to the Premier requesting that he respond to the recommendations in the Committee's Fourth Report.

The Committee reports to the House that to date no response has been made to the recommendations in either the Committee's Fourth Report or its Fifth Report.

APPENDIX ONE

RECOMMENDATIONS IN THE COMMITTEE'S FOURTH REPORT

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

1. OPERATIONAL ACCOUNTABILITY

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 <i>Parliamentary Commissioner Act 1971</i>.
(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 –

<ul style="list-style-type: none">• prepare an Annual Report on the Inspector's operations to be presented to each House of Parliament;
<ul style="list-style-type: none">• report on a regular basis to the Standing Committee on the Inspector's general activities and operations;
<ul style="list-style-type: none">• report to the Standing Committee in response to a direction from the Standing Committee; and
<ul style="list-style-type: none">• 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.

2. PROCEDURAL FAIRNESS AND THE PROTECTION OF RIGHTS

<u>Recommendation Two</u>
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.

3. SECRECY AND CONFIDENTIALITY

<u>Recommendation Three</u>
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.

APPENDIX TWO

RECOMMENDATIONS IN THE COMMITTEE'S FIFTH REPORT

Amending the Anti-Corruption Commission Act 1988

1. OPERATIONAL ACCOUNTABILITY

Recommendation for the creation of an Office of Parliamentary Inspector of the Anti-Corruption Commission

The Committee recommends –

(i) That an Office of Parliamentary Inspector of the Anti-Corruption Commission be created under the ACC 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 ACC 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 ACC 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.

2. SERIOUS IMPROPER CONDUCT

What powers does the ACC have, and what powers should it have, in respect of serious improper conduct?

Recommendation

The Committee recommends that the ACC's powers in respect of serious improper conduct should allow the ACC to evaluate evidence for the purpose of advising an appropriate authority whether or not it warrants consideration of further action.

If the decision in *Parker v ACC* leaves uncertain the powers of the ACC in respect of serious improper conduct, appropriate amendments should be made to the ACC Act.

3. EXTENDING THE INVESTIGATIVE POWERS OF THE ACC

Should the greater investigative powers the ACC may exercise when conducting a preliminary inquiry be extended to full investigations by the Commission?

<u>Recommendations</u>	
1.	The Committee recommends that the distinction between the powers available to the Commission when conducting a preliminary inquiry and the powers available to the Commission when conducting an investigation itself be removed from the ACC Act.
	The ACC Act should be amended to –
	<ul style="list-style-type: none"> • remove all of Part III of the ACC Act;
	<ul style="list-style-type: none"> • include an additional section in Part IV of the ACC Act to the effect that an investigation may be in the nature of a preliminary investigation;
	<ul style="list-style-type: none"> • remove references to preliminary inquiries in sections 17(4) and 20(5) and insert in their place references to preliminary investigations; and
	<ul style="list-style-type: none"> • remove all other references to preliminary inquiries in the ACC Act and insert in their place references to preliminary investigations.
2.	The Committee recommends that the section 37 preliminary inquiry power should not be extended to ACC investigations.
3.	The Committee recommends that the power the Commission has under section 44(1) of the ACC Act to request a statement of information should extend to any person or body and should not be limited to only public authorities and public officers, and section 44(1) should be amended accordingly.

4. PROTECTING CONFIDENTIALITY WHEN AN ACC OFFICER IS CALLED TO GIVE EVIDENCE IN LEGAL PROCEEDINGS

Should provision be made in the ACC Act to provide that an ACC officer is not required to divulge confidential information during legal proceedings?

Recommendation

The Committee recommends that the secrecy provisions in the ACC Act be amended to contain provisions in terms similar to those contained in the ICAC Act through which confidential information held by the ICAC is protected from being disclosed during legal proceedings.

5. INITIATION OF AN INVESTIGATION BY THE COMMISSION WITHOUT A SPECIFIC ALLEGATION

Should the ACC be able to initiate an investigation into conduct it believes is occurring or may occur?

Recommendation

The Committee recommends that the ACC have power to initiate investigations into criminal conduct, corrupt conduct or criminal involvement which may have occurred, may be occurring or may be likely to occur.

6. RECEIPT OF MATTERS WHICH FALL SHORT OF ALLEGATIONS

Should the ACC be able to receive matters which concern or may concern relevant conduct or should the ACC only be able to receive and act on allegations?

Recommendation

The Committee recommends that section 3 of the ACC Act be amended so that the meaning of the term allegation will encompass matters which concern or may concern corrupt conduct, criminal conduct, criminal involvement or serious improper conduct.

7. POWER OF ARREST

Should there be provision for a power of arrest so that ACC officers may arrest a person who fails to comply with a Notice to Attend the Commission's office or another place to provide information?

Recommendation

The Committee recommends that ACC officers not be given any power to arrest a person who fails to comply with a Notice to Attend the Commission's office or another place to provide information.

8. SUMMONS OF A PERSON IN CUSTODY

Should section 22 of the *Prisons Act 1981* be amended to include an investigation under the ACC Act so that an order in writing under section 22 may be made to have a prisoner brought before an ACC Special Investigator to give evidence?

Recommendation

The Committee recommends that section 22 of the *Prisons Act 1981* be amended to allow for a section 22 order to be made where attendance by a prisoner is required for the purposes of an investigation by an ACC Special Investigator.

9. CHAIRMAN TO HAVE POWERS OF A SPECIAL INVESTIGATOR

Should the Chairman of the ACC be given power to perform the function of a Special Investigator under certain circumstances?

Recommendation

The Committee recommends that the Commission not be given the power to constitute a Special Investigation with the Chairman as Special Investigator even under limited circumstances.

10. PUBLIC HEARINGS

Should a Special Investigator have the power, subject to the agreement of the Commission, to hear evidence in public?

Recommendation

The Committee recommends that a Special Investigator not be given the power to hear evidence in public.

11. AUSTRALIAN FEDERAL POLICE WITNESS PROTECTION

Should the ACC be able to engage the Australian Federal Police to provide witness protection?

Recommendation

The Committee recommends that an incidental power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions be conferred on the ACC.

12. OATH OR AFFIRMATION

Should the Chairman of the ACC be able to delegate the power to administer an oath or affirmation to Commission members?

Recommendation

The Committee recommends that section 6(10) of the ACC Act be amended to allow the Chairman to delegate the power to administer an oath or affirmation to Commission members.

13. CLARIFICATION OF WHAT FURTHER ACTION MEANS UNDER SECTION 17 OF THE ACC ACT, WHAT MAY BE INCLUDED IN A SECTION 22(1) REPORT AND WHAT RECOMMENDATIONS MAY BE MADE UNDER SECTION 22(2)(C) OF THE ACT

Is clarification of what further action means under section 17 of the ACC Act, what may be included in a section 22(1) report and what recommendations may be made under section 22(2)(c) of the Act required?

Recommendation

No amendments should be made to clarify what further action means under section 17 of the ACC Act, what may be included in a section 22(1) report and what recommendations may be made under section 22(2)(c) of the Act until the Supreme Court brings down its decision in *Parker v ACC*.

If any amendments are required following the decision in this case, those amendments should be consistent with the Committee's conclusions regarding the role of the Commission: the ACC's powers in respect of serious improper conduct should allow the ACC to evaluate evidence for the purpose of advising an appropriate authority whether or not it warrants consideration of further action.

14. AMENDMENT OF SECTION 19 OF THE ACC ACT – INFORMANT TO BE NOTIFIED OF DECISION

Should section 19 of the ACC Act be amended to remove the words “made an allegation under section 13 (1) (a), (b) or (c)” and replace them with a reference to matters reported under sections 14, 15 and 16 of the Act?

Recommendation

The Committee recommends that section 19 of the ACC Act be amended to refer to matters reported under sections 14, 15 or 16 rather than allegations made under section 13 (1) (a) (b) or (c).

15. PROCEDURES FOR REVIEW OF A DECISION THAT FURTHER ACTION IS NOT WARRANTED

(i) Review period

Should the review period regarding a decision that further action is not warranted be extended?

Recommendation

The Committee recommends that the review period under section 20(4) of the ACC Act be extended to forty-two days with provision for that period to be extended with the agreement of the person requesting the review being maintained.

(ii) Threshold test for undertaking a review

Should grounds for the Commission to refuse to review a decision that further action is not warranted be included in the ACC Act?

Recommendation

The Committee recommends that section 20 of the ACC Act be amended to allow the Commission to refuse to review a matter where the allegation is frivolous, vexatious or not made in good faith or is otherwise without substance.

16. OVERSIGHT BY THE ACC OF INVESTIGATIONS REFERRED BY IT TO THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATIVE INVESTIGATIONS

Does the ACC Act require amendment to clarify that the ACC does not perform any extensive oversight role with respect to investigations referred to the Parliamentary Commissioner for Administrative Investigations (the Ombudsman) by the ACC?

Recommendation

The Committee recommends that if there is uncertainty under the ACC Act regarding the independence of independent agencies with respect to matters referred to them for investigation by the ACC then this should be clarified.

17. ADVICE TO BE GIVEN TO A PERSON ON THE OUTCOME OF A PRELIMINARY INQUIRY

Should section 26 of the ACC Act be amended so as to allow the ACC to inform a person to whom an allegation relates as to the outcome of a preliminary inquiry into that allegation by the ACC or an appropriate authority?

Recommendation

The Committee recommends that section 26 of the ACC Act be amended so as to allow the ACC to inform a person to whom an allegation relates as to the outcome of a preliminary inquiry into that allegation by the ACC or an appropriate authority.

18. ADVICE TO PARLIAMENT ON THE OUTCOME OF PRELIMINARY INQUIRIES

Should section 27 of the ACC Act be amended so as to allow the ACC to report to each House of Parliament not only on further action by the Commission, but also on the outcome of preliminary inquiries?

Recommendation

The Committee recommends that section 27 of the ACC Act be amended so as to allow the ACC to report to each House of Parliament not only on further action by the Commission, but also on the outcome of preliminary inquiries.

19. THE MEANING OF THE PHRASE “THE FACTS DISCLOSED” IN SECTION 27 OF THE ACC ACT – REPORT ON FURTHER ACTION BY THE COMMISSION

What is the meaning of the phrase “the facts disclosed” in section 27 of the ACC Act?

Recommendation

The Commission’s power under section 27 of the ACC Act to report to each House of Parliament on “the facts disclosed” following further action by the Commission should be consistent with the functions and duties of the Commission. The ACC is primarily an investigative agency and any report under section 27 should not extend beyond reporting the results of an investigation.

20. AMENDMENT TO SECTION 37 OF THE ACC ACT – REQUESTS FOR INFORMATION

Should section 37 of the ACC Act be amended to include the words “at such place” after “manner” in line 4 of section 37(1)?

Recommendation

If section 37 (requests for information during a preliminary inquiry) is not removed from the ACC Act, the clause should be amended to make clear that the ACC may require a person to be interviewed at the offices of the ACC or at another place.

21. AMENDMENT OF SECTIONS 45, 46 AND 47 OF THE ACC ACT TO INCLUDE “THINGS”

Should sections 45, 46 and 47 of the ACC Act be amended to include things?

Recommendation

The Committee recommends that section 45(1)(a) of the ACC Act be framed in the following terms: “inspect the premises and any document or other thing in or on them”; and sections 46 and 47 be amended to include a reference to “other things”.

APPENDIX THREE

The Committee's 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.