

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

*Thirty-second report — “How the Corruption and Crime Commission Handles
Allegations and Notifications of Police Misconduct” — Tabling*

MR J.N. HYDE (Perth) [12.29 pm]: I present for tabling the thirty-second report of the Joint Standing Committee on the Corruption and Crime Commission, titled “How the Corruption and Crime Commission Handles Allegations and Notifications of Police Misconduct.”

[See paper 5594].

Mr J.N. HYDE: I will go straight to a summary of our findings and recommendations. The first finding of this committee report is that the Corruption and Crime Commission should have itself commenced an investigation into the 31 August 2008 incident involving Mr Kevin Spratt at the Perth watch-house when, or shortly after, it was first informed of this incident in September 2008. Our second finding is that the CCC is in 2012 an organisation more committed to prioritising the discharge of its misconduct function by way of independent investigation with respect to the WA Police than was the case in 2008. Our third finding is that unique delays in the CCC’s inquiry into the use of Taser weapons on Mr Kevin Spratt at the Perth watch-house in 2008 could have been avoided if the Corruption and Crime Commission Act facilitated the appointment of a deputy or assistant commissioner. Our recommendations address the appointment of an acting commissioner. Our fourth recommendation is that the CCC act be amended to make it clear that the CCC may include findings of fact in its reports. Our fifth recommendation is that the CCC should report to Parliament on the outcome of any operation that it conducts, even when that outcome is not controversial. I want to address those findings and recommendations in context.

In his seminal critique of pure reason, the German philosopher Immanuel Kant stridently insisted that human perception was very much a function of our ability to imagine. Psychologists, Kant lamented, have hitherto failed to realise that imagination is a necessary ingredient of perception itself. At the time of its publication in 1781, Kant’s assertion was, to put it mildly, controversial. Today, in a world coloured by our mastery of advertising and marketing, cosmetic surgery, Photoshop, press conferences and media management, the notion that the world is not necessarily as we see it seems pedestrian. It is an unfortunate truism that the fight against corruption, particularly in public administration, is a crucial facet of twenty-first century governance because corruption is not limited to a few morally weak persons. Though we might like to describe those who have engaged in corrupt behaviour as “bad apples”, the reality is that corruption is an inherent characteristic of human nature. Though we all aspire to see our society mirror that which is described in Plato’s *The Republic*, we must be conscious of the fact that each of us has the capacity, how so ever well contained, to exemplify the distasteful observation of Thomas Hobbes. Furthermore, it takes the trespass of only one person to begin a total dissolution of the social construct. Eternal vigilance is most certainly the price of liberty. It is not difficult to recall examples of what happens to the fabric of societies when executive corruption becomes endemic. In the past year alone we have witnessed a gamut of social unrest arising out of corruption, from street level rioting and looting in London to the current tragic civil war that is tearing Syria apart. Although it is difficult to adequately quantify, the economic benefit associated with having a public service that is, by virtue of the good work performed by agencies such as our Corruption and Crime Commission, resistant to corruption is undoubtedly significant. For these and myriad other reasons, there can be no doubt that the role played by our CCC is vital. It is equally true, however, that while it is without question that the WA public service is today stronger and fairer in discharging its function as a result of the CCC, it is essentially impossible to adequately quantify the full impact of all the exceptional work that the CCC does. A very unfortunate consequence of this fact is that our perception of the success of the CCC is, to return to Kant, largely informed by our collective imagination. Coupled with the fact that controversy makes good media copy, it is perhaps easier to appreciate the appeal of pronounced intentions to somehow “make better use” of an agency that already performs such a noble and essential role.

The Joint Standing Committee of the Corruption and Crime Commission has long harboured the strong belief that although every component of the CCC’s role is important, its role in working to enhance and maintain the high standards of integrity within the WA police is especially important. As the report states —

“Police officers are,” as the former Parliamentary Inspector, the Honourable Chris Steytler ... put it, “in many ways the front line of the justice system.”

Certainly police officers are the most visible component of that system, and as such the manner in which the police function is and is seen to be discharged is a fundamental element in the rule of law in Western Australia. It is for this reason that police corruption is an especially problematic phenomenon. Our system of law and order in the main relies upon individual persons obeying the law, an outcome that is in effect supported by the existence of the police. When the police themselves break the law, the entire justice system is placed into jeopardy as it creates the perception that the rule of law is unimportant, which in turn diminishes public

confidence in the police. Furthermore, though it is acknowledged that police—like every other public service entity—ought to assume primary responsibility for dealing with misconduct allegations that are levelled against them, postmodern cynicism represents a barrier to even the most stringent of internal investigations. As a consequence, independent police oversight is crucial. Throughout the course of this inquiry it has been continually reiterated to the committee that it is essential that serious and credible public complaints of serious police misconduct, such as those involving either the excessive use of force or the misuse of police discretion, are regularly subjected to robust investigation and review by an external agency.

It was for all these reasons that in November 2010 the committee, having, like many others in Western Australia, viewed and considered the appalling and shameful footage of Taser weapons being used on Mr Kevin Spratt by WA Police officers in the Perth watch-house on 31 August 2008, resolved to undertake this inquiry. Though the public release of this footage on 4 October 2010 by the CCC coincided with the publication of an excellent CCC report—a report that had a positive impact on the use of Tasers by WA Police officers—the committee wanted to find out why the CCC had not undertaken an immediate inquiry into the incident when first apprised of its seriousness back in 2008. Of particular concern to the committee was the apparent reluctance by the CCC to undertake independent investigations of alleged misconduct on the part of WA Police officers. Unfortunately, this inquiry has confirmed the view initially formed by the committee when it viewed that footage in 2010: in the past, the CCC has not devoted adequate priority to its police oversight role. Furthermore, it is the view of the committee that the decision of the CCC, communicated to the WA Police in October 2008, to internally investigate this obviously serious matter amounted to a serious misjudgement by the CCC. In forming this view, the committee acknowledges and supports the notion that the optimum model for promoting and enhancing integrity in any agency involves requiring the leadership of that agency to assume responsibility for the actions of their staff members. It is abundantly clear that promoting a culture of integrity is the single greatest misconduct deterrent, and such a culture is always best built from within. On this point, it is very clear to the committee—as I believe it is to most Western Australians—that the internal culture of the WA Police is very strong. Furthermore, through the course of this inquiry, the committee has learnt about the many ways in which the professional standards portfolio of the WA Police—a portfolio that is led with dedication by Assistant Commissioner Dominic Staltari—works to continually enhance that already strong culture. Especially giving regard to the myriad positive outcomes that flowed from the CCC’s subsequent inquiry into the Spratt incident, the committee maintains it would be more appropriate and of greater benefit to the state of Western Australia for the Corruption and Crime Commission to have embarked upon this inquiry two years earlier than it did. As we considered the evidence provided in aid of this inquiry, our committee was continually reminded of the ancient Greek proverb that all that is good to know is difficult to learn. Although the 31 August 2008 incident remains a black mark on the history of the WA justice system, it is clear to the committee that many important lessons have been learned as a consequence of its occurrence.

The world has undergone a significant change over the past four years, and so too has the CCC. The committee notes that in the time since his appointment to the role of Corruption and Crime Commissioner in November 2011, Hon Roger Macknay has overseen the implementation of numerous changes to CCC policy and procedure, with the effect of affording a far greater priority to the CCC’s consideration of allegations of police misconduct than has historically been the case. As a consequence, throughout the course of 2012, the CCC significantly increased its investigative effort into allegations made about WA Police. Since Commissioner Macknay’s appointment, the CCC has undertaken and completed a total of 10 independent investigations into allegations of excessive use of force by police. Now, most welcome of all, this increase in investigative effort stands as testament to the strong WA Police internal culture, as none of these investigations has substantiated the allegations upon which they were initiated. Although this does leave media organisations having to indulge in even more creative writing than usual, this is evidence of an excellent system of oversight at work. This is not to say that further improvement is not possible. The committee believes that enhancements for the transparency of the CCC’s police oversight role would reap significant benefits. If a person sees fit to bring an allegation to the attention of the CCC that person should have, or be able to gain, a solid understanding of the CCC’s investigative processes and what they can expect from the process. The committee believes strongly that the police oversight model that exists in WA in 2012 is a model that the citizens of WA can very certainly trust.

I want to refer to a number of sections in the report. I have summarised the findings and the recommendations. I want to refer again to the Spratt incident, particularly when we consider the issue of the coroner’s report that was tabled in New South Wales yesterday, which was very damning of police behaviour in New South Wales that led to the tasering and the death of a New South Wales citizen. The committee wants to put that in the context that, because of the CCC’s public addressing of this issue in WA, we have learned from those issues. I want to quote in context from the great metaphysical poet John Donne —

No man is an island, intire of itselfe;
every man is a peece of the Continent, a part of the main.

if a clod bee washed away by the sea, Europe is the lesse,
as well as if a Promontorie were,
as well as if a manor of thy friends or of thine own were,
each man's death diminishes me,
because I am involved in Mankinde;
and therefore never send to know for whom the bell tolls;
it tolls for thee.

That encapsulates why the Spratt incident was the so disturbing to Western Australians. The committee has made clear findings and recommendations. Part of our thinking was also informed by discussions with the FBI and the chief administrator of the city of Chicago's independent police review authority, Ms Ilana Rosenzweig, who said to us, "You need to have someone who is independent watching the guys who police organised crime." The evidence from the Chicago jurisdiction and the Royal Canadian Mounted Police jurisdiction reinforces the need to have this independent oversight. Ms Rosenzweig stressed to our committee that it is incredibly important that the people doing the work within an oversight agency maintain their dignity and respect for others, and especially for those who are under investigation for having transgressed in some way.

There have been issues in which the CCC has complained that it is portrayed unfairly, and we gave the CCC an extra public hearing for it to vent its views. I retain a strong belief that in giving our CCC more powers than any other body in the state, and powers that exceed and impinge on the liberty of Western Australians, the Parliament should subject the CCC to the strictest oversight, because with great power comes a requirement for great oversight. It is important to note that whereas there may be lots of bar talk—I think is what the commissioner said—or criticism of the CCC, the CCC's own polling, which was taken in its public perceptions survey on 27 February 2008, with some 380 people surveyed, found that 80.2 per cent believed that the CCC would properly investigate a complaint, 98.4 per cent thought it was good to have an agency like the CCC, and 54 per cent thought that the CCC had increased government accountability. Whereas the CCC may feel it gets bad publicity from the media or politicians and there may be bar talk, the citizens of Western Australia understand and value the need for having a CCC. That is not to say that the CCC gets everything right and that it should not be subjected to the most stringent oversight.

I also want to say thanks to Michael Strong, a former director of the Office of Police Integrity in Victoria. The chapters on his evidence are incredibly good reading on his involvement in police oversight in Victoria. He said that his external perception of the CCC was that as an agency it was respected in law enforcement circles as having a good investigative capacity. He said that this debate around getting the right balance of an agency like the CCC is not new.

This may be my valedictory committee report, because unfortunately we failed to amend the CCC act to allow this committee to keep going even after the Premier prorogues Parliament, in case there are some important issues in January or February. I thank Michael Burton and John King; Frank Alban, MLA, our chairman Hon Nick Goiran, and Hon Matt Benson-Lidholm. Report 32 is an excellent contribution.

MR F.A. ALBAN (Swan Hills) [12.49 pm]: The thirty-second report of the Joint Standing Committee on the Corruption and Crime Commission, "How the Corruption and Crime Commission Handles Allegations and Notifications of Police Misconduct", draws to a conclusion my four years as a member of that committee. This work has been both challenging and rewarding, and I believe our reports have been substantial and comprehensive. One of the highlights of our reporting time was perhaps arguably the most important and controversial report, the tenth report of the committee entitled "How the Corruption and Crime Commission Can Best Work Together with the Western Australian Police Force to Combat Organised Crime". During the four years we met many distinguished and accomplished people and I thank them all for their generous contributions. I also register my thanks to my fellow committee members for a great working relationship, including the chair, Hon Nick Goiran, MLC, member for South Metropolitan Region.

Debate interrupted, pursuant to standing orders.

[Continued on page 8775.]