

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

Second Report — “Report on the Relationship between the Parliamentary Inspector and the Commissioner of the Corruption and Crime Commission” — Tabling

MR J.N. HYDE (Perth) [10.09 am]: I present for tabling the second report of the Joint Standing Committee on the Corruption and Crime Commission, entitled “Report on the Relationship between the Parliamentary Inspector and the Commissioner of the Corruption and Crime Commission”.

[See paper 732.]

Mr J.N. HYDE: Corruption prevention is all about checks and balances. We as a Parliament give enormous powers of investigation to a body that has to operate largely in secret. That is why and how we have created the Corruption and Crime Commission—Australia’s most successful anticorruption body. However, secrecy does not mean a lack of transparency. That is why we the Parliament, the representatives of the community, have created a Parliamentary Inspector of the CCC. Again, his position has enormous powers of investigation. Similarly, we have a duty to uphold transparency and accountability by making sure there are checks and balances on the power of the parliamentary inspector.

Queensland’s Crime and Misconduct Commission, which is the model our CCC is largely based on, fulfils its triangle of transparency through a parliamentary oversight committee as the representative of the Parliament. The CMC can investigate the community and, of course, parliamentarians, as well as have input into criticisms offered by the inspector. The Queensland inspector can investigate and oversight the CMC. The parliamentary committee oversees the CMC through the filter of the inspector and the inspector directly. Getting the three corners of the triangle balanced creates a stronger triangle and a stronger anticorruption body. Importantly, it provides for a stronger perception of confidence in the CMC in Queensland. Queensland arrived at the strong triangle of transparency and accountability after a breakdown in the relationship between the then Criminal Justice Commission and the inspector in 1998 and 1999. When Western Australia adapted the Queensland legislation to create its own CCC, it did not make the triangle strong. We assumed, as had the Queenslanders originally, that goodwill between strong-willed lawyers and judges, and strong-willed parliamentarians, would always prevail. It did not in Queensland, so the legislation was changed. It also has not prevailed in Western Australia; hence this report and the committee’s recommendations that the Western Australian legislation be changed.

The key recommendations in this report are that the CCC respect the process of the inspector making an informed adverse opinion on the CCC’s operations, and that the inspector ensure that the CCC has had an adequate opportunity to examine the criticism and that its comments are included in the parliamentary inspector’s report. Our other major recommendation is that the parliamentary inspector retain his strong, unique power of own-motion investigation, but that his final published opinion be tabled through the parliamentary committee, as happens in Queensland. The major change we are recommending is that a final safety valve be put into the triangle of transparency. The committee is forced to undertake its oversight role to ensure that the parliamentary inspector has consulted fully and that any adverse opinions have fulfilled the transparency and accountability requirements of the act. This proposed legislative change for the tabling of parliamentary inspector reports through the committee enjoys the support of the new parliamentary inspector, Chris Steytler, and the former Queensland parliamentary inspector and now commissioner, Robert Needham.

Our report sets out the work of the former committee and the current committee on seeking a resolution of the dispute between Mr McCusker and the commissioner of the CCC on the complex issue of the extent of the oversight powers of the parliamentary inspector, in particular the ability of the parliamentary inspector to critique a CCC report containing a misconduct opinion expressed by the CCC, and the ability of the parliamentary inspector to table his reports containing such criticism directly in the public forum of Parliament. I am happy to report that chapter 1 highlights the proactive role of the committee. Given that I have only been back on this committee since late last year, I do this particularly to praise the work of the former chair, Hon Ken Travers, the current chair, Hon Ray Halligan, and departed members, who conducted strong oversight in difficult circumstances in the previous 18 months.

The current committee convened a day-long closed hearing, which was called a workshop, on 4 February 2009. At the workshop the commissioner, Len Roberts-Smith, the parliamentary inspector, Mr Christopher Steytler, QC, with the support of all participants, including the former parliamentary inspector, Mr Malcolm McCusker, AO, QC, agreed on a process to address the respective functions and powers of the commission and the office of the parliamentary inspector. Both the commissioner and the new parliamentary inspector, Mr Steytler, have confidence that they will be able to arrive at a successful outcome. As a reflection of this confidence, the CCC voluntarily discontinued the Supreme Court proceedings on 6 February 2009, and the commissioner and the parliamentary inspector reached an agreement that, over the next six months, they will, in their dealings with

each other, identify any issues of principle concerning their respective functions and powers on which they differ. At the conclusion of that period, and after discussions with the joint standing committee, they will discuss any differences of principle and, importantly, the practical consequences of those difficulties. They will endeavour to agree upon the issues, if any, in which they believe legislative reform is required. They will place their suggestions before the joint standing committee with the agreed path forward for legislative reform.

Chapter 2 of our report sets out the arguments put forward by Mr McCusker and the commissioner as to the scope of the parliamentary inspector's powers under the Corruption and Crime Commission Act 2003 to review a misconduct opinion expressed by the CCC. I point out at this stage that many media reports erroneously refer to the CCC as having the power to make findings of misconduct. This is incorrect. The CCC has the power only to make assessments and form opinions as to whether a public officer has engaged in misconduct. The CCC is not a court, and therefore does not have the power to make a binding legal determination that a person has engaged in criminal conduct or has committed a disciplinary offence. A legal determination of guilt or innocence by a court affects the legal position of the individual whereas an opinion of misconduct by the CCC does not. This is made explicit in section 23 of the CCC Act. This is not to say, of course, that the CCC's opinions are a trivial matter. They are expressed both under the authority of and in accordance with the CCC Act. The publication of such an opinion, or even an adverse assessment not amounting to misconduct, may have serious consequences for the individual and his or her reputation. I commend this morning's *The West Australian* in particular, and other media, for the excellent and accurate reporting of the opinion handed down by the CCC late yesterday on the John Halden matter. The media understood, and readers now understand, that an opinion was handed down, not a judgement.

Chapter 3 of the report discusses the ability of the parliamentary inspector to table his reports directly in Parliament. As the CCC Act presently stands, the parliamentary inspector has a choice of tabling his reports directly in Parliament or tabling them through the committee. The committee makes a recommendation to Parliament that the CCC Act should be amended so that the parliamentary inspector is required to table his reports with the committee, as happens in Queensland, and that, if the committee has not tabled the parliamentary inspector's report in Parliament within 30 days, the parliamentary inspector can proceed to table his report directly in Parliament if he believes it is in the public interest to do so. This recommendation will not reduce the effectiveness of the oversight powers of the parliamentary inspector. The parliamentary inspector, Chris Steytler, told the committee this week in a briefing that the recommendation has his support and that he does not think that it will make his office any less effective.

The parliamentary inspector can still initiate an investigation into the CCC on his own initiative. In Queensland the inspector cannot do this, and that is what makes our parliamentary inspector the strongest in the land. All that we are recommending is, in effect, a breathing space of 30 days to enable the committee to consider the parliamentary inspector's report before it is tabled in Parliament. I repeat that if the report has not been tabled in Parliament within 30 days, the recommendation of the committee is that the parliamentary inspector be able to proceed to table his report in Parliament without further consultation with the committee if he is of the view that it is in the public interest to do so. As the experience in Queensland shows, in nearly 10 years no parliamentary committee has prevented the inspector from tabling a report or expressing an adverse opinion. The system works because it is there in the legislation. I do not believe that this breathing space of 30 days will ever be used in Western Australia because if an inspector says to a parliamentary committee that he is of a strong view that a report should be made public, I am sure the parliamentary committee will respect those informed wishes.

The first practical advantage of the breathing space is that it will enable cooler heads to prevail. The committee will be able to comment upon the parliamentary inspector's report, seek the views of the CCC and if necessary bring the parties before it to explore avenues of consensual resolution to the issues raised. The workshop the Joint Standing Committee on the Corruption and Crime Commission held on 4 February resulted, firstly, in the discontinuance of the Supreme Court proceedings and demonstrated that the committee can play an important role in facilitating the resolution of disputes. Secondly, it will enable the committee the opportunity to place before Parliament its comments concerning the parliamentary inspector's report at the same time that Parliament considers that parliamentary inspector's report. Therefore, this triangle of transparency and accountability will be true and equal. The committee will be placed in a position to proactively advise government, rather than having to react to a report that has already been tabled in Parliament. The checks and balances of the system will work much better. Thirdly, the Corruption and Crime Commission's entitlement to procedural fairness will be preserved.

At this stage I will set out what I believe is the impetus of this recommendation. I am a very firm believer in the institution of the Corruption and Crime Commission. The CCC remains the most effective anticorruption body in Australia and it benchmarks favourably with the world's leading bodies, which I argue are led by the Independent Commission Against Corruption in Hong Kong. The Parliamentary Inspector of the Corruption and Crime Commission in Western Australia is the most powerful and effective oversight inspector of any corruption

body in Australia. It is important that the public has confidence in the Corruption and Crime Commission and that the commission earns this confidence. A strong CCC and a strong parliamentary inspector give the community confidence in the operation and opinion making of the CCC. The public nature of the dispute between the CCC and the parliamentary inspector was harmful to the public image of both parties. Anybody who knows anything about corruption in the world knows that organised crime and people who are interested in lessening the power of corruption fighting deliberately work to achieve this aim. Throughout the history of corruption bodies in the world, these people have tried to get the media and public opinion to focus on disagreements and differences between anticorruption bodies, so that their guilt or perceived guilt does not become the story of the day. It is Corruption 101 as taught by people who are engaged in corruption.

If our committee can provide a forum whereby disagreements between the two offices can be discussed and resolved without the spectre of confidence-sapping debate and litigation, this should be promoted and encouraged. As parliamentarians it is our duty to ensure that our legislation never ends up in the Supreme Court and that our legislation is strong and good enough so that the intention and will of the Parliament is clear and unchallengeable. Let us remember that our Corruption and Crime Commission is the most effective and our legislation is the best because we based them strongly on Queensland's Crime and Misconduct Commission legislation, which was the best at that time. Importantly, we learnt from some of its teething problems. Unfortunately, we did not learn from all Queensland's problems and we ignored the fact that there had been a huge blow-up between the commissioner and the parliamentary inspector in 1998 and 1999.

The committee does not want Western Australia to totally adopt the Queensland model. The committee sees the flaws in that model and that our local circumstances have been incorporated and need to be incorporated into our act. Mr Needham, the Chairperson of the CMC in Queensland and also the former parliamentary inspector, known as the commissioner in Queensland, described it to the Joint Standing Committee on the Corruption and Crime Commission as follows. He stated —

I attended a conference in Perth when you were looking at setting up your new Commission and your committee was looking at the new models and based it on Queensland model with some changes. At that I quite strongly expressed my view consistent with what I said today that my view was that everyone should be accountable — the CMC should be accountable to the Parliamentary Committee. The Parliamentary Committee should be accountable to Parliament and Parliament be accountable to the people of Queensland... But if you set up your Parliamentary Inspector off to the side not accountable to the Parliamentary Committee then you are going away from that model. The Parliamentary Inspector should be accountable to the Parliamentary Committee as to how he or she carries out the role [of Parliamentary Inspector].

This is breathtakingly simple; it is a triangle of accountability and transparency that will increase confidence in the Corruption and Crime Commission and the parliamentary inspector in Western Australia.

The committee's recommendation that the parliamentary inspector table his reports with the committee is sound. I urge the government to adopt that recommendation in its review of the CCC legislation. It enables a set of fresh eyes to review the parliamentary inspector's report and allows for time to reflect on what is proposed to be put in Parliament.

The committee's second report made three recommendations. I have alluded to the second recommendation, which would give both the CCC and the inspector adequate and transparent abilities to comment on adverse findings they make about each other's actions. The third recommendation is in two parts. Recommendation 3.1 states —

The operation of section 200 of the CCC Act should be extended beyond its current application to encompass situations where the Parliamentary Inspector intends to express an opinion that is adverse to a person or a body (including the CCC) and is likely to be made public, or in correspondence with a complainant. In such situations the Parliamentary Inspector should be required to provide a draft of the intended adverse opinion to that person or body, so as to afford that person or body a reasonable opportunity to make representations concerning the intended actions of the Parliamentary Inspector.

The committee is trying to mirror the requirements under section 200 with the Corruption and Crime Commission, whereby the CCC must give a person it is making an adverse opinion about the opportunity to comment. We believe that the parliamentary inspector's actions should be similar. It is a very grey area. In all transparency, I inform the house that the committee has not yet convinced the parliamentary inspector or every member of our own committee or the public that this particular recommendation is the way to go. However, the committee realises that a parliamentary inspector in writing a letter, as the Corruption and Crime Commission, or making an utterance to another body, could make the same standard of opinion that is contained in an official report. Therefore, the committee believes the legislation should be amended to encompass that situation. Others do not share that opinion and I respect that very much. I think it is important that we have several months until

the government brings in amended legislation. It is important that parliamentarians, inspectors and others involved look at this issue to decide whether they believe that these requirements should apply to the inspector as well.

I urge parliamentarians to read the committee's report. I thank very much our principal research officer, Scott Nalder, and our research officer, Nicole Burgess. I praise very strongly my parliamentary colleague the member for Swan Hills for his work. I have been involved with this committee since it started and it is very powerful to have someone new with fresh eyes join the committee and ask questions that perhaps this Parliament should have asked in 2003 when we passed the original legislation. I commend the report to parliamentarians who have an interest in preventing corruption in Western Australia.

MR F. ALBAN (Swan Hills) [10.27 am]: Like the member for Perth, I am also a member of the Joint Standing Committee on the Corruption and Crime Commission. I commend the committee's "Report on the Relationship between the Parliamentary Inspector and the Commissioner of the Corruption and Crime Commission" to the house. I support the committee's recommendations because I am a firm believer in the institution of the Corruption and Crime Commission.

The Corruption and Crime Commission enjoys broad community support as it performs a vital role in improving the integrity of the public sector and, in particular, combating organised crime. It also acts as a strong deterrent to the criminal element in our society. Of course, there are people who would benefit from the undermining of the Corruption and Crime Commission; therefore, it is important that the public has confidence in the CCC and that the CCC earns that confidence. If the experiences in other states are any indication, I firmly believe that in the next decade a major issue that this state will face will be its ability to tackle both crime and corruption. Regarding the public's confidence in the Corruption and Crime Commission, I believe the recent dispute between the Parliamentary Inspector of the Corruption and Crime Commission and the CCC was harmful to the image of both parties.

It can be seen from the workshop that was conducted by our committee on 4 February 2009, which resulted in the discontinuance of the Supreme Court proceedings, that the committee can play an important role in facilitating the resolution of disputes between the Corruption and Crime Commission and the Office of the Parliamentary Inspector. That point was also made by my fellow committee member the member for Perth. If the committee can provide a forum in which disagreements between those two bodies can be discussed and resolved without the prospect of litigation, that should be promoted and encouraged. The committee's recommendations seek to do just that.

The committee undertook an investigative trip to Queensland. While in Queensland, the committee spoke to the head of the Queensland Parliamentary Crime and Misconduct Committee, Mr Needham, and to the Parliamentary Commissioner, Mr Alan MacSporran, as well as others. The Queensland model differs from the Western Australian model in that the Queensland Parliamentary Commissioner does not have an own-motion power and cannot table his reports in Parliament. In speaking to the Queensland officials I gained valuable insight into how the role of parliamentary commissioner has evolved in Queensland, and into its perceived advantages and disadvantages. The committee's recommendations do not adopt the Queensland model but have been informed by it. All the committee members who travelled to Queensland were of like mind when we returned that we had found the missing links in our model. Mr Needham outlined to the committee an accountability regime that I believe would work in Western Australia. That regime is as follows: The CCC is accountable to the courts and the parliamentary inspector; the parliamentary inspector is accountable to the committee; the committee is accountable to the Parliament; and the Parliament is accountable to the people of Western Australia. That regime comprises, in essence, three different roles, but with a common purpose. I believe that accountability model has much to commend it. For that reason, I believe that committee recommendation 2—that the Parliamentary Inspector of the Corruption and Crime Commission table his report with the committee—is very sound. It will enable a fresh set of eyes to review the parliamentary inspector's report. It will also allow a period of time for reflection on what is proposed to be put to Parliament. It should be emphasised—this is a very important point—that this will be a 30-day period only. I am encouraged by the fact that the parliamentary inspector has informed the committee that he does not think that recommendation 2 will make the office of parliamentary inspector any less effective, and it therefore has his support.

I conclude by noting that the report does not seek to address all the issues that exist between the CCC and the parliamentary inspector. However, I am confident that if the committee's recommendations on this matter are adopted, they will go a long way towards providing a sensible mechanism by which any outstanding issues in dispute can be addressed without the dispute having to be played out in the public arena. I am confident also that these recommendations will assist in enhancing public confidence in the CCC and the parliamentary inspector. I commend the committee report and recommendations to the house.