

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

*Thirty-third Report — “The ability of the Corruption and Crime Commission to charge and prosecute” —
Tabling*

MR N.W. MORTON (Forrestfield) [11.43 am]: I present for tabling the thirty-third report of the Joint Standing Committee on the Corruption and Crime Commission, titled “The ability of the Corruption and Crime Commission to charge and prosecute”.

[See paper 4897.]

Mr N.W. MORTON: The Joint Standing Committee on the Corruption and Crime Commission originally commenced an inquiry into the Corruption and Crime Commission being able to prosecute its own charges on 26 June 2014, and was due to report to Parliament on the matter by 30 December 2015. In July 2015, however, an appeal was made to the Supreme Court by a former police officer that challenged the power of the CCC to charge and prosecute for an alleged assault while he was on duty. When the committee became aware of this appeal, it resolved to put its initial inquiry on hold, pending the outcome of the appeal.

The Court of Appeal handed down its decision in *A v Maughan* [2016] on 15 July 2016. As part of its judgment, the Court of Appeal held that the commission’s powers and functions did not extend to the prosecution of persons for matters investigated by the commission that are otherwise unrelated to the administration and enforcement of the legislation establishing the commission. Following the judgment, the committee resolved to continue its inquiry, but with amended terms of reference. This is not the first time the issue of the commission’s prosecution powers has been questioned and this report describes earlier debate and previous recommendations made regarding its power to lay charges and prosecute. The committee describes the recommendations made in the Archer review in 2008, as well as approaches taken by past and present CCC commissioners and Parliamentary Inspectors of the Corruption and Crime Commission.

This report provides a summary of the opinions and advice the commission has received on its power to charge and prosecute. The report also reviews the power to prosecute held by a number of Western Australian government agencies. The Department of Fisheries, the Department of Mines and Petroleum and the Department of Commerce all have acts they administer that allow them to commence prosecutions. These powers are clear and specific in their respective legislation, but, in the main, any charges are laid and prosecuted by the State Solicitor’s Office. An examination of integrity agencies in other jurisdictions reveals that most of these agencies have powers to refer matters arising from investigations to a relevant prosecutorial agency. None has the express power to prosecute in their own right, other than the Independent Broad-based Anti-corruption Commission in Victoria.

This report also provides the background to the Supreme Court appeal that arose following a CCC investigation into the conduct of a former Western Australia Police officer who was alleged to have used excessive force on a detainee in the Broome Police Station in March and April 2013. The former police officer was later charged by the CCC and his hearing was held on 17 April 2014 in the Kalgoorlie Magistrates Court before Magistrate Andrew Maughan, who handed down his decision on 28 November 2014. The former police officer sought an application for review of Magistrate Maughan’s decision not to grant a permanent stay in relation to the prosecution initiated by the commission. There were four grounds of appeal by the applicant—three relating to an alleged abuse of process, and the fourth challenging the CCC’s authority to prosecute him.

The Corruption and Crime Commissioner, Hon John McKechnie, QC, told the committee that prior to the decision in *A v Maughan*, the commission had commenced prosecutions against 140 people for offences arising from its investigations. These did not include proceedings initiated by the commission for contempt of the commission. The committee was advised that the commissioner had made arrangements with the Director of Public Prosecutions and the State Solicitor to deal with prosecutions arising from CCC investigations in anticipation that the judgment in *A v Maughan* would find that the commission did not have the power to charge and prosecute.

The current process the commission uses to charge and prosecute people following *A v Maughan* is described in the report. That process requires the commission to refer a prosecution brief to the State Solicitor for his consideration, if it forms a view during an investigation that an offence has been committed. If the State Solicitor believes that there is a *prima facie* case against the accused, and that it is in the public interest to prosecute, he will commence proceedings. When the alleged offence is a “simple offence”, the prosecution will be conducted by the State Solicitor. When the offence is an “indictable offence”, the proceedings will be taken over by the DPP at the committal stage.

The Court of Appeal left open the issue of whether the CCC has the power to prosecute its own charges in matters related to the administration and enforcement of the Corruption, Crime and Misconduct Act 2003, and the commissioner said that, having regard to the reasoning behind the decision, it was difficult to see how there

could be such a power. The commissioner told the committee during a public hearing that this matter needs to be put beyond doubt.

The committee received 24 submissions to its inquiry, including from the Attorney General, Hon Michael Mischin, MLC; the Corruption and Crime Commissioner, Hon John McKechnie, QC; and the Parliamentary Inspector, Hon Michael Murray, QC. It undertook closed hearings with the CCC commissioner and PICCC, as well as with the State Solicitor, Mr Paul Evans, and the Director of Public Prosecutions, Mr Joseph McGrath, SC. The evidence obtained by the committee overwhelmingly supports the maintenance of a separation between the investigation of serious misconduct and the prosecution of criminal offences. It has considered the approach taken by interstate and international anti-corruption agencies. At the present time, the committee is not persuaded that it is either necessary or desirable for the CCC to be empowered to commence or conduct prosecutions for offences unrelated to the administration and enforcement of the Corruption, Crime and Misconduct Act 2003.

The committee has recommended that the Corruption and Crime Commission include a specific update on the efficiency and effectiveness of its arrangements with the State Solicitor for the commencement and conduct of prosecutions in its annual report for 2016–17 and that the Attorney General undertake a review into the efficiency and effectiveness of the commencement and conduct of prosecutions arising from CCC investigations, and table a report on that review within 12 months of the tabling of the commission’s annual report for 2016–17.

I would like to take this opportunity to thank all the people who contributed to the committee being able to complete its inquiry in a timely fashion since the *A v Maughan* judgement, in particular those from other jurisdictions who interrupted their busy schedules to brief the committee in a very open fashion on the involvement of their oversight agencies in prosecutions. I would also like to thank my fellow committee members whose contribution to the thirty-third report of the committee in this thirty-ninth Parliament I have very much appreciated: the committee chairman, the member for South Metropolitan Region, Hon Nick Goiran, MLC; the deputy chairman, the member for Albany, Mr Peter Watson, MLA; and the member for South West, Hon Adele Farina, MLC. Of course, the committee members would have been unable to complete this report in the limited window of time available without the support of the committee’s secretariat, Dr David Worth and Ms Jovita Hogan.