



Joint Standing Committee on the Corruption and Crime Commission

**The Parliamentary Inspector's protocols with the
Corruption and Crime Commissioner and the
Public Sector Commissioner**

**Report No. 27
March 2016**

Parliament of Western Australia

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The Parliamentary Inspector's protocols with the Corruption and Crime Commissioner and the Public Sector Commissioner

Report No. 27

Presented by

Hon Nick Goiran, MLC and Mr Peter Watson, MLA

Laid on the Table of the Legislative Assembly and Legislative Council
on 17 March 2016

Chairman's Foreword

This report by the Joint Standing Committee provides the Western Australian Parliament with background information for two protocols developed by the Parliamentary Inspector of the Corruption and Crime Commission (PICCC), Hon Michael Murray, QC, and the Corruption and Crime Commissioner, Hon John McKechnie, QC, and the Public Sector Commissioner, Mr Mal Wauchope.

These two protocols assist the effective operation of the *Corruption, Crime and Misconduct Act 2003* (CCM Act) by ensuring that the PICCC retains the responsibility for overseeing any allegation of misconduct made against Corruption and Crime Commission officers, other than the most trivial.

I would like to thank the PICCC and the two Commissioners for their efforts in completing these protocols while completing the urgent work required to implement in a short time frame the necessary organisational changes to take up their new responsibilities flowing from the CCM Act.

I would like to thank my fellow Committee Members for their input on this report; the Committee's Deputy Chairman, the Member for Albany, Mr Peter Watson MLA; the Member for Forrestfield, Mr Nathan Morton MLA, and the Member for the South West Region, Hon Adele Farina MLC. The Committee members were ably supported by the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan.

A handwritten signature in blue ink, appearing to be 'N. Goiran', with a horizontal line extending to the right.

HON NICK GOIRAN, MLC
CHAIRMAN

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Findings and Recommendations

Finding 1

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The Protocol developed by the Public Sector Commissioner and the Parliamentary Inspector of the Corruption and Crime Commission is intended to ensure that there is clarity between them and the Corruption and Crime Commission in regard to the handling of allegations of minor misconduct made against officers of the Corruption and Crime Commission.

Recommendation 1

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The Parliamentary Inspector of the Corruption and Crime Commission should report to Parliament, no later than in his 2015-16 Annual Report, on the effectiveness of the Protocol he has developed with the Public Sector Commissioner on the handling of allegations of minor misconduct made against officers of the Corruption and Crime Commission.

Chapter 1

Two joint Protocols developed by the PICCC

This Protocol, in addition to the s 196(4) Protocol settled between Commissioner McKechnie QC and me earlier this year, completes the process of ensuring that I receive formal notification of an allegation received by the Commission, or the Public Sector Commission, which is made about a Commission officer. Hon Michael Murray QC, Parliamentary Inspector.

Introduction

The purpose of this report is to inform the Western Australian Parliament of separate Protocols developed by the Parliamentary Inspector of the Corruption and Crime Commission (PICCC), Hon Michael Murray QC, with the Corruption and Crime Commissioner and the Public Sector Commissioner to improve the effectiveness of the State's integrity framework.

The two Protocols were provided to the Joint Standing Committee by the PICCC in late 2015 and they complete a process he undertook to ensure that he receives formal notification of any allegation of misconduct made against Commission officers.¹ The two Protocols are attached as Appendices 1 and 2 to this report.

Protocol between the Parliamentary Inspector and the Corruption and Crime Commissioner

The Committee previously reported to Parliament on the Protocol developed between the PICCC and the new Corruption and Crime Commissioner, Hon John McKechnie QC, in June 2015. Its Report 20, *The Operation of section 196(4) of the Corruption and Crime Commission Act 2003*², finalised an issue that had been the source of tension between the PICCC and the previous Commissioner, Mr Roger Macknay, QC.

This tension was over the differing interpretation and application of section 196(4) of the *Corruption and Crime Commission Act 2003* (CCC Act). The PICCC discovered in 2013 that he and the CCC had differing interpretations of the word 'allegation'

1 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 10 November 2015.

2 Joint Standing Committee on the Corruption and Crime Commission, *The Operation of section 196(4) of the Corruption and Crime Commission Act 2003*, 18 June 2015. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/6766D3050E51BC5948257E670028CB6D/\\$file/Report%2020-%20PICCC%20on%20s196\(4\)-%20June%202015.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/6766D3050E51BC5948257E670028CB6D/$file/Report%2020-%20PICCC%20on%20s196(4)-%20June%202015.pdf). Accessed on 1 February 2016.

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contained in this section. This had resulted in the CCC limiting the notification of allegations of misconduct made against CCC officers to those circumstances in which the CCC determined that the subject-matter of an allegation could constitute misconduct.

The CCC Act was amended in 2015. Section 196(4), however, of the new *Corruption, Crime and Misconduct Act 2003* (the CCM Act) was unchanged. It provides the following obligation for the CCC:

*The Commission is to notify the Parliamentary Inspector whenever it receives an allegation that concerns, or may concern, an officer of the Commission and at any time the Parliamentary Inspector may review the Commission's acts and proceedings with respect to its consideration of such an allegation.*³

The Committee's Report 20 described the various communications that had taken place between the PICCC and the Corruption and Crime Commission in an effort to reach an agreed position on the interpretation of those circumstances that would require a notification to him of allegations made against a Commission officer.

The negotiations culminated in the joint signing of a report to the Committee by the PICCC and the new Commissioner of the Corruption and Crime Commission, Hon John McKechnie, QC containing a Protocol on a joint understanding of how section 196(4) will operate. The Protocol will ensure that the PICCC is notified in all circumstances of allegations against CCC staff, other than the most trivial. The new Protocol was raised as a significant achievement by the PICCC in his 2014-15 Annual report.⁴

The Committee recommended in Report 20 that the Parliamentary Inspector report on the effectiveness of the Protocol in his 2015-16 Annual Report. The Committee will continue to monitor the arrangement provided for in this Protocol between the PICCC and the CCC Commissioner.

Protocol between the Parliamentary Inspector and the Public Sector Commissioner

The genesis of this second Protocol were the amendments to the *Corruption and Crime Commission Act 2003* in 2015 that saw the responsibility for handling allegations of minor misconduct made against the State's public officers, other than WAPOL officers,

3 AustLII, *Corruption, Crime and Misconduct Act 2003*, nd. Available at: www5.austlii.edu.au/au/legis/wa/consol_act/ccama2003330/s196.html. Accessed on 1 February 2016.

4 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2014-2015*, nd, p5. Available at: www.piccc.wa.gov.au/files/PICCC_Annual_Report_2014_2015.pdf. Accessed on 1 February 2016.

being moved from the Corruption and Crime Commission to the Public Sector Commission.

One consequence of the new CCM Act is that it now requires allegations of minor misconduct made against CCC officers to fall under the oversight of the Public Sector Commission. This amendment to the CCC Act was highlighted by the PICCC in a closed hearing with the Committee in March 2015, particularly where a complaint might include allegations of both serious and minor misconduct.

The PICCC told the Committee, that while the *Corruption and Crime Commission Amendment (Misconduct) Bill 2014* had received Royal assent on 9 December 2014:

...I assume that the fact that there has been no amendment to the provisions that affect the exercise of my functions suggests to me that the Parliament did not wish to change that and would want to leave an oversight through my office to the Committee of any misconduct activity in relation to Commission officers. I am not sure what effect has been created by the way in which the legislation has been formulated.⁵

The Committee raised the consequences of this shift in responsibilities in its Report 21, *Recent amendments to the Corruption and Crime Commission Act 2003: Some implications for Western Australia's integrity framework*, tabled on 18 June 2015.⁶ This Report noted the PICCC's advice in his letter to the Committee on 20 April 2015 that:

The provision of current interest is s 196(4) [of the CCC Act] which imposes on the CCC the obligation to notify me of any allegation which concerns or may concern a Commission officer. ... but it is clear that the obligation of notification to me is only imposed on the CCC and my powers, although considerable, of oversight and to take over the matter myself, may only be exercised in relation to the CCC and its officers.

I would have no capacity to exercise those powers in respect of a matter in the hands of the PSC [Public Sector Commissioner] where a CCC officer was the subject of an allegation which may or may not amount to misconduct of any degree of seriousness, whereas, if the

5 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, *Transcript of Evidence*, Closed hearing, 18 March 2015.

6 Joint Standing Committee on the Corruption and Crime Commission, *Recent amendments to the Corruption and Crime Commission Act 2003: Some implications for Western Australia's integrity framework*, 18 June 2015. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/146BF840C1EDEC5948257E6700293792/\\$file/Report%2021-%20PSC%20minor%20misconduct-%20FINAL.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/146BF840C1EDEC5948257E6700293792/$file/Report%2021-%20PSC%20minor%20misconduct-%20FINAL.pdf). Accessed on 1 February 2016.

Chapter 1

matter was before the CCC the notification obligation would arise no matter how serious or minor the allegation was.⁷

The PICCC also advised the Committee that he had had discussions about this matter with the Public Sector Commissioner, Mr Mal Wauchope, and that it was his understanding that Mr Wauchope:

...would take the view that if any allegation is made to be dealt with by him, concerning or which may concern a CCC officer, he would think it appropriate to refer the allegation to the CCC pursuant to s 45T(1)(b), thereby generating the obligation of the CCC to notify me and to deal with the matter, if not removed to me, under my direction.

I would be content with such an arrangement, which was also canvassed with me by Acting Commissioner Shanahan, SC. It would obviate the need to consider further amendment of the [CCM] Act to cure what seems to me to be an unintended hiatus in the amended scheme.⁸

It was the view of the PICCC that, to alleviate further amendments to the CCM Act, a Protocol be developed similar to the one that he had developed with the Corruption and Crime Commissioner. The Protocol between the PICCC and the Public Sector Commissioner was finalised in November 2015 and is provided in Appendix 2.⁹

Finding 1

The Protocol developed by the Public Sector Commissioner and the Parliamentary Inspector of the Corruption and Crime Commission is intended to ensure that there is clarity between them and the Corruption and Crime Commission in regard to the handling of allegations of minor misconduct made against officers of the Corruption and Crime Commission.

The Committee will continue to monitor the arrangement provided for in this Protocol between the PICCC and the Public Sector Commissioner.

Recommendation 1

The Parliamentary Inspector of the Corruption and Crime Commission should report to Parliament, no later than in his 2015-16 Annual Report, on the effectiveness of the Protocol he has developed with the Public Sector Commissioner on the handling of allegations of minor misconduct made against officers of the Corruption and Crime Commission.

7 Ibid, p13.

8 Ibid.

9 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 10 November 2015.

Conclusion

The Committee agrees with the actions taken by the PICCC in establishing Protocols with the Corruption and Crime Commissioner and the Public Sector Commissioner to ensure that he retains the responsibility for overseeing any allegation made against CCC officers, other than the most trivial.

The completion of the two Protocols indicates the collaborative nature of the State's integrity agencies. More importantly, it also ensures that allegations concerning officers of the Corruption and Crime Commission are properly brought to the attention of the Parliamentary Inspector.

Appendix One

Protocol with CCC Commissioner in regard to the use of section 196 of the CCM Act

The Parliamentary Inspector of the Corruption and Crime Commission
And
The Commissioner of the Corruption and Crime Commission

HEREBY AGREE:

1. The subject of this Protocol is any matter or information received in any way by the Commission which concerns, or may concern, the conduct, by act or omission, publicly or privately, of an officer of the Commission in an adverse manner in that it may, directly or indirectly, reflect adversely upon the person's fitness for office as an officer of the Commission.
2. This Protocol will not operate in respect of a matter or information which is merely the expression of dissatisfaction with the determination of a matter by an officer or officers of the Commission performing the duties of their office.
3. As soon as reasonably practicable after the Commission receives a matter or information to which this Protocol applies, a senior officer will notify the Parliamentary Inspector, in writing of;
 - the date of receipt of the matter or information,
 - from whom it was received,
 - the particulars of the matter or information (a copy of any written record is to be provided),
 - any other information which may be relevant for the Parliamentary Inspector to know, and
 - how the Commission is dealing, or proposes to deal with the matter.
4. If, when the above notification is made, the information last-mentioned in [3] is not known, the Parliamentary Inspector is to be provided with that information as soon as it is available.
5. If, upon his review of the matter, the Parliamentary Inspector does not remove it from the Commission to himself for consideration and determination, the Commission will inform the Parliamentary Inspector of its final determination of the matter.
6. If the Commission becomes aware of a matter or information of a kind described in [1] from other than a source external to the Commission, the Parliamentary Inspector is to be notified of it in accordance with [3] and [4] of this Protocol.

Appendix Two

Protocol with Public Sector Commissioner in regard to the use of section 45G of the CCM Act

PROTOCOL

The Parliamentary Inspector of the Corruption and Crime Commission
&
The Public Sector Commissioner

S 45G of the Corruption, Crime and Misconduct Act 2003

- - -

It is agreed that:

1. an allegation received by the Public Sector Commissioner that concerns, or may concern, an officer of the Commission which casts an adverse light on that officer's professional or private conduct or on the officer's capacity to properly fulfil the officer's professional responsibilities, will be referred to the Parliamentary Inspector at the earliest convenient opportunity, and
2. the Parliamentary Inspector will acknowledge in writing receipt of an allegation referred to him by the Public Sector Commissioner at the earliest convenient opportunity.



The Hon Michael Murray AM QC
Parliamentary Inspector of the
Corruption and Crime Commission

10/11/15
Date



Mr M C Wauchope
Public Sector Commissioner

6.11.15
Date

Appendix Three

Committee's functions and powers

On 21 May 2013 the Legislative Assembly received and read a message from the Legislative Council concurring with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.¹⁰

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

¹⁰ On 9 December 2015 the CCC Act was amended and renamed the *Corruption, Crime and Misconduct Act 2003*. The Legislative Assembly's Standing Orders are yet to be amended to reflect this change.