

Joint Standing Committee on the Corruption and Crime Commission

Surveillance and Accountability: A Gap in the Oversight Umbrella?

**Report No. 31
November 2012**

Parliament of Western Australia

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Joint Standing Committee on the Corruption and Crime Commission

Surveillance and Accountability: A Gap in the Oversight Umbrella?

Report No. 31

Presented by

Hon Nick Goiran, MLC and John Hyde, MLA

Laid on the Table of the Legislative Council and
Legislative Assembly on 8 November 2012

Chairman's Foreword

Etymology tells us that our contemporary use of the word “audit” hails from the early 15th century, when its use was derived from the Classical Latin *auditus* – “a hearing.”¹ It is perhaps unsurprising that the governmental principle of official self-examination can be traced to the Renaissance. Today, of course, the value inherent to the habitual self-examination of the discharge of executive power has established the process of audit as a fundamental tenet of good governance.

This is so because it is through auditing the processes of government that those processes are enhanced: in many instances, regular audits bear future efficiencies; in others, it is the process of audit that serves to ensure that governmental functions are discharged in a fair, transparent and responsible manner. Nowhere is this truer than with respect to those powers of government that impinge upon individual liberty so as to ensure the collective good. In particular, powers of government that we might describe as exceptional – such as the power to surveil – are especially demanding of a thorough process of audit.

It is doubtless for this reason that the primary function of the Joint Standing Committee on the Corruption and Crime Commission, as described by Standing Order 289 of the *Standing Orders of the Legislative Assembly of the Parliament of Western Australia* is to “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.”² In essence, the Committee is asked to perform this function on behalf of all of the citizens of Western Australia so as to counterbalance the exceptional powers that both of these agencies are able to draw upon in discharging their own functions. The Committee undertakes this task in a number of different ways, and it is for this reason that the Committee of the current Parliament has established a convention whereby annual public hearings are convened with representatives of the CCC and – separately – the Office of the Parliamentary Inspector, for the purpose of considering and reviewing each agency’s annual report subsequent to those reports being tabled in Parliament. As a result of these hearings the Committee remains apprised of the activities of and outcomes produced by both agencies over the course of the 1 July – 30 June reporting period. The process also allows the Committee to delve deeper into issues that are identified by the annual reports of each agency, such as in 2011 when a line of inquiry in the course of a review hearing attended by the Acting CCC

¹ Itself the past participle of *audire* – “to hear.”

² The *Standing Orders of the Legislative Assembly of the Parliament of Western Australia* can be found at the website of the Parliament of Western Australia (www.parliament.wa.gov.au), located among the Legislative Assembly resources; Standing Order 289 is detailed on pages 116-117.

Commissioner and senior CCC officers ultimately saw the Committee prepare and table a report in Parliament in March 2012.³

So it was that in October this year the Committee convened its annual review hearing with the Office of the Parliamentary Inspector.⁴ As there is still no substantive Parliamentary Inspector, this hearing was attended by the Acting Parliamentary Inspector, Mr Craig Colvin SC, and the Assistant to the Parliamentary Inspector, Mr Murray Alder. In advance of the hearing the Committee considered and familiarised itself with the *Annual Report 2011-2012* of the Office of the Parliamentary Inspector, and in particular the commentary on the inability of the Parliamentary Inspector to properly audit the use of telecommunications interception powers by the CCC.

So as to properly discharge its investigative function, the CCC has access to a wide range of exceptional powers, including the ability to deploy surveillance devices under the provisions of the *Surveillance Devices Act 1998* (the 'SD Act'), and to intercept telecommunications under the provisions of the *Telecommunications (Interception and Access) Act 1979* (Cth) (the 'TI Act'). Counterbalancing these powers, one of the functions of the Parliamentary Inspector of the Corruption and Crime Commission is, by the provisions of section 195(1)(cc), "to audit any operation carried out pursuant to the powers conferred or made available by [the *Corruption and Crime Commission Act 2003*]." In practice, the Office of the Parliamentary Inspector discharges this function by conducting quarterly audits of the use by the CCC of its various powers of investigation, a process that includes an examination of the various records kept by the CCC in relation to the use of these powers. When, for example, the CCC wishes to make use of a surveillance device in the course of a particular investigation, the SD Act requires the CCC to first apply for (and obtain) a surveillance device warrant from a court,⁵ a process that requires the CCC to prepare and provide the court with an affidavit certifying that the application meets with the various requirements of the SD Act. A component of the Parliamentary Inspector's quarterly audit process includes the examination of these affidavits, which are provided to the Parliamentary Inspector by the CCC.

Essentially the same is true when the CCC wishes to make use of telecommunications interception powers in the course of an investigation; certainly the CCC is required to follow a similar process in obtaining a TI warrant. There is, however, one crucial difference: the TI Act explicitly forbids the provision by the CCC of supporting affidavits to the Parliamentary Inspector for any purpose other than if the Parliamentary

³ The report in question – *Revocation of Exceptional Powers* – was tabled in Parliament on 29 March 2012.

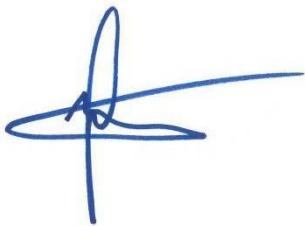
⁴ A similar review hearing attended by the CCC Commissioner, Acting Commissioner and senior officers took place on 7 November 2012.

⁵ In general this means a judge, although in some limited circumstances a magistrate can issue a warrant under the *Surveillance Device Act 1998*

Inspector is investigating alleged misconduct on the part of the CCC. That is, while the state SD Act allows the CCC to provide affidavits used in surveillance device warrant applications to the Parliamentary Inspector to assist the discharge of the Parliamentary Inspector's audit function – a process that the CCC are fully cooperative with – the same audit function is frustrated by the Commonwealth TI Act.

Regarding this situation as most unsatisfactory, the Committee further explored this topic in the course of the hearing with the Acting Parliamentary Inspector, and at the conclusion of that hearing the Committee resolved to make this report to Parliament – both to ensure that proper attention is paid to this problem, and to publicly register its support for an appropriate amendment to the TI Act. Although that Act is Commonwealth legislation and so cannot be amended by the Parliament of Western Australia, it is clear that this amendment would vastly enhance the oversight of what is a significant intrusion upon the privacy rights of all citizens. Furthermore, the Committee can see no good reason why such an amendment would be in any way problematic; such an amendment would simply bring the Parliamentary Inspector's oversight of the use of TI warrants by the CCC into line with the current oversight exercised with respect to SD warrants. As such, the Committee strongly believes that the Parliament of Western Australia should be aware of this problem, and that the State Government, through the Attorney General, Hon Michael Mischin MLC, ought to liaise with his Commonwealth counterpart, Hon Nicola Roxon MP, to see this amendment made.

In addition, the Committee has decided to take the opportunity afforded by making this report to re-assert an earlier recommendation from its fourteenth report in the current Parliament, entitled *Death of a Witness*. The Committee has made a series of follow-up inquiries in relation to this recommendation – that the CCC should be able to provide the State Coroner with material obtained via telecommunications interception where that material would assist the investigation of an apparent suicide – and it is clear that there exists widespread support for this recommendation. As such, processes that will bring about this proposed amendment should be undertaken and not allowed to languish within the Commonwealth Attorney General's department.

A handwritten signature in blue ink, consisting of a stylized 'N' and 'G' with a horizontal line extending to the right.

Hon Nick Goiran MLC
Chairman

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Ministerial response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Attorney General, through an appropriate representative in the Legislative Assembly, report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee, within not more than three months, or at the earliest opportunity after that time if the Assembly is adjourned or in recess, from the date of tabling of this report in the Assembly.

Recommendations

Recommendation 1 (page 6)

The Government of Western Australia should advocate for an amendment to the *Telecommunications (Interception and Access) Act 1979* (Cth) that would permit the Parliamentary Inspector of the Corruption and Crime Commission to call for and examine supporting affidavits used by the Corruption and Crime Commission in obtaining warrants under the provisions of that Act, as and when determined by the Parliamentary Inspector.

Recommendation 2 (page 9)

The Government of Western Australia should continue to advocate for an amendment to the *Telecommunications (Interception and Access) Act 1979* (Cth) that would permit the CCC to provide to the Coroner intercepted telecommunications material in situations such as that which caused the Joint Standing Committee on the Corruption and Crime Commission to prepare and table its February 2011 report entitled *Death of a Witness*.

Chapter 1

Annual review hearing with the Office of the Parliamentary Inspector

It is the certainty of being punished and not the horrifying spectacle of public punishment that must discourage crime.

Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 1975

Monitor and report

Section 203 of the *Corruption and Crime Commission Act 2003* requires the Parliamentary Inspector to prepare and provide to Parliament a report concerning her or his general activities over the course of each twelve month period ending 30 June. Similarly, section 91 of the Act requires that the CCC do likewise, and these respective reports are tabled in Parliament in the latter part of September each year.

The CCC Act does not, however, stipulate the functions and powers of the Committee; instead, this determination is deferred to the Houses of Parliament. As a result, the functions and powers of the Committee are set out by Standing Order 289 of the *Standing Orders of the Legislative Assembly of the Parliament of Western Australia*, which states that:

It is the function of the Joint Standing Committee on the Corruption and Crime Commission 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.*

By a combination of the annual reporting requirements of the CCC Act and its own monitoring function, the current Committee has established a convention with both the Office of the Parliamentary Inspector and the CCC whereby annual public hearings are convened with representatives of these agencies in October/November each year,

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for the purpose of publicly reviewing the matters covered by their respective annual reports. In 2009 and 2010 these hearings were attended by the CCC Commissioner and Parliamentary Inspector (along with their respective supporting officers) together, on 25 November and 13 October respectively; in 2011 the Committee elected to convene separate hearings with each agency – the Parliamentary Inspector appeared on 19 October 2011, while the CCC annual report was considered on 9 November 2011. In the aftermath of these 2011 hearings, the Committee formed the view that there is significant merit in convening separate annual review hearings with each agency, and resolved to continue this practice.

Annual Report 2011-2012 of the Office of the Parliamentary Inspector of the Corruption and Crime Commission

At a meeting on 26 September 2012, the Committee made note of the publication of the Office of the Parliamentary Inspector's *Annual Report 2011-2012*, which had been tabled in Parliament the previous day. After considering the *Annual Report*, and in line with its established convention, the Committee resolved to seek the attendance of the Acting Parliamentary Inspector, Mr Craig Colvin SC, along with the Assistant to the Parliamentary Inspector, Mr Murray Alder, before a public hearing on 17 October 2012.

During that hearing – the transcript of which appears at Appendix Two to this report – a range of matters were discussed, including the quantum of the activities undertaken by the Office of the Parliamentary Inspector during the reporting period, the reported increase in the discharge of the Office's audit function, and the amendment to how the resources received free of charge by the Office from the Department of the Attorney General is calculated. The Committee also took the opportunity to further explore a significant item of note in the *Annual Report*, which was the commentary on the effective inability of the Office of the Parliamentary Inspector to properly audit the use of telephone interceptions by the CCC.

On pages 8-9 of the *Annual Report*, under the heading "Powers of the Parliamentary Inspector," it is stated that:

The powers of the Parliamentary Inspector are conferred by s 196 of the Act and they are adequate to allow the functions of the office to be fulfilled effectively. However, as has been observed in previous Annual Reports, the absence of a general power on the office's part or on the part of any State or Commonwealth agency to examine supporting affidavits in warrant applications made by the Commission under the Telecommunications (Interception and Access) Act 1979 (Com) is a serious deficiency in the oversight of the Commission's operations and its appropriate use of its powers.

The *Report* also provides context for the proffered view:

The Commission's rights under this legislation intrudes into the privacy of any person who speaks on a telephone line to which an interception warrant applies, whether or not the warrant relates to the user of the line and whether or not the call falls within the purpose of the Commission's investigation. It is a right which is frequently exercised by the Commission. The Commission's supporting affidavit in its warrant application provides the reasons offered by it as to why the warrant should be granted and is read by a judicial officer at the time the application is made, but there is no general authority for the Inspector or for any other State or Commonwealth agency to subsequently investigate the accuracy of the affidavit's content. Nor can a series of affidavits for warrants be assessed for systemic irregularities.

A final observation is then offered as to the absurdity of the present situation:

This situation is in contrast to the Parliamentary Inspector's power under s196 of the Act to examine the Commission's supporting affidavits used under the Surveillance Devices Act 1998 (WA) to obtain warrants which authorise the Commission to place surveillance devices in people's homes, places of employment and motor vehicles pursuant to the office's audit function of Commission operations under s 195(1)(cc) of the Act.⁶

In considering this apparent anomaly within the CCC Act prior to the hearing, the Committee consulted the CCC's own *Annual Report 2011-12* (which was tabled in Parliament on 27 September 2012), and ascertained that in the course of the reporting period the CCC had obtained 32 warrants to make use of powers available under the Commonwealth *Telecommunications (Interception and Access) Act 1979* (the 'TI Act'), and three warrants to make use of powers available under the state *Surveillance Devices Act 1998* (the 'SD Act').

There is no suggestion that telecommunications interception powers are misused by the CCC; rather, it is simply the case that the forced inconsistency in the discharge of the Parliamentary Inspector's audit function – which exists only because the TI Act is a Commonwealth law – is problematic. After familiarising itself with the provisions of the TI Act, the Committee formed the view that while the requirements that must be met by the CCC before a TI Act warrant can be obtained are properly onerous, allowing the Parliamentary Inspector to examine supporting affidavits would enhance the discharge of the Parliamentary Inspector's audit function without in any way impacting the CCC's ability to make use of telecommunications interception powers. That is, the only agency that would be impacted by permitting the Parliamentary Inspector to examine supporting affidavits lodged by the CCC in obtaining TI Act warrants would be the Office of the Parliamentary Inspector.

⁶ Office of the Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2011-2012*, 25 September 2012, pp 8-9.

Public review hearing with the Acting Parliamentary Inspector

The Committee posed a series of questions to Acting Parliamentary Inspector Colvin in the course of the 17 October hearing pertaining to auditing TI Act warrants, with the Committee Deputy Chairman, Mr John Hyde MLA, beginning the questioning by seeking to quantify the difficulty in examining supporting affidavits used to obtain surveillance device warrants:

Mr J.N. Hyde: *...how onerous... is the process of discharging the PI's audit function of examining the supporting affidavits used to obtain surveillance device warrants?*

Mr Colvin: *If the question is, is it a substantial burden on the Office of the Parliamentary Inspector, it is not, because that process of review can be undertaken without a large amount of resources. If there was a particular issue in a particular case, then that would be of the character of one of the 43-odd matters that have been formally investigated here. But the actual review process would not require substantial additional resources. It is an issue about simply not being able to do it, rather than having the resources to be able to do it.⁷*

The Deputy Chairman then asked whether the ability to examine affidavits lodged in support of TI Act warrant applications might enhance the discharge of the PI's audit function. As Acting Parliamentary Inspector Colvin explained:

At present it is a field of activity by the Corruption and Crime Commission in the exercise of a power that is a substantial interference with otherwise the rights of individuals, and there is no ability by the parliamentary inspector to see the nature of the connection between the character of the investigations being undertaken by the Corruption and Crime Commission and the connection with the circumstances in which there have been telephone intercepts. It is one thing, of course, for those applications to be made to those who are not familiar with the process and the nature of investigations being undertaken by the Corruption and Crime Commission, which is the current position, but there ought to be someone who is able to know that and then review the affidavit material and the nature of the interceptions that are being undertaken connected with those investigations. That is the scrutiny that is not available at present.⁸

Finally, the Deputy Chairman and Chairman, Hon Nick Goiran MLC, confirmed that an amendment to the TI Act, giving regard to the use of telecommunications interception

⁷ Mr Craig Colvin SC, Acting Parliamentary Inspector, and Mr Murray Alder, Assistant to the Parliamentary Inspector, *Transcript of evidence*, 17 October 2012, p 6.

⁸ *Ibid.*

powers by the CCC, would not place undue burden upon the Office of the Parliamentary Inspector:

Mr J.N. HYDE: *The CCC's recent annual report revealed that the CCC received 32 warrants under the TI act in the most recent reporting period, as well as just three warrants under the SD act. If your office were empowered to examine supporting affidavits to use to obtain warrants under the TI act, would it be envisaged that every one of the affidavits lodged in relation to those 32 warrants would be examined?*

Mr Colvin: Yes.

The CHAIRMAN: *Again, you would confirm that that would not be unduly onerous on the office of the —*

Mr Colvin: No.⁹

Subsequent to the hearing the Committee resolved to prepare a report to Parliament on this matter. Prior to doing so, however, the Committee wrote to Acting Parliamentary Inspector Colvin to explain the Committee's intention and to invite the Acting Parliamentary Inspector to provide the Committee with a further submission on this matter, if he were so inclined. The Committee was pleased to receive a submission from the Acting Parliamentary Inspector on 31 October 2012; the submission makes clear all of the important matters pertaining to this matter, and is reproduced in its entirety at Appendix One.

In the submission, Acting Parliamentary Inspector Colvin explains that the inability to properly audit the CCC's use of TI warrants "is the only gap in the Parliamentary Inspector's otherwise comprehensive authority to audit the Commission's operations," and this "gap is significant because it relates to an invasive power that is regularly used by the Commission." Later in his submission, Acting Parliamentary Inspector Colvin draws specific attention to the danger that exists as a result of this legislative flaw:

The deficiency in the legislative framework gives rise to a particular oversight danger: if the Commission, or its officers, abuses the telephone interception power within the affidavit process and the abuse is not perceptible to the judicial officer who considers the Commission's warrant application, then Parliament has little chance of ever knowing about it. This is because it will be unlikely that anyone outside the Commission will have witnessed the abuse so as to be in a position to complain to the Parliamentary Inspector. Yet another danger is that it is impossible for the Parliamentary Inspector to be satisfied that the Commission has exhausted all avenues of investigation before applying for a warrant, something that is required by the TI Act.¹⁰

⁹ *Ibid.*

¹⁰ Mr Craig Colvin SC, *Letter to the Chairman of the Joint Standing Committee on the Corruption and Crime Commission*, 31 October 2012, p 3.

Chapter 1

Concluding the submission, the Acting Parliamentary Inspector states that:

It is submitted that the TI Act should be amended so as to give a body that oversees the Commission the express authority to audit its affidavits and that body should be the Parliamentary Inspector. The Parliamentary Inspector has the jurisdiction to audit all remaining aspects of the Commission's operational activities, and it is within this larger picture that the use of telephone interceptions must be considered. Providing this audit power to another body would fragment oversight of the Commission, preventing any one person from seeing the complete picture.¹¹

The Committee concurs with the Acting Parliamentary Inspector, and makes the following recommendation:

Recommendation 1

The Government of Western Australia should advocate for an amendment to the *Telecommunications (Interception and Access) Act 1979* (Cth) that would permit the Parliamentary Inspector of the Corruption and Crime Commission to call for and examine supporting affidavits used by the Corruption and Crime Commission in obtaining warrants under the provisions of that Act, as and when determined by the Parliamentary Inspector.

¹¹ *Ibid.*

Chapter 2

Committee report: *Death of a Witness*

The Coroner is a Judicial Officer who must be advised when a person dies apparently from unnatural causes or where the cause of death is not known.

[...]

In some cases the Coroner may comment and make recommendations about public health or safety or the administration of justice, to help prevent similar deaths happening.

Website of the Coroner's Court of Western Australia

The recommendation that the WA Parliament advocate for amendment to the TI Act recalls an earlier recommendation made by the Committee in a different report tabled by the Committee on 24 February 2011 entitled *Death of a Witness*. In that report, the Committee recommended that the WA Parliament advocate for amendment to the TI Act that would allow the CCC to provide material obtained through telecommunications interception to the State Coroner in circumstances where the material would assist the Coronal investigation of an apparent suicide.

In explaining the situation, it was stated by the Committee that:

The CCC has received an opinion from Senior Counsel that the CCC is prohibited from providing... TI material to the Coroner, by reason of the prohibitions in the TI Act.

The Parliamentary Inspector and the Committee have seen this opinion. It appears from the opinion that, while the CCC can release TI material to the Coroner if the Coroner is investigating the death of a person in relation to the commission of certain offences, the CCC cannot release TI material to the Coroner if the Coroner is investigating possible contributing causes to an apparent suicide that is unrelated to the commission of these offences.

It is the unanimous view of the CCC, the Parliamentary Inspector and the Committee that this is a most unsatisfactory state of affairs and that the

Chapter 2

*TI Act should be amended to allow the Coroner to have access to this type of information if necessary.*¹²

As a result, the Committee recommended:

*That the Parliament of Western Australia advocate for the Telecommunications (Interception and Access) Act 1979 (Cth) to be amended to permit the CCC to provide to the Coroner intercepted telecommunications material in situations such as the present case.*¹³

In responding to the Committee's *Death of a Witness* report, the then Attorney General, Mr Christian Porter MLA, informed the Committee that:

*In view of [the recommendation], I have forwarded a copy of your Committee's report to the Hon Robert McClelland MP, Commonwealth Attorney-General, within whose Ministerial Portfolio responsibilities the Telecommunications (Interception and Access) Act 1979 (Cth) is included. In particular, I have referred to... [the Committee's] recommendation.*¹⁴

The Committee had cause in recent times to again consider the matters that led to the *Death of a Witness* report. Having heard nothing beyond that which had been communicated to the Committee in the Government's response as to whether there had been any tangible outcome from the report, the Committee wrote to the current Attorney General, Hon Michael Mischin MLC, seeking a copy of any response that might have been received from the Commonwealth Attorney General pertaining to the Committee's recommendation. A copy of a response sent by Hon Robert McClelland MP was duly received by the Committee. In the letter, Hon Robert McClelland MP states:

Suicide is a difficult and distressing event for all involved. I am aware that in these particular circumstances, the TIA Act did not authorise the release of intercepted information by the CCC to the Coroner for the purpose of investigating possible contributing causes to the witness' apparent suicide. I recognise that the operation of the TIA Act has an important effect in these sensitive circumstances.

Accordingly, I have asked my Department to consider the Committee's recommendations about the application of the TIA Act to a broader

¹² Joint Standing Committee on the Corruption and Crime Commission, *Death of a Witness*, 24 February 2011, p 23.

¹³ *Ibid.*

¹⁴ Mr Christian Porter MLA, *Letter to the Chairman of the Joint Standing Committee on the Corruption and Crime Commission* (Legislative Assembly tabled paper number 3784), 15 August 2011, p 2.

*range of coronial investigations as a matter of priority, as part of our ongoing review of the Act.*¹⁵

The Committee has not been able to ascertain the current status of this apparent “ongoing review” of the TI Act, but is aware that the Parliamentary Joint Committee on Intelligence and Security is currently engaged in an inquiry into potential reforms of national security legislation, and that a series of potential reforms to the TI Act are being considered in the course of this inquiry.

As it is apparent that reforms to the TI Act are actively being considered, and insofar as there is apparent broad support for the Committee’s earlier recommendation that the TI Act be amended so as to permit the State Coroner to access intercepted material for the purpose of investigating an apparent suicide, the Committee reiterates its earlier recommendation:

Recommendation 2

The Government of Western Australia should continue to advocate for an amendment to the *Telecommunications (Interception and Access) Act 1979* (Cth) that would permit the CCC to provide to the Coroner intercepted telecommunications material in situations such as that which caused the Joint Standing Committee on the Corruption and Crime Commission to prepare and table its February 2011 report entitled *Death of a Witness*.

The Committee would be pleased if the Parliamentary Joint Committee on Intelligence and Security were to consider both of the recommendations contained within this report in the course of its inquiry into potential reforms of national security legislation. The Joint Standing Committee on the Corruption and Crime Commission believes strongly that there would be significant merit if both of the recommendations contained within this report – recommendations that are extremely minor in scope – were made to the TI Act.

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¹⁵ Hon Robert McClelland MP, *Letter to Hon Christian Porter MLA*, 14 September 2011.

Appendix One

Submission provided by the Acting Parliamentary Inspector

On 31 October 2012 the Committee received a letter from the Acting Parliamentary Inspector, Mr Craig Colvin SC, after the Committee had advised him of its intention to prepare this report and had invited him to make a submission in response. The letter is reproduced in its entirety overleaf.



**ACTING PARLIAMENTARY INSPECTOR
OF THE CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

31 October 2012

The Hon Nick Goiran MLC
Chairman
Joint Standing Committee of the
Corruption and Crime Commission
Level 1, 11 Harvest Terrace
PERTH WA 6000

Dear Mr Chairman

**JOINT STANDING COMMITTEE'S REPORT ON AUDITING TELEPHONE
INTERCEPTION AFFIDAVITS OF THE CORRUPTION AND CRIME
COMMISSION**

Thank you for your invitation to make a submission to the Committee concerning the inability of any oversight body to audit affidavits used by the Commission to apply for warrants under the *Telecommunications (Interception and Access) Act 1979 (Com)*.

Background

The absence of authority on the part of the Parliamentary Inspector to audit Commission affidavits used to gain warrants under the *TI Act* has been raised by each Parliamentary Inspector of the Corruption and Crime Commission in Annual Reports since 2007. I also did this in the 2012 Annual Report. This absence of authority is the only gap in the Parliamentary Inspector's otherwise comprehensive authority to audit the Commission's operations. This gap is significant because it relates to an invasive power that is regularly used by the Commission. Since its inception in 2003 the Commission has averaged 54 warrants per year, though use has reduced to some extent in recent years.

The invasive nature of telephone interception is well known. For instance, all telephone calls made to and from a telephone to which a warrant issued under the *TI Act* relates are intercepted, recorded and listened to by the Commission. This is so regardless of whether a party to the call is the subject of a Commission investigation, or whether the content of the call is relevant to that investigation. Where a warrant relates to a specific person rather than a particular telephone, any telephone that the person might use will similarly have calls made to and from it intercepted, recorded and listened to by the Commission, regardless of the parties to the calls. Emails, facsimiles and other communications sent or received via a telephone line to which a warrant relates are also intercepted, recorded and read by the Commission, regardless of the identity of the

sender, or the recipient, or whether the communication is relevant to the Commission's investigation. Information intercepted by the Commission may be supplied to other agencies in Australia in certain circumstances, even if that information does not relate to the original criminal offence the investigation of which was the basis upon which the Commission obtained its warrant. Warrants may be issued for up to 90 days and may be renewed on the Commission's application. Statistics show that the Commission has regularly renewed its warrants.

A warrant's scope to capture private information that belongs to someone who is, or who is not, the object of a Commission investigation, is wide. If evidence of wrongdoing is discovered, it may be used to investigate that offence, whether or not it involves the person, or the offence, for which the warrant was originally obtained. The nature of the power is such that its use should be confined to appropriate cases. This requires the appropriate development of policy and use of discretion by the Commission. There is presently no oversight of these practices.

It is my view, as it was the view of the two previous Parliamentary Inspectors, that reasonable means to audit and detect any isolated, or systemic, abuses of the interception power by the Commission should be created, including an external auditing power of its affidavits used to obtain warrants.

Legislative framework for auditing and assessing the Commission and its deficiencies

Section 195 of the *Corruption and Crime Commission Act 2003 (WA)* authorises the Parliamentary Inspector to audit the Commission's operations. This power is not restricted to completed operations, and may be exercised at any time during an operation, subject to the audit not interfering with, obstructing, hindering or delaying a lawful operation.

Section 195 also authorises the Parliamentary Inspector to assess the effectiveness and appropriateness of the Commission's procedures and, as with the audit function, an assessment may be made at any time, subject to the same restriction noted above.

Together, these two functions allow the Parliamentary Inspector to audit or assess all aspects of the Commission's operational activities (and all non-operational Commission procedures), except the Commission's telephone interception warrant applications and related activities. This is because the *CCC Act*, being State legislation, does not govern telephone interception. This investigation activity is governed solely by the *TI Act*, which is Commonwealth legislation.

Further, the *TI Act* does not provide the Parliamentary Inspector (or any other oversight body) with the authority to audit affidavits used by the Commission in support of its applications for warrants. Section 68(k) of the *TI Act* authorises the Commission to release to the Parliamentary Inspector such affidavits (and any other information concerning the interception process) only when the Parliamentary Inspector is considering an issue 'that relates, or appears to relate, to a matter that may give rise to the dealing by the Parliamentary Inspector of the Corruption and Crime Commission with a matter of misconduct (within the meaning of the Corruption and Crime

Commission Act)'. This section of the *TI Act* has historically been interpreted and applied by the Commission to extend only to cases where the Parliamentary Inspector is considering an issue involving the type of misconduct which the Parliamentary Inspector has jurisdiction to 'determine', and that is misconduct on the part of the Commission or its officers.

The Commission's interpretation of s 68(k) has had the consequence that in all other instances in which the Parliamentary Inspector's audit and assessment functions are being fulfilled, the Commission has not provided affidavits, or any other information concerning telephone interception, that may be relevant to the Parliamentary Inspector's considerations. Where such information has appeared in Commission documents, it has been redacted.

The deficiency in the legislative framework gives rise to a particular oversight danger: if the Commission, or its officers, abuses the telephone interception power within the affidavit process and the abuse is not perceptible to the judicial officer who considers the Commission's warrant application, then Parliament has little chance of ever knowing about it. This is because it will be unlikely that anyone outside the Commission will have witnessed the abuse so as to be in a position to complain to the Parliamentary Inspector. Yet another danger is that it is impossible for the Parliamentary Inspector to be satisfied that the Commission has exhausted all avenues of investigation before applying for a warrant, something that is required by the *TI Act*.

A residual audit jurisdiction vested in the Western Australia Ombudsman requires brief mention. The *Telecommunications (Interception and Access) Act 1996 (WA)* gives the Ombudsman a limited jurisdiction, *inter alia*, to record and report to State and Commonwealth Attorneys General the number of warrants issued to the Commission under the *TI Act*. But this jurisdiction does not encompass an examination of the affidavits used by the Commission in its applications for warrants.

Conclusion

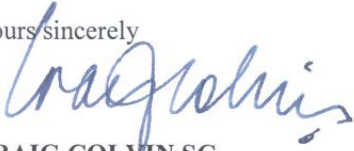
It is submitted that the *TI Act* should be amended so as to give a body that oversees the Commission the express authority to audit its affidavits and that body should be the Parliamentary Inspector. The Parliamentary Inspector has the jurisdiction to audit all remaining aspects of the Commission's operational activities, and it is within this larger picture that the use of telephone interceptions must be considered. Providing this audit power to another body would fragment oversight of the Commission, preventing any one person from seeing the complete picture.

Additionally, the Parliamentary Inspector's powers under ss 196 and 197 of the *CCC Act* provide the means to act effectively should an audit of the Commission's affidavits reveal an abnormality.

Finally, the Parliamentary Inspector's reporting power under s 199 of the *CCC Act* enables a report to Parliament in circumstances which involve a serious abuse of the Commission's interception power.

The Parliamentary Inspector would not require additional resources to conduct the audit.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Craig Colvin', written over the word 'Yours sincerely'.

CRAIG COLVIN SC
ACTING PARLIAMENTARY INSPECTOR

Appendix Two

Transcript of evidence given by the Acting Parliamentary Inspector

On 17 October 2012 the Committee convened a public hearing attended by the Acting Parliamentary Inspector, Mr Craig Colvin SC, and the Assistant to the Parliamentary Inspector, Mr Murray Alder, for the purpose of reviewing the *Annual Report 2011-2012* of the Office of the Parliamentary Inspector of the Corruption and Crime Commission. The transcript of evidence given during this hearing is reproduced overleaf.

**JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION**

ANNUAL REPORT REVIEW

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 17 OCTOBER 2012**

Members

**Hon Nick Goiran (Chairman)
Mr John Hyde (Deputy Chairman)
Mr Frank Alban
Hon Matt Benson-Lidholm**

Hearing commenced at 10.18 am**COLVIN, MR CRAIG****Acting Parliamentary Inspector of the Corruption and Crime Commission, examined:****ALDER, MR MURRAY****Assistant to the Parliamentary Inspector of the Corruption and Crime Commission, examined:**

The CHAIRMAN: On behalf of the Joint Standing Committee on the Corruption and Crime Commission, I would like to thank you for your appearance before us today. The purpose of this hearing is for the committee to speak with the Acting Parliamentary Inspector of the Corruption and Crime Commission, Mr Craig Colvin, SC, and to the Assistant to the Parliamentary Inspector, Mr Murray Alder, about the annual report of the Office of the Parliamentary Inspector for 2011–12 which was tabled in Parliament on 25 September 2012. This is an annual public meeting convened by the committee and it is also the first time that Mr Colvin has formally attended before the committee since being appointed acting parliamentary inspector earlier this year.

I would like to take this opportunity to introduce myself as the Chair of the committee. To my left is the Deputy Chairman, Mr John Hyde, MLA, the member for Perth. To his left is Hon Matt Benson-Lidholm, MLC, the member for the Agricultural Region. To my right is Mr Frank Alban, MLA, the member for Swan Hills.

The Joint Standing Committee of the Corruption and Crime Commission is a committee of the Parliament of Western Australia. This hearing is a formal procedure of the Parliament and therefore commands the same respect given to proceedings in the houses themselves. Even though the committee is not asking you to provide evidence on oath or affirmation, it is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. This is a public hearing and Hansard will be making a transcript of the proceedings. If you refer to any documents during your evidence, it would assist Hansard if you could provide the full title for the record.

Before we proceed to the questions we have for you today, I need to ask you a series of preliminary questions. First, have you completed the “Details of Witness” form?

The Witnesses: Yes.

The CHAIRMAN: Do you understand the notes at the bottom of the form about giving evidence to a parliamentary committee?

The Witnesses: Yes.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet provided in advance of today’s hearing?

The Witnesses: Yes.

The CHAIRMAN: Do you have any questions in relation to being a witness at today’s hearing?

The Witnesses: No.

The CHAIRMAN: Mr Colvin, just for your awareness, the normal process for the committee is that we would direct questions through you and then you would utilise the assistance of Mr Alder completely at your discretion. I commence by turning to the annual report that was tabled in

Parliament last month. In particular, I understand that a total of 43 matters were undertaken by the parliamentary inspector's office during the reporting period. The office concluded 40 matters during the reporting period, some of which originated prior to the beginning of the reporting period. It would be helpful for the committee to understand how many of the 43 matters that were undertaken in the period were brought to a conclusion.

Mr Colvin: There were 35. Of the 40, 35 relate to the reporting period and five were from an earlier period.

The CHAIRMAN: As at today's date, is it possible to know how many matters are currently active?

Mr Colvin: There are eight separate files at present.

The CHAIRMAN: Are those eight the difference between the 35 and the 43 or is that just a coincidence?

Mr Colvin: I think that is just a coincidence because some have arisen since.

The CHAIRMAN: It may be the case as far as the committee understands that the Office of the Parliamentary Inspector receives more than the 43 allegations of complaints that have been referred to in the annual report. For example, the recent annual report of the Corruption and Crime Commission stated that the CCC assessed 3 047 complaints and notifications concerning 5 912 allegations during the same reporting period. Are you in a position to indicate approximately how many total complaints and/or allegations were received by the Office of the Parliamentary Inspector during the reporting period?

Mr Colvin: Records are not kept that relate to those. What is reported on are those that involve the exercise of statutory functions and satisfy that requirement. My advice is that there are about as many that proceed as do not, so there are about as many again as those that are reported on that are the subject of some inquiry but do not move to the stage of the exercise of statutory functions.

The CHAIRMAN: The 43 matters that were undertaken in 2011–12 are 43 matters received that are considered to fall within the office's jurisdiction but in addition to that, the office receives complaints in a generic sense, some of which do not fall within the jurisdiction and records are not kept as to how many there might be.

Mr Colvin: That is right. In some instances they might simply be an inquiry—somebody asking about what should happen in relation to something. Records are not kept of those.

The CHAIRMAN: I wanted to then turn to the office's audit function. I note that the 43 matters undertaken were nine less than in the previous reporting period and, similarly, 40 matters were brought to a conclusion; that is, five less than in the previous reporting period. This reduction in investigative work resulted in what appears to have been a corresponding increase in discharge of the audit function of the Office of the Parliamentary Inspector. Is this a fair appraisal of why the key efficiency indicator cost of the audit function as a percentage of total cost of operation increased from 39 per cent to 52 per cent year on year?

Mr Colvin: Yes.

The CHAIRMAN: Does this dilution in the investigative work indicate an increased general level of satisfaction with the CCC by citizens of Western Australia?

Mr Colvin: It would be difficult for me to answer that question. It does reflect the fact that the previous full-time parliamentary inspector, Chris Steytler, was able to deal with a lot of matters that had been there for some time. With those matters being dealt with, there is now time to attend to the audit functions and that is where the focus is as a result of those matters having been dealt with.

The CHAIRMAN: Nevertheless, it is fair to say that the reduction in numbers is a positive trend and therefore there is the capacity to further engage in audit.

Mr Colvin: Yes, that is definitely a positive trend. The report reported on cooperation of the commission at paragraph 5.5 in relation to both acting commissioner Mark Herron and commissioner Roger Macknay, QC, dealing with matters of complaint, which means that those procedures are able to be undertaken much more efficiently.

Mr F.A. ALBAN: Still with reference to the audit function, is it preferable for the Office of the Parliamentary Inspector to devote in the vicinity of 50 per cent of its total resources to the audit function? How important is the audit function, and can you give us some examples of its benefit?

Mr Colvin: I answer these questions having been in this role for a matter of months. With that caveat, the audit function is very important and it would be a concern from my point of view if the number of complaints got to a level where we were not able to commit the time that is currently being committed to the audit function. Having regard to the nature of the powers that are entrusted to the Corruption and Crime Commission, the amount of time that is available now needs to be maintained. I am sorry; I missed the last part of your very last question.

Mr F.A. ALBAN: Can you give us an example of its benefit?

Mr Colvin: In relation to telephone intercepts, which has been the subject of a report, it enables the public to know the nature of the powers that are being exercised and, where necessary, to raise issues concerning the exercise of those powers. In relation to the telephone intercept function, the audit function identifies that issue and it still remains an issue in that instance to effectively undertake full audit and scrutiny. That is clearly an example of something that has come through that function. Another is the process of review that has been undertaken by the new commissioner as a result of reports concerning the processes followed by the commission by the previous inspector. That is a process of review which comes through the fact that oversight is provided by the parliamentary inspector's position.

Mr J.N. HYDE: Mr Colvin, we appreciate that you are new to the position, and thank you for it. Is it fair to say that the acting parliamentary inspector can only perform the investigative function and that the government's failure to appoint a substantive parliamentary inspector—I guess it is now seven months since Mr Steytler announced his retirement—means that the audit function of the Office of the Parliamentary Inspector cannot be properly discharged?

Mr Colvin: There are two instances in which the acting parliamentary inspector function might be taken over. That is in a circumstance in which there is a conflict relating to a particular matter that would not be in relation to audit. Historically, where you have a full-time parliamentary inspector, that is the most likely position where that role is undertaken. In circumstances in which there is not a full-time parliamentary inspector, the acting parliamentary inspector takes over all of that role. Having said that, the nature of the acting parliamentary inspectors is that they are not appointed on the basis that they are available full time to undertake all of those responsibilities. There remains through Mr Alder importantly a continuing role where the collection of information and the undertaking of the process that has been established for regular audit is still being undertaken through that office. That is to provide an assurance that that is still being undertaken, but ideally you would have a full-time inspector in that role.

[10.30 am]

Mr J.N. HYDE: As an acting inspector, do you have the same powers just to turn up unannounced at the CCC and have access to anything in the building, any computer, any information, exactly the same as a full-time inspector?

Mr Colvin: I do when I am carrying out the responsibilities of the full-time parliamentary inspector. I have been given access. I have secured access to do that at any time. Since I have been appointed and been and undertaken inspection I have been through that process as part of my time as acting parliamentary inspector.

The CHAIRMAN: Does that then also apply to Mr Zelestis at the moment?

Mr Colvin: No, there is only one person who holds those responsibilities at any point in time.

Hon MATT BENSON-LIDHOLM: Mr Colvin, there are two particularly pressing questions that I want to ask. For one of them, can I just take you back to the introductory remarks that were made and when we were talking about matters undertaken in the reporting period that were brought to a conclusion? I am particularly interested in matters that the Office of the Parliamentary Inspector has said that there is no case to answer. In this particular committee we often get complaints from people in relation to the behaviour of public servants at the various offices that are held. Frequently our response and the Office of the Parliamentary Inspector's response is that there is no case to answer. I just want to know, (a) what are the various procedures? I know that is a very generalised sort of question, simply because no two cases are the same. But what sorts of procedures does the parliamentary inspector's office go through to ascertain whether there is a case to be answered? And then when something is dismissed, what sort of feedback is provided to the person who feels aggrieved at a particular situation that they believe needs to be addressed? Because quite often these people, they then come back to us and say, "Look, we could not get anywhere with the CCC" or "The parliamentary inspector's office said there is no case to answer. We do not know why. We do not believe that." Can you address those two issues for me?

Mr Colvin: Can I just check one thing before I do? All of the matters that are the subject of the report, so the 43 matters and historically before that, the process always involves the communication of the outcome of investigations by the parliamentary inspector to the person concerned who has raised the issue. There may be occasions where an inquiry which really should be directed to the commission for some reason comes to the parliamentary inspector's office, in which case that matter would be referred to the commission, and then of course the person, having been pointed in the direction, can raise and communicate those issues with the commission and there would be a separate reporting about those matters so far as the commission is concerned. My understanding is that the commission provides a response to parties when there has been a matter directed to them as well. There should not be an instance where a party feels that there has not been the response. Whether the party is satisfied with the response is a separate matter.

Hon MATT BENSON-LIDHOLM: If I can interrupt you, I think that is more the point: these people who get back to us are not happy with the response. I want to know particularly then what generally is the nature of the response that might come from the parliamentary inspector's office. Is it a detailed response or is it brief or is there not necessarily any particular typical response that is provided, that it just depends upon the case?

Mr Colvin: It is the latter; it depends upon the case. There are instances where of course there may be operational issues in relation to ongoing investigation by the Corruption and Crime Commission which curtails the nature of what can be communicated in a response. There are issues of identification of individuals and the circumstances in which they have provided information to the commission which will curtail the nature of the response. Within those constraints, every effort is made to provide as much of a substantive response as is possible so far as the parliamentary inspector responses are concerned. But at times that will mean that not absolutely everything is able to be stated. That is the nature of the process.

Hon MATT BENSON-LIDHOLM: I understand. I just want to continue with the general theme that we were undertaking until I went back to that first issue regarding the audit function and particularly a comment in relation to financial information. Just bear with me a second while I give you a little bit of a quote here. I am saying that there was one significant increase—this is in relation to the annual report. There was one significant increase in the total cost of services rendered by the Office of the Parliamentary Inspector during the reporting period, being an increase in the resources received free of charge from the Department of the Attorney General from \$21 651 in 2010–11 to \$71 053 in 2011–12. To my way of thinking, that particular increase, even though monetary-wise is not a huge amount, it is a significant percentage increase. I would like your comments about that.

This particular comment that I want to focus on says that this is explained in the annual report with the statement that the increase in resources free of charge is largely due to a more accurate method of calculating administrative resources provided by the Department of the Attorney General, and indeed the report of 2011–12 of the Department of the Attorney General also reflects this change. My question then is: are you able to give the committee something of a breakdown of what was included in \$71 053 of resources provided free of charge, because, to me, an extra \$50 000 of resources free of charge does warrant some sort of attention. I would like to get your comments there.

Mr Colvin: Yes, you are right, Mr Benson, to identify that as the significant difference between reporting last year and this year. That charge relates to management services provided for facilities that are provided by the Attorney General's department for use by the parliamentary inspector. It is a charge which applies not just to those services received by the parliamentary inspector but those provided by the Attorney General for a number of premises and facilities that are managed by it. That charge is an allocation that is undertaken on a pro rata basis, principally by reference to the area occupied, I think, by the parties. It is a charge, of course, over which the parliamentary inspector does not have any control other than perhaps to make arrangements for other premises, if that was thought appropriate. That is how the charge arises. It is an allocation made by the Department of the Attorney General of its management costs associated with managing the premises and facilities provided to various entities.

The CHAIRMAN: So that I can understand that better, Mr Colvin, is that, for example, things like this negotiation of the lease, that type of thing, which I presume you do not handle yourself personally and perhaps Mr Alder does not. Maybe that is the type of thing you are referring to?

Mr Colvin: That is right. Even issues down to any issues associated with the premises are all managed by the Attorney General.

The CHAIRMAN: And presumably the pay —

Mr Colvin: Yes.

The CHAIRMAN: — that is provided to the two of you. Someone needs to administer that, and that is somewhat reflected in this cost.

Mr Colvin: I am not sure whether it extends to that. If I just might have a moment. It does; it includes those services as well.

The CHAIRMAN: In some respects it sounds like the calculation method is a little barbaric in the sense that in recent times the Department of the Attorney General may have been a little bit more active in the sense that it had to be involved in an appointment process for yourself but in a reporting period there may be no need for it to be engaged in an appointment process and so to just do it across the entity by way of square metreage is a method but perhaps not a precise method.

Mr Colvin: I think it would be difficult to conceive of an entirely appropriate method other than in bearing lots of costs in terms of trying to track where all of the costs went. I think this charge can be affected obviously by how many premises are managed at any particular time and what the size of them are, but that is the nature of the charge.

The CHAIRMAN: So they have not got to the point of deciding to time charge by six-minute units or anything like that?

Mr Colvin: I will just let that one —

Hon MATT BENSON-LIDHOLM: I think I know where you are coming from, Mr Chair.

Mr J.N. HYDE: Mr Colvin, page 8 of the annual report states —

... the absence of a general power on the office's part or on the part of any State or Commonwealth agency to examine supporting affidavits in warrant applications made by

the Commission under the *Telecommunications (Interception and Access) Act 1979 (Com)* is a serious deficiency in the oversight of the Commission's operations and its appropriate use of its powers. —

[10.45 am]

As the annual report further mentions, this is in contrast to the power of the parliamentary inspector with respect to warrants obtained by the CCC under the Surveillance Devices Act, which is an act, of course, of the state Parliament rather than the commonwealth. The parliamentary inspector is able to examine supporting affidavits for all warrants obtained under that act. Could you confirm that the Office of the Parliamentary Inspector is able to access supporting affidavits used to obtain warrants under the TI act if the parliamentary inspector is in the process of conducting an inquiry into alleged misconduct on the part of the CCC officers?

Mr Colvin: I do not think that can be done. I think that is the—sorry, yes; I misunderstood the question. I can confirm that, yes; and in relation to misconduct, yes.

Mr J.N. HYDE: Okay. How onerous, though, is the process of discharging the PI's audit function of examining the supporting affidavits used to obtain surveillance device warrants?

Mr Colvin: If the question is, is it a substantial burden on the Office of the Parliamentary Inspector, it is not, because that process of review can be undertaken without a large amount of resources. If there was a particular issue in a particular case, then that would be of the character of one of the 43-odd matters that have been formally investigated here. But the actual review process would not require substantial additional resources. It is an issue about simply not being able to do it, rather than having the resources to be able to do it.

Mr J.N. HYDE: Okay. Then how might the ability to examine supporting affidavits lodged in support of TI warrants applications enhance the discharge of the PI's audit function?

Mr Colvin: At present it is a field of activity by the Corruption and Crime Commission in the exercise of a power that is a substantial interference with otherwise the rights of individuals, and there is no ability by the parliamentary inspector to see the nature of the connection between the character of the investigations being undertaken by the Corruption and Crime Commission and the connection with the circumstances in which there have been telephone intercepts. It is one thing, of course, for those applications to be made to those who are not familiar with the process and the nature of investigations being undertaken by the Corruption and Crime Commission, which is the current position, but there ought to be someone who is able to know that and then review the affidavit material and the nature of the interceptions that are being undertaken connected with those investigations. That is the scrutiny that is not available at present.

The CHAIRMAN: So it is the one gap in the oversight umbrella?

Mr Colvin: Yes.

Mr J.N. HYDE: The CCC's recent annual report revealed that the CCC received 32 warrants under the TI act in the most recent reporting period, as well as just three warrants under the SD act. If your office were empowered to examine supporting affidavits to use to obtain warrants under the TI act, would it be envisaged that every one of the affidavits lodged in relation to those 32 warrants would be examined?

Mr Colvin: Yes.

The CHAIRMAN: Again, you would confirm that that would not be unduly onerous on the office of the —

Mr Colvin: No.

The CHAIRMAN: Any further questions, members? What I might do at this point, then, Mr Colvin, is indicate that we will close this particular portion of the hearing with respect to it

being a public hearing, and the committee proposes to now move into closed session for the purposes of discussing with you some more sensitive matters, particularly around perhaps the eight active complaints you have before you at the moment.

Mr Colvin: Yes.

[The committee took evidence in closed session]

Appendix Three

Committee's functions and powers

On 25 November 2008 the Legislative Council concurred 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*.

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