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

**PARLIAMENTARY INSPECTOR'S
REPORT CONCERNING MR STEPHEN
LEE**

**Report No. 1
in the 38th Parliament**



WESTERN AUSTRALIA
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Joint Standing Committee on the Corruption and Crime Commission

Parliamentary Inspector's Report concerning Mr Stephen Lee

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THE CORRUPTION AND CRIME
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**PARLIAMENTARY INSPECTOR'S
REPORT CONCERNING MR STEPHEN
LEE**

Report No. 1

Presented by:

Hon. Ray Halligan, MLC and Mr Frank Alban, MLA

Presented to the President of the Legislative Council and tabled with the Clerk of the
Legislative Assembly on 24 December 2008

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TABLE OF CONTENTS

COMMITTEE MEMBERS	i
COMMITTEE STAFF.....	i
COMMITTEE ADDRESS	i
COMMITTEE'S FUNCTIONS AND POWERS	v
ABBREVIATIONS AND ACRONYMS	vii
CHAPTER 1 PARLIAMENTARY INSPECTOR'S REPORT CONCERNING MR STEPHEN LEE	1
1.1 BACKGROUND	1
1.2 REPORT REGARDING MR STEPHEN LEE.....	1
1.3 MR LEE'S COMPLAINT TO THE PARLIAMENTARY INSPECTOR	2
1.4 CCC SEEKS TO PREVENT PARLIAMENTARY INSPECTOR FROM TABLING HIS REPORT	4
1.5 PARLIAMENTARY INSPECTOR TABLES HIS REPORT.....	6
1.6 RESPONSE OF THE COMMITTEE.....	7
APPENDIX One.....	9
LEGISLATION	9

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 of the 38th Parliament.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 288-292 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.

ABBREVIATIONS AND ACRONYMS

“CCC”	Corruption and Crime Commission
“CCC Act”	<i>Corruption and Crime Commission Act 2003</i>
“Parliamentary Inspector”	Parliamentary Inspector of the Corruption and Crime Commission
“JSCCCC”	Joint Standing Committee on the Corruption and Crime Commission
“MLA”	Member of the Legislative Assembly
“MLC”	Member of the Legislative Council

CHAPTER 1 PARLIAMENTARY INSPECTOR'S REPORT CONCERNING MR STEPHEN LEE

1.1 Background

The Corruption and Crime Commission ('CCC') has been in operation since January 2004.

In 2007 and 2008, the Parliamentary Inspector of the CCC ('the Parliamentary Inspector') tabled four reports with the Parliament of Western Australia which were critical of the CCC's investigations. The reports have given rise to a dispute between the Commissioner of the CCC ('the Commissioner') and the Parliamentary Inspector as to the jurisdiction of the Parliamentary Inspector to table reports critical of the CCC. A number of subsidiary issues have also arisen during this time over which the Parliamentary Inspector and the Commissioner have expressed disagreement.

The Joint Standing Committee on the Corruption and Crime Commission of the 37th Parliament ('the former Committee') was actively involved in facilitating a resolution of the issues in dispute between the Parliamentary Inspector and the Commissioner. A number of closed session hearings were held and the former Committee circulated a discussion paper to the Parliamentary Inspector and the Commissioner setting out its preliminary views. A day long workshop was scheduled to be hosted by the former Committee and attended by the Commissioner and the Parliamentary Inspector. However, before the workshop could be held the former Committee ceased to exist when the Legislative Assembly was prorogued and dissolved on Thursday, 7 August 2008.

The current Joint Standing Committee on the Corruption and Crime Commission of the 38th Parliament ('the Committee') was established on 25 November 2008. The Committee resolved on 4 December 2008 to continue the work of the former Committee and to hold a formal inquiry into the functions, powers and responsibilities of the CCC and the Parliamentary Inspector as they pertain to each other. The reporting date of the associated report to Parliament is 12 March 2009.

The Committee wrote to the CCC and the Parliamentary Inspector on 16 December 2008 requesting their attendance at a day long workshop on 4 February 2009 to work through the issues in dispute between the parties. It is the intention of the Committee to report to Parliament on the outcome of that workshop.

1.2 Report regarding Mr Stephen Lee

On 26 September 2008, as neither House of Parliament was sitting, the CCC transmitted a copy of its report entitled *Report on the Investigation of Alleged Misconduct Concerning Mr Stephen Lee, Mayor of City of Cockburn* ('CCC Lee Report') to the Clerk of the Legislative Council and the Clerk of the Legislative Assembly. Under section 93(3) of the *Corruption and Crime Commission Act 2003* ('CCC Act') the CCC Lee Report is to be regarded as having been laid before each House.

Mr Lee is the Mayor of the City of Cockburn. Mr Lee has served as a councillor to the City of Cockburn since May 1991, and was elected Mayor in December 2000. Mr Lee was re-elected as Mayor in May 2005. At the relevant times under consideration in the CCC Lee Report, Mr Lee was the Mayor of the City of Cockburn.

The CCC Lee Report examined the funding of Mr Lee's election campaign for re-election at the Local Government Elections held in May 2005, particularly the donations received from an entity known as Port Coogee Now and a public relations firm called Riley Mathewson Public Relations.

The CCC Lee Report also examined the relationship between Mr Lee and Australand Holdings Limited ('Australand'), the developer of Port Coogee, and, in particular, any financial contribution by Australand in relation to Mr Lee's election campaign. The report also examined Mr Lee's role in relation to some matters before Council involving Australand and the Port Coogee development.

In the CCC Lee Report the CCC expressed five misconduct opinions against Mr Lee.

Despite the fact that the CCC formed an opinion that Mr Lee engaged in misconduct, the CCC made no recommendation that the Department of Local Government and Regional Development give consideration to the taking of disciplinary action against Mr Lee. This is because prior to 21 August 2007 there was no legislative mechanism for disciplinary action against an individual council member.¹

1.3 Mr Lee's complaint to the Parliamentary Inspector

Following publication of the CCC Lee Report, Mr Lee came under substantial pressure to resign as Mayor of Cockburn.

On 7 October 2008 ABC News reported the following in its online news service:

Cockburn mayor agrees to resign if CCC findings upheld

The Local Government Minister John Castrilli has suspended any action against the Mayor of Cockburn, Stephen Lee, after he agreed to resign if the misconduct findings against him are upheld.

Mr Castrilli says he has been told by Mr Lee that he will be lodging a complaint with the Parliamentary Inspector, Malcolm McCusker, immediately over the findings against him by the Corruption and Crime Commission (CCC).

The CCC made five misconduct findings against Mr Lee, but until now, he has refused to resign.

¹ Amendments to the *Local Government Act 1995* and the *Local Government (Rules of Conduct) Regulations 2007* came into effect on 21 August 2007 and now provide a mechanism to take disciplinary action against individual council members where they do not comply with Rules of Conduct made pursuant to section 5.104 of the *Local Government Act 1995*.

Mr Castrilli says Mr Lee will stand down from the Council tomorrow, but has agreed to resign if Mr McCusker supports the CCC's findings, or if he rules that another review is not necessary.

Mr Lee is on paid leave.

Mr McCusker says he is obliged to consider any complaint that is lodged with him.

On 7 October 2008 the Minister for Local Government made the following commentary in an issued media statement:

Minister announces decision of City of Cockburn Mayor to stand down

Local Government Minister John Castrilli has welcomed the decision of Stephen Lee, City of Cockburn Mayor, to stand down from all positions, including the Mayoralty from Wednesday, October 8, 2008.

"In a letter to me today, Mr Lee has agreed to lodge a complaint immediately with the Parliamentary Inspector to request a review of the CCC report that concluded findings of misconduct by him as an elected member of the City of Cockburn," Mr Castrilli said.

"Mr Lee's decision to stand down and stand aside as Mayor allows him to pursue his rights of 'natural justice'.

"Importantly, the concerned Cockburn community can be assured that Mr Lee's hands have been effectively removed from the levers of power pending any investigation by the Parliamentary Inspector.

"Stephen Lee has advised me in writing that if the Parliamentary Inspector validates the findings of the CCC report or determines that no further report or review is required, that he will resign as Mayor immediately."

The Minister said no further action would be taken on the matter while Mr Lee's request for a review was considered by the Parliamentary Inspector.²

Mr Lee subsequently lodged a complaint with the Parliamentary Inspector.

² The Committee notes that the above article and press release refer to "findings" of misconduct. This is a misnomer. The CCC only has the power to 'make assessments and form opinions as to whether a public officer has engaged in misconduct. The CCC is not a Court and therefore does not have the power to make a binding legal determination that a person has engaged in criminal conduct or has committed a disciplinary offence. A legal determination of guilt or innocence by a Court affects the legal position of the individual, whereas an opinion of misconduct by the CCC does not. This is made explicit in section 23 of the CCC Act. This is not to say that the CCC's opinions are a trivial matter. They are expressed both under the authority, and in accordance with, the Act. The publication of such an opinion, or even an adverse assessment not amounting to misconduct, may therefore have serious consequences for the individual and his/her reputation.

The Parliamentary Inspector then prepared a draft report and provided a copy of the draft report to the CCC. The Parliamentary Inspector made known to the CCC his intention to table the report. The Committee surmises that the draft report was provided to the CCC by the Parliamentary Inspector in order to comply with his obligations under section 200 which provides:

Before reporting any matters adverse to a person or body in a report under section 199, the Parliamentary Inspector must give the person or body a reasonable opportunity to make representations to the Parliamentary Inspector concerning those matters.

1.4 CCC seeks to prevent Parliamentary Inspector from tabling his report

On 18 December 2008 the CCC made an urgent ex parte application to the Supreme Court of Western Australia seeking an injunction to restrain the Parliamentary Inspector from presenting or tabling the proposed report.

The application was made without informing the Parliamentary Inspector or the Committee.

The application was heard before the Chief Justice of the Supreme Court, Martin CJ on 18 December 2008. His judgment³ records that the application was supported by affidavits tendered by the CCC and that the affidavits deposed that:

- Following publication of the CCC Lee Report, Mr Lee or solicitors acting on his behalf drew certain matters to the attention of the Inspector, after which he conducted an investigation into those matters.
- At about 4 pm on 15 December 2008, the Commission was advised that there was a document ready for collection from the offices of the Inspector. That document was collected and delivered to the Commission. The document enclosed within it a draft executive summary of a report that the Inspector indicated was his intention to publish by tabling before Parliament on Friday, 19 December 2008.
- At about 12.45 pm on 17 December 2008, the Commission received another telephone call from the Inspector's office to advise that a document was ready for collection. It was collected shortly thereafter and that document enclosed a copy of the draft report prepared by the Inspector and which was entitled 'Report on the Corruption and Crime Commission's Report dated 26 September 2008 Concerning Mr Stephen Lee.'
- Later that afternoon, the Commission wrote to the Inspector requiring further time within which to respond to the Inspector's report. The Inspector responded to that letter by a letter which was received at 12.42 pm on 18 December 2008.

³ *Re Parliamentary Inspector of the Corruption and Crime Commission; ex parte Corruption and Crime Commission* [2008] WASC 305 (18 December 2008)

- In that letter the Inspector expressed the view that adequate time had been provided to the Commission to respond to the matters raised in the draft report. The letter concluded by observing that the Inspector was not prepared to delay the tabling of his report any later than 4 pm on Tuesday, 23 December 2008.

The injunction sought was in aid of an application for a writ of prohibition and a declaration that it would be unlawful and outside the powers of the Parliamentary Inspector to table a report in Parliament in terms of the proposed draft report forwarded to the Commission under cover of the Inspector's letter dated 17 December 2008.

The Commission alleged that:

- the proposed report contains errors of law and fact and also contains conclusions that are manifestly unreasonable;
- the Parliamentary Inspector has taken irrelevant considerations into account;
- the Parliamentary Inspector, in preparing his draft report, has gone beyond his powers and in particular the functions imposed upon the Parliamentary Inspector by section 196 of the CCC Act and the authority to report upon the exercise of those powers conferred by section 199 of the CCC Act when read with section 205 of the CCC Act⁴;
- the Parliamentary Inspector has denied the CCC procedural fairness because of failure to provide the Commission with a reasonable opportunity to make representations concerning matters within the report that are said to be adverse to it. This is said to contravene section 200 of the CCC Act.

Martin CJ dismissed the application to restrain the Parliamentary Inspector from tabling his report.⁵ Martin CJ made the following points in favour of deciding not to award the injunction:

- There was no justifiable reason for the CCC not to have informed the Parliamentary Inspector of the urgent application. For that reason alone, the Court did not grant the injunction.
- The Inspector is an officer of Parliament. The power which he purports to exercise and which the CCC would seek to restrain him from exercising is a power to report to Parliament. That raises serious questions as to the justiciability of the proceedings and a serious question as to whether these proceedings are within the jurisdiction of the court,

⁴ Section 205 of the CCC Act provides that reports by the Inspector must not include certain matters including information that may reveal the identity of a person who has been or is reasonably likely to be investigated by the Commission or information that may indicate that a particular investigation has been or is likely to be undertaken by the Commission.

⁵ *Re Parliamentary Inspector of the Corruption and Crime Commission; ex parte Corruption and Crime Commission* [2008] WASC 305 (18 December 2008).

and, indeed, as to whether the commencement of these proceedings is, of itself, a contempt of Parliament.

- The appointment of Mr McCusker, the Parliamentary Inspector, expires on 31 December 2008. It was reasonable to infer that any acting Parliamentary Inspector or replacement for Mr McCusker would require some considerable time to get to the point where they could have the same degree of confidence in the draft report as Mr McCusker presently enjoys.
- The Parliamentary Inspector's proposed report would go some way towards addressing and perhaps restoring to some extent the reputation of Mr Lee in the light of the previously published report of the Commission. The injunction sought by the CCC would have an adverse impact upon Mr Lee. Mr Lee had not been served with notice of these proceedings, nor has he been given any opportunity to be heard in relation to them, nor is any undertaking as to damages proffered in order to protect Mr Lee from the adverse consequences of any order that the court might make.

Martin CJ did note that, subject to the important qualification that he had not heard from the Parliamentary Inspector, that the CCC had raised "seriously arguable" issues with respect to:

- excess of jurisdiction, in terms of the functions of the Parliamentary Inspector;
- the nature of the report which he proposes to table; and
- possible contravention of section 205 of the CCC Act.

1.5 Parliamentary Inspector tables his report

The Parliamentary Inspector tabled his report on Mr Lee ('the PI Lee Report') with Parliament on 24 December 2008 via the mechanism provided by section 206 of the Act (transmitting a copy of his report to the Clerk of both Houses of Parliament).

The Committee will review the PI Lee Report carefully, and consider how the report impacts upon the formal inquiry instigated by the Committee into the functions, powers and responsibilities of the Parliamentary Inspector and the CCC as they pertain to each other.

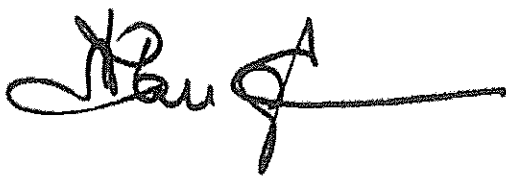
1.6 Response of the Committee

As noted the Committee:

- has commenced a formal inquiry into the respective powers of the CCC and the Parliamentary Inspector as they pertain to each other (**'the Inquiry'**);
- will report to Parliament by 12 March 2009; and
- are arranging a workshop with the CCC and Mr Malcolm McCusker QC to address the issues in dispute between the parties.

The Committee will consider as part of the Inquiry:

- the PI Lee Report and the issues surrounding it in detail;
- the implications of the Court action that the CCC has initiated against the Parliamentary Inspector on the ongoing relationship of the CCC and the Parliamentary Inspector;
- the allegation of the CCC that the Parliamentary Inspector did not provide the CCC with a reasonable opportunity to respond to the draft PI Lee Report; and
- the role, if any, that the Parliamentary Inspector should play in resolving disputes of the nature highlighted in Mr Lee's case.



HON. RAY HALLIGAN, MLC

CHAIRMAN

APPENDIX ONE

LEGISLATION

Legislation	State (or Country)
<i>Corruption and Crime Commission Act 2003</i>	Western Australia

