

1054

Premier of Western Australia **LOAN COPY**

Our Ref: 200902936

Hon. Nicolas Goiran MLC
Chairman
Joint Standing Committee on the Corruption and Crime Commission
Parliament House
Harvest Terrace
PERTH WA 6000

Dear Mr Goiran

REPORT ON THE RELATIONSHIP BETWEEN THE PARLIAMENTARY INSPECTOR AND THE COMMISSIONER OF THE CORRUPTION AND CRIME COMMISSION; Report No. 2

I refer to the Joint Standing Committee's *Report on the Relationship between the Parliamentary Inspector and the Commissioner of the Corruption and Crime Commission; Report No. 2* (the Report) tabled on 19 March 2009.

I wish to advise that the Government has now considered the Report and a response to the Committee's recommendations is attached.

I consider that the Government's response:

- is consistent with Parliament's original intentions regarding the role of the Corruption and Crime Commission (CCC) and Parliamentary Inspector;
- recognises that the Commissioner of the CCC and the Parliamentary Inspector have agreed to work collaboratively; and
- is interim in nature, given the process established by the Joint Standing Committee whereby the current Commissioner of the CCC and Parliamentary Inspector will identify any differences of opinion regarding issues of principle concerning their respective functions over the next 6 months and advise the Joint Standing Committee of any agreed suggestions for legislative reform.

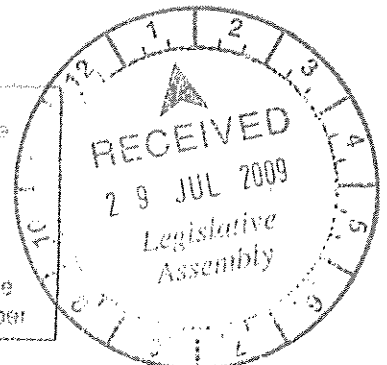
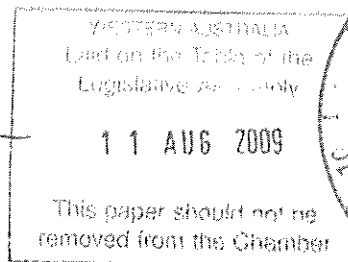
On behalf of the Government, I wish to thank the Joint Standing Committee for its efforts in undertaking a collaborative approach to resolving the dispute between the CCC and the former Parliamentary Inspector.

Yours sincerely

Colin Barnett MLA
PREMIER

Att.

21 JUL 2009



GOVERNMENT RESPONSE

TO

THE REPORT ON THE RELATIONSHIP BETWEEN THE PARLIAMENTARY INSPECTOR AND THE COMMISSIONER OF THE CORRUPTION AND CRIME COMMISSION; Report No. 2**Recommendation 1**

The Committee recommends that in any report prepared by the Parliamentary Inspector that is critical of the Corruption and Crime Commission (CCC), the Parliamentary Inspector include in his report all CCC submissions as to the Parliamentary Inspector's adverse comments and that the CCC not use section 88 of the Corruption and Crime Commission Act 2003 (the CCC Act) to table Administrative Matter Reports as a method of replying to the Parliamentary Inspector's adverse comments, and that if necessary section 88 of the CCC Act be amended to clarify this.

The Government supports this recommendation.

The Parliamentary Inspector (the Inspector), the Hon Christopher Steytler QC, supports this recommendation and has undertaken to annex any relevant CCC submissions to his reports.

It is agreed that it is not appropriate for the CCC to use section 88 of the CCC Act as a method of replying to the Inspector's adverse comments. To do so may create an ongoing process of continuous comment regarding a matter.

Consideration is currently being given as to whether it is necessary to amend section 88 to implement this recommendation. One potential solution involves amending section 88 to require the CCC to table any special reports through the Joint Standing Committee on the CCC (the Committee), rather than direct to Parliament. This would enable the Committee to ensure that the reports were not used as a method of replying to any adverse comments made by the Inspector. The Government does not intend to progress any legislative amendments in this regard until the Committee advises the House of the suggestions for legislative reform put forward by the Inspector and the Commissioner of the CCC.

It is considered that Mr Steytler's commitment to attaching any CCC submissions to his reports is sufficient to implement that portion of the recommendation and therefore legislative reform is not necessary in that regard.

Recommendation 2

The CCC Act should be amended so that the Parliamentary Inspector is required to table his reports through the Committee, accompanied by a recommendation by the Parliamentary Inspector as to whether it is in the public interest to be tabled publicly in Parliament.

If the Committee has not tabled the Parliamentary Inspector's report on Parliament within 30 days, then, if the Parliamentary Inspector is of the belief that it is in the public interest to do so, the Parliamentary Inspector can proceed to table his report direct with Parliament without further consultation with the Committee.

The Government does not support this recommendation on the basis that the Inspector should be able to report direct to Parliament, as is the case with other independent Parliamentary officers.

It is noted that the Hon Ken Travers MLC did not agree with this recommendation. Mr Travers argued that any restriction on the ability of the views of the Inspector to be directly communicated to the Parliament may lead to reduced public confidence in the protections provided by the Inspector and a concern that the CCC may abuse its powers. He also contended that it could lead to a perception of political interference and that there are a number of independent Parliamentary officers who report directly to Parliament (such as the Auditor General and the Commissioner for Young People and Children) and he sees no reason why the Parliamentary Inspector should have a restriction placed upon that position that is not placed on other similar officers.

It is considered that these arguments have merit.

The majority of the Committee considered that there were several compelling reasons for this recommendation, including:

- i. section 188(4) of the CCC Act states that the Inspector is responsible for assisting the Committee in the performance of its functions.
- ii. The Committee will act as a check and balance on the exercise of the Parliamentary Inspector's powers. If the criticisms of the Parliamentary Inspector are contentious, or raise difficult issues as to the scope of the Inspector's powers under the CCC Act, or raise sensitive operational information, the Committee can seek independent advice, and can report to Parliament accordingly.
- iii. The CCC's entitlement to procedural fairness will be preserved. It is anticipated that the Committee, should it receive a report critical of the CCC, will afford the CCC a further opportunity, over and above the obligation already owed by the Inspector to the Commissioner under section 200, to make representations, including representations as to whether and in what form the Inspector's report should be tabled in Parliament.
- iv. The prospect of two inconsistent and unresolved reports being in the public arena will be reduced.
- v. The prospects of conflict between the Parliamentary Inspector and the CCC will be diminished.

In relation to argument (ii), the Committee comments that there is currently no check on the Inspector's powers. It is noted that section 192 of the CCC Act provides that the Inspector

may be suspended or removed from office by the Governor on addresses from both Houses of Parliament. This mechanism provides an ultimate check on the Inspector's powers, although it is acknowledged that such a power is likely only to be used in extreme circumstances.

In the Government's view, it is not necessary to afford the CCC a further opportunity to respond to any adverse comments made by the Inspector, as described in (iii) above, when such a legislative right already exists.

In relation to arguments (iv) and (v), it is noted that given the process established under the Act, the CCC reports are likely to be in the public arena prior to the Inspector's reports. Therefore, in order to reduce any "inconsistency" between the 2 reports, the Committee would have to persuade the Inspector to amend his report, as there is limited opportunity for the CCC to amend its report which may already have been publicly released. This argument therefore assumes that it will be the Inspector's, rather than the CCC's report, that is "incorrect". It is considered that it is more appropriate for both the Parliamentary Inspector to report directly to Parliament.

Recommendation 3.1

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

The Government does not support this recommendation, as it is considered to be unworkable. Adoption of the recommendation would prevent the Inspector from commenting publicly on issues that he or she considered to be important as and when those issues arise (or when a question was publicly asked). This may have the practical consequence of preventing the Inspector from speaking out at all.

It is considered unnecessary and unworkable to require the Inspector to give every person or body who is likely to be criticised in correspondence to a complainant an opportunity to respond first. The obligation would be onerous, cumbersome and productive of delay. It would also often be unnecessary. A letter to a complainant might express an opinion that is adverse to a person or body in a very minor respect or where the opinion arises out of conduct that is not in question and self evidently justifies an adverse opinion (for example, where serious misconduct has been proved before a court or has been admitted). As formulated, the proposed amendment would operate even in such cases.

It is also noted that it would be difficult to develop a workable definition of the phrase 'opinion that is adverse' to a person or body.

It is considered that this is more a matter of practice rather than a process that should be prescribed within legislation. Additionally, it is likely that any media comment or public

appearance would generally relate to matters that had been released in a public report in any event.

Recommendation 3.2

The CCC Act should be amended so that if the Parliamentary Inspector intends to express an opinion that is adverse to a person or a body (including the CCC) and is likely to be made public, or in correspondence with a complainant, then the Parliamentary Inspector be required to provide the Committee with an advance draft copy of such an intended opinion, so as to afford the Committee a reasonable opportunity to consider the Parliamentary Inspector's intended actions.

The Government does not support this recommendation.

It is considered that there is no justification for such an amendment. It is unnecessary and inappropriate, as well as potentially burdensome for the Committee, for it to have input in respect of any public expression of an adverse opinion, or in respect of any adverse opinion expressed in correspondence with a complainant, however minor. In the Government's view, the Inspector should be trusted to exercise a sensible discretion in such cases.

It is also imperative for the Inspector to be, and be seen to be, functioning as an independent officer of the Parliament. If the Inspector is required to forward copies of all documents that are to be released publicly or to a complainant that contain adverse opinion to the Committee, it is possible that Committee could be seen as interfering with the role of an independent, parliamentary officer.

Instead, the Inspector should be encouraged to forward relevant correspondence to the Committee in the interests of developing a strong cooperative relationship with the Committee.