



Our Ref: 35-19443

**Treasurer; Attorney General**

COPY

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

Dear Mr Goiran *Nick*

**JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION:  
REPORT 20 CLOSED HEARING WITH GAIL ARCHER SC AND FURTHER ANALYSIS  
OF PROPOSED REFORMS TO THE CORRUPTION AND CRIME COMMISSION ACT  
2003**

The State Government has considered the above report ("the Report") of the Joint Standing Committee on the Corruption and Crime Commission. The stated purpose of the Committee's present report is to:

*clarify what were the principal recommendations made by Ms Gail Archer SC in her review of the Corruption and Crime Commission Act 2003.*

The purpose of the Committee's present report therefore appears to be to seek to clarify one phrase from the Government's previous response to Reports 10 and 13, being the description of Gail Archer's SC recommendations with respect to an organised crime as 'a principal recommendation' of the review of the *Corruption and Crime Commission Act 2003* undertaken by Ms Archer SC.

For the purpose obtaining that clarification, the Committee undertook the action it describes on p 5 of the Report, specifically, it summonsed Ms Archer SC to attend a closed hearing of the Committee to answer questions concerning her review.

Most relevantly for the purposes of the Committee's present report, the Committee questioned Ms Archer as to what she understood to be the 'principal recommendations' of her review. In her response, Ms Archer noted that this is a term which 'has many meanings,' and then made the following statement:

*There were 58 recommendations that I ultimately made, and the primary purpose of the review was to look at the effectiveness and operation of the act as a whole. The recommendations relating to things that were significant impediments to the operation generally are the things I would characterise as the primary recommendations. Those are things that relate to the fact that the actual commissioner cannot delegate some powers, which makes the running of the CCC almost impossible. Frankly, I do not know how it has occurred, because he or she cannot delegate the power to conduct private hearings, for instance, and does not have a deputy, and I felt that those recommendations were the most important. The other thing that I saw as being most important was the public monitor. The reason I thought that was important was because there were so many different views about*

that issue, and it was something that nobody had really reached a firm opinion about; whereas, in comparison, the organised crime, everybody seemed to be singing off the same song sheet at that time. Looking at the law enforcement agencies across Australia, at that time the view was that this was a good thing. That was where people had got to. But in relation to the public interest monitor, it was quite different. There were very divergent views, and I spent a lot of time focusing on that issue, and I would categorise that as one of the primary recommendations of the operation of the act as a whole. The recommendations relating to things that were significant impediments to the operation generally are the things I would characterise as the primary recommendations.

I would suggest it is not entirely clear from this passage whether or not Ms Archer SC would characterise her recommendation in respect of organised crime as either of a 'primary recommendation' or a 'principal recommendation' and consequently this statement does not necessarily conclusively establish, as appears to be maintained by the Committee on p 17 of the Report, that Ms Archer SC did not consider the recommendation with respect to organised crime to be a 'principal recommendation' of her report. Should the Commission wish to inform itself further, it is of course open for it to summons Ms Archer SC to provide further evidence regarding this point, however it is not clear what useful outcome this would achieve. I would however note that the Government rejects any assertion that Ms Archer SC's recommendation was not 'principal' in the sense that it can be discounted as unimportant or unwarranted.

In this regard, what is apparent from Ms Archer SC's evidence is that she considered, as the present Government does, that previous recommendations from the Report 31 of the JSCCC, and opinion expressed by Commissioner Kennedy and by the Crime and Misconduct Commission constituted compelling and authoritative support for the introduction of an organised crime function. Is Ms Archer SC's words:

*It was unnecessary to reinvent the wheel and by that I meant that it was not necessary to set out again the reasoning for endorsing the CCC having this power.*

In any event, the Government notes the present Committee's recommendations which concern the Government's mooted reforms to the *Corruption and Crime Commission Act 2003*. Although these reforms are presently subject to Cabinet processes, and consequently it is not proposed to respond directly to the Committee's recommendations regarding this matter, the Government notes the Committee's continued input and advocacy for its own preferred approach.

Yours sincerely



Hon C. Christian Porter MLA  
TREASURER, ATTORNEY GENERAL

8 MAR 2012