Joint Standing Committee on the Corruption and Crime Commission — First Report — Annual report 2020–21 — Motion

Resumed from 27 October on the following motion moved by Hon Dr Steve Thomas —

That the report be noted.

Hon NICK GOIRAN: I am pleased to rise as we consider the annual report of the past financial year for the Joint Standing Committee on the Corruption and Crime Commission. We have had the opportunity to consider this report previously. One element I have yet to address with members is the seventeenth report that was tabled by the Joint Standing Committee on the Corruption and Crime Commission. Members will be aware that at page 2 of this report the committee notes that it tabled the report titled *Meaningful reform overdue: The Corruption, Crime and Misconduct Act 2003*. It specifically drew to our attention that that report called on the government to undertake a comprehensive review of the Corruption, Crime and Misconduct Act 2003.

This report was tabled in this place now more than a year ago. It is a little contentious because these calls for reform have been going on for a very, very long time. It is quite timely for us to have the opportunity to consider this today, given that the house is in the midst of debating a bill dealing with unlawful consorting, among other things, and that there is a difference of opinion at present between the government and the opposition on who should be the overseer of those powers—the CCC or the Ombudsman.

Interestingly, this report that the committee tabled sets out a whole range of stakeholders that have called for reform. It might interest members to know that not only did the Joint Standing Committee on the Corruption and Crime Commission call for reform in the fortieth Parliament and, indeed, as identified in this report, in the thirty-ninth Parliament, but also the Corruption and Crime Commission called for reform and a review of the act. The committee also draws to our attention that the Parliamentary Inspector of the Corruption and Crime Commission has called for reform of the act and tells us that the Public Sector Commissioner has called for amendments to the act. The committee identified a further three organisations, agencies or stakeholders that have called for improvements and legislative reform. The submission of the Community and Public Sector Union–Civil Service Association of WA can be found at appendix five. Members will also see at appendix seven that an organisation known as Civil Liberties Australia has called for reform. The last group that has called for reform and suggested changes is none other than the Western Australia Police Force. Its suggestions are found at appendix eleven.

The issue is that the current Joint Standing Committee on the Corruption and Crime Commission drew to our attention in its first report that work had been done in the form of the previous committee's seventeenth report, which had called for this review, yet we have had no response from the government on this matter. I suspect that the government is likely to say that there are two reasons there has been no response to that report. First, it will say that the Joint Standing Committee on the Corruption and Crime Commission in the forty-first Parliament has not sought to re-table the seventeenth report from the fortieth Parliament. Therefore, the government will say, "We've got nothing to respond to in the forty-first Parliament." Secondly, I think the government will say that the particular report I am referring to does not list any specific recommendations that formally require a response from the government under the standing orders of the Legislative Assembly. Just because there is no formal requirement for the government to respond does not mean that it ought not to respond anyway. If the Joint Standing Committee on the Corruption and Crime Commission felt it necessary to table a report that says that meaningful reform is overdue, that should be enough for the government to take notice and provide a response. The fact that it has been supported by calls from the Corruption and Crime Commission, the Parliamentary Inspector of the Corruption and Crime Commission, the Public Sector Commission, the Western Australia Police Force and other stakeholders only elevates the importance of this issue.

It is worth making members aware that in the CCC's submission—very brief as it may be—to this inquiry, which is found on page 41 of the seventeenth report, it said —

> Reshaping the unused organised crime exceptional powers would also strengthen the State's ability to deal with serious and organised crime.

This is particularly pertinent given the debate we are having at the moment on the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021 and the proposed dispersal notice scheme, because we have here a suggestion by the Corruption and Crime Commissioner, John McKechnie, QC, that it would be worthwhile to reshape the unused organised crime exceptional powers.

Members may not be aware that there are very significant—in fact, extraordinary—powers in the Corruption and Crime Commission for organised crime. It enables the CCC, on an application of the Western Australia Police Force, to hold hearings in which individuals are compelled to provide evidence. If they do not provide evidence—if they do not provide a response under compulsion—they can be held in contempt, such is the power of these extraordinary hearings. These laws have been rarely used over the last 15 years. They have been used in some high-profile cases, including, most recently that I recall, in cases that involved members of outlaw motorcycle gangs; but, generally

speaking, they have been rarely used. It is interesting that the Corruption and Crime Commissioner uses the word "unused". I think that perhaps, on reflection, the commissioner might prefer to use a different phrase. It is not true to say that these organised crime exceptional powers have been unused, but it is certainly true to say that they have been under-utilised.

That in itself warrants a response. Does the McGowan Labor government agree with the Corruption and Crime Commissioner that these organised crime exceptional powers should be reshaped, and reshaped into what? I recall that the main issue is that WA police have been hesitant, depending on the leadership model at the relevant time, to utilise these powers. I have never fully understood why that is the case, given that these exceptional powers have, in fact, been used, when certain bikies were jailed for two years for being in contempt of the Supreme Court due to their non-answers or lack of answers when hauled before a Corruption and Crime Commission hearing.

The Corruption and Crime Commissioner also mentioned in his submission, found at appendix four of the seventeenth report of the Joint Standing Committee on the Corruption and Crime Commission in the fortieth Parliament, to an "exciting opportunity to deliver a Misconduct Act that best serves the State in the decade to come." The Joint Standing Committee on the Corruption and Crime Commission, under the then chairmanship of Margaret Quirk, MLA, embarked on this process and the Commissioner of the Corruption and Crime Commission said that this was an "exciting opportunity".

The DEPUTY CHAIR: Hon Nick Goiran.

Hon NICK GOIRAN: Yet, two years has passed since the commissioner referred to this "exciting opportunity to deliver a Misconduct Act that best serves the State in the decade to come." The letter is dated 3 September 2019. More than two years ago, the commissioner basically embraced the Chair of the Joint Standing Committee on the Corruption and Crime Commission and said, "This is an exciting opportunity. We can work together to reform this for the benefit of the next decade"; yet, two years later, nothing has happened. What has the McGowan government done with the review of the Corruption, Crime and Misconduct Act and the commissioner's proposal of a new act? Has any work commenced in this space? What is the current status of that work? This suggestion was made two years ago by the Corruption and Crime Commissioner; meanwhile, despite the fact that that particular submission of the CCC commissioner was very brief and only talked about this "exciting opportunity" and about reshaping organised crime exceptional powers, a far more comprehensive submission was provided by the then Parliamentary Inspector of the Corruption and Crime Commission. That can be found at appendix eight. It should be noted that the author was the Parliamentary Inspector of the Corruption and Crime Commission at the time, the late Hon Michael Murray, AM, QC. He was a man of great intellect. In my previous role as Chair of the Joint Standing Committee on the Corruption and Crime Commission over two parliamentary terms, my observation of him was that he was a person of great intellect, integrity and professionalism. In his three-page submission to the committee he set out a range of areas that require reform. In fact, he provided a very helpful list of those areas, in some form of chronological order. By my count, in his three-page letter the parliamentary inspector saw fit to draw to the attention of the committee some seven different areas of reform.

Once again, more than two years has passed since this letter was first provided to the committee. The letter is dated 7 October 2019; one would assume that the committee received it shortly thereafter. The committee included it in a report it provided to the Parliament a year ago. The committee had the benefit of this letter for just over a year and now the Parliament has had the benefit of it for more than a year. The McGowan Labor government, therefore, has also had the benefit of this letter for more than a year, yet we have had no response from it about what it wants to do with these seven areas of reform that the late Hon Michael Murray thought fit to draw to everyone's attention.

Some of the areas he outlined in the letter go back as far as Hon Michael Murray's predecessor as Parliamentary Inspector of the Corruption and Crime Commission Hon Chris Steytler, QC; the observations I made about Hon Michael Murray equally apply to Hon Chris Steytler, who was the first parliamentary inspector I had the opportunity to work with in, if my memory serves me correctly, the thirty-eighth Parliament. Hon Michael Murray referred to Mr Steytler's proposals in the letter, which states, at page 63 of the report —

> Mr Steytler thought such cases should be investigated by the Commission itself and proposed a general policy statement to that effect in the Act, perhaps by amendment of s7B.

He is referring to concern about the priority with which the police were looking at allegations of excessive use of force. This has been a longstanding concern. Indeed, I note that the Joint Standing Committee on the Corruption and Crime Commission has provided another report to Parliament dealing with this issue; it may even be on the *Daily Notice Paper* before us. I can see that it is the third committee report for consideration, and the second of the reports tabled by that committee in this Parliament. It goes to the issue of the excessive use of force. This is a matter that has been going on for so long that not the previous parliamentary inspector, but the one before that—Hon Chris Steytler—said that we need to elevate the issue of investigations by the CCC into excessive use of force by police, and we need to elevate it in the act by way of an amendment to section 7B, yet nothing has happened.

Another area that Hon Michael Murray brought to our attention in this letter is a recommendation of amendments to the act —

> … designed to make the process of investigation complete under my oversight.

That is the phrase that is used in the letter on page 63 of that report. What he is referring to there is a set of circumstances when there was misconduct within the Corruption and Crime Commission by some of its officers. The unit was then known as the operational support unit. There was difficulty about who had primary carriage of the investigation—whether it was the CCC looking into its own officers, whether the Western Australia Police would be involved and to what extent the parliamentary inspector would be able to undertake the task. In the 2015 report, he indicated that it was necessary to make amendments to the act. Now we have two areas that have been identified by two different parliamentary inspectors that have not been actioned. These matters precede the McGowan government, not just since the 2021 election but before its appointment following the 2017 election. These matters have been repeatedly brought to the McGowan government's attention, yet there has been no action—not only no action, but also no response.

The third area that the parliamentary inspector draws to our attention in his letter is what he refers to at page 64, which states —

> … the need to amend the Act to make it clear that the Commission's power to deal with industrial matters without interference from me, may only be exercised after or to the extent that it does not derogate from my function to deal with misconduct by Commission officers.

I can recall a set of circumstances when the Corruption and Crime Commission and the parliamentary inspector were in a demarcation dispute about jurisdiction all with regard to this language in the act and its reference to an industrial matter. If there is an industrial matter, is it only for the Corruption and Crime Commission to be engaged or might the parliamentary inspector still be able to be engaged? What happens when there is overlap between an industrial matter and misconduct matters? That issue remains unresolved, hence why the late Hon Michael Murray drew our attention to it and said that there needs to be an amendment to the act.

The fourth matter that Hon Michael Murray drew to our attention in the seventeenth report of the Joint Standing Committee on the Corruption and Crime Commission is an area about which he said —

> In my view it would be convenient to amend the Act to make it clear that the Commission has no power to prosecute for any offence and, consequently no power of arrest for any matter which might constitute a criminal offence, or at all.

The DEPUTY CHAIR: Hon Nick Goiran.

Hon NICK GOIRAN: The situation there was another dispute that arose and was ultimately settled by the Supreme Court. If my memory serves me correctly, the WA Police Union assisted a police officer to challenge in the Supreme Court whether the Corruption and Crime Commission had the power to lay charges and prosecute the offence. Ultimately, there was a Supreme Court decision on the matter. What Hon Michael Murray said in his letter is that it would be convenient to amend the act to make it clear that there is no power to not only prosecute for any offence, but also arrest for any matter that might constitute a criminal offence or at all. He sought for these things to be clarified. This is the fourth area drawn to our attention by Hon Michael Murray, and on which there has been no action.

The fifth of the seven areas that the former parliamentary inspector draws to our attention is referred to at page 65 of the report —

> "Misconduct alleged by public officers who subsequently become officers of the … Commission."

He is referring to another report, dated 4 December 2018. He goes on to say —

> The point which is relevant for present purposes is that, if such an officer is alleged to have been misconducting himself or herself as a public officer before their engagement, and it has been inadequately dealt with; or not dealt with at all, it is beyond my power to intervene because my function is limited to dealing with misconduct by Commission officers. I continue to propose the legislative amendments (at least in their substance) proposed in the Report.

In this scenario, it is possible—or indeed, as I understand, it has occurred, hence the need for this report of 2018—that a public officer might have committed one or more indiscretions that could be described as misconduct. However, before the matter is fully investigated or finalised, they remove themselves from the place where the indiscretions occurred—whatever department it might have been—and find themselves in the employment of the Corruption and Crime Commission. There is then a big difficulty for the parliamentary inspector, because he cannot look into historical matters that involved the public officer. The public officer will therefore have managed to shield themselves from the scrutiny of the parliamentary inspector, quite perversely, by hiding in the Corruption and Crime Commission. The very overseer of the Corruption and Crime Commission, the parliamentary inspector, who is supposed to be looking into misconduct in the commission, cannot even look into the particular officer because they have shielded themselves from such scrutiny all because their indiscretions occurred prior to their appointment at the commission.

We can well appreciate that Hon Michael Murray has brought this to our attention and said that this is another area for reform. It is the fifth area for reform set out in this comprehensive submission, yet nothing has been done by the McGowan Labor government and there has been no response.

The sixth area set out in this excellent submission by Hon Michael Murray, albeit more than two years ago—two years of inaction by the government—is quoted at page 65 as follows —

> … because neither the Commission, nor the Public Sector Commission, can deal with "minor misconduct" by Commission officers, in the result no investigative agency can do so and I recommend that the Commission be again provided with the power to deal with all forms of misconduct by its officers, subject to my independent oversight.

The genesis of this matter was a report entitled *A saga of persistence*. The name of that report from 2019 is timely, because I feel it is a bit of a saga of persistence here in the chamber at times trying to get the government to take seriously these reforms to the Corruption and Crime Commission. The report is, after all, entitled *Meaningful reform overdue*. It will take, I think, some more persistence and perseverance before we see any true action taken by the government.

In this episode, the parliamentary inspector has identified that if the misconduct is defined or characterised as "minor misconduct" compared with "serious misconduct", there is a gap in the oversight umbrella whereby neither the Corruption and Crime Commission nor the Public Sector Commission can deal with that minor misconduct. Why? It is because it is by a commission officer. If a public servant is alleged to have committed minor misconduct, the matter is investigated by the Public Sector Commissioner. However, if an allegation of serious misconduct is made, it is handled by the CCC. The question then becomes: what happens if a CCC officer commits minor misconduct? Should the subordinate body, the Public Sector Commission, look into allegations of minor misconduct by the CCC, or should it be the CCC itself? Hon Michael Murray recommended that the commission should once again be provided with the power to deal with all forms of misconduct by its officers, subject to his independent oversight. That seems to be an eminently sensible and long-overdue reform. The *Parliamentary Inspector's report on 'a saga of persistence'*, the eleventh report, was tabled on 27 June 2019. The McGowan government and the Attorney General cannot shield themselves from the scrutiny of that report. It absolutely happened on their watch, and they should indicate whether they intend to reform the Corruption, Crime and Misconduct Act, or is it okay for an officer of the Corruption and Crime Commission to commit minor misconduct, hide in the CCC and be shielded from investigation, just like when the misconduct occurred prior to the officer's appointment to the Corruption and Crime Commission?

The last area identified—certainly that I have been able to identify—in the letter from Hon Michael Murray from two years ago is what he has referred to as the collateral damage that occurs when individuals have been identified without the benefit of any court process or other means of making a finding of guilt. He has referred to this as a matter that causes him "grave concern". That is the language he uses in this letter. I will quote the letter for completeness. He says at page 65 —

> I must say that it is a matter which causes me grave concern when what is often referred to as "collateral damage" arising out of identification without the benefit of any court process or other means of making a finding of guilt occurs, it is said as a necessary corollary of the exercise of a discretionary decision to name. I think the Act needs to provide greater clarity as to when such judgements may be made, but I am not yet in a position to settle on a specific view.

Members probably know that, from time to time, parties can be named in reports and proceedings and the like, yet we find that they have not had the opportunity to clear their name in a court of law or by some other means. That was of sufficient concern to Hon Michael Murray that he drew it to the attention of not only the committee, but also the Parliament of Western Australia. The question is: what does the McGowan government intend to do about that? Does it intend to respond to this matter or will it allow the shields to continue?

The DEPUTY CHAIR: Hon Nick Goiran.

Hon NICK GOIRAN: I will conclude my consideration of this matter shortly, suffice to say that in the Joint Standing Committee on the Corruption and Crime Commission's first report of 2021, the committee thought it was appropriate to draw our attention specifically to its seventeenth report of 2020. I note that page 2 of that report says —

> '[o]ver the course of the 40th Parliament, this committee has observed a range of areas where the *Corruption, Crime and Misconduct Act 2003* … is either deficient, obsolete or unclear', and '[w]hat is made abundantly clear through the collation of feedback from stakeholders, is that a comprehensive review is necessary to support much needed reform of the CCM Act.'

This report that the committee talks to and quotes from—the seventeenth report, which I have been referring to this afternoon—includes not only the brief submission from the Corruption and Crime Commissioner that I alluded to earlier, but also the far more comprehensive and worthwhile one by Hon Michael Murray.

Interestingly, other stakeholders were consulted about the reforms. One of them was the Ombudsman. The Deputy Chair (Hon Dr Sally Talbot) will remember that I said it is timely for us to consider this matter given the other debate we are engaged in regarding the unlawful consorting laws. In a letter dated 21 August 2019 found on page 67 of the seventeenth report of the Joint Standing Committee on the Corruption and Crime Commission, the Ombudsman said —

> I sincerely appreciate the courtesy of you writing to me about this matter.
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> As Ombudsman, I serve Parliament and its Committees, and am available to you at any time to assist you in any way.
>
> In relation to the request the subject of your letter, I have no suggestions for change to the *Corruption, Crime and Misconduct Act 2003*.

He goes on to provide contact details before ending "Yours sincerely".

There is very much this issue that will need to be considered later, either today or tomorrow, by members as to whether the Corruption and Crime Commission ought to be the overseer of these police powers or it should be the Ombudsman. We have already seen from the committee's seventeenth report that the CCC is saying there is a need to reshape some of these organised crime powers. In comparison, the Ombudsman said that he had nothing to add about reforms in this area. The question might reasonably be asked: what does WA Police Force have to say about all this? Its submission can be found in the final appendices to this report, and the author of this letter dated 7 October 2019 is the Commissioner of Police, Mr Dawson. He has set out four areas of reform that he is calling on the government to consider. Of course, we still do not know what the Minister for Police, the Attorney General and the Premier have to say about this. This letter was sent by the Commissioner of Police at a time when he was busy, but perhaps not as busy as he has been over the last two years with the additional hats he has had to wear. On 7 October 2019, he saw fit to advise Margaret Quirk, MLA, the Chair that Joint Standing Committee on the Corruption and Crime Commission, that part 3, division 3, section 28(2) warrants further clarification. He says at page 73 of the seventeenth report —

> This section provides for notifying authorities to "… notify the CCC <u>in writing</u> …".

There he takes the opportunity to underline the phrase "in writing" to bring it specifically to the reader's attention. He goes on in this letter to say —

> The use of the word writing implies traditional correspondence and is proposed this be amended to reflect email and electronic notification methods. Use of the word writing also appears at several other sections throughout the Act, which may require clarification.

What is the government's response to Mr Dawson's plea for clarification from two years ago? Has it provided him any comfort or clarification on this point? If it has, we would certainly welcome the government tabling that response. I very much suspect that, regrettably, there simply has been no consideration of this point at all, despite the fact that more than two years have passed. Nevertheless, the Commissioner of Police, not satisfied with just that one area of reform and clarification, goes on to provide a further three areas, which I quote here. He refers to section 28(6), which is found in the third division of part 3 of the act, and says —

> This section places a general obligation/duty on agency heads to notify the Corruption and Crime Commission … of suspected serious misconduct. Section 28(6), provides specific exemption for the agency head, of the duty to notify if the matter concerns *Reviewable Police Action* …

Members may be aware that all reviewable police action must be considered and drawn to the attention of the Corruption and Crime Commission. It can then determine whether it will independently consider the matter or simply monitor how WA Police Force considers the matter.

One of the big issues that has arisen—this has been mentioned by a number of stakeholders—is what is referred to as a section 42 notice. A section 42 notice enables the Corruption and Crime Commission to effectively place a stop work order on a police officer. In fact, a section 42 notice is not limited to police; it can be issued to any agency. Section 42 notices have caused great tension over the years between WA police and the Corruption and Crime Commission, so much so that on 7 October 2019, Mr Dawson saw fit to bring this matter specifically to the attention of the Joint Standing Committee on the Corruption and Crime Commission. He said —

> Historically, there have been occasions after a 42 Notice direction, where CCC investigations have continued for extended timeframes. This prevented the WA Police Force from investigating and the loss of investigative strategies and evidence.
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> It is proposed that after issue of the Section 42 Notice, a requirement be placed upon the CCC to review the issue of the Notice every 30 days and a duty placed upon the CCC to notify the appropriate authority of such review, particularly timely advice over revocation, so that investigations can be quickly reinstated.

Members can see that a number of issues have been raised, whether it be by the CCC itself, the parliamentary inspector or WA Police Force. This is before we even start considering what the Public Sector Commissioner and other bodies, including the other two stakeholders that I referred to earlier, have had to say about this. These things demand a response. If the Joint Standing Committee on the Corruption and Crime Commission in the previous Parliament saw fit to table a report entitled *Meaningful reform overdue*, and it had the opportunity to highlight that some of this review and reform goes back as far as the Gail Archer review, one would expect that at some point the McGowan government would provide a response to these issues. In fact, interestingly, the Gail Archer review made 58 recommendations. The fifty-eighth of those was that a further review be conducted of the act eight years after its commencement. This comment was made by Gail Archer in her report of February 2008. More than 13 years have passed since Gail Archer made the recommendation that a further review be conducted of the act eight years after its commencement—not eight years after she had said that. It has now been 13 years since she said that, yet nothing has been done about it. What does the McGowan government propose to do about this, or will it be left to languish?

The DEPUTY CHAIR: Hon Nick Goiran.

Hon NICK GOIRAN: I would ask the ministers, whether it be the ones who are present, or any others, to give this matter due consideration, and when we next consider this report to advise what the McGowan government intends to do about this. It is really not satisfactory that Gail Archer said in 2008 that we need to have a review of the act eight years after its operation, keeping in mind that it is a 2003 act, and 13 years after she said that, nothing has happened. It is really not satisfactory that the Joint Standing Committee on the Corruption and Crime Commission in the thirty-ninth Parliament identified numerous areas in the act that need reform and made recommendations to that effect, and nothing has happened. It is really not satisfactory that the same committee in the fortieth Parliament has tabled its seventeenth report, entitled *Meaningful reform overdue*, and nothing has happened. It is really not satisfactory that the Corruption and Crime Commissioner, Mr McKechnie, indicated two years ago that he looked forward to working with the committee on this exciting opportunity so that we can reshape these laws for the next decade, and two years into those 10 years, nothing has happened. It is really not satisfactory that there has been no response from the government to the submission made by the late Michael Murray, the former Parliamentary Inspector of the Corruption and Crime Commission, about the various reforms that he and his predecessor, the Honourable Chris Steytler, recommended over that period, the least of which are the seven that I have mentioned this afternoon. It is really not satisfactory that there has been no response from the government to the four areas of reform that Mr Dawson, the Commissioner of Police, brought to our attention two years ago. All those stakeholders—the Joint Standing Committee on the Corruption and Crime Commission; the Corruption and Crime Commissioner, Mr McKechnie; two parliamentary inspectors; Mr Dawson, the police commissioner; and I have not had time this afternoon to touch on the submission by the Public Sector Commissioner—have called for reform, yet there has been no response from the Attorney General or the McGowan government.

I would ask the ministers to give this matter consideration. Given the very few sitting weeks that remain between now and the end of the year, I doubt that we will have another opportunity to consider this report. That will give the McGowan government the long summer recess to consider this matter properly—all the feedback from those stakeholders, from the joint standing committee through to the various agencies—and then advise the chamber what it is going to do about the review that Gail Archer, SC, as she then was, indicated should happen a long, long time ago. What does it intend to do about that? It will have the whole recess to consider it and then come back and provide some sort of response to the chamber. Unless any other members would like to contribute to the debate on the committee's first report, I will move that consideration of this report be postponed to the next sitting.

Resolved, on motion by Hon Nick Goiran, that consideration of the report be postponed to the next sitting of the Council.