

*Joint Standing Committee on the Corruption and Crime Commission — Thirteenth Report —  
“Annual Report 2018–19” — Motion*

Resumed from 20 May on the following motion moved by Hon Alison Xamon —

That the report be noted.

**Hon NICK GOIRAN:** Because we are in committee, can we rise and speak from our active chairs?

**The CHAIR:** I am certainly happy with that. Sometimes it is easier to seek forgiveness.

**Hon NICK GOIRAN:** Thank you, Mr Chair. The thirteenth report of the Joint Standing Committee on the Corruption and Crime Commission is currently before us. We last had an opportunity to consider this report on Wednesday, 20 May. I understand that a view amongst some members is that spending an hour on consideration of committee reports around this time on a Wednesday afternoon is not the most valuable use of the chamber’s time. I understand why it might suit some members, particularly government members, to hold that view, particularly while anything to do with the Joint Standing Committee on the Corruption and Crime Commission continues to sit for our consideration. Regrettably, there are 10 reports for our consideration at this time and only one —

**Hon Stephen Dawson:** There are actually more than 10, but they put only 10 on the business program.

**Hon NICK GOIRAN:** There you go, Mr Chair. More than 10 reports are available to us. To the best of my knowledge, only one is about the Corruption and Crime Commission, but there may well be another one. In fact, I think there is one entitled something like “Red Faces”, which is ironic considering how the government is handling the appointment of the Corruption and Crime Commissioner. I would think there are some red faces in government, particularly in the Attorney General’s office, and probably the Attorney General has a red face too. At the moment, there are 13 reports for consideration, and I thank the Deputy Leader of the House for drawing my attention to that. Two reports relate to the work of the Joint Standing Committee on the Corruption and Crime Commission. Members of the government may not like Wednesday afternoons, particularly while these types of reports are available for our consideration, but if we do not consider them now, when would we have the opportunity to do so? We would never have any other opportunity. As we know from the processes of previous Parliaments when other things like ministerial statements were considered, we would never get the opportunity to consider these reports at another time. It is valuable work that the committees do and we need to consider these reports.

The thirteenth report, before us, is the annual report of the committee, which has had a longstanding reputation for fulfilling important and good work on behalf of Parliament. This committee has tabled a report outlining its activities over the last fiscal year and I am keenly looking forward to it tabling the next report in the next few months. When I look at the report for 2018–19, it strikes me that certain aspects warrant further consideration.

In particular, I note that the Corruption and Crime Commission has a duty to undertake certain oversight functions of the Western Australia Police Force, the fisheries division of the Department of Primary Industries and Regional Development and the Australian Criminal Intelligence Commission. That is regardless of whether the Corruption and Crime Commission is now under the stewardship of the acting commissioner, who continues to have all the powers that the former commissioner had and continues to do all the work that the commission previously undertook under the former commissioner. The work of the committee and the Corruption and Crime Commission shows us that those three agencies—the Western Australia Police Force, the fisheries division of the Department of Primary Industries and Regional Development and the Australian Criminal Intelligence Commission—have the capacity to undertake what is described as “controlled operations”. What are controlled operations? A controlled operation is, in effect, when a person in one of those agencies undertakes tasks or does things that would ordinarily be considered criminal behaviour, but it is happening in a controlled environment, in a controlled operation, for the purpose of catching criminals. In the annual report, reference is made to the fact that a controlled operation is a law enforcement operation that may involve an authorised participant engaging in unlawful conduct. That has always been my understanding. Officers, paid for by Western Australian taxpayers, are expressly undertaking unlawful conduct. Members of the Western Australia Police Force and the fisheries department and people from the Australian Criminal Intelligence Commission are undertaking unlawful tasks. They are trying to catch criminals while they are undertaking those tasks. That is why the oversight of a controlled operation is crucial. We simply cannot have Western Australian police officers running around, expressly engaged in unlawful conduct, even if it is for the purpose of trying to catch criminals, if nobody is watching. We cannot have that.

This hardworking committee—it certainly has three members with great integrity and competence; members know what I think about the other member—has drawn to our attention that there were 79 controlled operation authorisations for Western Australia police during the reporting period. Of those 79, variations were undertaken for 34 and, in one case, an application was refused. That tells us that, on average, the Western Australia Police Force makes an application, and authorisation is given, more than once a week for it to conduct controlled operations. More than once a week in Western Australia, Western Australian police officers are running around undertaking tasks that

involve unlawful conduct. That is what the report tells us. They are permitted to undertake this unlawful conduct because it is under the umbrella of a controlled operation, and the safeguard for the people of Western Australia is that the Corruption and Crime Commission oversees it. This crucial responsibility has been entrusted to the Corruption and Crime Commission, and further explanation and examination of how the Corruption and Crime Commission goes about this task is warranted.

Members will be aware that Hon John McKechnie is no longer the commissioner of the Corruption and Crime Commission. Given that the honourable former commissioner has now retired, I would like to know, over the five-year period that he was the commissioner, how much examination of these controlled operations was undertaken. On how many occasions did former commissioner John McKechnie look into these activities of WA police officers when they were authorised to commit unlawful conduct? On how many occasions did he personally examine these serious matters and form a conclusion about whether they were appropriate or otherwise? We do not know the answer to that. That would be valuable information for the Parliament to understand, not because this Parliament has any intention of appointing Hon John McKechnie, because the government has since indicated that it has abandoned that process.

**The CHAIR:** The question is that the report be noted.

**Hon NICK GOIRAN:** However, I think there will be some good lessons to be learnt for the next commissioner. If it is the case that over the five-year period Hon John McKechnie never once examined any of these controlled operations, despite the fact that it was one of the most important tasks he had to do during that five-year period, we should know that. I am not saying that he did not do that—I do not know whether he did or did not—but let us imagine for a moment that he was interested in other things. If he was involved in other pet projects and he was not so interested in the work of the Corruption and Crime Commission and its oversight of controlled operations, we should know that, so that Parliament can ask the Joint Standing Committee on the Corruption and Crime Commission to make sure that this is top of mind for the next commissioner.

I have no problem with the Parliament of Western Australia authorising police officers, and indeed officers from the fisheries department, to engage in unlawful conduct. I do not have a problem with that, so long as the controlled operation is being rigorously oversighted by the Corruption and Crime Commission. If it is not being rigorously oversighted and we have just basically got a tick-box process of auditing, that is totally unacceptable. We cannot have WA police officers running around, on average at more than once a week, engaging in unlawful conduct with nobody watching. This would be a valuable area of inquiry. The next commissioner of the Corruption and Crime Commission, self-evidently, will be a Western Australian who is qualified to hold that position; that is, a person who has the qualifications to be a Supreme Court judge. They do not necessarily have to have been a Supreme Court judge. Incidentally, that will mean that the person will not have attained the age of 70. If the person has attained the age of 70, they are no longer eligible to be a Supreme Court judge and, by necessary implication, the same applies to the Corruption and Crime Commissioner. But that aside, whoever that person is, self-evidently it will not be Hon John McKechnie; it will be some other learned Western Australian. If police officers and fishery department officers are running around engaging in unlawful conduct, we would want that person to have at the top of their mind the oversight of those controlled operations.

I would very much like to encourage the committee to consider this in advance of the appointment of the next commissioner, who I understand will not be appointed now until sometime after 13 March 2021. At the insistence of the government, it has decided to completely abandon the process of appointment and purposely made sure there will be no substantive commissioner in place between now and 13 March. I think that is a complete abdication of its responsibility; it has a duty to do that. Nevertheless, the government has decided that to be the case. I would like, on the basis of the information in front of us in the committee's thirteenth report, to have confidence that the next Corruption and Crime Commissioner will be oversighting these important controlled operations.

I note in addition that the Corruption and Crime Commission has responsibility for matters arising from the Criminal Investigation (Covert Powers) Act 2012. I understand that when the commission identifies areas of concern, it seeks feedback from the agencies about the issues that arise. To the best of my recollection—because the information is not readily at hand—the types of matters that fall under the Criminal Investigation (Covert Powers) Act 2012 include things like assumed identities. My recollection is that the Commissioner of Police can self-authorise his police officers to assume identities and undertake other things that would ordinarily be extraordinary powers—matters that police previously needed to apply to the Corruption and Crime Commission for authorisation. That is now something that the police commissioner can self-authorise. Again, it would be good for us to have a robust understanding of how much former commissioner McKechnie was really oversighting these particular tasks. We do not have that information at our disposal. I think it would be good for the benefit of the next commissioner, whoever that might be.

That concludes my remarks with regard to the 2018–19 annual report. I look forward to reading the next report from the Joint Standing Committee on the Corruption and Crime Commission.

**Hon MICHAEL MISCHIN:** I rise to make a few comments on the thirteenth report of the Joint Standing Committee on the Corruption and Crime Commission titled “Annual Report 2018–19”, which was tabled in November 2019. The point of the report is to inform the Parliament. It being a joint standing committee, a copy of the report was tabled in the other place by its chair, Margaret Quirk, MLA, the member for Girrawheen, and in this place by Hon Jim Chown, MLC, the deputy chair. Frequently, these sorts of reports, particularly from joint standing committees, seem to be rather prosaic. The report goes through the sorts of things the committee has been doing in the last financial year, and covers—in a very brief summary, I have to say—its oversight function and its legislative review function, among other things. It gives us an insight as to what it has been about, and happy times they must have been in the last financial year!

The committee has four members: two from the Labor Party, the government party, both drawn from the Legislative Assembly; one member of the Liberal Party, drawn from this chamber; and, uniquely, a member of the Greens, the member having been appointed by the government as its other representative from this place. I will not go into the history of the appointment and the like and the departure from convention and tradition in that case. I do not intend to reflect at all, except favourably, on the character, competence and integrity of Hon Alison Xamon, but suffice to say that as part of its oversight function, particularly in respect of nominating a candidate for appointment to the important and extraordinarily powerful post of Corruption and Crime Commissioner, the whole concept was one of bipartisanship between the two major parties in this state—not the National Party and the Labor Party, not the Greens and the Labor Party, not Independents and the Labor Party, but the Liberals and Labor. Either of those two parties will essentially be the core of any government of the day. Things might change over generations—who knows?—but in 2003, when the act was enacted, that was what was foreseen. One of the most important functions of that committee is to recommend to the Premier of the day someone who has not only bipartisan support in that committee but also majority support. The numbers are meant to be equal so that there is a balance in that committee—true bipartisan. The Labor Party saw fit to try to exploit that after the last election by putting two of its members on and nominating someone who they thought, being on the left side of politics, would automatically gravitate to its views on that committee; that they would be its puppet. That did not work out. If there is any doubt about fiddling the rules, members have only to listen to what one member of that committee had to say in the other place. Mr Hughes, the member for Kalamunda, said that he was glad that it fiddled the rules.

The point of my rising on this report is that I am concerned about how this committee will go forward. The committee’s oversight function is summarised on page 8 —

The Committee has continued to perform its oversight function, closely monitoring the activities of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission —

We do not have one at the moment; one needs to be appointed —

and, to the extent relevant to its portfolio, the activities of the Western Australia Police Force and the Public Sector Commission.

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The Committee held a range of hearings as a part of its oversight role.

**The CHAIR:** Unfortunately, temporary order 4 will now have to apply and our time today for consideration of that report is exhausted. We have to put that aside and move to our next committee report.

**Consideration of report postponed, pursuant to standing orders.**