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GOVERNMENT RESPONSE TO THE FIFTH REPORT OF THE JOINT STANDING COMMITTEE ON THE ANTI-CORRUPTION COMMISSION ENTITLED "AMENDING THE ANTI-CORRUPTION COMMISSION ACT 1988"

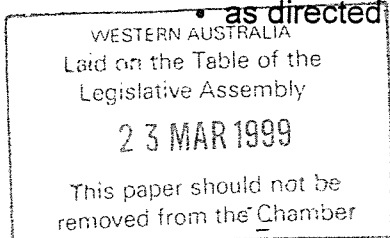
The Joint Standing Committee on the Anti-Corruption Commission ('the Committee') tabled its Fifth Report ('the Report') on 22 December 1999 in the Legislative Council and on 23 December 1999 in the Legislative Assembly. The Committee directed the Premier to respond to the Report within 3 months in accordance with Standing Order 378.

The Report by the Committee made a number of recommendations. They are:

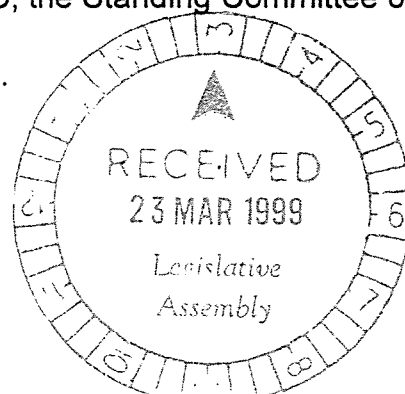
Recommendation 1

The Committee recommends -

- (i) That an Office of Parliamentary Inspector of the Anti-Corruption Commission be created under the Act.
- (ii) That the Office of Parliamentary Inspector of the Anti-Corruption Commission be filled by a person who has held office as a Judge or District Court Judge or is eligible for appointment as a Judge.
- (iii) That the Parliamentary Inspector of the Anti-Corruption Commission be appointed by the Governor on the recommendation of the Standing Committee.
- (iv) That provision be made under the Act for the suspension or removal of the Parliamentary Inspector from his office to be on similar grounds to those applying to the Parliamentary Commissioner of Administrative Investigations under section 6 of the *Parliamentary Commissioner Act 1971*.
- (v) That the Parliamentary Inspector of the Anti-Corruption Commission perform the following functions -
 - auditing the operations of the ACC;
 - investigating and reporting on complaints against the ACC, its officers or a Special Investigator; and
 - assessing the effectiveness and appropriateness of the ACC's procedures.
- (vi) That the functions of the Inspector can be exercised -
 - on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference from the Ombudsman, the ACC, the Standing Committee or any other agency; or
 - as directed by the Standing Committee.



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- (vii) That the Parliamentary Inspector of the Anti-Corruption Commission have the power to -
- make or hold inquiries and for this purpose to exercise the powers of a Royal Commission and a Chairman of a Royal Commission under the applied provisions as provided for and modified under Part IV of the Act;
 - investigate any aspect of the ACC's operations, the conduct of its officers or the conduct of a Special Investigator;
 - have full access to the records of the ACC and to have copies made of any records;
 - require the ACC, officers of the ACC or a Special Investigator to supply information or produce documents or other things about any matter relating to the ACC's operations or any conduct of its officers or a Special Investigator;
 - require the ACC, officers of the ACC or a Special Investigator to attend before the Inspector and answer any questions or produce documents or other things relating to the ACC's operations or any conduct of its officers;
 - investigate and assess complaints about the ACC, its officers or a Special Investigator;
 - refer matters relating to the ACC, its officers or a Special Investigator for consideration or action; and
 - recommend disciplinary action or criminal prosecution against officers of the ACC or a Special Investigator
- (viii) That the Parliamentary Inspector of the Anti-Corruption Commission -
- prepare an Annual Report on the Inspector's operations to be presented to each House of Parliament;
 - report on a regular basis to the Standing Committee on the Inspector's general activities and operations;
 - report to the Standing Committee in response to a direction from the Standing Committee; and
 - may report on any matters relating to the functions of the Inspector as set out in clause (v) of this recommendation to the Standing Committee, or, if the Committee is not constituted, the Presiding Officer of each House of Parliament.
- (ix) That the Terms of Reference of the Standing Committee be amended so that its functions extend to monitoring and reviewing the performance of the functions of the Inspector.

Recommendation 2

The Committee recommends that the ACC's powers in respect of *serious improper conduct* should allow the ACC to evaluate evidence for the purpose of advising an appropriate authority whether or not it warrants consideration of further action.

If the decision in *Parker v ACC* leaves uncertain the powers of the ACC in respect of serious improper conduct, appropriate amendments should be made to the ACC Act.

Recommendation 3

1. The Committee recommends that the distinction between the powers available to the Commission when conducting a preliminary inquiry and the powers available to the Commission when conducting an investigation itself should be removed from the ACC Act.

The ACC Act should be amended to -

- remove all of Part III of the ACC Act;
 - include an additional section in Part IV of the ACC Act to the effect that an investigation may be in the nature of a preliminary investigation;
 - remove references to preliminary inquiries in section 17(4) and 20(5) and insert in their place references to preliminary investigations; and
 - remove all other references to preliminary inquiries in the ACC Act and insert in their place references to preliminary investigations.
2. The Committee recommends that the section 37 preliminary inquiry power should not be extended to ACC investigations.
 3. The Committee recommends that the power the Commissioner has under section 44(1) of the ACC Act to request a statement of information should extend to any person or body and should not be limited to only public authorities and public officers, and section 44(1) should be amended accordingly.

Recommendation 4

The Committee recommends that the secrecy provisions in the ACC Act be amended to contain provisions similar to those contained in the *Independent Commission Against Corruption Act 1988* (NSW) through which confidential information held by the ICAC is protected from being disclosed during legal proceedings.

Recommendation 5

The Committee recommends that the ACC have power to initiate investigations into criminal conduct, corrupt conduct or criminal involvement which may have occurred, may be occurring or may be likely to occur.

Recommendation 6

The Committee recommends that section 3 of the ACC Act be amended so that the meaning of the term allegation will encompass matters which concern or may concern corrupt conduct, criminal conduct, criminal involvement or serious improper conduct.

Recommendation 7

The Committee recommends that ACC officers not be given any power to arrest a person who fails to comply with a Notice to Attend the Commission's office or any other place to provide information.

Recommendation 8

The Committee recommends that section 22 of the *Prisons Act 1981* be amended to allow for a section 22 order to be made where attendance by a prisoner is required for the purposes of an investigation by an ACC Special Investigator.

Recommendation 9

The Committee recommends that the Commission not be given the power to constitute a Special Investigation with the Chairman as Special Investigator even under limited circumstances.

Recommendation 10

The Committee recommends that a Special Investigator not be given the power to hear evidence in public.

Recommendation 11

The Committee recommends that an incidental power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions be conferred on the ACC.

Recommendation 12

The Committee recommends that section 6(10) of the ACC Act be amended to allow the Chairman to delegate the power to administer an oath or affirmation to Commission members.

Recommendation 13

No amendments should be made to clarify what further action means under section 17 of the ACC Act, what may be included in a section 22(1) report and what recommendations may be made under section 22(2)(c) of the Act until the Supreme Court brings down its decision in *Parker v ACC*.

If any amendments are required following the decision in this case, those amendments should be consistent with the Committee's conclusions regarding the role of the Commission: the ACC's powers in respect of serious improper conduct should allow the ACC to evaluate evidence for the purpose of advising an

appropriate authority whether or not it warrants consideration of further action.

Recommendation 14

The Committee recommends that section 19 of the ACC Act be amended to refer to matters reported under section 14, 15 or 16 rather than allegations made under section made under section 13(1) (a) (b) or (c).

Recommendation 15

The Committee recommends that the review period under section 20(4) of the ACC Act be extended to forty two days with provision for that period to be extended with the agreement of the person requesting the review being maintained.

The Committee recommends that section 20 of the ACC Act be amended to allow the Commission to refuse to review a matter where the allegation is frivolous, vexatious or not made in good faith or is otherwise without substance.

Recommendation 16

The Committee recommends that if there is uncertainty under the ACC Act regarding the independence of independent agencies with respect to matters referred to them for investigation by the ACC then this should be clarified.

Recommendation 17

The Committee recommends that section 26 of the ACC Act be amended so as to allow the ACC to inform a person to whom an allegation relates as to the outcome of a preliminary inquiry into that allegation by the ACC or an appropriate authority.

Recommendation 18

The Committee recommends that section 27 of the ACC Act be amended so as to allow the ACC to report to each House of Parliament not only on further action taken by the Commission, but also on the outcome of preliminary inquiries.

Recommendation 19

The Commission's power under section 27 of the ACC Act to report to each House of Parliament on "the facts disclosed" following further action by the Commission should be consistent with the functions and duties of the Commission. The ACC is primarily an investigative agency and any report under section 27 should not extend beyond reporting the results of an investigation.

Recommendation 20

If section 37 (requests for information during a preliminary inquiry) is not removed from the ACC Act, the clause should be amended to make clear that the ACC may require a person to be interviewed at the offices of the ACC or at another place.

Recommendation 21

The Committee recommends that sections 45(1)(a) of the ACC Act be framed in the

following terms; "inspect the premises and any document or other thing in or on them"; and sections 46 and 47 be amended to include a reference to "other things".

Consultation

The Report considers a number of recommendations put to the Committee by the ACC. The Government has commenced discussions with the ACC regarding the Committee's recommendations. The Committee noted that many of the amendments raised by the ACC and discussed by the Committee are affected by the current litigation of *Parker v ACC* which has yet to be decided by the WA Supreme Court. As such it would be appropriate not to make any decisions on those amendments until that judgment has been handed down, and appeals, if any, are finalized.

The WA Police Union of Workers has also raised matters of concern regarding the *Anti-Corruption Commission Act 1988* with the Government. The Government has agreed to the establishment of a working group which will meet to discuss these matters of concern to the WA Police Union.

Conclusion

The Government will be working on the recommendations for amendments made by the Committee and plans to bring forward a Bill to amend the Act when the consultation process outlined above is complete.