



Joint Standing Committee on the Corruption and Crime Commission

Exceptional Powers Revocation

Report No. 26
March 2012

Parliament of Western Australia

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**Joint Standing Committee on the Corruption
and Crime Commission**

Revocation of Exceptional Powers

Report No. 26

Presented by

Hon Nick Goiran MLC and John Hyde MLA

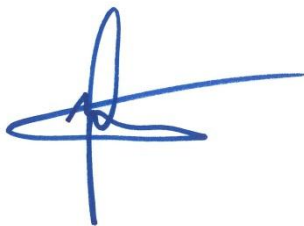
Laid on the Table of the Legislative Assembly and the Legislative Council on
29 March 2012

Chairman's Foreword

The Corruption and Crime Commission currently acts as gatekeeper of a suite of “exceptional powers” that the Police Commissioner can apply to use. It was therefore of great interest to the Committee that the Corruption and Crime Commission 2010 – 2011 Annual report indicated that one of the exceptional powers findings had been revoked. It is important for the whole community that such powers have robust monitoring and accountability mechanisms in place and the revocation of the granting of such powers indicated a possible problem with the system.

Initial enquiries with the CCC Acting Commissioner and Executive at a hearing before the Committee confirmed the basic details of the revocation. The Committee referred the matter to the Parliamentary Inspector of the CCC to ascertain details around the revocation. An “exceptional powers” finding was granted in May 2011 but in June it was found that a written delegation from the WA Police Commissioner, required under the CCC Act, had not been in the possession of the applicant. The Acting Commissioner of the CCC immediately revoked the finding, even though this was not required under the legislation, and instituted a more formal, written application process, together with guidelines and written information sheets to assist applicants.

This swift response from the CCC in identifying and resolving an issue, has maintained the integrity, accountability and transparency of the exceptional powers process. The Western Australian community require a strong and dedicated gatekeeper of powers that can infringe upon their usual and expected rights. The actions of the CCC in this case provide re-assurance and are commended by the Committee.

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HON NICK GOIRAN MLC
CHAIRMAN

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Findings and Recommendations

Finding 1

The Corruption and Crime Commission granted two “exceptional powers” findings in the 2010 – 2011 reporting period, one of which was revoked.

Finding 2

A WAPOL officer applied for exceptional powers without written delegation from the Police Commissioner as required under the *Corruption and Crime Commission Act 2003*.

Finding 3

The lack of compliance was identified by WAPOL and upon advice to the CCC was acted upon immediately, 27 days after the finding had originally been made.

Finding 4

The CCC have responded appropriately to this incident, establishing a formal application procedure with guidelines for WAPOL staff to utilise.

Chapter 1

Exceptional Powers

Exceptional Powers

Exceptional powers are powers under Divisions 2, 3 and 4 of Part 4 of the CCC Act which the WA Police Commissioner can apply to the CCC to use in an organised crime investigation conducted by the WA Police. These include such things as:

- the summoning and examining of witnesses, in coercive hearings;
- the conduct of controlled operations by police officers;
- powers of search and entry without a warrant;
- powers to stop, detain and search a person or conveyance without a warrant;
- the acquisition and use of assumed identities by a police officer; and
- the conduct of integrity testing programs.

CCC Annual Report

The origins of this report are found in the Corruption and Crime Commission 2010 - 2011 Annual Report. A table showing required reporting indicated that two (2) organised crime exceptional powers findings had been granted but a footnote indicated that one had been revoked¹.

A public hearing with the Acting Commissioner of the CCC and his executive staff was convened on 9 November 2011 to discuss the Annual Report. Subsequent to the public hearing, a closed session was called and the revocation of the exceptional powers finding was discussed.

***The CHAIRMAN:** Acting commissioner, for the purposes of the Hansard record, the committee has resolved to move into closed hearing. I just have the one question I wanted to ask you, which I foreshadowed earlier, and that was with respect to the exceptional powers finding that was revoked. So, to the extent that you are able, could you just explain what caused that to be revoked?*

***Mr Herron:** Yes. I reviewed the granting of those powers. How that application proceeded is that there had been a statutory declaration*

¹ Corruption and Crime Commission of Western Australia; 2010 – 2011 Annual Report. P. 91

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filed—it was a long statutory declaration. We then held a private hearing where some further evidence was called in relation to it. I granted the police an exceptional power finding, and then that proceeded for a short period of time, and then we were constantly reviewing that, as we are required to do under the act. At one stage when we reviewed it, I was no longer satisfied that it was appropriate for the police to continue to have that exceptional power, so I revoked the finding. I think it is probably inappropriate that I go any further than that, but I revoked the finding at that stage².

Enquiries by the Parliamentary Inspector

Subsequent to the hearing with the CCC Commissioner, on 10 November 2011, the Committee wrote to the Parliamentary Inspector of the Corruption and Crime Commission, asking him to ascertain the circumstances around the revocation of the exceptional powers finding. He responded on 13 December 2011, citing information he had been provided by Commissioner, the Honourable Roger Macknay QC:

The extraordinary powers finding in this matter was made after a private hearing in May 2011, an application for such having earlier been made by an Assistant Commissioner of Western Australian Police (WAPOL); [...] supported by a statutory declaration made by a senior member of the Gang Crime Squad.

[...]

A file memorandum informed the Acting Commissioner (CCC), prior to his making of the finding that the Assistant Commissioner of WAPOL was acting under a delegation from the Commissioner.

[...]

WAPOL subsequently advised the Commission that in fact the Assistant Commissioner had not been in possession of a written delegation from the Commissioner of Police as required by section 82 of the CCC Act.

On receipt of that information, and on 9 June 2011, the Acting Commissioner revoked the exceptional powers finding.

² Mr Mark Herron, Acting Commissioner Corruption and Crime Commission and Senior Executive Team, *Transcript of evidence* 9 November 2011 – Closed hearing p.1.

[...]

Following the above events, and on 27 June 2011, WAPOL was advised that the Commission had decided to institute a formal application process for applications for exceptional powers.

Enquiries with the Corruption and Crime Commission

A letter was written to Commissioner Macknay on 23 February 2012, outlining the information we had received from the Parliamentary Inspector and requesting further information. The Committee was particularly interested in how the application process for “exceptional powers” had been improved. A response dated 28 February 2012 stated;

I can confirm that this process, which represents a shift towards a more formal procedure, was approved by Acting Commissioner Herron on 24 June 2011 and the Assistant Commissioner of Police advised as of 27 June 2011.

Prior to its implementation, an exceptional powers application (EPA) was made by way of a cover letter from the Commissioner of Police and a statutory declaration annexing all of the relevant exhibits.

[...]

Under the current application process, Police are required to submit:

- *'EP Form 1 - Application': the initiating process by which Police are to make an application for exceptional powers; and*
- *'EP Form 2 -Affidavit': to be sworn by the relevant police officer.*

[...]

the Commission has developed an information sheet which is intended to provide any officer new to the EPA process with a clearer understanding of the CCC Act's requirements and the Commission's expectations when making such an application.

[...]

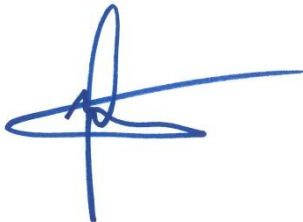
The information sheet provides, amongst others, that:

Chapter 1 Exceptional Powers

- *a copy of the written delegation made pursuant to subsection 82(2) of the CCC Act must be submitted with any application made by a delegate of the Commissioner of Police whose rank is Assistant Commissioner or higher;*
- *all relevant exhibits/evidence must be annexed to the affidavit;*
- *a chronology of events must be annexed to the affidavit where there are a large number of offences under investigation; and*
- *a dramatis personae must be annexed to the affidavit where there are numerous persons of interest referred to in the application.*

Finally, the information sheet makes it clear that if further information is required by the Commission, the Corruption and Crime Commissioner may call for further evidence to be given at a private examination.

The prompt action by the CCC in revoking the exceptional powers finding when a problem was identified and then instituting a more formal, written application process is commendable. Even more commendable is their development of information sheets and other items, to make the process easier to use and ensure Commission expectations are met and compliance with legislation is adhered to.

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HON NICK GOIRAN MLC

CHAIRMAN

Appendix One

Committee's functions and powers

On 25 November 2008 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to –

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

Appendix Two

Hearings

Date	Name	Position	Organisation
9 November 2011	Mr Mark Herron	Acting Commissioner	Corruption and Crime Commission
	Mr Michael Silverstone	Executive Director	
	Mr Paul O'Connor	Director Legal Services	
	Mr Robert Sutton	Acting Director Operations	
	Mr Roger Watson	Director Corruption Prevention	
	Ms Peta Mabbs	Director	