

Joint Standing Committee on the Corruption and Crime Commission

The CCC's interaction with the State's Integrity Coordinating Group

**Report No. 9
February 2014**

Parliament of Western Australia

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and Crime Commission**

**The CCC's interaction with the
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Coordinating Group**

Report No. 9

Hon Nick Goiran, MLC and Mr Peter Watson, MLA

Laid on the Table of the Legislative Assembly and the Legislative Council
on 27 February 2014

Chairman's Foreword

The *Corruption and Crime Commission Act 2003* provides a key function of the Joint Standing Committee the Corruption and Crime Commission (JSCCCC) to be the monitoring and reporting to Parliament on the functioning of the Corruption and Crime Commission (CCC).

This inquiry into the CCC's interaction with the Integrity Coordinating Group (ICG) was spurred by two factors. Firstly, the Joint Standing Committee learnt from the CCC Commissioner, Mr Roger Macknay QC, in August 2013 that the Auditor General had not informed the Commissioner of the nature of an inquiry that led to his seventh report in June 2013 (titled *Fraud Prevention and Detection in the Public Sector*) before undertaking it. The Committee considered that this was unusual given the participation of both agency heads in regular ICG meetings.

Secondly, at around this same time committee members noted the issues raised by the Chief Justice, Hon Wayne Martin AC QC, in his Whitmore Lecture on 1 August 2013, *Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government*. The Chief Justice raised concerns about a 'fourth arm' of government composed of integrity agencies, such as the CCC, and whether they remained fully accountable to Parliament for their actions. The Joint Standing Committee resolved to undertake this Inquiry on 14 August 2013.

The ICG was established in January 2005 by the four principal Western Australian integrity monitoring agencies. The ICG membership included the Parliamentary Commissioner for Administrative Investigations (Ombudsman), the then-Office of the Commissioner for Public Sector Standards (OPSSC), the Corruption and Crime Commission (CCC), and the Office of the Auditor General (OAG). The ICG model was similar to Queensland's Integrity Committee but this model was not used by other Australian jurisdictions.

The ICG was not established by legislation and thus has no statutory powers or status of its own. The ICG is managed by the respective agency heads who are independent statutory officers reporting directly to Parliament. The group established to allow member agencies to share information about their activities and undertake joint research and other initiatives, and ensure a consistent approach to communication and education on corruption issues.

This inquiry continues the Joint Standing Committee's review of the CCC's interaction with the ICG that occurred in the previous two Parliaments. The JSCCCC held a hearing with all ICG members in the 37th Parliament. In its report to Parliament on 29 March 2007, the then-Chair of the Committee said that the hearing followed an interest from

August 2002 by the Joint Standing Committee on the Anti-Corruption Commission to conduct an inquiry into integrity within the State's Public Sector. In the 38th Parliament, the JSCCCC held another hearing with all ICG members. On that occasion, the Committee did not table a report in Parliament but rather resolved to publish the hearing's transcript on its web site.

Chief Justice Martin's 2013 Whitmore Lecture raised concerns about integrity agencies such as the CCC combining together as a 'fourth arm of government'. Former NSW Chief Justice Spigelman in a 2004 paper claimed that 'integrity' is now a universal governmental function in modern democracies and equivalent in significance to the legislative, executive or judicial branches. However, the review in 2013 by former High Court Justice Ian Callinan AC and Professor Nicholas Aroney of Queensland's *Crime and Misconduct Act 2001* was highly critical of the proliferation of integrity agencies and labelled them an integrity 'industry' or 'regime'.

The JSCCCC wrote to the anti-corruption organisations in other Australian jurisdictions seeking a submission to its Inquiry as to what model they used in establishing their relationships with similar agencies within their jurisdiction. In Tasmania, the CEO of the Integrity Commission, the Auditor-General, the Ombudsman, the Anti-Discrimination Commissioner and the Commissioner for Children meet informally every quarter to discuss issues of mutual interest. In Victoria, a high-level Integrity Consultative Committee (ICC) was recently established to facilitate information sharing and coordination between the heads of agencies in the Victorian integrity system. It first met in October 2013 and includes the Independent Broad-based Anti-corruption Commission (IBAC) Commissioner. IBAC also participates in the Prevention and Education Advisory Group (PEAG) which was established in August 2013. It meets on a quarterly basis to share information on prevention and education activities and to identify opportunities for collaboration.

Queensland's coordination for its integrity agencies is similar to the ICG. The Crime and Misconduct Commission (CMC) has participated in Queensland's Integrity Committee (IC) since 2001. The IC meets three to four times a year to discuss a wide range of ethical and integrity issues. The CMC's Director of Integrity Services is a representative on the Queensland Public Sector Ethics Network (QPSN).

The CCC Commissioner, Mr Roger Macknay QC, outlined to the Committee that there were two formal meetings involving the ICG agencies every quarter. The first involved staff at a directorate level. The CCC is represented at this meeting by its Director of Corruption Prevention, Mr Roger Watson. The following month there is a meeting of the heads of the ICG agencies together with the staff who had attended the earlier working group meeting. The main costs to the CCC in its involvement with the ICG are the staff costs associated with attending these meetings every three months. This involvement totals about 14.5 staff hours per quarter.

The Commissioner said that he continued to attend ICG meetings as his predecessors had and he argued there was a legislative requirement within section 18 of the *Corruption and Crime Commission Act 2003* that supported the involvement of the CCC within the ICG. He agreed with the Chief Justice that the State's integrity agencies should remain within the executive branch of government and be subject to the scrutiny of Parliament and to laws passed by the Parliament and enforced by the courts.

Mr Macknay submitted to the Committee that if the "fourth arm of government is spoken about ... I make no comment in relation to that other than to say that is not an expression that I have used, I think, or would be likely to use."¹

During his hearing with the Committee, the Commissioner agreed with my assessment that the greatest overlap of the work of the CCC is with the Auditor General. The Commissioner confirmed, however, that he had yet to have a separate meeting, or arrange regular meetings, between him and the Auditor General. He also agreed with a suggestion from the Committee that such an arrangement would be 'useful' and might have alleviated the situation with regard to the Auditor General's report *Fraud Prevention and Detection in the Public Sector*, where there was no formal invitation to the CCC to provide a submission.

The other agency with which the CCC has some overlap is with the Ombudsman. The CCC Commissioner agreed that the Ombudsman received similar complaints to the Commission and that a memorandum of understanding (MOU) between the CCC and the Ombudsman had been completed within two months of the CCC commencing operations in 2004. The MOU with the Ombudsman is the only one that the CCC has developed and it has not been reviewed since 2004. The Commissioner agreed to review it if the Committee recommended it do so. The Committee has made this one of its three recommendations to the CCC.

The Committee raised the risk posed by a possible conflict of interest as a consequence of the relationship the CCC had with the ICG agencies, and the possible diminution of the CCC's ability to oversight them. The CCC Commissioner said that this risk was minimised because "we are the subject of a great deal of oversight. It is hard to imagine a body that has more oversight than us."² Specifically, Mr Macknay highlighted that the current two Parliamentary Inspectors had been senior Appeal Court judges.

Commissioner Macknay's view of his involvement within the ICG framework was that it is quite a 'mild activity' that allowed him to get to know all the other agency heads. The Committee has not received any evidence that has shown there is a tangible benefit to

1 Ibid, p4.

2 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 26 August 2013, p11.

the CCC's formal involvement within the ICG, or the time given over to it by the Commissioner and his senior staff. The Committee considers that the Commissioner should evaluate whether it would be more effective for the CCC to have stand-alone meetings with relevant ICG members, such as the Ombudsman and the Auditor General, as required.

I would like to acknowledge the work on this report by my Committee colleagues: the Deputy Chairmen, Mr Paul Papalia CSC MLA, Member for Warnbro, (who resigned from the Committee on 7 February 2014) and Mr Peter Watson MLA, Member for Albany, (who joined the Committee on 11 February 2014), the Member for Churchlands, Mr Sean L'Estrange MLA, and the Member for the South West Region, Hon Adele Farina MLC. Finally, I wish to thank the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan, for their efforts in completing this Inquiry.

A handwritten signature in blue ink, consisting of a stylized 'N' and 'G' with a horizontal line extending to the right.

HON NICK GOIRAN, MLC
CHAIRMAN

Contents

Findings and Recommendations	iii
1 Background to Inquiry	1
<hr/>	
Introduction	1
Committee response	2
Previous hearings with the ICG by the JSCCC	3
Progress of the Inquiry	4
2 The Development of the ICG	5
<hr/>	
Formation and functioning of the ICG	5
Development of an integrity industry	6
Reporting and oversight of ICG agencies	7
ICG objectives	8
Operational matters	9
ICG Chair	9
Meeting frequency	9
ICG budget	9
3 Integrity Regimes in Other Australian Jurisdictions	11
<hr/>	
Introduction	11
Response from other jurisdictions	11
NSW	11
Tasmania	11
Victoria	12
Queensland	13
A different view of the Queensland integrity framework	14
Conclusion	15

4	CCC interaction with the ICG	17
	Introduction	17
	Current interaction	17
	Overlap with other agencies	19
	Auditor General	19
	Ombudsman	20
	Does involvement in the ICG create any conflicts of interest?	22
	Oversight	23
	Conclusion	23
	Appendices	25
1	Submissions received	25
2	Hearings	27
3	ICG Work Program Template	29
4	MOU between CCC and the Ombudsman	33
5	Overview of Western Australian Integrity Agencies and Statutory Accountability Provisions	39
6	Fourth branch of government	43
	Establishment of the doctrine of the separation of powers	43
	Development of the concept of the fourth branch of government	43
7	Committee's functions and powers	45

Findings and Recommendations

Finding 1

Page 10

The Corruption and Crime Commission's funding of Integrity Coordinating Group activities is ad-hoc and minor compared to its other core activities.

Recommendation 1

Page 10

The Corruption and Crime Commission should ensure that contributions to Integrity Coordinating Group activities do not exceed those that would be incurred should it liaise with agencies on an individual basis to fulfil its obligations under section 18(2)(g) of the *Corruption and Crime Commission Act 2003*.

Finding 2

Page 15

The anti-corruption agencies in Tasmania, Queensland and Victoria participate in a similar consultative process to the Corruption and Crime's involvement in the Integrity Coordinating Group.

Finding 3

Page 20

The Corruption and Crime Commission's anti-misconduct work has its greatest overlap with the work of the Office of the Auditor General.

Finding 4

Page 20

As at 26 August 2013, the Corruption and Crime Commissioner had yet to meet with the Auditor General, separate from Integrity Coordinating Group meetings, on the potential overlap in the work of their organisations.

Finding 5

Page 20

The absence of an arrangement for standalone meetings between the Commissioner and the Auditor General contributed to the Corruption and Crime Commission not having an opportunity to provide a submission to the Auditor General's report *Fraud Prevention and Detection in the Public Sector*.

Recommendation 2

Page 20

The Corruption and Crime Commission should establish regular standalone meetings with the Auditor General.

Finding 6

Page 20

The Corruption and Crime Commission and the Ombudsman signed a Memorandum of Understanding in March 2004.

Finding 7**Page 21**

This Memorandum of Understanding with the Ombudsman is the only one that the Corruption and Crime Commission has with any member of the Integrity Coordinating Group.

Finding 8**Page 21**

The Memorandum of Understanding between the Corruption and Crime Commission and the Ombudsman has not been reviewed since its creation in 2004.

Recommendation 3**Page 21**

The Corruption and Crime Commission should review its Memorandum of Understanding with the Ombudsman to ensure that it remains current, relevant and minimises the probability of duplication between the agencies.

Finding 9**Page 22**

For the period 1 January 2008 to 1 September 2013, the Corruption and Crime Commission had received two complaints against staff members from Integrity Coordinating Group agencies.

Finding 10**Page 23**

Of the two complaints received by the Corruption and Crime Commission, one was determined to be frivolous or vexatious, and the other was referred back to the agency in question.

Finding 11**Page 23**

The Corruption and Crime Commission is subject to greater structural independent oversight than the other Integrity Coordinating Group agencies.

Finding 12**Page 24**

The Corruption and Crime Commission's regular interaction with the Integrity Coordinating Group is presently an irrelevant factor in its effectiveness at carrying out its responsibilities contained in the *Corruption and Crime Commission Act 2003*.

Recommendation 4**Page 24**

The Corruption and Crime Commission should consider whether it would be more effective for it to have stand-alone meetings with relevant Integrity Coordinating Group agencies, as required.

Recommendation 5**Page 24**

While it continues to participate in the Integrity Coordinating Group, the Corruption and Crime Commission should include its activities and associated costs of this involvement in its annual report.

Chapter 1

Background to Inquiry

...many (but not all) of the so-called integrity agencies which it has been suggested might collectively form a fourth branch of government lack transparency.

Chief Justice, Hon Wayne Martin AC QC.

Introduction

The *Corruption and Crime Commission Act 2003* provides a key function of the Joint Standing Committee the Corruption and Crime Commission to be the monitoring and reporting to Parliament on the functioning of the Corruption and Crime Commission (CCC).³ The Committee has regularly reported to Parliament on the CCC's relationships with other organisations, especially the WA Police. This report reviews the interaction of the CCC with the State's other important integrity agencies that have formed the so-called Integrity Coordinating Group (ICG).

This inquiry was spurred by two factors. Firstly, the Joint Standing Committee learnt from the CCC Commissioner, Mr Roger Macknay QC, in August 2013 that the Auditor General had not informed the Commissioner of the nature of an inquiry that led to his seventh report in June 2013 (titled *Fraud Prevention and Detection in the Public Sector*⁴) before undertaking it. The Committee considered that this was unusual given the participation of both agency heads in regular ICG meetings.⁵

Secondly, the Committee members were mindful of the issues raised by the Chief Justice, Hon Wayne Martin AC QC, in his Whitmore Lecture on 1 August 2013, *Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government*.⁶

The Chief Justice raised concerns about a 'fourth arm' of government composed of integrity agencies, such as the CCC, and whether they remained fully accountable to Parliament for their actions:

3 *Corruption and Crime Commission Act 2003*, (Western Australia).

4 Auditor General, *Fraud Prevention and Detection in the Public Sector*, 19 June 2013. Available at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3910392a3f01685b125a7fb648257b8f0022171c/\\$file/392.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3910392a3f01685b125a7fb648257b8f0022171c/$file/392.pdf). Accessed on 29 October 2013.

5 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 5 August 2013.

6 Hon Wayne Martin AC QC, 'Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government', 2013 Whitmore Lecture, Sydney, 1 August 2013. Available at: www.supremecourt.wa.gov.au/files/Whitmore%20Lecture%202013%20Chief%20Justice%20Martin%201%20Aug%202013.pdf. Accessed on 9 October 2013.

Chapter 1

This paper is a response to various suggestions made over the last 10 years or so to the effect that various statutory agencies with different functions and responsibilities should be collectively regarded as a fourth arm of government, united in the discharge of a shared responsibility. It appears to me that there may be significant dangers in this proposition, including the risk of distraction from the specific language used by the Parliament in conferring functions upon each agency, and in defining the standards to be applied and observed by each agency. The collection of these agencies in one grouping creates the risk that they will cease to be the islands of power to which Gummow J referred, but will instead come to be regarded, at least by themselves, as an overarching part of the fabric of government, perhaps as the pediment in the metaphorical Greek temple shown earlier in this paper. This in turn carries the risk that the efficacy of the checks and balances that have characterised relations between the three recognised branches of government, and which have stood the test of time, may be undermined.⁷

Appendix Five contains a summary prepared by the Chief Justice of Western Australian integrity agencies and their statutory accountability provisions. Appendix Six includes background information about the concept of a fourth arm of government.

The Chief Justice's address was summarised forcefully by a Western Australian journalist in the following way:

So in our reaction to the excesses of WA Inc, have we created public sector monsters which pose their own threats? It appears so. Chief Justice Martin paints the Public Sector Commissioner as the most extreme example who has now been given powers above those of the Parliament or any Minister — and is not subject to direction by anyone.⁸

Committee response

Having already started enquiries into its concerns about the apparent lack of communication between the CCC and the Auditor General, the Joint Standing Committee resolved to undertake this Inquiry on 14 August 2013 and proposed to table its report on 26 April 2014. The terms of reference for the Inquiry were for the Committee inquire into and report on:

⁷ Ibid, p40.

⁸ Mr Paul Murray, 'Who is Watching the Integrity Watchdogs?', *The West Australian*, 7 August 2013, p24.

- a) the role played by the Corruption and Crime Commission (CCC) within the State's Integrity Coordinating Group (ICG);
- b) the extent of any jurisdictional overlap between the CCC and other members of the ICG;
- c) how the CCC handles instances of jurisdictional overlap with other members of the ICG;
- d) the costs and benefits of the CCC's participation in the ICG;
- e) any operational implications of the CCC's participation in the ICG; and
- f) the model used by other misconduct and anti-corruption agencies in establishing their relationships with agencies within their jurisdiction.

In that same month, and in response to a proposal that Parliament should investigate the actions of the ICG, the JSCCCC chairman, Hon Nick Goiran MLC, expressed the Committee's view to the media that the Inquiry's primary concern is "the extent to which the CCC is involved in the ICG and whether it's efficient and effective".⁹ The Committee takes this opportunity to re-emphasise that it only has jurisdiction over one of the members of the ICG and therefore has no delegated power from the Parliament to enquire into the ICG itself.

Previous hearings with the ICG by the JSCCCC

This inquiry continues the Joint Standing Committee's review of the CCC's interaction with the ICG that occurred in the previous two Parliaments. The JSCCCC held a hearing with all ICG members in the 37th Parliament on 13 September 2006. In a report to Parliament on 29 March 2007, the then-Chair of the Committee said that the hearing followed an interest from August 2002 by the Joint Standing Committee on the Anti-Corruption Commission to conduct an inquiry into integrity within the State's Public Sector. One of the core components of the 2006 examination of the ICG was the possible integration of oversight agencies, including the concept of a one-stop shop for public access to these services. The Chair said that the Committee "intends to meet regularly with the Integrity Coordinating Group to assess its activities and ... its impact on integrity within the public sector."¹⁰

9 Mr Daniel Emerson, 'MPs Take a Closer Look at Agencies', *The West Australian*, 26 August 2013, p14.

10 Joint Standing Committee the Corruption and Crime Commission, *Public Hearing with the Integrity Coordinating Group on 13 September 2006*, Parliament of Western Australia, Perth, 29 March 2007, pviii. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/B6CC046C793E15CD48257831003E96E1/\\$file/Report+No.20.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/B6CC046C793E15CD48257831003E96E1/$file/Report+No.20.pdf). Accessed on 9 October 2013.

Chapter 1

In the 38th Parliament, the Joint Standing Committee held another hearing with all ICG members on 9 September 2009. Following that hearing, the Committee resolved to publish the hearing's transcript on its web site.¹¹

Progress of the Inquiry

This Inquiry commenced with a hearing with the CCC Commissioner, Mr Roger Macknay QC, on 26 August 2013. The Committee had originally intended to hold hearings with Mr Macknay and the Parliamentary Inspector of the Corruption and Crime Commission, Hon Michael Murray QC, and other witnesses at a later date. However, after this initial hearing the Committee resolved not to seek additional evidence by way of supplementary hearings but rather to establish how anti-corruption agencies in other Australian jurisdictions interact with their equivalent integrity agencies.

The Committee also wrote to the Chairmen of those Western Australian Parliamentary committees with jurisdiction over the other members of the Integrity Coordinating Group to draw their attention to the CCC transcript to try to ensure there was no duplication in the work of these committees. This letter was followed up with a meeting of the Chairmen with the Speaker of the Legislative Assembly and the President of the Council on the matter of the ICG and the work of these committees. On the 26 September 2013, the Public Accounts Committee, due to its jurisdiction over the Public Sector Commissioner, commenced an *Inquiry into Amendments to the Public Sector Management Act 1994 (WA)*.

The Committee also obtained relevant material from the CCC, such as copies of the minutes of the ICG meetings. The current interaction of the CCC with the ICG is outlined in Chapter 4 below. The next Chapter summarises the ICG's development, structure and activities.

11 Dr Ruth Shean, Commissioner for Public Sector Standards, Office of the Public Sector Standards Commissioner; Hon Len Roberts-Smith, Commissioner, Corruption and Crime Commission; Mr Christopher Field, Ombudsman, Western Australian Ombudsman; Mr Colin Murphy, Auditor General, Office of the Auditor General. *Transcript of Evidence*, 9 September 2009. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/264532F06FE5B25048257831003C11B5/\\$file/ccc090909.f.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/264532F06FE5B25048257831003C11B5/$file/ccc090909.f.pdf). Accessed on 9 October 2013.

Chapter 2

The Development of the ICG

The ICG was “unique within Australia and, to the best of our knowledge, internationally”. Ms Deirdre O’Donnell, WA Ombudsman.

Formation and functioning of the ICG

The Integrity Coordinating Group (ICG) was established in January 2005 by the four principal Western Australian integrity monitoring agencies. The ICG membership included the Parliamentary Commissioner for Administrative Investigations (Ombudsman), the then-Office of the Commissioner for Public Sector Standards (OPSSC), the Corruption and Crime Commission (CCC), and the Office of the Auditor General (OAG).¹² The then-Ombudsman said the model used to create the ICG was “unique within Australia and, to the best of our knowledge, internationally.”¹³

The ICG was not established by legislation and thus has no statutory powers or status of its own. The ICG is managed by the respective agency heads who are independent statutory officers reporting directly to Parliament. It was established by the agreement of the four founding members as a forum through which its member agencies could share information about their activities and undertake joint research and other initiatives and ensure a consistent approach to communication and education. It was designed to foster greater policy coherence and operational coordination amongst those core integrity bodies with the aim of strengthening integrity across the sector.¹⁴

The previous Joint Standing Committee on the Corruption and Crime Commission (JSCCC 38th Parl) reported that the concept of the ICG was informed by a 2005 speech by the Commonwealth Ombudsman, Professor John McMillan, *Chaos or Coherence? Strengths, Opportunities and Challenges for Australia’s Integrity Systems*.¹⁵ Professor

12 In his 2013 Whitmore, Lecture, Chief Justice Martin also included the Inspector of Custodial Services, the Parliamentary Inspector of the Corruption and Crime Commission and the Commissioner for Children and Young People as performing ‘integrity functions’ in Western Australia.

13 Ms Deirdre O’Donnell, Parliamentary Commissioner for Administrative Investigations, *Transcript of Evidence*, 13 September 2006, p2.

14 Hon Norman Moore, Leader of the House representing the Premier, Western Australia, Legislative Council, *Question Without Notice No. 131*, 2 December 2008.

15 Professor John McMillan, *Chaos or Coherence? Strengths, Opportunities and Challenges for Australia’s Integrity Systems*. Available at: www.ombudsman.gov.au/files/9_December_2005_Chaos_or_coherence_Strengths_opportunities_and_challenges_for_Australias_integrity_systems.pdf. Accessed on 6 January 2014.

Chapter 2

McMillan's speech accompanied the launch of the National Integrity Systems Assessment Final Report which, among other things, recommended:

*...the creation in each Australian jurisdiction of a governance review council, including representatives of agencies such as the Ombudsman, Auditor-General, public service commissioner, parliamentary standards commissioner, and community representatives...*¹⁶

The JSCCCC in the 38th Parliament found that the ICG chose a less formal structure with a policy-based approach, but with similar objectives to those proposed by the NISA report.¹⁷

The membership of the ICG has since evolved to include the Office of the Information Commissioner and the Public Sector Commissioner. The position of Public Sector Commissioner was established in November 2008 and replaced the Commissioner for Public Sector Standards when that agency ceased to exist. The Joint Standing Committee understands that it is not likely that further agencies will be invited to join the ICG.¹⁸

Development of an integrity industry

The Chief Justice's 2013 Whitmore Lecture raised concerns about integrity agencies such as the CCC combining together as a 'fourth arm of government'. Appendix Six includes additional information about this concept. In his lecture he cites a paper in 2004 by former NSW Chief Justice Spigelman who claims that 'integrity' is now a universal governmental function in modern democracies and:

*a fundamental mechanism of governance, ... equivalent in significance to the legislative, executive or judicial branches" because of the fundamental necessity to ensure that corruption,... is eliminated from government.*¹⁹

What constitutes the 'fourth arm' or integrity branch of government and its various attributes was the main topic for the Australian Institute of Administrative Law's 2012 annual conference. In 2013 it was one of the main concerns of an Open Government

¹⁶ Ibid, p4.

¹⁷ Joint Standing Committee on the Corruption and Crime Commission, *Public Hearing With The Integrity Coordinating Group on 13 September 2006*, Parliament of WA, Perth, 29 March 2007, p1.

¹⁸ Integrity Coordinating Group Meeting Minutes, 21 May 2007, Item No. 5.

¹⁹ Hon J J Spigelman AC, 'The Integrity Branch of Government', *Australian Law Journal*, vol. 78, 2004, p725. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1809582. Accessed on 5 November 2013.

Policy Forum held by the Queensland Government.²⁰ Former High Court Justice Ian Callinan AC and Professor Nicholas Aroney review of Queensland's *Crime and Misconduct Act 2001* was highly critical of the proliferation of integrity agencies and labelled them an integrity 'industry' or 'regime'. They said that integrity "has become its own over-elaborate industry involving repetition of the obvious, and clothing it in a morass of high-flown aspirational and often bureaucratic language."²¹

Reporting and oversight of ICG agencies

The JSCCCC is limited to only overseeing the Corruption and Crime Commission. The ICG agencies' reporting and parliamentary oversight relationships are shown in Table 1.

Table 1- Reporting and oversight of ICG agencies

Agency	Parliamentary Oversight	House of Parliament	Legislation
Corruption and Crime Commission	Joint Standing Committee on the Corruption and Crime Commission	Joint	<i>Corruption and Crime Commission Act 2003 (WA)</i>
Office of the Auditor General	Joint Standing Committee on Audit ²²	Joint	<i>Auditor General Act 2006 (WA)</i>
Public Sector Commission	Public Administration Committee	Legislative Council	<i>Public Sector Management Act 1994 (WA)</i>
	Public Accounts Committee ²³	Legislative Assembly	
Ombudsman	Public Administration Committee	Legislative Council	<i>Parliamentary Commissioner Act 1971 (WA)</i>

20 Dr David Solomon AM, Queensland Integrity Commissioner, 'The Integrity Branch – Parliament's Failure or Opportunity?', Paper presented at the Australasian Study of Parliament Group National Annual Conference, Perth, October 2013.

21 Hon Ian Callinan AC and Prof. Nicholas Aroney, *Review of the Crime and Misconduct Act [Qld 2001] and Related Matters: Report of the Independent Advisory Panel*, Queensland Government, Brisbane, 28 March 2013, p215. Available at: www.justice.qld.gov.au/cmareview. Accessed on 6 January 2014.

22 Section 48(1)a of the *Auditor General Act 2006* requires the Joint Audit Committee to undertake a review of the Act every five years.

23 The Public Accounts Committee is allocated the legislation that the Premier is responsible for, which includes the *Public Sector Management Act 1994*.

Chapter 2

Office of the Information Commissioner	Public Administration Committee	Legislative Council	<i>Freedom of Information Act 1992 (WA)</i>
	Community Development and Justice Standing Committee ²⁴	Legislative Assembly	

ICG objectives

Although it is not a formal entity, the ICG maintains a website supported by the Public Sector Commission.²⁵ This site describes the ICG's role and articulates the aims of the cooperative arrangement of the five agencies:

*The Integrity Coordinating Group (ICG) promotes policy coherence and operational coordination in the ongoing work of Western Australia's core public sector integrity institutions. The ICG seeks to achieve operational cooperation and consistency through public awareness, workplace education, prevention, advice and investigation activities across a range of integrity themes.*²⁶

The ICG's objectives include:

- fostering collaboration between public sector integrity bodies,
- encouraging and supporting research, evaluation and policy discussion to monitor the implementation of integrity and accountability mechanisms in Western Australia, and other jurisdictions, nationally and internationally, and
- inspiring operational cooperation and consistency in communication, education and support in public sector organisations (including State Government bodies, local government organisations and public universities).²⁷

24 The Community Development and Justice Standing Committee is allocated the legislation that the Attorney General is responsible for, which includes the *Freedom of Information Act 1992*.

25 Integrity Coordinating Group, *Disclaimer*, nd. Available at: www.icg.wa.gov.au/disclaimer. Accessed on 1 November 2013

26 Integrity Coordinating Group, *About the ICG*, nd. Available at: www.icg.wa.gov.au/about-icg. Accessed on 1 November 2013.

27 Dr Ruth Shean, Commissioner for Public Sector Standards, *Transcript of Evidence*, 9 September 2009, p3.

Operational matters

ICG Chair

The role of the Chair of the ICG is rotated amongst the members. The inaugural Chair was the then-Commissioner for Public Sector Standards, Ms Maxine Murray, with executive support provided by her office.²⁸ The agency that has control of the chair incurs the costs associated with the meetings and hosts the meeting at their premises.²⁹ The position of Chair is rotated annually, with the role currently being performed by the CCC Commissioner, Mr Roger Macknay QC.³⁰

Meeting frequency

The ICG meets quarterly with a prior working group meeting of senior staff. The time for each ICG meeting was estimated by Mr Macknay to be less than 90 minutes³¹ and he described the meeting frequency in the following way:

There are quarterly meetings between people at directorate level; when I use that term, our Commission is divided into Directorates, ...the Director of Corruption Prevention, Roger Watson, would attend, together with the Deputy Public Sector Commissioner, Ms Fiona Roche, and the Deputy Ombudsman and Deputy Auditor General....

*Then, in the following month, and again on a quarterly basis, there is a meeting of the heads of the agencies together with those people who had attended the working group.*³²

The impost on his own time was estimated by Mr Macknay to be approximately three hours, including both preparation and attendance, for each quarterly meeting with a figure twice that for the Director of Corruption Prevention. Other staffing costs associated with input to the ICG meetings brings the total staff time per quarter for the CCC to 14.5 hours.³³

ICG budget

There is no specific budget for the ICG's annual costs. Aside from staffing costs, the required budget of the ICG is met by negotiation between the participating agencies. Minutes of the ICG meetings record that it was agreed in principle that where ICG-

28 Integrity Coordinating Group Meeting Minutes, 20 January 2005, Item No. 4.

29 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 26 August 2013, p6.

30 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, Letter, 16 October 2013.

31 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 26 August 2013, p11.

32 Ibid, p2.

33 Ibid, p6.

Chapter 2

related costs arise, members will rotate payment.³⁴ However, the ICG minutes indicate that there are instances where the costs are shared among member agencies. A case in point was an integrity forum for which ICG member agencies each contributed \$3,500.³⁵

Additional costs to the CCC in 2013 of participating in the ICG included contributing to a regional outreach forum in Geraldton in 2013, explained by the Commissioner as:

*that was funded by the Public Sector Commission in terms of airfares, and there was the cost of a car being driven up and back. I was indisposed, so the Acting Commissioner, Judge Herron, as his honour now is, had to attend, so we had to pay him for three days.*³⁶

Funding of ICG activities continues to be ad-hoc. The Committee is aware that an Exhibition Booth at the Australian Public Sector Anti-Corruption Conference, which was allocated via sponsorship agreement to the Public Sector Commission (PSC), was used to highlight the work of the ICG and agencies such as the CCC.³⁷

Finding 1

The Corruption and Crime Commission's funding of Integrity Coordinating Group activities is ad-hoc and minor compared to its other core activities.

Recommendation 1

The Corruption and Crime Commission should ensure that contributions to Integrity Coordinating Group activities do not exceed those that would be incurred should it liaise with agencies on an individual basis to fulfil its obligations under section 18(2)(g) of the *Corruption and Crime Commission Act 2003*.

34 Integrity Coordinating Group Meeting Minutes, 11 May 2005, Item No. 3.

35 Integrity Coordinating Group Meeting Minutes 26 February 2008, Item No. 4 and 12 September 2008, Item No 4.1.

36 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 26 August 2013, p7.

37 Mr Roger Macknay, QC, Commissioner, Corruption and Crime Commission, Letter, 4 December 2013.

Chapter 3

Integrity Regimes in Other Australian Jurisdictions

...a sign of a haphazard multiplication of agencies, functions and powers with little if any concern to ensure that the entire system is coherent, efficient and effective
Hon Ian Callinan AC and Professor Nicholas Aroney.

Introduction

The Joint Standing Committee wrote to the anti-corruption organisations in other Australian jurisdictions seeking a submission to its Inquiry as to what model they used in establishing their relationships with similar agencies within their jurisdiction. Specifically, the Committee welcomed advice from these organisations of any formal or informal arrangements they had with these other agencies.

The legislation establishing these anti-corruption organisations differs between each jurisdiction. NSW has a separate agency overseeing the activities of the NSW Police, the Police Integrity Commission, while the Crime and Misconduct Commission (CMC) in Queensland has responsibility for both public misconduct and corruption, as well as fighting organised crime. The agencies also have a wide range of experience. The Independent Commission Against Corruption (ICAC) in NSW was established in 1989 while the Independent Broad-based Anti-corruption Commission (IBAC) in Victoria was only established on 10 February 2013. The *Independent Commissioner Against Corruption Act 2012* passed through the South Australian Parliament in November 2012, but the Office for Public Integrity in SA has just commenced its operations.³⁸

Response from other jurisdictions

The Committee received four submissions from anti-corruption organisations in other Australian jurisdictions (see Appendix One).

NSW

The outcome of the response from ICAC was that its submission did not enlighten the Committee on the existence of an ICG-like regime, if any, in NSW.

Tasmania

The Tasmanian Integrity Commission (TIC) was established in October 2010 to improve the standard of conduct and ethics in Tasmania's public authorities. Under the *Integrity*

³⁸ Independent Commissioner Against Corruption, *About the Office for Public Integrity*, 28 August 2013. Available at: www.icac.sa.gov.au/node/152. Accessed on 30 October 2013.

Chapter 3

Commission Act 2009 (Tas) a Board of the Commission was established and both the Ombudsman and the Auditor-General are ex-officio members of it. Up until 4 February 2013 (when the position was abolished), the Tasmanian State Service Commissioner was also an ex-officio member.³⁹

TIC said that the CEOs of some agencies such as the Auditor-General, the Ombudsman, the Anti-Discrimination Commissioner and the Commissioner for Children “meet informally quarterly to discuss issues of mutual interest.” Participants appreciated the discussion of their similar work and the opportunity to identify common concerns, such as the training and development needs of their staff. Some of these agencies are also exploring the possibility of co-locating their offices to make more efficient use of resources, such as 'back office' support services. This informal group has no formal title or structure and it does not produce joint materials or make any joint public statements.⁴⁰

Victoria

In its submission, IBAC said that it was “in the process of establishing consultative arrangements with other integrity agencies in Victoria.” Additionally, a high-level Integrity Consultative Committee (ICC) was recently established to facilitate “information sharing and coordination between the heads of core agencies in the Victorian integrity system.”⁴¹ The ICC first met on 31 October 2013 to determine its objectives and operating arrangements. Its membership comprises:

- IBAC Commissioner (Chair);
- Victorian Ombudsman;
- Auditor-General;
- Chief Municipal Inspector;
- Commissioner for Law Enforcement Data Security;
- Privacy Commissioner; and
- Public Sector Standards Commissioner.⁴²

IBAC also participates in two other groups, which it chairs, that bring together representatives of Victoria’s integrity agencies. The Protected Disclosure Liaison Group (PDLG) was established 2 September 2013. It meets quarterly to support the implementation of the new *Protected Disclosure Act 2012* and help ensure that an

39 Ms Diane Merryfull, Chief Executive Officer, Tasmanian Integrity Commission, Letter, 18 October 2013, p1.

40 Ibid, p2.

41 Mr Alistair Maclean, Chief Executive Officer, Independent Broad-based Anti-corruption Commission, Letter, 30 September 2013, p1.

42 Ibid.

efficient system of managing and investigating protected disclosures. The membership of the PDLG is:

- IBAC (Chair);
- Victorian Inspectorate;
- Victorian Ombudsman;
- Victoria Police; and
- Parliament.

A Prevention and Education Advisory Group (PEAG) was established on 12 August 2013. It meets on a quarterly basis to share information on prevention and education activities and to identify opportunities for collaboration. The membership of PEAG is:

- IBAC (Chair);
- Local Government Investigations and Compliance Inspectorate;
- State Services Authority;
- Victorian Auditor-General's Office; and
- Victorian Ombudsman.

A range of other informal consultations between Victorian agencies occur on an issues-basis. For example, IBAC's legal officers hold regular but informal meetings with the Ombudsman's Legal Division to help ensure the smooth flow of information between both agencies.⁴³

Queensland

The CMC has participated in Queensland's Integrity Committee (IC) since 2001. The IC meets "three or four times a year" and "discusses a wide range of ethical and integrity issues, and shares information about their activities." Its membership includes:

- Integrity Commissioner;
- Information Commissioner;
- Ombudsman;
- Auditor-General;
- Attorney-General; and
- CMC Chairperson.⁴⁴

⁴³ Ibid, p2.

⁴⁴ Dr Den Levy RFD, Acting Chairperson, Crime and Misconduct Commission, Letter, 22 October 2013, p1.

Chapter 3

The CMC said that the Chief Executive of the Public Service Commission ceased involvement in the IC following changes to the Public Service Commission's governance and responsibilities following the March 2012 election.⁴⁵

In their submission, the CMC said section 59 of the *Crime and Misconduct Act 2001* requires them to work cooperatively with other integrity organisations to avoid needless duplication and "inescapably compels us to cooperate." It provided two examples involving the Ombudsman and the Queensland Audit Office (QAO) where dialogue with the CMC ensured there was no duplication of effort and maximised the opportunities available to take advantage of each other's work.⁴⁶

In a similar fashion to IBAC, CMC officers also meet regularly with other agencies to discuss matters of mutual interest. For example, the CMC's Director of Integrity Services is its representative for the Queensland Public Sector Ethics Network (QPSEN). QPSN provides a forum to identify ethics issues and develop strategies which promote the Queensland Government's integrity agenda across the public sector. The CMC's Director Integrity Services, or our Principal Prevention Adviser, also participates in the Public Interest Disclosure (PID) Coordinators Network. PID is a specialist practitioner forum established by the Public Service Commission to assist in the administration of the *Public Interest Disclosure Act 2010*. This network allows agencies to share PID-related knowledge and resources in a collaborative manner. Additionally, integrity agency officers will liaise on particular operational matters in order to avoid a duplication of effort. An example of this cooperation was the investigations conducted by the CMC and the QAO in 2003 concerning a Member of Parliament.⁴⁷

The CMC has a number of liaison agreements and Memoranda of Understanding (MOU) with other Queensland agencies where there is a jurisdiction overlap.⁴⁸ It provided the Committee with copies of these MOUs, which are similar in style to that developed in 2004 between the CCC and the WA's Ombudsman (see Appendix Four).

A different view of the Queensland integrity framework

A review of the CMC and the *Crime and Misconduct Act 2001* by retired High Court judge Hon Ian Callinan AC and Professor Nicholas Aroney was tabled in the Queensland Parliament on 18 April 2013.⁴⁹ It takes a very different, and scathing, view of the Queensland integrity 'birds nest' that the CMC participates in. It describes that State's

45 Ibid.

46 Ibid, p2.

47 Ibid, p3.

48 Ibid, p4.

49 Crown Law, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel Redacted Version*, Queensland Government, Brisbane, 28 March 2013. Available at: www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2447.pdf. Accessed on 29 October 2013.

integrity 'industry' as "bloated, inefficient and thriving" and finds that the CMC liaison agreements and MOUs an 'over-elaborate' approach to ensuring that misconduct and corruption is minimised:

It is an indication to us of a lack of clarity in the statutory framework that the various units of public administration think it is necessary or desirable for them to carve out for themselves agreements about where their agreed functions lie. ...

But that they should need formal written protocols for these, and that there should be so many, is a sign of a haphazard multiplication of agencies, functions and powers with little if any concern to ensure that the entire system is coherent, efficient and effective. The lack of efficiency is seen in the multiplicity and overlap. The lack of effectiveness is demonstrated by the fact that despite so many integrity agencies and officers, corruption and fraud is still able to be perpetrated, and sometimes audaciously so.⁵⁰

The report finds that the MOUs and other policy documents use "aspirational and often bureaucratic language" which is "incapable of easy or sensible application". Instead, it proposes that "every government department is bound to carry out its functions in accordance with the law" and should cooperate with every other department. In regards to the operation of the CMC, the report says it "is entitled to co-operation without any written or other agreement as and when the exercise of its statutory powers and functions so demand."⁵¹

Conclusion

The evidence gathered by the Committee indicates that Tasmania, Queensland and Victoria operate similarly to Western Australia, with integrity agencies meeting in a formal and informal fashion to coordinate their efforts at minimising corruption and misconduct. However, these efforts have been recently criticised by senior judicial figures as being over-elaborate and lacking in transparency.

Finding 2

The anti-corruption agencies in Tasmania, Queensland and Victoria participate in a similar consultative process to the Corruption and Crime's involvement in the Integrity Coordinating Group.

⁵⁰ Ibid, p144.

⁵¹ Ibid, p129.

Chapter 4

CCC interaction with the ICG

...my experience of the ICG is that its activities are relatively benign. If I thought there was a problem with it I would not be associated with it. Mr Roger Macknay QC.

Introduction

In 2006, a year after the establishment of the Integrity Coordinating Group (ICG), the then-Commissioner of the Corruption and Crime Commission (CCC), Mr Kevin Hammond, told the JSCCCC of the 37th Parliament that he had been approached by the Commissioner for Public Sector Standards about:

*establishing a communication mechanism to improve the collaboration of the respective authorities and to reduce the likelihood of any conflict of programs or activities...*⁵²

Commissioner Hammond attended his first meeting of the ICG on 20 January 2005.⁵³ While much of the activities of the CCC are confidential, in terms of its review and education activities Commissioner Hammond was “happy to share our plans with other people so that there is no conflict of language and, whenever possible, duplication is prevented.”⁵⁴

This current JSCCCC inquiry met with the current CCC Commissioner, Mr Roger Macknay QC, on 26 August 2013 to update itself on the present level of interaction with the ICG by the CCC.

Current interaction

Mr Macknay outlined to the Committee that there were two formal meetings involving the ICG agencies every quarter. The first involved staff at a directorate level. The CCC is represented at this meeting by its Director of Corruption Prevention, Mr Roger Watson, who meets with staff such as the Deputy Public Sector Commissioner, Ms Fiona Roche, and the Deputy Ombudsman and Deputy Auditor General. The following month there is

52 Mr Kevin Hammond, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 13 September 2006, p2.

53 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 11 September 2013, p2.

54 Mr Kevin Hammond, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 13 September 2006, p2.

Chapter 4

a meeting of the heads of the ICG agencies together with the staff who had attended the earlier working group meeting.⁵⁵

The meetings proceed according to a standard template. Appendix Three contains a redacted version of this meeting template that only includes information provided by the CCC. After the hearing with the Commissioner, the other ICG agencies agreed to the CCC providing the Committee with copies of all of the minutes of all ICG meetings.

The main costs to the CCC in its involvement with the ICG are the staff costs associated with attending these meetings every three months. This involvement totals about 14.5 staff hours per quarter, consisting of:

- three hours for the Commissioner;
- six hours for the Director of Corruption Prevention;
- two hours for an executive assistant who provides secretarial assistance; and
- three and a half hours by managers and team leaders within the CCC's Corruption Prevention Division.⁵⁶

In terms of jointly-prepared ICG resources, the CCC does not contribute to the cost of these but pays the printing costs of its own supplies of the final product on a as needs basis. For example, the ICG has recently produced *Conflict of interest: guidelines for the Western Australian public sector/the Integrity Coordinating Group* and the CCC spent \$4,263 plus GST to print the copies it required.⁵⁷

The Commissioner said that he continued to attend ICG meetings as his predecessors had and "it was already in existence when I began and it seemed to be serving some kind of useful purpose, and I simply continued the practice." He argued there was a legislative requirement within the *Corruption and Crime Commission Act 2003* (CCC Act) that supported the involvement of the CCC within the ICG:

Section 3 [of the CCC Act] defines 'independent agency' as meaning the Parliamentary Commissioner, the Auditor General and the Public Sector Commissioner. Section 18 provides for the misconduct function.

The Act's primary modelling is to create functions of the Commission and then to create powers and so on to enable it to carry out the functions. Section 18 provides that the Commission performs the function by, amongst other things, consulting, cooperating and exchanging information with independent agencies. So there is a clear

⁵⁵ Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 26 August 2013, p2.

⁵⁶ *Ibid*, p6.

⁵⁷ *Ibid*, p7.

*mandate, if not a duty, on the part of the Commission, to consult and to exchange information with independent agencies—those, of course, including therefore the Ombudsman, the Auditor General and the Public Sector Commissioner.*⁵⁸

Mr Macknay said that the CCC fulfilled the requirements of s18 of the Act by “obtaining and releasing information where we think it is appropriate so to do.”⁵⁹ The Commissioner told the Committee, that similar to the Tasmanian Integrity Commission, “if the ICG did not exist, ...there would have to be informal discussions and exchanges.”⁶⁰ He also agreed with the Chief Justice that the State’s integrity agencies should remain within the executive branch of government and be subject to the scrutiny of Parliament, to laws passed by the Parliament and enforced by the courts.

On the concept of a ‘fourth arm of government’, Mr Macknay stated “I make no comment in relation to that other than to say that is not an expression that I have used, I think, or would be likely to use.”⁶¹

Overlap with other agencies

Auditor General

During his hearing with the Committee, the Commissioner agreed with the observation by the JSCCCC Chairman that the greatest overlap of the work of the CCC is with the Auditor General:

*When I say ‘potential overlap’, we are looking at the same thing, of course. There is an obligation on any notifying authority, being a department or local government. I am not sure that the Auditor General would have jurisdiction in relation to local government— I do not think he does, in fact— nor universities, so they would be two quite significant areas where we go where he cannot. But we would be notified of misconduct by the notifying authority immediately that became apparent. The Auditor General does not pursue misconduct as such, of course; the Auditor General reports on discrepancies. So, it is an area of operation where the overlap exists rather than activities of the same kind, so we would not both be conducting investigations into individuals. The Auditor General would not do that.*⁶²

58 Ibid, p3.

59 Ibid, p5.

60 Ibid, p3.

61 Ibid, p4.

62 Ibid, p8.

Chapter 4

Finding 3

The Corruption and Crime Commission's anti-misconduct work has its greatest overlap with the work of the Office of the Auditor General.

While agreeing that the potential existed for an overlap in the work of the CCC and the Auditor General, the Commissioner confirmed that he had yet to have a separate meeting, or arrange regular meetings, between him and the Auditor General. He also agreed with a suggestion from the Committee that such an arrangement would be 'useful' and might have alleviated the situation with regard to the Auditor General's report seven *Fraud Prevention and Detection in the Public Sector*, where there was no formal invitation to the CCC to provide a submission.

Finding 4

As at 26 August 2013, the Corruption and Crime Commissioner had yet to meet with the Auditor General, separate from Integrity Coordinating Group meetings, on the potential overlap in the work of their organisations.

Finding 5

The absence of an arrangement for standalone meetings between the Commissioner and the Auditor General contributed to the Corruption and Crime Commission not having an opportunity to provide a submission to the Auditor General's report *Fraud Prevention and Detection in the Public Sector*.

Recommendation 2

The Corruption and Crime Commission should establish regular standalone meetings with the Auditor General.

Ombudsman

The other agency with which the CCC has some overlap with is the Western Australian Parliamentary Commissioner for Administrative Investigations (Ombudsman). The Ombudsman receives complaints from individuals about administrative decisions made in the public sector, and possible misconduct by the State's public servants. The CCC Commissioner agreed that these were also the types of complaints the Commission received. A Memorandum of Understanding (MOU) between the CCC and the Ombudsman had been completed within two months of the CCC commencing operations on 1 January 2004 (see Appendix Four a copy of the MOU).⁶³

Finding 6

The Corruption and Crime Commission and the Ombudsman signed a Memorandum of Understanding in March 2004.

⁶³ Ibid, p12.

The MOU requires the Ombudsman to notify the CCC as soon as reasonably practicable when it becomes aware of “any matter that it is suspected on reasonable grounds concerns or may concern misconduct of a public officer.”⁶⁴

Unlike the CMC in Queensland which has 18 such agreements, the MOU with the Ombudsman is the only one that the CCC has developed.⁶⁵

Finding 7

This Memorandum of Understanding with the Ombudsman is the only one that the Corruption and Crime Commission has with any member of the Integrity Coordinating Group.

The MOU requires each agency to nominate a liaison officer. Since February 2005 the Commission’s liaison officer has been Mr Roger Watson, Director of Corruption Prevention, while the Ombudsman’s liaison officer is the Assistant Ombudsman Complaint, who is currently Ms Sarah Cowie.⁶⁶ The CCC Commissioner reported to the Committee that there had been no instances where, in accordance with section 9.3 of the MOU, the agencies’ liaison officers have sought to resolve an issue through a formal meeting. Instead, issues that arose in the early years of the MOU’s operation were dealt with through telephone discussion, under the provisions of section 9.1 of the MOU.⁶⁷

The CCC’s MOU with the Ombudsman has not been reviewed since it was completed in 2004. The Commissioner agreed that, while he did not think there have been any problems with the agreement, “if the Committee recommended that we have a look at it, we would have a look at it.”⁶⁸ The Committee’s view is that a decade after its creation, the MOU is overdue for review.

Finding 8

The Memorandum of Understanding between the Corruption and Crime Commission and the Ombudsman has not been reviewed since its creation in 2004.

Recommendation 3

The Corruption and Crime Commission should review its Memorandum of Understanding with the Ombudsman to ensure that it remains current, relevant and minimises the probability of duplication between the agencies.

64 Ibid.

65 Ibid.

66 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 11 September 2013, p2.

67 Ibid, p3.

68 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 26 August 2013, p14.

Chapter 4

Does involvement in the ICG create any conflicts of interest?

In their review of the CMC, Hon Ian Callinan and Professor Aroney highlighted the risk posed by the conflict of interest when “anticorruption agencies are requested or empowered to investigate cases of misconduct in agencies where they have previously provided education or preventative advice, or have undertaken audits of procedures and processes.”⁶⁹

The Committee raised this issue with the CCC Commissioner in terms of the possible diminution of the CCC’s ability to oversight the State’s public sector agencies as a consequence of the relationship the CCC had with them through the ICG. Following his hearing Mr Macknay provided the following information about CCC inquiries into ICG agencies for the period from 1 January 2008 to 1 September 2013:

- *the Commission has undertaken no investigations into alleged misconduct involving staff members from ICG member agencies pursuant to sections 33(1)(a) or (b) of the CCC Act.*
- *in 2012 the Commission conducted one preliminary investigation pursuant to section 32(2) of the CCC Act into alleged misconduct involving a staff member of the Office of the Information Commission. On the basis of this preliminary investigation the Commission decided to take no action under section 33(1)(d) as the complaint was determined, in accordance with section 18(3)(b), to be frivolous or vexatious.*
- *the Commission has referred one misconduct complaint involving a staff member from an ICG agency back to the home agency for investigation. This occurred in 2013 when an allegation of misconduct involving a staff member from the Public Sector Commission was referred back to that agency for investigation under section 33(1)(c) of the CCC Act.*⁷⁰

Finding 9

For the period 1 January 2008 to 1 September 2013, the Corruption and Crime Commission had received two complaints against staff members from Integrity Coordinating Group agencies.

69 Crown Law, *Review of the Crime and Misconduct Act and Related Matters: Report of the Independent Advisory Panel Redacted Version*, Queensland Government, Brisbane, 28 March 2013, p70. Available at: www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2447.pdf. Accessed on 29 October 2013.

70 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 11 September 2013, p2.

Finding 10

Of the two complaints received by the Corruption and Crime Commission, one was determined to be frivolous or vexatious, and the other was referred back to the agency in question.

The Committee is mindful about perceived conflicts of interest in addition to actual conflicts of interest within the ICG. Accordingly, the Committee has determined to inquire further into the CCC's policies and procedures in this respect.

Oversight

While Hon Ian Callinan and Professor Aroney raised a possible risk posed by anti-corruption agencies such as the CCC working closely with other government agencies, the CCC Commissioner countered that this risk was minimised because "we are the subject of a great deal of oversight. It is hard to imagine a body that has more oversight than us."⁷¹

Specifically, Mr Macknay highlighted to the Committee that the current two Parliamentary Inspectors "have both been extremely senior judges who have been Appeal Court judges for much of their time" and that:

*The Parliamentary Inspector has the right to examine any document in the place, can question anybody in the place, can conduct an inquiry and interrogate anyone from the Commissioner down under oath. So in terms of the Parliamentary Inspector, we are utterly transparent.*⁷²

The CCC is also the only member of the ICG that is subject to the oversight of its own joint standing committee. No other member of the ICG has the dual layer of oversight of a parliamentary inspector and a joint standing committee.

Finding 11

The Corruption and Crime Commission is subject to greater structural independent oversight than the other Integrity Coordinating Group agencies.

Conclusion

Commissioner Macknay's view of his involvement within the ICG framework was that "it is quite a mild activity, I have to say."⁷³ A personal benefit was that:

71 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 26 August 2013, p11.

72 Ibid.

73 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 11 September 2013, p11.

Chapter 4

*I have got to know all of the other people [agency heads] to some extent, which I think is really, if not necessary, very useful. There are issues of common concern. We are looking at the same public sector at the same time, so if I am concerned about something it means I can ring somebody up and speak to them without having to introduce myself for the first time— that sort of thing. I think that is intangible, but undeniably useful, with respect.*⁷⁴

The CCC reported that there “is high demand for the Commission’s education programs. Workshops and presentations are delivered to public officers, community members and industry and service groups.”⁷⁵ In 2012-13 the CCC delivered 49 corruption prevention and education presentations and forums to 3,134 public officers and community members in both metropolitan and regional Western Australia.⁷⁶ While it also participates in ICG educational activities, its stand-alone presentations are very successful.

The Committee has not received any evidence that has shown there is a tangible benefit to the CCC’s formal involvement within the ICG, or the time given over to it by the Commissioner and his senior staff. The Committee considers that the Commissioner should evaluate whether it would be more effective for the CCC to have stand-alone meetings with the ICG members relevant to the CCC’s functions, such as the Ombudsman and the Auditor General, as required.

Finding 12

The Corruption and Crime Commission’s regular interaction with the Integrity Coordinating Group is presently an irrelevant factor in its effectiveness at carrying out its responsibilities contained in the *Corruption and Crime Commission Act 2003*.

Recommendation 4

The Corruption and Crime Commission should consider whether it would be more effective for it to have stand-alone meetings with relevant Integrity Coordinating Group agencies, as required.

Recommendation 5

While it continues to participate in the Integrity Coordinating Group, the Corruption and Crime Commission should include its activities and associated costs of this involvement in its annual report.

⁷⁴ Ibid, p13.

⁷⁵ Corruption and Crime Commission, *Annual Report 2012-13*, Perth, 27 September 2013, p7.

⁷⁶ Ibid, p xvii.

Appendix One

Submissions received

Date Received	Name	Position	Organisation
30 September 2013	Mr Alistair Maclean	Chief Executive Officer	Independent Broad-based Anti-corruption Commission, Victoria
15 October 2013	Hon David Ipp AO QC	Commissioner	Independent Commission Against Corruption, NSW
25 October 2013	Dr Den Levy RFD	Acting Chairperson	Crime and Misconduct Commission, Queensland
30 October 2013	Ms Diane Merryfull	Chief Executive Officer	Tasmanian Integrity Commission

Appendix Two

Hearings

Date	Name	Position	Organisation
26 August 2013	Mr Roger Macknay, QC	Commissioner	Corruption and Crime Commission
	Mr Michael Silverstone	Executive Director	

Appendix Three

ICG Work Program Template



The Integrity Coordinating Group
Promoting and Strengthening Integrity in WA Public Bodies

Integrity Coordinating Group

Information Sharing Between ICG Members

The undenoted provides information on ICG activities at 8 August 2012. It includes activities carried out over the past 3 months and/or planned for the next 3 months.

CCC	<p>Last 3 months</p> <p>Police Capacity Development</p> <ul style="list-style-type: none"> • Review of covert policing pursuant to the Prostitution Act 2000 completed. • Review of covert policing pursuant to the Misuse of Drugs Act 1981 completed. • Draft Police Notification Guidelines informing police about reporting misconduct and reviewable police action are completed and with police for comment. <p>Local Government Capacity Development</p> <ul style="list-style-type: none"> • Pilbara review – meeting held with all four local governments in Pilbara region to discuss responses to review. (Town of Port Hedland, Shire of Roebourne, Shire of East Pilbara, Shire of Ashburton). • Commenced drafting review report for tabling in Parliament. • Continued engagement with executive level of local government sector with presentations being made to the Metropolitan Branch of the Local Government Managers Association and the WALGA Great Southern Zone. • As part of the Commissions Regional Outreach visit to Albany and Esperance round table forums for Mayors and ECOs were held to discuss corruption challenges for the sector. In-house Conflict Of Interest workshops were also provided for staff and councillors. • Commenced planning for two new capacity development projects – a Systems-Based Evaluation (SBE) of the City of Stirling's misconduct resistance and a performance review looking at the capacity of local governments to prevent, identify and deal with misconduct risks in procurement. <p>Health Capacity Development</p> <ul style="list-style-type: none"> • Continued drafting of SBE report for the Wheatbelt region of the WA Country Health Service (WACHS). • Continued review of WA Health management of misconduct of misconduct risks associated with procurement activities. • Commenced review and evaluation of Department of Health misconduct management strategy and implementation mechanism. • Commenced review of WA Health handling of unexplained drug losses. <p>Research</p> <ul style="list-style-type: none"> • Continued liaison with Curtin University to develop research tool to measure organisational corruption resistance. • Continued collaborative research with Murdoch University. Research overview presented at the Misconduct Resistance Practitioners Forum held at the Pan Pacific on 7 August. • Developed CCC collaborative research framework with support protocols and policies and now implemented. • Continued evaluation of the effectiveness of WAPOL oversight system for use of force matters.
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	<ul style="list-style-type: none"> Public Sector Misconduct Awareness Survey conducted with all public sector agencies and local governments. The report is due on 9 August 2012. Other Misconduct Perception Surveys developed to be used as part of the SBE process within various public sector agencies and local government. <p>Development</p> <ul style="list-style-type: none"> Conducted review and rewrite of 'Report Misconduct' forms for print and for online. Conducted review of key CCC external communications materials (brochures and fact sheets), and developed new draft content for: <ul style="list-style-type: none"> How to report misconduct to the CCC Making a complaint about a police officer How the CCC deals with misconduct What is misconduct? Who is a public officer? Report Misconduct (hard copy print form) Report Misconduct (interactive online form) <p><u>Next 3 months</u></p> <p>Police Capacity Development</p> <ul style="list-style-type: none"> Finalise and publish Police Notification Guidelines. Commence systems based review of WAPOL Human Resources portfolio. <p>Local Government Capacity Development</p> <ul style="list-style-type: none"> Complete evaluation of City of Stirling's misconduct resistance and commence drafting report. Commenced planning and background research for a Systems-Based Evaluation of the Town of Cottesloe's misconduct resistance. Engaged independent firm and commenced the internal review and audit of the procurement policies, procedures and practices at the five targeted metropolitan local governments. <p>Health Capacity Development</p> <ul style="list-style-type: none"> Complete review of DOH handling of unexplained drug losses. Finalise and disseminate SBE report for the Wheatbelt region of the WA Country Health Service (WACHS). Commence drafting of consolidated report on findings from the WA Health SBEs for tabling in Parliament. Develop program of Systems Based Reviews and Evaluations. Continue procurement and tendering audit project Continue review and evaluation of DOH misconduct management strategy and implementation mechanism. <p>Research</p> <ul style="list-style-type: none"> Publish preliminary paper on Murdoch research project findings end of August 2012. Development of draft report on research into Taser use at DCS. Draft report still being developed. Engaged with Prof David Pick and Dr Theodora Issa at Curtin Business School in collaborative research discussions on "gauging organisational ethical health". Additional meeting with David and Theodora identified the need to develop an instrument to do a pilot test with few organisations. Mark Loves from University of Wollongong approved to conduct research into "Police who Investigate Police". Planned environmental scan to be conducted about misconduct within the public sector.
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	<p>Development</p> <ul style="list-style-type: none"> • Design, production and distribution of new CCC print materials (brochures and fact sheets). • Completion of new website navigational architecture design. <p>Completion of technical development of online case study library website design.</p>
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Appendix Four

MOU between CCC and the Ombudsman

1 Application

This is a Memorandum of Understanding ("MoU") between the Corruption and Crime Commission ("CCC") and the Parliamentary Commissioner for Administrative Investigations ("Ombudsman").

The objective of this MoU is to establish and maintain a constructive and co-operative working relationship between the CCC and the Ombudsman by:

- providing a framework to clarify the oversight responsibilities of the CCC and the Ombudsman in relation to investigations concerning the Western Australia Public Sector (including the WA Police Service, "WAPS"), and
- establishing protocols for the exchange of information between the CCC and the Ombudsman on matters of mutual interest relevant to the functions of the respective agencies.

2 Definitions

"agency" means the CCC or the Ombudsman as the case may be

"agency caveat" means a restriction placed on information by the originating agency which prohibits the provision of the information to any other person or entity outside the agency unless required by law

"appropriate authority" means 'appropriate authority' as defined in section 3 of the *Corruption and Crime Commission Act 2003*

"independent agency" includes the Ombudsman and means 'independent agency' as defined in section 3 of the *Corruption and Crime Commission Act 2003*

"CCC Act" means the *Corruption and Crime Commission Act 2003*

"misconduct" means misconduct as defined in section 4 of the *Corruption and Crime Commission Act 2003*

"PC Act" means the *Parliamentary Commissioner Act 1971*

"reviewable police action" means reviewable police action as defined in section 3 of the *Corruption and Crime Commission Act 2003*

3 Authority to enter into a MoU

- 3.1 The CCC derives its authority to consult and exchange information from sections 18(g), 22(2), 32(3), 24(2) and 43(2) of the CCC Act.
- 3.2 The Ombudsman derives its authority to consult and exchange information with the CCC from sections 22A and 22B of the PC Act.

4 Basis for complaints mechanism

The basis for the system of handling complaints against public officers and members of WAPS is found in:

- 4.1 Section 18 of the CCC Act which empowers the CCC to deal with misconduct by public officers (including WAPS). The CCC has to be notified by the Commissioner of Police of reviewable police action pursuant to section 21A of the CCC Act and the CCC is empowered to deal with these matters.
- 4.2 Section 14(1) of the PC Act whereby the Ombudsman has the obligation to investigate (subject to the provisions of that Act) any decision, recommendation, act or omission done, that relates to a matter of administration and affects any person in his or her personal capacity in or by any department or authority to which the PC Act applies, and
- 4.3 Section 4A(1)(a)(b), (c), (d) and (e) of the PC Act which provides that an authority for the purposes of the PC Act is the "Police Force of Western Australia" and other general and specified public authorities that employ public officers.

5 Notification requirements and powers of inter-agency referral of complaints for investigation

Ombudsman's duty to notify the CCC: section 28 of the CCC Act

- 5.1 The Ombudsman will, in writing, notify the CCC as soon as is reasonably practicable after becoming aware of any matter which is of relevance or concern to the Ombudsman in her official capacity, and is suspected, on reasonable grounds, concerns or may concern misconduct by a public officer.
- 5.3 Once the Ombudsman has notified the CCC of a misconduct allegation, the Ombudsman will not after advising the complainant take any further action in relation to the allegation unless the matter is formally referred to the Ombudsman by the CCC or the Ombudsman is notified that the CCC intends to take no further action.

- 5.4 When the CCC has assessed a matter referred by the Ombudsman, the CCC agrees to notify the Ombudsman in writing, as soon as practicable, whether action is or is not to be taken by the CCC.
- 5.5 The Ombudsman retains jurisdiction over any act done or omitted to be done that relates to a matter of administration and there is no duty to notify the CCC in relation to these matters. The Ombudsman AGREES to consult freely with the CCC about administrative investigations in relation to public officers (including WAPS) on the basis that these investigations may provide a source of information that is of interest to the CCC. Similarly, the CCC AGREES to consult with the Ombudsman about matters under CCC investigation that may contain matters of administration on the basis that they may provide a source of information that is of interest to the Ombudsman.

Further action by the CCC

- 5.6 Upon receipt of notification of an allegation from the Ombudsman, the CCC will deal with the allegation by assessing it, forming an opinion under section 22 of the CCC Act and making a decision under section 33 of the CCC Act.
- 5.7 The CCC will determine whether further action is needed in relation to the allegation and, if so, whether in co-operation with, or by which independent agency or appropriate authority that further action shall be carried out.
- 5.8 Where an allegation is received by the CCC, it may refer the matter to the Ombudsman for further action or take action in co-operation with the Ombudsman. Allegations that are purely administrative will be referred to the Ombudsman.
- 5.9 Before deciding to refer any matter to the Ombudsman, the CCC will first consult with the Ombudsman.
- 5.10 Where the CCC has referred a matter to the Ombudsman for further action but then decides to carry out another further action, the CCC will advise the Ombudsman through the liaison function unless the Ombudsman has requested that the CCC carry out such further action.
- 5.11 Where the CCC refers a matter to the Ombudsman, such reference will be treated by the Ombudsman as if it were a complaint duly made under section 17 of the PC Act.
- 5.12 The CCC may make recommendations to the Ombudsman about the taking of action or the consideration of matters it considers appropriate.

Complainant to be advised

- 5.13 The complainant in the matter shall be advised, as soon as practicable, as to which agency will have conduct of the allegation or if no further action is to be taken by that agency. Responsibility for this advice rests with the agency that has conduct of the matter.

6 Consultation

The Ombudsman AGREES to consult with the CCC and provide information about any action taken in relation to an allegation referred to the Ombudsman by the CCC as soon as practicable.

7 Information exchange

Request for information

- 7.1 Each agency may request the other agency to provide information where such information is relevant to the respective functions of that agency.
- 7.2 A request for information must be in writing and signed by a manager of the agency. An urgent request for information may be made by telephone or in person PROVIDED THAT the request is confirmed in writing as soon as practicable thereafter.
- 7.3 Requests for information are to be directed to the agency staff member dealing with the file or where that person is not known, to the nominated liaison officer of each agency.

Provision of information

- 7.4 Where an agency staff member receives a request for information, that information will be provided in accordance with this MoU SUBJECT TO:
- any statutory requirement
 - any agency caveats
 - resource availability, and
 - any undertaking of confidentiality given to any person by the agency.

Storage and Destruction of Information

- 7.5 The issuing agency is to specify any security considerations relevant to information that it provides and whether the information is to be returned when no longer required. The receiving agency AGREES to secure such information in accordance with such specifications.

- 7.6 Information that is no longer required by the receiving agency, shall be returned or destroyed in accordance with the provisions of the *State Records Act 2000* and/or the retention and disposal schedule in place with the receiving agency.

8 Confidentiality and privacy considerations

- 8.1 Information received will be treated in accordance with the legislative obligations of each agency.
- 8.2 Where information received is subject to an agency caveat, the information shall not be disseminated in any manner contrary to the requirements set out in the caveat except as may be required by law.

9 CCC and Ombudsman liaison

Liaison Officers

- 9.1 Each agency will nominate an officer or officers to act as liaison officer or officers whose role will include:
- The facilitation of information exchange between the two agencies will be congruent with any relevant statutory provisions about disclosure and this MoU, and
 - The provision of clarification for staff members as required in relation to the operation of the MoU and generally about the involvement of either agency in any matter.
- 9.2 Any significant policy or procedural issues are to be referred to the CCC Director Operations and the Assistant Ombudsman. Agencies will be advised of any change in the liaison officers.

Other issues

- 9.3 Where issues arise between the CCC and the Ombudsman in relation to any matter arising under this MoU, the parties will seek to resolve the issue, in the first instance, through a formal meeting between liaison officers.
- 9.4 Where necessary, the issue or issues may be referred to the CCC Director Operations and the Assistant Ombudsman, or to the Ombudsman and the Corruption and Crime Commissioner.

10 Honour clause

This MoU is an expression of the purpose and intention of the parties, which is binding in honour only EXCEPT where legislative obligations exist. It is not intended that the MoU give rise to any legal relationship, rights, duties, or consequences, or be the subject of litigation.

11 Amendment or variation

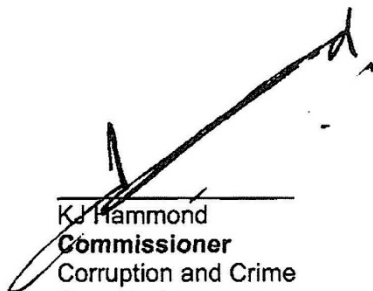
This MoU may be amended or varied following written agreement between the Corruption and Crime Commissioner and the Ombudsman.

12 Termination

This MoU will remain in effect until terminated in writing by either the Corruption and Crime Commissioner or the Ombudsman.

13 Date of effect

This MoU comes into effect on the date which it is signed by both the Corruption and Crime Commissioner and the Ombudsman.


K.J. Hammond
Commissioner
Corruption and Crime
Commission


D O'Donnell
Parliamentary Commissioner
for Administrative Investigations

8 March 2024
Date

5 March 2024
Date

Appendix Five

Overview of Western Australian Integrity Agencies and Statutory Accountability Provisions⁷⁷

⁷⁷ Hon Wayne Martin AC QC, 'Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government', 2013 Whitmore Lecture, Sydney, 1 August 2013, pp42-43. Available: www.supremecourt.wa.gov.au/files/Whitmore%20Lecture%202013%20Chief%20Justice%20Martin%201%20Aug%202013.pdf. Accessed on 9 October 2013,

Statutory Accountability Provisions⁷⁸	Appointment	Direction by Minister	Confidentiality	Auditor General⁷⁹	Ombudsman	FOI
Auditor General (Auditor General Act 2006 – AG Act)	Appointed by, and sworn before, the Governor on recommendation of the Minister after consulting relevant Parliamentary Committees and party leaders. Term of 10 years (Schedule 1, cl 1)	Is deemed CEO under PSM Act (s 4) but Auditor General cannot be directed by responsible authority under PSM Act s 32 (s 9 AG Act). Minister can require that information about an agency not disclosed to Parliament not be disclosed by Auditor General (s 37)	Information confidential except for purposes of, or proceedings under, Act, other written law or Criminal Code, if in relation to three named committees (s 46) or if in the State's interests and would not compromise Auditor General's independence (s 23)	Independently audited (Part 5) and see also Financial Management Act, Schedule 3	Exempt other than as CEO of Office of the Auditor General: PC Act, Schedule 1	Exempt (including the Office of the Auditor General): FOI Act, Schedule 2
Ombudsman (Parliamentary Commissioner Act 1971 – PC Act)	Appointed by Governor, term of 5 years (s 5); oath administered by the Speaker (s 8)	Not deemed to be CEO under PSM Act or regulations so cannot be directed by Minister	Investigations to be conducted in private (s 19). Can direct that correspondence not be disclosed (s 23). May disclose information to Inspector Custodial Services, DPP, CCYP, CCC and Parliamentary Inspector but otherwise not disclosed except for the purposes of an investigation or report under the Act, for proceedings for perjury or offences under the Act (ss 22B, 23) or if in the public interest to disclose to "any person or to the public or a section of the public" (s 23).	Not exempt - Financial Management Act, s 5	Does not apply: PC Act, Schedule 1	Exempt: FOI Act, Schedule 2
Information Commissioner (Freedom of Information Act 1982 – FOI Act)	Appointed by Governor up to 7 years (s 56); oath administered by Speaker of the Legislative Assembly (s 60)	Not deemed to be CEO under PSM Act or regulations so cannot be directed by Minister	No disclosure of confidential information other than for the purposes of or proceedings under this or another written law (s 82)	Not exempt - Financial Management Act, s 5	Does not apply: PC Act, Schedule 1	Exempt: FOI Act, Schedule 2
Public Sector Commissioner (Public Sector Management Act 1994 – PSM Act)	Appointed by Governor for 5 year term, on recommendation of Minister after consulting the parliamentary leader of each party (s 17); declaration before Governor prior to commencement (s 17)	Is deemed to be a CEO under s 4 of PSM Act but is to act independently, is not subject to lawful direction by Minister other than under PSM Act although s 32 does not apply (s 22). Can be directed to hold special inquiries and reviews and on establishment/abolition of departments but Commissioner can decline direction on inquiries and reviews (ss 24B, 24H, 35)	No special provisions; general confidentiality applies	Not exempt - a department	Exempt other than as CEO of the department of the Public Service: PC Act, Schedule 1	Not exempt
Inspector of Custodial Services (Inspector of Custodial Services Act 2003 – ICS Act)	Inspector is appointed by the Governor for not more than 7 years (s 6); oath administered by Governor (s 8)	Is deemed CEO under PSM regulations (r 4A) so would be subject to direction by Minister, but ICS Act states only subject to direction as under s 17 ICS Act (s 17) – Minister can direct inspections, reviews and generally but Inspector can decline (s 17)	May direct non-disclosure of OICS documents (s 48). Non-disclosure of information obtained except in performance of the Inspector's functions; for consultations with CCC, DPP and Ombudsman; if in the Inspector's opinion it is in the public interest or in proceedings for perjury or offence under Act (ss 44-47)	Not exempt – a department and see s 63	Does not apply: PC Act, Schedule 1	Exempt: FOI Act, Schedule 2
Corruption & Crime Commission (CCC) (Corruption and Crime Commission Act 2003 – CCC Act)	Commissioner appointed on recommendation of Premier by Governor, after referral of three eligible persons by nominating committee (Chief Justice, Chief Judge and community representative) and supported by Standing Committee (s 9); oath to be taken before a Judge (s 15); appointment for a 5 year term (Schedule 2)	Not deemed CEO under PSM Act or regulations so is not subject to direction by Minister	Examinations only to be in public if in the public interest and not an organised crime examination (s 140). No disclosure of restricted matter unless directed by Commission or as part of hearing (s 151), or of official information except for purposes under the Act, prosecutions or disciplinary action in relation to misconduct, Commission certifies it is necessary in the public interest, to either House of Parliament or the Standing Committee, or disclosure to a prescribed authority (s 152). Can consult, cooperate and exchange information with Ombudsman, DPP, Auditor General, Inspector Custodial Services, Public Sector Commissioner, (ss 3, 18(g))	Not exempt - Financial Management Act, Schedule 1 and see s 187	Does not apply: PC Act, Schedule 1	Exempt: FOI Act, Schedule 2
Parliamentary Inspector Corruption & Crime Commission (Corruption and Crime Commission Act 2003 – CCC Act)	Except for the first Parliamentary Inspector, the Inspector is appointed by the Governor on recommendation of Premier from a list of three selected by nominating committee (Chief Justice, Chief Judge and community representative) and supported by Standing Committee (s 189). Oath to be taken before a Judge (s 194); appointment for 5 year term (Schedule 3)	Not deemed CEO under PSM Act or regulations so is not subject to direction by Minister	Inquiries not to be held in public (s 197). Non-disclosure obligation under s 151 applies to Parliamentary Inspector (s 207). No official information to be disclosed except for purposes of Act, for prosecution or disciplinary action relating to misconduct, to either House of parliament or Standing Committee or to prescribed authorities (ss 208, 209)	Not exempt - Financial Management Act, Schedule 1 and see s 216	Does not apply: PC Act, Schedule 1	Exempt: FOI Act, Schedule 2
Commissioner for Children and Young People (Commissioner for Children and Young People Act 2006 – CCYP Act)	Appointed by Governor on recommendation of Premier after consultation with leaders political parties (s 7) for a term up to 5 years (s 9) on oath administered by Governor (s15)	Not deemed CEO under PSM Act or regulations so not subject to direction by Minister generally but is subject to direction under CCYP Act (ss 25, 26). Minister can direct general policy in performing functions but Commissioner can decline (s 26)	No disclosure except for purposes of Act, offence under the Act, the Public Interest Disclosure Act or another written law, with written consent of Minister or person to whom information relates, or statistics (s 60)	Not exempt - taken to be a department for the purposes of the Financial Management Act (Financial Management Regulations, r 3A)	Exempt other than as chief employee under PSM Act: PC Act, Schedule 1	Not exempt

Statutory Accountability Provisions	Public Sector Commission	Corruption & Crime Commission	Other oversight	Judicial Review	Removal
Auditor General (<i>Auditor General Act 2006 – AG Act</i>)	An independent officer of Parliament required to act independently (s 7). Auditor General is not an office in the Public Service and cannot be monitored or investigated by the Public Sector Commissioner or disciplined under the PSM Act (AG Act s 9, PSM Act s 4). Public service officers (or others) can be appointed to the Office of the Auditor General to conduct audits (s 29). The Public Sector Commissioner can undertake reviews or special inquiries under the PSM Act	Not exempt	Required to provide information to the Public Accounts Committee and Estimates and Financial Operations Committee [not dedicated committees for the oversight of Office of the Auditor General]; and the Joint Standing Committee on Audit [dedicated oversight Committee but not established until late 2012] (s 46)	No action or claim for damages lies against the Auditor General for act done or omitted unless malicious and without reasonable and probable cause (s 45)	Suspension by Governor, removal by Parliament (Schedule 1, cl 7)
Ombudsman (<i>Parliamentary Commissioner Act 1971 – PC Act</i>)	Ombudsman and staff are not subject to Part 3 of PSM Act (s 10) so are not part of the Public Service. Can be monitored, reviewed, inquired into or investigated by the Public Sector Commissioner but not disciplined under the PSM Act	Not exempt		Documents to or from the Ombudsman which are specifically prepared in the course of an investigation under the Act are not admissible in proceedings (s 23A); Supreme Court may determine jurisdiction (s 29); no liability or proceedings unless there is evidence of bad faith and with leave of the Supreme Court (s 30); no prerogative writ shall be issued nor proceedings brought seeking one (s 30(3)); except in proceedings for perjury or offence under the Royal Commissions or this Act, Ombudsman and staff not to be called to give evidence or produce document in any judicial proceedings (s 30(4))	Suspension by Governor, removal by Parliament (s 6)
Information Commissioner (<i>Freedom of Information Act 1982 – FOI Act</i>)	Commissioner not Public Service office (s 55) and staff are not employed under Part 3 of the PSM Act (s 61). Can be monitored, reviewed, inquired into or investigated by the Public Sector Commissioner but not disciplined under the PSM Act	Not exempt		No review of decisions except under the FOI Act (s 103); Protection from personal liability if done in good faith (s 80); referrals to Supreme Court on questions of law relating to complaints, and appeals on exemption certificates or change in personal information (s 78, 85)	Suspension by Governor, removal by Parliament (s 58)
Public Sector Commissioner (<i>Public Sector Management Act 1994 – PSM Act</i>)	Commissioner not Public Service office (s 16), but can be monitored, reviewed, inquired into or investigated, but not disciplined, under the PSM Act. Commission staff are public service officers	Not exempt		When conducting special inquiries or investigations has the same protection and immunity as a Judge (ss 241, 24, Schedule 3, cl 6)	Suspension by Governor, removal by Parliament (s 18)
Inspector of Custodial Services (<i>Inspector of Custodial Services Act 2003 – ICS Act</i>)	PSM Act does not apply to the Inspector (s 6) so cannot be monitored, reviewed, inquired into or investigated by the Public Sector Commissioner or disciplined under the PSM Act. However staff are public service officers (s 16)	Not exempt		No action in tort if done in good faith (s 52); no document prepared by or for the Inspector specifically for the purposes of the Inspector is admissible in proceedings (other than offence under ICS Act or perjury) (s 53)	Governor may remove for misbehaviour or incapacity (s 9)
Corruption & Crime Commission (<i>Corruption and Crime Commission Act 2003 – CCC Act</i>)	Not a Public Service office (s 9) and staff are not employed under part 3 of the PSM Act (s 179). Can be monitored, reviewed, inquired into or investigated by the Public Sector Commissioner but not disciplined under the PSM Act	No allegation against Commissioner to be received. (s 27)	Supreme Court to issue search warrants (s 101) and may order registration of assumed identities (s 106); Supreme Court to review detention of an arrested person (s 150). Supreme Court issues listening device warrants (Surveillance Devices Act 1998). Ombudsman inspects telecommunications warrants and authorisations issued to CCC (Telecommunications (Interception and Access) Western Australia Act 1966 and regulations). Parliamentary Inspector (Part 13) audits Act and CCC operations. Standing Committee (Part 13A) functions determined by Parliament and are not justiciable (s 216A)	Commission has same protection and immunity as judge of Supreme Court (s 147); no action in tort if done in good faith (s 219); no civil or criminal liability for purported compliance in good faith with Act (s 221); no prerogative writ in relation to organised crime, exceptional powers, fortifications except with consent of Inspector and after completion of investigation (s 83). Information acquired under the Act cannot be used in Court except for misconduct proceedings (s 152) [NB The CCC has powers to investigate judicial officers if crime sufficient to remove from office (s 27)]	Suspension by Governor, removal by Parliament (s 12)
Parliamentary Inspector CCC (<i>Corruption and Crime Commission Act 2003 – CCC Act</i>)	Not a Public Service office (s 188) and staff are not employed under part 3 of the PSM Act (s 210). Can be monitored, reviewed, inquired into or investigated by the Public Sector Commissioner but not disciplined under the PSM Act	No allegation against the Parliamentary Inspector to be received (s 27)		Information acquired under the Act cannot be used in Court except for misconduct proceedings (s 208) no action in tort if done in good faith (s 219); no civil or criminal liability for purported compliance in good faith with Act (s 221)	Suspension by Governor, removal by Parliament (s 192)
Commissioner for Children and Young People (<i>Commissioner for Children and Young People Act 2006 – CCYP Act</i>)	Commissioner is not a Public Service position (s 6) so cannot be disciplined but can be monitored, reviewed, inquired into or investigated under PSM Act. Staff are appointed under Part 3 PSM Act (s 16) so are public service officers.	Not exempt	Standing Committee (Part 7) – functions determined by Parliament and are not justiciable (s 51)	No action in tort if done in good faith (s 59)	Suspension by Governor, removal by Parliament (s 8)

Appendix Six

Fourth branch of government

Establishment of the doctrine of the separation of powers

The doctrine of the separation of powers between three branches of government (executive, legislature and judiciary) has been the traditional model of Westminster-style government. It was formally adopted into the Constitution of the United States of America in September 1787.⁷⁸ The doctrine was first described by Charles de Secondat (Baron de Montesquieu) in his book *L'Esprit des Lois* (The Spirit of the Laws), which he published with Claudine Guérin de Tencin in 1748.⁷⁹

Dean Wells argues that Montesquieu thought he was describing the British Constitution when he articulated the doctrine of the separation of powers, but claims that the separation is actually clearer in non-Westminster systems (such as the USA) where the executive hasn't been chosen by the legislature.⁸⁰

Development of the concept of the fourth branch of government

In his 2013 Whitmore Lecture, Chief Justice Martin suggested that the use of the term 'fourth branch of government' to describe the various agencies performing integrity functions can be attributed to an article published in 2000 by American Professor, Dr Bruce Ackerman, and given an impetus in a lecture delivered by the Chief Justice of New South Wales, Hon James Spigelman AC, in 2004.⁸¹

In his Harvard Law Review article on whether the American-style of separation of powers should be used as a model for other countries, Professor Ackerman specifically frames the 'bureaucracy' as the fourth branch of government.⁸² He offers that framers of modern constitutions should establish an integrity branch to oversee the country's

78 *United States Constitution*, 31 October 2013. Available at: http://en.wikipedia.org/wiki/United_States_Constitution. Accessed on 5 November 2013.

79 *The Spirit of the Laws*, 5 November 2013. Available at: http://en.wikipedia.org/wiki/The_Spirit_of_the_Laws. Accessed on 5 November 2013.

80 Hon Dean Wells, 'Current Challenges for the Doctrine of the Separation of Powers – The Ghosts in the Machinery of Government', Lecture given at Queensland University of Technology on 26 April 2006, p108, Brisbane, 2006. Available at: <https://lr.law.qut.edu.au/article/download/195/189>. Accessed on 9 October 2013.

81 Hon Wayne Martin AC QC, 'Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government', 2013 Whitmore Lecture, Sydney, 1 August 2013, p14. Available at: www.supremecourt.wa.gov.au/files/Whitmore%20Lecture%202013%20Chief%20Justice%20Martin%201%20Aug%202013.pdf. Accessed on 9 October 2013.

82 Professor Bruce Ackerman, 'New Separation of Powers', *Harvard Law Review*, vol.113, no.3, 2000, p691.

bureaucracy.⁸³ He later outlines the need for a 'fifth branch' - the regulatory branch- to oversee the bureaucratic experts who 'make law' via developing regulations to support legislation.⁸⁴

Justice Spigelman's article on administrative law further develops this proposal for the recognition of a fourth branch of government:

*The integrity branch is concerned to ensure fidelity of government institutions to the purposes for which their powers are conferred. Each of the three recognised branches – legislative, executive and judicial – perform integrity functions in an accepted and distinct manner.*⁸⁵

Justice Spigelman also claims 'integrity' is now a universal governmental function and "a fundamental mechanism of governance, ... equivalent in significance to the legislative, executive or judicial branches" because of the fundamental necessity to ensure that corruption,... is eliminated from government."⁸⁶

The Western Australian Ombudsman, Mr Chris Field, drew upon Justice Spigelman's article to further the case for integrity agencies being described as the fourth branch of government in a paper for the 2012 Australian Institute of Administrative Law National Forum.⁸⁷ Mr Field calls for the recognition of this fourth branch of government due to the creation over the last 40 years of integrity agencies in Western Australia. He calls this development "a profound nature of this change in government" and claims:

*so profound has this change been, to access to administrative justice and procedural remedy on one hand, to the creation of a range of accountability agencies dedicated to integrity protection and promotion on the other, that we have come to suggest a new branch of government.*⁸⁸

83 Ibid, p694.

84 Ibid, p696.

85 Hon J J Spigelman AC, 'The Integrity Branch of Government', *Australian Law Journal*, vol. 78, 2004, p724. Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1809582. Accessed on 5 November 2013.

86 Ibid, p725.

87 Mr Chris Field, 'The Fourth Branch of Government: The Evolution of Integrity Agencies and Enhanced Government Accountability', Paper presented at the 2012 AIAL National Administrative Law Forum, Adelaide, 19-20 July 2012. Available at: www.ombudsman.wa.gov.au/Publications/Documents/speeches/AIAL%202012%20Conference%20Paper%20Chris%20Field%20Final.pdf. Accessed on 6 November 2013.

88 Ibid, p11.

Appendix Seven

Committee's functions and powers

On 21 May 2013 the Legislative Assembly received and read a message from the Legislative Council concurring 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.

