



***JOINT STANDING COMMITTEE
ON THE CORRUPTION AND
CRIME COMMISSION***

**REPORT ON THE HEARING WITH
THE CORRUPTION AND CRIME
COMMISSION ON 05 JULY 2004**

Report No. 1

2004

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Joint Standing Committee on the Corruption and Crime Commission

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Report No. 1

Presented by:

Hon Derrick Tomlinson, MLC

Mr John Hyde, MLA

Laid on the Table of the Legislative Council and Legislative Assembly
on 26 August 2004

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COMMITTEE'S FUNCTIONS AND POWERS

On 13 May 2004 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-292 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.

CHAIRMAN'S FOREWORD

The interim report of the Kennedy Royal Commission¹, dated December 2002 foreshadowed the dissolution of the former Anti-Corruption Commission of Western Australia, an agency politic tasked with combating serious misconduct by public officers. The report concluded:

“...that the identifiable flaws in the structure and powers of the ACC [had] brought about such a lack of public confidence in the processes for the investigation of corrupt and criminal conduct that the establishment of a new permanent body [was] necessary”²

Further, that the new body would be “armed with the additional powers” demonstrated by equivalent interstate anti-corruption bodies as required for the effective performance of their functions.³

The recommendations in respect of the new oversight agency, the “Corruption and Crime Commission”, were in principle, supported by Dr Geoff Gallop, MLA, Premier of Western Australia, in tabling the report in Parliament on 25 February 2003.⁴

The associated legislation, the *Corruption and Crime Commission Act 2003 (CCC Act 2003)*, commenced on 01 January 2004 with the Commission coming into operation on that same day. The Anti-Corruption Commission and the related Parliamentary Joint Standing Committee were dissolved in May of this year.

Unlike the former *Anti-Corruption Commission Act 1988 (ACC Act 1988)*, the *CCC Act 2003* prescribes a number of mechanisms to scrutinise the performance of the functions of the Corruption and Crime Commission. Such prescription relates in part to the Commission’s enhanced investigative powers. Consequentially, the Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) was established by Parliament on 13 May 2004. The Committee is not only tasked with reporting to Parliament on the Commission’s performance but that of the Parliamentary Inspector whose role is to ensure:

“that the CCC’s operations and exercise of powers conform to, and are conducted in accordance with, basic principles underlying the law”⁵

¹ Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct By Western Australian Police Officers, Interim Report, December 2002.

² *Ibid.* p.3.

³ *Ibid.*

⁴ Parliamentary Debates, Western Australian Legislative Assembly, 25 February 2003, p.4551.

⁵ Parliamentary Debates, Western Australian Legislative Assembly, 15 May 2003. p.7862.

The *ACC Act 1988* limited the former Commission to a more investigative, punitive approach to corruption prevention within the public sector. In line with the recommendations of the Kennedy Royal Commission, the *CCC Act 2003* introduces an additional element of preventative intervention, allowing for a more holistic approach to the issue⁶. The JSCCCC will monitor the impact of the relevant legislative provisions quite closely, having particular interest in the links between intelligence, research and education. This focus on prevention has been encapsulated in the Committee's terms of reference.

The four members of which the JSCCCC comprises are all former members of the Joint Standing Committee on the Anti-Corruption Commission. Their appointment is recognition by Parliament of the importance of corporate knowledge in maximising the effectiveness of oversight of the newly appointed Commission.

The Committee is aware of the need to balance accountability requirements with the Inspectorate and Commission's need to retain a level of independence, conduct core business and maintain confidentiality where appropriate. In a report of the former Parliamentary Criminal Justice Committee (PCJC) in Queensland published during the early stages of the then Criminal Justice Commission (CJC) and pertaining specifically to the Commission, the PCJC acknowledged with respect to some of these considerations that:

"[They] could not be reconciled absolutely into a perfect system".

They cited that this was clearly recognised by Mr G. E. Fitzgerald, Chairman of the 1987 Queensland Royal Commission, which resulted in the establishment of the CJC.

Further, that:

*"Any system established must be fluid in its operation, continually responding to the requirements of justice in a particular case; but be institutionally stable through the universal requirements of justice".*⁷

To ensure effective performance and compliance by the Inspectorate and Commission, the Committee has committed considerable resources to the development of a framework for the delivery of its oversight function. Ongoing liaison with the Inspectorate, Commission and regulatory agencies has and will be necessary to reconcile some of the considerations detailed above and minimise duplication by agencies in ensuring accountability. Justice Kennedy referred in the interim report of the Western Australian Police Royal Commission to the process of "evolution of agencies tasked with corruption and crime prevention" being linked to "the particular

⁶ Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct By Western Australian Police Officers, Interim Report, December 2002, p.106.

⁷ Legislative Assembly of Queensland, Parliamentary Criminal Justice Committee, *Review of the Operations of the Parliamentary Criminal Justice Committee and Criminal Justice Commission*, 03 December 1991, p.44.

needs in each jurisdiction”⁸. The Committee is cognisant of the fact that that any system of oversight needs to have an element of flexibility to account for changes in operation to meet the needs of the locality.

As with the former Joint Standing Committee on the Anti-Corruption Commission, the JSCCCC will hold regular hearings with the Commission, including the Commissioner, Directors and other relevant staff of the CCC as required. Similar hearings will be held with the Parliamentary Inspector, to be reported on separately.

HON DERRICK TOMLINSON, MLC
CHAIRMAN

⁸ Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct By Western Australian Police Officers, Interim Report, December 2002, p.9.

ABBREVIATIONS AND ACRONYMS

“ <i>ACC Act</i> ”	Anti-Corruption Commission Act 2003
“ACC”	Anti-Corruption Commission
“APM”	Australian Police Medal
“ <i>CCC Act</i> ”	Corruption and Crime Commission Act 2003
“CCC”	Corruption and Crime Commission
“CJC”	(former) Criminal Justice Commission
“DPP”	Director of Public Prosecutions
“IAU”	(Police) Internal Affairs Unit
“IT”	Information Technology
“JSCACC”	Joint Standing Committee on the Anti-Corruption Commission
“JSCCCC”	Joint Standing Committee on the Corruption and Crime Commission
“MLA”	Member of the Legislative Assembly
“MLC”	Member of the Legislative Council
“PCJC”	Parliamentary Criminal Justice Committee
“QC”	Queen’s Counsel
“TI”	Telecommunications Interception

GLOSSARY

“Complaint”

Allegations of misconduct made orally or in writing directly to the CCC and not through a “notifying authority” as defined under section 3 of the *Corruption and Crime Commission Act 2003*.

“Notification”

Allegations of misconduct notified to the CCC in writing by a “notifying authority”, as defined under section 3 of the *Corruption and Crime Commission Act 2003*

CHAPTER 1 INTRODUCTION

1.1 Background

The Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) convened a hearing with the Corruption and Crime Commission (CCC) on 05 July 2004. The Commission was required to respond to issues raised by its predecessor, the Anti-Corruption Commission (ACC), and to other matters discussed at a hearing with the Joint Standing Committee on the Anti-Corruption Commission (JSCACC) on 29 March this year⁹. These were phrased as questions on notice to the CCC. The JSCCCC notes that some of the concerns raised by the ACC may reflect problems inherent in transition from one agency to another and the establishment of an authority of the complexity of the CCC. Mr Hammond, Commissioner, CCC (herein known as “the Commissioner”) reflects upon this when he claims that despite some “tension”, “goodwill” on the part of both Commissions, following dissolution of the ACC in May 2004, enabled a reasonably “smooth” transition¹⁰.

The Committee recognises that its ability to access significant “reporting data”, either qualitative or quantitative, is hampered by the recency of the Commission’s establishment. As the Commissioner noted in his opening statement, “the first six months of this organisation has seen a necessary focus on both people and resource issues....the next nine months ending in April next year...will be a period of consolidation”, in which he refers to continued systems development¹¹. The Committee is conscious of the need to provide the Commission sufficient leeway to implement and test the latter. The JSCCCC is also aware that it will be some time before useful comparative data is available.

The Commissioner and the majority of the directorate tendered evidence at the hearing, details of witnesses are provided at Appendix One. Their presence enabled the Committee to obtain more detailed information on the conduct of the Commission’s operations and the overall governance structure.

A transcript of the hearing is available on the Parliamentary website at www.parliament.wa.gov.au.

⁹ Legislative Assembly of Western Australia, Joint Standing Committee on the Anti-Corruption Commission, *Report on the Hearing with the Anti-Corruption Commission on 29 March 2004*, Report No.8, 13 May 2004.

¹⁰ Mr Hammond, Commissioner, CCC, Transcript of Evidence, 05 July 2004, p.3.

¹¹ *Ibid*, p.4.

1.2 Response to matters raised at hearing with the Anti-Corruption Commission on 29 March 2004

(i) *Loss of investment*

The ACC expressed concern that its dissolution would result in a loss of investment in the event that corporate knowledge and infrastructure were not transferred to the CCC.

The allegations related to:

- minimal employment of ACC staff;
- failure to adopt the ACC's information technology (IT) and document handling facilities;
- incompatibility of the IT system adopted by the CCC; and
- confusion around the transfer of the ACC's Telecommunications Interception facilities¹².

In his opening statement, the Commissioner premised his response regarding recruitment of ACC staff by stating that necessary compliance with public sector standards in human resource management, had caused notable delay in the employment of staff. Further, that the responses for advertised positions were considerable in number, citing 700 applications for 60 positions. He detailed that a significant number of the current staffing contingent were former ACC employees on either short or long term appointments¹³.

The Commissioner refuted ACC comments in relation to the ACC and CCC's IT systems, stating that the Commission had worked "tirelessly" on systems integration¹⁴. Maintenance of access to the ACC and Royal Commission's (RC) data base had been secured through immediate appointment of the ACC's Systems and Security Administrator as Manager Information Technology and subsequently, an ACC Contract Support Officer¹⁵. Mr Silverstone, Executive Director, detailed that the CCC will develop a tailored document management system and has sought tenders in relation to an assessment of the Commission's overall IT requirements. In response to

¹² Transcript of Evidence, 29 March 2004, pp.4, 9-12.

¹³ Mr Hammond, Commissioner, CCC, Transcript of Evidence, 05 July 2004, pp. 2-3.

¹⁴ *Ibid.* p.3.

¹⁵ Mr Hammond, Commissioner and Mr Silverstone, Executive Director, CCC, Transcript of Evidence, 05 July 2004, pp. 3/6.

a query of the Committee, he said he envisaged that no additional funding would be secured to achieve the latter¹⁶.

Mr Silverstone acknowledged the level of investment in the ACC's Telecommunications Interception (TI) capacity and concerns regarding its utilisation by the CCC. However, he detailed that technical considerations could render the system inappropriate for the Commission's use. This included:

- problems with access to "call data" necessary for "assisting and monitoring";
- issues of security and inflexibility of the system by nature of the parent company, responsible for the development and maintenance of the system, being foreign owned; and
- an inadequate "path to future technology".

In essence, he noted that the Commission would be required to spend an additional \$60,000 to access a major telephone operating systems data, however that security concerns and delays for even minor upgrades would continue to occur given foreign involvement. It was viewed that such delays could not be circumvented, based on the Commission's inability to access the system using its "in-house technical capacity"¹⁷.

The JSCCCC questioned whether the Commission would be able to divest itself of these obstacles¹⁸. Mr Silverstone responded that although the Commission was undertaking an evaluation of the system, they were not satisfied that they could address them all. The Commission has budgeted for a replacement system if required¹⁹.

With respect to the remaining assets of the ACC, the Commissioner detailed that these had been "subject to inventory" and would be transferred when the CCC accesses more permanent accommodation²⁰.

(ii) *Establishment of a joint Telecommunications facility*

The JSCACC previously noted that Police had been funded for a Telecommunications Interception capacity. The ACC detailed that the Government was considering a joint facility between Police and the Commission, with the former Chairman of the ACC,

¹⁶ Mr Silverstone, Executive Director, CCC, Transcript of Evidence, 05 July 2004, pp.6-7.

¹⁷ *Ibid.* pp.7-8.

¹⁸ Transcript of Evidence, 05 July 2004, p.8.

¹⁹ Mr Silverstone, Executive Director, CCC, Transcript of Evidence, 05 July 2004, p.8.

²⁰ Mr Hammond, Commissioner, CCC, Transcript of Evidence, 05 July 2004, p.3.

Mr Terence O'Connor QC, inferring that the decision lay largely with the CCC²¹. Although this question was not pursued specifically at the 05 July hearing, it was noted that the systems remain separate and as indicated by Mr Silverstone, there are significant technical difficulties requiring consideration at this time²². Whether the evaluation encompasses an assessment of the suitability of a joint system may require further investigation by the Committee.

The Committee did however explore whether the existence of two systems would result in duplication in the monitoring of targets or other operational concerns²³. Mr Silverstone indicated that this may be unavoidable given that agencies engage TI for their own purposes and further, that it may be necessary to refrain from disclosing to the Police Service the nature of police targets²⁴.

Mr Watson, Acting Manager, Investigations Review and Complaints Assessment detailed that the Commission is informed by the Police Internal Affairs Unit (IAU), on a weekly basis, of their "investigating resource priorities" in relation to "their particular targets". Although the exchange of information is not two-way, he viewed that it ameliorates some duplication in investigation²⁵.

(iii) Closure of files on transfer to the CCC

The ACC informed the JSCACC that it had endeavoured to close a number of investigations in order to reduce the pressure on the CCC during its establishment phase²⁶. The JSCACC confirmed with the CCC that the recent transfer of 525 matters by the Parliamentary Commissioner for Administrative Investigations (Ombudsman) were allegations on which a response was being sought from the Police Service. The Committee queried the volume of matters, whether it was attributable to misplacement of files within the police system and if Police IAU had endeavoured to close files for transfer²⁷. Mr Watson cited that the Ombudsman's jurisdiction ceased on 01 January which prohibited closure of files post that date, that historically this was not a high number and that it included many minor matters. Positive comments were made in relation to the Ombudsman's closure and transfer of relevant files²⁸.

²¹ Transcript of Evidence, 29 March 2004, p.4.

²² Mr Silverstone, Executive Director, CCC, Transcript of Evidence, 05 July 2004, p.7.

²³ Transcript of Evidence, 05 July 2004, p.7.

²⁴ Mr Silverstone, Executive Director, CCC, Transcript of Evidence, 05 July 2004, p.7.

²⁵ Mr Watson, A/Manager Investigations Review and Complaints Assessment, CCC, Transcript of Evidence, 05 July 2004, p.7.

²⁶ Chairman O'Connor QC, ACC, Transcript of Evidence, 29 March 2004, p.2.

²⁷ Transcript of Evidence, 05 July 2004, p.9.

²⁸ Mr Watson, A/Manager Investigations Review and Complaints Assessment, CCC, Transcript of Evidence, 05 July 2004, p.9.

Mr Watson was unable to comment on whether files, in the past, had been misplaced within the Police Service, however cited that a police internal investigation took a considerable time to complete. Unable to confirm exact figures at the hearing, he felt that the average time taken was approximately 9 months, with 40-50% of matters, categorised as local complaint resolutions, taking a month rather than the expected one week to complete²⁹. The Committee noted that devolution of minor matters to the districts under the Delta Program was intended to make local command more responsible for its own troops and enable the IAU to deal with more serious matters, however mooted whether it had resulted in the system becoming more “bureaucratised”³⁰. Mr Watson noted the effectiveness of devolution in terms of management willingness to address misconduct of assigned officers, however said that with an organisation the size of the Police Service, it is about balancing “control versus efficiency”. In his opinion the initiative has been a “spectacular success” despite some districts operating more effectively than others³¹.

The Committee indicated that timeliness of the completion of investigations, particularly by the IAU, was a concern on which it would seek further information at the next hearing³².

As an addendum to this discussion, the Committee queried the timely clearance of minor, frivolous or vexatious matters³³. Mr Watson reminded Members of the Commission’s ability to dispose of these allegations under section 18 (3) of the Act. However, Mr Watson qualified this statement in noting the right of a complainant to a bona fide complaint, the need for police to deal with matters in a “transparent” and “accountable” manner and in the case of minor matters, if unaddressed, progression to more serious forms of misconduct³⁴. The Committee endorsed the latter, noting that “[t]he gathering together of information and intelligence about seemingly trivial matters sometimes exposes a problem that simply might be an attitude of management or command structure within a particular location; however, it can, as...indicated, lead to the emergence of more serious matters”³⁵. Further, complaints not satisfactorily addressed, can have ramifications on a person’s ability to function effectively at a later date³⁶. The Commission has adopted a policy that repeat complainants are able to

²⁹ *Ibid*, p.10.

³⁰ Transcript of Evidence, 05 July 2004, p.10.

³¹ Mr Watson, A/Manager, Investigations Review and Complaints Assessment, CCC, Transcript of Evidence, 05 July 2004, p.10.

³² Transcript of Evidence, 05 July 2004, p.10.

³³ *Ibid*, p.11.

³⁴ Mr Watson, A/Manager, Investigations Review and Complaints Assessment, CCC, Transcript of Evidence, 05 July 2004, p.11/14.

³⁵ Transcript of Evidence, 05 July 2004, p.12.

³⁶ *Ibid*, p.13/14.

make “bona fide and valid complaints”. This is supported by a process of internal peer review and in turn, recourse to the Office of the Parliamentary Inspector³⁷.

Mr Watson informed members that these type of complaints do not generally consume significant CCC resources³⁸.

(iv) Low levels of complaints by individuals

The ACC reported low levels of complaint by individuals, a total of 8% for the period 1 July - 30 December 2003³⁹. The CCC noted that possibly 30-50% of the 801 matters received since its commencement were complaints as distinct from notifications. The Commission indicated that they would be able to provide the Committee with more specific figures once the integration of systems had occurred⁴⁰.

(v) Low level reporting on misconduct in local government

The ACC, at the 29 March 2004 hearing, detailed low levels of reporting in respect to misconduct in local government, a total of 11 % for the period 1 July - 31 December 2003⁴¹. The former JSCACC queried reporting levels, given the focus on local government both within the media and Government established boards of inquiry. Ms Rayner, former Commissioner of the ACC viewed improper conduct within local government as a systemic issue arising from “conflicts of interest”, and saw a need to “implement proper checks and balances on the use of powers and discretions by officers and councillors” and conduct joint education with local government⁴². The Committee, like Ms Rayner, expressed concern at what it referred to as a person acting on their “unofficial job statement”, that is undertaking inappropriate behaviour that is “acknowledged, understood and sanctioned”. The JSCCCC viewed that the focus required, not only with local government but the broader public sector, has to do with changing the core value system of the organisation⁴³.

³⁷ Mr Watson, A/Manager, Investigations Review and Complaints Assessment, CCC, Transcript of Evidence, 05 July 2004, p.14.

³⁸ *Ibid*, p.11.

³⁹ Legislative Assembly of Western Australia, Joint Standing Committee on the Anti-Corruption Commission, *Report on the Hearing with the Anti-Corruption Commission on 29 March 2004*, Report No.8, 13 May 2004, p.29.

⁴⁰ Mr Watson, A/Manager, Investigations Review and Complaints Assessment, CCC, Transcript of Evidence, 05 July 2004, p.13.

⁴¹ Legislative Assembly of Western Australia, Joint Standing Committee on the Anti-Corruption Commission, *Report on the Hearing with the Anti-Corruption Commission on 29 March 2004*, Report No.8, 13 May 2004, p.29.

⁴² Transcript of Evidence, 29 March 2004, pp.5-6.

⁴³ Transcript of Evidence, 05 July 2004, pp.15-17

The Commissioner in his opening statement detailed that the CCC had not reached “any concluded view” as to the level of corruption within local government as a whole, although cited that it would be the subject of “intense activity” by the Corruption Prevention, Education and Research Directorate⁴⁴. The Directorate informed the Committee that local government had been prioritised for intervention, together with the Departments of Health, Education and Training, Justice and the Western Australia Police Service. Research has commenced regarding issues confronting local government and the availability of relevant educational programs⁴⁵.

An issue raised by a member of the Committee pertained to alleged “unprecedented powers” granted to Chief Executive Officers of Councils under the *Local Government Act 1995* and a subsequent amendment to that Act, dated 1997. The Member informed the hearing that concern had been expressed by Mayors and Councillors that within the legislation there is a marked absence of the required “checks and balances” on the power of the Chief Executive Officer, and that perhaps an examination of these provisions was required⁴⁶.

The Commission cited that at local government targeted outreach activities, employees had been encouraged to report misconduct, with reassurance provided to those concerned, that feedback would occur in relation to complaint matters⁴⁷. The Committee highlighted the need for local government employees to understand that the ethos behind lodging a complaint does not relate to receiving a “report card” on the outcome⁴⁸, although the JSCCCC does acknowledge that in certain circumstances, the Act makes provision for notification⁴⁹.

The ACC had cited that inadequate investigative resources within the Department of Local Government and Regional Development had hindered the examination of complaints⁵⁰. The CCC notes that local government staff had confirmed the latter and that it was a matter they were assessing⁵¹.

(vi) *Wrongful or inappropriate access to computers by Police.*

In information submitted both during and post hearing, the ACC detailed that despite sustained advice from the Commission, the Police Service had “not instituted adequate

⁴⁴ Mr Hammond, Commissioner, CCC, Transcript of Evidence, 05 July 2004, p.4.

⁴⁵ Dr Froyland, Director Corruption Prevention, Education and Research, Transcript of Evidence, 05 July 2004, p.15.

⁴⁶ Transcript of Evidence, 05 July 2004, p.16.

⁴⁷ Mr Hammond, Commissioner, CCC, Transcript of Evidence, 05 July 2004, p.15.

⁴⁸ Transcript of Evidence, 05 July 2004, p.17.

⁴⁹ *CCC Act 2003*, Section 35.

⁵⁰ Chairman O’Connor QC, ACC, Transcript of Evidence, 29 March 2004, p.5.

⁵¹ Mr Hammond, Commissioner, CCC, Transcript of Evidence, 05 July 2004, p. 15.

prevention strategies to combat unauthorised and improper access to, and disclosure of confidential information”⁵². The Committee acknowledged the recommendations of the Kennedy Royal Commission in relation to the Police Service, notably being an improved system of control of access to its computer data, stronger penalties for breach, and amendment of the legislation to “clarify the ambit of criminal culpability for unauthorised disclosure”⁵³. The Committee assumed that this issue would be dealt with under the External Audit of the Reform Process, the audit framework for implementation of the recommendations of the Royal Commission, overseen by the CCC. However, the Committee queried the CCC’s plans in relation to this issue⁵⁴.

Mr Silverstone stated that given that the CCC are in the process of establishing “processes and procedures” it was too early to confirm how this would be addressed. He noted that although conscious of the RC recommendations, the proposals were expensive and would have a “long gestation period” in terms of developing processes that “address cultural change”. The Western Australia Police Service has a number of information technology projects in train at the moment. Mr Silverstone detailed that the CCC’s investigative and complaints assessment processes would be developed, in part, to focus on unauthorised access and to monitor the impact of the recommendations of the RC⁵⁵.

(vii) Differences in outcomes for Police compared to general public officers

Data provided by the ACC at the last hearing indicated that public officers were more likely to face criminal charges than Police, who generally faced disciplinary or administrative action⁵⁶. This related to a variety of reasons outlined in the 29 March report of the JSCACC. The Commission detailed that they either have, or intend to, undertake a range of measures to address this issue, including:

- Liaising with Police Commissioner Karl O’Callaghan APM and Deputy Commissioner Chris Dawson APM, Standards and Reform, to ensure CCC access to police complaint and investigation systems, for the purposes of continued improvement;

⁵² Legislative Assembly of Western Australia, Joint Standing Committee on the Anti-Corruption Commission, *Report on the Hearing with the Anti-Corruption Commission on 29 March 2004*, Report No.8, 13 May 2004, Questions on Notice, Appendix 4, Question 5.

⁵³ Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct By Western Australian Police Officers, Final Report, January 2004, Volume One, p.13.

⁵⁴ Transcript of Evidence, 05 July 2004, p.17.

⁵⁵ Mr Silverstone, Executive Director, CCC, Transcript of Evidence, 05 July 2004, pp.17-18.

⁵⁶ Legislative Assembly of Western Australia, Joint Standing Committee on the Anti-Corruption Commission, *Report on the Hearing with the Anti-Corruption Commission on 29 March 2004*, Report No.8, 13 May 2004, p.32.

- Reviewing all police disciplinary action to ensure that the penalty is commensurate with the seriousness of the offence;
- Using the Commission’s extensive powers for police complaints investigation;
- Educating managers to ensure the development of internal systems that encourage complainant reporting; and
- Monitoring the implementation of relevant recommendations of the RC, including those pertaining to the adoption of a more managerial approach promoting “changed behaviour in Police officers”.⁵⁷

(viii) Allegations of sexual assault within the Department of Education and Training

The ACC were critical of the policies and procedures of the Department of Education and Training in relation to sexual assault, having made recommendations that the Department review the latter⁵⁸.

Mr Watson detailed that the Department’s approach to the issue was “inherently flawed” both with respect to their “propensity to act” on allegations and the “level of disclosure” made on investigations conducted. He detailed that the Commission received numerous notifications in relation to various forms of assault against children and that these matters were referred to the Police Public Sector Investigation Unit for investigation.

Mr Watson cited that his unit was in the process of establishing a relationship with the Department to address some of these inadequacies in approach, having already met with the Department’s investigating unit to articulate concerns in relation to the level of disclosure. The CCC would also focus on improving the Department’s transparency in relation to appropriate notification of investigative outcomes⁵⁹.

Given the earlier statement by Dr Irene Froyland, Director, Corruption Prevention, Education and Research, regarding the prioritisation of the Department of Education, the Committee would envisage that consideration would be given to this issue in the work undertaken.

⁵⁷ Mr Silverstone, Executive Director and Dr Froyland, Director Corruption Prevention, Education and Research, CCC, Transcript of Hearing, 05 July 2004, pp.18-19.

⁵⁸ Chairman O’Connor QC, ACC, Transcript of Evidence, 29 March 2004, p.13.

⁵⁹ Mr Watson, A/Manager Investigations Review and Complaints Assessment, CCC, Transcript of Evidence, 05 July 2004, p.23.

1.3 Other matters

(i) *Minimising delays in prosecution*

The ACC at a hearing on 25 August 2003, raised concerns in relation to perceived delays by the Director of Public Prosecutions (DPP) in dealing with matters referred by the Commission⁶⁰. The Commissioner indicated that he had an established working relationship with Mr Cock, Director, DPP that he felt would promote the resolution of any concerns⁶¹.

(ii) *Organised Crime: Applications for Exceptional Powers and Fortification Removal*

In response to a Committee question, the Commissioner detailed that he had not received an application for exceptional powers and only one in relation to fortification removal. He informed that the perception amongst police appeared to be that “the threshold is too high and that the definition of an organised crime or section 5 offence is just too intricate to get around”. He understands that notion, although has encouraged Police to test the legislation⁶².

(iii) *Authorisations for Telecommunications Interception Warrants*

The CCC indicated that applications for Telecommunication Interception Warrants, which fall under Federal jurisdiction, were currently being made to the Family Court, although could be made to the Administrative Appeals Tribunal. Apparently for established reasons, the Federal Court no longer provide this approval⁶³. A Committee member expressed concern at this trend in both Western Australian and the Eastern States to seek authorisation through the Family Court⁶⁴. Mr Anticich, Director Operations, acknowledged the need to determine the most appropriate agency for application and to synchronise this with other bodies utilising TI legislation⁶⁵.

(iv) *Non-delegable powers of the Commission*

Section 185 (1) of the Act permits the Commission to delegate the performance of “any power or duty of the Commission” under the Act, except those defined under Section 185 (2). Although the Commissioner detailed at the hearing that the non-

⁶⁰ Chairman O’Connor QC, ACC, Transcript of Evidence, 25 August 2003, p.11.

⁶¹ Mr Hammond, Commissioner, CCC, Transcript of Evidence, 05 July 2004, p.21.

⁶² *Ibid*, p.19.

⁶³ Mr Hammond, Commissioner and Mr Anticich, Director Operations, CCC, Transcript of Evidence, 05 July 2004, pp.5-6.

⁶⁴ Transcript of Evidence, 05 July 2004, p.5.

⁶⁵ Mr Anticich, Director Operations, CCC, Transcript of Evidence, 05 July 2004, p.5/6.

delegable functions do not, at this time, create an onerous workload, they do, in the absence of an Acting Commissioner, require him to be constantly available. The process for the appointment of the Acting Commissioner, although commenced, has not concluded.

The Commissioner cited that information received from the State Solicitor's Office indicated that Part 7 examinations may "place a considerable burden on the Commission". Although believing it to be too early to recommend the appointment of an Assistant Commissioner, he felt this may be an issue for future consideration. The Commissioner will monitor the impact of these provisions and report to the Committee in due course⁶⁶.

⁶⁶ Mr Hammond, Commissioner, CCC, Transcript of Evidence, 05 July 2004, p.4-5.

APPENDIX ONE

HEARINGS

Date	Name	Position	Organisation
05 July 2004	Mr Kevin Hammond	Commissioner	Corruption and Crime Commission
	Mr Mike Silverstone	Executive Director	
	Mr Nick Anticich	Director Operations	
	Dr Irene Froyland	Director Corruption Prevention, Education and Research	
	Mr Roger Watson	Acting Manager, Investigations Review and Complaints Assessment	

APPENDIX TWO

LEGISLATION

Legislation	State (or Country)
Anti-Corruption Commission Act 1988 (repealed)	Western Australia
Corruption and Crime Commission Act 2003	Western Australia