



**Joint Standing Committee on the
Anti-Corruption Commission**

EXPLANATORY REPORT
Integrity Within the Public Sector

Report No. 3
In the Thirty-Sixth Parliament

2003

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Integrity Within the Public Sector

Report No 3

IN THE THIRTY-SIXTH PARLIAMENT

Presented by:

HON. DERRICK TOMLINSON, MLC

MR JOHN HYDE, MLA

Laid on the Table of the Legislative Council and Legislative Assembly
on Thursday, 3 April 2003

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COMMITTEE'S FUNCTIONS AND POWERS

The functions of the Committee are:

On 28 June 2001 the Legislative Assembly and the Legislative Council agreed to establish the Joint Standing Committee on the Anti-Corruption Commission. The Joint Standing Committee's functions and powers are set out as follows under Legislative Assembly Standing Orders 289, 290 and 264.

290 (1) It is the function of the Committee:

- (a) to monitor and review the performance of the functions of the Anti-Corruption Commission established under the *Anti-Corruption Commission Act 1988*;
- (b) to consider and report to Parliament on issues affecting the prevention and detection of "corrupt conduct", "criminal conduct", "criminal involvement" and "serious improper conduct" as defined in section 3 of the *Anti-Corruption Commission Act 1988*. Conduct of any of these kinds is referred to in this Standing Order as "official corruption";
- (c) to monitor the effectiveness or otherwise of official corruption prevention programs;
- (d) to examine such annual and other reports as the Joint Standing Committee thinks fit of the Anti-Corruption Commission and all public sector offices, agencies and authorities for any matter which appears in, or arises out of, any such report and is relevant to the other functions of the Joint Standing Committee;
- (e) in connection with the activities of the Anti-Corruption Commission and the official corruption prevention programs of all public sector offices, agencies and authorities, to consider and report to Parliament on means by which duplication of effort may be avoided and mutually beneficial co-operation between the Anti-Corruption Commission and those agencies and authorities may be encouraged;
- (f) to assess the framework for public sector accountability from time to time in order to make recommendations to Parliament for the improvement of that framework for the purpose of reducing the likelihood of official corruption; and
- (g) to report to Parliament as to whether any changes should be made to relevant legislation.

(2) The Joint Standing Committee will not:

- (a) investigate a matter relating to particular information received by the Anti-Corruption Commission or particular conduct or involvement considered by the Anti-Corruption Commission;
- (b) reconsider a decision made or action taken by the Anti-Corruption Commission in the performance of its functions in relation to particular information received or particular conduct or involvement considered by the Anti-Corruption Commission; or
- (c) have access to detailed operational information or become involved in operational matters.

The Legislative Council has agreed to a resolution, which has the same functions and powers as set out in the above Standing Orders of the Legislative Assembly.

The Standing Orders of the Assembly relating to standing and select committees are also followed as far as they can be applied.

CHAIRMAN'S SIGNATURE

**HON DERRICK TOMLINSON, MLA
CHAIRMAN**

ABBREVIATIONS AND ACRONYMS

“ACC”	Anti-Corruption Commission (WA)
“ACC Act”	<i>Anti-Corruption Commission Act 1988</i> (WA)
“CCC”	Corruption and Crime Commission (WA)
“CMC”	Crime and Misconduct Commission (QLD)
“ICAC”	Independent Commission Against Corruption (NSW)
“JSCACC”	Joint Standing Committee on the Anti-Corruption Commission (WA)
“PCICAC”	Parliamentary Committee on the Independent Commission Against Corruption (NSW)
“PCMC”	Parliamentary Crime and Misconduct Committee (QLD)
“PCOPIC”	Parliamentary Committee on the Ombudsman and the Police Integrity Commission (NSW)
“PIC”	Police Integrity Commission (NSW)

GLOSSARY

“Ombudsman”	means the Parliamentary Commissioner for Administrative Investigations.
“Royal Commission”	means the Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct By Western Australian Police Officers.

1.1 Background

In August 2002, the Joint Standing Committee on the Anti-Corruption Commission (JSCACC) resolved to consider the issue of Integrity within the Public Sector and prepare a series of Discussion Papers to be tabled in the Parliament of Western Australia. The Discussion Papers would deal with the following topics:

- Review of the Anti-Corruption Commission Act 1988;
- Review of Regulatory Agencies;
- Ethics Education in the Public Sector;
- Integration of Oversight Agencies; and the
- Role of the Parliamentary Committee.

1.2 Conduct of the Inquiry

The JSCACC advertised the inquiries and called for public submissions.¹ Eleven submissions were received from individuals, government agencies and other organisations. These submissions addressed the issues in one or more of the advertised Discussion Paper topics.

In October 2002, the JSCACC attended a conference in Brisbane entitled *Reconstructing 'The Public Interest' in a Globalising World: Business, the Professions and the Public Sector*. Whilst in Brisbane the JSCACC took the opportunity to hold briefings with the Crime and Misconduct Commission (CMC) and the Parliamentary Crime and Misconduct Committee (PCMC). Following the Conference, the JSCACC met with representatives of the following anti-corruption bodies in Sydney:

- Police Integrity Commission (PIC);
- NSW Parliamentary Committee on the Independent Commission Against Corruption (PCICAC);
- NSW Parliamentary Committee on the Ombudsman and the Police Integrity Commission (PCOPIC); and the
- Independent Commission Against Corruption (ICAC).

The briefings proved invaluable in providing an overview of the operation of these bodies and some of the difficulties encountered in the exercise of their duties.

¹ Advertisement calling for submissions appeared in the *West Australian* newspaper on Saturday 28 September 2002 and in the *Weekend Australian* on 28-29 September 2002.

1.3 Royal Commission Inquiry

In October 2002, shortly after the JSCACC advertised for public submissions, the *Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct By Western Australian Police Officers*, (the Royal Commission) released a Discussion Paper calling for submissions on the issue of external oversight of the Western Australian Police Service.²

At this point it became evident that there was some overlap in the work being done by the JSCACC Committee and the Royal Commission in the conduct of its inquiries.

1.4 Release of JSCACC Report, Integrity in the Public Sector: Review of the Anti-Corruption Commission Act

On 19 December 2002, the JSCACC released the first of its reports in the *Integrity in the Public Sector* series which reviewed the *Anti-Corruption Commission Act*. This review essentially highlighted earlier concerns expressed by the JSCACC in relation to the legislative deficiencies of the Act relating to accountability, confidentiality and the coercive powers of the Anti-Corruption Commission (ACC).

1.5 Royal Commission Interim Report

On 20 December 2002 the Interim Report of the *Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct By Western Australian Police Officers* was presented to Government.³ The Report was subsequently tabled by the Premier, Dr Geoff Gallop, MLA on 25 February 2003. The Report's main recommendation was that the ACC be replaced by a new external oversight agency to be known as the Corruption and Crime Commission (CCC). The Royal Commission concluded that the flaws in the powers and structure of the ACC made it necessary to establish the new body.

The Royal Commission recommended that the CCC should operate as a permanent royal commission headed by a single Commissioner who would have the status of a judge. The Commissioner would have all the powers of a royal commission including the ability to hold public hearings and compel witnesses to give evidence. Additional powers for the new body would include the power to conduct integrity tests, controlled operations and to use assumed identities.

Other recommendations included:

- The transfer of the functions of the Ombudsman in overseeing complaints of police misconduct to the CCC with the primary responsibility for addressing complaints and investigating suspected Police misconduct to lie with the Commissioner of Police.

² Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers, External Oversight – Western Australian Police Service, Discussion Paper, October 2002.

³ Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers, Interim Report, December 2002.

- Enabling the CCC to investigate serious and organised crime and hold public hearings along the lines of the Police Integrity Commission in NSW.

1.6 Government Response to Royal Commission

Accompanying the tabling of the Royal Commission Interim Report on 25 February 2003, was a statement of the Government's intention.

In this, the Premier, Dr Geoff Gallop, MLA committed to introducing legislation to establish the new body by the completion of the Royal Commission:

It will be absolutely vital that we avoid any gap between the Royal Commission's conclusion and the commencement of this new body⁴

He announced that the CCC would be based on Queensland's Crime and Misconduct Commission. The Premier also stated that the Government:

... will appoint an independent Parliamentary inspector to supervise the CCC's activities. The Parliamentary inspector is to report directly to the Parliament through the Joint Standing Committee.⁵

1.7 Role of the Joint Standing Committee

The JSCACC welcomes the Government's decision to implement the recommendations of the Interim Report of the Royal Commission to establish the CCC. The JSCACC has long noted its concerns in relation to the legislative deficiencies of *the Anti-Corruption Commission Act 1988* and commends the Royal Commission on suggested changes to address these deficiencies. These changes encompass many of the recommendations of the JSCACC aimed at extending the power of the ACC to increase its effectiveness, however ensuring its accountability through the appointment of a Parliamentary inspector.

In its Interim Report, the Royal Commission clearly recognised the role and work of the JSCACC by recommending the Committee's continuation and an extension of its role. The appointment of the Parliamentary inspector and giving the CCC the power to investigate organised crime will result in greater oversight responsibilities.

⁴ Media Release, Department of Premier and Cabinet *Western Australia to get tough, new corruption and organised crime watchdog*, 25 February 2003.

⁵ Legislative Assembly, Royal Commission Into Whether There Has Been Corrupt or Criminal Conduct by Western Australian Police Officers, Interim Report, Statement by Premier, *Hansard*, Tuesday 25 February 2003, p 4551.

1.8 Royal Commission – JSCACC Reports

The JSCACC was established in 1997 by resolution of both Houses of Parliament, to oversee the performance of the ACC. Under its terms of reference the JSCACC is required to monitor and review the performance of the ACC and to report to Parliament on issues affecting the prevention and detection of corruption in the public sector of Western Australia.

The Royal Commission acknowledged the impact of the non-disclosure or “secrecy” provisions of the *Anti-Corruption Commission Act* and the JSCACC’s own terms of reference on the JSCACC’s ability to effectively monitor the performance of the ACC and report to Parliament.

1.9 Operational Accountability

The JSCACC in 1998 criticised the absence of an independent complaints body to investigate the ACC. The JSCACC stated:

*The lack of independent scrutiny creates a significant gap in accountability. If a mechanism is not established through which the operations of the ACC can be fully and independently scrutinised, the ACC will remain vulnerable to criticisms that it functions as a “Star Chamber” and that complaints about the fairness of its procedures or the conduct of its officers cannot be answered.*⁶

The Royal Commission’s Interim Report made reference to the number of significant recommendations made by the JSCACC regarding the ACC including:

- The establishment of an Office of Parliamentary inspector with powers to audit the operations of the ACC, investigate complaints against the ACC and evaluate the effectiveness of procedures of the ACC;⁷
- Extending the functions of the JSCACC to monitor and review the performance of the inspector;⁸
- The ACC’s powers in respect of serious improper conduct should allow the evaluation of evidence for the purpose of advising an appropriate authority whether it warrants consideration of further action;⁹
- The removal of the distinction between powers to conduct a preliminary inquiry and an investigation from the ACC Act;¹⁰ and
- Power be given to the ACC to initiate its own investigations.¹¹

⁶ Joint Standing Committee on the Anti-Corruption Commission, Report on the Operational Accountability of the Anti-Corruption Commission and the Protection of Rights under the Anti-Corruption Commission Act 1988, Report No 4 in the Thirty-Fifth Parliament, October 1998, p 3.

⁷ Joint Standing Committee on the Anti-Corruption Commission, Report on the Operational Accountability of the Anti-Corruption Commission and the Protection of Rights under the Anti-Corruption Commission Act 1988, Report No 4 in the Thirty-Fifth Parliament, October 1998.

⁸ *Ibid.*

⁹ Joint Standing Committee on the Anti-Corruption Commission, Amending the Anti-Corruption Commission Act 1988, Report No.5 in the Thirty-Fifth Parliament, December 1998.

¹⁰ *Ibid.*

The Interim Report of the Royal Commission also referred to the JSCACC work and concerns expressed about a range of matters relating to the ACC including:

- The general issue of secrecy ;
- The protection offered individuals subject to investigation;
- The extent to which the Commission can make public, and should make public, the results of its investigations; and
- The accountability of the Commission.¹²

1.10 Continuing Committee Inquiries

The Royal Commission has been explorative in its review of regulatory agencies in a number of Australian jurisdictions, although it has drawn principally on the experience of the New South Wales and Queensland anti-corruption models, given the duration and extensive review of those systems. Valuable lessons have been drawn from the Western Australian experience under the ACC and interstate anti-corruption frameworks to formulate recommendations to address a number of deficiencies and reduce duplication of agencies in fighting corruption and misconduct in this state. The JSCACC considers that it would be an inappropriate use of resources and result in duplication, were it to continue this line of inquiry.

It would be premature to comment at length on the integration of oversight agencies given that the structure of the new anti-corruption framework has not been fully formulated. This makes effective comparison of agency structure and opportunity for integration difficult to determine. The JSCACC will however provide comment in the report titled *Role of Parliamentary Committee*, but only in so far as integration relates to the role of the Committee.

The absence of legislation, policies and protocols to underpin the new structure recommended by the Royal Commission means that it currently remains loosely defined, providing real opportunity for the JSCACC, the public and other agencies to contribute to the debate on the form the structure could take.

Ethics education in the public sector has long been viewed by the JSCACC as essential in preventing corruption because it enables systemic reform. Ethics education has been trialed and reviewed in a number of jurisdictions and it is clear from the literature and discussions with interstate bodies that the form ethics education takes affects the degree of ethical culture in an organisation.

Further, the expanded role of the Parliamentary Committee under the new structure opens a great opportunity to adopt best practice, particularly from those agencies in Queensland and New South Wales upon which this structure is based.

¹¹ *Ibid.*

¹² Joint Standing Committee on the Anti-Corruption Commission, *Secrecy under the Anti-Corruption Commission Act*, Discussion Paper, April 1998.

In light of these comments, the JSCACC will progress two of the remaining reports in the Integrity in the Public Sector Series, *Ethics Education in the Public Sector* and *Role of Parliamentary Committee*.

APPENDIX ONE

SUBMISSIONS RECEIVED

Date	Name	Position	Organisation
21 Oct 2002	Carol Roe	Citizen	
07 Nov 2002	Peter Evans	Citizen	
18 Nov 2002	MJ Dean	General President	W.A. Police Union of Workers
21 Nov 2002	Julie Fry	Citizen	
21 Nov 2002	Malcolm Mummery	Citizen	
22 Nov 2002	Gavin Waugh	Citizen	
25 Nov 2002	Gary McGrath	Citizen	
26 Nov 2002	B E Matthews	Commissioner of Police	W.A. Police Service
26 Nov 2002	Kerry O'Neil	Acting Auditor General	Office of the Auditor General
29 Nov 2002	Deirdre O'Donnell	Ombudsman	Parliamentary Commissioner for Administrative Investigations
12 Dec 2002	Maxine Murray	Commissioner	Office of the Public Sector Standards Commissioner

APPENDIX TWO

LEGISLATION

Legislation	State (or Country)
Anti-Corruption Commission Act 1988	Western Australia
Independent Commission Against Corruption Act 1988	New South Wales
Official Corruption Commission Act 1988	Western Australia
Police Integrity Commission Act 1996	New South Wales
Police Act 1892	Western Australia
Royal Commissions Act 1968	Western Australia
Complaints (Australian Federal Police) Act 1981	Commonwealth
Crime & Misconduct Act 2001	Queensland
Parliamentary Commissioner Act 1971	Western Australia
Criminal Code	Western Australia
Ombudsman Act 1974	New South Wales

APPENDIX THREE

INTERSTATE MEETINGS HELD

Date	Name	Organisation	Place
7 October 2002	Mr Brendan Butler, SC Chairman Mr Ray Rinaldo, Commissioner (part-time) Mr John Callanan, Assistant Commissioner - Crime Mr Stephen Lambrides, Assistant Commissioner, Misconduct	Crime and Misconduct Commission	Brisbane, Qld
7 October 2002	Mr Geoff Wilson, MP, Chairman Ms Desley Boyle, MP, Member Mr Andrew McNamara, MP, Member Mr Stephen Finnimore, Director Research Mr Luke Passfield, Research Officer	Parliamentary Crime and Misconduct Committee	Brisbane, Qld
8 October 2002	Mr Terry Griffin, Commissioner Mr Peter Barnett, Manager - Assessment and Reports Team Mr James Slater, Executive Officer	Police Integrity Commission	Sydney, NSW
8 October 2002	Mr Kerry Hickey, MP, Member Ms Helen Minnican, Committee Director Ms Prue Sheaves, Project Officer	Joint Committee on the Independent Commission Against Corruption	Sydney, NSW
8 October 2002	Mr Kieran Pehm, Deputy Commissioner Mr Mal Brammer, Executive Director - Strategic Operations Division Mr Grant Poulton, Executive Director - Corruption, Prevention, Education and Research Mr John Pritchard - Commission Solicitor Ms Linda Waugh, Executive Officer to the Commissioner and Deputy Commissioner	Independent Commission Against Corruption	Sydney, NSW

APPENDIX FOUR

LIST OF JSCACC REPORTS & PAPERS IN THE 35TH PARLIAMENT

Document	Date	Title
Discussion Document	7 Apr 1998	Secrecy under the Anti-Corruption Commission Act
Report 1	23 Oct 1997	Confidentiality and Accountability: Parliamentary Supervision of Anti-Corruption and/or Law Enforcement Agencies in Australia
Report 2	28 May 1998	The Working Group of Parliamentary Committees with a Role to Oversee Criminal Justice and Law Enforcement Bodies
Report 3	18 Jun 1998	Complaints made by Detective Sergeant Peter Coombs Against the Anti-Corruption Commission, Special Investigator Geoffrey Miller QC and Others
Report 4	29 Oct 1998	The Operational Accountability of the Anti-Corruption Commission and the Protection of Rights Under the Anti-Corruption Commission Act 1988
Report 5	23 Dec 1998	Amending the Anti-Corruption Commission Act 1998
Report 6	23 Dec 1998	The Second Working Group Meeting of Parliamentary Committees with a Role to Oversee Criminal Justice and Law Enforcement Bodies
Report 7	13 May 1999	Annual Report
Report 8	3 June 1999	Ministerial Response to the Committee's Recommendations
Report 9	9 Dec 1999	A Report on the Special Investigation Conducted By Mr Geoffrey Miller QC: The Allegations, The Evidence, The Outcomes and Their Relevance to Anti-Corruption Procedures Within The Western Australian Police Service
Report 10	22 Jun 2000	The Hearings Held by the Joint Standing Committee on the Anti-Corruption Commission in the Legislative Council Chamber Parliament House, Perth on Friday, 5 May 2000
Report 11	10 Aug 2000	The Investigative Powers and Operational Accountability of the Anti-Corruption Commission

LIST OF JSCACC REPORTS & PAPERS IN THE 36TH PARLIAMENT

Document	Date	Title
Report 1	22 Sept 2002	Annual Report 2001-2002
Report 2	19 Dec 2002	Integrity Within the Public sector: Review of the Anti-Corruption Commission

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- Martin B, “Police will support watchdog: union”, *The West Australian*, Wednesday 26 February 2003, p 13.
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