From:	Roger Macknay
To:	Joint Standing Committee on the Corruption and Crime Commission
Subject:	CCC prosecutions
Date:	Tuesday, 13 September 2016 10:32:12 AM

Dear Mr Goiran,

Thank you for your letter of 18 August 2016 and invitation to comment on the above matter, in the light of A v Maughan (2016) WASCA 128 and the terms of reference of your enquiry.
The threshold question is of course whether the Commission, or its officers ought have powers of arrest and prosecution.
Prosecutions on indictment in the Supreme or District Court have always been initiated and carried out by the DPP, and I can see no reason to disturb that, so that part of the question necessarily relates only to prosecutions before a Magistrate.
Martin CJ pointed out in Maughan that similar organizations in some other states don't have those powers.
In my view that is not determinative.
These are novel state institutions, with little in the way of historic precedent for them in the common law world bar royal commissions and grand juries.
As such they are bound to evolve in ways that reflect the needs and culture of their own particular environment.
The Commission in this State was set up specifically as a response to the findings of a Royal Commission into WA Police, and oversight of police remains in my view its most important function.
Independence is of fundamental importance in that task, and with great respect I don't entirely agree with the Chief Justice when he says the police are adequately equipped to prosecute their own.
There seems something odd to me about a state of affairs where the Commission could investigate an officer, make a finding of serious misconduct, which related to a breach of the law, and then be obliged to hand the matter to police to decide whether to charge.
Public differences of opinion of that kind can cause a public loss of confidence in both organizations.
It is worthy of note that in the UK that officers of the IPCC have all the powers of a police officer for the purposes of an investigation, including the power of arrest.
The IBAC in Victoria would also appear to have powers of both arrest and prosecution.
It might well be that in many cases a matter would be referred to the DPP, following arrest, and in my own experience Mr McGrath could not have been more helpful when called on.
Nonetheless, the core business of the DPP is to prosecute on behalf of the police, and briefs from a minor player like the Commission are always likely to be regarded by some DPP officers as a distraction from the main business, particularly if they are complex and require intensive preparation.
Although at first blush a remedy for the present state of affairs might be thought to lie in a simple re-issue to relevant Commission officers of certificates of appointment as a special constable, without the limitation which caused the problem, given the broader findings of the Court some amendment to the Commission Act would appear necessary.
That in my opinion ought validate all past prosecutions, whether or not it is thought such might be susceptible to appeal.
I hope the above is of some assistance.
Kind regards.
Roger Macknay

Sent from my iPad