



Joint Standing Committee on the Corruption and Crime Commission

The ability of the Corruption and Crime Commission to charge and prosecute

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The ability of the Corruption and Crime Commission to charge and prosecute

Report No. 2

Presented by

Ms M.M. Quirk, MLA and Hon J.E. Chown, MLC

Laid on the Table of the Legislative Assembly and Legislative Council
on 14 September 2017

Chair's Foreword

Report number 33 of the Joint Standing Committee of the Corruption and Crime Committee in the 39th Parliament (39th JSCCCC) was laid on the Table of the Legislative Council and the Legislative Assembly on 17 November 2016. Titled *The ability of the Corruption and Crime Commission to charge and prosecute*, it contained 48 Findings and two Recommendations.¹

Due to the prorogation of the Parliament and the dissolution of the Legislative Assembly on 30 January 2017, the Attorney General did not have the opportunity to respond to the recommendations of the 39th JSCCCC.

Given the importance of the recommendations made by the 39th JSCCCC, the Joint Standing Committee on the Corruption and Crime Commission (Committee) resolved to bring them to the new Government's attention by tabling them in the 40th Parliament.

The Committee notes that the recommendations refer to the Corruption and Crime Commission's Annual Report for 2016–17. If it is necessary for the recommendations to be acted upon, the Committee is amenable to changing the timeframe of the recommendations to refer to the Annual Report for 2017–18.



MS M.M. QUIRK, MLA
CHAIR

¹ This report can be viewed at:

[http://www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/08BE36EA89E7B9EC4825806E000B0C90/\\$file/51234441.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/08BE36EA89E7B9EC4825806E000B0C90/$file/51234441.pdf)

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Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendation of the Committee.

Findings and Recommendations

Finding 1

The Corruption and Crime Commission's predecessor, the Anti-Corruption Commission, was an investigative body with no express power to prosecute.

Finding 2

No express intent to empower the Corruption and Crime Commission to prosecute can be found in any debate during the passage of the Bills establishing the Commission in 2003.

Finding 3

The Archer Review recommended (recommendation 55) that the *Corruption and Crime Commission Act 2003* be amended to make it clear that the Corruption and Crime Commission had, and had always had, the power to commence and conduct prosecutions in the Magistrates Court.

Finding 4

Recommendation 55 of the Archer Review was supported by the then-Parliamentary Inspector, Mr Malcolm McCusker AO, CVO, QC.

Finding 5

Recommendation 55 of the Archer Review to amend the *Corruption and Crime Commission Act 2003* to clarify the power of the Commission to commence a prosecution has not been expressly adopted or implemented by any of the State Governments since the Review was published in 2008.

Finding 6

Upon inquiry by the Joint Standing Committee in May 2010, the Corruption and Crime Commission advised the Committee that it was satisfied that it did have the power to prosecute.

Finding 7

Subsequent Parliamentary Inspector, Hon Chris Steytler QC, did not support the Corruption and Crime Commission having a power to prosecute.

Finding 8

Upon further inquiry by the Joint Standing Committee in the 38th Parliament in October 2010, the Corruption and Crime Commission remained satisfied it had the power to charge and prosecute.

Finding 9

Prior to the decision of the Court of Appeal in *A -v- Maughan 2016* [WASCA] 128, the Corruption and Crime Commission had preferred 1,976 charges against 171 people, which resulted in 1,249 convictions against 133 people.

Finding 10

Prior to 8 December 2004, Corruption and Crime Commission officers could commence a prosecution in their private capacity.

Finding 11

Prior to 8 December 2004, the Corruption and Crime Commission preferred nine charges in two prosecutions.

Finding 12

The commencement of the *Criminal Procedure Act 2004* limited the ability to conduct prosecutions in the State to those ‘authorised officers’ listed in section 80(2) of the Act.

Finding 13

Then-Commissioner, Hon Len Roberts-Smith RFD, QC, submitted to the Archer Review of the *Corruption and Crime Commission Act 2003* that the Commission and its officers were able to prosecute as an ‘authorised person’ as defined by section 20(1) of the *Criminal Procedure Act 2004*.

Finding 14

The Corruption and Crime Commission has not been appointed under section 182(1) of the *Criminal Procedure Act 2004* as an ‘authorised person’ to conduct prosecutions.

Finding 15

After the commencement of the *Criminal Procedure Act 2004*, the Corruption and Crime Commission sought and received legal advice on 14 occasions regarding its power to prosecute.

Finding 16

Prior to the Court of Appeal decision in *A -v- Maughan 2016* [WASCA] 128, the Corruption and Crime Commission was satisfied that it had the power to charge and prosecute matters in the Magistrates Court.

Finding 17

The Department of Fisheries, the Department of Mines and Petroleum and the Department of Commerce all have Acts they administer that expressly allow certain authorised persons to commence prosecutions.

Finding 18

Regulations for the *Criminal Procedure Act 2004* allow authorised investigators in the Department of Child Protection and the Public Transport Authority to commence summary prosecutions.

Finding 19

The NSW Independent Commission Against Corruption has the power to lay charges by preparing a Court Attendance Notice for a defendant, but can only do so with the written approval of the Director of Public Prosecutions that the proceedings may be commenced.

Finding 20

The NSW Director of Public Prosecutions conducts all prosecutions commenced by the Independent Commission Against Corruption, whether summary or indictable.

Finding 21

Neither the NSW Police Integrity Commission nor its intended successor, the Law Enforcement Conduct Commission, has the power to commence or conduct prosecutions.

Finding 22

The NSW Director of Public Prosecutions conducts all prosecutions arising from investigations of the Police Integrity Commission.

Finding 23

Notwithstanding its express statutory power to prosecute, the Independent Broad-based Anti-corruption Commission (IBAC) has a protocol with the Victorian Office of Public Prosecutions (OPP) that provides for the OPP to handle all indictable matters and also prosecute some summary matters flowing from IBAC investigations.

Finding 24

Criminal charges arising from investigations undertaken by the Queensland Crime and Corruption Commission are prosecuted by either the Commissioner of Police or the Director of Public Prosecutions.

Finding 25

All South Australian Independent Commission Against Corruption prosecutions, both summary and indictable, and including against its own Act, are referred for prosecution to the Director of Public Prosecutions.

Finding 26

All Australian Commission for Law Enforcement Integrity prosecutions, both summary and indictable, and including against its own Act, are referred for prosecution to the Commonwealth Director of Public Prosecutions.

Finding 27

The Tasmanian Integrity Commission has no power to prosecute and instead refers matters for prosecution to the Commissioner of Police, the Director of Public Prosecutions or other agencies that it considers appropriate for action.

Finding 28

The Independent Police Complaints Commission in the United Kingdom can arrest and charge a person but has no capacity to prosecute. Instead, it submits a file of evidence from their investigations to the Crown Prosecution Service for possible prosecution.

Finding 29

The Garda Síochána Ombudsman Commission does not have a power to commence or conduct prosecutions but provides its reports, investigation files and recommendations to the Irish Director of Public Prosecutions for the consideration of laying charges.

Finding 30

The Police Ombudsman for Northern Ireland does not have a power to commence or conduct prosecutions but provides a file of evidence on a matter involving an officer of the Police Service of Northern Ireland to the independent Public Prosecution Service for it to consider the laying of charges.

Finding 31

In New Zealand, the Independent Police Conduct Authority does not have a power to commence or conduct prosecutions, but makes recommendations to the Commissioner for Police.

Finding 32

Hong Kong's Independent Commission Against Corruption has the power to commence a prosecution but must first obtain the consent of the Secretary for Justice.

Finding 33

On 15 July 2016 the Western Australian Court of Appeal found that the Corruption and Crime Commission's functions do not extend to the prosecution of offences the subject of investigations conducted by it, but which have no other connection with the CCC or the administration of its Act.

Finding 34

The Court of Appeal left open the issue on whether the Corruption and Crime Commission has the power to prosecute its own charges in respect to matters which are related to the administration and enforcement of the *Corruption, Crime and Misconduct Act 2003*.

Finding 35

Following the judgment in *A -v- Maughan*, the Corruption and Crime Commission has made arrangements to refer matters to the State Solicitor, who will consider whether to commence prosecutions which will then be conducted by either the State Solicitor or the Director of Public Prosecutions.

Finding 36

The Corruption and Crime Commission has the power to arrest but must thereafter liaise with an authorised person if charges are to be laid.

Finding 37

The Corruption and Crime Commissioner would prefer if the Director of Public Prosecutions conducted all prosecutions arising from the Commission's investigations.

Finding 38

It is a normal function of the State Solicitor to commence and conduct prosecutions arising from investigations conducted by many government departments.

Finding 39

The State Solicitor's preference for all agencies is to be briefed prior to a prosecution being commenced.

Finding 40

The State Solicitor has established arrangements to ensure there are no untimely delays in having prosecutions commenced.

Finding 41

The likely number of summary and 'either way' matters provided each year by the Corruption and Crime Commission to the State Solicitor's Office (SSO) to prosecute will be a small part of the total number of prosecutions being conducted by the SSO.

Recommendation 1

The Corruption and Crime Commission include a specific update, on the efficiency and effectiveness of its arrangements with the State Solicitor for the commencement and conduct of prosecutions, in its Annual Report for 2016-17.

Finding 42

The likely number of indictable matters provided each year by the Corruption and Crime Commission to the Director of Public Prosecutions (DPP) through the State Solicitor will be a small part of the total number of indictable matters received by the DPP.

Finding 43

The Corruption and Crime Commission is satisfied that its power to commence and conduct the prosecution of the offence of contempt under Part 10 of the Corruption, Crime and Misconduct Act 2003 has not been affected by the decision of *A -v- Maughan*.

Finding 44

The Parliamentary Inspector does not support empowering the Corruption and Crime Commission to commence and conduct prosecutions for offences arising outside of the *Corruption, Crime and Misconduct Act 2003*.

Finding 45

The overwhelming majority of submissions to this Inquiry support an ongoing separation between the Corruption and Crime Commission's investigative function and an independent agency's prosecution function.

Finding 46

Investigations undertaken by the Corruption and Crime Commission gather evidence which can result in opinions of serious misconduct. The standard of proof required to form those opinions is at a lesser standard than required in prosecutions for criminal offences.

Finding 47

The WA Police Union acknowledges that the Corruption and Crime Commission has the power to prosecute its own charges in respect to matters which are related to the administration and enforcement of the *Corruption, Crime and Misconduct Act 2003*.

Finding 48

No compelling case has been presently made out to justify empowering the Corruption and Crime Commission to either commence or conduct prosecutions.

Recommendation 2

The Attorney General undertake a review into the efficiency and effectiveness of the commencement and conduct of prosecutions arising from Corruption and Crime Commission investigations and table a report on that review within 12 months of the tabling of the Corruption and Crime Commission's Annual Report for 2016-17.

Appendix One

Committee's functions and powers

By concurrence between the Legislative Assembly and the Legislative Council, the Joint Standing Committee on the Corruption and Crime Commission was established on 15 June 2017.

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, Crime and Misconduct Act 2003*.

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