

**Paper by the Hon. John Hyde, MLA
Chairman
Joint Standing Committee on the Corruption and Crime Commission
Parliament of Western Australia**

**Australasian Study of Parliament Group Annual Conference
7 October 2005**

Parliamentary oversight from the Parliament's perspective

In Western Australia, we've had the opportunity over the past two years to legislate for, establish – on January 1, 2004 - and oversight Australia's newest corruption-fighting body, the Corruption and Crime Commission.

Having been deputy chair of the previous oversight committee on WA's flawed, sometimes dysfunctional and often public-relations-catastrophe-prone Anti Corruption Commission, I'd been surprised at how efficiently and quickly our new CCC gained public confidence and real, measurable corruption-fighting successes.

The CCC used its sizeable budget, strong powers and canny personnel to expose a number of public sector and local government wrong-doers, most tellingly in public hearings where the initially "I'm innocent" target, would publicly 'fess up after he and the public shared concurrently, for the first time, recordings or video of the denied offence happening.

As a former journalist, I watched the WA media accurately praise and give credit to our CCC and its leadership under Commissioner Kevin Hammond. Having visited Queensland and seen that shortly after their new CMC began, which enabled people to publicise the fact that they'd put a complaint into the anti-corruption watchdog, and the resultant media shark-feeding frenzy as every bitter, self-inflated local council want-to-be started dobbing-in and publicising his dobbings for political/election gain, I'd feared a similar response in WA when our new open CCC began.

Somehow in WA, it didn't - in Queensland, it took the media about 12 months to realise that nutters, crooks and the deluded were using the media as their patsy and they began self-regulating outlandish claims. Perhaps my former WA colleagues in the fourth estate, some of whom worked as cadets under my pompous sub-editing, actually self-regulated from day one; or perhaps local government in WA (not being overtly party-machine controlled), is much less vindictive.

Under the previous Parliament, the previous new CCC oversight committee for all of its six months' stewardship enjoyed an excellent relationship with the new Commissioner and the new Parliamentary Inspector, Malcolm McCusker. The new committee, came into place with three new members joining me in June. The excellent relationships between CCC, inspector and oversight committee continued – no big egos, no partisan by-play, no hidden agendas. The committee – two Labor, two Liberal, with no casting vote to engender bipartisanship – even continued its independent stance by querying and not accepting advice from the Premier's Office on some legislative interpretations.

A few weeks back, some colleagues mused that this had to be the best Corruption Commission in the world. Even the Malaysian Government wants to base its new corruption fighter on WA's. We had to be the most fortunate parliamentary oversight committee ever. New legislation, great leadership and dedicated staff had actually created a winner for us.

And then on August 16, the CCC's Acting Commissioner, Moira Rayner, admitted to the Commissioner that she'd tipped off a CCC suspect. On August 25 the parliamentary oversight committee was fully briefed, and two and a half hours later we made the issue public. Suddenly, we were openly exposing the most serious transgression by a corruption fighter's head in Australian history.

Today, I'd like to explore how the way the CCC itself, the Parliamentary Inspector and even the oversight committee exposed and dealt with this transgression means the WA public will have even greater confidence that their CCC is the best corruption fighter available. Those of us close to this episode know it already I feel, and I think once WA's Director of Public Prosecutions delivers his ruling on the transgression – either to charge or not to charge - the committee will be able to begin a transparent review of the whole process.

It is an undeniable fact that the CCC itself discovered a transgression by one of its own, (albeit the Acting Commissioner), and dealt with the issue quickly, professionally and transparently.

The CCC's handling of this should be a template for every agency, local Council or parliament on what to do when you internally discover a transgression – be it misconduct or corruption. There was no need for a whistleblower, no journalist toiled away like Watergate sleuths Woodward and Bernstein foiled by cover-ups and fuelled by deep throats. The CCC discovered the transgression itself.

Some background first...

Our previous ACC Parliamentary committee and the WA Government unashamedly picked the best bits from Queensland's CJC and CMC legislation and operation, and to a lesser extent NSW's bodies, to create the best possible model, with a Parliamentary Inspector having unfettered access into the CCC.

We also had the benefit of the International Institute for Public Ethics first world conference in Brisbane in 2002 so as we could actually talk with practitioners about how different anti-corruption legislation affected them. We also could bench-mark what Queensland committee members and others were saying about their CMC/CJC with independent experts while we were in Brisbane.

I know I returned from that conference with a zeal for the anti-corruption education and ethics role being inseparable with the crook-catching role. Rather than just being focussed on cleaning up the mess, you have a meaningful corruption fighter when it's also responsible for prevention.

I do offer these as personal views as the Chairman, not an official committee position. Having been Deputy Chair of the JSCACC which had major input into the CCC legislation, and then the first JSCCCC, and now chair of the JSCCC I offer these views from a perspective of having some corporate knowledge, combined with my parliamentary role as a Government member involved in the Government's position on the eventual legislation.

As parliamentarians we spend much time with theory – how do we balance the enormous powers and removal of human rights we give to corruption fighters, with checks and balances? How do we ensure that a CCC and Parliamentary Inspector are carrying out their duties as the legislation intended?

How do we ensure that political parliamentarians, self-serving and altruistic alike, don't have access to operational case details, yet can still effectively oversight corruption commissions? How do we prevent corruption within the body itself?

This is a case study of the Acting Commissioner having admitted that she advised a friend whom she knew was under investigation by the CCC for a criminal offence that his phone was “was probably being bugged” and not to make any telephone calls.

Add into the mix, that the friend is the recently, quickly resigned Legislative Council Clerk of Parliaments, Laurie Marquet, now on his death bed and charged with having siphoned off \$227,000 of parliament's money into a bogus law firm he created, as well as drug possession.

Or, as Ms Rayner viewed it in evidence our committee tabled, Laurie knows he's been caught “with his hands in the till and drugs on his person.” It was in fact the case that Marquet's telephone calls were being intercepted by the CCC, and as a result the CCC intercepted a call by the Acting Commissioner in early August, arranging to visit Marquet. From that date, the previously frequent and unguarded calls by Marquet on his mobile phone ceased. This raised a suspicion that he had been warned. The matter was promptly referred by the Commissioner to the Parliamentary Inspector.

On August 16, he at once interviewed the Acting Commissioner, who admitted giving Marquet the warning. She then tendered her resignation to the Commissioner on the same day. The Parliamentary Inspector decided to provide the committee with a report and finding of misconduct on the matter, which he did on August 25, after giving the former Acting Commissioner reasonable opportunity to comment on his draft report, as a matter of fairness.

After careful consideration of whether to do so might jeopardise the right of Marquet to a fair trial, the committee decided to make the entire, unedited report public and did so, just 24 hours after first becoming aware of the issue. The Parliamentary Inspector has since referred the matter to the WA Director of Public Prosecutions and the WA Police Service.

I might add at this point, that I handed the oversight committee members a copy of the Inspector's report as soon as I got it, around 10.30am on Thursday August 25. This was the first time anyone on the oversight committee became aware of the real facts concerning Ms Rayner's resignation. At 1pm the Committee met, had Hansard record our hearing with the Inspector, and we resolved at 2pm that the Inspector and I would prepare a statement so as all parliamentarians were fully briefed by the expected 5pm close of business in the Assembly.

At 5pm I read out the statement in the Assembly.

As a side issue, some commentators, talk-back radio callers, non-committee parliamentary newbies and retired members – conspiracy theorists extraordinaire – accused us, the CCC and committee, of having media-managed this disclosure.

Now, as the learned legislators and parliament staff in this audience know, to finish a bombshell committee meeting at 2pm, duck off to question time for an hour, and then still have a coherent statement of the utmost transparency without potentially affecting future trials, which meets Parliament's procedures and formats for tabling, actually and legally printed and tabled in the House after three hours has got to be a world record.

When the dust settles on this matter, the Parliamentary staff in WA should be rightly commended for facilitating transparency so quickly. With the benefit of hindsight, it is arguable the initial wrongful suspicion of media management and smoking-gun cover-up was a reaction to the Moira Rayner issue being revealed in just nine days from the Parliamentary Inspector first interviewing Ms Rayner to the statement in Parliament.

People used to Government agencies that cover-up stuff-ups and pay lip-service to transparency via staged leak, press release and photo op, just couldn't believe that in only nine days justice was seen to be done – and that the professional, thorough nine days of investigation by the Parliamentary Inspector and CCC officers occurred without a leak.

In many ways, this was a text-book perfect way of how a government agency should deal with suspected misconduct, and possible corruption. ie. the Commissioner (as "CEO" of

agency) investigated, established there may be an incident, alerted the appropriate reporting authority (usually the CCC for every other agency, but for the CCC, the Inspector). Discovered internally, dealt with internally, made transparent quickly, sent on to the appropriate bodies. If we could instil this practice into local government and other agencies, we would be even further down the path of decreasing misconduct and corruption. We want to encourage a culture of individual agencies, work teams and an individual recognising what is misconduct, what is corruption, and amend their own behaviour and deal with it, rather than relying on an external agency monitoring everyone 24/7.

From a parliamentary committee oversight view, what observations can we make from this issue?

We have to communicate our roles and their limitations in the checks and balances of having a worthwhile anti-corruption body. To ensure fairness, to stop the actual or the perception of a closed-shop cabal running anti-corruption in WA, it's important that up until the Inspector's report was made public the committee didn't speak to the Commissioner; that the Inspector or the committee don't seek to advise the Director of Public Prosecutions while he deliberates on whether to lay charges; that the committee doesn't oversight an operational investigation by the police.

This is all common sense to those of us involved in legislation and fairness, but we've all received the letters and the phone calls from aggrieved constituents who I'd argue can't understand why a parliamentary oversight committee doesn't just ring up the local police to direct them to gaol "toute suite" a public servant – parking inspector or police Supreme Court judge - because of their complaint. And I'd argue that this misunderstanding of proper process is widespread.

By the Friday afternoon, just 20 hours after first making the issue public, with the committee convening to release the full transcript, report and aided by new overnight information, some observers were criticising the Inspector and the Committee because we hadn't actually lit a bonfire in Forrest Place and begun burning Ms Rayner at the stake.

It's perfectly obvious to legislators, lawyers and judges why under the existing CCC legislation a finding of "misconduct" was made on August 25 against a former employee, and not one of official corruption.

And subsequent comment on the Committee's hearings and the Inspector's report wrongly interpret that our initial concern was information prejudicial to one trial, Marquet's, while we clearly stated multiple trials – encompassing future charges not yet laid.

But after contradictions revealed by Ms Rayner herself in surprising media interviews, brought on by the Committee's statement being made public in parliament, plus the continued work being undertaken by the Inspector and CCC it will be perfectly

understandable to you why the Inspector referred additional information to the State's Director of Public Prosecutions to consider whether charges could be laid.

Once the original matter and the additional, serious information was handed to the DPP concerning Ms Rayner – now an ex-CCC officer, it was appropriate that the committee, the inspector and the Commissioner not comment, while the DPP and the police were conducting inquiries.

Clearly, the additional information convinced the Inspector and the committee, that Ms Rayner should be charged with a more serious offence. It's perfectly understandable to us why a separation of powers and roles goes a long way to ensuring corruption can't fester. Politicians shouldn't have de facto access to the operational details of our corruption-fighting bodies. Public servants have a basic right to resign – if they voluntarily choose to do so before an adverse finding, be it non-sackable misconduct or chargeable corruption, it's not the role of the employer or a parliamentary inspector to mete out a sentence.

If, as the Wood Royal Commission in NSW found, bent public servants use a quick resignation with entitlements on exit as a way of avoiding charges or adverse findings, then that is a system fault.

By being open and transparent, the Committee's actions enabled the Inspector and the CCC to collect additional information in a different context, that our openness and resultant publicity had afforded. Whether the DPP charges Ms Rayner or not is not the oversight issue – what is important is that the open process has provided the DPP with additional information to make an informed decision.

At senior or Commissioner level of anti-corruption bodies, higher standards apply.

In terms of the sort of tall poppies some Australians love to cut down to size, Ms Rayner fitted the bill: a successful Equal Opportunities commissioner in Victoria, an internationally respected children's commissioner in the UK, an intelligent lawyer appointed as a full Anti Corruption Commission commissioner, a leading feminist.

Conspiracy theorists of the Right want her burnt at the stake, conspiracy theorists of the Left see a witch-hunt. A parliamentary oversight committee has one role here – to ensure that the extraordinary powers of a CCC and an inspector were used properly. They were. JSCCCC as a bipartisan committee of only 4 members two Government Labor, two Liberal independent - we endorsed the legislation that gives no casting vote to the chair and requires real consensus to achieve required bipartisan decisions

If you are a Corruption commissioner, a police commissioner, a parliamentarian or a judge, you do not – and should not – have the right to disclose anything to a charged person or a person of interest. Through our privileged positions and responsibilities, we do not have a right to switch the rules from our private life to our professional life.

A dear friend, your child or your partner may be dying, but if you knowingly place yourself privately in a position of professional vulnerability to information, you cannot be trusted to do your job ethically. Clearly the educative lesson out of this issue is to highlight to people seeking or accepting higher office that their private life and professional access to information cannot mix.

The Committee and the Parliamentary Inspector believe that in the interests of transparency, anyone involved with the Commission needs to adhere to standards at a much higher level than others in the community.

In the past two weeks we've had the abrupt resignation of an Assistant Police Commissioner in WA. The Police Commissioner announced his resignation and would only reveal that a misdemeanour had occurred, was raised with his deputy, who then resigned.

For several days, the Commissioner, Dr Karl O'Callaghan, who is doing a tremendous job in modernising and opening up our police service in WA, would not reveal the exact nature of the misdemeanour.

Human beings love to gossip, love to think ill of those in authority and our media merely reflects that thirst for tawdry details and human frailties, specially if we can get something hinted at sexually. Of course, in the absence of what was, originally, minor email transgressions (but subsequently not so minor, when coupled with the Assistant Commissioner's other role as WA's representative on the national anti-terror body) the rumour mill went silly.

I have no operational information on this issue and while it has now been passed on to the CCC for review, one knew straight away the Commissioner would end up having to make all the tawdry, sexual innuendo and dumb details public. I think this episode just reinforces how high our ethical standards bar has been rightly raised: if you're a senior cop, pollie or beak and you stuff up, no matter how trivially, you have no right to immediate natural justice or fairness.

At that level, be it stuff-up, minor transgression, misconduct or corruption, make it public as soon as possible – and that should be almost immediately after your call on the gravity of the issue has been made. Transparency itself will usually engender more information and either more serious transgressions or even quickly establish the person's true innocence.

From a natural justice perspective, the reputation of people being investigated can be severely damaged EVEN IF the person is not eventually charged. More worrying is the "collateral damage" to innocent associates, non-public figures dragged into a matter. This is a very important human rights issue for parliamentary oversight committees to keep abreast of. In the light of beefed-up anti-terror legislation we will all – State and Federal – soon be introducing, parliamentary oversight committees must be even more relevant.

The 10-year Buddhist sunset clause intended on this legislation – I call it Buddhist, because you’ll need three parliamentary reincarnations before you get to review it, means committees may be called upon when there is a real problem. It is possible to have the best protective anti-terror legislation and avoid the situation of innocent Brazilians being executed on passenger trains. Committees need to be reviewing anti-terror operations from day 1 so as we avoid “collateral damage”, much more serious than damaged reputations.

Committee turnover, as with CCC bodies – healthy and needed. I commend my new members, having to deal – just eight weeks into their membership - with perhaps the most serious oversight issue any committee has faced.

I was mindful as Chair, and as the only person with committee ownership of what has gone on before, that my belief that this was the best legislation and check-and-balance relationship, should be held up to stress. I know, way beyond the transcripts and printed reports, that all the committee members explored fully the responsibilities they have as an oversight committee. That they weighed up the huge freedom-limiting powers a CCC and Inspector have, against our access to sufficient information to endorse our Inspector’s report and actions.

The best anti-corruption bodies don’t end up with long-serving retirees. J. Edgar Hoover is a glorious reminder of why we should be suspicious of longevity in roles that foster secrecy.

Just as many anti-corruption fighters move agencies after five or six years, it’s healthy for oversight committees to regenerate. Openness with its occasional misinformation, is still streets ahead of saying nowt

One of the lighter moments in this matter came through an opinion piece written by Victorian resident and one-time WA police commissioner Bob Falconer where he opined on September 11 that the Moira Rayner issue was handled terribly and “Rayner got off lightly” was the headline. “In my opinion,” he thundered, “her actions were at least a gross breach of professional ethics. Well, Bob, if you actually read the transcripts and Hansards made public on August 25, you’d see the Parliamentary Inspector found her guilty of much more serious conduct than an ethics aberration.

Much of the misinformation on the Rayner issue has occurred through people commenting based on an existing misinformation. And I hasten to add that journalists haven’t deliberately deceived or editors mischievously edited – but in creating a CCC where people have the right to talk about their dealings with the CCC, as opposed to its predecessor and its stupid legislation that allowed some people to interpret you couldn’t even mention the “corruption body”’s name publicly.

Ms Rayner’s version told to and reported accurately by good journalists, was incorrect and contradictory. Somebody who provided some information to the CCC on an associated Marquet matter, hinted to a reporter that his role was somewhat bigger and his information more important than it was. Fancy that? A human being big-noting himself!

So, wrong information did gain temporary currency. The traditional Police / Watchdog / Government response would be to amend the legislation so as suspects, informants et al couldn't disclose their information.

I happen to think that where we have checks and balances, and parliamentarians rightly not having carte blanche access to operational files on political enemies, it's very healthy for people to have the right to either self-incriminate or reveal a systemic process abuse in the media.

What oversight committees and corruption bodies have to get better at is professionally correcting misinformation quickly and explaining the bleeding obvious – even to former police commissioners and retired, relevance-seeking politicians.