

# **AUSTRALASIAN STUDY OF PARLIAMENT GROUP**

## **Western Australian Chapter**

### Combating Corruption

#### Parliament's Man - An Effective Tool?

The Hon Michael Murray QC.

Parliamentary Inspector of the  
Corruption and Crime Commission.

*"Integrity has no need of rules"; Albert Camus*

My Office is established by the *Corruption and Crime Commission Act 2003 (WA)* (the Act). It is entirely independent of the Commission. Generally speaking, I have no power to act directly to proceed against the Commission, its officers or any other agency or public officers and I may not interfere with any lawful operation of the Commission. What good may I do in those circumstances?

I have ample power to perform the functions of my office. They are:

- to audit the operation of the Act and the operations of the Commission,
- to deal with misconduct (as defined in s4 of the Act) of the Commission and its officers by making recommendations to it or to appropriate agencies and authorities, and
- to assess the effectiveness and appropriateness of the Commission's procedures.

Therefore, it is my task to watch over the work of the Commission in dealing with corruption and other types of misconduct by public officers and, most importantly, to watch over its effectiveness in dealing with corruption and misconduct generally and particularly within the ranks of its own officers.

I will return to the latter aspect of my work shortly, but, again speaking generally I have ample powers to enable me to perform the functions of my office. I may:

- have unrestricted access to the Commission's records, any documents or other things,

- require officers to provide information,
- consult with other relevant agencies and authorities, and, importantly,
- refer matters concerning the Commission or its officers to other agencies for their action and recommend the taking of disciplinary action against, or the criminal prosecution of Commission officers.

I act of my own motion, upon complaints by members of the public, upon Ministerial request, and upon a reference by the Commission, the Parliament, or the Joint Standing Committee.

I may hold a formal inquiry, privately, where necessary to advance the performance of my functions, but I have not thus far found it necessary to do so and I would prefer the flexibility of the exercise of my general powers of investigation except in case of necessity. Such an inquiry is held utilising the powers of a Royal Commission under the *Royal Commissions Act 1968*

(WA), but again, in private, and as a general rule the evidence taken in such an inquiry will be inadmissible in proceedings in a court.

The Act, Part 13, Division 4, contains stringent secrecy provisions which operate upon me to protect the position of those who are the subject of investigation, unless they end up in open court or in other judicial or quasi-judicial proceedings which are open to the public.

Even then the desirability of subjugating the public interest in obtaining information, to the effectiveness of the processes which may be utilised to deal with corruption, may need to be considered. Under s83 of the Act I may stop proceedings for a prerogative writ, an injunction, or declaratory judgment sought to be commenced during the currency of the exceptional powers granted under Part 4 of the Act in respect of organised crime as presently dealt with in the Act -

- compulsory examination of witnesses before the Commission,

- enhanced powers of entry and search,
- assumed identities,
- controlled operations of secret surveillance of various kinds, including undercover involvement in criminal activity and integrity testing, and
- fortification removal powers.

I have not so far been called upon to act under s83 and would only stifle the process of litigation in the forms of judicial review mentioned so far as was absolutely necessary to preserve the operational efficacy of investigatory processes currently being employed pursuant to the exercise of powers available under the Act.

I should comment upon an important aspect of my work, that relating to alleged corruption or other misconduct by the Commission or, more particularly, by its officers. The Commission must inform me of any allegation, by whomever made, “that concerns, or may concern, an officer of the Commission”: s196(4) of the

Act.

The Commission is not to stop its own processes in the discharge of the duty imposed upon it to investigate and deal with such a matter, but it will do so under my guidance and control until the point arrives at which I think it necessary to terminate the Commission's proceedings and determine the course to be taken myself.

The statutory scheme in effect preserves the capacity of the Commission to investigate and discipline its own officers and leaves me to step in and ensure that appropriate action is taken where it is found to be necessary to protect the integrity of the process of dealing with misconduct by Commission officers, even to the extent of recommending, or referring for consideration, criminal prosecutions.

I am pleased to be able to report that the Commissioner has agreed that any allegation, even if not expressly or

apparently of misconduct by a Commission officer, which concerns, or may concern an officer, should be notified to me, ie:- anything which is not merely an expression of dissatisfaction with Commission processes or at the determination of an investigation arrived at by the Commission. In my view that will enable me to perform my statutory duty to review any such allegation and to consider how it should be effectively handled.

Having now discussed my functions to oversee the processes of the Commission without publicly making decisions of a substantive kind in respect of matters within the power and duties of the Commission, I may say that my functions are, in my opinion sensibly stated to give the public the assurance that often substantial investigatory power vested in the Commission is effectively exercised without unnecessarily infringing the ordinary rights we all enjoy as members of this community.

My powers are adequate to the purpose and most effectively exercised with the co-operation of the Commissioner of the CCC, the Hon Roger Macknay QC. I have met with no case where I have not received every assistance from the Commission in the performance of my duty under the Act.

Even so, the ultimate power at my disposal is the power to report my findings, not only about matters generally, or in a specific case relating to the operational effectiveness of the Commission or its processes, but also concerning matters to do with the outcome of particular investigations by the Commission, to the Parliament.

I may do so directly to the Parliament or by way of a report to the Joint Standing Committee of the Parliament established under s216A of the Act. That process removes from me the obligation to observe the secrecy provisions of the Act in the sense that it becomes the responsibility of the Joint Standing Committee to make the decision whether the subject



matter dealt with in my report should, wholly or in part, be disclosed in the public interest. The secrecy provisions of the Act no longer apply if my report is tabled in either House of Parliament.

How, then, is the question posed in the title of this paper to be answered? The primary agent set up by the Act to fight misconduct and corruption in governmental and other public agencies, without trespassing upon the responsibilities of the Police, is the Commission. It is invested, necessarily in the view of the legislature, with considerable investigatory powers.

Parliament has sought to retain the capacity to have oversight of the exercise of those powers. I am the means by which that oversight is exercised, and I am given adequate powers to perform that function, a process made easier by the co-operation offered by the Commission.

It is unnecessary for that to be an effective process,

capable of providing the community with the assurance that its rights will not be infringed, except to the extent necessary to serve its interest in the control and prevention of corruption in the public sector, that I should have the power to override and alter the work of the Commission. The power of publicity is sufficient to make me Parliament's effective tool in securing the proper operation of the Act.