



**Joint Standing Committee on the Corruption and Crime
Commission**

WA Police Union complaint in regard to the partiality of the Parliamentary Inspector of the Corruption and Crime Commission

Report No. 12
May 2014

Parliament of Western Australia

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Joint Standing Committee on the Corruption and Crime Commission

WA Police Union complaint in regard to the partiality of the Parliamentary Inspector of the Corruption and Crime Commission

Report No. 12

Presented by

Hon Nick Goiran, MLC and Mr Peter Watson, MLA

Laid on the Table of the Legislative Assembly and the Legislative Council on
8 May 2014

Chairman's Foreword

This report stems from adverse comments made in relation to the Parliamentary Inspector of the Corruption and Crime Commission (PICCC), Hon Michael Murray QC, by the President of the WA Police Union of Workers (WAPU), Mr George Tilbury, at a Committee hearing on 4 December 2013. These claims were made while the Committee was taking evidence in relation to the matter of requests by the Corruption and Crime Commission's officers to Western Australia Police officers to participate in voluntary interviews.

In his evidence, Mr Tilbury claimed that the PICCC had been partial in his dealings with the WA Police Union on more than one occasion. The Committee could not allow these allegations to be untested and invited Mr Tilbury to substantiate his allegations by way of a submission to the Committee. WAPU subsequently provided the Committee with only one matter of complaint about the PICCC's partiality in its submission of 20 January 2014.

WAPU allege that, in an item of correspondence between the PICCC and the Corruption and Crime Commission (CCC), the PICCC was acting outside of his statutory functions in providing legal advice to the CCC. In addition, WAPU claims that, in opining about the stance taken by union members in refusing to cooperate in voluntary interviews with the CCC, the Parliamentary Inspector had displayed partiality.

The Committee forwarded the WAPU submission to the PICCC for his response. This was received on 28 March 2014 and was provided to WAPU for a final submission. These two documents are included as appendices to this report. WAPU chose not to make a final submission to the PICCC's response to its complaint.

The functions and powers of the Parliamentary Inspector are contained in sections 195 and 196 of the *Corruption and Crime Commission Act 2003* (the CCC Act). Section 195(1)(c) gives the PICCC power "to assess the effectiveness and appropriateness of the Commission's procedures".¹ Section 196(2) of the CCC Act also gives the PICCC power to "to do all things necessary or convenient for the performance of the Parliamentary Inspector's functions."

In considering the matters raised by WAPU, the Committee believes that it is incumbent on the Parliamentary Inspector to take whatever means necessary to carry out his functions. In some circumstances this may include consideration of court

1 AustLIi, *Corruption and Crime Commission Act 2003 - Sect 195*, nd. Available at: www.austlii.edu.au/au/legis/wa/consol_act/cacca2003338/s195.html. Accessed on 11 April 2014.

decisions made in other jurisdictions and their impact, if any, to the procedures of the CCC.

Whilst it is not commonly the practice of the Committee to table the outcome of complaints received, in this instance the Committee has elected to do so given:

- the seriousness of the allegation;
- it originated during a public hearing of the Committee; and
- the unavoidable impact on the future operations of the Office of the Parliamentary Inspector in the event the complaint was sustained.

The Joint Standing Committee finds that the allegation by the WA Police Union of Workers that the Parliamentary Inspector is partial to be without foundation, and further, that the Parliamentary Inspector continues to have the bi-partisan support of the Committee.

I would like to acknowledge the work on this report by my Committee colleagues: the Deputy Chairman Mr Peter Watson MLA, the Member for Albany; Mr Nathan Morton MLA, the Member for Forrestfield; and the Member for the South West Region, Hon Adele Farina MLC. Finally, I also thank the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan, for their efforts in compiling this report.

A handwritten signature in blue ink, consisting of a stylized 'N' followed by a horizontal line and a vertical line crossing it.

HON NICK GOIRAN, MLC
CHAIRMAN

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Findings and Recommendations

Finding 1

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The Joint Standing Committee finds that, in the matter raised by the WA Police Union of Workers, the Parliamentary Inspector acted in accordance with sections 195 and 196 of the *Corruption and Crime Commission Act 2003*.

Finding 2

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The Joint Standing Committee finds that the assertion that the Parliamentary Inspector acted outside of his statutory functions, is incorrect.

Finding 3

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The Joint Standing Committee finds that the allegation by the WA Police Union of Workers about the partiality of the Parliamentary Inspector, is without foundation.

Finding 4

Page 8

The Parliamentary Inspector continues to have the bi-partisan support of the Joint Standing Committee.

Chapter 1

Allegations of partiality against the Parliamentary Inspector

...but we do question the impartiality of the Parliamentary Inspector.

Mr George Tilbury, President of the WA Police Union of Workers.

Background to this report

A primary function of the Joint Standing Committee is to monitor and report to Parliament on the exercise of the function of both the Corruption and Crime Commission (CCC) and the Parliamentary Inspector of the Corruption and Crime Commission (PICCC). This report stems from adverse comments made in relation to the PICCC, Hon Michael Murray QC, by the President of the WA Police Union of Workers (WAPU), Mr George Tilbury, at a Committee hearing on 4 December 2013. These claims were made while the Committee was taking evidence in relation to the matter of requests by the Corruption and Crime Commission's officers to Western Australia Police (WAPOL) officers to participate in voluntary interviews.²

In his evidence, Mr Tilbury claimed that the PICCC had been partial in his dealings with the WA Police Union:

***The CHAIRMAN:** Are you familiar with the process that is available to your members in terms of them proceeding with a complaint to the Parliamentary Inspector?*

***Mr Tilbury:** Yes, I am.*

***The CHAIRMAN:** So might that be another option in terms of being able to address some of these issues in terms of it being dealt with in confidence and without the risk of reprisal?*

***Mr Tilbury:** It is, but we do question the impartiality of the Parliamentary Inspector.*

***The CHAIRMAN:** On what basis?*

² Joint Standing Committee on the Corruption and Crime Commission, Voluntary CCC interviews with Western Australia police officers, *Transcript of Evidence*, 4 December 2013. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/3284DB154BC735B848257C38002D21AF/\\$file/75651084.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/3284DB154BC735B848257C38002D21AF/$file/75651084.pdf). Accessed on: 11 April 2014.

Chapter 1

Mr Tilbury: *Some of the correspondence that we have actually seen takes one side into account of a particular matter without referring to it in its entirety. So that is of concern to us. It has happened on more than one occasion.*³

When questioned as to how WAPU had come to perceive that the PICCC was biased, Mr Tilbury referenced the PICCC's comments on a High Court decision in a letter to the CCC Commissioner about voluntary police interviews:

The CHAIRMAN: *So the Parliamentary Inspector, Hon Michael Murray, QC, an eminent ex-Supreme Court judge, is not being impartial with respect to matters dealing with WA police officers; that is the suggestion?*

Mr Tilbury: *Only with the experience we have had to date.*

The CHAIRMAN: *All right, but the experience you are referring to is some correspondence. It would assist the committee if you could indicate what particular matters in the correspondence are of concern to you that led to the allegation the Parliamentary Inspector is now becoming not impartial.*

Mr Tilbury: *Just in reference to the letter that was sent to us from the Parliamentary Inspector, he does cite examples and instances where he has taken a firm view which is clearly wrong in parts of this. He does make reference to a matter titled X7, which is not relevant in this particular case, and was less than helpful in relation to the issue at hand.*

The CHAIRMAN: *For the benefit of members, the letter that is being referred to is the letter from the Parliamentary Inspector to Commissioner Macknay, dated 15 August 2013?*

Mr Tilbury: *Yes, that is correct.*

The CHAIRMAN: *Just so that I have got this clear, then, because the Parliamentary Inspector refers to a case X7, that was a judgement of the High Court, in his correspondence and the advice you have been given is that it is not relevant to the matter at hand, that makes him not impartial?*

³ Ibid, p3.

Mr Tilbury: *With him having such strong views in relation to that and referring to my letter, which is the issue at hand, that is our view, yes.*⁴

In light of its responsibilities to the Parliament and to afford due process to the PICCC, the Committee could not allow these allegations to be untested. The Committee's Chairman suggested Mr Tilbury ought to substantiate his allegations by way of a submission to the Committee:

The CHAIRMAN: *Might I suggest, then, Mr Tilbury, for the benefit of this matter being in a public hearing, that an allegation that the Parliamentary Inspector is lacking impartiality is a substantive matter and would be a matter of grave concern to this Committee, which has, amongst other things, a responsibility for overseeing the Parliamentary Inspector. I have to say at this point, I have not heard anything this morning that gives me grounds to follow that up further.*

So what I might propose that I do is that if it is a matter that you would like to take further, I would suggest that you correspond with the Committee, with a detailed submission as to whether you wish to pursue that complaint further and the grounds for it, because, frankly, it is not satisfactory to me that a person of the eminence and experience of Mr Murray— his impartiality is being called into question this morning on the grounds that have been provided. But I am happy to give you and the union the benefit of the doubt and the opportunity to correspond with us further on that matter.

Mr Tilbury: *We are more than happy to do that. Thank you.*⁵

The WA Police Union provided a submission on 20 January 2014 (see Appendix One) and this is discussed in greater detail in Chapter 2.

Timeline of events

4 December 2013	WAPU provides evidence to the Committee.
20 January 2014	WAPU submits a complaint to the Committee on the PICCC's partiality.
20 February 2014	The complaint is forwarded to the PICCC for his response.
28 March 2014	The Committee receives the PICCC's response.

4 Ibid, p4.

5 Ibid.

Chapter 1

2 April 2014 The Committee forwards the PICCC's response to WAPU and invites it to make any final submission on the matter.

28 April 2014 WAPU advises that it will not make a further submission.

This report does not deliberate on the issue of voluntary police interviews with the CCC, which was the context in which the allegation about the PICCC arose. The Committee will report separately to Parliament on that matter.

Chapter 2

The substantive allegations of the WAPU complaint

A fair minded observer would be entitled to now conclude that the Parliamentary Inspector may not bring an impartial mind to a complaint by a Police Officer...
Mr George Tilbury, President of the WA Police Union of Workers.

WAPU's allegations

Despite claiming while giving evidence that there had been more than one occasion where the Parliamentary Inspector had taken a one-sided view of matters⁶, WAPU provided the Committee with only one matter of complaint about the PICCC in its submission of 20 January 2014. WAPU allege that, in an item of correspondence between the PICCC and the CCC, the PICCC was acting outside of his statutory functions in providing legal advice to the CCC. WAPU claims that, in opining about the stance taken by union members in refusing to cooperate in voluntary interviews with the CCC, the Parliamentary Inspector displayed partiality.

The Union's complaint is that the PICCC gave his legal opinion to the CCC in considering relevant statutory provisions in a High Court case *X7 v Australian Crime Commission*, in coming to conclusions in relation to police voluntary interviews. In this letter to the CCC, the PICCC also attached a copy of the case.⁷

In relation to its claim of partiality, WAPU also takes issue with the PICCC's view on voluntary interviews:

*The... letter also contains the Parliamentary Inspector's general opinion about the position taken by the Union and opined that Union Members refusing to participate in voluntary interviews with the CCC hinder the timeliness of the investigations process...*⁸

WAPU argue that the PICCC ought not to have acted beyond his statutory functions, and that the stance he has taken on the matter of voluntary interviews may dissuade police officers from seeking to complain about the CCC.

6 Joint Standing Committee on the Corruption and Crime Commission, Voluntary CCC interviews with Western Australia police officers, *Transcript of Evidence*, 4 December 2013, p3.

7 Mr George Tilbury, President, WA Police Union of Workers, Letter, 20 January 2014, p2.

8 Ibid.

Chapter 2

Much of the WAPU complaint about the PICCC focuses on the PICCC's legal view of whether material given in a voluntary interview with the CCC is privileged. The letter concludes:

A fair minded observer would be entitled to now conclude that the Parliamentary Inspector may not bring an impartial mind to a complaint by a Police Officer regarding voluntary interviews with the CCC because of the contents of his letter.

In summary, the Parliamentary Inspector:

- 1. Has agreed with the CCC that Police Officers who refuse to co-operate "hinder the timeliness of the process" of CCC investigations;*
- 2. Has concluded that a Police Officer who "refuses to co-operate" with the CCC in a voluntary interview is engaging in a pointless and futile exercise;*
- 3. Has criticised the Union for correctly advising Members of their right not to participate;*
- 4. Has criticised the Union for directing its Members not to participate in voluntary interviews because they will not have protection over the use of their answers under the CCC Act, when the efficacy or otherwise of the Union's decision to advise its Members of their rights is outside the scope of the Parliamentary Inspector's statutory function.⁹*

The PICCC's response

The Parliamentary Inspector provided his response to the WAPU complaint to the Committee on 28 March 2014 (see Appendix Two). The PICCC said in his response that the CCC Commissioner had rightly referred to him the original WAPU letter about police voluntary interviews as:

Under s195(1)(c) of the Act, one of my functions is to assess the effectiveness and appropriateness of the Commission's procedures. If, in the area of investigation and monitoring of the conduct of other investigators, police officers were to refuse their co-operation and thereby force the Commission to resort in every case to the formal processes of enforcement to which I have referred above it would

⁹ Mr George Tilbury, President, WA Police Union of Workers, Letter, 20 January 2014, p3.

*obviously delay the prompt resolution of specific matters of inquiry across the board.*¹⁰

The functions and powers of the Parliamentary Inspector are contained in sections 195 and 196 of the *Corruption and Crime Commission Act 2003* (the CCC Act). Section 195(1)(c) gives the PICCC power “to assess the effectiveness and appropriateness of the Commission’s procedures”.¹¹ Section 196(2) of the CCC Act also gives the PICCC power to “to do all things necessary or convenient for the performance of the Parliamentary Inspector’s functions.”¹²

In considering the matters raised by WAPU, and the application of the CCC Act, the Committee affirms that it is incumbent on the Parliamentary Inspector to take whatever means are necessary to carry out his functions. In some circumstances this may include consideration of the impact of court judgments made in other jurisdictions.

The PICCC also states in his letter his concern that a consequence of the allegations made by WAPU that he is acting without due impartiality in relation to the issue of voluntary interviews may discourage WAPU members from seeking his assistance in any matter to do with the CCC. The effect of this stance would leave WAPU members without an avenue for complaint about the actions of the CCC.¹³

The Committee notes in passing that it also has jurisdictional oversight of the CCC and can receive and handle complaints about the CCC. Nevertheless, it has been a long-standing convention for the Committee to refer, at first instance, any complaints received about the CCC to the PICCC for his consideration and determination. This has then created an additional right for complainants to return to the Committee in the event they have a complaint about the handling of the matter by the PICCC.

Accordingly, in practice the division of complaint-handling responsibility has been that the PICCC has handled complaints about the CCC, whereas the Committee has handled complaints about the PICCC.

In this present case, the PICCC’s response was provided to WAPU for a final submission. Upon being contacted by the Committee to ascertain whether a final submission was forthcoming, WAPU advised that it chose not to make a further submission to its complaint.

10 Hon Michael Murray QC, Parliamentary Inspector, Letter, 28 March 2014, p2.

11 AustLII, *Corruption and Crime Commission Act 2003 - Sect 195*, nd. Available at: www.austlii.edu.au/au/legis/wa/consol_act/cacca2003338/s195.html. Accessed on 11 April 2014.

12 AustLII, *Corruption and Crime Commission Act 2003 - Sect 196*, nd. Available at: www.austlii.edu.au/au/legis/wa/consol_act/cacca2003338/s196.html. Accessed on 11 April 2014.

13 Hon Michael Murray QC, Parliamentary Inspector, Letter, 28 March 2014, p3.

Chapter 2

Whilst it is not commonly the practice of the Committee to table the outcome of complaints received, in this instance the Committee has elected to do so given:

- the seriousness of the allegation;
- it originated during a public hearing of the Committee; and
- the unavoidable impact on the future operations of the Office of the Parliamentary Inspector in the event the complaint was sustained.

Committee findings

In considering this matter, the Committee can find no evidence that supports the complaint from WAPU about the partiality of the PICCC.

Finding 1

The Joint Standing Committee finds that, in the matter raised by the WA Police Union of Workers, the Parliamentary Inspector acted in accordance with sections 195 and 196 of the *Corruption and Crime Commission Act 2003*.

Finding 2

The Joint Standing Committee finds that the assertion that the Parliamentary Inspector acted outside of his statutory functions, is incorrect.

Finding 3

The Joint Standing Committee finds that the allegation by the WA Police Union of Workers about the partiality of the Parliamentary Inspector, is without foundation.

Finding 4


The Parliamentary Inspector continues to have the bi-partisan support of the Joint Standing Committee.

Appendix One


WAPU's letter of complaint – 20 January 2014

WAPU
WA POLICE UNION OF WORKERS

Gen Corro 192



20 January 2014



Honourable N. Goiran MLC
Chair
Joint Standing Committee on the Corruption and Crime Commission
Level 1, 11 Harvest Terrace
WEST PERTH WA 6005

Dear Mr Goiran

LACK OF IMPARTIALITY OF PARLIAMENTARY INSPECTOR

On 22 July 2013 the WA Police Union wrote to the Corruption & Crime Commission ("CCC") following enquiries we received from our Members concerning their rights and obligations with respect to requests for them to participate in voluntary interviews with CCC investigators.

On 29 July 2013, Commissioner Macknay responded to the Union by letter and expressed his disappointment at the position being adopted by the Union ("the Commissioner's letter"). On 22 August 2013, the CCC wrote to the Union and advised that the Commissioner's letter had been provided to the Parliamentary Inspector who had responded to the CCC in a letter dated 15 August 2013 ("the Parliamentary Inspector's letter"). The CCC provided the Union with a copy of the Parliamentary Inspector's letter.

For the reasons that follow, we are of the view that the Parliamentary Inspector acted outside of his powers in sending his letter. We remind the JSC that the functions of the Parliamentary Inspector are as follows¹:

- a) To audit the operation of the CCC Act;
- b) To audit the operations of the CCC for the purpose of monitoring compliance with the laws of the State;
- c) To deal with matters of misconduct on the part of the CCC, officers of the CCC and officers of the Parliamentary Inspector;
- d) To audit any operation carried out pursuant to the powers conferred or made available by the CCC Act;
- e) To assess the effectiveness and appropriateness of the CCC's procedures;
- f) To make recommendations to the CCC, independent agencies and appropriate authorities;
- g) To report and make recommendations to either House of Parliament and the Standing Committee;
- h) To perform any other function given to the Parliamentary Inspector under the CCC Act or another Act.

¹ Pursuant to section 195(1) of the *Corruption and Crime Commission Act 2003 (WA)*.

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These functions may be performed on the Parliamentary Inspector's initiative, at the request of the Minister, in response to a matter reported to the Parliamentary Inspector or in response to a reference by either House of Parliament, the Standing Committee or the CCC.²

Giving legal advice to the CCC is not one of the Inspector's statutory functions under the CCC Act or any other Act. In our view, it is plain that the Parliamentary Inspector's letter comprises a legal opinion. This is plain because in his letter, the Parliamentary Inspector considered the relevant statutory provisions, analysed the High Court decision of *X7 v Australian Crime Commission* [2013] HCA 29 ("*X7*") (and attached a copy of the case) and came to conclusions in relation to voluntary interviews. Further, the Parliamentary Investigator provided a legal opinion that in light of *X7*, the Union was wrong in its advice to its Members.

The Parliamentary Inspector's letter also contains the Parliamentary Inspector's general opinion about the position taken by the Union and opined that Union Members refusing to participate in voluntary interviews with the CCC hinder the timeliness of the investigation process and could see no benefit in a Police Officer refusing to participate in a voluntary interview.

In our view, the Parliamentary Inspector's legal opinion set out in his letter is incorrect and his general opinions appear to proceed from his legal opinion. Voluntary interviews are not specifically provided for under the CCC Act. There is no authority for the Parliamentary Inspector's opinion that the CCC Act would not be interpreted as having the effect that the protections applicable to compulsory examinations would be lost because a person elected to co-operate voluntarily.

Contrary to the Parliamentary Inspector's reference to *X7*, that decision is not authority for the proposition advanced by the Parliamentary Inspector. In fact, *X7* is irrelevant to the issue of participation by public officers in voluntary interviews because it involved the validity of the power of the Australian Crime Commission to conduct a compulsory examination of a person about the facts of a criminal offence, after the person had been charged with such offence but before the person's criminal trial. We note that Commissioner Macknay conceded that he would adopt a more cautious approach than the Parliamentary Inspector about the effect of *X7* or how the CCC Act would be interpreted in light of it.³

As a matter of law, there is no statutory protection for a Police Officer who participates in a voluntary interview with CCC investigators because the CCC Act only accords protections and privileges over statements made by a witness answering questions under compulsion. This was accepted by Commissioner Macknay when he said:

"there is nothing in the Act that provides any form of privilege for answers given in a voluntary interview in the same way that the Act provides certain limitations on the use that be made of answers in a sworn examination".⁴

This position has also been accepted by the WA Police Commissioner in recent public statements to the media to the effect that he considers Police Officers should have such protections when speaking with the CCC voluntarily.

In our view, the CCC has decided to use voluntary interviews as a means of obtaining information about misconduct without having to utilise the powers of compulsion under the CCC Act. Voluntary interviews are therefore a matter of convenience only for the CCC. Police Officers are not required by law to "*co-operate*" with the CCC except where compelled to do so by notice or summons.

² Section 195(2) of the CCC Act.

³ Transcript p5 JSC CCC hearing 9 September 2013.

⁴ Transcript p4 JSC CCC hearing 9 September 2013.

There is no basis for criticising Police Officers for refusing to participate in voluntary interviews. Therefore, lawful refusal cannot be concluded to hinder the timeliness of CCC investigations when voluntary interviews are not governed specifically by the CCC Act but compulsory powers exist to obtain such information anyway.

The Parliamentary Inspector is the appropriate person to receive a complaint from a Police Officer about the conduct of the CCC or any CCC officers acting in the discharge of their duties. A fair minded observer would be entitled to now conclude that the Parliamentary Inspector may not bring an impartial mind to a complaint by a Police Officer regarding voluntary interviews with the CCC because of the contents of his letter.

In summary, the Parliamentary Inspector:

1. Has agreed with the CCC that Police Officers who refuse to co-operate "hinder the timeliness of the process" of CCC investigations;
2. Has concluded that a Police Officer who "refuses to co-operate" with the CCC in a voluntary interview is engaging in a pointless and futile exercise;
3. Has criticised the Union for correctly advising Members of their right not to participate;
4. Has criticised the Union for directing its Members not to participate in voluntary interviews because they will not have protection over the use of their answers under the CCC Act, when the efficacy or otherwise of the Union's decision to advise its Members of their rights is outside the scope of the Parliamentary Inspector's statutory function.

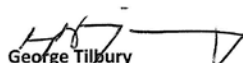
In our view, a Police Officer seeking to complain to the Parliamentary Inspector is likely to be discouraged from doing so in light of the adversarial and judgmental position adopted by the Parliamentary Inspector in this letter. It is the Union's submission that the Parliamentary Inspector ought not to have commented at all as the matter is beyond the scope of his statutory functions, unless he was delivering a report compiled after receipt of a complaint to his office which had then been investigated.

Even if the Union is wrong about its interpretation of the CCC Act and the lack of protections offered to Police Officers in voluntary interviews, this does not excuse or justify the Parliamentary Inspector acting outside of his statutory functions.

I trust the information outlined will assist the Committee understand why WAPU expressed concerns about the impartiality of the Parliamentary Inspector, when we recently appeared before you to give oral evidence.

I look forward to a response at your earliest convenience.

Yours sincerely


George Tilbury
President

Appendix Two

PICCC response - 28 March 2014



**PARLIAMENTARY INSPECTOR
OF THE CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

Our ref: 412 & 435/13

28 March 2014

The Hon Nick Goiran MLC
Chairman
Joint Standing Committee of the
Corruption and Crime Commission

Dear Chairman

POLICE UNION of WORKERS

Thank you for the opportunity to respond to the allegation made by the President of the Police Union, Mr Tilbury, that I am biased or without due impartiality as between the Commission and the Police when I have become involved in matters of oversight, or the conduct, of investigations concerning police officers. It is put that I lean towards the view of the matter adopted by the Commission.

When, as I understand it for the first time, the proposition of bias was put at a public hearing before the JSC on 4 December 2013, it was said that the Union had "seen" correspondence from me which took a one sided view of a matter. "It has happened on more than one occasion", he said. You invited him then, if he wished to pursue that allegation, to make a detailed written submission setting out the grounds for the contention.

His letter, dated 20 January 2014, refers to a single letter I wrote to the Commissioner of the CCC on 15 August 2013. That letter was written in response to the Commissioner providing me with copies of a letter from Mr Tilbury to him, dated 22 July 2013, the Commissioner's reply, dated 29 July 2013, and his letter on the same topic to the Commissioner of Police, dated 26 July 2013. I believe the JSC has copies of all that material.

In his response to the Union the Commissioner of the CCC referred generally to the receipt of complaints which were about the Police, or concerned them as witnesses. He referred to relevant provisions of the Act.

Section 32 requires an assessment of the allegation so that an opinion may be formed as to whether it may concern any relevant misconduct by a police or other public officer. There may be a preliminary investigation and people may be "consulted" and

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information sought. Section 33 authorises further investigation by the Commission and/or another agency, such as the Police, under the oversight of the Commission.

The Act says nothing about how the process of investigation is to be carried out until, in provisions to which I referred in my letter about which Mr Tilbury complains, it provides mechanisms by which people may be compelled to participate.

There may be a formal process of examination of witnesses, and it does not matter whether they attend voluntarily or in obedience to a summons or notice to produce procedure. What is usually described as public interest immunity is abrogated, but otherwise all the ordinary privileges and immunities afforded by the law to a witness in court proceedings are preserved expressly.

The position is exactly the same when the investigation involves the use of the other available process of compulsion, a notice requiring the provision of a statement of information or to produce any record or thing. Only the public interest immunity is abrogated. Otherwise the privileges and protections afforded by the common law and other statute law are expressly preserved.

In no case is any information provided, or statement made, under compulsion admissible in a court except in relation to proceedings for contempt, for an offence against the Act, or disciplinary proceedings.

The point is short and simple. If there was to be any compulsory process by which an investigation could be conducted, it had to be provided by the Act. In doing so the Act clearly provides the extent to which the ordinary protections afforded by the law are abrogated or modified.

Otherwise the process of investigation can only be by securing the voluntary participation of those who are its subject or who might be witnesses. They can refuse to participate and if they do co-operate they retain all the ordinary privileges and protections of the law because nothing in the Act takes them away.

The matter of the letter from Mr Tilbury was rightly referred to me by the Commissioner. Under s195(1)(c) of the Act, one of my functions is to assess the effectiveness and appropriateness of the Commission's procedures. If, in the area of investigation and monitoring of the conduct of other investigators, police officers were to refuse their co-operation and thereby force the Commission to resort in every case to the formal processes of enforcement to which I have referred above it would obviously delay the prompt resolution of specific matters of inquiry across the board.

It was therefore incumbent upon me to consider the necessity of the action proposed by the Union and to make my views known so that I could, if those views were accepted, influence the adoption of processes of investigation which were not only effective and expeditious, but fair to all involved.

As I have said, in the end my consideration of the matter necessarily centred upon the provisions of the Act and their interpretation against the background of the general rule

of law that the common law is preserved for the benefit of all of us except to the extent that it is taken away by clear provisions of an enactment.

As I hope I have made clear, I concluded that the advice proposed to be given to police officers that they should refuse to co-operate with the Commission but should only participate under compulsion because, "(i)f an Officer voluntarily elects to participate in an interview which is not compulsory, any statements made by the Officer can be used against them in subsequent criminal or civil proceedings" was simply wrong as a matter of law.

That was not a view which was negotiable or open to change upon its referral to the Commissioner of the CCC, the Commissioner of Police, the Union, or any other agency. Therefore, I did not engage in that process with any of the above persons, but simply made my view known to the Commissioner and informed him that I would have no objection to him passing it on to the Union and the Commissioner of Police.

As to my reference to the recent decision of the High Court in *X7 v ACC [2013] HCA 29*, it was, of course, decided upon different facts to those at issue here, but it remained an application of "the settled principle that statutory provisions are not to be construed as abrogating important common law rights, privileges and immunities in the absence of clear words or necessary implication to that effect": French CJ and Crennan J at [21] and [24]. Those judges were in the minority, but not upon their view of the law, for which their Honours cited numerous decisions of the High Court, going as far back as 1908.

The question in *X7* was whether the powers of compulsory examination of persons under the *Australian Crime Commission Act 2002* (Cth) were exercisable in relation to *X7* who had been charged with drug importation and money laundering offences. The majority held not, on the ground that the compulsion involved would inevitably detract from the capacity of the accused to rely upon such matters as the right to silence and the privilege against self-incrimination in criminal proceedings when it was not abundantly clear that that was the legislative intent. The minority, for reasons which are not presently relevant, took the opposite view of the proper construction of the ACC Act.

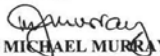
In this case the answer to be given is clear. The Act modifies to some extent the application of the common law privileges in relation to the use of its compulsory processes. It says nothing at all about the application of those rights and privileges where the person concerned has voluntarily participated in the process of investigation. They must remain fully available, including the right to silence and the privilege against self-incrimination in subsequent proceedings in a court.

I do not know if police officers have been given the advice the Union proposed in Mr Tilbury's letter, or if they have been told that they should not seek to ventilate any concerns they may have about the conduct of CCC investigations with me. If the first piece of advice has been circulated it can only have the effect of delaying the Commission's processes for no good reason. If the second piece of advice has been circulated it has the effect of depriving police officers from having access to my oversight of the Commission's processes.

I cannot leave this matter without making the comment that I find Mr Tilbury's observation that I lack impartiality, not only without foundation, but unworthy of an individual whose position is such that he has the capacity, possibly, to influence his members against their participation in an integrity system which he says he supports.

If I may be of any further assistance to the Committee please let me know. I have no objection if you consider it desirable to provide this letter to the Commission, the Commissioner of Police and the Union for such comment as they may wish to make.

Yours sincerely,


HON MICHAEL MURRAY AM QC
PARLIAMENTARY INSPECTOR

Appendix Three

Hearings

Date	Name	Position	Organisation
4 December 2013	Mr George Tilbury	President	WA Police Union of Workers
	Mr Brandon Shortland	Vice President	
	Mr Jonathan Groves	Deputy Vice President	

Appendix Four

Committee's functions and powers

On 21 May 2013 the Legislative Assembly received and read a message from the Legislative Council concurring with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

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 and Crime Commission Act 2003*.

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