



PARLIAMENTARY INSPECTOR  
OF THE CORRUPTION AND CRIME COMMISSION  
WESTERN AUSTRALIA



*Annual Report*



*1 July 2004 -  
30 June 2005*



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## PRELIMINARY OBSERVATIONS

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This is my second Annual Report to Parliament as Parliamentary Inspector and my first report for a full 12 months reporting period. I was appointed in January 2004 (as was the Commissioner for Corruption and Crime, Mr Kevin Hammond). The first Annual Report therefore covered only a six-month period.

The investigation of allegations of "misconduct" is one of the primary functions of the Corruption and Crime Commission. During the reporting period, the Commission received 2,410 allegations or notifications of "misconduct", or suspected misconduct.

On the rare occasion that an allegation of "misconduct" is made against the Commission or any of its officers, the Commission may not receive or deal with that allegation, but must refer it to the Parliamentary Inspector.

The Commission has been prompt to make referrals to me, whenever that has been appropriate. During the accounting period, 14 matters were referred to me by the Commission. However, with one exception, none of those matters was, on my analysis of the underlying facts, an allegation of "misconduct", as defined by s.4 of the Act. Rather, they were either complaints that the Commission had failed to investigate a matter to the satisfaction of the complainant; or had rejected a complaint which the complainant considered ought not to have been rejected. In one instance, a complainant alleged that the Commission had improperly, and in breach of confidence, released information that the complainant was under investigation by the Commission – an allegation which, on further investigation by me, proved to have been unfounded.

The small number of complaints regarding the operations and functions of the Commission, which have been either referred to me by the Commission, or have come directly to me, is a strong indication that the Commission is performing its statutory function satisfactorily.

I have found, since my appointment, that it has been necessary to clarify the function of the Parliamentary Inspector, and in particular to dispel any misconception that the Inspector performs a kind of appellate role, where a member of the public is dissatisfied with a conclusion reached by the Commission with respect to his or her complaint. That, of course, is not the Inspector's function. However, in "assessing the effectiveness and appropriateness of the Commission's procedures" (Act, s.195(1)(c)) it will sometimes be necessary to review and revisit the subject matter of a complaint, in the process of ensuring that it has been properly assessed by the Commission.

I am satisfied that the Commission has, during the reporting period, fulfilled its statutory functions effectively and appropriately.

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## 1. ROLE AND FUNCTIONS OF THE PARLIAMENTARY INSPECTOR

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The Office of the Parliamentary Inspector of the Corruption and Crime Commission is established by section 188 of the *Corruption and Crime Commission Act*.

I was appointed as the Parliamentary Inspector on 1 January 2004, pursuant to section 189, by the Governor by Commission under the Public Seal of the State of Western Australia, on the recommendation of the Premier.

A most important aspect of the office is that it is not an office in the public service. The Parliamentary Inspector is an officer of Parliament and is responsible for assisting the Joint Standing Committee, established pursuant to section 216A and comprising an equal number of members appointed by each House of Parliament, in the performance of that Committee's functions.

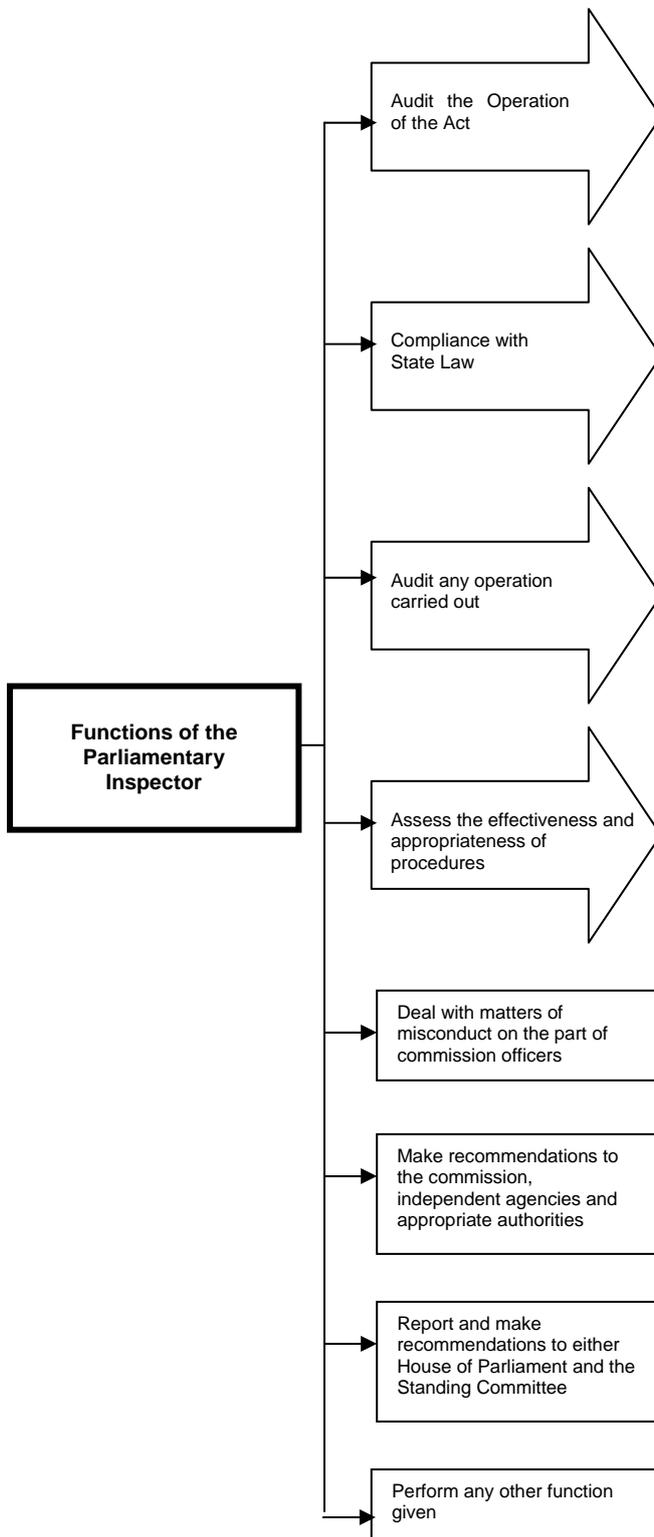
The Parliamentary Inspector has the following functions (s195)

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

These functions may be performed on the Parliamentary Inspector's own 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 the House of Parliament, the Standing Committee or the Commission.

The Inspector may report to the Parliament or to the Standing Committee at any time on matters affecting the Commission, including the operational effectiveness and requirements of the Commission; or on any administrative or general policy matter relating to the functions of the Parliamentary Inspector. The Inspector is also obliged to report annually to the Parliament about his or her general activities during the year, and this report may be prepared in conjunction with the Annual Report required under the *Financial Administration and Audit Act*.

The key functions are summarised below.



## **1.1 ANALYSIS OF THE AUDIT AND OTHER FUNCTIONS OF THE INSPECTOR**

The term "audit" is not defined in the Act. What follows is my analysis of each of the "functions" listed in section 195.

### **(aa) to audit the operation of the Act**

This clause was inserted in response to a recommendation by the Legislation Committee of the Legislative Council. It is not clear from the Committee's report precisely what was intended by this provision. On the face of it, it appears to require the Inspector to identify any shortcomings in the Act, by means of independent review of its operation, without the need to resort to a full scale Parliamentary review. It is probable that the intent was to provide an independent mechanism for initiating minor amendments, rather than a full-scale review.

This function could be performed on a periodic basis, either by reviewing the operation of the Act as a whole, or by reviewing a selected component of the Act. Components might be selected by the Inspector as a result of his or her own observations, or as a result of a request from the Minister, Parliament, the Commission or other stakeholders.

It could take the form of an inquiry, calling for submissions, through research and/or audit by the Inspector's staff, or by a combination of these approaches.

My present intention is to identify any perceived shortcomings in the operation of the Act, as and when they manifest themselves, in consultation with the Commissioner, and to report any such matters to the Standing Committee, to which I am responsible.

### **(a) to audit the operations of the Commission for the purpose of monitoring compliance with the laws of the State**

This function enables the Parliamentary Inspector to provide assurance that the Commission does not use secrecy or confidentiality provisions to prevent normal accountability mechanisms from applying, and to ensure that it does not operate "above the law".

Similar provisions appear in the legislation in other States. I propose to perform this function by seeking an assurance from the Commission as to compliance, examining its method of operation, satisfying myself that there are systems in place to ensure compliance, assessing the risk of compliance failure, and periodically auditing those areas where the risk and/or consequence of non-compliance is significant.

Assurance will also be sought from others involved in compliance monitoring, such as the Commission's Internal Audit and the Auditor General, with the Inspector reserving the right to periodically examine these activities to gain assurance that this level of oversight is functioning effectively.

### **(b) to deal with matters of misconduct on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector**

This function could be performed on a "reactive" or a "proactive" basis. I have decided to be essentially "reactive". That is to say, I will act upon, by investigating, complaints received by me, either by referral from the Commissioner, when a complaint of misconduct by Commission officers comes to the notice of the Commissioner, or directly from a complainant, or by referral from the Standing Committee, or by others (such as the Attorney General).

However, to ensure that members of the public are aware that they may refer to me, in the event of dissatisfaction with the Commission, a brochure has been produced for distribution and a website is to be produced, explaining the role of the Parliamentary Commissioner, and how to make complaints. Furthermore, members of the public dealing with the Commission are given information, which includes notification of the role of the Parliamentary Inspector.

**(cc) to audit any operation carried out pursuant to the powers conferred or made available by this Act**

This provision was inserted in response to a recommendation by the Legislation Committee of the Legislative Council. The report of the Committee makes clear its intent:

*"Given the CCC's extensive coercive powers, the Committee recommends an amendment which provides that the Parliamentary Inspector is to have the ability to directly audit any operation carried out pursuant to the powers conferred or made available by the CCC Act. This will include operations conducted by the Police Service using exceptional powers granted by the CCC pursuant to the organised crime function."*

This is a significant function, which enables the Inspector to examine in detail any operation, using the special powers conferred under the Act. It is similar to that of the Inspector of the Police Integrity Commission in New South Wales, who has direct access to that Commission's operational information via a room within the Commission's premises.

These audits may be undertaken:

- at the request of the Minister;
- at the request of Parliament; or
- on the Inspector's own initiative, in which case operations could be selected:
- at random;
- on a risk assessment basis (such as where the use of special powers is extensive); or
- on a public interest basis.

I have decided to examine selected operations involving the use by either the Commission, or the police, of the special powers made available under the Act, to determine if the operation and the use of special powers:

- complies with the legislation in terms of the mandatory procedures for authorisation, monitoring, reporting and other accountability conditions;
- has conformed to the policies and procedures established by the Commission,
- has been conducted in a timely manner; and
- has involved reasonable use of the special powers under the circumstance of the case.

The outcomes expected from this form of monitoring would be:

- reduced risk of unnecessary use of or abuse of the special powers from awareness that such operations may be independently monitored;
- procedural improvements resulting from the Inspector's reports on observed deficiencies; and
- improvements to or refinement of the legislation relating to special powers.

### **(c) to assess the effectiveness and appropriateness of the Commission's procedures**

At first sight, this would be a very large task. It could be taken to include all of the Commission's procedures, both operational and administrative.

My interpretation of this function is that it requires the Parliamentary Inspector to monitor the specific procedures associated with functions and powers unique to the Commission.

In New South Wales, the Inspector of the Police Integrity Commission conducted an inquiry into the practices and procedures of PIC with particular reference to the conduct of its hearings. His inquiry was conducted largely by calling for submissions,

combined with some consultations. An outcome of the inquiry was the endorsement of many of PIC's practices, to recommend improvements with respect to others, and to recommend the development of guidelines.

There are two distinct approaches the Parliamentary Inspector could take to performing this function:

- a **reactive** approach, where the function is seen as essentially a reserve role, responding only to complaints or public expressions of dissatisfaction with the Commission's performance; or
- a **proactive** approach, where the Parliamentary Inspector takes an active and ongoing role in assessing the Commission's procedures on a risk basis.

Either approach would be valid, but the "proactive" approach would provide better assurance to the Parliament, that the Commission is functioning as intended. It would have particular relevance to those lower profile functions of the Commission such as its education function. By including administrative procedures it would also be possible for the Inspector to give assurance as to the procedures governing such areas as security within the Commission.

The Inspector could give effect to this function by periodically establishing an inquiry to deal with specific procedural issues, or by the use of the Parliamentary Inspector's staff to provide assurance that the Commission has established, published and is adhering to appropriate procedures for each of its operational and administrative functions.

### **Functions (d), (e) and (f)**

See above. These functions are, I think, self-explanatory, and require no analysis.

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## **2. POWERS OF THE PARLIAMENTARY INSPECTOR**

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The Parliamentary Inspector has power to do all things necessary or convenient for the performance of the Parliamentary Inspector's functions.

The Commission is to notify the Parliamentary Inspector whenever it receives an allegation that concerns, or may concern, an officer of the Commission and at any time the Parliamentary Inspector may review the Commission's acts and proceedings with respect to its consideration of such an allegation.

Upon such a review, the Parliamentary Inspector may notify the Commission that the matter is to be removed to the Parliamentary Inspector for consideration and determination.

On receipt of such a notice, the Commission is to comply with its terms.

Upon removal, the Parliamentary Inspector may annul the Commission's determination and substitute another.

Where the Parliamentary Inspector proposes to act under the above section, the Commission must be given a reasonable opportunity to show cause why its determination should not be annulled.

The Parliamentary Inspector must not undertake a review of a matter that arises from, or can be dealt with under, a jurisdiction created by, or that is subject to, the *Industrial Relations Act 1979*.

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### **3. THE OFFICE**

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The Parliamentary Inspector's Office has suitable office premises within the Perth Central Business District. The postal address of this office is Locked Bag 123, Perth Business Centre WA 6849. The office telephone number is (08) 9264 6250 and the facsimile number is (08) 9264 6251. The email address is [piccc@piccc.wa.gov.au](mailto:piccc@piccc.wa.gov.au). One full-time staff member is engaged in the office.

The office operates appropriate computer systems, which are maintained by this office and back up tapes are kept off site for extra security.

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## **4. RECORD-KEEPING PLAN**

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The *State Records Act 2000* requires at section 19 that each agency has a record-keeping plan. The Parliamentary Inspector's Office has recently engaged a consultant to comply with these requirements.

The TRIM Context system of electronic record keeping is currently in place, which will ultimately improve easy access to the recorded information.

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## 5. REPORT ON OPERATIONS

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### 5.1 REFERRALS

During the reporting period the Inspectorate received 30 referrals, of which 14 were referred by the Commission.

### 5.2 PERFORMANCE INDICATORS

Three performance indicators have been developed to assist the Office of the Parliamentary Inspector of the Corruption and Crime Commission to measure its effectiveness and efficiency. These have not been certified for the year ending 30 June 2005, however it is anticipated that they will undergo the certification process for the next financial year.

The performance indicators include:

- **Number of referrals received** – this indicator measures the total number of referrals received by the Parliamentary Inspector’s Office in the financial year;
- **Number of investigations finalised** – this quantity-based indicator displays the total number of investigations finalised by the Parliamentary Inspector’s Office in the financial year and presumes that each referral results in an investigation; and
- **Proportion of investigations finalised satisfactorily** – this indicator measures the percentage of finalised investigations where the processes of the Corruption and Crime Commission were deemed to have been upheld.

No cost-based (efficiency) indicators were employed in the year ending 30 June 2005, due to the differing nature and complexity of each referral that the Parliamentary Inspector receives.

If an investigation that has concluded is reopened, through additional correspondence from the referral originator, it is considered to constitute a new referral.

#### Table of Performance Indicators

Indicator	2005	Six months to 30 June 2004
▪ Number of referrals received	30	-
▪ Number of investigations finalised	11	-
▪ Proportion of investigations finalised satisfactorily	100%	100%

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## 6. OPERATION OF THE COMMISSION

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The Commission received 2,140 complaints or allegations of misconduct during the reporting period, of which 582 were from individuals, and 1,828 from public sector agencies.

The Commission has published "Notification Guidelines" to inform relevant agencies (and the public) of the functions of the Commission and how to notify suspected misconduct.

I have reviewed the Guidelines and am satisfied that they provide accurate and helpful information, which can be obtained on the Commission's website.

The Commissioner has been careful to ensure that any matter which might arguably come within my function, is referred to me. He has also kept me informed on matters pertaining to the Commission's operation, and is always available to confer with me as required.

All complaints against Commission staff are placed on the relevant file, which is forwarded to me by the Commissioner himself, and the complainant is informed of that.

The Commission's website explains the role of the Parliamentary Inspector and how complaints against the Commission may be forwarded to me.

I consider that during the reporting period the Commission has now established a sound framework for ensuring that its various functions, as detailed in Part 2, Division 2, of the Act, are being adequately addressed, they being, specifically:

- Prevention and Education;
- Misconduct investigations;
- Police Royal Commission; and
- Functions in relation to the (former) Anti-Corruption Commission.