



**CORRUPTION AND CRIME COMMISSION  
OF WESTERN AUSTRALIA**

**SPEECH**

**BY**

**COMMISSIONER KEVIN HAMMOND**

**TO**

**IPAA**

**“CORRUPTION, INTEGRITY & THE PUBLIC SECTOR”**

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**SHERATON HOTEL**

Thank you for coming along to this breakfast for what will be my farewell after more than 25 years in public life. As most of you know I am retiring at the end of the month so ending three years and three months as the inaugural Commissioner of the Corruption and Crime Commission which commenced operation on 1 January 2004, and which later took over the unfinished work of both the Anti-Corruption Commission and the Kennedy Royal Commission.

After 22 years on the bench of the District Court, I knocked off work at the end of 2003 in order to carry bricks at the Commission.

Before I start, I'm sure you will appreciate that I am unable to comment specifically on the recent public hearings run by the Commission. The Commission's opinions and findings on those matters raised will be made public when the reports are tabled in the Parliament.

The report on Smiths Beach is well advanced and I hope will be tabled sometime in the next couple of months. As to the public hearings on lobbying – that is still an ongoing investigation and I have already indicated it is hoped to have that report tabled by the end of the year.

My retirement will not delay the completion of these reports which will be the result of the efforts of many people. Inevitably, charges will be laid as a result of those investigations.

I must admit that even after more than 20 years on the bench, I've been surprised by the extent of the networks that exist and the way influence could be exerted inappropriately in this state as was revealed at the recent public hearings.

The public hearings have given rise to a broad examination of the level of integrity and propriety that the public ought to expect from politicians, councillors as well as state and local government employees.

This is a worthwhile examination and debate that is currently taking place around Australia and one that I and many others follow with great interest.

That debate needs to be seen in the context that in our system of government, what could be called a social contract exists between governments at various levels, be they federal, state or local, and the people. The basis of this social contract is that in return for the payment of taxes, government not only provides goods and services, but also protection.

This protection incorporates policing and the administration of law, as well as protection from misconduct by corrupt public officers whose place of privilege and trust might enable them to exploit their position to gain a benefit for themselves or others or cause a detriment to others.

A government's election is based on the trust of the electorate. Unfortunately, the public is mistrustful of government, of politicians, of the institutions that serve them, and of business.

Research by the international public relations firm, Edelman [Edelman 2006 Asia Pacific Stakeholder Research], found that fewer than 24% of respondents trusted the government to do the right thing and even fewer trust the business sector.

That represents a low level of trust and is a matter of considerable concern for both governments and business.

Nothing erodes that trust faster than allegations of corruption. People today have little tolerance of public officers who improperly use their position to benefit themselves, their family, friends or business interests.

Corruption by public officers has a corrosive effect on our community. For example, if the public starts to doubt the

effectiveness of the police force, confidence in the system of law and order is shaken.

This is illustrated by recent events in Victoria.

Similar principles apply to planning approvals, the granting of government (local or state) contracts or employment, licences and the many other activities undertaken by government at all levels.

The integrity of each of these activities serves to strengthen or undermine this bond of trust between the electorate and the people.

Unfortunately, there still appear to be people holding public office whose practices have not kept up with the changing and I believe, increasing expectations of our community.

I was asked what was the single most important issue before the public sector today.

On the evidence before us resulting from the Commission's investigation and hearings over the last three years, it is clear there are many quite influential public officers who wouldn't

recognise a conflict of interest if it walked up and kicked them in the backside.

This is very concerning to me and should be to you. The capacity to recognise and properly manage the conflicts of interest that inevitably arise in public life is central to preserving the trust placed in public officers. It is not wrong to have a conflict of interest, it is what you do about it that matters.

It is an area that requires close attention and much greater effort across the public sector. It is an area that is receiving great attention from our Corruption Prevention, Education & Research Directorate whose officers conduct seminars and presentations across the state and to all manner of public sector groups providing literature, information and guidance.

For all that, far and away the great majority of Western Australian public officers are good people dedicated to their jobs. That a few should so severely damage the hard won reputation of the whole public sector is deeply saddening. It is for this reason that such agencies as the triple-C are critical for the maintenance of trust of Western Australians in their public sector.

Part of the feedback the Commission has received suggests a view held by some that the Commission is out of touch, that it doesn't understand how business is done in the real world. This criticism implies that it is all right for public officers to provide for a few a privileged access to information and assistance not available to everyone.

The Commission's view is that this is not all right and I believe the vast majority of Western Australians supports this view. These inappropriate practices have perhaps been allowed to occur because no agency to this time has had sufficient power and capacity to expose them.

It is an increasing trend for governments to establish commissions such as this. Indeed, it is possible to assert that no modern democratic society can do without such a commission.

Within Western Australia today there is an economic boom, commodity prices, labour costs and real estate prices are all rising. Infrastructure and labour and other resources are under pressure. There is considerable pressure on business to grasp these opportunities to return value to share holders. This in turn places considerable pressure on the public sector with complex decisions required to be made under pressure of time.

Public officers can also find themselves having considerable discretion in the way decisions are taken both in terms of process and timeframe and indeed who benefits from the decision. Under pressure, shortcuts may be taken, mistakes made and on occasion individuals can seek or be offered a benefit to manage decisions in particular ways. If there is an error of process in the decision-making then frequently it is something that the Auditor General or Ombudsman might take up, depending on jurisdiction. However, where there is a benefit or a detriment gained or provided then that is a concern for the Commission. This underlines the need for agencies such as the Commission with the particular function of improving the integrity of the public sector.

The Commission, by its presence and with the mandatory requirement for reasonably suspected misconduct to be reported by Chief Executive Officers, acts to reinforce why individuals should not engage in misconduct and forms part of the corruption prevention mechanism helping to ensure that those who are corrupt are identified and dealt with appropriately.

When serious misconduct is detected it can paralyse agencies for weeks, diverting resources from its principal business while the matter is dealt with. Depending on the seriousness, a single

incident of misconduct or more likely a series of incidents can not only cause this paralysis but can result in a loss of public confidence destroying the reputation of organisations that have taken thousands of people many years to establish.

In a speech delivered in the 2004 National lecture series for the Australian Institute of Administrative Law in April 2004 The Hon. J. J. Spigelman AC Chief Justice of N.S.W. proposed recognition of a fourth branch of Government which he termed an “integrity branch”. During his address when dealing with what he termed “The Idea of Integrity”, he said “Considered as a branch of government, the concept focuses on institutional integrity, although the latter, as a characteristic required of occupants of public office, has implications for the former. I use the word in its connotation of an unimpaired or uncorrupted state of affairs. This involves an idea of purity, which, in the context of mechanisms of governance should operate in practice. The role of the integrity branch is to ensure that that concept is realised, so that the performance of governmental functions is not corrupt, not merely in the narrow sense that officials do not take bribes, but in the broader sense of observing proper practice.” [Reported (2004) 78 ALJ at 725]

However, vague concepts of public morality have not determined how the Commission has acted in the past 3 years.

That is solely determined by our Act – *The Corruption and Crime Commission Act 2003*, the Criminal Code and other Statutes governing the behaviour of the public sector.

I have been a black letter lawyer since graduating in law more years ago than I care to remember and the principle of abiding by the words of the statute has been upmost on my mind in all decisions taken at the Commission over the last three years.

The Triple C's role as part of the integrity branch of government is to improve continuously the integrity of the public sector. In doing so it has considerable powers available to it. That being said the Commission is committed to working with and assisting CEOs to meet their responsibility for addressing misconduct in their respective agencies. Of course where CEOs are unwilling or unable to act then the Commission will act in its own right using the full extent of its powers if necessary. In this way the Commission plays an important role in promoting transparency and holding the public sector to account on behalf of the people of Western Australia.

However, I don't think it would be correct to conclude that the integrity of public officers in Western Australia is any better or worse than anywhere else in Australia. With highly publicized controversies involving public officials in Queensland, New

South Wales and Tasmania, that is a long bow to draw. It is interesting to however note an apparently higher level of exposure of misconduct in states that have established anti-corruption bodies – those states being Western Australia, Queensland and New South Wales.

Though I realize the CCC has caused the state government considerable pain, the government must be commended for establishing the Commission with strong powers, providing adequate funding and moral support.

## **PUBLIC HEARINGS**

Some of those decisions have been difficult - none perhaps more so than that to determine whether or not to conduct a public hearing as part of an investigation.

Under the CCC Act, the Commission can only conduct public hearings when the Commissioner reaches the conclusion, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, that it is in the public interest to do so (section 140(2)) of the Act.

Clearly, this is not an easy decision and each case has to be individually assessed. Broadly speaking factors such as the seriousness of the allegations, how widespread are the alleged practices and how frequently they are allegedly occurring have to be weighed against the benefit of the public exposure that comes from an open hearing.

Generally speaking, there are three main benefits that result from the conduct of public hearings. First, public hearings enhance the public's confidence in the Commission's work, as it enables the work to be observed and through this the public can judge for itself the Commission's worth.

Second, it allows the public to become more aware of the range of matters that concerns the Commission and promotes awareness of public sector misconduct more broadly. Experience has shown the numbers of matters of suspected misconduct brought to the Commission's attention increases during high profile public hearings.

And thirdly, the educative benefit of these public examinations of alleged serious misconduct for other public officers cannot be underestimated.

Additionally, with regard to the recent hearings, a specific benefit of their conduct in public is that the exposure of some of the matters raised may hopefully enable public sector agencies within the State to take immediate remedial action to ensure good governance is not compromised.

In terms of the importance of openness it is worth remembering our predecessor – the Anti-Corruption Commission – and how its Act forced the agency to operate in great secrecy. That quickly eroded the public's confidence in the Commission and the efforts to combat corruption in the State.

With regard to the potential prejudice to, or privacy infringements of, individuals, the Commission acknowledges that public hearings come at considerable cost to some witnesses and their families. While it is not the Commission's intention to cause undue stress and discomfort to individuals, the overwhelming need has been to address the public interest in identifying the matters raised during these hearings that go to the heart of good and effective governance in this State.

I should add that when witnesses are compelled to give evidence at a hearing, that evidence cannot be used against them in court. However, obviously any evidence gathered by

the Commission from sources outside the hearing room is admissible in court.

Some lawyers have complained that their clients don't get a fair go as unlike a court, the defence is not presented with all the available evidence prior to the commencement of hearings.

This shows a fundamental lack of understanding of the process followed by Royal Commissions and Commissions of inquiry.

This Commission is an investigative body and its functions do not form part of the mainstream administration of justice in that they do not include the making of conclusions or findings with respect to either civil or criminal liability. These public hearings form but one part of the investigative process, the purpose of which is to get to the truth of a matter.

These hearings are not a court process, but an investigative process into a subject matter of widespread public interest and importance. As a consequence of its investigative function the Commission is not and cannot be bound by the rules of evidence.

While witnesses appearing before the Commission may be legally represented this does not necessarily entail a right to

cross-examine the client witness or any other witnesses as the evidence is presented.

The hearings form part of a continuing investigation and in the absence of the knowledge of all of the evidence available to the Commission it is usually not in the witness's interests to be further examined by their counsel at that time.

Rather, in the recent public hearings the legal representatives of affected parties were given the opportunity to recall any witnesses for cross-examination after all the evidence had been presented. I believe this provides a higher degree of procedural fairness.

The requirements of procedural fairness can also be met in other ways such as by giving the person an opportunity to reply to the allegations under oath or to make submissions before an adverse opinion is expressed in a Commission report.

As with Royal Commissions, the rules of procedural fairness do not impose any obligation on the Commission to notify any person that evidence may be given that is adverse to their interests before that evidence was given. This approach is well supported by legal precedent, for example *News Corporation v National Company Security Commission* case.

The reason is that because in some cases advance notice might adversely affect the investigation and in others the Commission may not necessarily know that a particular name is going to be mentioned. I as Commissioner am keenly aware that it is essential to conduct investigations of this nature with scrupulous care to avoid any prejudice to the investigation itself and to avoid unfair damage to the reputations of those affected.

Many persons appearing as witnesses do so to assist the Commission. They are not the objects of its investigations and will not be adversely affected by the Commission's activities. Consequently, contrary to the views of some, a summons to appear before the Commission does not automatically signal a threat to their reputation or suggest any criticism of their actions in regard to any matter.

In regard to the effect on the reputation of individuals it has been said that often any damage to a person's reputation resulted from the public revelation of his or her conduct. In that circumstance it was really the person's conduct rather than the Commission's revelation of it that damaged their reputation. That being said, the degree to which the reputations of individuals might be inadvertently adversely effected is a matter of careful consideration by the Commission.

I would add further that the Hearing Room procedures the CCC has adopted are not unique to 186 St Georges Terrace. They are essentially similar to those adopted by similar bodies in other states. They are published on the Commission's website and are available in hard copy.

## **SUPPRESSION ORDERS**

Individuals who perceive themselves as inappropriately affected have the opportunity to make submissions to the Commission to seek a suppression order. In the past such orders have been imposed by the Commission unilaterally to protect the interests of persons collaterally or incidentally mentioned at hearings.

This Commission uses suppression orders for a number of purposes. One is to support the conduct of the Commission's investigations in public in that suppression orders can allow the effective progression of the investigative process.

In other circumstances I, as Commissioner, am concerned to avoid the publication of what sometimes can be gratuitous and occasionally derogatory references to persons only marginally or collaterally involved with the main purposes of these investigations, if at all. In the course of the hearings the Commission applies these suppression orders in order to protect, as far as possible, individuals from unfair damage to their reputations.

During the two recent public hearings I made 17 suppression orders of which about 15 were made on my own initiative without waiting for an application. Many of these were to prevent the

publication outside the hearing room of salacious and derogatory comments about others.

Occasionally in the hearings references have arisen, mainly from telephone intercepts, which identify people by first names or some oblique reference. It would be inappropriate and unfair for anyone to make judgments solely on the statements of others that have arisen in an unguarded conversation, to conclude whether misconduct has occurred or not, as these statements of others may be false, malicious or self-serving.

With regard to such references, arising as they do in personal conversations between persons of interest to the Commission, they are only of interest in so far as they touch on the matters under investigation and that alone is not sufficient to warrant the Commission or anyone to form the opinion that an individual has engaged in misconduct. Other corroborative material, independent of the particular conversation in question would be required.

## **TELECOMMUNICATIONS INTERCEPTS AND SURVEILLANCE DEVICES**

Two of the most discussed aspects of our public hearings have been the use of telephone intercepts and listening devices.

We've even had a few calls to the Commission from people asking if their phones or homes were bugged.

Under the strict legislation that controls these activities, we can't tell you.

However, due to the strict conditions controlling these activities the answer is probably not.

## **TELECOMMUNICATIONS INTERCEPTION**

Telecommunications interceptions are intrusive and before the Commission can undertake them we have to establish the necessity for the process before an especially appointed Commonwealth Judicial Officer as telecommunications are controlled by the Commonwealth Government. This means an application has to be made before the Commonwealth judicial officer to obtain the appropriate warrant to intercept specified lines.

Information has to be provided on affidavit to convince a judicial officer that the proposed interception is justified in the light of:

- (a) the seriousness of the alleged offences being investigated, which must involve the investigation of a criminal offence punishable by imprisonment for at least seven years;
- (b) the importance or significance of the evidence likely to be obtained; and
- (c) information as to whether the evidence sought to be obtained could be obtained by any other means.

(There has been some public observation that the Triple-C has some extraordinarily powerful powers in this connection but in fact, the Commission's powers are identical to those possessed by all Police Services in Australia & a number of other agencies declared by the Commonwealth.)

Those interception warrants when obtained must go through a registration process and their auditing and reporting upon by the State Ombudsman who acts as the agent for the Commonwealth Ombudsman is a complex and rigorous procedure as indeed it should be.

A copy of each interception warrant must be lodged with the Attorney General of the State as soon as practicable after it is obtained, and in turn the State Attorney General must inform the Commonwealth Attorney General.

Additionally, however, significant checks and balances on dealing with intercepted information. These are imposed by the *Telecommunications (Interception and Access) Act 1979* (“TI Act”) of the Commonwealth. In short, apart from the internal Commission constraints around the integrity, security and record keeping of such information, the Commission can only deal with it for permitted purposes – which are defined in the TI Act – and can only communicate such information to other persons and agencies where this is expressly authorised by the TI Act.

## **SURVEILLANCE DEVICES**

The Commission placed a surveillance device in the home of a witness in the recent public hearings and I know a number of people felt uncomfortable about this revelation. However, at times this procedure may be the only way to obtain evidence critical to the investigation of serious allegations.

The Commission is one of the few bodies in the state permitted, under the *Surveillance Devices Act 1998 of Western Australia* (SDA), to use surveillance devices, such as listening devices and optical surveillance devices. However, again the use of these powers is tightly constrained by the Act.

Under the SDA, the Commission can only use these devices under a warrant issued by a judge of the Supreme Court of Western Australia, except in a few special situations provided for in the SDA.

A Commission officer can obtain a warrant (as part of a specific investigation) if he or she satisfies the judge, on affidavit, that there are reasonable grounds for suspecting a specified offence may have been or is likely to be committed and the use of a specified type of device is likely to yield evidence that will assist the Commission's investigation.

As with the TI Act, there are significant constraints on the Commission's use of surveillance devices. We do **not** have a general power to use devices as and when we feel they may be useful, or may provide interesting information.

The officer applying for the warrant must in the application address a number of criteria, such as the public interest

generally but also, specifically, the nature and seriousness of the offence, the effect of using the specified device on the privacy of others and the value or weight of the information expected to be collected through the use of the device.

A warrant will authorise the use of the device for up to 90 days. The SDA also controls how the Commission deals with information collected through the use of devices. For example, information collected must be stored in a secure area with appropriately limited access. Further, the Commission is constrained by the SDA as well as its own legislation in determining whether it can give information collected through a surveillance device to another person and in what circumstances.

As an aside, I might mention that before any person of whatever status can commence work at the CCC, he or she must be cleared to at least “Highly Protected” security status by an authorised delegate of the Commonwealth Attorney General and this is a lengthy and intrusive process.

## **USE OF MATERIAL**

The Commission is particularly conscious of its considerable responsibility in using material it has gathered only for authorised purposes.

In preparing for the conduct of examinations, specific attention is paid to ensuring that only that material that is directly relevant to the hearing's scope and purpose is used. In doing this the Commission applies what it describes is a proportionality test. Through this test the Commission assesses whether the revelation of the information is relevant to the matter being investigated, whether it is in the public interest and considers the potential for unfair damage to the reputation of individuals and/or organisations.

The Commission sees no benefit to the public interest or indeed its own reputation in disclosing material that is not relevant, especially if it is only gossip or matters outside the scope of the investigation or it results in unfair damage to the reputation of the individuals and organisations concerned.

However, for all that the recent significant revelations at the public hearings of the Commission would have been impossible

without our telephone interception and surveillance devices powers.

## **THE COMMISSION'S ACCOUNTABILITY STRUCTURE**

I would now like to say a few words about the CCC's accountability framework.

The Commission itself is subject to very considerable oversight.

First and foremost the CCC is accountable to the Parliament.

This occurs in four ways:

- through the Joint Standing Committee on the CCC;
- the Parliamentary Inspector;
- through annual auditing of its financial statements by the Auditor General; and
- through the CCC's responsiveness to the annual parliamentary estimates process

The last two need no further comment, I will however address the first two.

## **JOINT STANDING COMMITTEE ON THE CCC**

The Committee comprises of four Members, drawn equally from both Houses of Parliament and from the government and opposition parties.

The Committee's functions are as follows

- (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 & 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 Commission Act 2003*

This Standing Committee holds public hearings several times a year as well as private hearings in which the Commission can be questioned about its activities although this does not include operational activities.

## **PARLIAMENTARY INSPECTOR**

The Parliamentary Inspector reports to the Joint Parliamentary Standing Committee.

Mr Malcolm McCusker AO QC, was appointed by Parliament as the inaugural Parliamentary Inspector. He has total access to the premises of the Commission, its staff and records at all times and can investigate allegations against the Triple-C with the powers of a Royal Commissioner.

He has the power to access all case and operational details and can interview any Commission officer on any matter at any time.

## **OTHER ACCOUNTABILITY MEASURES**

In addition to being accountable to Parliament, the Attorney General is the Commission's responsible minister solely for budgetary purposes.

In terms of accountability, the Commission is reliant on its reputation. The maintenance of that confidence is dependent on the broadly held perception that the Commission is effectively and appropriately performing its role. This means using its considerable powers in the public interest, but not in such a

manner that it could be perceived as acting in trivial matters or somehow as not in the public interest.

In its approach to its own accountability the Commission recognises that it lives in its own 'glass house' and so it seeks to meet its responsibilities for accountability stringently. It would do little for public confidence and reputation if the Commission was to breach those public sector standards that it holds others to account for.

## **ORGANISED CRIME FUNCTION**

The CCC Act has two main purposes. One is to improve continuously the integrity of, and to reduce the incidence of misconduct in the public sector. The other is to combat and reduce the incidence of organised crime.

Unfortunately, I would have to list this second purpose as one of my disappointments at the Commission. The Commission is not empowered to use its powers to directly undertake investigations into organised crime. Rather, the police are entitled to apply to the Commissioner of the CCC to be able to use so-called extraordinary powers vested in the CCC to investigate organised crime.

However, there have only been two applications from police to use these powers and this has been extremely disappointing.

In a report tabled in the Parliament in December 2005, the Commission detailed difficulties with the current legislation including the definition of organised crime and the Commission's powers to deal with contempt.

## **ACHIEVEMENTS**

Because of the public interest in recent events, my speech so far has mostly focussed on the Commission's activities in terms of the public hearings.

However, our activities extend way beyond that.

Last financial year the Commission:

- Received and assessed 2,361 allegations and notifications of misconduct – 22% of which were substantiated;
- Monitored 1,884 misconduct investigations undertaken by public sector agencies;
- Reviewed 2,083 misconduct investigations conducted by public sector agencies;

- Laid 147 criminal charges against 12 people that includes public officers and non-public officers;
- Tabled five reports in Parliament;
- Undertook four major inquiries and one major review resulting in the tabling of reports in Parliament; and
- Delivered 96 seminars (on managing the risk of misconduct) to 2,700 people including a variety of public sector agency staff across the state.

It is this educational role of the Commission that gives me the most optimism for the future.

Finally, for the first time in Western Australia, there is a government agency that has the responsibility to work with state government departments and local government to raise awareness of corruption and make recommendations on how to deal with it. Neither of our predecessor agencies had this important prevention & education mandate.

The real improvement in the integrity of the public sector will not necessarily come from using our range of powers in public hearings but from working with agencies and the individuals in them to address integrity issues.

This cooperative approach can bring about much broader change and I see this side of the Commission growing over time.

I remarked earlier that a single incident can destroy public confidence in an institution that has taken the work of thousands of people over many years to establish.

That is why an independent and effective anti-corruption agency is so important in a modern democracy. These agencies are a growth business and already exist in a number of Australian states and countries around the world.

They have been created because Parliaments have responded to increasing demands for higher standards expected of conduct and accountability of our politicians and public officers.

In assessing the work of the Triple C to date, I would like to consider the following quote. It is from a speech given by Shirley Heafey, former Chair of the Commission for Public Complaints against the Royal Canadian Mounted Police given to the University of Ottawa Faculty of Law in 1993.

Appropriately, the paper was titled *The Need for Effective Civilian Oversight of National Security Agencies in the Interest of Human Rights*.

Ms Heafey listed five key elements when determining if a civilian oversight agency is effective. They are:

1. Independence – is the agency beholden to the police or security force? Is it beholden to the Minister or Government?
2. Powers – Is the process complaint driven or can the agency audit such activities as it sees fit?
3. Information – does the agency have ready access to all relevant information or does the police or security force control what it sees?
4. Resources – are there enough?
5. Reporting – does the reporting mechanism put the issues in the public domain.
6. I would add a 6<sup>th</sup> element, namely the strength of the oversight mechanism and I have described to you the details of our local structures involving the Parliament Inspector and the Joint Standing Committee.

I think the Triple C measures up fairly well against each of these criteria.

I have been honoured to serve as the Commission's inaugural Commissioner and as I retire I wish to also publicly acknowledge the tireless work, enormous enthusiasm and dedicated professionalism of the Commission's staff who have come to us from academia, the armed forces, police services across Australia and overseas, the public and private sectors, and other sources who have combined together to form a very effective organisation determined to operate in the manner laid down by the Government of Western Australia and for the benefit of the people of our state.