



**CORRUPTION AND CRIME COMMISSION  
OF WESTERN AUSTRALIA**

EDITED TRANSCRIPT OF A SPEECH

EXECUTIVE SEMINAR SERIES 2004

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BY

COMMISSIONER KEVIN HAMMOND

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Place: Parmelia Hilton Hotel  
Mill St  
Perth

Thank you for taking the time out of your busy schedules to come along and hear me today. The opportunity to address an audience comprising one of the main groups with whom I'll be working was impossible to resist even though these are still early days in the life of the CCC.

I've been in the job for two-and-a-half months now – it seems considerably longer – and have mostly been concerned with the nuts and bolts of establishing a new agency. Tasks such as recruiting staff, acquiring premises and setting up everything else required can be so time consuming, as most of you must know. I am the only permanent employee of the CCC at this stage.

But let me assure you the CCC is up and running. We are in the process of recruiting directors and other staff and are operating with an implementation staff on temporary contracts from a number of agencies including the Anti Corruption Commission, Police Royal Commission, Ombudsman, Justice, Treasury, and Premier and Cabinet and the DPP.

Permanent staff will be gradually coming on board until we reach our full complement of about 150. This is being done with an annual budget of \$21 million - about twice the budget of the ACC.

Coming from a legal background, I've spent sometime familiarising myself with our act – the *Corruption and Crime Commission Act 2003* – which will determine exactly what we can and cannot do.

The CCC certainly has extensive powers – said to be the most extensive of any anti-corruption agency in Australia. So something about the person who exercises those powers – I'm 67 years old and as you may be aware, have been Chief Judge of the District Court since 1995 and served on the bench for a total of 22 years.

Other bodies which I have chaired include the Supervised Release Review Board, the Land Valuation Tribunal, the Crime Prevention Council, as well as being a member of the Advisory Board of the Crime Research Centre at the University of Western Australia.

While undertaking these roles, particularly as a judge, I'd like to think that I have given people a fair go, treated others with dignity, and taken my role very seriously. I have no intention of changing at this stage of my life.

In many ways it's a pity we even need a body like the Corruption and Crime Commission. As the callers to talkback radio tell us – in the old days you could leave your milk money out for the milkman, leave your key in the front door without any fear and no one questioned the work of public servants.

Unfortunately, those days are long since gone and jurisdictions around the world have found it necessary to set up anti-corruption bodies. There is a strong need for these bodies as corruption in our public institutions eats at the heart of modern government. It quickly destroys confidence in our institutions that may have taken decades to build up but unfortunately, once lost, is not easily won back.

The CCC came about from a recommendation in the Interim Report of the Police Royal Commission in December 2002 and like the ACC it has the power to look at misconduct, including corruption of public officers in the police service, the public service and local government.

This covers more than 130-thousand public officers in some 600 agencies ranging from the large departments to the universities, Swan Bells Foundation, the Gender Reassignment Board or the Distressed Persons Relief Trust to name but a few.

In addition, the CCC grants police permission to use the exceptional organised crime, and fortifications removal powers and oversees the use of those powers.

These powers are substantially similar to those granted to the CCC itself.

The CCC has what has been called a gatekeeper role in terms of the police using these powers and I certainly don't see myself as a modern-day Elliot Ness, although I note that under Section 184 of our Act, I am now a Special Constable.

In three years' time the Act under which the CCC operates will be reviewed by the Minister. Areas to be mentioned in this review include:

- A multi person Commission;
- The appointment of up to two Assistant Commissioners;
- Jurisdiction over private companies undertaking public functions;
- The CCC having an investigative review crime function;
- The need for a public interest monitor;
- The Commission performing a witness protection function; and
- The Commission taking over the confiscation of proceeds of crime from the DPP.

But that's some time off. In the meantime, there are some critical differences with the ACC's powers which I believe will make the new organization much more effective.

The first of these is the ability to hold public hearings. The experience of the ACC and Police Royal Commission has shown that the public is sceptical of investigations held in private. A public hearing is one of the best ways of showing that justice has been done, that the right questions have been asked and that the matter has been taken as far as it can be.

Section 140 of the CCC Act states that *“The Commission may open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so.”*

The downside of public hearings is that innocent people may have their reputations tarnished and as Commissioner, it is my job to try and limit that as much as possible.

The CCC will conduct private hearings when it is appropriate to do so.

Other important powers granted to the CCC include:

- The power to obtain documents or other things;
- To compel a witness to attend a hearing. I might add that witnesses can only discuss the fact that they have received such a summons with their legal adviser though speaking to others may be permitted in limited circumstances such as seeking psychological counselling;
- To conduct telecommunications intercepts and use surveillance devices;
- To have investigators take on assumed identities; and
- The ability to conduct integrity tests.

The last two of these significant powers were not available to the ACC.

These powers are similar to the powers given to the Police Royal Commission and other jurisdictions, and have been found necessary to conduct investigations into serious allegations of corruption.

But I don't want to emphasize these powers. The real benefit of the work of the CCC will come from working with the agencies represented in this room to increase your capacity to control misconduct and corruption.

In a way our title of Corruption and Crime Commission is perhaps a little fearsome. It is appropriate to refer to Sections 7A & 7B of our Act.

“7A Act’s purposes

The main purposes of this Act are –

- (a) to combat and reduce the incidence of organised crime; and
- (b) to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.

7B How Act’s purposes are to be achieved –

- (1) The Act’s purposes are to be achieved primarily by establishing a permanent commission to be called the Corruption and Crime Commission.
- (2) The Commission is to be able to authorise the use of investigative powers not ordinarily available to the police service to effectively investigate particular cases of organised crime.
- (3) The Commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.”

One of the major roles of the CCC is its prevention and education function.

A considerable amount of assistance will be made available to support you to deal with misconduct in your organisations by helping you develop appropriate reporting systems, investigate misconduct and corruption allegations, and in giving feedback about those investigations.

We will be working with you to improve your capacity to combat misconduct through measures including Corruption Prevention Reviews which will address among other things an agency's grievance procedures, Public Interest Disclosure arrangements and risk management issues.

Clearly in the other jurisdictions where similar bodies already exist, an enormous amount of work has already been done in this information and dissemination field.

The information gathered from our investigations into misconduct will be examined to see if recommendations for procedural change should be made in terms of the procedures of individual departments or across a number of agencies.

Please do not see us as a policeman but as a source of information and advice. If you have a problem please contact us so we can work through it with you.

Speaking of policemen – it could get confusing just who you have to report issues of misconduct to. There's a range of agencies including the CCC, Public Sector Standards Commissioner, the Ombudsman, the Auditor General and the Police.

Unfortunately, you may need to read each of the Acts to really sort this out but broadly speaking:

- The Auditor General audits the delivery of Government services.

- The Ombudsman handles complaints about the administrative actions of Government agencies as distinct from the conduct of government officers.
- The Public Sector Standards Commissioner monitors compliance with Public Sector standards in human resource management and the Public Sector Code of Ethics.
- The Police Service has a public sector investigations unit that looks at criminal conduct, and
- The Corruption and Crime Commission deals with misconduct of public officers and needs to be informed about all allegations of misconduct including corruption.

Memoranda of Understanding will be developed with these agencies so that we work effectively together to minimise the risk of overlapping.

Most of the CCC's work arises from reports made by public sector agencies and from information received from the public. However, we won't investigate every matter received. The primary responsibility for preventing and dealing with misconduct lies with public sector managers.

The CCC will take over a small number of investigations of misconduct or corruption – they will be the ones that are serious, appear to be widespread or are otherwise in the public interest.

Once a complaint has been made, the CCC will either run the investigation, refer it to another body such as the Ombudsman or Public Sector Standards Commissioner or refer it back and monitor the agency's own investigation of the allegation.

If an agency conducts an internal investigation, the CCC may include a recommendation on the time in which action should be taken.

Under section 28 of our Act, there is an obligation on principal officers to report concerns of misconduct as soon as possible. Section 29 of the CCC Act states that this responsibility takes precedence over the obligations contained in any other acts or any obligation to maintain confidentiality about a matter.

There's a duty to notify when you suspect on reasonable grounds that misconduct may have occurred. It is possible to hold a reasonable suspicion even though no particular person has been identified and there is no substantive proof.

No civil or criminal liability attaches to an individual or agency that makes allegations to the CCC in good faith.

To make it easier to know what to report we have prepared guidelines for agencies on what to report. They are available here today or will be on our "under construction" website at [www.ccc.wa.gov.au](http://www.ccc.wa.gov.au).

These guidelines will no doubt be reviewed and specific ones will be developed for the police service and for particular agencies depending on their needs.

Under the Act, the CCC does not have to report the progress of an investigation to the agency making a complaint but we obviously have to make it clear just who we have determined will conduct the investigation.

The Department of Premier and Cabinet's *Annual Report Framework (2003)* has issued guidelines on the content of annual reports which do not specifically refer to reporting on corruption prevention strategies. However, they require reporting on a range of accountability issues such as compliance with public sector standards and compliance with codes of ethics and codes of conduct.

In its Final Report, the Police Royal Commission recommended the Framework be amended so that all agencies are required to report on their compliance with the requirement to carry out programs of risk management.

By the way, the CCC is itself required to report to Parliament annually.

So in terms of the CCC what is misconduct? There are two tests – the conduct test and the consequences test.

The conduct test includes actions such as:

- Corruptly acting or failing to act. Here corruptly, while not defined in our Act, usually involves calculated, often continuing covert and wrongful exercise of a public duty or function.
- Corruptly taking advantage for a person's own benefit or detriment to another.
- Committing an offence in an official capacity.
- Not being honest or impartial.
- A breach of trust, and
- Misuse of information for personal benefit, or benefit or the detriment of another.

The consequences test is satisfied when conduct identified in the conduct test constitutes or could constitute any of:

- An offence against the Statutory Corporations (Liability of Directors) Act 1966 – this mainly concerns the responsibilities of a director.
- An offence against any other written law.
- A disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994.
- An offence punishable by two or more year's imprisonment.

For greater detail I refer you to the Guidelines.

From experience areas of particular concern to the CCC are in agencies that have a regulatory, planning or service delivery functions as they offer the greatest opportunity for misconduct.

Some examples of misconduct by public officials could include:

- A teacher assaults a student. This passes the conduct test in that it is an offence against a written law with possible grounds for termination of employment.
- Cash is stolen from an office safe. This is an offence punishable by a jail term of more than two years under the conduct test and again, in terms of the consequences test, is an offence against a written law.
- A public officer offers a firm that provides services to a government agency favourable treatment in return for employing his son. Under the conduct test this is taking advantage of a public office and under the consequences test is a disciplinary offence providing reasonable grounds for dismissal under the Public Sector Management Act.

But broadly speaking, as I previously said, there is a duty to notify when you suspect on reasonable grounds that misconduct may have occurred. My advice would be that if in doubt report. You will never be wrong to report.

Maintaining confidentiality when dealing with suspected misconduct is critical because:

- Breaching confidentiality could undermine subsequent inquiries.
- It could place informants at risk of reprisal.
- It is an offence under section 151 of the Act to disclose restricted information provided to the CCC except in certain circumstances.

Information handed over to the CCC is subject to strict duties of non-disclosure. The Act places strict limitations on the disclosure of that information which is limited to the purposes of conducting the investigation or for prosecution. Officers of the CCC are subject to heavy penalties for revealing information without authority and I'm pleased to say that the track record in this area in the Police Royal Commission and ACC has been very good.

Which leads to the protection of those who make complaints to the CCC. In addition to the Government's recently passed Public Interest Disclosure or whistleblowers act, there are a number of protections under the CCC Act which include heavy penalties for victimizing, dismissing or causing injury or detriment to a person who has appeared before, or given evidence to, or helped the CCC.

Should you have complaints about the way in which the CCC has conducted an investigation, you can take your case to the Parliamentary Inspector, Malcolm McCusker Q-C, a respected member of the bar, who can look at any aspect of the CCC's investigations with the powers of a Royal Commissioner.

The Parliamentary Inspector is not an S-E-S organisation and is an officer of Parliament responsible for assisting the Parliamentary Standing Committee that is to be established to monitor the CCC in the performance of its duties.

Obviously the Commission is given extraordinary powers to do things and it must be accountable. Above the Commission rests this pyramid of accountability. The Office of Parliamentary Inspector is a concept from NSW and is there to oversee the work of the CCC.

With the powers given to the CCC, it is entirely appropriate that a strong oversight function is built into the system.

But as I said, if you have any queries please contact us on 9215 4888 and we will try to help you out or direct you to the right agency.

We do want to make it clear that we are not fearsome, we're available, we will help we will assist and we will advise.

We are in the course of our recruitment attracting applications of extremely high calibre from across Australia.

When the Commission is fully up and established I am sure it will be an agency of respect.

Thank you again for inviting me here today. It is actually my first foray into the more or less public arena and I thank you for your attention. If you have any questions I will do my best to answer them ....