



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

29 April 2024

Mr Peter Khalil MP
Chair, Parliamentary Joint Committee on Intelligence and Security

By email: pjcis@aph.gov.au

Dear Chair

Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024

Thank you for inviting submissions on the review of the Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024 (Bill) being carried out by the Parliamentary Joint Committee on Intelligence and Security. My submission is confined to Schedule 5 of the Bill, as it is these amendments which relate to oversight bodies such as my office.

The *Corruption, Crime and Misconduct Act 2003* (WA) (CCM Act) which established the Western Australian Corruption and Crime Commission (Commission) also created the office of the Parliamentary Inspector. Section 195 of the CCM Act sets out the Parliamentary Inspector's statutory functions, which include auditing the operations of the Commission for the purposes of monitoring compliance with Western Australian law, dealing with matters of misconduct on the part of the Commission and its officers, and assessing the effectiveness and appropriateness of the Commission's procedures.

In order to assist me in carrying out these functions the Commission regularly provides documentation for me to audit in relation to, for instance, its applications under state legislation such as the *Surveillance Devices Act 1998* (WA). However, I am unable to monitor the Commission's use of warrants under the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act) in any comprehensive way.

This is because I may only receive and use interception warrant information and interception information where it relates to a matter of misconduct on the part of the Commission, an officer of the Commission or my own officers. These functions, which are a relatively small aspect of my overall role, are the only activities of my office presently included in the TIA Act's definition of 'permitted purpose'.

Accordingly, in any Commission files that I review on a matter that does not relate to these purposes, any interception warrant information or interception information must be redacted. For example, I am unable to scrutinise the Commission's applications for warrants under the TIA Act, nor its use of those warrants to intercept private telephone conversations. I do not suggest for a moment that there has been any impropriety in this regard, but this absence of oversight appears to run counter to the aims of not only the

TIA Act but also the CCM Act. This is an issue that extends beyond my own office and also affects the inspectors of integrity commissions in other states and territories.

Schedule 5 of the Bill relates to information sharing between integrity agencies and oversight bodies. First, it amends the definitions in section 5(1) of the TIA Act to specifically identify these entities so as to differentiate them from similarly named entities in other jurisdictions.

Second, the Bill makes several amendments which reflect the nature of my functions under the CCM Act, as follows:

- Clause 75 amends the definition of ‘permitted purpose’ in section 5(1) of the TIA Act to provide that each of my statutory functions will constitute a ‘permitted purpose’ of my office within the scheme of the TIA Act.
- Clause 152 would enable the chief officer of an agency to provide information to me where it relates, or appears to relate, to any of the matters referred to in the definition of ‘permitted purpose’ in the context of my office.
- Clause 192 includes all of my functions in the definition of ‘eligible purpose’ in the context of international production orders relating to interception.

The above amendments represent a very welcome change and would greatly assist me in carrying out my functions under the CCM Act. However, these changes are not picked up in the definition of ‘prescribed investigation’ in section 5(1) of the TIA Act.

Clauses 94 and 95 of the Bill amend references to my title and the correct title of the CCM Act. They do not propose to change the current wording in subsection 5(1)(j), which presently provides that ‘prescribed investigation’, in reference to my office, ‘means dealing with a matter of misconduct in the performance of the Parliamentary Inspector’s functions’.

The above language, which limits investigations to those dealing with ‘a matter of misconduct’, is narrower than that used in the definitions which apply to *all* of the other oversight bodies referred to in section 5(1) of the TIA Act. As my functions and powers are closely analogous to those possessed by those other bodies, I can only assume that this discrepancy represents a drafting oversight.

The practical outcome is that the definition of ‘prescribed investigation’ in relation to my office risks being interpreted as referring only to investigations that involve matters of misconduct on the part of the Commission, its officers, or my officers. This would exclude my other statutory functions from this category.

By way of an example, a sizeable part of my workload involves assessing the effectiveness and appropriateness of the Commission’s procedures pursuant to section 195(1)(c) of the CCM Act. This often requires me to investigate the manner in which the Commission has handled a complaint it has received from a member of the public. From time to time, following an investigation of this kind, I will conclude that the Commission has made material errors in the course of dealing with a complaint.

However, in the absence of any misconduct by a Commission officer (as distinct from factors such as human error, negligence or inattention), such an investigation would not be a ‘prescribed investigation’ for the purposes of the TIA Act.

In view of these concerns, I respectfully suggest that clause 94 of the Bill be amended to adopt the same formulation currently used in respect of oversight bodies in other States, for example, in section 5(1)(cc) of the TIA Act as it relates to the Victorian Inspectorate. If my suggestion is adopted, the definition of ‘prescribed investigation’ in section 5(1)(j) would therefore be ‘an investigation that the Parliamentary Inspector is conducting in the performance of the Parliamentary Inspector’s functions under the Corruption, Crime and Misconduct Act 2003 (WA)’.

In conclusion, I welcome the amendments contained in Schedule 5. However, I believe that unless the change proposed above is also made then their intended outcome, of assisting me in the performance of my statutory functions, will only be partially realised.

If you require further information from me, please contact my office on 08 9264 9570 or at piccc@piccc.wa.gov.au.

Yours sincerely,



MATTHEW ZILKO SC
PARLIAMENTARY INSPECTOR