

**REPORT ON THE OPERATION OF THE
*CORRUPTION, CRIME AND MISCONDUCT ACT 2003***

**CORRIGENDUM: THE CORRUPTION AND CRIME
COMMISSION'S 2019 *REPORT ON THE WA
COMMISSIONER IN JAPAN***

Section 199 of the *Corruption, Crime and Misconduct Act 2003* (WA)

27 November 2023

1. The Corruption and Crime Commission (Commission) is Western Australia's leading integrity body, and the legislature has entrusted it with extraordinary powers. These are enumerated in the *Corruption, Crime and Misconduct Act 2003* (CCM Act).
2. One of the Commission's powers, and mine, is the ability to table reports directly in the Parliament, with minimal restrictions as to their content.¹ Both the Commission and my office also enjoy immunity from defamation actions, or any other claim for damages, in carrying out our statutory functions.² A corollary of such powers must be caution and prudence in their exercise.
3. On 12 March 2019, the Commission tabled its *Report on the WA Commissioner in Japan* (Report) regarding Mr Craig Peacock, who had served as the Western Australian trade commissioner in Japan from 2002 to early 2019. He had originally been employed through the Department of Premier and Cabinet, but in 2017 responsibility for the Japanese office shifted to the Department of Jobs, Tourism, Science and Innovation (DJTSI). The Report, which attracted considerable media attention, articulated the Commission's opinion that Mr Peacock had corruptly used his position to obtain benefits for himself and other people.³
4. Naturally, this had a catastrophic effect on Mr Peacock's professional and personal reputation. In May this year, he sent me a detailed written submission in which he requested that I review the procedures used in investigating him and preparing the Report, pursuant to my function in section 195(1)(c) of the CCM Act. I obtained the relevant files from the Commission and considered them over a period of several weeks.
5. For the most part, the procedures used in this instance were effective and appropriate, and there is no basis to dispute the Commission's opinion of serious misconduct. However, there were three matters which raised substantive concerns for me.
6. First, there was an omission. The Commission's files disclosed that within days of having been informed of a substantial overpayment by the DJTSI and asked to explain it, Mr Peacock offered in writing to enter into a repayment plan. This offer was not taken up, and the Report contained no reference to it. Mr Peacock's offer does not prove his claim that the overpayment, amounting to nearly \$500,000 over a period of ten years,⁴ was an honest mistake, nor does it negate the Commission's opinion of serious misconduct. In the Commission's view, Mr Peacock's proposal to set up a repayment plan was 'self-serving and a false promise'. That may or may not have been the case (there was no evidence that pointed to Mr Peacock's state of mind when the offer was made). However, the offer was relevant to the subject matter of the Report, and as such it would have been fair and transparent to include it.
7. Second, there was a factual inaccuracy. The Report concluded that Mr Peacock was now 'jobless, without a Japanese visa and without any realistic prospects'.⁵ This statement was incorrect. Moreover, it could be read as an implication that the Japanese government had stripped Mr Peacock of his right to live and work there. This was not

¹ See sections 84, 85 and 88 of the CCM Act.

² Sections 219 and 222 of the CCM Act.

³ *Report on the WA Commissioner in Japan*, [34].

⁴ *Report on the WA Commissioner in Japan*, [119].

⁵ *Report on the WA Commissioner in Japan*, [309].

the case. When Mr Peacock's employment as trade commissioner was terminated, his official visa ceased. He then applied for a spouse visa, as he is married to a Japanese national. His application was granted, and he continues to reside in Japan.

8. Third, and most seriously, there was a material error. The Report speculated that Mr Peacock, who is not an Australian resident for tax purposes, may have been evading tax in Japan, as he did not pay income tax in that country. The Commission acknowledged that tax evasion fell outside its jurisdiction and explained that it had made no findings on the matter; instead, 'the tax issue' had been used 'to form a view that absent corroboration, Mr Peacock is a generally unreliable witness'.⁶ However, the way in which the Report was framed would also have left the casual reader with the misleading impression that its subject had indeed evaded his tax obligations in Japan. In particular, the Report stated that it was 'possible Mr Peacock should have been paying tax in Japan on his income as Commissioner' and that he was 'possibly evading tax'.⁷ Given that tax evasion is a criminal offence, that statement was tantamount to suggesting that Mr Peacock had possibly committed a crime.
9. These kinds of issues would ordinarily have been drawn to the Commission's attention before the Report was tabled. Section 86 of the CCM Act provides that before reporting any matters adverse to a person or body, the Commission must give the person or body a reasonable opportunity to make representations to it concerning those matters. In this instance, the Commission's files showed that it had fully complied with this requirement, even to the extent of contacting Mr Peacock's then legal representative a second time to check whether any representations would be made. However, unfortunately, they were not. I understand from Mr Peacock that his failure to respond during the section 86 process can be attributed, in large part, to his own mental health issues at a very stressful time in his life.
10. My view that the Report is affected by a material error is primarily based on my analysis of Chapter Ten, which dealt with the taxation issue, and on research conducted by my office. The Commission's files disclosed that its officers had made enquiries with the Australian Taxation Office (ATO) to determine whether or not a person 'employed by an entity from Western Australia' would have been liable to pay income tax in Japan. Although an officer of the Japan National Tax Agency working with the ATO provided advice to the Commission, the information thus obtained was equivocal because, of course, the question posed by the Commission did not accurately capture the status of Mr Peacock, which is discussed further below. Nevertheless, it was apparent that in preparing Chapter Ten, the Commission had relied on that information together with a generic 'guide to taxation in Japan prepared specifically for expatriates' by the HSBC Bank (HSBC guide).⁸
11. The HSBC guide, which contended that permanent residents were liable to pay income tax in Japan, was not directed to the circumstances of expatriates who, like Mr Peacock, were employed by a State Government rather than by private companies. Nevertheless, the Commission concluded, apparently on the basis of the HSBC guide, that Mr Peacock 'would likely be characterised as a permanent resident' in Japan.⁹

⁶ *Report on the WA Commissioner in Japan*, [244] and [246].

⁷ *Report on the WA Commissioner in Japan*, [237] and [244].

⁸ *Report on the WA Commissioner in Japan*, [237].

⁹ *Report on the WA Commissioner in Japan*, [238].

12. Mr Peacock has advised me that during his role as trade commissioner, he did not have (and still does not have) either Japanese nationality or permanent residency in Japan. When he appeared before the Commission, Mr Peacock stated that due to the nature of his work there, he was not required to pay income tax. The Commission viewed this explanation with scepticism, and its Report stated:

During examination, Mr Peacock kept reiterating that he had an official passport which allowed him to avoid paying tax in either Australia or Japan. That is not the purpose or effect of an official passport.¹⁰

13. In conducting my review, I interviewed individuals who had served as trade commissioners in Japan for Western Australia and New South Wales, in each case for a period of ten years. In fact, the former Western Australian trade commissioner I consulted was Mr Peacock's predecessor in the role. Both men advised that as they had held official passports and official visas, they had not been required to pay tax in Japan during their time as trade commissioners.
14. I also made enquiries with the Japanese Embassy in Canberra, which directed me to the Japanese consulate in Perth. The Japanese Vice Consul confirmed in writing that according to Article 9(viii) of the *Income Tax Act* and Article 24 of the *Order for Enforcement of the Income Tax Act of Japan*, income tax is not imposed on salaries paid by a local government of a foreign state to a person who works for that local government if they do not have Japanese nationality or permanent residency in Japan and are engaged in work for the foreign local government that is not intended to generate profit.¹¹
15. In light of the matters set out at paragraphs [10]-[14] above, it would appear that Mr Peacock was correct when he told the Commission that he was not required to pay income tax to the Japanese authorities during his tenure as WA trade commissioner.
16. Mr Peacock has advised that, as in Australia, tax evasion is viewed very seriously in Japan, so much so that it is punishable by up to ten years' imprisonment. In both countries, a person who is perceived as having engaged in tax evasion will inevitably suffer reputational damage, as Mr Peacock says has occurred in his case.
17. When my review was complete, I wrote to the Commission and suggested that in the circumstances it should table a short supplementary report withdrawing any imputation that Mr Peacock had engaged in tax evasion and acknowledging that he had offered to enter into a repayment plan with the DJTSI.
18. The Commission did not take up this proposal. Instead, it suggested that I had misunderstood Chapter Ten, which was 'not concerned with determining the issue of tax evasion' but was instead directed to its negative assessment of Mr Peacock's credibility and honesty, as exemplified by inconsistent statements he had made regarding his status as a taxpayer. Thus, its 'interest during the investigation were the statements of positive obligation as to country of tax liability made by Mr Peacock whilst a public officer, and the private benefit Mr Peacock may have gained from making those statements'. More succinctly, the Commission recently emphasised that

¹⁰ *Report on the WA Commissioner in Japan*, [239].

¹¹ The Vice Consul also drew my attention to Article 18 of the Australia-Japan Tax Treaty, which is to the same effect.

its focus as regards taxation was, simply, on the ‘many lies’ it alleges Mr Peacock had told about the matter.

19. The Commission also advised that it ‘did not make extensive enquiries during the investigation to determine definitively whether Mr Peacock was obligated to pay tax in Japan’ and that the ‘enquiries that were made were general in nature’. Finally, the Commission explained that its statement in the Report that Mr Peacock was ‘possibly evading tax in both Japan and Australia’ was made ‘in the context where the Report states the Commission cannot determine this issue and it is a fact that Mr Peacock did not pay tax in Japan or in Australia’.
20. With respect, I do not find this explanation to be satisfactory.
21. First, if Mr Peacock’s tax liability per se was immaterial and the sole purpose of raising the issue was to cast doubt on his credibility (both as a witness, and in his former role as a public officer), it was unnecessary to use the language described by me in paragraphs [8], [11] and [12] above. Nor can I find any reason why the Report suggested that ‘taxation authorities in Japan and Australia may take an interest in [Mr Peacock’s] finances’,¹² or why the press release issued on the day of the Report’s tabling highlighted his alleged ‘Non-payment of taxes in Australia or Japan since at least 2010’.
22. Second, the Commission’s explanation to me appears to suggest that in a situation where it does not know whether a person has committed a criminal offence, and where it has not conducted sufficient research to determine the matter definitively, the Commission nevertheless believes it is acceptable to speculate publicly that the person has ‘possibly’ committed the offence. This cannot be regarded as a responsible exercise of its power to report to the Parliament.
23. Relevantly, the Commission takes issue with my concern as to the impression that its Report may have had on a casual reader, maintaining that a ‘careful reader’ would have understood the ‘limited purpose’ of Chapter Ten. Nevertheless, once a report is tabled in the Parliament and becomes a public document it is apt to be read by a great number of people, not all of whom will be familiar with the nuances of the Commission’s jurisdiction and the different uses to which evidentiary material can be put. It is for this reason that great care must be taken in the preparation of such reports.
24. As the Commission has declined to prepare a supplementary report to address these errors and omissions, I have taken it upon myself to do so. I have a high regard for the Commission and the important work it does, and I have not taken this course lightly. Nevertheless, my overriding duty to the Parliament compels me to correct the record.



MATTHEW ZILKO SC
PARLIAMENTARY INSPECTOR

¹² *Report on the WA Commissioner in Japan*, [309].