



**Joint Standing Committee on the Corruption and Crime
Commission**

Emails between staff of the Department of Corrective Services and the Corruption and Crime Commission: Supplementary Report

Committee Members

Chairman	Hon Nick Goiran, BCom, LLB, MLC Member for South Metropolitan Region
Deputy Chairman	Mr Peter Watson, MLA Member for Albany
Members	Hon Adele Farina, BA, LLB, MLC Member for South West Region Mr Nathan Morton, BSc, GradDipEd, MLA Member for Forrestfield

Committee Staff

Principal Research Officer	Dr David Worth, DipAeroEng, MBA, PhD
Research Officer	Ms Jovita Hogan, BA (Hons)

Legislative Assembly	Tel: (08) 9222 7469
Parliament House	Fax: (08) 9222 7804
Harvest Terrace	Email: jscccc@parliament.wa.gov.au
PERTH WA 6000	Website: www.parliament.wa.gov.au/jscccc

**Published by the Legislative Assembly, Parliament of Western Australia, Perth.
May 2014.**

ISBN: 978-1-925116-04-5

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Joint Standing Committee on the Corruption and Crime Commission. Report 11)

328.365

Joint Standing Committee on the Corruption and Crime Commission

Emails between staff of the Department of Corrective Services and the Corruption and Crime Commission: Supplementary Report

Report No. 11

Presented by

Hon Nick Goiran, MLC and Mr Peter Watson, MLA

Laid on the Table of the Legislative Assembly and Legislative Council
on 8 May 2014

Chairman's Foreword

Following the tabling on 12 December 2013 of its Report No. 8, *Report into emails between staff of the Department of Corrective Services and the Corruption and Crime Commission*, the Joint Standing Committee provided a new reference to the Parliamentary Inspector of the Corruption and Crime Commission (PICCC) under s195(2)(d) of the *Corruption and Crime Commission Act 2003 (WA)*. This reference was to ascertain whether an additional 1,445 emails on the Corruption and Crime Commission's database, that had not been examined by the PICCC for Report No. 8, might contain any material which would give rise to a suspicion of misconduct involving a public officer which would warrant further investigation.

Some of these emails had been between Mr Pollitt, an officer of the Corruption and Crime Commission (CCC), and Mr Parker, an officer at the Department of Corrective Services (DCS). The PICCC's investigation into these emails was provided to the Committee on 27 March 2014 and is contained in Appendix One.

The PICCC was actually provided with 1,529 emails by the CCC for his new inquiry. Of these, 94 were between Mr Parker and Pollitt, or between Mr Parker and the CCC. The PICCC reports that emails which were relevant to the Committee's reference to him numbered 19 of the 94 emails.

The PICCC concludes his latest report on this matter by saying that he sees "no necessity for any further recommendations to be made in this Report concerning the Commission's procedures as a result of the emails disclosed to me."¹ The PICCC was satisfied that:

none of the 19 emails sent between Messrs Parker and Pollitt involved misconduct on the part of Mr Pollitt.

The contents of two of the 19 emails (emails 76 and 79) are the kind to which my initial Inquiry related, and further demonstrate the attempt to undermine Ms Sandy Randall of the Department as I identified in my original Report to the Committee.

The contents of email 79, however, can be viewed as being more serious than this. In that email, Mr Parker may have disclosed information to Mr Pollitt concerning an internal complaint made against Ms Randall.

¹ Hon Michael Murray, Parliamentary Inspector, *Report into the Department of Corrective Services and the Corruption and Crime Commission*, Perth, 27 March 2014, p10.

There is no evidence in the email exchange that Mr Pollitt elicited the information disclosed by Mr Parker, engaged in or encouraged further exchanges in respect of it, or used the information in other emails with anyone else.²

While Mr Parker resigned from the DCS in 2012, the PICCC said that the nature of the information he had disclosed in email 79 required the PICCC to refer the matter to both the CCC and DCS for their consideration.

The Committee wrote to the then-CCC Commissioner, Mr Roger Macknay QC, to enquire as to what action the CCC would take in regard to this matter. The CCC responded that it would make no further representations regarding the PICCC's report and leave it to DCS to determine what action, if any, it considers appropriate in the circumstances.

I would like to thank the Parliamentary Inspector of the Corruption and Crime Commission, Hon Michael Murray QC, for efficiently completing the reference provided to him by the Committee.

I would also like to acknowledge the work on this report by my Committee colleagues: the Deputy Chairman Mr Peter Watson MLA, the Member for Albany; Mr Nathan Morton MLA, the Member for Forrestfield; and the Member for the South West Region, Hon Adele Farina MLC. Finally, I wish to thank the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan, for their efforts in speedily compiling this Report.

A handwritten signature in blue ink, consisting of a stylized 'N' followed by a horizontal line and a vertical line crossing it.

HON NICK GOIRAN, MLC
CHAIRMAN

² Ibid, p8.

Contents

Findings and Recommendations	i
1 Supplementary report	1
Introduction	1
PICCC's findings	2
Committee's actions	3
 Appendices	 5
1 Parliamentary Inspector's Report	5
REPORT INTO THE DEPARTMENT OF CORRECTIVE SERVICES AND THE CORRUPTION AND CRIME COMMISSION	5
1. PURPOSE	5
2. BACKGROUND	5
3. ACTION TAKEN BY ME	6
4. THE EMAILS	7
5. MY ASSESSMENT	10
2 Committee's functions and powers	13

Findings and Recommendations

Finding 1

Page 3

The Parliamentary Inspector's supplementary inquiry arising from the Joint Standing Committee's reference has resulted in a matter being referred to the Corruption and Crime Commission and the Department of Corrective Services for their consideration.

Finding 2

Page 3

The Corruption and Crime Commission has left it to the Department of Corrective Services to determine what action, if any, it considers appropriate with regards to the nature of the information Mr Parker disclosed in email 79.

Recommendation 1

Page 3

The Corruption and Crime Commission should monitor action taken by the Department of Corrective Services regarding the matter referred to it by the Parliamentary Inspector.

Chapter 1

Supplementary report

I am satisfied that none of the 19 emails sent between Messrs Parker and Pollitt involved misconduct on the part of Mr Pollitt. Parliamentary Inspector.

Introduction

On 12 December 2013 the Joint Standing Committee tabled Report No. 8, *Report into emails between staff of the Department of Corrective Services and the Corruption and Crime Commission*.³ This report's appendix provided the report of the Parliamentary Inspector of the Corruption and Crime Commission (PICCC) into a matter that had appeared on the front page of *The West Australian* titled 'Dirty Tricks Email Trail' on 2 July 2013.

The emails had been between Mr Pollitt, an officer of the Corruption and Crime Commission (CCC), and Mr Parker, an officer at the Department of Corrective Services (DCS). The PICCC had tabled his report with the Committee on 7 November 2013.

Following the tabling of Report No. 8, the Committee provided a new reference to the PICCC under s195(2)(d) of the *Corruption and Crime Commission Act 2003 (WA)* (the CCC Act) to ascertain whether an additional 1,445 emails on the CCC's database might contain any material which would give rise to a suspicion of misconduct involving a public officer which would warrant further investigation.

The PICCC had originally told the Committee that these emails were produced after his request to the CCC following their original audit of Mr Pollitt's emails. They were not reviewed by the CCC senior lawyer who had undertaken the initial email audit or the PICCC because of their number and of the time the task would have taken. The Committee reported the PICCC comments about these additional emails in Report 8:

I decided that, in view of the emails I had already received from the Commission having already provided sufficient context to fulfil the purpose of my Inquiry, I could not justify requesting the Commission to

3 Joint Standing Committee on the Corruption and Crime Commission, *Report into emails between staff of the Department of Corrective Services and the Corruption and Crime Commission*, 12 December 2013. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/6180C2808E6E8DED48257C3D0028FA9D/\\$file/10147859.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/6180C2808E6E8DED48257C3D0028FA9D/$file/10147859.pdf). Accessed on 11 April 2014.

Chapter 1

*devote further time and resources to examining the 1,445 emails when there was no clear benefit that might be achieved for my Inquiry.*⁴

The PICCC's investigation into these additional emails was provided to the Committee on 27 March 2014 and is contained in Appendix One.

PICCC's findings

The PICCC was actually provided with 1,529 emails by the CCC for his new inquiry. Of these, 94 were between Mr Parker and Pollitt, or between Mr Parker and the CCC. The PICCC reports that emails which were relevant to the Committee's reference to him numbered 19 of the 94 emails.

The PICCC concludes that he sees "no necessity for any further recommendations to be made in this Report concerning the Commission's procedures as a result of the emails disclosed to me."⁵ The PICCC was satisfied that:

...none of the 19 emails sent between Messrs Parker and Pollitt involved misconduct on the part of Mr Pollitt.

The contents of two of the 19 emails (emails 76 and 79) are the kind to which my initial Inquiry related, and further demonstrate the attempt to undermine Ms Sandy Randall of the Department as I identified in my original Report to the Committee.

The contents of email 79, however, can be viewed as being more serious than this. In that email, Mr Parker may have disclosed information to Mr Pollitt concerning an internal complaint made against Ms Randall.

*There is no evidence in the email exchange that Mr Pollitt elicited the information disclosed by Mr Parker, engaged in or encouraged further exchanges in respect of it, or used the information in other emails with anyone else.*⁶

While Mr Parker resigned from the DCS in 2012, the PICCC said that the nature of the information he had disclosed in email 79 required the PICCC to refer the matter to both the CCC and DCS for their consideration.

4 Ibid, p3.

5 Hon Michael Murray, Parliamentary Inspector, 'Report into the Department of Corrective Services and the Corruption and Crime Commission', Perth, 27 March 2014, p10.

6 Ibid, p8.

Finding 1

The Parliamentary Inspector's supplementary inquiry arising from the Joint Standing Committee's reference has resulted in a matter being referred to the Corruption and Crime Commission and the Department of Corrective Services for their consideration.

Committee's actions

The Committee agreed to table the PICCC's report once it had consulted the CCC about it. The Committee provided the Corruption and Crime Commissioner, Mr Roger Macknay QC, with a copy of the report and sought:

- a) any additional representations that the Corruption and Crime Commission may wish to make about this report, other than those already made to the PICCC before he completed this report; and
- b) advice on whether the Commission will directly investigate the matter of email number 79 referred to in the PICCC's report, or whether this matter will be referred to DCS to investigate, whilst being monitored by the Commission.

The Acting Commissioner, Mr Christopher Shanahan SC, responded to the Committee on 2 May 2014.⁷ He said that the CCC would make no further representations regarding the PICCC's report and leave it to DCS to determine what action, if any, it considers appropriate in the circumstances.

Finding 2

The Corruption and Crime Commission has left it to the Department of Corrective Services to determine what action, if any, it considers appropriate with regards to the nature of the information Mr Parker disclosed in email 79.

Recommendation 1

The Corruption and Crime Commission should monitor action taken by the Department of Corrective Services regarding the matter referred to it by the Parliamentary Inspector.

⁷ Mr Chris Shanahan SC, Acting Commissioner, Corruption and Crime Commission, Letter, 2 May 2014.

Appendix One

Parliamentary Inspector's Report

REPORT INTO THE DEPARTMENT OF CORRECTIVE SERVICES AND THE CORRUPTION AND CRIME COMMISSION

S 201 of the Corruption and Crime Commission Act 2003 (WA)

27 March 2014

1. PURPOSE

The purpose of this Report is to inform the Joint Standing Committee of the Corruption and Crime Commission (Committee) of the outcome of my investigation conducted pursuant to its reference to me under s 195(2)(d) of the *Corruption and Crime Commission Act 2003 (WA)* (Act), dated 12 December 2013.

2. BACKGROUND

On 7 November 2013, I tabled with the Committee my report titled Report into the Department of Corrective Services and the Corruption and Crime Commission. My Report described the Inquiry I conducted into the Corruption and Crime Commission's (Commission) assessment of, and action taken in relation to, emails sent between Mr Andrew Parker, an officer in the Department of Corrective Services (Department), and Mr Craig Pollitt, an officer in the Commission.

Correspondence received from the Commission during my Inquiry explained that a search of the Commission's email database for emails with the surname 'Parker' in the address of either the sender or recipient had revealed a total of 1,445 emails. These emails were in addition to those described in my Report to the Committee.

On 12 December 2013, the Committee tabled its Report No. 8 titled Report into emails between staff of the Department of Corrective Services and the Corruption and Crime Commission. The Committee's Report contained, as an appendix, my Report dated 7 November 2013.

The Committee also provided a reference to me on that day under s195(2)(d) of the Act to ascertain whether the 1,445 emails on the Commission's database contain any material which gives rise, on my part, to a suspicion of misconduct involving a public officer which, in my view, would warrant further investigation.

The Committee requested that I report back to it with the result of my investigation by 28 March 2014.

3. ACTION TAKEN BY ME

On 19 December 2013, I wrote to Commissioner Macknay QC explaining the terms of the Committee's reference to me. I asked him to provide me with copies of the 1,445 emails as soon as it was reasonably convenient, taking care that sensitive information, such as telecommunications interception information which might have appeared in those emails, was redacted.

On 23 January 2014, Commissioner Macknay QC wrote to me and said that a search of the Commission's email database conducted subsequent to receiving my letter, in the time-span of August 2010 to March 2013, did not replicate the previous result of 1,445 emails. To ensure that all relevant emails would be identified and provided to me, he widened the parameters of the dates from 1 April 2010 to 31 August 2013.

This search produced 1,529 emails which fell within the stated description.

A copy of the emails was delivered to my office on 23 January 2014. All of them have since been read.

A categorisation of the general nature of the emails appears in the following part of this Report, as does a detailed description of 96 emails which passed between Mr Parker and the Commission during the time period searched. Of those 96 emails, 19 were sent between Mr Parker and Mr Pollitt. Of those 19 emails, two were not disclosed to me by the Commission during the Inquiry I commenced on 2 July 2013, and were therefore not examined in my Report to the Committee on 7 November 2013. The subject-matter of the two emails necessitated their disclosure by the Commission.

On 11 February 2014, I wrote to Commissioner Macknay QC under s 200 of the Act and provided him with the opportunity to make representations to me by 21 February 2014 as to why the two emails had not been disclosed to me. The Commissioner provided his representations to me on 14 February 2014, and I describe them in Part 5 of this Report.

On 11 February 2014, I also wrote to Mr Parker under s 200 of the Act and provided him with the opportunity to make representations to me by 21 February 2014 in respect of the subject-matter of the two emails. Mr Parker first responded by email on 14 February 2014, and again by email on 27 February 2014, and I describe his emails in Part 5 of this Report.

4. THE EMAILS

The general nature of the subject-matter of the 1,529 emails is as follows:

Commission non-business (social)	63%
Commission business	31%
To or From Parker	5%
Between Parker & Pollitt	1%

No email in the first two categories in the table above gave rise to a suspicion of misconduct on the part of any public officer which, in my view, would warrant my investigation.

The emails in the last two categories can be described as follows:⁸

No.	Date	From	To	Subject-matter of email
1	30/3/10	Parker	Commission	Requests assistance with conducting a Department misconduct investigation
2	29/6/10	Parker	Commission	Do
3	11/8/10	Parker	Commission	Refers an allegation of misconduct pursuant to s 28 of the Act (his responsibility while Acting Manager of the Department's Investigations Unit)
4	16/8/10	Parker	Commission	Do
5	17/8/10	Parker	Commission	Do
6	23/8/10	Commission	Parker	Requests an update on a Department investigation
7	14/9/10	Parker	Commission	Requests assistance with conducting a Department misconduct investigation
8	14/9/10	Parker	Pollitt	Asks a question about a misconduct investigation
9	25/10/10	Parker	Commission	Enquires about a job application he was in the process of making for a position with the Commission
10	28/10/10	Parker	Commission	Do
11	29/11/10	Commission	Parker	Requests an update on a Department investigation
12	4/1/11	Parker	Commission	Refers an allegation of misconduct pursuant to s 28 of the Act (his responsibility while Acting Manager of the Department's Investigations Unit)
13	5/1/11	Parker	Commission	Do
14	5/1/11	Parker	Commission	Do
15	6/1/11	Parker	Commission	Do
16	6/1/11	Parker	Commission	Do
17	6/1/11	Parker	Commission	Do
18	6/1/11	Parker	Commission	Do
19	10/1/11	Parker	Commission	Do
20	11/1/11	Parker	Commission	Do
21	11/1/11	Parker	Commission	Do
22	11/1/11	Parker	Commission	Do
23	11/1/11	Parker	Commission	Do
24	11/1/11	Parker	Commission	Do

⁸ 'Commission' will be indicated where an email has been sent to or from the Commission where the name of the Commission officer who generated the email or was its recipient is irrelevant to my investigation.

25	12/1/11	Parker	Commission	Do
26	12/1/11	Parker	Commission	Do
27	12/1/11	Parker	Commission	Do
28	12/1/11	Parker	Commission	Do
29	13/1/11	Parker	Commission	Do
30	13/1/11	Parker	Commission	Do
31	13/1/11	Parker	Commission	Do
32	13/1/11	Parker	Commission	Do
33	17/1/11	Parker	Commission	Do
34	19/1/11	Parker	Commission	Do
35	19/1/11	Parker	Commission	Do
36	19/1/11	Parker	Commission	Do
37	19/1/11	Parker	Commission	Do
38	19/1/11	Parker	Commission	Do
39	20/1/11	Parker	Commission	Do
40	20/1/11	Parker	Commission	Do
41	20/1/11	Parker	Commission	Do
42	21/1/11	Parker	Commission	Do
43	24/1/11	Parker	Commission	Do
44	24/1/11	Parker	Commission	Do
45	24/1/11	Parker	Commission	Do
46	24/1/11	Parker	Commission	Do
47	6/4/11	Pollitt	Parker	Asks to meet for a coffee and for a description of the formal interview training Commission officers receive (see email 53 for an explanation of this)
48	20/4/11	Pollitt	Parker	Asks to meet for a coffee
49	27/4/11	Parker	Pollitt	Agrees to meet for coffee
50	27/4/11	Parker	Pollitt	Explains that a contract employee he knows in the Health Department did not have his contract renewed, and that Ms Sandy Randall offered that person a three-month contract with the Department, despite no vacancies existing at the employee's particular level
51	27/4/11	Parker	Pollitt	Further exchanges to arrange a time to meet for coffee
52	29/4/11	Pollitt	Parker	Finalises a time to meet for coffee
53	1/6/11	Parker	Commission	Asks a Commission officer if he is 'looking after' Pollitt. Discusses his employment application with the Commission, and asks who in the Commission would be a good contact for him to enquire about training and development for investigations. His secondary employment while employed at the Department is with a company called Interview Skills Ltd.
54	1/6/11	Commission	Parker	The Commission officer provides a contact's details in the Commission in response
55	1/6/11	Parker	Commission	Writing from secondary employment email address, he solicits work for Interview Skills Ltd from the Commission
56	4/7/11	Parker	Pollitt	The content of this email was previously published in the Parliamentary Inspector's initial Report
57	5/7/11	Parker	Pollitt	Do
58	6/7/11	Parker	Commission	Submits a misconduct complaint against Ms Sandy Randall
59	7/7/11	Pollitt	Parker	Provides his personal contact details, including mobile telephone number, and advises Parker to take some time off work
60	7/7/11	Parker	Pollitt	The content of this email was previously published in the Parliamentary Inspector's initial Report

61	9/8/11	Pollitt	Parker	Asks to meet for a coffee
62	9/8/11	Parker	Commission	The content of this email was previously published in the Parliamentary Inspector's initial Report
63	18/8/11	Parker	Commission	Do
64	24/8/11	Parker	Commission	Do
65	9/9/11	Parker	Pollitt	Asks to meet for a coffee. Forwards an email dated 8/9/11 from Ms Sandy Randall to Pollitt in which she informs him of her decision not to appoint him as Manager, Internal Investigations in the Department. He suggests that the 'old crew' get together for a drink soon, and that he had been in contact with 'Leonic' earlier that week via SMS
66	9/9/11	Parker	Pollitt	Says that he 'has had some information'
67	13/9/11	Parker	Commission	Provides misconduct investigation update
68	23/9/11	Parker	Pollitt	Says 'no change here' and asks for the name and contact in court security, saying he recalled that Pollitt had had an interview there and knew the bloke
69	26/9/11	Pollitt	Parker	Provides details as requested in the previous email, and asks for a meeting over a coffee
70	25/10/11	Commission	Parker	Enquires about supervision of a misconduct investigation. Parker's reply asks the Commission officer to 'pump out those applications for level 6 jobs'
71	27/10/11	Department officer	Parker, Pollitt and others in public sector	Social event arrangements
72	15/11/11	Parker	Department officers	Conversation about an advertised position vacancy
73	24/11/11	Department officer	Parker	Requests an update on a Department investigation to be provided to the Commission
74	28/11/11	Parker	Department officer	Acknowledges previous email
75	19/12/11	Parker	Pollitt and others in public sector	Social event arrangements (the same event as in email 71)
76	19/12/11	Pollitt	Parker	Inform that he is unavailable to attend social event. Parker replies that there is 'no change hear' (sic) and speaks disparagingly of Ms Sandy Randall. This email was not disclosed by the Commission during the Parliamentary Inspector's Inquiry
77	5/1/12	Ombudsman Officer	Parker, Pollitt and others in public sector	Inform others of her promotion
78	6/1/12	Commission	Parker	Asks advice about the use of a kindle, and Parker provides his advice. Commission officer asked for a meeting over coffee, and Parker accepts
79	2/2/12	Parker	Pollitt	Provides an invitation to farewell drinks for a colleague. He again speaks disparagingly of Ms Sandy Randall, adding that her best mate's popularity has sunk to a new low after a colleague reported Randall for telephoning and claiming that she had recorded meetings with others which evidence bullying. Pollitt replies, declining the invitation, but suggesting meeting for a coffee right away. This email was not disclosed by the Commission during the Parliamentary Inspector's

				Inquiry
80	14/3/12	Commission	Parker	Requests an update on a Department investigation
81	21/3/12	Pollitt	Parker	Requests the incarceration dates of a prison officer, and suggests a meeting over a coffee
82	25/8/12	Parker	Commission	Lodges complaints of misconduct against executive officers in the Department
83	31/8/12	Parker	Commission	Requests an acknowledgment of the previous email
84	5/10/12	Parker	Commission	Requests an update on the progress of his complaints of misconduct (those in email 82)
85	18/10/12	Parker	Commission	Thanks the Commission for the update on his complaints of misconduct
86	21/1/13	Parker	Commission	Requests an update on the progress of his complaints of misconduct
87	12/2/13	Parker	Commission and PSC	Lodges further complaints of misconduct against Ms Sandy Randall
88	18/2/13	Pollitt	Parker and others in public sector	Makes social event arrangements
89	22/2/13	Parker	Commission	Lodges further information in respect of his complaints of misconduct against Ms Sandy Randall
90	12/5/13	Parker	Commission	Lodges another complaint of misconduct against Ms Sandy Randall
91	19/6/13	Parker	Commission	Requests an update on the progress of his complaints of misconduct in previous email
92	21/6/13	Commission	Parker	Provides advice that the assessment of his complaints is continuing
93	5/7/13	Parker	Commission	Lodges another complaint of misconduct against Ms Sandy Randall
94	23/8/13	Parker	Commission	Demands an update on all his complaints of misconduct made against Ms Sandy Randall

5. MY ASSESSMENT

The emails in the table in Part 4 which are relevant to the Committee's reference to me on 12 December 2013 are those sent by either Mr Parker or Mr Pollitt to the other. 19 of the 94 emails are of this nature.

I am satisfied that none of the 19 emails sent between Messrs Parker and Pollitt involved misconduct on the part of Mr Pollitt.

The contents of two of the 19 emails (emails 76 and 79) are the kind to which my initial Inquiry related, and further demonstrate the attempt to undermine Ms Sandy Randall of the Department as I identified in my original Report to the Committee.

The contents of email 79, however, can be viewed as being more serious than this. In that email, Mr Parker may have disclosed information to Mr Pollitt concerning an internal complaint made against Ms Randall. Such disclosure may have been contrary to the Department's rules which control official information, however, this question has not been examined because its determination is beyond my jurisdiction.

There is no evidence in the email exchange that Mr Pollitt elicited the information disclosed by Mr Parker, engaged in or encouraged further exchanges in respect of it, or used the information in other emails with anyone else.

As mentioned on page 3 of this Report, I wrote to Commissioner Macknay QC on 11 February 2014 under s200 of the Act in respect of the Commission's omission during my initial Inquiry to disclose emails 76 and 79.

In his response to me dated 14 February 2014, Commissioner Macknay QC suggested that the opportunity I had afforded him on 11 February 2014 was beyond the scope of s200. He said that he took this view because I had said in my letter that I 'may' make a comment adverse to the Commission in response to its omission to disclose the two emails to me. His view is that s200 only becomes relevant when the Parliamentary Inspector actually forms an adverse view and when the Commission is informed of that view.

I do not agree with Commissioner Macknay QC's interpretation of s200 of the Act in this respect. The Parliamentary Inspector's obligation under the section extends to the affected person the benefit of procedural fairness, and arises before any adverse matter is reported either to Parliament or the Committee. Extending this benefit to an affected person before finally deciding that an adverse comment will be made in a report is at the heart of the procedural fairness being respected; it provides the person with a real opportunity of providing evidence or some other relevant matter which may impact upon a Parliamentary Inspector's mind and, therefore, how or whether at all, the adverse comment is published.

In contrast, extending the benefit of the section to an affected person after a decision is made to include an adverse comment in a Report may be inferred by the person to imply that the adverse comment will be included in the Report of the Parliamentary Inspector regardless of what the person says in response. That could, conceivably, prevent relevant information from being submitted to the Parliamentary Inspector.

Despite his view of s200 of the Act, Commissioner Macknay QC said in his letter to me that the two emails may have been assessed as being not relevant to my initial Inquiry or may have been inadvertently omitted. He could not take the matter further because the Commission officer who read and determined which emails should be forwarded to me had since left her employment with the Commission.

The nature of the content of emails 76 and 79 - particularly that of email 79 for the reasons described - places them clearly within the scope of my initial Inquiry, and it is unlikely, I think, that had they been read they would have been deemed irrelevant.

I also mentioned on page 3 of this Report that I wrote to Mr Parker on 11 February 2014 under s200 of the Act to afford him the opportunity to make representations to me in respect of the content of emails 76 and 79 because I concluded that the content of the emails could be regarded as being adverse to him.

On 14 February 2014, Mr Parker first responded to my letter by telephoning my office. He followed this call with an email on the same day. Those aspects of his email which were relevant to the process under s200 of the Act were that he would not be in a position to make his representations by 21 February 2014, that he first intended to

analyse the Committee's Report dated 12 December 2013, and that he would then analyse my letter dated 11 February 2014. Mr Parker provided no date as to when he expected to conclude his analyses.

My office immediately replied to Mr Parker's email and asked him to suggest an alternative date by which he might make his representations. Mr Parker did not reply.

To avoid any misunderstanding, I wrote to Mr Parker on 21 February 2014 and said that he could make his representations to me by 28 February 2014.

On 28 February 2014, Mr Parker responded to my letter by email. Those aspects of his email which were relevant to the process under s200 of the Act were that he was not duty bound or legally obligated to make any response to my letters, but that he believed that it would be professionally courteous to acknowledge my role by providing a brief response which, he said, could have been longer but for 'legal advice and clauses' which prevented him from doing so.

The part of Mr Parker's brief response which was relevant to my invitation to him was, however, a repetition of his statement described above; that he was unable to make now, or at any time in the future, any explanation or comment for the reason given.

Mr Parker told me in his last email that he had resigned from the Department in 2012. Despite this, the nature of the information he disclosed in email 79 requires me to provide a copy of it to both the Commission and the Department for their consideration. I have done so today.

Having previously reported to the Committee on the nature of other emails between Messrs Parker and Pollitt which were published by the West Australian newspaper, and having expressed in that Report my satisfaction with the responses made by the Commission to the issue, I see no necessity for any further recommendations to be made in this Report concerning the Commission's procedures as a result of the emails disclosed to me on 23 January 2014.

HON MICHAEL MURRAY QC
PARLIAMENTARY INSPECTOR

Appendix Two

Committee's functions and powers

On 21 May 2013 the Legislative Assembly received and read a message from the Legislative Council concurring with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- 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 and 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 and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.