

13 February 2026

The Hon. Colleen Egan MLA
Chair
Joint Standing Committee on the Corruption and Crime Commission
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

By submission portal and email: jscccc@parliament.wa.gov.au

Dear Ms Egan

PARLIAMENTARY INQUIRY INTO THE CORRUPTION, CRIME AND MISCONDUCT ACT 2003

Thank you for your letter dated 18 December 2025 inviting the Law Society of Western Australia to contribute to the parliamentary inquiry into ways to modernise the *Corruption, Crime and Misconduct Act 2003* (the CCM Act).

The Law Society's response has been informed by feedback received from members of the Criminal Law and Courts Committees. I refer also to the Law Society's letter dated 26 September 2025 to the Joint Standing Committee which raised two fundamental issues in relation to the operation of the CCM Act:

- The Society considers the primary focus of the Commission should be oversight of government and law enforcement, as opposed to assisting law enforcement with investigations. The "exceptional powers" provisions in the CCM Act are exceptional for good reason and the preconditions required to be met before they are engaged should remain at a 'difficult' threshold; and
- The Office of the Parliamentary Inspector must be adequately resourced to deal with all functions relating to oversight of the Commission.

The Law Society's response to the specific matters of interest to the Joint Standing Committee is as follows:

1. The definition of misconduct, including what should constitute serious misconduct and minor misconduct

The Law Society acknowledges the definitions of misconduct, serious misconduct and minor misconduct in the CCM Act are complex, however, the Society does not support amendments to these definitions.

If the Joint Standing Committee considers the terms (as currently defined in the CCM Act) should be amended, the Law Society encourages the use of precise language to clearly distinguish between 'serious' and 'minor' misconduct.

The Law Society notes the CCM Act does not define the term 'corrupt(ly)' in section 4, however, the Court of Appeal determined the meaning in *State of Western Australia v Burke* [2011] WASCA 190 at [280] (being an 'improper purpose').

Explanatory notes or identification of exclusions such as mistake or negligence, may also be useful.

2. Who should be included in the definition of public officer?

Section 1 of the *Criminal Code*, defines the term 'public officer' as any of the following:

- (a) *a police officer;*
- (aa) *a Minister of the Crown;*
- (ab) *a Parliamentary Secretary appointed under section 44A of the Constitution Acts Amendment Act 1899;*
- (ac) *a member of either House of Parliament;*
- (ad) *a person exercising authority under a written law;*
- (b) *a person authorised under a written law to execute or serve any process of a court or tribunal;*
- (c) *a public service officer or employee within the meaning of the Public Sector Management Act 1994;*
- (ca) *a person who holds a permit to do high-level security work as defined in the Court Security and Custodial Services Act 1999;*
- (cb) *a person who holds a permit to do high-level security work as defined in the Prisons Act 1981;*
- (d) *a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law;*
- (e) *any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not.*

Incorporation of the *Criminal Code* definition of 'public officer' makes the CCM Act subject to amendments which limit or extend the Commission's jurisdiction. The Law Society considers it appropriate for the CCM Act to have an independent definition of 'public officer' in the CCM Act which applies to the Commission.

The current definition excludes contractors or service providers who undertake duties in accordance with statutory provisions under contract or engagement by the public service, as well as former public officers. The Law Society cautions against the inclusion of employees of private companies directed by their employer to perform a service for the State being subject to the jurisdiction of the Commission. If persons in that category are suspected of committing a crime, they can be investigated by police.

3. The impact of disclosure restrictions on:

- (a) witness welfare**
- (b) a witness's ability to assist police**
- (c) the ability to provide feedback to complainants**

The Commission has extraordinary powers of inquiry to investigate and to deal with serious misconduct in the public sector. Non-disclosure notations are imposed on a person which prohibit disclosure of the existence of a summons or compulsory notice,

or any 'official matter' as that term is defined in section 99 of the CCM Act. These non-disclosure requirements are imposed where the CCC considers that these matters, if disclosed, 'might' or 'could reasonably be expected to' prejudice the safety or reputation of a person, fair trial of a person or the effectiveness of an investigation or where it would not be in the public interest to disclose the official matter (under sections 99(4) or (5) of the CCM Act). Non-compliance with the prohibition on disclosure is an offence under the CCM Act.

If the non-disclosure notation is imposed, a person must rely on exceptions spelt out in the notice to permit that person to be able to disclose that they have been placed under a requirement or summons to any person other than their lawyer. The risk of imposing non-disclosure notations on a compulsory notice or summons, without first assessing the person's vulnerabilities, personal circumstances or likely involvement in other law enforcement proceedings is that the person may be restricted to a degree that is disproportionate to the prejudice the Commissioner is satisfied 'might' or 'could reasonably be expected to' occur.

A witness may suffer an adverse impact on their employment, personal or family commitments, and the burden of non-disclosure may inhibit mental health support or prevent that person from assisting police or law enforcement in related investigations or prosecutions.

The Law Society recommends the following amendments to the CCM Act:

- amending the threshold under sub-sections 99(4) and (5) of the CCM Act to require the Commissioner to be satisfied, on the basis of an objective assessment, that a non-disclosure notation is necessary and that prejudice will result without it, before the Commission imposes the non-disclosure notation; and
- including a requirement for assessment of a witness or potential witness's personal circumstances, vulnerabilities and need for support services before any compulsory notice or summons is issued. The Law Society further recommends the Commission engages appropriately trained witness support teams to undertake these assessments, to ensure that if a non-disclosure notation is provided it is witness-informed, and to provide guidance to witnesses and handle complaints.

4. Measures for ensuring robust investigation of allegations when the Corruption and Crime Commission refers matters back to government agencies and the WA Police Force

The Law Society does not support amendments to the CCM Act to prescribe measures for investigations of allegations referred to government agencies and the WA Police. The Law Society considers the existing provisions under the CCM Act provide sufficiently robust powers of oversight over other agencies and police. If there is an issue with another agency's investigative methods, processes, or outcomes, rather than giving the Commission stronger oversight over external investigations, it would be appropriate for that agency to address any need for reform.

As a less prescriptive alternative, the Commissioner may consider publishing guidance or recommendations for such investigations in similar terms to the report referred to in section 37(2) of the CCM Act. Such guidance could address:

- the appointment of appropriately qualified investigators
- investigative methodology
- reporting requirements for the agency to report back to the CCC (if required) and

- other matters including procedural fairness and interactions with Public Sector Commissioner's Instructions issued under the *Public Sector Management Act 1994*.

Further consultation

The Law Society welcomes the opportunity to comment on any draft legislation which is developed following the Joint Standing Committee's review of the operation of the CCM Act.

If you have any queries or wish to discuss the Law Society's response, please contact Susie Moir, Director - Advocacy and Professional Development on (08) 9324 8600 or by email smoir@lawsocietywa.asn.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Judy McLean', with a stylized flourish at the end.

Judy McLean
President