

**CORRUPTION, CRIME AND MISCONDUCT AND  
CRIMINAL PROPERTY CONFISCATION AMENDMENT BILL 2017**

*Second Reading*

Resumed from 12 June.

**HON ALISON XAMON (North Metropolitan)** [4.02 pm]: I had only just begun my contribution yesterday, so I rise to again affirm that I am the lead speaker for the Greens on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. I have also indicated that the Greens are not inclined to support this legislation.

This bill will amend the Corruption, Crime and Misconduct Act 2003, as well as the Criminal Property Confiscation Act 2000. It will ensure that the Corruption and Crime Commission has the power to investigate and bring criminal property confiscation proceedings in respect of unexplained wealth and criminal benefits. That means that the CCC's current statutory powers will be joined with powers currently possessed by the Director of Public Prosecutions and the Western Australia Police Force in respect of unexplained wealth and criminal benefits under the Criminal Property Confiscation Act 2000. The CCC will not have exclusive jurisdiction; the DPP and the police will still retain their powers, but the CCC will be able to investigate cooperatively with another body and to consult, cooperate and exchange information with other people and bodies. That includes entities such as the police, the Australian Criminal Intelligence Commission and the Australian Taxation Office.

As has been mentioned, this bill's genesis was the 2008 Archer report, which was a statutory review into the legislation establishing the CCC and its functions. It was carried out by Ms Gail Archer, SC, as she then was. There were 58 recommendations for reform and they covered a very wide range of matters. Recommendation 27 recommended amendment of the Criminal Property Confiscation Act 2000 to give the CCC the same powers as WA Police and to allow it to apply for unexplained wealth declarations, criminal benefit declarations and, I note, crime-used property substitution declarations, which is not covered by this bill, with the question of transferring to the CCC the functions of the DPP to be reconsidered within five years.

The Joint Standing Committee on the Corruption and Crime Commission did some analysis of recommendation 27 of the Archer report and reported to the thirty-eighth Parliament in its thirteenth report of February 2011, titled "Analysis of Recommended Reforms to the Corruption and Crime Commission Act 2003". The CCC at the time supported the recommendation and the Parliamentary Inspector of the Corruption and Crime Commission at the time had no comment on it. The report supported recommendation 27 in principle and flagged the committee's intention to look into it further in the future. The committee subsequently held a closed hearing with Gail Archer, SC, and further analysed the proposed reforms in its September 2011 twentieth report to Parliament, titled "Closed Hearing with Gail Archer SC and Further Analysis of Proposed Reforms to the Corruption and Crime Commission Act 2003". By then, Ms Archer had served a term as Acting Corruption and Crime Commissioner.

Some pertinent points were made in the chairman's foreword of that report. It states —

The recommendation to expand the role of the CCC to combat organised crime was not initiated by Ms Archer. She concurred with the work that had been done and although allowing the recommendation to stand, did not consider it to be a "principal recommendation."

Instead, apparently Ms Archer considered far more vital the recommendations around delegation, the appointment of a public interest monitor to represent the public interest in applications for surveillance warrants—a really important matter—and the role of the CCC's education and prevention function, which is another really important role. Continuing on in the chairman's foreword —

It has been, and continues to be, the Committee's view that given the historical link between organised crime and police corruption, that the fight against organised crime is best served by the CCC in monitoring the WA Police for corruption.

The committee preferred to expand the provisions granting exceptional powers to the police and instead retain the CCC's vital oversight role of WA Police and the wider WA public sector. Recommendation 1 states —

If the CCC is given an enhanced organised crime investigation function, its functions of preventing, identifying and dealing with misconduct should be maintained at (at least) its current capacity.

That was a quite prescient observation by the committee and goes very much towards some of the concerns the Greens and I have about the bill in front of us.

In June 2012 the committee reported specifically on the issue at hand in its twenty-eighth report, titled "Proceeds of crime and unexplained wealth: A role for the Corruption and Crime Commission?" The foreword of the committee's report stated that the committee remained opposed to increasing the jurisdiction of the Corruption and Crime Commission so as to enable it to directly investigate organised crime while concurrently overseeing WA Police. The foreword concluded that the committee believed that any problems were unlikely to be rectified solely by expanding the jurisdiction of the CCC. It noted that deficiencies in the Corruption and Crime

Commission Act 2003 would need to be addressed if the CCC was to prove more effective than the WA Police–Office of the Director of Public Prosecutions model. Furthermore, any new role undertaken by the CCC would require either an initial increase in the CCC’s resources or an abrogation of duties presently performed by the CCC; that is, any solution based on the CCC undertaking this role would necessarily come at a cost to the state of Western Australia. That is the work of the Joint Standing Committee on the Corruption and Crime Commission looking at precisely the issue in front of us today.

I want to touch on some of the issues that arise directly as a result. The Corruption and Crime Commission has undertaken to exercise its proposed new function as will be prescribed within the act within existing resources for three years and then to review the funding arrangement. It has been stated on several occasions that the ongoing costs of the unexplained wealth function may be realised by the success of confiscation proceedings. However, the CCC has advised that this diversion of existing resources from the CCC’s existing functions will have an impact on the CCC’s other investigative outputs. We are regularly advised that the CCC assigns priorities and suspends or terminates investigations if resources at the time need to be committed to what is deemed to be a more important investigation. Accordingly, resources would be diverted from this area to a particular serious misconduct investigation if it was determined that the public interest would be better served that way.

The reference to ongoing costs being realised by the success of confiscation proceedings is a reference to section 131 of the Criminal Property Confiscation Act 2000, which sets out the purposes for which money can be paid out of the confiscation proceeds account at the Attorney General’s direction. They include —

- (e) to carry out operations authorised by the Commissioner of Police for the purpose of identifying or locating confiscable property; and
- (f) to cover any costs of storing, seizing or managing frozen or confiscated property that are incurred —

Under the act. Clause 73 of the bill proposes to amend these purposes so that they also apply to the CCC, making criminal property confiscation proceedings by the CCC potentially self-funded going into the future.

I note that another purpose in section 131 is —

- (b) ... the development and administration of programmes or activities designed to prevent or reduce drug-related criminal activity and the abuse of prohibited drugs;

The Greens have long regarded these approaches as an essential and core part of tackling the state’s drug problem. The fundamental questions that I believe arise with bills that affect the CCC’s functions are that it means we need to start examining what, in the view of Parliament, is the role of the CCC. Whose role is it to deal with serious and organised crime in this state? Importantly, whose role is it to be the gatekeeper overseeing how those people deal with it? How do we make sure that the people with gatekeeper responsibility ensure that the people undertaking those investigations are not corrupted by serious and organised crime? Parliament still has not fully identified where the balance best lies. The Greens would say very clearly that the CCC’s most important role is the oversight of police. That is how it fights serious and organised crime.

Debate interrupted, pursuant to standing orders.

[Continued on page 3275.]

*Sitting suspended from 4.15 to 4.30 pm*