

**CORRUPTION AND CRIME COMMISSION BILL 2003**

*Declaration as Urgent*

**MR J.A. MCGINTY** (Fremantle - Attorney General) [9.38 pm]: In accordance with Standing Order No 168(2), I move -

That the Corruption and Crime Commission Bill 2003 be considered an urgent Bill.

I believe members are aware that this Bill was introduced a little less than three weeks ago. We are working to a time frame to try to achieve the passage of this Bill. I would certainly appreciate the cooperation of members opposite in ensuring the expeditious passage of this Bill.

Question put and passed.

*Second Reading*

Resumed from 15 May.

**MRS C.L. EDWARDES** (Kingsley) [9.39 pm]: I support this legislation and also acknowledge the Attorney General's work and that of the Opposition, particularly given the fact that the Government wants to deal with this as an urgent Bill. The Government is under a time constraint. I understand that the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers will hand down its final report by 1 August. There will then be the serious issue of handing over documents and continuing investigations to ensure a smooth transition. Unfortunately for the Government, it also told the staff of the Anti-Corruption Commission that their services would no longer be required from 1 August. Perhaps that was a bit premature when the legislation has not as yet passed through this Parliament.

Mr J.A. McGinty: It is 31 August.

Mrs C.L. EDWARDES: I thank the Attorney General for that piece of information. The idea of a new commission to replace the ACC has been around for some time. The fact that a new model needed to be put in place was recognised by the previous Government. It was also recognised by the Joint Standing Committee on the Anti-Corruption Commission under both the previous Government and the current Government. There are a number of reports that members should take the opportunity to read in order to gain a full understanding of the concerns that have arisen; namely, report No 3 of the thirty-sixth Parliament in 2003, the fifth report of the thirty-fifth Parliament in 1998, the third report of the thirty-fifth Parliament in June 1998, the fourth report of the thirty-fifth Parliament in 1998 and report No 2 of the thirty-sixth Parliament in 2002. They are just a few reports that I bring to the Parliament's attention in an endeavour to save the time of members so that they can get a bit of an understanding about the views.

Similarly, the ACC had some concerns about the limitation on its functions. It saw some of those limitations as: the inability to respond publicly when it felt it was required to do so, the inability to hold public hearings and the inability to have someone investigate complaints about the commission. The only option it had was to carry out a separate review or appoint a separate investigator, which happened on a couple of occasions. That was not satisfactory for either the ACC or the Joint Standing Committee on the Anti-Corruption Commission for several reasons. It also was not satisfactory for members of the public. The ACC lost some confidence within the community. Some of that loss of confidence within the community was due to a targeted attack. I say with some sincerity, but also with no delight, that that targeted attack came from the Western Australian Police Union and the then Police Union solicitor, the current member for Innaloo. They did it for their own reasons in representing their constituency and their clients. They did a particularly effective job, because they seriously undermined the integrity and the functions of the ACC. I think that anyone who judges the success or otherwise of any anticorruption commission by the number of successful prosecutions or otherwise is a little naive. That does not properly reflect the functions of a commission.

Another problem that had been identified was that the ACC needed to have an educative and advisory role, particularly to other public statutory authorities. Without such a role, there can be no change in the long term in the culture of corruption and/or ethics, and ethics are synonymous with anticorruption. The parliamentary inspector, as proposed in this Bill, will be a particularly valuable tool, so that when complaints are made, such as those levelled against the Anti-Corruption Commission by the Police Union and by members opposite when they were in opposition, those complaints can be investigated. The Joint Standing Committee on the Anti-Corruption Commission had no role to play in operational matters, and nor should it. I do not believe that any member of Parliament should have a role in the operational matters of an anticorruption body, whatever form it takes. However, there was always a view that a body was needed to oversee the ACC, so that complaints from members of the public who had been the subject of investigations or otherwise could be investigated. As the Joint Standing Committee on the Anti-Corruption Commission also receives many complaints from members of

the public, and given that it does not have an operational role, it is important to have someone to whom it can refer those matters. It will have an opportunity to refer those matters to the parliamentary inspector. As the Joint Standing Committee on the Anti-Corruption Commission, we are just one body. I say "we" because I have the pleasure of being a member of that standing committee at this time. We have the opportunity to refer those matters and seek advice not about the operational side but at least about what the ACC did or did not do on a particular matter, and refer it to any one of the other public sector agencies that also have a complaints or an investigative role. They include the Ombudsman; the Commissioner for Public Sector Standards; the Auditor General, who also has a particular role in the matters that can be referred to him; the police, if the matters are of such a nature; or, in some circumstances, the Director of Public Prosecutions.

I am sure that all members of Parliament know that some people in the community, for some reason or another, are not satisfied that their complaints have been investigated properly. Many of them carry that burden with them for many years and it eats away at them. All that happens is that they go from one public sector oversight body to another. It just goes around in a circle. There seems to be a view that there needs to be a better way to deal with these complaints. Although the Parliamentary Inspector of the Corruption and Crime Commission will deal with some of the problems that the Joint Standing Committee on the Anti-Corruption Commission, the Anti-Corruption Commission and members of the public have faced, it will not be an answer to the many concerns of members of the public who believe that their complaints have not been properly investigated.

One of the issues that the Joint Standing Committee on the Anti-Corruption Commission discussed was whether its role and function should take in more than just the Corruption and Crime Commission and whether it should have a broader and wider role in terms of integrity in the public sector and, therefore, in other public sector bodies. Although those other bodies were regularly invited to attend the JSCACC, no prescription was provided. There is no prescription for the standing committee in this legislation either. It is left to the standing orders of this House. I hope that the Attorney General can give us some very strong views about what he believes should be put in place. At the moment the legislation provides that it can be a standing committee of either House or a joint standing committee. That is under the ACC legislation. The Corruption and Crime Commission will report to a standing committee. No other description is given. I believe the Joint Standing Committee on the Anti-Corruption Commission has been an effective committee of this Parliament as an oversight body. It is because it was a joint standing committee of both Houses. It has also been fairly bipartisan. If the new standing committee is to have credibility as an oversight committee of such a very important commission, I would like the Attorney General's views of the role of the committee.

It is interesting that the legislation provides for a review after five years. The reason is that Hon Derrick Tomlinson is on record as saying that these bodies, around the world and in Australia, have a life expectancy of only four to five years. Community surveys and attitudes conducted by the Independent Commission against Corruption in New South Wales show after about five years whether such commissions are effective. The more effective a commission is in creating public debate and referrals to such bodies as the ICAC, the more the community sees there is corruption. As such, the community becomes more concerned about corruption. It becomes cyclic as to whether a commission is effective in uncovering corruption and exposing it. In exposing corruption there is a high level of corruption that is recognised by the community. All the anticorruption bodies in Australia and around the world change their processes and format every four to five years.

The Corruption and Crime Commission started its life in 1989 as the Official Corruption Commission. The Act was No 52 of 1988. The OCC was a very small organisation. Its Act has only 14 sections. It was established by the then Labor Government. The Act had limited powers and very few resources. The OCC Act was amended in 1991 and 1994, when I was the Attorney General. It was also amended in 1996. The 1991 amendments committed the commission to report to Parliament. The 1994 amendments were more extensive and the 1996 amendments created the Anti-Corruption Commission, which was a more extensive body. Nonetheless, there was continuity between the OCC and the ACC. Although the ACC was a much larger and more powerful body than the OCC, the 1996 amendments built on the earlier changes, in particular, the 1994 amendments. There was not a major structural change. To some extent, it is the same with the Corruption and Crime Commission. Although there is a change from three commissioners sitting as a body to one commissioner, it has addressed some of the more serious concerns raised by members of the public, the ACC and the Joint Standing Committee on the Anti-Corruption Commission. In particular, the process of investigation, the lack of public hearings, the parliamentary inspector and the lack of powers of the commission were the main concerns. More powers were needed to fight corruption properly within the community. More particularly, an educative role was needed for the long term.

In 1992 a Legislative Assembly select committee on the OCC Act recommended substantial changes to the Act. Those changes were put in place in 1994. They expanded the jurisdiction of the commission. As I indicated, the ACC was established in 1996. It is interesting to look at the names of commissions in Australia and around the world. Some identify corruption up-front and some are anticorruption. Some refer to public sector integrity,

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police integrity or the like. However, the important thing is not necessarily the name of the body but the confidence established in the body. I suggest that we need a few amendments when establishing confidence in the new body. Some deal with the individual commissioner, who will be a very important person. It is particularly true given the powers that will be given under the Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002. The exceptional powers legislation, otherwise known as the bikie legislation, was passed by this Parliament with a great deal of scrutiny and support. It was also passed with some concerns about the necessary safeguards put in place when the Commissioner of Police sought exceptional powers. The safeguard was given on the basis that the Commissioner of Police needed to seek the authority from a judge of either the Supreme Court or the District Court. The Act will be repealed and incorporated in the Corruption and Crime Commission Bill 2003 for two reasons. The first is that, cynically, it could well be that a serving judge will always perform that role. That was identified at the time of the debate on the Bill. Secondly, the interim report of the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers recommended that a crime function be carried out. It is carried out by other structures around Australia. For instance, the Queensland anticorruption body has a close working relationship with that State's Police Service. Members of that Police Service move in and out of the organisation as needed. It could be argued that because the State has a small population, it is one of the economies of scale that has been achieved through that body. It is also argued that it gives a level of expertise in investigating matters in which it has knowledge. Although I do not believe there is a problem in seconding members of a Police Service, it is not something that has always been encouraged in Western Australia. The practice in this State has been to encourage the appointment of investigators from the eastern States. I believe that the limitation on the appointment of the commissioner not being a police officer is an important one. It is because it supports the integrity of the commissioner, who must be independent. A level of confidence by the community must be maintained in the commission.

One of the important issues is the number of police who will be prepared to come forward to the Corruption and Crime Commission. That has not been significant in Western Australia, and going to the Anti-Corruption Commission has actually been discouraged by the informal network within the Police Service. I am pleased that this is now being actively discouraged, and the member for Kalgoorlie will enlarge on this. Police officers are now being actively encouraged to inform on matters of misconduct or corruption within their purview. That is to be supported. The Police Service has a particularly good role model for the protection of whistleblowers. I have raised this before, in debate on the Public Interest Disclosure Bill. That model is provided by the Commissioner for Public Sector Standards, once the whistleblowers legislation is brought into being.

The status of the commissioner is of importance for the confidence of the community. The exceptional power should go to a judge, which would give some level of comfort that there is a proper check and balance to the Commissioner of Police seeking exceptional powers. If the appointment does not have the status of a judge, it would, perhaps, not necessarily undermine confidence in the office, because an individual can always influence that, but it might create concern in the community that could lead to the undermining of that individual, and therefore of the commission in its early stages. That will be a critical element. If the person appointed was not only qualified to be a judge, but was actually a serving judge, the commission would be set on a very strong footing to begin with. The parliamentary inspector, as I have indicated, has a very important role. However, under the legislation that person has no qualifications. The office has a very important function to carry out. The tenure of the office is for only two years, whereas that of the commissioner is for four years. If the parliamentary inspector has an oversight role, and the Government is really serious about accountability and the fight against corruption, the parliamentary inspector should not have a shorter tenure than the commissioner. I will be putting forward an amendment to extend the tenure of the parliamentary inspector, and also to increase the status of the office. At the moment the Bill provides no qualifications for the parliamentary inspector, although he has the oversight role. The functions of the inspector are outlined in clause 192(1), which reads -

The Parliamentary Inspector has the following functions -

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the laws of the State;
- (b) to deal with matters of misconduct on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector;
- (c) to assess the effectiveness and appropriateness of the Commission's procedures;
- (d) to report and make recommendations to the Commission;
- (e) to report and make recommendations to Parliament and Standing Committees;
- (f) to perform any other function given to the Parliamentary Inspector under this or another Act.

Clause 192(2) reads -

The functions of the Parliamentary Inspector may be performed -

- (a) on the Parliamentary Inspector's own initiative;
- (b) at the request of the Minister;
- (c) in response to a complaint made to the Parliamentary Inspector; or
- (d) in response to a reference by Parliament, a Standing Committee or the Commission.

This seems to provide some level of imbalance. If a commissioner has the role of granting exceptional powers to the Commissioner of Police, and has qualifications equal to eight years of legal practice or those of a judge, then the parliamentary inspector, who has a very important oversight role, should not be of a lesser status or qualification, or serve a lesser term. It appears to me that this legislation would say to the community, as well as to the commissioner and the parliamentary inspector, that the inspector has a lesser role than that of the commissioner. However, this inspector has a particularly valuable and important role in ensuring the confidence and the integrity of the commission. I am sure this is where the Government wishes to go, and I will be bringing forward an amendment about the qualifications of the parliamentary inspector.

To remove some of the unworkable provisions of the Anti-Corruption Commission, the new commission is to be given powers that are not presently available to the Anti-Corruption Commission. These relate to integrity testing and control operations. In fact, the Corruption and Crime Commission will have all the powers of the police royal commission, including integrity testing and control operations, assumed identities and the like. That is very important in combating corruption. Some will say that these practices will breach the privacy of the individual, and that they are going over the top. Those arguments have always been around; they are always around whenever these extra powers are given to these bodies. The balance to this is that the public sector, overseen by a corruption commission, will have the confidence of the community in Western Australia and Australia, and of those who wish to come and invest in Western Australia. It is significant that, in all of the conferences around the world, corruption is seen as having an impact on the economics of a country. Which countries do Western Australian businesses prefer to deal with? Generally they prefer those countries which have some stability and integrity in their public sector. Countries like Singapore have a very strong zero tolerance policy towards corruption. That country has turned around to a remarkable degree in 20 years, and it is a model that is being looked at by other Asian countries that face a constant battle dealing with corruption in their public services.

I will turn to some of the other aspects of this legislation. Misconduct is defined in clause 4, which reads -

Misconduct occurs if -

- (a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment;
- (b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person;
- (c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment;
- (d) a public officer engages in conduct that -
  - (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public body or public officer;
  - (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;
  - (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
  - (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or another person,

Other reviewable actions follow. The investigations that have taken place by the Anti-Corruption Commission indicate the sorts of conduct involved. The report of the Joint Standing Committee on the Anti-Corruption Commission, No 4 of 2003, includes cases reported by the ACC outlining some of its operations. It states that the cases reported to the ACC from 1 July to 31 December 2002 alleging serious misconduct in public office were as follows: police, 119; government departments, 84; local government, 40; and other public authorities, 14. That makes a total of 257.

The Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers highlighted some of the issues that have been uncovered as misconduct and allegations of corruption. Some may say that the police would be one of the main areas for the focus of attention, yet the statistics for only a six-month period show that police comprise less than half; if the Department of Justice is included it goes over half. It may well be that a functional role within the police and the Department of Justice tends to uncover those types of allegations and acts, excluding other departments and agencies. The other government agencies and local government are of particular interest to me, because those organisations have received the least attention. A change of culture is absolutely essential in an educative and advisory role.

I will refer to some of the aspects that the Independent Commission Against Corruption has highlighted as corrupt conduct. Some of the examples include -

**A public official uses (or misuses) public resources for their personal benefit**

Examples:

A public official uses a work computer and work time to develop projects for private clients.

A public official claims travel allowances for trips not taken or claims expenses not incurred.

A public official uses an agency's earthmoving equipment to improve the value of his own home or does landscaping for his friends.

A public official claims overtime for periods when he is playing golf.

...

A council employee asks for money in return for a guarantee of being awarded a contract.

A public official awards a government tender to a company in which they have a pecuniary interest.

A public official forges an approval on official letterhead to help out a business friend.

A public official takes financial advantage of a client in their care who may be elderly, a person with a disability, or from a non-English speaking background.

...

A public official looks up driver licence information in response to a request from a friend who is a private investigator.

A public official (or former public official) provides confidential information to a company bidding for government work.

...

A company that wants to do business with a government agency offers a public official money or a gift to choose that company for the job.

Representatives of a private company regulated by a government agency take a government inspector to expensive lunches and social functions -

One could even add sporting functions.

and give the inspectors' children gifts with a view to guaranteeing preferential treatment.

A business pays a salary to a public official's wife (even though she is not in their employ) in return for expedited approvals.

It is a very serious issue in terms of the matters that can be brought forward, as identified by the matters that have come before the Independent Commission Against Corruption. The information provided on the ICAC web site is very interesting. In particular, it contains a regular newsletter which identifies reports that are published on a regular basis on the matters before and in relation to the public hearings that are conducted. Once a public hearing is conducted, that information is made public. Some people may identify that they do not wish to have a public hearing. It may not be in their interest. However, the commissioner can decide that if it is in the public interest to do so, a public hearing can be held.

I refer to the legislation before us and who is covered by it. A public officer is defined under section 1 of the Criminal Code as -

- (a) a police officer;
- (aa) a Minister of the Crown;

- (ab) a Parliamentary Secretary . . . ;
- (ac) a member of . . . Parliament;
- (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*;

Does this definition cover contractors who carry out work, for example, under the AIMS Corporation contract?

Mr J.A. McGinty: Only some at the higher level. It is not the bulk of them.

Mrs C.L. EDWARDES: It is those who do high-level security work. Therefore, not all those employed under the Prisons Act would be covered. I ask the Attorney General to identify that in his response. Under section 1 of the Criminal Code the definition of public officer relates to persons who hold a permit to do high-level security work as defined in the Prisons Act and the Court Security and Custodial Services Act. Who it does not include is very important, particularly with some of the issues that are coming forward from the Department of Justice. The definition continues -

- (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; or
- (e) any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not;

The issue with contracting out relates not just to the areas of prisons, custodial services and the like. The issue is how wide the definition is and whom it will cover under the Corruption and Crime Commission Bill.

I refer to some issues relating to how corruption is dealt with. I mentioned earlier community attitudes to corruption. In 1997 ICAC published the report "Community Attitudes to Corruption and the ICAC 1996", which is very interesting in terms of the chicken and the egg situation I identified earlier. Respondents regarded workplace behaviour in the public sector more stringently than workplace behaviour in private business. That is very important because, firstly, it deals with the higher regard in which members of the community hold the public sector and the reason that confidence should not be lost. Respondents indicated that corruption was not mitigated by the number of people involved or whether it involved personal gain; it was still a corrupt activity. Respondents indicated that the public sector was and should be more accountable than the private sector because greater accountability and probity should apply with the spending of public money and that the public sector should set an example. Some of the perceptions from respondents on the effects of corruption were also very important. One comment in the report stated -

We don't get a fair go, say with jobs, like the jobs for the boys thing.

Another comment was that ethical values that are promoted in the community should be demonstrated in the conduct of the public sector. Another comment relating to disillusionment, loss of confidence and loss of trust stated -

It's unfair, you put trust in the government and there are shonky people running things at the top. This disadvantages me and my family.

Those comments are very enlightening for any Government considering the establishment of a corruption and crime commission agency.

What is corruption? The misconduct defined in the Bill is quite broad. I have also identified examples of the forms and causes of corruption, such as the abuse of office, fraud, bribery etc. The consequences of corruption are a loss of confidence by the community, by investors in the State and generally within government itself. There is not just one solution to combat corruption, such as the establishment of the Corruption and Crime Commission. The Parliament has a very strong role to play in fighting corruption, particularly in terms of accountability. The WA Inc royal commission report clearly highlighted the role of Parliament. The index of that report covers issues such as open government, accountability, integrity in government, standards of conduct for public officials and whistleblowing. It covers also issues for the Parliament itself such as questions on notice, questions without notice, the role of standing and select committees and other matters. It deals also with issues such as political appointments, appointments of ministerial staff and the role and operation of the Government Media Office. To some extent some of those concerns are being raised again.

I implore members opposite to take time to read the report, if they have not already read it, of the Royal Commission into Commercial Activities of Government and Other Matters. That report cost this State a lot of money and we do not want repeated the same issues again and again. We want to prevent and detect corrupt activity in the public sector. Strategies can be used for intervention to ensure a level of credibility and integrity. There is a legal framework and the rule of law. I suppose one issue in the debate on the previous Reserves (Reserve 43131) Bill was the rule of law and the legal framework. There must be exceptional reasons for taking away individuals' rights to natural justice and judicial review. Those reasons must always be explained to this House and not pooh-poohed as taking up time. It is very important. There is also the issue of financial discipline and management of public sector finances. The State's AAA credit rating is being kept on the basis of the community paying for it through increased taxes. The public is paying for the Government's surplus, but it is yet to be understood by the community. When it does, it will judge the Government on it.

Another strategy for intervention is procurement, which is the awarding of government contracts. Proper checks and balances must be put in place and the process must be transparent. That concern was raised recently when Hon Tom Stephens put forward a new policy. He identified a new Department of Housing and Works policy on 6 May to improve risk management and best practice. They are just words. Under the policy, the minister has the ability to exempt particular contracts from the policy to ensure cost effectiveness and risk management. Why would a minister put himself or herself into that position whereby that exemption was not made transparent? The Government has put in place a policy, with which I do not agree, that no builder is to hold more than five contracts valued at more than \$1.5 million at any time. If there is a solid reason for providing an exemption, the minister should be able to argue for and debate that reason. However, it defies all imagination that a minister would put himself in a position in which there is no transparency to the fact that he can exempt particular contracts through a policy. That defies accountability in government and does not lend itself to being ethical or anticorruption.

I have identified public education awareness, the sensitivity of citizens' rights and public sector reform. Public sector reform is very important, particularly with regard to its change of culture. Earlier, I indicated that the Police Service has at least started to move down that path. That is not necessarily so for the rest of the public sector. Given the increasing number of complaints against local government, I suggest it is not necessarily so for local governments either.

I have consistently raised my concerns in this place regarding whistleblower legislation and the protection of those whistleblowers. The Government will not have effective whistleblower legislation if it does not change the culture of the public sector. The Government will not change the public sector culture and create an environment for whistleblowers to come forward on corrupt activity and allegations of serious misconduct, the likes of which the Government wants referred to the Corruption and Crime Commission, if it does not demonstrate that it will protect whistleblowers. I again raise the issue of Chris Read, who is a proven whistleblower. His life has been absolutely and totally destroyed. His family has been absolutely and totally destroyed. Why would anybody else in the public sector come forward and make complaints which, to all intents and purposes were proven, if they will not be looked after? The Government says that will happen in the future. I am telling you, Mr Speaker, that in the future no-one will have confidence in going through that process because whistleblowers are not being looked after. The Government has not demonstrated that it will protect whistleblowers. If this Government were serious about identifying and combating corruption, it would hold Chris Read up to the public sector as an example to it that its culture will change. That would provide the public sector with an example that the Government will protect whistleblowers not just in the future when the legislation comes into force from 1 July 2003, but from today. If the Government were serious, it would do that. However, it is bound by the Public Sector Management Act in a way that is unbelievable, because the public sector will always protect its own. When a person writes a letter of complaint to the minister, that letter goes to the person who has the most knowledge, and that person is often the very person against whom the complaint has been made. That person then writes a letter to the minister, and the minister signs it off, and the letter goes around and around in a circle. It is no wonder that we as members of Parliament get complaints that have gone from the Auditor General to the Commissioner for Public Sector Standards, the Ombudsman, the Commissioner of Police and the Joint Standing Committee on the Anti-Corruption Commission, because the person has been getting no satisfaction whatsoever.

I also raise the issue of Shane Houston, a former public servant in the Western Australian Department of Health. An allegation was made some three years ago about an activity that he had undertaken. The department started an investigation into the allegation but then dropped it. The Director of Public Prosecutions then picked it up, but it also dropped it because the department had restarted its own investigation. The Minister for Health confirmed to me earlier this year that that investigation is still under way, three years later. How on earth will we ever combat corruption if we do not make the changes in the public sector that need to be made to deal with complaints effectively, and when the Commissioner for Public Sector Standards says that she can do nothing

about it because until the investigation has been completed, she has no power to act? That provides a prime opportunity for a department or agency not to do anything. It can start an investigation and then lose it. That is not fighting corruption. Local government is another example. The City of South Perth had a whistleblower.

Mr P.G. Pandal: He was very badly treated.

Mrs C.L. EDWARDES: He was extremely badly treated. I understand that even today he does not have a job. That is absolutely disgraceful. I know that the Attorney General is serious about the whistleblower legislation. However, I implore him to recognise that this legislation will do nothing to improve integrity in the public sector if we do not change the culture of the public sector. We cannot change the culture of the public sector if we do not protect whistleblowers. Irrespective of the legislation that will come in on 1 July, whistleblowers will not come forward because they have seen what has been done to the likes of Chris Read and the person at the City of South Perth. They are just two recent examples of people who have had their actions confirmed. Those two people need to be put on a pedestal for coming forward. This legislation is all about combating corruption. If people who have the ability to detect corruption within the public sector do not come forward, then this legislation will come to nought.

We have some issues with the legislation. These sorts of independent corruption agencies have been around for some time in the world and in Australia, and since 1989 in Western Australia. They are there to ensure the integrity of public administration and public institutions in this State. The integrity and accountability of public administration is absolutely essential to democracy. I have identified a number of concerns and issues that will seriously undermine this legislation for the Government of the day, not the least of which is the lack of support for whistleblowers in the whistleblower legislation. The awarding of contracts - the Hon Tom Stephens example - is another important issue and one that the Government should be taking seriously. It is absolutely essential if we are to prevent corruption in the future to have a level of transparency in the awarding of government contracts. The educative function of the commission is critical and will need to be resourced. That educative function is not being carried out effectively in this State, and it needs to be. I believe that most States and countries that have established independent corruption agencies have found that the educator function and advisory role have been far more important than the investigative function. There is a need to ensure that a very strong resourcing role is identified for that particular function. We support the legislation. I thank the Attorney General for working with us in a constructive way and for agreeing to many of our amendments to date. I have identified a further couple of amendments that we will bring forward. I look forward to the rest of this House's contribution towards what I believe is a very important function; that is, maintaining the integrity of the public sector within Western Australia.

**DR E. CONSTABLE** (Churchlands) [10.36 pm]: This is the second time in seven years that this Parliament has been asked to debate anticorruption agency legislation. I hope we get it right this time. As we all now recognise, the Anti-Corruption Commission Act has many failings. The inadequacies of the Anti-Corruption Commission have been well aired in the media over the past few years; certainly since 1996. We have seen challenges to the authority of the Anti-Corruption Commission in the courts and in the media. In particular, over the past few years we have seen challenges to the authority of the Anti-Corruption Commission by the Western Australian Police Union. I offer the observation that there have been inordinate delays in the Office of the Director of Public Prosecutions relating to briefs received from the ACC. I am sure that on occasions that has been a great hindrance to the work of the Anti-Corruption Commission. From a number of angles, the ACC has had a difficult time, not the least of which has been the result of some inadequacies in the legislation.

As a member of the Joint Standing Committee on the Anti-Corruption Commission since its inception in 1996, I found it a great disappointment that the previous Government, which set up the ACC, did not take the advice of the committee on any occasion whatsoever. The committee worked very diligently and reported on many occasions with suggestions for improvements to the legislation. Many of those suggestions are contained in the Corruption and Crime Commission Bill before us today. I am pleased with that. In the chairman's foreword to the committee's second report of this Parliament, tabled in both Houses on Tuesday, 19 December 2002, Hon Derrick Tomlinson wrote -

In the first five years of its operation, the ACC failed to win the confidence of many serving police officers, has been in conflict with the Police Union, has been the subject of adverse media comment, and has had its authority challenged successfully in the Supreme Court. All of these things have detracted from the important role the ACC has played in pursuing improper conduct within the public sector, and in particular, within the Police Service.

I welcomed this Government's announcement of the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. Royal commissions have two basic purposes: firstly, to uncover any wrongdoing in the area they are looking into; and, secondly and very importantly, to restore the confidence of the community in the issues under investigation. Often one hears



comments in the media, particularly on talkback radio, from people complaining about the cost of royal commissions. They often cost a lot of money, but they are set up to investigate important problems or issues in the community. For that reason alone, I believe that most of the time they are justifiable, as is their cost. If this royal commission, which is costing millions of taxpayers' dollars, restores the community's confidence in the Police Service, and also in a new anti-corruption commission, it will have done its job. The royal commission has made recommendations to this Government that new legislation be set up to improve the anti-corruption agency that we have. Let us hope that this will help restore confidence in the Police Service itself.

The Corruption and Crime Commission Bill 2003 seeks to remedy the inadequacies of the existing legislation that governs the Anti-Corruption Commission. In doing so, it creates a new anti-corruption agency with much greater powers than the ACC has had. In a number of reports to this Parliament, the joint standing committee recognised that the Anti-Corruption Commission Act 1988 was flawed. Indeed, in eight of the 11 reports in the last Parliament, the joint standing committee recommended amendments to the Act. As I said a moment ago, I am greatly disappointed that the Court Government did not see fit to look closely enough at those recommendations and act on at least some of them. The current Government is now implementing at least some of the recommendations.

I draw special attention to the inclusion of a parliamentary inspector in the new legislation. It is a very welcome addition and will add a new dimension of accountability in this complex area. It will add a dimension of accountability to the Corruption and Crime Commission. I hope it will give those people who have complaints about the CCC - there have certainly been complaints against the ACC by individuals - a place to which to go, and hopefully they will have confidence that their complaints will be examined with proper scrutiny. The inclusion of a parliamentary inspector should give all stakeholders much-needed confidence in the new anti-corruption agency. I sincerely hope that is the case.

Perhaps people will ask why we need an anti-corruption agency anyway. I believe that in a democracy it is imperative that citizens have confidence in their public officers, particularly in their Police Service. I do not believe that it is possible in this day and age for a Police Service to investigate itself. It is not generally accepted that it can do so. It is much better to have a separate authority investigating these issues in the community.

I recognise the important role that police officers play in this community and the difficult and dangerous job they must often do. However, I also recognise that police officers have powers and privileges well beyond those of all other citizens. For instance, they can carry guns and act in ways in which the rest of us cannot act. Therefore, they have enormous responsibility as well. It is important that they carry out their duties with honesty and integrity. I hasten to add that I am confident that the majority of police officers carry out their duties in a fair and honest way. However, I believe that a separate authority is needed to investigate corruption and improper behaviour in the public sector, and particularly in the Police Service.

In the next few days it will be important for this legislation to be scrutinised carefully by this Parliament to ensure that sufficient checks and balances are in the structures presented before us for this new anti-corruption agency. This Bill affords the CCC extraordinary powers. The CCC will have the powers of the ACC and of the royal commission. Together, that makes a pretty hefty package of powers that can be exercised by the CCC. I repeat what the Attorney General pointed out in his second reading speech. The Bill's powers will allow the Corruption and Crime Commission to examine people on oath both in public and in private. Examination in public will be a new power that should be exercised with great caution. Secondly, it will give powers to use assumed identities and surveillance devices. It will also give power to conduct covert activities, such as integrity testing of police officers. Integrity testing is an accepted method of uncovering corrupt and criminal behaviour, but it must be exercised with great caution.

The new legislation will replace the three part-time commissioners of the Anti-Corruption Commission with one full-time commissioner. I am not sure it is wise to put all that power with one commissioner. Nevertheless, this aspect will unfold through explanation by the Attorney General during consideration in detail. I am comforted by the fact that the legislation will also establish a position of parliamentary inspector, which will be a check and balance on the powers to be given to the one commissioner.

The parliamentary inspector will have access to all records of the CCC, and will be able to investigate complaints against the commission. A great frustration of the Joint Standing Committee on the Anti-Corruption Commission has been the fact that individual citizens with complaints about the actions of the ACC had no place to which to take their complaints. On many occasions, the committee and individual members of the committee received complaints from individuals with grievances about their treatment by the ACC. I am not here to judge whether they were legitimate complaints, but every citizen should have a place to go to have complaints considered. The parliamentary inspector will have that role - it will be a very important part of the inspector's work. However, the Bill is silent on the qualifications of the parliamentary inspector. A very experienced

person in the manner of a judge or retired judge should be appointed. I understand that requirement is included in an amendment to be incorporated into the legislation.

Mr J.A. McGinty: Some people are of the view that given the commissioner should be a judicial-type person, in order to provide a counterbalance, somebody who is not a lawyer would be appropriate as the parliamentary inspector. You are very much going for the legal model, from what you say.

Dr E. CONSTABLE: Absolutely. That is what I have seen in other jurisdictions, and it works. We should flesh that aspect out in consideration in detail to ensure we are comfortable with the direction in which we are headed. We certainly must talk about the level of experience of the person in investigative work, reporting and other such matters. I would urge a safety net in appointing someone with experience as a judge.

In only two clauses does the Bill refer to a standing committee - namely, clauses 92 and 198 - and no detail is provided about the committee itself. When Parliament provides extraordinary powers to an agency or individual, it is important that Parliament retains a constant watching brief on that agency. The joint standing committee has had that brief in the ACC legislation since 1996. A joint standing committee scrutinised, as far as possible, the Anti-Corruption Commission. However, this Bill before the Chamber is silent on the form and role of the standing committee. This issue must be fleshed out in consideration in detail.

However, I offer this comment at this stage: from my experience on the joint standing committee over the last six years, it is very important that a dedicated standing committee develop expertise in this area. The wording of the Bill could be misconstrued. I understand a dedicated standing committee will be appointed to oversee the CCC. I hope that the current structure of the committee is maintained; that is, a joint standing committee that comprises an equal number of members of both Houses. It should be a balanced committee so that it conducts its work in the spirit of bipartisanship. It should never be the case that one point of view has a majority of votes on such a committee. I believe very strongly that the committee has worked well up till now and I would not like to see a change to that make-up. I hope that the Attorney General takes note of those comments based on my experience.

Another point I raise is the educative and preventive role of the Corruption and Crime Commission. This is a new and very welcome role for the anticorruption agency. There are a couple of models in other parts of Australia, particularly the Independent Commission Against Corruption, which has a role in education and prevention. I do not think there is much use in spending millions of dollars just investigating corruption without learning some lessons from it and ensuring that those lessons are absorbed into the public service and are taken note of. Education is one way of doing that.

In the visits that the joint standing committee made to the eastern States and overseas, one of the areas that we looked at in some detail was the educative role of such agencies. However, we also looked at the initial training of police officers and integrity and ethics training. This is one area in which the CCC could play a role. Also, there is a role in the continuing professional development of public officers. This is a very important role in which the CCC could very quickly learn a lot from what ICAC has done and in the materials that ICAC has produced in its educative role. I note also that in the Attorney General's second reading speech, he commented on the budget of the CCC and said that it will be greatly increased. The amount mentioned was \$21 million in the current budget. Is that correct?

Mr J.A. McGinty: Yes.

Dr E. CONSTABLE: Tonight, just to check up on the Attorney General, I looked at the previous budgets of the Anti-Corruption Commission and it is a considerable increase. In order to do its job of education, it needs to be properly funded; it cannot just be paid lip-service. I will be interested in watching the development of that area of the CCC.

The consideration in detail stage of this Bill will be very important. We need to understand the implications of the extraordinary powers that will be given to the commissioner and to the officers of the CCC. I do not agree that there is a need to hurry this Bill along, although there seems to be quite a lot of urgency from the Government's point of view. There are 82 amendments on the Notice Paper. That points to the fact that the Corruption and Crime Commission Bill may well have been put together in a bit of a hurry. That sets off an alarm bell in my mind that we must go through this Bill step by step and be very sure that we know what we are doing. It has to work this time because the last time it did not work. It is very important that we get it right. On that note, I support the legislation and I look forward to the consideration in detail stage.

*Adjournment of Debate*

**MR J.A. MCGINTY** (Fremantle - Attorney General) [10.53 pm]: In the light of the appropriate way in which this matter has been progressed, I move -

That the debate be adjourned.

Question put and passed.

*House adjourned at 10.53 pm*

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