CORRUPTION AND CRIME COMMISSION AMENDMENT AND REPEAL BILL 2003

Committee

The Chairman of Committees (Hon George Cash) in the Chair; Hon Kim Chance (Leader of the House), in charge of the Bill.

The CHAIRMAN: Members, we are dealing with the Corruption and Crime Commission Amendment Bill 2003, No 218-1B. There are 51 clauses to the Bill and two schedules. Considerable amendments have been made in the form of the "Report of the Standing Committee on Legislation in relation to the Corruption and Crime Commission Act 2003 and the Corruption and Crime Commission Amendment Bill 2003". That report has now been returned to the House. Under Standing Order No 234A, before any other question on the Bill, I am required to put the following question -

> That the amendments recommended by the Standing Committee on Legislation be read into and deemed part of the Bill.

The amendments recommended by the Standing Committee on Legislation were as follows -

Clause 5

Page 8, after line 25 - To insert -

"serious misconduct" means misconduct of a kind described in sections 4(a) - (c).

Clause 10, proposed section 30

Page 20, line 5 - To insert before "The" -

(1)

Page 20, line 5 - To insert after "about" -

-

(a)

Page 20, line 7 - to insert after "28" -

;

(b) what reports are required with respect to such matters and also with respect to the matters referred to section 21A

Page 20, after line 7 - To insert -

(2) A person who would otherwise have had a duty to notify but for guidelines issued under this section shall have a like duty to make a report in accordance with the guidelines.

Clause 10

Proposed section 31

Page 20, line 9 - to delete "section" and insert instead "sections 21,".

Page 20, line 9 - To insert after "28" -

or 30

Page 20, line 10 - to insert after "notification" the words "or report".

Page 20, lines 10 and 11 - to delete "that section" and insert instead "those sections".

Proposed section 33

Page 21, line 7 - To delete "Having" and insert instead –

(1) Subject to subsection (2), having

Page 21, after line 16 - To insert -

(2) The Commission is not to make a decision under subsection (1)(a) or (b) unless in its opinion the subject person's misconduct is or could constitute serious misconduct.

(3) The Commission may require any matter reported to it under section 30 to be referred to the Commission and may deal with that matter as if it had been notified under section 29.

Proposed section 38

Page 23, line 18 - To delete "paragraph (a), (b) or (c) of".

Page 23, line 18 - To insert after "33" -

(1)(a)-(c)

Page 23, after line 22 - To insert -

(2a) The Commission is not to reconsider action taken under section 33(2) except on fresh evidence.

Clause 5

Page 4, line 15 after "means" - To insert "any".

New clause 10

Page 13, after line 31 - To insert the following new clause -

10. Section 21A inserted

After section 17 the following section is inserted -

" **21A. Reviewable police action**

(1) The Commissioner of Police is required to notify the Commission of matters concerning, or that may concern, reviewable police action in accordance with guidelines issued under section 30.

(2) The Commission is not to receive or consider any matter that concerns, or may concern, reviewable police action unless it determines that a matter should be dealt with for the purposes of this Act.

"

Clause 6

Page 10, lines 27 to 30 - To delete "; or" in line 27 and delete the lines that follow.

Clause 20, proposed section 28

Page 18, line 2 - To delete the line.

Page 19, lines 18 to 22 - To delete the lines.

Clause 6

Page 9, line 23 - To insert after "person" the words "or to cause a detriment to any person".

Page 9, line 33 - To insert after "officer" the words "whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct".

Page 10, line 13 - To insert after "or" the words "the benefit or detriment of".

Page 9, line 32 - to delete "body" and insert instead "authority".

Clause 10, proposed section 27

Page 17, lines 8 to 10 - To delete the lines.

Clause 13, proposed section 196

Page 112, after line 23 - To insert -

(4) The Commission is to notify the Parliamentary Inspector whenever it receives an allegation that concerns, or may concern, an officer of the Commission and at any time the Parliamentary Inspector may review the Commission's acts and proceedings with respect to its consideration of such an allegation.

(5) Upon a review under subsection (4), the Parliamentary Inspector may notify the Commission that the matter is to be removed to the Parliamentary Inspector for consideration and determination.

(6) On receipt of a notice under subsection (5), the Commission is to comply with its terms.

(7) Upon a removal under subsection (5), the Parliamentary Inspector may –

(a) annul the Commission's determination and substitute another; or

(b) make any decision the Parliamentary Inspector might otherwise have made had the Parliamentary Inspector exercized an original jurisdiction; or

(c) make any ancillary order, whether final or provisional, that is remedial or compensatory.

(8) Where the Parliamentary Inspector proposes to act under subsection (7)(a), the Commission must be given a reasonable opportunity to show cause why its determination should be annulled.

(9) The Parliamentary Inspector must not undertake a review of a matter that arises from, or can be dealt with under, a jurisdiction created by, or that is subject to, the *Industrial Relations Act 1979*.

Clause 10, proposed section 27

Page 17, line 22 - To insert after "*Code*" the words "or is of a kind that, if established, would constitute grounds for removal from judicial office".

Page 17, after line 22 - To insert -

(4a) The Commission, when performing its functions in relation to the conduct of a holder of a judicial office must proceed having proper regard for preserving the independence of judicial officers.

(4b) When investigating a holder of judicial office, the Commission must act in accordance with conditions and procedures formulated in continuing consultation with the Chief Justice.

Page 17, line 23 - To delete "subsection (4)" and insert instead "this section".

Clause 7, proposed section 18

Page 13, after line 18 - To insert -

(3) When the Commission is deciding whether further action for the purposes of this Act in relation to an allegation is warranted, the matters to which it may have regard include the following -

(a) the seriousness of the conduct or involvement to which the allegation relates;

(b) whether or not, in the case of an allegation under section 4, the allegation is frivolous or vexatious or is made in good faith;

(c) whether or not the conduct or involvement to which the allegation relates is or has been the subject of appropriate investigatory or other action otherwise than for the purposes of this Act;

(d) whether or not, in all the circumstances, the carrying out of further action for the purposes of this Act in relation to the allegation is justified or is in the public interest.

Clause 10

Page 22, after line 6 - To insert -

35A. Person investigated can be advised of the outcome of the investigation

The Commission may inform a person to whom an allegation relates as to the outcome of any investigation carried out by the Commission or an appropriate authority in relation to the allegation if -

(a) the person requests the information; or

(b) the Commission considers that giving the information to the person is in the person's best interests,

and the Commission considers that giving the information to the person will not prejudice the carrying out of any further action in relation to the allegation.

Proposed section 25

Page 16, after line 20 - To insert -

(5) A person who makes a report under this section and who does so –

(a) knowing that the content of the report is false or misleading in a material respect;

(b) maliciously, or recklessly,

is guilty of a crime.

(6) A charge cannot be brought against a person under subsection (5) other than by the Director of Public Prosecutions.

Penalty: Imprisonment for 3 years and a fine of $60,000.

Summary penalty: $10,000.

Page 16, after line 20 - To insert -

(5) A publication by -

(a) a complainant;

(b) a person who has relied upon information derived from a complainant; or

(c) a person who has no reliable source of knowledge (which shall be presumed in the absence of proof to the contrary),

that an allegation has been made about a person to the Commission carries with it, an inference that there were reasonable grounds for making the complaint.

Proposed section 35

Page 22, line 3 – To insert after "If" -

-

(a)

Page 22, line 4 - To insert after "28(2)" -

;

(b) an allegation under the A-CC Act is referred to the Commission; or

(c) a complaint under the *Parliamentary Commissioner Act 1971* is referred to the Commission

Page 22, line 5 - To insert after "person" the words "who made the allegation or complaint".

Proposed section 50(2)

Page 31, line 5 - To insert after "offence" -

;

(b) the persons investigating the offence ought to have formed the view that the person should be charged with the offence

Proposed section 51

Page 31, line 13 - To delete "this Division" and insert instead "Divisions 3, 4 and 5".

Page 31, after line 31 - To insert -

(6) The Commission may at any time revoke an exceptional powers finding by notice to the Commissioner of Police.

Proposed section 62(2)

Page 38, line 31 - To insert after "notice" the words "as soon as is reasonably practicable".

New clause 16, page 110, after line 23 - To insert the following new clause -

16. Section 40 amended

(1) Section 40(1) is amended as follows -

(a) before paragraph (a) the following paragraph is inserted -

" (aa) to audit the operation of the Act; ";

(b) before paragraph (c) the following paragraph is inserted -

" (cc) to audit any operation carried out pursuant to the powers conferred or made available by this Act; ";

(c) in paragraph (e) before "Parliament" - To insert -

" either House of ";

(d) in paragraph (e) by deleting "Standing Committees" and inserting instead -

" the Standing Committee ".

(2) Section 40(2)(d) is amended by inserting before "Parliament" -

" either House of ".

Clause 10

Proposed section 76(7)

Page 49, line 18 - To insert after "premises" the words "where there is fresh evidence".

Proposed section 79

Page 50, after line 19 - To insert -

(3) Subsection (2) does not extend to prevent claims in tort in relation to premises other than those in respect of which the fortification notice is given.

New clause 9, page 10, after line 34 - To insert the following new clause -

9. Section 8 amended

Section 8 is amended as follows:

(a) by deleting subsections (1) and (2) and inserting instead –

" (1) A person is qualified for appointment as the Commissioner if the person has served as, or is qualified for appointment as, a judge of the Supreme Court of Western Australia or another State or Territory, the High Court of Australia or the Federal Court of Australia. ";

(b) after subsection (3) the following subsection is inserted –

" (4) A person holding a judicial office shall retire upon appointment as Commissioner. ".

New clause 16, Page 117, after line 27 - To insert the following new clause -

16. Schedule 1 amended

Schedule 1 is amended as follows:

(a) clause 1 is repealed and the following clause is inserted instead –

" **1. Tenure of office**

Subject to this Act, the Commissioner holds office for a period of 5 years and is eligible for reappointment once. ";

(b) clauses 4(4) and 4(5) are repealed.

Clause 5

Page 4, after line 5 - To insert -

"bipartisan support" means supported by a majority consisting of Members of both the party that forms the Government and the party that provides the Leader of the Opposition;

Page 5, after line 8 - To insert -

"nominating committee" means a committee consisting of –

(a) the Chief Justice;

(b) the Chief Judge of the District Court; and

(c) the Solicitor General;

New clause 8 - section 7 amended

Page 10, after line 34 - To insert the following new clause -

8. Section 7 amended

(1) After section 7(3) the following subsections are inserted –

" (3a) The appointment referred to in subsection (3) shall be made from the recommendations of the nominating committee which shall nominate to the Premier three eligible persons.

(3b) Before making a recommendation under subsection (3a) the nominating committee shall advertise throughout Australia for expressions of interest. ".

(2) Section 7(4) is deleted and the following subsections are inserted instead –

" (4) Before an appointment is made under subsection (3), the Premier must consult with -

(a) the Standing Committee; or

(b) if there is no Standing Committee, the Leader of the Opposition, and the leader of any other political party with at least 5 members in either House.

(4a) If the Premier consults the Standing Committee about a proposed appointment, the Premier may nominate the person for appointment as the Commissioner only if the nomination has bipartisan support. ".

New clause 14, page 110, after line 23 - To insert the following new clause -

14. Section 34 amended

Section 34(1) is amended by deleting subsections (1), (2) and (3) and inserting instead -

" (1) The Parliamentary Inspector is appointed by the Governor by commission issued under the Public Seal of the State on the joint recommendation of the President of the Legislative Council ("the President") and the Speaker of the Legislative Assembly ("the Speaker") and holds office subject to this Act.

(2) The President and the Speaker are to recommend the appointment of a person from a list submitted by the nominating committee, who has bipartisan support. ".

New clause 17, page 119, after line 8 - To insert the following new clause -

17. Schedule 2 amended

Clause 1 is deleted and the following clause is inserted instead -

" **1. Tenure of office**

Subject to this Act, the Parliamentary Inspector holds office for a period of 5 years and is eligible for reappointment once. ".

New clause 14, page 117, after line 16 - To insert the following new clause -

14. Part 13A inserted

After section 50 insert the following new Part -

" **Part 13A – Standing Committee**

216A. Standing committee of Houses of Parliament

(1) The Houses of Parliament are to establish a joint standing committee comprising an equal number of members appointed by each House.

(2) The functions and powers of the standing committee are determined by agreement between the Houses and are not justiciable.

(3) The committee established under the name of the Joint Standing Committee on the Anti-Corruption Commission shall –

(a) carry on the functions conferred on the standing committee under this Act; and

(b) have the same powers with respect to the Commission and the Parliamentary Inspector as it has with respect to the Anti-Corruption Commission,

until such time as the Houses appoint the Standing Committee. ".

Clause 5, page 8, lines 26 to 33 - To delete "means -" in line 26 and delete the lines that follow and insert instead "is the committee referred to in section 216A;"

New clause 13, page 110, after line 23 - To insert the following new clause -

13. Section 33 amended

After section 33(3) the following subsections are inserted -

(4) The Parliamentary Inspector is an officer of Parliament whose primary function is to assist the standing committee.

(5) The Parliamentary Inspector is an officer of the Parliament who helps the standing committee in the performance of its functions.

Clause 5, page 4, line 5 - To insert after "agency" the words "or either House of Parliament".

Clause 10, proposed sections 27A and 27B, page 17, after line 25 - To insert the following new sections -

27A. Allegations involving parliamentary privilege

(1) Despite any contrary provision in this Act, an allegation of misconduct, not being serious misconduct -

(a) made against a member of the Legislative Council or the Legislative Assembly in the performance by him or her of the functions of that office; or

(b) made against an officer liable to be removed from office under section 35 of the *Constitution Act 1889*,

is to be referred by the Commission to the presiding officer.

(2) A referral under subsection (1) is to name the member or officer and state the grounds on which the allegation is made and the nature of the misconduct by reference to a provision of section 4. The Commission is not required to disclose how it came to make the allegation.

(3) Section 22(3) and Division 4 of Part 2 are excluded in their operation with respect to an allegation made under subsection (1).

(4) In this section and section 27B -

"presiding officer" -

(a) is the President where the allegation relates to a member or officer of the Legislative Council, or the Speaker in relation to a member or officer of the Legislative Assembly;

(b) if -

(i) the office of President or Speaker is vacant, or becomes vacant in the course of an inquiry under section 27B; or

(ii) the member subject to an allegation under subsection (1)(a) is the President or the Speaker,

is the member appointed by each House to perform the functions and exercize the powers of the President or the Speaker during his or her temporary absence or when either office is vacant.

(5) Nothing in this section prevents a member or officer who is subject to a referral under subsection (1) from being charged with an offence whether or not the charge relates to the matters that form the basis of the allegation so referred.

27B. Dealing with allegation of member's misconduct

(1) The presiding officer, on receipt of a referral made under section 27A(1), must -

(a) where the allegation is made under paragraph (a), require a committee of the House whose functions include considering matters relating to the practice, procedure and privileges of the House (the **"Privileges Committee"**), to inquire into the matter;

(b) where the allegation is made under paragraph (b), require the Commission to conduct an inquiry.

(2) If the Privileges Committee resolves to carry out its own inquiry, it must do so by directing the Commission to act on its behalf.

(3) For the purposes of an inquiry under this section, the Commission -

(a) has the power, privileges, rights and immunities of a committee under the *Parliamentary Privileges Act 1891*;

(b) is to refer a matter, including an objection made under section 7 of the *Parliamentary Privileges Act 1891*, to the presiding officer for decision in a case where a committee is required to obtain a decision of the House;

(c) may order without summons a member or officer of either House to appear and give evidence or produce documents;

(d) may be assisted by parliamentary and Commission officers;

(e) cannot delegate the performance of a function that cannot be delegated by a committee of a House;

(f) is to report to the presiding officer and the Privileges Committee when so requested or at predetermined intervals or both.

(4) The Commission is to act in conformity with the *Parliamentary Privileges Act 1891*.

(5) An inquiry cannot be discontinued by direction of the presiding officer or the Privileges Committee unless the Commission consents.

(6) A recommendation under section 42(1) is to be contained in a report (whether interim or final) to the presiding officer and the Privileges Committee and, either in substitution for, or in addition to the recommendations that may be made under that subsection, may recommend that a member be expelled or an officer be removed under section 35 of the *Constitution Act 1889*.

(7) The presiding officer must present to the House a report provided under subsection (6), in the form in which it was received, on the sitting day next following its receipt.

(8) The Commission must not make a recommendation to an independent agency under section 42(4) unless expressly authorized by resolution of the House.

Clause 10

Page 15, lines 1 to 11 - To delete the clause.

Page 27, after line 21 - To insert -

(6) A recommendation made by the Commission under this section is not a finding, and is not to be taken as a finding, that a person has committed or is guilty of a criminal

offence or has engaged in conduct that constitutes or provides grounds on which that person's tenure of office, contract of employment, or agreement for the provision of service, is, or may be, terminated.

Page 54, lines 5 to 7 - To delete the lines.

Clause 13

Page 114, lines 24 to 26 - To delete the lines.

Clause 5

Page 3, line 21 - To insert before "Section" -

(1)

Page 9, after line 10 - To insert -

(2) Section 3 is further amended by inserting the following subsection -

"(2) Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercized if, or to the extent, that the exercize would relate to a matter determinable exclusively by a House of Parliament, unless that House so resolves. "

Clause 10

Proposed section 94, page 60, lines 22 to 23 - To delete the lines.

Proposed section 100, page 66, lines 4 and 5 - To delete the lines.

Proposed section 138

Page 90, after line 5 – To insert

(1) Before the Commission conducts an examination for the purposes of an investigation under this Act, the Commission is to inform the witness of the general scope and purpose of the investigation.

(2) Subsection (1) does not apply if the Commission considers that in the circumstances it would undesirable to so inform the witness.

Page 90, line 6 - To insert before "Except" -

(3)

Schedule 1, clause 9, page 146, after line 29 - To insert -

(5) After section 5(1)(b) the following paragraph is inserted -

" (ba) in relation to each Part VI warrant whose authority is exercised by the authority, particulars of –

(i) the warrant;

(ii) the day on which, and the time at which, each interception under the warrant began;

(iii) the duration of each such interception;

(iv) the name of the person who carried out each such interception; and

(v) in relation to a named person warrant - each service to or from which communications have been intercepted under the warrant; ".

(6) After section 5(1) the following subsection is inserted -

" (1a) If a Part VI warrant is a named person warrant, the particulars referred to in subsection (1)(ba)(ii) must indicate the service in respect of which each interception occurred. ".

Title, page 1, line 1 - To insert after "2003" the following -

;

- repeal the *Anti-Corruption Commission Act 1988;*
- repeal the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*; and
- make amendments and provide for transitional matters as a consequence of the enactment of this Act and the repeal of other Acts

Clause 1, page 2, line 4 To insert after "*Amendment*" the words "*and Repeal*".

New clause 18, page 119, after line 8 - To insert -

"

18. Renumbering of provisions of *Corruption and Crime Commission Act 2003*

(1) The sections of the *Corruption and Crime Commission Act 2003* set out in column 1 of the Table to this section are renumbered as set out opposite those sections in column 2 of the Table.

Table

Column 1 **Section number in** *Corruption and Crime Commission Act 2003*	**Column 2** **Renumbered section number in** *Corruption and Crime Commission Act 2003* as amended by this Act
4	6
5	7
6	8
7	9
8	10
9	11
10	12
11	13
12	14
13	15
14	16
15	17
16	19
17	20
18	151
19	152
20	153
21	154
22	155
23	156
24	178
25	179
26	180
27	181
28	182
29	183
30	184
31	186
32	187
33	188
34	189
35	190
36	191
37	192
38	193
39	194
40	195
41	207

42	208
43	209
44	210
45	211
46	212
47	213
48	214
49	215
50	216
51	217
52	218
53	219
54	220
55	221
56	222
57	223
58	224
59	225
60	226
61	227

(2) Part 3 is renumbered as Part 9.

(3) Part 4 is renumbered as Part 12.

(4) Part 5 is renumbered as Part 13.

(5) Division 3 of Part 5 is renumbered as Division 4.

(6) Division 4 of Part 5 is renumbered as Division 5.

(7) Division 5 of Part 5 is renumbered as Division 6.

(8) Part 6 is renumbered as Part 14.

(9) Part 7 is renumbered as Part 15.

(10) Schedule 1 is renumbered as Schedule 2.

(11) Schedule 2 is renumbered as Schedule 3.

(12) Schedule 3 is renumbered as Schedule 4.

(13) The provisions of the *Corruption and Crime Commission Act 2003* are amended as set out in the Table to this section.

Table

section 3 definition of "Commissioner"	delete "12(1)(a)" and insert instead "14(1)(a)"
section 3 definition of "officer of the Commission"	delete "25" and insert instead "179" delete "27" and insert instead "181" delete "28" and insert instead "182"
section 3 definition of "officer of the Parliamentary Inspector"	delete "44" and insert instead "210" delete "46" and insert instead "212" delete "47" and insert instead "213"
section 3 definition of "Parliamentary Inspector"	delete "38(1)(a)" and insert instead "193(1)(a)"
section 9	delete "1" and insert instead "2"
section 12	delete "11" and insert instead "13"
section 18(5)	delete "19" in both places where it occurs and insert instead "152"
	delete "42" in both places where it

	occurs and insert instead "208"
section 18(6)	delete "20 or 43" in the 3 places where it occurs and insert instead "153 or 209"
section 20(2)	delete "19(4)" and insert instead "152(4)"
section 21	delete "18(7), 19(2) and 20(3)" and insert instead "151(7), 152(2) and 153(3)"
section 26(1) and (3)	delete "25" in the 3 places where it occurs and insert instead "179"
section 31(3)(b)	delete "27" and insert instead "181"
section 32	delete "31" and insert instead "186"
section 36	delete "2" and insert instead "3"
section 38(1)(c)	delete "40(3)" and insert instead "195(3)"
section 41	delete "18" and insert instead "151"
section 43(2)	delete "42(4)" and insert instead "208(4)"
section 45(1) and (3)	delete "44" in the 3 places where it occurs and insert instead "210"
section 49(3)(b)	delete "46" and insert instead "212"
section 50	delete "49" and insert instead "215"
section 62	delete "3" and insert instead "4"
Schedule 1	delete "[s. 9]" and insert instead "[s. 11]"
Schedule 1 clause 7(e)	delete "10" and insert instead "12"
Schedule 2	delete "[s. 36]" and insert instead "[s. 191]"
Schedule 2 clause 7(d)	delete "37" and insert instead "192"
Schedule 3	delete "[s. 62]" and insert instead "[s. 228]"
Schedule 3 clause 8(5)	delete "18, 19 or 20" and insert instead "151, 152 or 153"
Schedule 3 clause 8(7)(c) and (8)(b)	delete "19 or 20" in both places where it occurs and insert instead "152 or 153"
Schedule 3 clause 10(2)	delete "25" and insert instead "179"
	delete "27" and insert instead "181"
	delete "28" and insert instead "182"
	delete "44" and insert instead "210"
	delete "46" and insert instead "212"
	delete "47" and insert instead "213"

".

New clause 19, page 120, after line 3 - To insert -

19. Application of *Interpretation Act 1984*

(1) The provisions of the *Interpretation Act 1984* about the repeal of written laws and the substitution of other written laws for those so repealed (for example, section 16(1), 36 and 38) apply to the repeals effected by sections 21 and 32 as if the *Corruption and Crime Commission Act 2003* effected those repeals.

(2) The provisions of Division 2 and Division 3 Subdivision 2 are additional to the provisions applied to the provisions applied by subsection (1).

New clause 10, page 10, after line 34 - To insert the following new clause -

10. Section 12 amended

Section 12 is amended by inserting the following subsection after subsection (2) -

" (2a) The process for nomination and consultation with regard to the appointment of a person to act in the office of Commissioner shall be the same as that for the appointment of the Commissioner except that -

(a) the process may be carried out prospectively even though the necessity for an appointment has not arisen;

(b) it may be carried out with respect to a number of persons each of whom is eligible to be appointed should the necessity arise; and

(c) any bipartisan support for a person lapses on the expiration of 12 months from the date of the resolution. ".

New clause 8, page 13, after line 19 - To insert the following new clause -

8. Section 15 amended

Section 15(2) is amended in the following manner -

(1) by deleting paragraph (a) and inserting instead -

" (a) analysing the intelligence it gathers in support of its investigations into organised crime and misconduct; and

(b) analysing the results of its investigations and the information it gathers in performing its functions; and

(c) analysing systems used within public authorities to prevent misconduct; and

(d) using information it gathers from any source in support of its prevention and education function; and ".

(2) after paragraph (c) to insert -

" (g) ensuring that in performing all of its functions it has regard to its prevention and education function; and

(h) generally increasing the capacity of public authorities to prevent misconduct by providing advice and training to those authorities, if asked, to other entities; and ".

New clause 15, Page 110, after line 23 - To insert the following new clause -

15. Section 38 amended

Section 38 is amended by inserting the following subsection after subsection (2) -

" (2a) The process for nomination and consultation with regard to the appointment of a person to act in the office of Parliamentary Inspector shall be the same as that for the appointment of the Parliamentary Inspector except that -

(a) the process may be carried out prospectively even though the necessity for an appointment has not arisen;

(b) it may be carried out with respect to a number of persons each of whom is eligible to be appointment should the necessity arise; and

(c) any bipartisan support for a person lapses on the expiration of 12 months from the date of the resolution. ".

New clause 11, page 97, after line 27 - To insert the following new clause -

11. Section 60 amended

(1) Section 60(1) is amended by deleting "5" and inserting instead -

" 3 ".

(2) After section 60(1) the following subsection is inserted -

" (1a) In addition to any matters that the Minister may determine, the Minister shall also have regard to whether the Act should be amended to include -

(a) a multi person Commission;

(b) the appointment of up to two Assistant Commissioners;

(c) jurisdiction over private entities executing public functions;

(d) the commission having an investigative crime function;

(e) a public interest monitor;

(f) the commission performing a witness protection function;

(g) the commission taking over the confiscation of proceeds of crime from the Director of Public Prosecutions;

(h) provision for witness and interpreter fees; and

(i) the adoption of the legislative scheme of the *Crime and Misconduct Act 2001*(Qld).

(3) Section 60(2) is amended by deleting "6" and inserting instead –

" 4 ".

Clause 2, page 2, after line 15 - To insert -

(4) In the event that any provision of this Act has not been proclaimed within 12 months of the act being assented to, it shall come into operation upon the date 12 months after assent.

Clause 10

Proposed section 28(2)(b), page 18, line 11 - To insert after "of" the words "relevance or".

Proposed section 42(5), page 27, lines 19 to 20 - To delete the words "for the purposes of section 103 of the *Justices Act 1902* and section 611B of the *Criminal Code*" and insert instead "by the independent agency for the purposes of discharging its obligations under section 103 of the *Justices Act 1902* and section 611B of the *Criminal Code*".

Proposed section 43, page 27, line 22 to page 28, line 2 - To delete the lines.

Proposed section 83, page 51, line 27 - To delete "A" and insert instead "Except with the consent of the Parliamentary Inspector, a".

Proposed section 94(2)(a), page 59, line 28 - To delete "concerned" and insert instead "required".

Proposed section 94

Page 60, line 29 - To insert after "Act;" -

or

Page 60, line 30 to page 61, line 2 - To delete the lines and insert instead -

(c) disciplinary action.

Proposed section 95, page 61, line 13 - To delete "document" and insert instead "record".

Proposed section 101, page 66, line 15 - To insert after "suspected" the word "serious".

Page 67, after line 26 - To insert -

(7) the law and practice relating to search warrants issued under section 711 of the *Criminal Code* shall apply to an application for a search warrant under this section.

(8) Before the authorised person uses force that may cause damage to a place or thing to gain entry or access to the place or thing the authorised person must, if reasonably practicable –

(a) ask the occupier of the place to allow the authorised person to enter the place or to have access to the thing; and

(b) give the occupier a reasonable opportunity to allow the entry or access.

Proposed section 122(1)(a)

Page 80, line 26 - To delete "An authority to conduct" and insert instead "A participant in".

Page 80, lines 27 to 28 - To delete the lines.

Page 80, line 29 - To delete "inducing a" and insert instead "induce another".

Page 80, line 30 - To insert after "misconduct" the words "that there is no reason to suspect that person has previously engaged in".

Page 80, lines 30 to 31 - To delete "of a kind that the person would not otherwise have intended to engage in".

Page 81, line 1 - To delete "engaging" and insert instead "engage".

Proposed section 130(a), page 86, lines 15 and 16 - To delete "the person would not otherwise have intended to engage in" and insert instead "there is no reason to suspect that person had previously engaged in".

Proposed section 145

Page 93, line 13 - To insert after "Act;" the word "or".

Page 93, lines 14 to 19 - To delete the lines and insert instead -

(iii) disciplinary action.

Proposed sections 148 and 150, page 94, line 25 - To delete "If" and insert instead "Where an investigation relates to serious misconduct, if".

Proposed section 148

Page 95, line 28 - To insert after "and" the word "immediately".

Page 96, after line 6 - To insert -

(7a) Before the authorised person uses force that may cause damage to a place or thing to gain entry or access to the place or thing the authorised person must, if reasonably practicable -

(a) ask the occupier of the place to allow the authorised person to enter the place or to have access to the thing; and

(b) give the occupier a reasonable opportunity to allow the entry or access.

Page 97, after line 4 - To insert -

149A Provision for overnight detention

If the person is required to be detained overnight, the Commission must arrange for the person to be provided with accommodation and meals to a standard comparable to that generally provided to jurors kept together overnight.

Proposed section 150

Page 97, after line 20 - To insert

(c) order the person be brought before the Supreme Court

Page 97, line 23 - To delete "within a reasonable time".

Page 97, after line 26 - To insert -

(5) The Commission shall facilitate the person's access to legal representation in order to make an application under sub-section (1).

Clause 32

Page 125, after line 26 - To insert -

(ba) the rights, interests and welfare of any person employed by the A-CC are transferred to the Commission;

Page 125, line 28 - To delete "and" where it second appears and insert instead ",".

Page 125, line 28 - To insert after "b" -

and (ba)

Page 126, line 8 - To delete "and" and insert instead ",".

Page 126, line 8 - To insert after "b" -

and (ba)

Page 126, line 12 - To delete "and".

Page 126, line 12 - To insert after "b" -

and (ba)

Clause 51

Page 135, line 18 - To delete "that contain a provision".

Page 135, line 18 - To delete "(4)" and insert instead "(2)".

New clause 7, page 10, after line 34 - To insert the following new clause -

7. Part 1 amended

(1) Part 1 is amended by inserting after "**Part 1 - Preliminary**" - "**Division 1 - Introduction**".

(2) After section 5 the following Division is inserted -

"**Division 2 – Purpose**

7A Act's purposes

The main purposes of this Act are -

(a) to combat and reduce the incidence of organised crime; and

(b) to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.

7B How Act's purposes are to be achieved

(1) The Act's purposes are to be achieved primarily by establishing a permanent commission to be called the Corruption and Crime Commission.

(2) The Commission is to be able to authorise the use of investigative powers not ordinarily available to the police service to effectively investigate particular cases of organised crime.

(3) The Commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.

Clause 11, page 109, after line 2 - To insert -

177A. Summary prosecutions may be brought at any time with consent

Despite section 51 of the *Justices Act 1902* a complaint with regard to a simple offence may be made within 36 months from the time that the matter of complaint arose or thereafter at any time with the consent of the Attorney General.

Hon PETER FOSS: I support the motion. The committee's report is very extensive and took the committee some considerable time to complete. Even then, it is fair to say that we have not said as much in the report as we would like to have said, nor have we finished it in the way we would like to have finished it. In the spirit of cooperation that existed throughout the entire handling of the report, we have tried to get the report into this House in time for the Bill to be passed. We have therefore not been able to do quite as much as we would like to have done. In fact, aspects about the legislation that the committee learnt were very useful. The first aspect was that the problems in the Official Corruption Commission and the Anti-Corruption Commission quite plainly arose from the nature of their legislation. The ACC was put up more as a political stunt by Hon Phillip Pendal, who -

The CHAIRMAN: As a matter of procedure, I say to Hon Peter Foss that the motion before the House under Standing Order No 234A is that the amendments of the committee be read into and deemed part of the Bill. If that motion is agreed to, the next question I will put will be on clause 1. Hon Peter Foss's comments may be better suited to clause 1 once the Committee of the Whole has adopted the report. It is true that what Hon Peter Foss is saying is relevant to the current question. However, from a procedural point of view, it would be helpful in due course if there was agreement that we adopt the committee's recommendations. I could then move to the printed version of the adopted recommendations, and we could then discuss clause 1. I leave that with the member, because I am not sure whether he will be speaking for some time on issues and then find that I put the question on clause 1. That is just an indication of the procedure that I am seeking to adopt.

Hon PETER FOSS: The reason I am speaking on this matter now is that I think I can speak on things now that I may not be able to speak on when we get to clause 1.

The CHAIRMAN: Yes, so long as members understand that that is the procedure that we will be adopting.

Hon PETER FOSS: I had understood that this is how we would be handling the Bill. We have not actually had a second reading debate on the Bill, which obviously I would have liked to have had, so I felt that there might be a greater amount of latitude in this debate to say some of the things I want to say. I am suggesting that, because of the historical approach to this legislation, we should adopt the amendments in the committee report. As I have said, the ACC legislation arose from a political move by Hon Phil Pendal, which, to his surprise, was accepted by the then Burke Government. However, it had not been drafted with the sort of attention that one would give were one intending that the legislation be passed. Once the legislation was passed, its inadequacies soon became apparent, and a number of amendments were made to it over the years that ended up changing the constitution of the ACC. It is interesting that people who were involved in that process seemed to have had personal experience of the anti-corruption process and wanted to put in their own little bit to ensure that they did not have happen to them the things that have been happening until now. I think it was found by the police royal commission that the ACC and the people working in it were probably as effective as they could be, but one thing that prevented them from being more effective was the legislation under which they were operating. That was one of the findings of the interim report on the police royal commission that I actually agree with.

One would think, therefore, that we would be seeking in this legislation to make a break with the former legislation and start with a clean slate based on the information that is available from Western Australia, New South Wales and Queensland, each of which has had significant experience in this area. However, as will be evident from the recommendations in the report, the legislation is not a clean break but, rather, is a peculiar mixture of the old ACC Act, with some extra powers added. Those powers are the powers that were given to the police royal commission, which we support - we believe it is excellent that it should have those powers - and the powers that are granted under the Criminal Investigation (Exceptional Powers) and Fortification Removal Act glued onto the side. When I say "glued onto", they have been glued onto the Bill in an absolutely atrocious manner. It took us some considerable inquiry of Crown Law to find out how it all sticks together. I believe there will be numerous objections to the jurisdiction that is being conferred by this Bill, because it lends itself to dispute. The people who will be disputing it are the people against whom an organised crime order is made, who almost by definition will have enough money to take the matter to the Supreme Court and dispute it, because although the Bill excludes the right of people to challenge a matter in the court, it cannot prevent a person from going to the court and saying it does not have power under the Act. All the Bill does is stop people from querying things that are done under the Bill. However, it cannot stop people from querying whether a thing can be done under the Bill, because if the Bill does not authorise a thing that is done under the Bill, then the immunity from supervision that is given under the Bill is lost. Frankly, I believe we have actually ended up with a messier Bill than the ACC Act that we had previously, and with all the problems that the exceptional powers Bill had. A number of the amendments that have been recommended by the committee seek to address that problem. Unfortunately, they cannot address the fundamental structure problem. Only the Government can address that. I suggest that, in the not-too-distant future, this Government draft totally new legislation based on the recommendation of the committee to look at Queensland's Crime and Misconduct Act, which appears to be a brand new piece of legislation, as opposed to just another crafting of more bits onto bad legislation. That is the first problem with the Bill.

The second problem arises out of the structure. Although the title of this Bill is the Corruption and Crime Commission Amendment Bill, there is no such thing as a crime commission in the Bill. It does not exist; it is a misnomer. When speaking to commissions in the eastern States, we found that this will cause immense confusion, because people think it is a crime commission too. They think it is a commission charged with the investigation of organised crime, but it is not. Its sole role is to make the sorts of orders that we agree to make under the exceptional powers Act.

One of the real advantages of a crime commission is that, because organised crime does not stop at state borders, it is a very sensible and safe information-exchange avenue for other crime commissions. Crime commissions are

very hesitant to share their information with police forces, for obvious reasons. Again, the committee's report refers to an obvious link between organised crime and police corruption. Organised crime cannot survive without police corruption. It does not always involve police corruption, but it cannot survive without it. Inevitably, people who investigate police corruption will come across organised crime and people who investigate organised crime will come across police corruption. In Western Australia that has been left with the police. The only evidence the committee could find for that occurring was a statement at the round-table conference before the police royal commission that the police are already doing a good job and there is no suggestion that they are not handling it competently. As far as I am concerned, that could come from only one source - the police. Nobody else believes that. The fact is that the police have done nothing to combat organised crime. We passed the exceptional powers Act to enable them to fight organised crime, and they did not apply it for 18 months so that they could use those powers through a special commissioner. Even then, they did not apply the Act so that they could get rid of organised crime; they applied it to remove fortifications. What does that tell us about the matter? What does it tell us when nothing has been done to touch Mr Kizon, who is well known as a leading figure in organised crime? Mr Tom Domican lives in Western Australia and what has been done about him? Nothing. The fact is that the police in Western Australia have been totally incapable of dealing with organised crime. It is not surprising because it became quite clear that a totally different culture must exist within crime commissions and there must be a total separation from the day-to-day activities of the Police Force. We cannot allow the sorts of surveillance under which corrupt police or organised crime will be picked up, and policemen ordinarily have the capacity to find out what that information is. Most people realise that policemen must be used to tackle organised crime and corrupt police. However, a wall needs to be built around that operation. For instance, no-one on the staff of the crime commission in New South Wales is actually a serving policeman. There are ex-policemen on the staff and it works in task forces with policemen, but they are not allowed into the operation. They do not step past the door. They are in a separate unit. What will we do in Western Australia? We will leave it to the police. We could get involved in all sorts of arguments about whether crime and corruption should be put together and whether we should or should not do it. We have the worst of both worlds. We have neither cooperation between one half of a crime and corruption commission whereby intelligence can be exchanged through central control, nor a system in which police do not mix with the people chasing corruption. We have the worst of both worlds because we do not have that but we do have the crime people being tracked down by serving policemen as part of the Police Service. It is a crazy situation. One other recommendation which was made by the committee but which is not in the form of a statutory amendment is that the Government should seriously consider making this truly a crime commission.

The recommendations that ended up as amendments relate to matters mainly of accountability. One thing that becomes quite clear is that if these quite extraordinary powers are to be given, some form of accountability must be put in place. When the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill was debated, the accountability seized upon was that a person, formerly of judicial office, would be appointed as the special commissioner. That was the protection. Of course, in the transfer of the power to grant those powers to this commission, in which the commissioner himself will be an investigator and supercop, that independent view was lost. Some other type of supervision must be put in place. Again, the Queensland model seemed very good. The Anti-Corruption Commission itself had quite a good method. For instance, to ensure that the ACC appointed a person who was not considered to be of a political nature - in other words, to have a person who was a little apolitical - a gang of three was provided to nominate the commissioner or the members of the commission. That gang of three consisted of the Chief Justice, the Chief Judge of the District Court and the solicitor general. Most people accept that those people are reasonably independent nominators. That method was removed, strangely enough.

Under this Bill, greater powers will be granted but lesser protection will be given. That was a very serious inadequacy of the Bill. The people in Queensland had a very good idea. One of the problems with the ACC is that it has become a political football. No matter who is in government, the opposition party continually criticises the operations of the ACC for political reasons. Queensland tried to get away from that by providing bipartisan support for the nomination process. Queensland has a supervisory committee rather than a joint committee, as it is a unicameral Parliament. Its committee operates on a bipartisan basis; that is, the committee must not only reach a majority decision, but also have representation from both majority and minority parties, so that, during that process, each party has an investment in the person chosen. An attempt at that has been made in this Bill; that is, the Premier is to consult with the Leader of the Opposition. However, that has long been seen in this Parliament as not being very effective. I refer especially to the days of Mr Brian Burke. He went across the Chamber, informed the Leader of the Opposition that he intended to appoint a certain person as Electoral Commissioner, told the Leader of the Opposition that he had now been consulted, and walked back to his side of the Chamber. If that is consultation, it will obviously not lead to a great deal of bipartisan support. It is important that there be a process by which it can be ensured that the person who is appointed to that position will be supported by both sides, and that the activities of the commissioner will be scrutinised in such a way as to

obtain bipartisan support. The good thing about the Queensland committee is that it has operated with a huge measure of support from both sides. That has enabled Queensland to introduce that legislation, because everybody has been involved - their ideas have all been incorporated. It tends to work simply because it has bipartisan support.

We have recommended - I urge the Committee to accept this recommendation - a double process, in which the gang of three nominates three names to the Premier and the Premier then picks one of those people, which would still provide the element of executive selection. My assumption is that it would be implicit that the Premier would not have to accept any of the people who were nominated and that he could ask for a further three names to be presented to him. A stand-off could arise; the same three names could again be presented to the Premier. However, it could still go back. That nomination would go to the committee and, if it received bipartisan support, that person would be appointed.

Another recommendation is that they be appointed for only one period of five years plus one renewal for five years, on the basis that if they have a continuing appointment dependent on the Executive Government, there is a tendency to be not quite as independent as one would like. Another important measure relates to the Parliamentary Inspector. As members are aware, increasing numbers of independent parliamentary officers have been appointed. Even though they are called officers of the Parliament, as far as the Parliament is concerned it has no idea what they are doing. What does the Parliament get out of the Ombudsman? What sort of ability does it have to work with the Ombudsman, Auditor General or Information Commissioner? They might be called parliamentary officers because they are supposedly non-executive officers, but they are not parliamentary; in fact, they are float-free bodies. They have no accountability.

The real problem in our society is that we keep creating positions for independent officers who are not accountable to anybody. Why is somebody who is not accountable to anybody better than somebody who must face the people? I have never understood it. The theory of democracy is that if people stand for election every four years, they are better able to respond to what the public wants. I do not have a great deal of time, unless it is absolutely essential, for appointing people who are accountable to neither the Executive nor the people. These people must be accountable to somebody, and if they are to be accountable to Parliament, we must really make them accountable to Parliament.

The Queensland Parliament has made its parliamentary inspector virtually work in tandem with a parliamentary committee. It has gone further than we have suggested, because in Queensland there is no independent power of investigation unless there is a reference from the committee. The committee can give general references, but if it withdraws a reference, that is the end of the reference. It has made the whole process work very well with the public. The public see it as being real accountability. People can go to the inspector, and the inspector can look at everything and report to the committee. The inspector does not report the detail but merely the conclusion; however, the inspector has every detail. There is therefore a person working with the committee who has the capacity to look at the issue, to answer the questions the committee has and to investigate the matters the committee is interested in, which enables the committee to get in and follow things up without unnecessary disclosure to the committee of facts that it does not need to know.

At times our committee has felt a degree of ineffectiveness due to its inability to get in and inquire. On the other hand, we do not want to have it turn into a political bunfight. The parties appointing people to these committees must be very careful to appoint people who will work cooperatively. I assure the Chamber that the Opposition's wish is that the legislation should work and work effectively, but our concern was that there were many aspects that would not work, and there are still many aspects of this that will not work. We could not deal with those matters, but we have dealt with those matters that we could deal with. It is by no means perfect legislation. Our hope is that the Government will very quickly move again to re-establish this legislation more along the lines of the Crime and Misconduct Commission legislation. However, we believe that we have theoretically a perfect system of accountability and also a practical system of accountability. There is no doubt about it: in our discussion with the people in Queensland we were informed that there was universal satisfaction with accountability and universal approbation from both sides of Parliament that it was working. There were some problems in Queensland, which we will deal with in other recommendations. There is no doubt about it: that is a major part of the reason for the general satisfaction with the CMC. It is not a matter of political contingency at all. I would not say that the Independent Commission Against Corruption, the Police Integrity Commission and the New South Wales Crime Commission are equally lacking in contention. However, there was a lot of tension between those various organisations, which was quite fascinating to see. I believe that the Queensland Parliament has thought it through and has an effective system.

Another thing that really impressed us about Queensland was the philosophy. The parties believe, and I totally agree with it, that if people want to get rid of corruption, they must change the culture. One of the things the police royal commission has demonstrated is that former Commissioner Falconer - although he was maligned - achieved some changes in the culture. It was quite fascinating. One inspector said that he used to do something

but had not done it since the Delta reforms. That is because the culture had changed. It did not mean that the service got rid of all the crooks; however, the expectation that people should be honest was created. Previously there was a culture of dishonesty. Young policemen were quickly compromised. It might have been that they were given a free pie or saw their sergeant being given $20. If the junior officer who witnesses that does not prosecute his sergeant then and there, he is compromised and is just as guilty of an offence as is the sergeant. However, what new constable will prosecute his sergeant for taking bribes? People moving up through the ranks had skeletons in their cupboards. It was not their fault, it was the fault of the system, or the culture. The system encouraged and almost enforced that form of behaviour. In Queensland, they are trying to attract into the CMC police officers who can be trusted - that is, people they are certain are honest - and involve them in the change of culture. That involves things such as need to know. The biggest problem among police is gossip. Even if an officer gossips to somebody he thinks he can trust, there is no guarantee that he will not gossip to another officer who cannot be trusted, and so the word quickly gets around that X is being investigated. If officers must talk on only a need-to-know basis, they start to inculcate a culture of doing the right thing, which produces some potential. The classic examples are described in MacAulay's *The History of England* and Lord Campbell's *Lives of the Lord Chancellors and Keepers of the Great Seal of England, from the earliest times till the reign of King George IV*.

It was not all that long ago that judges were regularly corrupt. The system encouraged corruption. Generally speaking, people got into trouble for corruption not because they were corrupt but because they were excessively corrupt. They asked for too much money. Lord Bacon is a classic example of somebody who was prosecuted for corruption not because he was doing something that was different from what other people were doing but because he was greedy. He wanted excessive amounts of money and did not deliver because he had taken money from both sides. The extraordinary thing is that he outraged the then sense of decency about judges. The most important thing is what people expect of themselves in their job. I have known shifty lawyers who have been appointed to the Bench and suddenly become upright members of the Bench. Some people who were appointed were on my black list, which meant that I did not take them at their word but made sure I got it in writing. However, they lived up to the role of judge when they were appointed to the Bench. People now expect judges in Australia to be honest and incorruptible. There are places in the world where that is not expected, and it is not delivered. It is the culture that applies in a particular country that determines what will happen. I give an example, which I do not see as being corruption. I was asked by the justice minister in Vietnam to advise on its commercial court. The reality was that the commercial court in Vietnam would never find against the Government. Judges in that court are not appointed for life. Instead, they hold their position at the pleasure of the Government. They do not get much in the way of pay, but if they lose their job, they have no pay. Therefore, when I was asked to advise on the situation, there was no way that they would find against the Government or a government corporation. That was a given. If someone managed to snag a judgment against the Government, it would not be enforced. The judges had to first check with the minister about what was permitted. This was not concealed from me. It was not said with any degree of shame. It was seen as a problem because it meant that westerners did not trust the commercial court. It was not something to be afraid of; it was just the reality. The Government was saying it had a problem. It wanted people to trade in Vietnam; however, people would not trade in Vietnam because they could not sue the Government, and most of the corporations with which they must deal are government corporations. How do we solve the problem? That was the culture that was inherited from Russia, and it is mind boggling to us because we have become used to a different culture.

To change corruption, one must change the culture. Former Commissioner Falconer will be given a considerable tick in years to come for what he achieved. He is probably a contentious sort of person, but he had the right idea and always talked about a change in culture. The Bill contains amendments in that regard.

The committee was very concerned about one area, about which the Leader of the House made a statement today on behalf of the Attorney General that I do not believe was satisfactory. I refer to the employment of Anti-Corruption Commission staff. It is clear that the Attorney General has serious concerns about employing four or five of the 78 ACC officers. I understand that. However, people's jobs should not be taken away by an Act of Parliament because of such concern. One should go through the process of getting rid of them, and one might have to pay them some money to go. That is it. Governments often move into government and find people they do not want, and it costs to get rid of them. The fact is that 78 people have a right to continue in their jobs. This is a restructuring of an agency of government. I cannot accept removing a person's contracted employment by an Act of Parliament just because some people in that agency are not liked. I do not accept removing the contract of employment for those four or five officers, or whatever the number is precisely. Those people are entitled to be sacked with money - that is, to be paid out - just as anybody else is so entitled. I do not see why an Act of Parliament should be passed to take away their contractual rights.

Hon Kim Chance: Even so, we do it all the time to other people.

Hon PETER FOSS: I do not know anyone whose contractual employment rights have been taken away -

Hon Kim Chance: I can give you the names of a few milk vendors who might disagree with you.

Hon PETER FOSS: I do not agree with the Leader of the House. Those people had their contractual rights. The difficulty was that they were not protected by what was removed. The problem with the milk vendors was that there was protection for white milk, not coloured milk, and the money was in coloured milk. It was not a right taken away.

Hon Kim Chance: I won't do that again.

Hon PETER FOSS: Yes.

Hon Norman Moore: It could take all afternoon.

The CHAIRMAN: I am the manager of business!

Hon PETER FOSS: The statement made by the Leader of the House reads -

> The Government has maintained from the outset that it is committed to ensuring that all public sector employees affected by the decision to establish the CCC, including ACC and Ombudsman staff, are treated in a fair and equitable manner.

I disagree with that statement. I refer to the public evidence given by the employees' union representative, or some other modern-sounding term rather than shop steward. They attended and gave evidence. I refer the minister to that evidence. The Government has dealt with these people atrociously. The Government kept giving verbal assurances, but when it was asked to put it in writing, it never would. Unless something has happened since that evidence was given to the committee, the statement delivered this morning was the first indication in writing of the Government's intentions with these people. It is atrocious. People did not even have a guarantee that they would be redeployed or receive a redundancy payment. Most of them have done nothing wrong. They are perfectly innocent in the whole process. It is agreed by most people - the police royal commission certainly thought so - that the problems with the ACC arose from its legislation, and that it did the best job it could in the circumstances. The problems were not the fault of those 78 people, of whom Mr McGinty dislikes five senior people. It is not really their fault he dislikes them, either. The Attorney must offer them money to go. They should receive that money. That is what happens to people in particular positions when a Government takes over and does not want those people to remain. They are paid to go. An Act of Parliament is not passed saying people are no longer employed and are in limbo. The extraordinary thing about it is that if a department is abolished by ministerial direction, an entire provision is in place that deals with what should happen to people in terms of redundancy. However, a Crown Law opinion said that it did not apply to these people. They had no rights at all. All they had was verbal assurances that something would be done. The statement concerning the future employment of current Anti-Corruption Commission employees does not say much more. All it says is -

> In accordance with existing practice, when the ACC is abolished remaining employees will be placed in another agency prior to abolition. This will allow the employees to continue employment and gain access to redeployment and redundancy provisions if necessary, despite their employing authority ceasing to exist.

I draw attention to the words "if necessary". It continues -

> The Government has given an assurance that it will arrange for employees who require access to redeployment and redundancy provisions to continue to have such access until voluntary severance is taken or redeployment occurs.

That should be happening within the Corruption and Crime Commission. The Government should be inducing those people to go. They have done nothing wrong. It was not until quite late that suddenly the Government indicated that it would do this. Until then, people had been employed on the understanding that ACC staff would continue with the new CCC. Obviously, there would be changes at the top, and there would be re-establishments, reorganisations and all the things that happen whenever a new organisation is set up, but people's employment should not be taken away by an Act of Parliament. That is a serious concern for the Opposition. It asked the Attorney General what sort of undertaking would be given, and I can tell the House now that, having seen the undertaking, it is not sufficient - and I say that having checked with my colleagues. We will have to do a bit more thinking about that.

There are a number of other recommendations in the report. I will deal with the detail later. However, I will deal with one other matter on which the committee made a recommendation. There is a recommendation for a new offence of making malicious reports, which I believe is quite proper, and one other amendment that I asked to be put in - I had previously asked the Government - which relates to the publishing of statements that a complaint has been made. I agree that one of the problems that shrouded the ACC was the secrecy provisions. There is no doubt about that. However, that came about partly because of an experience that the former Premier

had. He was at a cocktail party, and everybody there knew that a complaint had been made against him, but he did not. It was only after a period that he eventually found out what had happened. Everybody else knew, but he had no idea that a complaint had been made against him. He also did not know that the complaint had in fact been dismissed. I believe that coloured some of his views. Another thing that coloured his views was what happened with Mr Greiner. A finding was made against him by the Independent Commission Against Corruption that was set aside by the Supreme Court. Obviously, it was of great satisfaction to him to have it set aside by the Supreme Court. In the meantime, he had lost his premiership and never got it back again. It was a somewhat small compensation. Care must be taken. There are provisions in the Bill, but I have not looked at the amendments yet.

The committee was concerned about that provision. Findings should not be able to be made. On the other hand, we believed that we could not stop the CCC from operating. A provision states that opinions cannot be formed. If an opinion cannot be formed, a person cannot do very much. I believe it will end up as just a matter of wording. The problem that comes with making it public is that proving malice is very hard. It is a mental element. To get inside a person and show malice is extremely hard. The problem with the law of defamation as it currently stands is that if someone says that a person is being investigated by the police, most people say that if the police are investigating, there must be something in it. However, the courts have held that that is not the case. They have held that when the ordinary person hears that someone is being investigated by the police, he says that that person must be innocent, because we all know that people are presumed innocent until proven guilty. Is that not lovely? Sometimes I wonder whether the courts are totally and utterly naive. That might be the law, and it might be what people should think, but it is not what they do think. As soon as they hear that someone is being investigated by the police, they think that that person is obviously in trouble. I certainly accept the lifting of the veil, but, on the other hand, I believe there must be some protection from the slightly absurd law of defamation that we have. Therefore, there is a recommendation for that as well.

I will deal with something that was said by the Attorney General. I refer to an article in the *Sunday Times* of 8 June 2003 that states -

> THE veil of secrecy that has shrouded the Anti-Corruption Commission - preventing the public from knowing anything about its activities - will be lifted when a new corruption watchdog is established in August.

August! Interesting. The article continues -

> Attorney-General Jim McGinty has told The Sunday Times the extraordinary secrecy provisions of the ACC were largely responsible for bringing the organisation into disrepute.

I think they have been a problem, there is no doubt about it -

> "No one knew what it was doing and there was no ability to reassure the public that allegations of corruption were being investigated," Mr McGinty said.

So far I agree with Mr McGinty -

> "The legislation governing the ACC was so paranoid about secrecy it even prevented ministers and departments from telling the public that an allegation had been referred to the ACC." Secrecy provisions also stopped innocent people defending themselves against malicious slurs.
>
> Mr McGinty said he was speaking from personal experience.

I will leave out a small amount from the following quote for reasons of the standing orders -

> He told Parliament this week that allegations against him had been made to the ACC and were "as good as made public at the time" by Liberal MP Peter Foss.
>
> "It was done for no reason other than to inflict political damage," Mr McGinty said . . . He had been prevented from defending himself against the rumours that circulated at the time.
>
> . . . Mr McGinty said he was advised by the ACC last month that there was no substance to the issue and it would not be further investigated. Mr McGinty said his experience of the system made him determined to ensure the new Corruption and Crime Commission had an ethos of openness and accountability.
>
> "In future, when a corruption allegation is raised, the Government will be able to reassure the public that it is being investigated, -

That would remain the case -

> the commissioner will have the power to comment on it if he or she believes that is warranted, and open hearings will add another layer of openness and accountability," he said.

> "A person who maliciously discloses that an allegation of misconduct has been, is, or may be about to be made to the commission - knowing the allegation to be false in a material particular - will be liable to up to three years' jail and a $60,000 fine,"
>
> Legislation to create the Corruption and Crime Commission will be debated in Parliament's Upper House this week.

Although I agree with the general comments made by Hon Jim McGinty, I have to disagree with him about some of his factual statements. For instance, I never disclosed to anybody that I made a complaint to the ACC, nor as good as disclosed it to anybody. The complaint I made was certainly not malicious or without substance. At this stage I feel obliged to say that I certainly did disclose in Parliament a number of factual matters that I thought were of great importance that they be disclosed, and people may draw all sorts of conclusions from them. However, in view of the fact that Mr McGinty has said that I made a malicious disclosure to the ACC, I will explain what it was I did do. I did make a complaint to the ACC in a letter. I will not read the first two pages of the letter but start reading where it becomes relevant. On page 3 it states -

> **CABINET MATTER**
>
> **Broad nature of matters regarding Cabinet Ministers**
>
> Unfortunately, the matter does not end there. I have a further complaint of corruption as to the handling of the Lewandowski affidavit. These matters have emerged from parliamentary and public statements made by those involved - generally The Hon Jim McGinty MLA, Attorney General but also The Hon Bob Kucera and the Hon Premier.
>
> **Background facts.**
>
> The Lewandowski affidavit was drafted by Mr Avon Lovell and on Thursday 6 June 2002 Mr Lewandowski attended upon the DPP in order to deliver the affidavit and to secure an assurance of indemnity about its use.
>
> The same day, Mr Cock the DPP, hand-carried the prosecution's file to the office of the Solicitor General Mr Robert Meadows QC.
>
> That evening, Mr Meadows attended upon the Attorney General and handed him a copy of the affidavit, a copy of Mr Kucera's transcript of evidence at the 1998 appeal, Mr Kucera's affidavit evidence-in-chief at the 1998 appeal, Mr Kucera's 1988 statement to the IAU upon which the affidavit was apparently based and other relevant transcripts (it would seem all the 1998 appeal transcripts - including Lewandowski and Hancock and even some earlier transcripts)

Since I wrote that letter, further answers from the Premier and the Attorney General have caused some confusion and ambiguity because they seemed to indicate that he did not have them until Saturday. At some stage they were given to Mr Kucera. It continues -

> Mr McGinty has refused or evaded answering whether the Solicitor General told him at that interview that Mr Kucera faced a similar or worse probe as to his evidence than he faced in the 1998 Appeal, even though the Attorney General has given all other sorts of self-serving evidence as to what transpired at that interview. What Mr McGinty has clearly admitted to was that the Solicitor General told him that Mr Kucera gave evidence at the 1998 Appeal.
>
> In fact, given the known and admitted circumstances, it is conceivable that the Solicitor General did not tell Mr McGinty that the Lewandowski affidavit had adverse implications for Mr Kucera and that Mr Kucera faced further investigation as to his involvement.
>
> **The actions of McGinty**
>
> If you could have any doubt that Mr McGinty was warned, then observing Mr McGinty's subsequent behaviour allays it:
>
> He tried to contact both the Premier and Mr Kucera that night. He succeeded in contacting the Premier at midnight Sydney time in Sydney. He contacted Mr Kucera the next day in Bunbury. Mr Kucera remained in Bunbury until Friday night because of ministerial obligations. At no stage did Mr McGinty contact the Minister for Police. Mr McGinty spent the entire weekend reading the documents he had been given. I have reason to believe that Mr Kieran Murphy, the Premier's media adviser was privy to discussions on the matter.
>
> Mr McGinty has admitted to 6 discussions of the matter with Mr Kucera over the weekend and on Saturday giving him all the documents that the Attorney General had received from the Solicitor General.

His explanation for this (given on Radio 6PR) was "because he was a colleague" and "to allow him to prepare his version of the events and to tell the truth". On Tuesday he released the content of the affidavit to the media.

He has also said that he believed Mr Kucera would be subject to unprincipled and baseless political attacks as a result of the Lewandowski affidavit. In Parliament and elsewhere, both the Premier and Mr McGinty have maintained that the Lewandowski affidavit makes no mention of Mr Kucera (I understand it doesn't) and that Mr Kucera is therefore not involved. Earlier on, I requested the tabling of the documents handed to Mr Kucera and this was refused. The Opposition wrote to the Master of the Supreme Court asking for copies of the transcripts and this was also refused. After about 3 weeks transcripts were provided but the two affidavits and 1988 statement still have not been provided. I believe that these documents in particular will determine the nature of any investigation of Mr Kucera and whether he may or should face perjury proceedings. These are still not available to me to this day despite the fact that an officer from the Office of the Leader of the Opposition has telephoned almost daily requesting them. She has not even received an acknowledgment of her requests.

Prejudicial behaviour of Attorney General

Subsequent to these events, the Mickelbergs delivered a petition to the Attorney General seeking his fiet for another appeal.

Between that time and the granting of the fiet and since, the Attorney General has used his office to behave in a manner prejudicial to the interests of justice and which only served to assist Mr Kucera and the Government.

They are:

(a) he has continually cast doubt on the veracity of Mr Lewandowski (knowing that the standard of proof to convict Mr Kucera of perjury is quite different from that to satisfy the CCA that the verdict is unsafe. I question the propriety of this course of action even if Mr McGinty had no stake in Mr Lewandowski's credibility;

(b) he has misrepresented the circumstances under which the affidavit was obtained making references to the actions of Mr Tony McLernon which had no reference to the obtaining of the affidavit

(c) He has threatened not to grant a fiet if Lewandowski refuses to return to Western Australia to give evidence to the Royal Commission and to face "judicial proceedings" despite the fact that Mr Lewandowski has said that he will return to give evidence to the CCA. This is both a misrepresentation of the nature of Royal Commission proceedings and calculated to give the Attorney General an excuse to refuse to deal with the Lewandowski affidavit and the petition

(d) he has published the nature of the affidavit to the world when he should have kept it confidential

(e) he may have been the source of the copy leaked to *The West Australian* and seems to be the only office which has not denied leaking it.

Legal basis for allegation of corruption

11. From the moment that he received the information from the Solicitor General on Thursday night, Mr McGinty has acted in breach of the ministerial oath and in clear conflict of his duty as Attorney General.

    He did so apparently with the knowledge of the Premier and apparently with the Premier's support then and certainly later.

12. Mr McGinty gave privileged information to a colleague and in-law (so to speak) so as to warn and prepare him against possible investigation. I do not need to advise you what would happen to a junior police officer if he were to warn a colleague and family member of a possible police investigation - even over a minor infraction.

    In this case, the person giving information was the first law officer, he gave information which he had received from the second law officer and who had received it from the independent prosecutor - information which he has delayed or refused to give to anyone else.

13. He has acted prejudicially to the Mickelbergs and Mr Lewandowski in order to assist his colleague and in-law.

> 14. He has threatened to refuse his fiet on grounds that were specious and intended to bring pressure on the Mickelbergs capacity to take action against Mr Kucera.
>
> (I should mention that Mickelbergs have advised me that their advice from Mr McCusker QC was not to publicly say anything to implicate Mr Kucera, as they did not want to offend the Attorney General. Whilst this may be appropriate advice in the circumstances, and is not the fault of the Attorney General, it certainly does mean that the public is adjusting to the notion that the Attorney General is likely to act improperly).
>
> I look forward to you investigating these two areas.

I made that complaint but I certainly did not make it maliciously. I made it because I was extremely upset with the behaviour of the Attorney General. He behaved in a way that I would never have considered appropriate. We have talked about the culture of people's behaviour - that is an example of it. That is a culture and use of documents that I could never countenance. I do not have any malice against the Attorney General; however, I am considerably disappointed with what he has done to the office he holds. He also said that he had no chance to defend himself. I have continually asked questions in this House and received evasive answers. If he really wanted to put an end to this matter, he would have defended himself - he would have answered the questions I asked. The fact is that the Attorney General has evaded giving an explanation of how that came to happen. That is important because the answer I received from the Anti-Corruption Commission shows plainly how important that is. It did not write back and state that there was no substance in it at all. The letter of 8 May 2003 states -

> I refer to the above allegation by you.
>
> The Commission has undertaken a preliminary inquiry into this matter and also received advice from a senior member of the Bar.
>
> The advice received was that the Attorney General was not at liberty to deal with the Lewandowski affidavit in any way he thought fit.

I have had this letter since May. I have not publicised it. The attack on me was made in June. Did I respond? No. I have waited for the appropriate moment to put the record straight. I think I have behaved with remarkable restraint. Why? Because I have a lot of respect for our role in this Parliament, just as I have a lot of respect for the role of an Attorney General. Although I am prepared to observe the role of this Parliament, the Attorney General has gravely disappointed me in fulfilling his role. The letter states why it did not prosecute -

> However, the elements of an offence under section 81 of the *Criminal Code* required that the purpose of the act, in this case the release of the Lewandowski affidavit, be established. In determining the purpose one must look at the subjective intention of the accused. (see *Malcolm CJ in Rompotis v R(1996) 18 WALR 54 at 59*).
>
> The Director of Public Prosecutions has agreed with the above advice, but has said that if the evidence disclosed an honest but misguided sense of fairness towards Mr Kucera or a wish to protect the interests of the Government, a jury could not be satisfied that the necessary intent existed.

We are back to what is called the Murphy defence: proving the intent inside a person's brain. How many times have we passed Acts to get around the particular problem of getting inside the brain of an accused person? It is a constant difficulty within the Criminal Code. Probably no other Attorney General has introduced more legislation to circumscribe the right of an accused to sit quietly and not talk than this Attorney General. Interestingly enough, he has also introduced legislation that enables the accused to be examined about his motivation. Prior to an amendment recommended by the committee, he could continue to be examined until such time as it was decided to charge him. We moved an amendment that stated that an examination could not continue once the opinion had been formed that a person should be charged. We have actually put in some defences and protections for such people.

The CHAIRMAN: We might deal with those when we have adopted the committee's report.

Hon PETER FOSS: Yes. The letter continues -

> Following the preliminary inquiry, the Commission has concluded that there is little likelihood of sufficient evidence being uncovered to establish the necessary intent. In these circumstances, the Commission has concluded that further action is not justified and has resolved to close its file.
>
> In accordance with section 20 of the Act you may, within 30 days of the day on which you receive this letter, make a written request to the Commission asking that it review its decision that further action in relation to your allegation is not warranted.

I agree that we should no longer have secrecy and that there should be an offence of making a malicious complaint. The committee has also said that if someone makes a complaint, it carries with it an imputation that

there was a reasonable ground for making it. However, this makes it much easier to sue that person. In other words, it is up to that person. If he thinks he has reasonable grounds, he can make a complaint; however, if he does not have reasonable grounds, he might end up being sued. That is to protect people like the Attorney General. If that is malice, it is a very strange sort of malice. I hope this will stop people doing the sort of thing that the Attorney General has complained about, and I hope I have proved to this place that I did it because I was indignant about a series of facts. My letter is almost entirely taken from answers given in Parliament and on 6PR, and I did that because I felt the matter should be investigated. It was interesting that I received an answer saying not that there was no substance in it, but that the commission cannot prove the mental element. Hopefully, that will not be a problem when this legislation is passed, because the commission will still be able to ask questions even after the preliminary assessment stage, which it cannot now do. That has been one of the big problems with the Anti-Corruption Commission. Hopefully, the Attorney General, having made this protestation that he will give us an explanation because he wants to make it clear, now will give us an explanation. I wish he would, because I keep receiving answers - I have read them out in this place - that refer me to questions to which I did not receive an answer. I am told to look at an earlier answer. I have received ambiguous answers; I have asked the Attorney General to resolve them and he will not. In his early statements, Mr McGinty said he had all those documents on the Thursday night when he spoke to the Premier, and some of them suddenly disappeared by Saturday. Maybe he made that mistake in the first instance; it may be something more sinister, I do not know. However, I want to know which it is. I think I am entitled to know whether he made a mistake and gave the wrong answer in the first instance or whether something happened on the Saturday. If it did happen on the Saturday, that has interest too, because we must know who asked for those documents. I cannot get answers to those questions. I have asked who requested those transcripts; I have not received them. I disagree totally with the statements made by the Attorney General. There was no malice on my part. I behaved with the utmost propriety and restraint, as I always try to do. I just wish that he would show the same sort of behaviour, and that he would be a little more accurate in his statements.

I support the motion that has been put to the House. I have not had an opportunity to look at the further amendments. I know some were matters that we have discussed, some were subject to further documents - and that is not acceptable, so we will have a problem when we get to that clause - but I will need the opportunity to look at the other ones. I do not know whether it is intended to go straight into the recommittal after this debate.

The CHAIRMAN: I will deal with some procedural matters in a moment, when this motion is agreed to.

Hon PETER FOSS: I support the motion. It is a quick way to enable us to get this legislation passed. We are very keen to do so. At all times the Opposition, the Greens (WA) and the Government have worked very cooperatively together, and I commend the committee chairman - he never likes me to do this - for the excellent way in which he conducted this inquiry. It would have been far more unacceptable to the Government had it not been for his excellent mediating impact. There may be a few things in the report that the Government does not like, but I can assure members that, but for the chairman, there would have been considerably more things the Government did not like. I have great respect for the chairman and his excellent way of conducting the meetings, which was totally cooperative. We put in an enormous number of hours. We met practically every day last week, and until all hours of the night, struggling against some fairly tight schedules. It was a pleasure to work with my colleagues on that committee, and I particularly congratulate the chairman, without whose skills we would not be in the position that exists today.

The CHAIRMAN: The question before the Committee is that the amendments made by the Standing Committee on Legislation be read into and deemed part of the Bill. That is the question at the moment. I will give the call to Hon Giz Watson. If this motion is agreed to, I will run through the procedure that the Committee can adopt to try to reach some time lines that I understand many members want to achieve. For the time being we must get past this first hurdle.

Hon GIZ WATSON: The report of the Standing Committee on Legislation is an excellent document, inquiring into a complex area of law and some very significant powers that, in effect, create a standing royal commission. On behalf of the Greens (WA), I was particularly concerned that the Standing Committee on Legislation inquire into this Bill. The report and recommendations are a vindication of that view. Believe it or not - I think I have been a member for too long - I have enjoyed the committee's investigation and the opportunity to make inquiries and investigations of the operation of similar bodies around Australia. This exercise has provided some useful feedback to the Government and some useful amendments, which I trust will be taken up by the Committee of the Whole. The Greens consider this one of the most significant Bills to be dealt with in this Parliament, and therefore it was very important that we had the opportunity to scrutinise it and get it right, particularly bearing in mind the problems with and criticisms of the Anti-Corruption Commission and its powers to inquire into crime and corruption. There is a very delicate balance between providing exceptional powers and ensuring that checks are in place. The Greens acknowledge the need for such a body. It is unfortunate that a body dealing with crime

and corruption is necessary; in an ideal world such a body would not be needed. The Greens recognise that it is necessary. It is important that the Corruption and Crime Commission have a preventive and educative function. The Government must move towards preventing corruption and crime, rather than merely dealing with it once it has happened.

The Greens (WA) have a problem with the fact that the Government has chosen to include in the Corruption and Crime Commission Bill the provisions of the Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002. We are still of the view that that Act should not be on the statute book. We opposed it vigorously during the debate in Parliament and in the public arena, and we still argue that its provisions are unnecessary. With regard to the activities of bikie gangs in the State, shortly after the debate on the Criminal Investigation (Exceptional Powers) and Fortification Removal Bill was completed, there was a breakthrough in the investigation into the Hancock inquiry. In our view, that provided the strongest reason that the exceptional powers Bill was not necessary. However, that is history. It is ironic that that investigation did not produce a conviction. The Greens (WA) would prefer that the Criminal Investigation (Exceptional Powers) and Fortification Removal Act not be part of this Bill. Its inclusion has caused us some concern. We will not vote against the Bill, even though we would like the provisions of that Act to not be part of this legislation. We want it recorded that we continue to oppose the exceptional powers provided to police in dealing with organised crime.

The report of the committee speaks for itself. I will not go into it in any detail because I am acutely aware of the commitment of all members and political parties to process this Bill before the Legislative Council adjourns for the year. We will do everything we can to achieve that. Some of the questions we asked in the committee are: who should have these exceptional powers; what checks and balances should be in place; when should such powers be used, and under what limitations; and to whom should the powers be given? I believe that the committee reached a very strong consensus in its recommendation that the Bill be amended. I understand that the Government has accepted a majority of these amendments. I sincerely believe that the Bill will provide a more effective and accountable system for investigating corruption and crime in this State. I sincerely hope that the contribution of members of the committee - it was a very exhaustive and lengthy inquiry - has played a significant role in achieving that. The Greens in particular have sought to ensure that the provision of exceptional, significant powers of investigation is balanced with the appropriate checks. With those comments, I look forward to the debate in committee.

Hon DERRICK TOMLINSON: It is important that we deal with the amendments that the Attorney General, through the Leader of the House, has put on the Notice Paper. However, I want to refer to a few matters at this stage of the debate. I was privileged to be a substitute for Hon Bill Stretch on the Standing Committee on Legislation, to which this Bill had been referred. I want to support the comments of my colleague Hon Giz Watson in her expressions of gratitude and admiration - if I can put it in those terms - for the manner in which the committee functioned. It has been a long time since I served on the Legislation Committee. The good-natured, diligent and bipartisan approach that characterised the Legislation Committee in the past was demonstrated again during the consideration of this Bill.

This Bill was a difficult piece of legislation to consider because it suffered from exactly the same initial malady from which the Anti-Corruption Commission legislation suffered. A fundamental flaw of the Anti-Corruption Commission legislation was that it merely amended the Official Corruption Commission legislation. It imported all the flaws of the OCC Act into the ACC legislation, amended it, added new powers and rendered the process unworkable in many respects. The error has been repeated. The ACC Act, with all its flaws, has formed the basis of this Bill, and some of those flaws have been imported into the Bill. For that reason I believe that when the Bill is reviewed in three years, the minister who is then in charge of the Bill must grant considerable latitude to the persons responsible for reviewing the Bill; otherwise, in five years I will be reading in the newspapers about the discredited CCC. I predict its name will be the "no C, no C, no C".

The committee took on its task with application and diligence but without partisan positions. I do not know how many hours we sat on the committee, but I think we held 30 meetings over several months. It was an especially difficult time for some members - particularly Hon Peter Foss and me - because of press reports that we were deliberately delaying the passage of the Bill. My position was and always has been that it was desirable to have the Corruption and Crime Commission in place before the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers was to report in August this year so that there would be a seamless transition of the two bodies. When that proved to be impossible, it was also my position that the CCC legislation and the CCC should be in place before the end of November, when the royal commission was again to report, so that there would be a seamless transition. Unfortunately, there will not be a seamless transition.

I report to the Committee that I found the Attorney General's attack on Hon Peter Foss and me and his wrong and mischievous public allegation that we were deliberately delaying the passage of the Bill to be offensive. I also make the point that although I used the term "discredited" in my prediction of what might happen with the CCC, I defend the reputation of the ACC, which is popularly described by some people as the "discredited ACC". The ACC had a flawed legislation under which to work. The royal commission, as Hon Peter Foss said, made the point that although the officers of the ACC had difficult and flawed legislation under which to work, no discredit could be placed upon their efforts. They did their best within the constraints of the legislation that was available to them. Regrettably, much of what happened in some of the ACC investigations will never be published because of the constraints of confidentiality. However, I want to make the point that if that history could be told, the discredit would lie not with the ACC in many of those investigations but with the police internal affairs investigators who acted as the agents of the ACC.

Finally, I express my support for one of the recommendations in the report of the committee; namely, that the Government seriously consider giving the CCC an organised crime investigation function. Although the title of the Bill is the Corruption and Crime Commission Amendment and Repeal Bill, the only crimes element of the Bill, apart from the organised crime element, is to substitute the Criminal Investigation (Exceptional Powers) and Fortification Removal Act with certain clauses in the Bill. All that this Bill will do is enable the CCC or the commissioner to endow police officers with exceptional powers that they would not otherwise be endowed with because those powers intrude upon civil liberties. Any police officer would love to have powers to compel evidence to be given, to break and enter, and to undertake telephone interception. However, those powers are denied them because of longstanding principles of civil liberty. All this Bill will do is give those powers, through the CCC, to the police. We have had a Royal Commission into Whether There Has Been any Corrupt or Criminal Conduct by Western Australian Police Officers. As a result of that royal commission, we are giving the police powers that otherwise they would have been denied. There is need for a crimes commission, and I hope the Government will take serious note of the recommendation that the CCC be given a crimes investigation power.

Question put and passed; the amendments contained in the recommendations of the Standing Committee on Legislation agreed to.

The CHAIRMAN: As the amendments recommended by the committee's report have now been adopted under Standing Order No 234A(2)(a), with the exception of clause 1, debate may not occur on clauses agreed to by the committee without amendment unless it is proposed to amend the particular clauses. Bill version 218-2B affects clauses 3, 4, 13, 14, 19, 26, 27, 29, 33 to 47, 49 to 66, and schedule 2. Debate may occur on all other clauses as amended.

With regard to procedure, to facilitate debate on this Bill, I also draw members' attention to Bill version 218-2B. This is the version of the Corruption and Crime Amendment Bill 2003 as amended by the report of the Standing Committee on Legislation and the question now passed under Standing Order No 234A. It is the version for which debate will proceed and to which the proposed amendments that are being circulated should relate. To assist with the debate, I observe that throughout the Bill members will find editorial notes in square brackets. These indicate either a clause that has been deleted by the report of the Standing Committee on Legislation, a new clause that has been inserted or the clause number in the original Bill before its referral to the Legislation Committee. Members may find these notes useful as they will assist in making Bill 218-2B referrable to the Legislation Committee's report and to the version of the previous Bill that the committee considered. That is the copy of the Corruption and Crime Commission Amendment and Repeal Bill that the Committee will deal with from here on in. If members require a copy of the green-covered printers proof, which incorporates the committee's amendments, please ask now.

I now propose to put the question that clause 1 do stand as printed. Members can speak to that clause. Although there has been wide-ranging debate to this point, if members so desire, they will be able to speak to the other clauses which the committee amended and which have now been adopted. However, once the debate on those matters has been concluded, it is my understanding that the minister handling the Bill will invite me to report the Bill, as amended, to the House. At the appropriate time - that is, when the question that the report be adopted is put - the minister will move to recommit the Bill for the purpose of dealing with the government amendments; that is, the amendments which have been circulated and which I assume will require some debate and discussion. We will then move through those amendments and, one hopes, we will be able to again report the amended Bill. That is the procedure that I intend to adopt. The question now is that clause 1 do stand as printed.

Clause 1: Short title -

Hon PETER FOSS: Normally I would speak at some length on the committee report but, in view of the fact that we wish to pass this legislation quickly and, as has been said by Hon Giz Watson, the report speaks for itself, I will not do so. As members have not had an opportunity to look at the amendments and not all of them are

instantly obvious, I will be quite happy when the Bill is recommitted to indicate when I understand an amendment and the minister need not explain it. However, when we get to an amendment that I do not fully understand, I would be grateful if the minister could explain in some detail what he understands is the reason for it. In that way we may be able to move quickly. I also suggest that, if we get bogged down on something, it may be appropriate to postpone the debate and perhaps even report progress. I would rather not get involved in a detailed discussion if it can possibly be avoided. We are certainly keen for this matter to progress quickly. On the other hand, I do not want something to slip past without a full understanding of it.

Clause put and passed.

Clauses 2 to 67 put and passed.

Schedules 1 and 2 put and passed.

Title put and passed.

Bill reported, with amendments.

Report

HON KIM CHANCE (Agricultural - Leader of the House) [12.40 pm]: By way of explanation, I will shortly seek leave to adopt the report. However, I advise that in the event that the House sees fit to grant that leave, I will then move for recommittal of clauses. I seek leave to adopt the report.

Leave granted.

Report of Committee adopted.

Recommittal

On motion by Hon Kim Chance (Leader of the House), resolved -

> That the Bill be recommitted for the further consideration of clauses 2, 5, 8, 11, 12, 15, 16, 20, 21, 24, 31, 32, 34, 47, 48 and new clauses 14, 17, 18, 19, 23, 36, 37, 38 and 40.

Committee

The Chairman of Committees (Hon George Cash) in the Chair; Hon Kim Chance (Leader of the House) in charge of the Bill.

Clause 2: Commencement -

Hon KIM CHANCE: I move -

> Page 2, lines 16 to 18 - To delete the lines and insert instead -
>
> (4) Except as provided in subsection (3), so much of this Act as has not been proclaimed is to come into operation upon the date 12 months after the date upon which this Act receives the Royal Assent.

Hon DERRICK TOMLINSON: I support the amendment. It is a rephrasing of the intention of the Legislation Committee, and I think it is an appropriate rephrasing. However, I want one small point clarified; that is, that proposed subsection (4) is subject to proposed subsection (3). Proposed subsection (3) reads -

> . . . that the Corruption and Crime Commission is of the opinion that the functions of the Anti-Corruption Commission are substantially exhausted.

Functions of the ACC include files on matters which have not been concluded. The ACC will have made a deliberate decision to keep a file open. Some of the files have been open for several years. I am assuming that all those files will be transferred to the CCC. However, the matters which have not been finalised are functions of the ACC. Will the minister give us the assurance that open files will not prevent the proclamation of the remaining parts of the Bill if it is not proclaimed within 12 months?

Hon KIM CHANCE: I believe that the words that Hon Derrick Tomlinson has referred to are simply a surfeit of caution. Clearly it would be the intention that the ACC's open files be handed over, but there may be some reason that is not possible at some stage. I cannot imagine what the circumstances might be, but the reason for the provision is a surfeit of caution.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5: Section 3 amended -

Hon KIM CHANCE: I move

Page 4, lines 7 to 10 - To delete the lines and insert instead -

"bipartisan support" means the support of -

(a) at least one member of the Standing Committee who is a member of the party of which the Premier is a member; and

(b) at least one member of the Standing Committee who is a member of the party of which the Leader of the Opposition is a member;

This is simply a clearer definition of the expression of what bipartisan support means. I believe it is an indication of what the committee has sought on the question of clarity about the role of Parliament in the oversight of the operations of the CCC.

Hon PETER FOSS: The Opposition does not support this amendment. It gives an exactitude that should not be there. I can see what the minister is trying to do. The other way it could have been worded was "all the members of the Government and all the members of the Opposition", which would be too exact the other way. With matters dealing with the Parliament it would certainly not be appropriate to have one member cross the floor to carry legislation. The whole idea is to get truly bipartisan support. It may not be exact, but one must keep in mind that this will be done by Parliament. The ideal situation is that everybody on each side should agree, but I do not want one person to have the power to say that he or she disagrees and muck everything up, nor do I want one person to cross the floor and get it through that way. I would rather have inexactitude, which is how this Parliament works. That is appropriate. Nobody knows exactly what it is but members must try to reach a compromise so that a decision can be made. The definition as currently drafted is the better position. I do not accept the reference to "one member". If the Government wants to make the definition more exact, it should make reference to all members. I think we are better off with inexactitude. I oppose this amendment.

Hon DERRICK TOMLINSON: The intention of the committee was that there be bipartisan support for the recommendation for the commissioner and the parliamentary inspector, which would replace the current requirement for the Premier to consult with the Leader of the Opposition. I make it quite clear that the reference is to the bipartisan support of the Parliament, which was to be expressed through the bipartisan support of the standing committee. The intention, which was taken from the Queensland Crime and Misconduct Act, was that that support be provided by a majority of committee members, at least one of whom comes from the opposition benches and at least one of whom comes from the government benches. That requirement would operate as a power of veto in the event there was bipartisan representation within the majority decision against a recommendation. I am sure the persons who drafted this with the exactitude to which Hon Peter Foss referred may have had in mind a majority of "this" and "that". However, the amendment makes no reference to a majority; therefore, "bipartisan support" means at least one of "this" and at least one of "that". Under this proposed definition, if the majority of the committee voted to not support the nomination but one member from the Government and one member from the Opposition voted to support it, the Premier would have gained bipartisan support. Unless we can be assured that "bipartisan support" means a majority of the committee members, including at least one member from each side, the amendment would be contrary to the intention of the committee.

Hon KIM CHANCE: I note it is almost time for us to break for lunch, which will give us the opportunity to read through the amendments. We are trying to rush a little. Members have not read forward to learn the effect of each amendment. We are dealing with a case of the general against the specific. The definition of bipartisan support in clause 5 needs to be read in conjunction with the second proposed amendment to clause 8. That amendment is to insert subsection (3a)(b) in section 7. In that amendment, the specific is spelt out, which is -

who, if there is a Standing Committee, has the support of the majority of the Standing Committee and bipartisan support.

That is the specific. Regarding the definition of bipartisan support, we are dealing with the generic. That meets the member's requirement.

Hon DERRICK TOMLINSON: I thank the Leader of the House for that explanation. I had read ahead. I have read all the amendments and put ticks against many of them, question marks against some and "no" against one. I wanted that important statement from the Leader of the House on the record.

Hon PETER FOSS: I have read ahead, too, and I do not agree with the provision. That is why I did not raise the point. I do not think the requirement should be a majority consisting of one member of the Opposition. If it does not have true bipartisan support, and one person only is persuaded to a view, that would present a problem. Similarly, it would be a problem if the requirement were that all members be in agreement. I do not know how many people will be on the committee. What we regard as bipartisan support must apply. The exactitude is not

needed. This will be interpreted by Parliament. One of the best things about Parliament is that it works best when requirements are not too precise; otherwise, some clever dick will say that one member supports it, and the rest are against it, so it will not work. If a committee comprises four government and four opposition members, and a matter is supported by four government members and only one opposition member, that is not bipartisan support. It would not work. The idea is to try to get substantial support. One does not want the situation of one person holding up a decision: if four government members and three opposition members support a matter, it should have the capacity to proceed. I realise that these things are hard to do. If one has inexactitude, at least one has the possibility of a matter being dealt with in a parliamentary term. It will not be a problem if everybody agrees with a matter, and opposition from one person would not present a difficulty. If it were the other way around and only one opposition member agrees to a matter, and support is claimed, the whole point would be lost. The minister's suggestion is a good one; that is, lunch, which is close, provides an opportunity to think about the matter. I hope the minister understands my concern as well. I thought the inexactitude was admirable.

Progress reported and leave granted to sit again.

[Continued on page 14764.]

Sitting suspended from 12.58 to 2.00 pm