

CORRUPTION AND CRIME COMMISSION BILL 2003

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 63: Terms used in this Division -

Debate was interrupted after the clause had been partly considered.

Mrs C.L. EDWARDES: Before the luncheon suspension, we were discussing the definition of “criminal activity” found in clause 63. The Attorney explained how all offences listed in schedule 1 will become section 5 offences. This is activity involving the commission of one of those offences by one or more persons. This is under part 4 of the Bill headed “Organised crime: exceptional powers and fortification removal”. The same definition of organised crime applies to part 4 of the Bill. That definition reads -

“organised crime” means activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences are committed, the commission of each of which involves substantial planning and organisation;

When granting such exceptional powers, it is important to satisfy the Chamber that some safeguard is provided. The House needs to be sure that the powers relate to organised crime and the commission of serious offences. Can the Attorney General identify why we have a new definition of criminal activity under the organised crime part of the Corruption and Crime Commission Bill? Also, which offences have been added to this provision? Looking at it quickly, it appears that section 143 of the Criminal Code is the only addition to the schedule 1 offences.

Mr J.A. MCGINTY: The top of schedule 1 on page 160 of the Bill contains the additional offence of attempting to pervert the course of justice. That was included because it is a classic organised crime offence.

Before the lunch suspension the House was debating the definition of criminal activity that is contained in clause 63 as follows -

“criminal activity” means any activity that involves the commission of a section 5 offence by one or more persons.

A section 5 offence is found, strangely enough, in proposed section 5.

Mrs C.L. EDWARDES: Proposed section 5 refers to schedule 1.

Mr J.A. MCGINTY: Indeed. The definition of organised crime is found on page 5 of the Bill in clause 3 -

“organised crime” means activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences are committed, the commission of each of which involves substantial planning and organisation;

That definition is taken from the organised crime legislation. The three provisions are interrelated.

Mrs C.L. EDWARDES: Why does the definition of criminal activity refer to one or more persons when an organised crime section 5 offence must involve two or more persons?

Mr J.A. MCGINTY: One person can be charged with being involved. One person may commit one schedule 1 offence, and another person may commit another schedule 1 offence. Collectively, that represents two or more people committing two or more schedule 1 offences. It is outlined in the singular to relate to such a person when subject to the use of these powers.

Mrs C.L. EDWARDES: I explore that aspect a little further. The criminal activity is not linked back to organised crime. Clause 63 is within part 4, which deals with organised crime and transfers all the exceptional powers to the commissioner to act as the judge. Criminal activity means a section 5 offence, which is outlined in proposed section 5 -

A section 5 offence is a Schedule 1 offence committed in the course of organised crime.

If in the course of organised crime two individuals commit a schedule 1 offence, they still must be two or more persons acting together, even though one person may be doing one thing and the other person doing another. Although the Attorney has changed the definition from what applied in the other Act, the activities of schedule 1 offences must still be under the definition of organised crime; that is, being two or more persons acting in concert, and so on. Is it not necessary to have two persons committing one schedule 1 offence? Two schedule 1 offences can be committed by two individuals. Is that correct? The Bill is changing what was in the exceptional powers legislation, although not the intent of it. Does it still cover organised crime, which means two or more persons?

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Mr J.A. McGINTY: That is the intention. Now that the member has raised the issue, it calls for closer examination. We should consider why there is a definition of criminal activity distinct from that of organised crime.

Mrs C.L. EDWARDES: This Bill puts criminal activity under controlled operations, which is a new concept and is provided in the Royal Commission (Police) Act. Paragraph (a)(ii) of this Bill refers to "arresting any person involved in criminal activity;" It covers one or more persons committing an offence but I gather that it must be in connection with organised crime.

Mr J.A. McGINTY: Yes. A section 5 offence must be committed as part of organised crime. It is a three-pronged way of describing something that was described in one way in the original organised crime legislation. It is a combination of a section 5 offence, the definition of organised crime and the definition of criminal activity. Together they equate to the old organised crime offence, which was the trigger for invoking the exceptional powers.

Mrs C.L. EDWARDES: Am I right in saying that it is criminal activity because it is under the heading of controlled operations?

Mr J.A. McGINTY: Yes. It imports all the old notions.

Clause put and passed.

Clause 64 put and passed.

Clause 65: Report about controlled operation or integrity testing programme -

Mrs C.L. EDWARDES: Subclause (2) outlines the particulars to be included in the report. However, it does not incorporate the outcome of any integrity testing or controlled operation. Why does it deal with the nature of the activities but not require the commission to be provided with the outcome of the integrity testing program or controlled operation?

Mr J.A. McGINTY: I am told that the Commissioner of Police must satisfy himself or herself that the powers are being used appropriately. Similarly, the Commissioner of Police is to give a copy of the report to the Corruption and Crime Commission as soon as is reasonably practicable after the Commissioner of Police is given the report. He is concerned more about the integrity of the processes than about the outcome. Although it might be interesting to know the outcome, it is not seen as essential for the purposes of this clause.

Mrs C.L. EDWARDES: Although I agree with that, given the use of integrity testing and controlled operations in the advisory and educative role, the outcome might be of value. How will the commission perform the educative function if it is not sure of the outcomes of any of the controlled operations or integrity testing? Without that knowledge the commission could be limited in what is a very important long-term function in combating corruption.

Mr J.A. McGINTY: I do not disagree with that proposition. I note that subclause (2) provides that the report must include the nature of the criminal activities against which the controlled operation is directed and the nature of the controlled activities engaged in for the purposes of the controlled operation. There is no limit on what else can be provided. It might well be that a more complete description is appropriate in some circumstances. That can be worked out as a matter of protocol once the system is operational.

Clause put and passed.

Clauses 66 to 89 put and passed.

Clause 90: Reports concerning police officers and chief executive officers -

Mrs C.L. EDWARDES: This clause provides that the commission may prepare a report on information available to the commission about officers from the level of Commissioner of Police to the level of constable and Aboriginal aide, or a chief executive officer. This clause highlights that the Bill does not deal with the public service in the same way as it deals with the police. Why must the commission prepare a report on almost anyone being appointed within the Police Service but not on a senior public servant? Surely, at least senior public service appointments should be covered by this clause. I do not understand why a constable is included. Why are not promotions covered? Why only appointments? What about a promotion to chief executive officer, Commissioner of Police or non-commissioned police officer? Are they covered under the term "appointment"?

Mr J.A. McGINTY: There has been a practice in the past - I do not think it is expressly provided for in the Anti-Corruption Commission Act - for the commission to provide reports on senior police officers when they are considered for promotion to certain ranks. I do not know to which level it applies. This clause builds on that

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practice. We thought that if anyone whatsoever were appointed to the Police Service and the CCC had any adverse information on him, a report should be provided by the commission on the inappropriateness of that appointment.

Mrs C.L. EDWARDES: How will that work in practice when dealing with constables of whom there are many?

Mr J.A. McGINTY: I do not think every appointment would require a CCC clearance. However, certain people might be known to the CCC for corrupt behaviour in another walk of life. Question marks might hang over a police officer's behaviour if he has been investigated and it is proposed he be promoted to a senior position. Promotion is an appointment to a superior position.

Mrs C.L. EDWARDES: Would promotion be incorporated?

Mr J.A. McGINTY: Yes, because it involves an appointment to a new position. The thinking was that all police officers described in paragraph (a) from commissioner to Aboriginal aide should be subject to the commission reporting on them. The clause provides that the "Commission may prepare a report on information available to the Commission about a person proposed to be appointed" to any of those positions. In relation to other senior public servants, it could apply to senior executive service members or people at director level or above.

Mrs C.L. Edwardes: They are not incorporated.

Mr J.A. McGINTY: They are not incorporated. I guess we are moving into a new area. I believe it is highly appropriate at the level of chief executive officer. I would happily see it come down a little further to include other senior public sector people. However, in this first step it expressly allows for chief executive officers to be the subject of a report by the Corruption and Crime Commission to the appropriate appointing bodies. As the member can see, we have also written into the Bill natural justice provisions so that an affected person will be given a copy of the report. That is a step forward. I would like to see that provision apply to other senior public servants, but for now I am happy that the provision goes far enough.

Clause put and passed.

Clause 91 put and passed.

Clause 92: Periodical report to Parliament -

Mrs C.L. EDWARDES: Clause 92(2) of the original Bill tabled stated -

The Commission is not to be required to provide operational information in a report under subsection (1).

Subclause (1) of that Bill stated -

Rules of Parliament may require the Commission to report to each House of Parliament or a Standing Committee, as and when prescribed in the Rules, as to the general activities of the Commission.

That original subclause (2) was deleted by amendment. Why has it been deleted to allow Parliament or a standing committee to receive operational information in a report required under subclause (1). I would have thought it was absolutely essential under the separation of powers for the Parliament at this level - let alone the Executive - not to be involved in the operational matters of the commission. Until now the Anti-Corruption Commission has not been required to provide information on operational matters. Having served on the Joint Standing Committee on the Anti-Corruption Commission, I know that from time to time the ACC has provided as much information as it could to the Parliament in confidence within the requirements of the secrecy provisions of the Anti-Corruption Commission Act in an endeavour to give some level of understanding of its work. Now that the secrecy provisions have been removed in some respects, that has changed a little. However, it is clearly wrong for the Parliament to require the production of a report that can incorporate operational matters. It is not acceptable for information provided to the Parliament to be made public to individuals during an ongoing operation. It is appropriate that the commission provide a report on the completion of a public hearing; that happens in New South Wales and it works particularly well, and that is the value of having a public hearing. However, it is absolutely wrong for the Parliament to require a report that can incorporate operational matters. I do not know why the Attorney General has removed that subclause from the Bill.

Mr J.A. McGINTY: I would share the concerns expressed by the member for Kingsley if that were being done. At the same time that subclause (2) was deleted from the Bill - that is, the provision that the commission not be required to provide operational information in a report to Parliament - a new subclause (5) was inserted into clause 152 which covers the situation. It was really a transfer of subclause (2) in a more elegant form and subject to other qualifications to clause 152, which refers to disclosure by the commission or officers of the commission, which includes a disclosure to Parliament. Clause 152(5) states -

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A relevant person is not authorised to disclose operational information . . . unless the Commission has certified . . . that disclosure is necessary in the public interest.

That subclause carries forward the notion that operational material should not be disclosed to anyone; however, it provides an exception that it should occur when, in the view of the commissioner, it is in the public interest. I can readily envisage a situation when disclosure of that information to the Parliament or a parliamentary committee would be in the public interest. The further amendment picks up two notions that deal with the issue raised by the member for Kingsley. I would be concerned if anyone outside the CCC had a right of access to day-to-day operational matters occurring within the CCC; that is not the intention. Subclause (5) is a better formulation of that provision.

Mrs C.L. EDWARDES: Clause 152(4)(d) states that official information may be disclosed by a relevant person if it is disclosed to either House of Parliament or to a standing committee. Subclause (5) states that it will not be disclosed unless the commission has certified it. Subclause (2) states that a relevant person must not, either directly or indirectly, make a record of any official information. Clause 92 is the flip side of the coin and states that Parliament may require the commission to report as and when prescribed in the rules. Which clause is overridden and who overrides it? Does clause 92, requiring the commission to report to each House of Parliament, override clause 152?

Mr J.A. MCGINTY: Clause 92, as a matter of construction, states that the rules of Parliament may require the commission to report as to the general activities of the commission. That is a very important qualification. The new clause 92 is not as strong as the former clause because the former subclause (2) was express in its terms; it stated that the commission was not required to provide operational information. However, general activities of the commission would be interpreted as most probably not applying to operational matters. That is why there is no inconsistency between the two provisions with the interpretation of the express provision in clause 152(5), which states that the information to be disclosed does not include operational information unless it is certified to be in the public interest. I believe the two clauses are compatible in that sense. I do not see any question of conflict arising in that area. The intention is certainly quite clear. The deletion of the former subclause (2) was not made so that operational material would be made available; it was more expressly and better provided for in clause 152(5), which is what we have before us now.

Mrs C.L. EDWARDES: Having been a member of the committee for a short time - my colleague the member for Churchlands has probably spent more time on it - I know there were occasions when the committee had to interpret the Act in conjunction with our rules and previous practice. I can foresee a potential conflict between the Parliament and the commission as to who has the power. Although the Attorney General said that the term general activities relates only to administrative and/or other activities other than operational activities, it may be read much more widely. Will the Attorney General again clarify for the House that this subclause (1) does not intend to allow the Parliament to require the commission to provide operational information in a report? I believe that the Attorney General faces a potential problem. Could the Attorney General clarify, at least for the record, what his intention is? He might like to get the Solicitor General's advice to clarify this before somebody needs to do so at a later time. We do not want to put the commission in conflict with the Parliament, and that potential exists.

Mr J.A. MCGINTY: I can understand that point of view. The intention is that the two clauses be read as not in any way inconsistent with each other. Clause 92 is not meant to give a right to the Parliament to demand information on operational matters. That is why the words "general activities" are used. The Parliament may require for each House of Parliament or a standing committee a report on the general activities of the commission. The prohibition contained in clause 152(5) is meant to operate in respect of reports to the Parliament; in other words, operational information is not to be disclosed unless it is certified by the commission as being in the public interest. That includes disclosure to the parliamentary committee. In light of the issue that the member has raised, I will have this matter looked at further and considered before the debate comes on in the other place, to make sure there is absolutely no possible doubt about the interaction of those two clauses.

Dr E. CONSTABLE: I share the concerns of the member for Kingsley. We must be absolutely clear on the meaning of this. When I read the term "general activities" I assumed it referred to operational matters. We want to be clear from the start. We do not want any grey area whatsoever. I am somewhat reassured by the Attorney General's comments. Before a new committee is established and before the Crime and Corruption Commission is established, we must be absolutely clear that the standing committee does not have a role in anything to do with the operational matters of the CCC.

Mr J.A. McGinty: That is certainly the intent, and we will make sure that is the legal effect as well.

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Dr E. CONSTABLE: I want to draw out another issue that is related to this clause, and that is the reference to a standing committee. I mentioned this in my speech during the second reading debate, and I have looked at the Attorney General's speech in reply.

Mr J.A. McGinty: I answered it.

Dr E. CONSTABLE: The Attorney General said that it was for the Parliament to decide. I will repeat what I said: I would like to see the structure of the committee remain as it has been since 1996; that is, a joint standing committee of both Houses of Parliament, balanced in all ways - in the numbers from both Houses, and members' political backgrounds and interests. There must be a bipartisan approach on this committee. It has worked well until now, and I would not like to see the political balance of an area like this in any way under question. It is very important that we as a Parliament be seen to do our job properly in this area. I urge the Attorney General to agree with me. I urge him to think very seriously about this. It is one thing to say that it is up to the Parliament to decide, but we all know where the motion will come from. If we see seven instead of eight members, there would be a real problem for us. I ask the Attorney General to please take into account how well the committee has worked until now. Some people think that the committee is too big. I do not think it is; I think it worked very well with eight people - four from each House - and I hope that the Attorney General will agree with that point of view.

Mr J.A. McGINTY: It is rare that I disagree with the member for Churchlands. A more accurate description of what I said in my second reading reply when addressing the point that the member raised is that it is up to the Parliament and that existing arrangements seem to me to be working well. I gave some endorsement to that proposition. However, it is a matter for the Parliament to decide.

Dr E. Constable: I agree with that, but I am sure that the Attorney General's influence will be very important.

Mr J.A. McGINTY: I am not on the committee, so I am sure the member's influence will be even greater.

Clause put and passed.

Clause 93 put and passed.

Clause 94: Power to obtain statement of information -

Mrs C.L. EDWARDES: Subclause (2) refers to the fact that a notice under this clause must specify or describe the information concerned. I would have thought that the word "required" would be more appropriate. I am a little concerned at the increasing use of the word "concerned" throughout this Bill. It seems to be a new use of a word which is unfamiliar in this criminal context. It is too much like jelly and it does not have specifics attached to it. Why was the word "concerned" used? Subclause (6) refers to statements of information and police being treated differently from people in the public sector. If proceedings are to be brought under section 23 of the Police Act, why are public servants not subject to proceedings under the Public Sector Management Act? I am concerned that we are setting up a far stricter test for police. Although there is a view in the community that if we cannot trust the police whom can we trust - I do not have a problem with that - this provision would be a let-off for the public sector. The public sector needs a change of culture. We need to emphasise to public servants that they are very much subject to this legislation. I believe that they are being let off in comparison with the police. It should not mean that public servants will not be treated seriously.

Mr J.A. McGINTY: We endeavoured when compiling this Bill to follow, whenever possible, the recommendations of the interim report of the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. The use of the word "concerned" is the result of a straight take out of the existing provisions contained in section 5 of the Royal Commission (Police) Act which was passed by this Parliament last year in order to give powers to the police royal commission. We have simply carried forward that wording. I do not think there is any particular significance in it. It is merely a matter of the way in which it has been expressed. The recommendation was to carry forward those powers, so we have carried them forward in the wording as well. The same sort of rationale applies to the provisions of clause 94(6), which seem to have dual standards - one standard for the police and one standard for the public sector. We have endeavoured to harmonise these standards wherever possible. However, whereas the existing powers of the police royal commission relate exclusively to police, it was thought appropriate in a number of areas that to transfer them to the entire public sector would seem to be going a little over the top. The member has mentioned a number of provisions already that impose more onerous requirements on the police. They derive from the royal commission itself.

Mrs C.L. Edwardes: A statement is admissible in a section 23 proceeding. It means for the public sector that although the ACC may have investigated a matter and referred it back to the authorities for disciplinary purposes, it must start all over again. One will find a repeat of the Shane Houston episode whereby three years

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later the proceedings still have not been completed. The ACC had investigated, the Director of Public Prosecutions had charged and then dropped the charge on the basis that there would be an internal investigation, and then the investigation had to be started all over again and three years later it is still not completed. It does not make sense to me why the work that has been done cannot be used. I accept that work that has been done at that level should not be used in a court or other formal tribunal, but I cannot see any reason that that work should not be made available to a department or agency.

Mr J.A. McGINTY: Subclause (6) relates to evidence that is given in compliance with a notice served under this section; in other words, a notice under which a person is under compulsion to answer a question. It is generally in the nature of a self-incriminatory statement. This provision, except in respect of the police, reflects the law as it is applicable generally in the courts. We had a classic example recently with Mr Lewandowski -

Mrs C.L. Edwardes: I think that is at a different level. We are not talking here about a matter being referred up to a higher court or tribunal. We are talking about a matter being referred down to a lower court or tribunal.

Mr J.A. McGINTY: Yes. The more punitive side of me suggests, because I have been very frustrated in recent times with the disciplinary procedures under the Public Sector Management Act, that this would be a very useful power to have in respect of public servants, but it is a question of how much we can bite off in one go. These are powers in relation to the police that were recommended by the police royal commission. I believe it is inappropriate to override the long established legal principles in respect of ordinary public servants who are not police officers. I accept that it is discriminatory, but that sort of discriminatory or differential treatment appears in a number of places throughout this legislation. That reflects the origin of this legislation as being the police royal commission.

Clause put and passed.

Clause 95: Power to obtain documents and other things -

Mrs C.L. EDWARDES: Clause 94(1) is prefaced with the words "for the purposes of an investigation, the Commission may, by written notice". Clause 95(1) is prefaced with the words "The Commission may, by written notice". However, clause 96(1), which deals with the power to summon witnesses to attend and produce things, is not prefaced with the words "for the purposes of an investigation". What is the reason for that?

Mr J.A. McGINTY: The member is correct. Clause 96 should be read as also being for the purposes of an investigation, in the same way as clause 94. It was not considered necessary to include those words, because they are implied. However, if the member wishes to move an amendment, we will support it, although I do not know that it will necessarily have any practical effect. It is certainly not intended that those powers be able to be exercised other than for the purposes of an investigation. That explanation may be sufficient to cover it from an interpretive point of view.

Clause put and passed.

Clauses 96 to 99 put and passed.

Clause 100: Power to enter and search public premises -

Mrs C.L. EDWARDES: This clause comes under division 2 - entry, search and related matters. Again, subclause (1) is not prefaced with the words "for the purposes of an investigation". However, although this clause is in a separate division, I imagine that the power to enter and search public premises is for the purposes of an investigation.

Subclause (2) states -

The powers conferred by this section must not be exercised other than for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve misconduct.

Clause 4, which deals with misconduct, is very broad. It includes corrupt activity, activity that may possibly be regarded as serious criminal conduct, and misconduct that falls short of criminal conduct. In this clause there is a power to enter and search public premises for the purpose of investigating any conduct that constitutes or involves or may constitute or involve misconduct. That is very broad. Perhaps it should be limited to cases in which the misconduct has a criminal component.

Mr J.A. McGINTY: This clause is taken from section 7 of the Royal Commission (Police) Act. It is important to bear in mind that this clause is not about, as the heading would suggest, public premises or public places, because of course a public place is any place to which the public has access. This clause is considerably narrower. Subclause (1)(a) provides that public premises are any premises occupied or used by a public authority or public officer in that capacity, so it could be a police station -

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Mrs C.L. Edwardes: Or a government agency.

Mr J.A. McGINTY: Yes, a government office.

Mrs C.L. Edwardes: The Attorney General seems to have a focus on police. In the figures that I gave yesterday for the ACC, the police constitute less than half the work. Everything else constitutes more than half, but at the end of the day the police are only one component of the real work of dealing with corruption.

Mr J.A. McGINTY: We are talking here about a government workplace, whether that be a police station, a hospital, a school or an office. It is important that the public sector anticorruption watchdog have unfettered access to government buildings in order to do its job. If there was an allegation of corruption by police officers at Scarborough or Kalgoorlie, we hope there would be immediate access by the officers of the commission to deal with that matter. We are not talking about private residences occupied by people who might also be public officers. The limited definition of public premises as any premises occupied or used by a public authority or public officer in that capacity really does pin it down to government buildings, and I think the commission will have access to those places.

Mrs C.L. EDWARDES: Given the definition of public officer, that would then obviously extend to electorate offices of members of Parliament and even to this Parliament.

Mr J.A. McGinty: No. Parliamentary privilege would exclude the Parliament, but it would include electorate offices.

Mrs C.L. EDWARDES: So the Parliament is excluded but electorate offices are included?

Mr J.A. McGinty: Yes. Subclause (5), which refers to the Parliamentary Privileges Act, has the effect of excluding the Parliament from the operation of this Bill.

Mrs C.L. EDWARDES: But the Parliamentary Privileges Act will not extend to electorate offices as such?

Mr J.A. McGinty: No.

Clause put and passed.

Clause 101: Search warrants -

Mrs C.L. EDWARDES: Subclause (4) states that an authorised person acting under a warrant may break open etc. When we were discussing either the fortifications removal legislation or the DNA legislation we dealt with the delegation of authority and how in some instances the authorised person needs to have someone else to assist him. Can anyone act under the direction of an authorised person in exercising these powers; and, if so, where is that contained in the Bill?

Mr J.A. McGINTY: The key provision is subclause (3) which authorises other people to attend with the authorised person for the purpose of doing the job, whatever that might be. There is no power to delegate to another person, so it must be done by the person who is the authorised person; obviously, if a particular police sergeant is authorised to do things, sufficient constables to effect the task can go with him to help.

Mrs C.L. Edwardes: And do the breaking open and seizing of any relevant materials etc? It is not just to accompany. Can they actually carry out the work?

Mr J.A. McGINTY: Yes. The interaction of subclauses (1) and (3) achieves that effect because we have a named officer on whom authority is conferred, or a person referred to in subclause (3). Persons referred to in subclause (3) are those people who are intending to help.

Mrs C.L. Edwardes: That is who the authority extends to?

Mr J.A. McGINTY: Yes. Constables attending with the sergeant, who are not personally named as being authorised, are authorised by virtue of -

Mrs C.L. Edwardes: Subclauses (1) and (3)?

Mr J.A. McGINTY: Together; yes.

Clause put and passed.

Clauses 102 to 111 put and passed.

Clause 112: Indemnity -

Mrs C.L. EDWARDES: This clause deals with an indemnity where an assumed identity has taken place. The indemnity is for any liability incurred by the officer, including reasonable costs, because of something done by the officer. If the thing is done in the course of acquiring or using an assumed identity with approval, the thing is

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done in the course of the officer's duty, and any requirements prescribed under the regulations have been met. In such activities we often see police involved in motor vehicle accidents and the like, and sometimes third persons are injured as a result. Is this covered under this indemnity? How broad and wide is this indemnity? Does it cover anything and everything that arises out of a particular operation?

Mr J.A. McGINTY: We should look at clauses 112 and 113 together. The answer to the member's question might well be that the indemnities referred to in clause 112(1) relating to the agency, and in subclause (2) relating to the officer of the commission, do not apply to anything done by an officer of the commission to whom the assumed identity approval applies, if a particular skill or qualification is needed to do the thing and the officer does not have that skill or qualification. The assumption of a false identity does not overcome that. I think that answers the question.

Mrs C.L. Edwardes: Does the Attorney General have an example in mind?

Mr J.A. McGINTY: A simple example is someone who says he is a competent driver and he does not have a drivers licence.

Mrs C.L. Edwardes: Under an assumed identity, he could be given one.

Mr J.A. McGINTY: Being given one does not save him under clause 113. Does that answer the question?

Mrs C.L. Edwardes: Basically it covers everything, provided he has been signed off as having the appropriate skill or qualification?

Mr J.A. McGINTY: Provided clause 112(2)(a), (b) and (c) is satisfied, yes.

Mrs C.L. Edwardes: Under an assumed identity, I suppose they take on a life and a lifestyle, so it is almost essential; it could be 24 hours a day.

Mr J.A. McGINTY: Yes. I am told that assumed identities were used with great effect in the police royal commission.

Mrs C.L. Edwardes: I think we saw some of that on the television.

Mr J.A. McGINTY: Yes.

Clause put and passed.

Clauses 113 to 121 put and passed.

Clause 122: Certain matters not to be authorised -

Mrs C.L. EDWARDES: This clause deals with controlled operations, integrity testing programs and certain matters not to be authorised. Clause 122(1)(a) states -

An authority to conduct a controlled operation must not be granted in relation to a proposed operation that involves any participant in the operation -

- (a) intentionally inducing a person to engage in misconduct of a kind that the person would not otherwise have intended to engage in; or

Should that not be qualified in some respect? Surely, when dealing with that, there might be reasonable belief and/or ground for the person having so engaged in or being likely to engage in such misconduct, but in this instance he must not "intentionally induce a person to engage in misconduct of a kind that the person would not otherwise have intended to engage in". I suppose if there were an allegation of taking money - not drugs - only a money-controlled operation would be set up, not a drug operation. Is that the difference? That seems to have narrowed it down. I said in my speech to the second reading that if it is done once, it will be done again in any event, and this seems to be controlling the controlled operation perhaps more than necessary. I take it that the police royal commission and people who are experienced in these matters are comfortable with this approach. It seems that the words "would not otherwise have intended to engage in" do not provide sufficient breadth to provide a reasonable belief or reasonable ground that the person may have or was likely to have.

Mr J.A. McGINTY: This matter was raised with me by the chairman of the Anti-Corruption Commission when I bumped into him in Fremantle a few weeks ago.

Mrs C.L. Edwardes: Over coffee?

Mr J.A. McGINTY: It was at the time, yes. I was at a function at Notre Dame University, as I recollect, and he was there in his capacity as chancellor. He raised a point similar to that which the member is raising now, and that was: what does this mean in any given context? This is a clause which is perhaps unusual and involves

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questions of intent - is it sufficient that someone be dishonest; or that they be dishonest in respect of money but not drugs? Frankly, I do not know the answers to those questions. It is meant as a clear statement of policy that they do not go out and try to catch angels with the use of controlled operations. How that might work in practice, I do not know. However, it has been the subject of comment, and an attempt to obtain some national uniformity. The February 2003 discussion paper of the Leaders Summit on Terrorism and Multijurisdictional Crime, entitled "Cross-Border Investigative Powers for Law Enforcement" states, on page 56 -

Requirements that must be met to obtain protection from criminal responsibility or indemnity

An activity or conduct meets the requirements of this section if:

- (a) the activity or conduct does not involve any participant in the operation intentionally inducing a person to commit an offence under a law of this jurisdiction, the Commonwealth or another State or Territory that the person would not otherwise have intended to commit,

It goes on to other matters that are not particularly relevant. I understand what is intended by it, but I do not understand how it will work in practice. It must evolve with time and practice. No-one would really argue with the intent behind it.

Mrs C.L. EDWARDES: This is probably also the time to point out that these controlled operations and integrity testing programs are being given to the commission and its officers to carry out. They do not apply only to organised crime, which was the previous part. It covers the commission dealing with public officers, in its very broad definition. Clause 122(3) reads -

A person must not be authorised to participate in a controlled operation unless the Commission is satisfied that the person has the appropriate skills to participate in the operation.

We were talking about that earlier when discussing the indemnity. I am aware from the police royal commission that in some instances in those controlled operations they may use an informant who may also be a criminal. How is it determined that a criminal informant has the appropriate skill to participate in the operation?

Mr J.A. MCGINTY: That is not a question to which I can give a sensible answer. I am sorry.

Clause put and passed.

Clause 123: Authority to conduct integrity testing programme -

Mrs C.L. EDWARDES: Clause 123 (8) reads -

An authority to conduct a integrity testing programme in respect of a matter for which there is not an allegation of misconduct must not be granted unless each person to be tested under the integrity testing programme is -

- (a) a police officer; or
- (b) a person of a class prescribed by the regulations.

This is one of those clauses in which police officers are discriminated against, but that has been sorted out with the Police Union and the Police Service, and police officers are reminded every day that they could be subject to integrity testing. Therefore, the knowledge that they may be subject to such a test is now part of their everyday life, so to speak. Who might be included as a person of a class prescribed by the regulations? Prison officers come to mind as being one such group of people. Are there others?

Mr J.A. MCGINTY: As the member has rightly observed, every police officer will be liable, without notice, to be subject to an integrity testing program. That derives from the Royal Commission (Police) Act, and the interim report of the police royal commission. It was thought that it would be inappropriate to apply the same liability to every public servant. It is different if someone is clearly on notice that he could be subject to an integrity test. It is not intended at this stage that any particular group of public servants will be prescribed by regulations as being subject to integrity testing. If the situation arose - one could think readily of fisheries officers or prison officers - in which a particular problem needed to be dealt with, such a group of people would be so prescribed. Given the resources involved in integrity testing, it would not be done lightly; the average clerk or receptionist in the public service would not be subject to integrity testing unless there was seen to be a particular problem. It might be a problem in a particular department. The issue of smuggling drugs into prisons immediately raises prison officers as possible subjects. It could also be an issue in a particular hospital, and those who work at that hospital could be prescribed. It is only fair to put people on notice that they will be subject to such testing under the regulations. They would not be subject to them in a random way without that prior notice.

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Mrs C.L. Edwardes: If a person is not included in the regulations, and is not a police officer, but it is considered that an integrity test or controlled operation is required for a department or agency - for instance, some public servants may be in a relationship with prisoners -

Mr J.A. McGINTY: They are not any more, as of yesterday.

Mrs C.L. Edwardes: I was actually thinking not of that case but of another. If there is some suggestion that information may be being passed or there is an opportunity for gaining information, should that person be warned individually, as against being a member of a class?

Mr J.A. McGINTY: No, because there would be a specific allegation against that person, and as part of the investigation of that allegation, such operations can be used.

Mrs C.L. Edwardes: So only random testing will have to be notified?

Mr J.A. McGINTY: Yes. When an individual is involved in that way, there would be an allegation and it would be part of the investigative regime. When there is no allegation as such, but there is a perceived problem, this would be gazetted, and that class of person would then be subject to integrity testing.

Clause put and passed.

Clauses 124 to 135 put and passed.

Clause 136: Ancillary powers -

Mrs C.L. EDWARDES: This clause deals with ancillary powers only in relation to part 6, which sets out the powers of the Corruption and Crime Commission. Why are there ancillary powers only in relation to part 6? Is it because the Government is not sure of anything else that it may not have covered? Is it desired to limit the powers to part 6 and not extend them to any other part covered under the legislation or any other function, or does this extend more broadly beyond part 6?

Mr J.A. McGINTY: This is the substantive part in the Bill that deals with the powers given to the Corruption and Crime Commission. The power of the commission to do anything that is necessary or incidental to the performance of the commission's functions is granted in an extended way because this is the most important part of the legislation, dealing with powers. The other powers are more specific and somewhat narrower, and most probably are not in need of the general broadening that can be found in an ancillary powers clause.

Clause put and passed.

Clauses 137 to 141 put and passed.

Clause 142: Legal representation -

Mrs C.L. EDWARDES: Subclause (1) provides that a person may be legally represented. However, subclause (4) provides that the commission may refuse to allow a person to be represented before the commission by a person who is already involved in an examination or is involved or suspected to be involved in a matter being investigated. I take it that, despite subclause (1), that refers not just to legal representatives but also to any other person; or is it narrowly defined? In that case, the language is unusual and, dare I say, convoluted. The person must be involved in an examination or is involved or suspected of being involved in a matter being investigated. Is it not just a person who represents one of the witnesses, cohorts or whatever?

Mr J.A. McGINTY: The clause is headed legal representation, so it can be construed to apply to legal representation. A lawyer who is either corrupt or otherwise involved in a matter before the commission can be excluded by the commissioner. As I read the clause, it relates to two categories. First, it might be thought to be undesirable, in terms of the nature of the inquisition taking place, for a lawyer to represent a number of people being examined. That deals with the bona fide lawyer. Secondly, if the lawyer is part of or linked to the corrupt behaviour in any way, there should be a power to exclude that lawyer. I see this clause operating within those two categories.

Mrs C.L. Edwardes: The lawyer must have been previously involved in an examination or be involved in the misconduct. What if the lawyer is just providing advice or is representing in some other way somebody else in whom the commission might have an interest?

Mr J.A. McGINTY: The member is raising the question of conflict.

Mrs C.L. Edwardes: That is right. That is not excluded, is it?

Mr J.A. McGINTY: The breadth of subclause (4) excludes a lawyer in that category. I do not think the commissioner has the power to refuse legal representation to a person being represented by a lawyer who was

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not suspected of being corrupt and who was not representing anyone else. The right to legal representation is established in subclause (1).

Mrs C.L. Edwardes: However, the lawyer is not involved. The commission may refuse to allow a witness to be represented before the commission by a person who is already involved in an examination. The lawyer must be involved in another examination in order to be excluded.

Mr J.A. McGINTY: Yes.

Mrs C.L. Edwardes: The lawyer may represent someone else who may appear before the commission, not necessarily in an examination, but that is okay. I don't think so.

Mr J.A. McGINTY: I am not sure that I fully understand the question. A person can appear before the commission only at an examination. If a number of people are being examined at that examination, the lawyer cannot appear for those people.

Mrs C.L. Edwardes: What if there is an examination of one matter, another matter is under investigation, the lawyer represents the person under investigation, but the lawyer also wants to appear for the witness under investigation?

Mr J.A. McGINTY: A discretion is given to the commissioner to exclude someone who is already involved in an examination. To me an examination means any examination. I doubt whether the commissioner would exclude a person who had previously represented someone before it.

Mrs C.L. Edwardes: Or is currently.

Mr J.A. McGINTY: Yes; unless there were some connection between the two. However, I think the clause is cast broadly enough to enable a person to be excluded when there is some overlap or conflict. That is the intent underpinning this provision, but it is cast more broadly so that the commission can exclude somebody who has previously appeared before it.

Clause put and passed.

Clauses 143 and 144 put and passed.

Clause 145: Use of statements obtained -

Mrs C.L. EDWARDES: I repeat the comments I made earlier about the use of statements obtained. They should be able to be used in disciplinary actions or procedures that involve a public officer, not just a police officer; otherwise it involves extra resources in reinvestigating the matters.

Clause put and passed.

Clauses 146 and 147 put and passed.

Clause 148: Arrest -

Mrs C.L. EDWARDES: Part 8 deals with arrest warrants, clause 148 deals with arrests and subclause (6) states -
A warrant issued under this section authorises any person to whom it is addressed -

...

- (b) for that purpose, to detain the person named in the warrant in custody until released by order of the Commission or, on review, by order of the Supreme Court.

What is proposed for detaining people in custody? It reads that it will be for more than 24 hours. Where will the person be detained? Will authorisation be needed for a person to be detained by the police?

Mr J.A. McGINTY: In a practical sense, it would probably be a request made by the police to arrest the person and detain him in the normal manner. That would not be the case in all circumstances, particularly if a police officer were involved. It would be up to the body to make the appropriation arrangements. This provision appears in the Royal Commission (Police) Act and the Criminal Investigation (Exceptional Powers) and Fortification Removal Act. I do not know whether the power has been used with either of those statutes. There may be provision for a person to be taken to a secure and unknown place by the police.

Mrs C.L. Edwardes: Is it not proposed to have a lock-up for the commission?

Mr J.A. McGINTY: Not yet. I hope it will not be necessary!

Clause put and passed.

Clauses 149 and 150 put and passed.

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Clause 151: Disclosure generally -

Mrs C.L. EDWARDES: Part 9 is headed “Disclosure, secrecy and protection of witnesses”. Subclause (1) provides a list of restricted matters, such as any evidence given before the commission; the contents of any statement of information or document, or a description of any thing, produced to the commission; the contents of any document, or a description of any thing, seized under the proposed Act; and any information that might enable a person who has been, or is about to be, examined by the commission to be identified or located, or the fact that any person has been or may be about to be examined before the commission. Is subclause (1)(b) broad enough to include in that definition any information or matter held by the commission, even if given voluntarily or orally to a Corruption and Crime Commission investigator? There appears to be no catch-all phrase, unless it is paragraph (b).

Mr J.A. MCGINTY: The intention is that all those matters be restricted from any form of publication, regardless of whether they were given voluntarily.

Mrs C.L. Edwardes: Is that even voluntarily or orally?

Mr J.A. MCGINTY: All of that. Later provisions relate to circumstances in which disclosure will be allowed. One starts with the proposition that these matters are restricted. With early drafting, the first issue raised was that a matter had been referred to the commission. We deleted that wording so that it was no longer a restricted matter; therefore, the fact that a complaint has been made can be a matter of disclosure. As soon as one starts to refer to evidence or anything else, it is restricted.

Clause put and passed.

Clauses 152 to 175 put and passed.

Clause 176: Commission is not an SES organisation -

Mrs C.L. EDWARDES: A special executive service organisation under the Public Sector Management Act -

Dr E. CONSTABLE: There is an amendment to clause 164.

Mrs C.L. Edwardes: I thought the amendment to clause 187 was the earliest one.

Dr E. CONSTABLE: An amendment has been circulated following our discussion at lunchtime.

Mr J.A. MCGINTY: If it is necessary to give comfort to the member for Churchlands, the Government will recommit and deal with the amendment. Is the member happy with that?

Dr E. Constable: I am happy.

Mrs C.L. EDWARDES: The Corruption and Crime Commission will not be an SES organisation, which is defined under the Public Sector Management Act as follows -

“SES organisation” means entity which consists of -

- (a) a body, whether corporate or an unincorporate, or the holder of a position, office or post, being a body or office, post or position -

Certain requirements must be met for SES organisations through the Public Sector Management Act. Why is the CCC not to be an SES organisation? Also, under clause 177, its staff are not to be employed under the Public Sector Management Act.

Mr J.A. MCGINTY: This follows the ACC model; namely, it is strictly independent from government. The staff are not public servants and are not subject to ministerial direction or the provisions of the Public Sector Management Act. In every sense, the commissioner and the organisation are independent from government. That is an important principle established with the Anti-Corruption Commission - although it gives rise to problems as well.

Mrs C.L. Edwardes: How can the Public Sector Standards Commissioner have a role in complaints similar to the role of the commissioner of the CCC and investigate and report?

Mr J.A. MCGINTY: I may have overstated the position a little before about the CCC’s independence. The staff are not employed under part 3 of the Public Sector Management Act, which is the part that gives rise to the public service. Although the organisation and staff are part of the public sector, they are not subject to the Public Sector Management Act and they are not public servants. That gives them independence. However, other sections of the Public Sector Management Act apply. That is how the Public Sector Standards Commissioner can report in respect of the organisation. It has always been considered highly desirable for the Corruption and Crime Commission to maintain a complete measure of independence.

Clause put and passed.

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Clause 177: Staff of the Commission -

Mrs C.L. EDWARDES: Subclause (4) refers to the power conferred by subclause (1). Clause 178 provides that if a public service officer is seconded he can retain his rights. What if that person wished to return to the Public Service or the commission wanted that person to return to the public service? Will this Bill allow that to occur?

Mr J.A. McGINTY: Clause 179 covers secondment of staff and use of facilities extensively.

Mrs C.L. Edwardes: What if it is an appointment to the commission and someone is seconded from, say, the Ombudsman's office?

Mr J.A. McGINTY: The answer to that is in either subclause (2) or (3). Subclause (2) provides for a person to cease to be appointed to the CCC and become a public service officer, presumably in a different department. It envisages that that could occur.

Mrs C.L. Edwardes: It does not seem to allow for transfers in and out. It preserves rights.

Mr J.A. McGINTY: Clause 179(3) seems to cover that. If a public servant was seconded to the commission he would be entitled to return to the Public Service afterwards, provided he was not leaving the commission on account of disciplinary matters.

Mrs C.L. Edwardes: Could the person return to the position he was in immediately prior to the appointment with the CCC?

Mr J.A. McGINTY: Yes. The person could return to at least the equivalent classification the person occupied immediately prior to the appointment to the CCC.

Clause put and passed.

Clauses 178 to 182 put and passed.

Clause 183: Delegation -

Mrs C.L. EDWARDES: Subclause (2) contains a long list of people to whom the commission cannot delegate powers and duties. However, the commission has a huge job to do; albeit an acting commissioner can be appointed in certain circumstances - when out of the State, when there is a vacancy, a conflict of interest etc. What would happen if the sheer workload gave rise to the need for an acting commissioner? Is there provision for circumstances in which the commissioner cannot legitimately do the work for various reasons? A huge task will be handled by only one person.

Mr J.A. McGINTY: Yes. Under clause 13, the commissioner may declare himself or herself unable to act by reason of having to perform other functions under this Act; in other words, workload-related issues, in which case an acting commissioner could be appointed.

Mrs C.L. EDWARDES: Subclause (6) provides that nothing in this clause - that is, delegation or non-delegation - limits the ability of the commission to perform a function through an officer or agent. Clauses 17 and 18 refer to functions. Other than that which is provided for in clause 183(2), can the commissioner perform a function through an officer or an agent?

Mr J.A. McGINTY: Subclause (6) was designed to preserve the administrative necessity principle that operates at a low level to enable things to be done, such as signing letters on behalf of other officers. It is a fairly standard provision.

Mrs C.L. Edwardes: Does that mean that although the work to prepare a summons, a warrant or an examination can be done through an officer or agent, the power to issue a summons and conduct an examination etc cannot be delegated to that person and must be done by the commission?

Mr J.A. McGINTY: Yes.

Clause put and passed.

Clause 184: Funds of Commission -

Mrs C.L. EDWARDES: Why has the amendment to subclause (1) deleted the provision for interest to be credited to the fund and what will happen to the interest?

Mr J.A. McGINTY: This amendment reflects a standard Treasury practice. The interest would be caught by subclause (1)(b), which states that the funds of the commission consist of "any moneys, other than moneys referred to in paragraph (a), lawfully received by, made available to or payable to the Commission". It is standard Treasury terminology. There is no issue involved, only the issue of interest!

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Clause put and passed.

Clauses 185 and 186 put and passed.

Clause 187: Appointment of Parliamentary Inspector -

Mr P.G. PENDAL: In the second reading debate I indicated that I would move along the lines of the amendments that have been circulated and stand in my name on the Notice Paper. The amendments are in two parts because my remarks to this clause apply equally to clauses 190 and 191. I made out a case during the second reading debate that if the Parliament uses the terminology that the Government is asking it to use in this Bill, it should be meaningful terminology.

I ask the Attorney General to cast his mind back to a Bill that he piloted through the Parliament last year when he was gracious and sensible enough to agree to a change to the title of the Bill that came into the Parliament as the Whistleblowers Protection Bill. I suggested to the Attorney General that it was inappropriate to incorporate language of that kind into the statute books, which suggestion was in line with the Commission on Government's report. The Attorney General accepted that argument and as a result of that we passed the Public Interest Disclosure Bill. I believe legislation should mean what it says and say what it means. The Government has deliberately chosen to refer in clause 186 to a parliamentary inspector. This concerns the notion that Parliament is being asked to become involved in a very special way. My argument is that if we are to use terminology such as parliamentary inspector, we should make it real, not only in this case but also in other cases, by insisting that the Parliament appoint the person. The Ombudsman has long been regarded as an officer of the Parliament, but it is interesting to note that the Ombudsman continues to be appointed by the Executive. Other important stand-alone public officers should be included in the category of those I have referred to, such as the Information Commissioner and the Auditor General, to name but two. My argument is that if we are creating an office called the Parliamentary Inspector, that person should be appointed by the Parliament.

I have made out a case that the procedures for the appointment are not rocket science. My amendment states that the Presiding Officers will make a recommendation to the Governor. That is entirely appropriate when one considers that the Parliament is made up of that famous parliamentary trinity: this House, the other House and the Governor. It seems therefore that we could go down quite a radical path - if the word radical appeals to the Attorney General in these circumstances - and strike a blow for the Parliament by saying that these appointments are not matters for the Executive, especially if we are to dress them in the language found in part 13 of the Bill.

I will canvass a few other matters, in particular the position in Queensland which has been drawn to my attention and of which I was unaware until I circulated my amendment. My amendment, if accepted, would mean that the Parliament and not the Executive would appoint the parliamentary inspector, which would open the path for similar appointments to be made in future by the Parliament.

The ACTING SPEAKER (Mr P.W. Andrews): Does the member for South Perth seek leave to move his amendments en bloc or one at a time?

Mr P.G. PENDAL: I will move them en bloc if I can; I thought I could not do that because other clauses intervene.

The ACTING SPEAKER: You must seek leave to move the amendments.

Mr P.G. PENDAL: I seek the leave of the House to move the first two amendments to clause 187 standing in my name on the Notice Paper.

Leave granted.

Mr P.G. PENDAL: I move -

Page 120, line 13 - To insert after "Governor" the following -

acting on the recommendation of the Speaker of the Legislative Assembly and the President of the Legislative Council

Page 120, lines 15 to 17 - To delete "the Premier is to consult with the Parliamentary Leader of each party in the Parliament." and substitute the following -

the Speaker of the Legislative Assembly and the President of the Legislative Council are to consult with a committee or committees of both Houses designated for that purpose by the respective Houses.

Mrs C.L. EDWARDES: I support the sentiment and the merit of the proposal put forward by the member for South Perth. When I have explained to people the provisions of the Bill for a parliamentary inspector to carry out the role of overseeing the commission, I have found that they genuinely believe the role to be a very special

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one, but one person thought the parliamentary inspector would be a member of Parliament. It signifies a level of independence for the commission as well as the Executive. The merit of the argument put forward by the member for South Perth is that if the word parliamentary is to be used in the context of one of these appointments, it should be up to the Parliament to appoint such an individual. If the word is used, it signifies to the community at large that the person fills a very special place with the imprimatur of the Parliament, when in fact that is not the case. The Executive is appointing the parliamentary inspector, albeit after consultation with the leaders of the opposition parties. At the same time, it is currying support for the individual and the office by using the word parliamentary in the title. Therefore, I support the merit of the arguments being put forward by the member for South Perth.

Mr J.A. MCGINTY: The member for South Perth referred to the situation in Queensland. The legislation we are debating is very much influenced by the Queensland Crime and Misconduct Commission model. The provisions in the Crime and Misconduct Act 2001 relate to the parliamentary commissioner, whom I presume to be the equivalent of the inspector whom we are talking about here. Section 306 of the Crime and Misconduct Act provides essentially for the appointment to be made by the Speaker of the Queensland Parliament. Of course, Queensland does not have the blight that we have visited on us here of having two Houses. It is therefore somewhat easier in Queensland because there is only one Presiding Officer.

Two interesting provisions exist in Queensland. The first is section 306, which reads -

- (1) The Speaker must advertise nationally for applications from suitably qualified persons to be considered for selection as the parliamentary commissioner.
- ...
- (3) The Speaker may appoint a person as the parliamentary commissioner only if the appointment is made with bipartisan support of the parliamentary committee.

That is very much the model being recommended by the member for South Perth. The meaning of independent parliamentary officers in the Western Australian context has always been that they report to the Parliament and are independent from the discipline of the Executive. The Auditor General and the Parliamentary Commissioner for Administrative Investigations are probably the two most significant. The whole area of determining whether there should be an appointment by the Parliament or the Executive is a matter that should be determined uniformly for those positions that are truly parliamentary positions. I believe that this is one of them. It is intended that, beyond making the appointment, any suspension or removal is to be done independently of the Executive and is to be done by the Parliament. Clause 189 of the Bill before us provides that the parliamentary inspector may at any time be suspended or removed from office by the Governor on addresses from both Houses of Parliament. Therefore, the responsibility to determine the appointment of the parliamentary inspector clearly rests with the Parliament. The other crucial element of the parliamentary inspector is that his role is not to report to the minister but to the Parliament. Again, there is the notion of the responsibility being to the Parliament.

We are now talking only about the appointment and not the question of to whom those officers report or who determines their employment. If other officers were appointed by the Parliament, I think I would be happier to look at adopting more fully the Queensland model here, but it is not something that as a matter of practice we have adopted for any of the other appointments of the independent office bearers. Perhaps one of the more comparable examples is the Inspector of Custodial Services, Professor Richard Harding, and his function. He is independent and reports directly to the Parliament, very much as is envisaged under this scheme. Without necessarily disagreeing with the views put forward by the member for South Perth, it is not something I would support in the context of this legislation, because of the Queensland precedent. However, if there were to be a reconsideration of all those independent officers whose responsibility is to report to the Parliament and who can only be removed by an address of both Houses of Parliament, that is the context in which all these matters should be resolved, rather than by an amendment to this legislation at this stage.

Mr J.N. HYDE: I concur with the Attorney General's position on this. I have spoken with a number of the Queensland people involved in the oversight committee there. I believe that Western Australia's position is very different from that of Queensland because Queensland does not have the bicameral system that we have here. We have two Houses of Parliament, so in effect either House could move for the suspension of the parliamentary inspector. I believe that is another safeguard that makes this a different situation. I would not support an ad hoc change to the situation purely applying to this Bill unless we were looking at a whole-of-Parliament situation.

Mr P.G. PENDAL: The more I see of the Attorney General at work, the more I see him - I think I referred to this before - as a bit of a Tory. I do not think he is all that radical in his thinking. One of the things that puzzles me is this notion that the Executive can get to make appointments but Parliaments can be left to clean up the mess if the appointments do not work out. We have seen that in a number of statutes. The Executive gets to

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choose appointees, probably in the most highly sensitive positions in state jurisdiction, and then the Government of the day says that if things go askew, it will rely on the Parliament to give that appointee the sack. That is what we are doing here.

This reminds me of a discussion I once had with a Presiding Officer of this Parliament about his ability to appoint a very senior officer. He made it clear at the time that he was the appointing agent. Some time down the track when things got a bit messy, he made it clear that if that person needed to be removed, he would rely on the Parliament to do the removing. I made the point during that private conversation that, on the contrary, he appointed the person and he should remove him. The same sense of responsibility applies here. I would certainly be interested in knowing from the Attorney General why the Government set aside the Queensland model. I note that the member for Perth said that he had consulted a number of people who thought that it was the best model. The Queensland Crime and Misconduct Act was passed in 2001, so the ink on the legislation is barely dry, but that jurisdiction was comfortable with the notion that the parliamentary commissioner, as they referred to him, could not only be removed but also appointed by Parliament. In the case of Queensland it was a straight appointment by the Speaker. I have provided a bit more of a check and a balance by suggesting that the appointment be by the two Presiding Officers. Their task will be to consult with a dedicated committee, although some people here may argue that we do not have many dedicated committees. Sorry; the word should be a designated committee.. After the Presiding Officers have made their choice and have consulted with that committee, they will make a recommendation to the Governor. That seems to me to be a classic example of an appointment that is made by the three components of the Parliament - this House, the other House and the Governor would all play a role. That means that if that person turns out to be inappropriate, or if there are grounds for the removal of that person because of misconduct, that will be handled by the Parliament. What I cannot fathom, and what I would be interested to know from the Attorney General, is why the Queensland model was looked at, and indeed embraced, with the exception of who will make the appointment in the first place. I should also place on the record that when the Queensland Premier, Mr Beattie, introduced his second reading speech into the Parliament it was such an unremarkable thing for him to suggest that the appointment should be by the Speaker, and therefore by the Parliament, that it raised no debate at all. This remarkable step was remarkable for its lack of remarkableness, if there is such a word. It seems to me that there is very much a different culture at work in that State, but I will be interested in the Attorney's response.

Mr J.A. MCGINTY: The practice in Western Australia is that the Executive makes appointments of this nature, as I have indicated previously. That is the reason we have followed the Western Australian practice rather than branch out into the brave new world of handing responsibility to the Parliament for that function. It is not a matter about which I feel passionately. If it were determined that that raft of independent office bearers should be appointed by the Parliament, these positions should be on the list as well. However, to me the important point is that they be independent of the Executive. It is perhaps somewhat akin to the judiciary, because we are talking here about judicial-type figures, and of course members of the judiciary are appointed by the Executive. However, that is where their link to the Executive finishes in terms of the ability to sack them or in any sense control them. I guess two different trains of thinking are at work here. The first is that the appointments will follow the judicial mode of appointment in Western Australia, and the amendments that will be moved, if the Parliament agrees to them, will further entrench the judicial nature of the appointments, particularly with regard to the commissioner. I think the issue of the inspector will need a little more discussion. The second is that independent office bearers in Western Australia who are not judicial in nature tend to be appointed by the Executive, and to varying degrees they can be removed only by both Houses of the Parliament. That is the way in which we have chosen to do it. It is not something about which I feel particularly passionately. We are simply following the way in which comparable appointments are made in Western Australia. If it was resolved in the future that those comparable appointments should be made by the Parliament, clearly the appointment of the commissioner should be one of those.

Amendments put and negatived.

Clause put and passed.

New clause 188 -

Mrs C.L. EDWARDES: I move -

Page 120, after line 19 - To insert the following new clause -

188. Qualifications for appointment

- (1) Subject to subsection (2), a person is eligible for appointment as Parliamentary Inspector if that person -

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- (a) is a Judge, acting Judge, auxiliary Judge or retired Judge of the Supreme Court or the District Court; or
 - (b) is a Judge, acting Judge, auxiliary Judge or retired Judge of a like court established by an Act of another State or Territory or the Commonwealth.
- (2) A person who is or has been -
- (a) a police officer; or
 - (b) an officer of the Commission,
- is not eligible to be appointed as Parliamentary Inspector.

This new clause deals with the qualifications for appointment as parliamentary inspector. The parliamentary inspector will have a very serious role and function, as outlined in division 2, to oversee the Corruption and Crime Commission and to deal with matters of misconduct and to report and make recommendations. There will need to be a very close working relationship between the parliamentary inspector and the commissioner. We cannot have an imbalance in the level of status of the inspector and the commissioner. If a parliamentary inspector who has no qualifications whatsoever is appointed over a person who potentially has the qualifications of a judge or a former judge or who has had eight years of legal experience, etc, we will have a huge imbalance. There is no equality between the role of the parliamentary inspector and the role of the commissioner. The parliamentary inspector will have a much more serious oversight role. Judges do not brook lesser human beings; it does not matter what their title is or who the individuals are. It is a matter of human nature that if the commissioner is to be a judge or a former judge, or is to be given the status of a judge, and the parliamentary inspector does not have equivalent status, it will not work.

Mr J.N. Hyde: If, as under this legislation, the inspector will have unfettered access to every document and all the information, then surely status will go out the window.

Mrs C.L. EDWARDES: I have probably been around for a few more years than the member for Perth.

Mr P.G. Pendal: Just a couple!

Mrs C.L. EDWARDES: I think I have even been in this world longer than the member for Perth! I have worked in a number of different occupations, and my experience is that human nature is human nature. Unless we give the parliamentary inspector a status that is equivalent to the strong oversight role that person will be required to play, that role will not be able to be carried out in the way we believe it should. That person will have to be extremely strong to be able to play an oversight role over someone who has a status equivalent to that of a judge. Judges rarely even brook Attorneys General, do they, Attorney? At the end of the day it does not matter what our status is, sometimes there is little tolerance. It is essential that we appoint a person who has qualifications similar to those of a judge so that we have some equality in the positions and have a balance. We will have a review in five years, but I believe it is essential that the parliamentary inspector be a judge, an acting judge or a former judge. If they do not have that qualification, this commissioner and the parliamentary inspector will not have the best opportunity to succeed in the way this Parliament wishes.

Mr J.A. McGINTY: This area worries me, because I am of the opinion that the inspector is a more powerful person than the commissioner, although on a practical day-to-day basis the commissioner will be in the limelight. We certainly have a recommendation from the police royal commission that a judicial-like figure be considered for appointment as the commissioner, and it would seem strange indeed if the person who had greater powers than the commissioner - that is, the person who oversaw the work of the commissioner and who audited the work of the commissioner - were a person of lesser status. I think that is the point that is being made. My real concern, however, is that in a State like Western Australia the pool of people from which to choose the inspector is drying up.

Dr E. Constable: What about advertising nationally?

Mr J.A. McGINTY: Even if we advertise nationally, it will still limit the options. In my view, to effectively audit the work of a judge the occupant of the position would need significant legal qualifications, experience in criminal law and things of that nature, but it may well be that a very senior and experienced public servant could fulfil that role, particularly one who had legal qualifications. I do not know. It would certainly leave open a wider range of people to be considered.

Another aspect that people have relayed to me during the course of this debate is that rather than having two judges heading up the body, a mix of skills could be seen as appropriate. To have somebody with a background in human rights or civil rights from a community perspective might be a good balance with the commissioner

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being a judicial figure. My own inclination is to look towards what I regard as being the safer model; that is, the judicial model.

I am more than happy with the amendment that gives the commissioner judicial status as a means of increasing the status of that position, which is listed as a subsequent amendment. It worries me that we might be limiting ourselves to an incredibly small pool of people to choose from for what are quite crucial positions. We may have a very eminent person in the community with great analytical skills, great auditing skills - not just in a financial sense but in a performance management sense - and all of those sorts of things, and he or she could be excluded because he or she has not been employed as a judge in the District Court, the Supreme Court or even in another jurisdiction. This is the one area in the amendment proposed by the Liberal Party with which we have some difficulty. I had hoped that we would have been in a position to agree on all matters, and I think we can with the exception of this amendment. As of now I am not in a position to agree to this amendment. That is the best way I can relay my thinking for why that is not possible. At the moment we have a less than optimal arrangement, where a judicial-type figure will head up the body but there are no prerequisites for the person overseeing the judge. I do not see that in any sense to be an optimal outcome. I need to give a lot more attention to this issue before progressing it, but at this time I am unable to agree to the amendment.

Mrs C.L. EDWARDES: This amendment is far more important than any of the other amendments I propose. This is the crucial amendment. I believe it is important for the commissioner to have the equivalent status of a judge, and this amendment is absolutely essential if this model is to work. I recognise the views expressed by the Attorney General when he says somebody might be available with great auditing and analytical skills and all the rest of it, but judges who have been appointed to similar positions on the eastern seaboard have proved to be very effective. They always have the analytical skills necessary to carry out this function; they usually have the breadth of experience to quickly balance up the information that is provided to them, so the time taken to carry out that oversight role is reduced; and they also become a safeguard. The Attorney General referred to somebody who is knowledgeable about human and civil rights and the like. Some people who have been involved in human and civil rights might not have the balance necessary for dealing with the information that comes before the commission, and as such there could be a conflict. This proposition could cause conflict between the parliamentary inspector and the commissioner, and the commission will not work if there is conflict. This is a new model. It is the first time that we will have a parliamentary inspector. Everybody supports that position, and somebody from the community who may just have civil or human rights experience will not be able to carry out the functions of this parliamentary inspector. If this legislation does not contain required qualifications for this position it will tend to indicate to the community, particularly to the commission, that it is not regarded as a very important role. It will signal that there are no requirements; no qualifications are needed; anybody can do this job. The Attorney General and I both know that that will not work, and it will not happen. Whether we agree with the commissioner having the status of a judge, and whether we appoint a judge or the like, that person will have a significantly higher standing in the community when exercising that power with all who come before him. If the parliamentary inspector is seen to occupy a lesser role, even though we do not believe it to be a lesser role, that perception will be there. It means there will be conflict to begin with. There will either be very strong, head-on conflict, or the parliamentary inspector will have a subservient role. We do not want a parliamentary inspector who is subservient to the commission. If the hierarchy, as we expect it to be, is that the parliamentary inspector has a very strong oversight role of the commissioner, that parliamentary inspector should have higher qualifications than the commissioner. Under the commissioner's qualifications, it can be anybody. It can be a person with eight years legal standing, somebody who has been a practitioner elsewhere with equivalent status, a serving or former judge, or whatever. There is a greater breadth of people to draw upon, but it is not limited to a judge, although in the first instance it would be sensible to appoint a judge to ensure the best opportunity of making this new model work. If we do not have somebody who is a judge or former judge acting in that oversight role there will be conflict or subservience and the commission will not work.

Mr J.N. HYDE: I strongly oppose this new clause. The danger already emerging in the debate is that we are seeing the role of the commissioner as purely a legal one. Clearly, the failing in our existing system and elsewhere is that the commissioner is seen purely as somebody who can hold court behind closed doors and make a good, legal decision. We want a Corruption and Crime Commission that can undertake educative roles, converse with the community and deal with this in a holistic way. If the commissioner has the status of a judge, I want a parliamentary inspector who is not of the same mould but who will put as much emphasis on the educative and other important roles of the CCC. To me, deterring corruption is as important, if not more important, than gaining a conviction or ensuring that the legal t's are crossed and i's are dotted. It sends the wrong message if we say that the parliamentary inspector must definitely be a person of a status equal to a judge. I oppose this new clause strongly.

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Dr E. CONSTABLE: I support this new clause and I strongly support the comments of the member for Kingsley. The Attorney General said that the inspector, in a sense, will be more powerful than the commissioner. I think they are both very powerful positions and I do not think we should see one as more powerful than the other. It is really to do with the skills that will be required to do the job. More often than not, the inspector will have to investigate complaints. To be able to investigate those complaints the inspector must have well-honed forensic skills to look at an investigation that has been carried out by the commission, analyse it and then be judge and jury of what has gone on in that investigation.

I said in my second reading contribution that it is very important that we get it right this time because we have had very difficult times with the Anti-Corruption Commission since 1996. The CCC has to work and the office of the parliamentary inspector has to work. We should be very careful and play it safe and ensure that we have analysed the work that this person will have to do. I agree that overseeing the educative and preventive roles is part of it, but it will not be the main game for the parliamentary inspector. The parliamentary inspector's job is crucial to making this legislation work and to ensuring that we get it right this time with the CCC. I urge the Attorney General to think carefully in his deliberations about the sort of person required. He needs to think about the main work that this person will have to do. I believe it will be to investigate complaints, analyse what has gone on in those investigations and make a determination. That requires the skills of someone who has been a judge, is a judge or is qualified to be a judge.

Mr J.A. McGinty: I do not mind that.

Dr E. CONSTABLE: I think we should amend this new clause. I am pre-empting the member for South Perth because he has been thinking that through. There are some very eminent people who could take on that role, but who have not been, but could well be appointed as, judges.

Mr J.A. McGinty: In the role of inspector?

Dr E. CONSTABLE: Yes, of inspector.

Mr J.A. McGinty: I am quite relaxed about the notion of extending it to someone who may be eligible for appointment, although that is not what the member for Perth has said. My real objection to the way in which the new clause is currently formulated is that the person must have been a judge.

Dr E. CONSTABLE: Yes. We should develop this in the discussion now.

Mr J.A. McGinty: Yes.

Dr E. CONSTABLE: I have put my case as strongly as I can. I mentioned it during the second reading debate. I am even more determined that those be the qualifications this person should have.

Mr P.G. PENDAL: I think the ideal is somewhere between what the Attorney General has said and what the member for Kingsley has said. I had written a possible paragraph (c) for new clause 188(1), which has been moved by the member for Kingsley; that is, words to the effect that it be someone who is eligible to be or who has been appointed one of the above. To have a layperson in this position is to send in a person with one arm tied behind his back. One of the skills of a trained legal practitioner is that analytical, forensic capacity to which the member for Churchlands referred. That does not mean that other people in our community do not have analytical skills. First, it requires someone with the training of a lawyer; therefore, I agree with the member for Kingsley in that respect. However, some people who have never been judges would be highly helpful in this circumstance. One person I can think of is Wayne Martin, QC. I do not think I have ever met the man so I am not promoting him. Others in the legal profession have never been to the bench and therefore have never had the chance to be retired judges.

Mr J.A. McGinty: The problem with Wayne Martin is that he led the Supreme Court astray in the one vote, one value case!

Mr P.G. PENDAL: I thought the Attorney General would have a particular affection for him for that reason! However, the Attorney General understands what I mean. I can think of 10 or 15 people in the legal profession in Western Australia who would fall into the category that I am talking about, and who have never been judges but who should be considered for this role. I am not sure whether we are considering a full-time parliamentary inspector, because in Queensland it is a part-time position. In some respects that will limit the pool even further, and the Attorney General has expressed some concern about our having a relatively small pool from which to draw.

However, I return to my original point. I think there is a lot of merit, first, in what the Attorney General has said, and also in the member for Kingsley's advocacy of a retired judge of the Supreme or District Courts or someone from another jurisdiction. If she were to expand that to take on board someone who is eligible, we would arrive at something that the Attorney General, the member for Kingsley and, for that matter, people like myself could

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live with. It would also send the message that there is a sense of equality between those people on the commission and someone who might end up being the parliamentary inspector.

Mr J.A. McGINTY: It is not my desire to stifle debate on this matter, but I suggest to the House that we move to the next clause on the basis that we will recommit this clause at the end of the debate. A range of ideas have been floated which we can think about and work on while we progress through the balance of the Bill, on the basis that this clause will be recommitted to be resolved. I have certain instructions on the wording of clauses about which I might need to talk to other people. There is sufficient room to be able to resolve this matter. It is interesting now that the Leader of the National Party is in the Chamber because he has put very strongly the counter point of view that we need the broadest possible pool of people from which to draw, and that to limit it to judges and former judges is too restrictive. There is a variety of views. However, having raised at least the germ of all those ideas, we can now move on the basis that we will recommit this clause.

Mrs C.L. EDWARDES: I am happy with that, and I am sure we can come to some agreement because we are of the same view. I am happy to recommit and we will work on the clause in the meantime.

The SPEAKER: The simplest way to proceed is for the member to withdraw the new clause and then it can be reconsidered with the other clauses.

New clause, by leave, withdrawn.

Clause 188 put and passed.

Clauses 189 to 222 put and passed.

Clause 223: Review of Act -

Mrs C.L. EDWARDES: A review of the Act is to be carried out in five years and the report of the review is to be tabled in Parliament within six years of the commencement of the Act. We have just seen under the Health Act a requirement within a certain time for a review of health regulations concerning smoking in enclosed places. The review was started. However, the minister did not receive the report in time for it to be tabled in the 12-month period, which expired on 12 January of this year. The report still has not been tabled. I indicate to the Attorney General that these clauses mean nothing. A review clause can be activated five years after the commencement of the Act; however, no penalty will apply if the minister does not table the report. Ministers can ignore this House. That is not satisfactory. As a Parliament, perhaps we need to consider such clauses in the future. Who will carry out the review? The minister is required to carry out the review under the Corruption and Crime Commission Bill. We often refer to Queensland in positive or negative tones: if Queensland is to set uniform legislation, we on this side of the House do not like it, and members opposite like it. However, a standing committee of the Queensland Parliament carries out such reviews, and it is an effective process. The review is a huge task to be undertaken by members of Parliament, as we all understand. Nevertheless, heavy involvement is seen between the Parliament and the Queensland Crime and Misconduct Commission. Again, that arrangement highlights the level of independence of that body. Did the Attorney look at the position in Queensland? He says he has modelled this Bill to some great extent on the Queensland arrangement. The standing committee of this Parliament was not appointed to carry out the review of the Act. Why has the Attorney General left it to the minister to carry out the review?

Mr J.A. McGINTY: I can say only that if in five years I am still the minister responsible for the administration of the Act, I will ensure the review is done.

Mr P.G. Pendal: That is a faint hope!

The SPEAKER: It is almost a certainty, I would have thought!

Mr J.A. McGINTY: Is that a bankable proposition?

I appreciate the comment by way of criticism made by the member for Kingsley. I do not know who will conduct the review. No doubt the advice of the parliamentary committee will be sought on the matter. I am sure the parliamentary committee will continue to operate in its current manner. I cannot take the matter much further than that.

Mr J.N. HYDE: The Standing Committee on the Anti-Corruption Commission made recommendations that were not adopted by the previous Government. The wording of clause 223 is the most effective way to proceed. A standing committee, or a joint committee of both Houses of Parliament, will have input. That arrangement places the responsibility on the minister of the day to take action, and provides an opportunity for the Opposition to sheet home blame where it should reside.

Mrs C.L. EDWARDES: I pick up on something that the member for Perth said, and was raised earlier by the member for Churchlands: the standing committee, or whatever we ultimately appoint, must be a joint standing

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committee. It must comprise equal numbers among the parties and work in a bipartisan manner - it has been established in this manner for some time.

Mr J.N. HYDE: That is a different issue from the legislation.

Mrs C.L. Edwardes: Do you agree?

Mr J.N. HYDE: No. It is a separate issue. The Parliament should decide such matters and it should be separate from the legislation.

Mrs C.L. EDWARDES: I put it clearly on the record that the standing committee should be a joint standing committee. It should have equal representation among the parties and operate in a truly bipartisan way. It is a very important body.

Mr J.N. HYDE: I remind the member that the existing Joint Standing Committee on the Anti-Corruption Commission did not reach a position on this very issue. The fit and proper way to proceed is that Parliament decides under its standing orders whether our existing committee should be audited. It is up to Parliament to audit the committee. If we are happy with the current situation, it will proceed. Alternatives can be considered at that stage. The legislation should proceed without reference to that issue. I have an open mind on whether we should proceed with the committee or alternative arrangements. However, this legislation is not the place to make that determination.

Clause put and passed.

Clauses 224 to 242 put and passed.

Clause 243: Continuation of allegations -

Mr J.A. McGINTY: I move -

Page 151, after line 2 - To insert the following -

- (3) If the allegation was made by a person under section 13(1)(a), (b) or (c) of the A-CC Act, section 35 of this Act applies as if the allegation were made under section 25 or 28(2), as the case requires, of this Act.

This amendment was found necessary as a result of some points made earlier by the member for Kingsley. I appreciate her suggestion; it covers the transitional arrangements as the ACC is phased out and replaced by the CCC.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 244 to 259 put and passed.

Schedule 1 put and passed.

Schedule 2 -

Mrs C.L. EDWARDES: I move -

Page 162, lines 17 and 18 - To delete the lines and substitute the following -

- (1) The Commissioner is entitled to be paid remuneration and to receive allowances or reimbursements at the same rate as a Puisne Judge of the Supreme Court.
- (2) The Commissioner is entitled to the same conditions in respect of leave of absence as a Judge of the Supreme Court.
- (3) The provisions of the *Judges' Salaries and Pensions Act 1950* that relate to pensions apply, with such modifications as circumstances require, to and in relation to -
 - (a) the Commissioner; and
 - (b) after the Commissioner's death, the Commissioner's spouse and children,as they apply to and in relation to a Judge of the Supreme Court appointed after the commencement of that Act and to and in relation to the spouse and children of a Judge of the Supreme Court after that Judge's death, and for that purpose "**Judge**" in that Act includes the Commissioner.

Page 162, line 21 - To delete the line.

Page 162, lines 22 to 24 - To delete the lines.

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Page 163, lines 4 to 5 - To delete the lines.

Page 163, lines 8 and 9 - To delete “or the District Court”.

Page 163, line 13 - To delete “person referred to in subclause (1)” and substitute the words “former Judge”.

Page 163, line 18 - To delete “person referred to in subclause (1)” and substitute the words “former Judge”.

Page 163, line 22 - To delete “person referred to in subclause (1)” and substitute the words “former Judge”

Page 163, after line 25 - To insert the following -

(6) In this clause -

“former Judge” means a person who, immediately before appointment to the office of Commissioner, was a Judge of the Supreme Court or the District Court.

These amendments will provide the commissioner with the status of a judge. I seek clarification from the Attorney General that this schedule does not in any way give life tenure to the person who is appointed a commissioner. The schedule contains a provision to appoint the commissioner for four years and to be reappointed, without a time limit. That should be considered in the review. There should be a maximum of no more than eight years - two terms - as is the case for similar positions in the eastern States. That will allow a new face to bring fresh life to such an important position. Such a position should attract people who have the status of a judge.

Mr J.A. McGINTY: I support the amendments moved by the member for Kingsley. They are designed to ensure that the status of the person appointed the commissioner of the Corruption and Crime Commission is that of a Supreme Court judge. I am told this is the best way to achieve it within this legislation and it will cement that position. I am very pleased to indicate the support of the Government for the substantive amendment and the consequential amendments moved by the member for Kingsley.

Amendments put and passed.

Schedule, as amended, put and passed.

Schedule 3:

Mrs C.L. EDWARDES: I move -

Page 165, line 6 - To delete “2” and substitute “4”.

The commissioner can be appointed for four years and is eligible for reappointment. It was considered necessary to appoint the parliamentary inspector for only two years. That does not make much sense. I do not know the rationale behind it. The person can be appointed for two years rather than for the maximum number of years. Nonetheless, this amendment will signal the importance that we are attaching to the office of the parliamentary inspector.

Mr J.A. McGINTY: The Government supports this amendment to equalise the tenure of the two positions.

Amendment put and passed.

Schedule, as amended, put and passed.

Schedules 4 and 5 put and passed.

Title put and passed.

Recommittal

On motion by Mr J.A. McGinty (Attorney General), resolved -

That the Bill be recommitted for the further consideration of clause 3 and new clauses 154, 165 and 188.

Consideration in Detail

Clause 3: Terms used in this Act -

Mr J.A. McGINTY: I move -

Page 6, before line 28 - To insert the following -

(a) a notifying authority;

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This amendment came about as a result of matters raised by the member for Kingsley. It became apparent that some notifying authorities were not public authorities for the purposes of the Bill. It was intended that “public authority” would include all notifying authorities and this amendment will achieve that end result.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 154 -

Mr J.A. McGINTY: I move -

Page 101, after line 29 - To insert the following new clause -

154. Exclusion of other laws

Section 151(7), 152(2) and 153(3) apply despite any law or rule of law, written or otherwise, under which a person may be required to produce or disclose any matter of information.

Mrs C.L. Edwardes: Does this amendment relate to the concern that restricted matter was not covered under the disclosure and secrecy clauses?

Mr J.A. McGINTY: It will have that effect. This matter was raised by the Clerk.

Mrs C.L. Edwardes: Basically you are saying that the three sections referred to in the new clause will override any other law that allows the commission to provide information.

Mr J.A. McGINTY: I thank the member for Kingsley for articulating clearly what I meant to say.

New clause put and passed.

New clause 165 -

Dr E. CONSTABLE: I move -

Page 107, after line 11 - To insert the following new clause -

165. Malicious disclosure of false allegation

A person who maliciously discloses that an allegation of misconduct has been or is or may be about to be made to the Commission, knowing the allegation to be false in a material particular, commits an offence.

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

This matter was the subject of quite a lot of discussion and debate earlier today. The new clause is self-explanatory. In summary, it will hopefully serve as a deterrent to those who might make or disclose malicious allegations. It may also provide some protection to a person who may be the subject of false or malicious allegations.

Mr J.A. McGINTY: I am happy to indicate the Government's support for this measure. Given that we are going into a new era of disclosure in which people will be able to say that they have referred matters to the Corruption and Crime Commission, a provision such as this should not be seen in any way as dampening the ability of people to make referrals to the commission. However, malicious and defamatory - perhaps criminally defamatory - allegations made in the media will not be permitted without people knowing that they face some penalty. A fairly high barrier has been raised by this new clause for people who maliciously disclose an allegation knowing that the allegation is false in a material particular. That is an appropriate message to send out with this Bill.

New clause put and passed.

Mr J.A. McGINTY: Mr Speaker, I seek your guidance. I would appreciate a brief adjournment to enable me to take further advice and instructions.

The SPEAKER: I will leave the Chair until the ringing of the bells.

Sitting suspended from 5. 48 to 5.57 pm

New clause 188 -

Mrs C.L. EDWARDES: I move -

Page 120, after line 19 - To insert the following new clause -

188. Qualifications for appointment

- (1) In subsection (2) -
“legal experience” means -
- (a) standing and practice in the State as a legal practitioner;
 - (b) standing and practice in another State or a Territory as a barrister or solicitor of the Supreme Court of that State or Territory;
 - (c) judicial services (including service as a judge of a court, a magistrate or other judicial officer) in the State or elsewhere in a common law jurisdiction; or
 - (d) a combination of 2 or more kinds of legal experience defined in this section.
- (2) A person is eligible for appointment as Parliamentary Inspector if that person -
- (a) is or has been a legal practitioner and has had not less than 8 years legal experience; or
 - (b) is a practising barrister of the High Court of Australia and has had not less than 8 years legal experience.

I thank the Attorney General for his support of the amendment. I believe that through our discussions we have been able to achieve a very workable solution to the problem that was envisaged. I wish all the very best to the parliamentary inspector, the commission and those who will be appointed to it.

Mr J.A. McGINTY: I indicate the support of the Government for this amendment. It will mean that this entire Bill has been able to be progressed by the agreement of everyone in this House. This last issue did present us with considerable difficulty, but I am pleased to say that it has been able to be amicably resolved. We support the amendment.

New clause put and passed.

Third Reading

MR J.A. McGINTY (Fremantle - Attorney General) [6.00 pm]: I move -

That the Bill be now read a third time.

I thank all members of the House and very much appreciate either the forbearance of those who did not sit through the lengthy detailed debate today or their support. I thank particularly the member for Kingsley for the detailed and constructive way in which this matter has been progressed. It is a delight to have a major piece of legislation that was potentially extremely controversial dealt with in such a constructive way. My only remaining hope, having said thank you to all members here, particularly the member for Kingsley, is that this matter will now proceed, not in a way that rushes it through the Legislative Council but in a way that recognises the importance of not only the Bill but also the timing of its passage. Given that every clause in this Bill has received the unanimous support of this House, I hope that it can be dealt with in the time that has been recommended by the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers; that is, to have it passed before the Parliament rises at the end of this month. That remains my fervent hope. I certainly thank members of this House for having contributed so significantly to help me achieve that objective.

MRS C.L. EDWARDES (Kingsley) [6.03 pm]: I thank the Attorney General and all his staff for their work. The work his staff have done has been exceptional and made it easy to work in such a cooperative way. The Attorney General has said that he hopes to have this legislation in place by 31 August. When I asked his officers what was plan B - it is always nice to have a plan B - they indicated at the time that the terms of reference for the police royal commission could be extended. The question was not anticipated and the remark was made off the top of their heads. However, I have heard the answer repeated since as being something that could happen. I do not know whether the Attorney General had anticipated it or whether issues other than this legislation will come into existence by 31 August - in spite of the legislation going through the Legislative Council - and require the Attorney General to extend the term of the police royal commission.

Extract from *Hansard*
[ASSEMBLY - Thursday, 5 June 2003]
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Mrs Cheryl Edwardes; Mr Jim McGinty; Dr Elizabeth Constable; Mr Phillip Pendal; Acting Speaker; Mr John Hyde; Speaker

Mr J.A. McGinty: It is my desire that the royal commission conclude and report on time. If we can get this legislation through the upper House before the end of this month, it will come into effect on 31 August and replace the royal commission and the Anti-Corruption Commission on that date. That is my desire, and anything the member for Kingsley can do within her own party to facilitate that will be much appreciated.

Question put and passed.

Bill read a third time and transmitted to the Council.

House adjourned at 6.05 pm
