

AUSTRALIAN CRIME COMMISSION (WESTERN AUSTRALIA) BILL 2003

Second Reading

Resumed from 4 December 2003.

HON DERRICK TOMLINSON (East Metropolitan) [10.18 am]: I signal the support of the Opposition for this Bill, which extends the authority of the Australian Crime Commission to the Western Australian jurisdiction and enables matters coming under the jurisdiction of Western Australian law to be referred for investigation by the Australian Crime Commission. The Australian Crime Commission has been operating for two years, and almost every other State has adopted its own legislation. Western Australia is amongst the last to do so.

Because it is uniform legislation, the Bill has been before the Standing Committee on Uniform Legislation and General Purposes. I commend the committee on its thorough and clear report. I extend to the chairperson, Hon Adele Farina, and the members, Hon Simon O'Brien and Hon Paddy Embry, my compliments on the report. Most importantly, however, I note that the staff at the time of this inquiry included Johanna Edwards and Sheena Hutchison. We are extremely privileged in the Legislative Council to have staff of the quality of those in the committee office. Johanna Edwards' stamp is on this report in the clarity of its understanding of the legal issues and its presentation. I would be remiss if I did not also include my compliments for Johanna Edwards for this report.

The report draws attention to an apparent overlap of jurisdiction. Paragraph 3.17 of the report states -

The Committee noted that where there is an overlap of jurisdiction between the ACC and the CCC, the Police Service may opt to use the ACC in preference to the CCC.

It is a bit ironic, I suppose, that the acronym "ACC" is used to refer to the Australian Crime Commission when the ACC, as the acronym of the Anti-Corruption Commission, was so - I am trying to think of the correct word -

Hon Nick Griffiths: You are being your normal diplomatic self.

Hon DERRICK TOMLINSON: The Anti-Corruption Commission was out of favour with some members of the Western Australia Police Service, but the Western Australia Police Service may now refer matters to the Corruption and Crime Commission. A possibility is discussed in the report. I understand that the Commissioner of the CCC, Mr Kevin Hammond, gave evidence to the Standing Committee on Uniform Legislation and General Purposes that it is possible that the Police Service in Western Australia would refer organised crime matters to the ACC for action rather than to the CCC. The procedures for invoking the special powers under the CCC are much more onerous for the police than those involved in invoking the powers under the ACC. Therefore, it may be the opinion of the Police Service that it is more convenient to refer matters to the ACC rather than to the state body, the CCC. The Joint Standing Committee on the Corruption and Crime Commission has discussed this matter with the Commissioner of the CCC. He is aware of the possibility. However, in recent months a memorandum of understanding has been negotiated between the Police Service and the CCC on the operation of the special powers. I think that matter is in hand. It is not a matter that concerns me a great deal, because the matters that the ACC will investigate that overlap with the powers of the CCC are of national significance. For example, much of the concern of the organised crime powers in the Corruption and Crime Commission Act focus on organised criminals. In its former life the legislation containing those provisions was sometimes referred to as the bikie Bill. The concern was with the criminal element of motorcycle gangs that is involved in drugs, in particular, and in prostitution. Quite clearly, these are matters of state jurisdiction that have national and international implications. They are perhaps more important as national matters than as state matters. The Police Service previously recruited staff and worked with the National Crime Authority on the pursuit of those matters. That sort of cooperation among state and national investigation organisations is absolutely essential for the pursuit of organised criminals at that level. I note that the committee has presented in appendix 5 a comparative table of offences that come under the jurisdiction of the CCC and the ACC. There are matters over which the Australian Crime Commission has no jurisdiction under commonwealth law but over which the state has jurisdiction under state criminal law. Some of those matters have national implications. Therefore, it makes sound sense to have the enabling legislation now before us so that matters of state jurisdiction might be referred to the Australian Crime Commission for investigation at that level. Although the overlap of the powers and functions of the ACC and the CCC is something on which a future joint standing committee should keep an eye, it is not a matter that causes me concern at this stage. I do not wish to pursue any amendments or changes to the Bill.

The other matter I want to refer to is the observation at page 74 of the committee's report about the deficiency in the accountability mechanisms that apply to the Australian Crime Commission and its board. The committee report refers to past statements by the Joint Standing Committee on the Anti-Corruption Commission and the Joint Standing Committee on the Corruption and Crime Commission presented to this House about constraints on accountability because of the statutory denial to that committee of access to operational matters. I would

never argue that a committee of the Parliament should have access to operational matters. I am sure that the Minister for Housing and Works agrees that there are times when it is desirable for the commission to give in-confidence briefings to the joint standing committee so that the committee might understand the context of the commission's action. However, such instances involve peculiar circumstances that test the confidentiality of the joint standing committee. I am very proud to say that in all my dealings as Chairman of the Joint Standing Committee on the ACC and the Joint Standing Committee on the CCC, that test has never failed.

Hon Nick Griffiths: Not in two Parliaments.

Hon DERRICK TOMLINSON: Not in two Parliaments. I am confident that it will not fail in the future. Regardless of that, I would not argue for parliamentary members to be given access to confidential operational matters, except in very peculiar circumstances.

The Standing Committee on Legislation met with the Joint Statutory Committee on the Australian Crime Commission in Canberra during one of the standing committee's oyster fact-finding missions on the CCC Bill. That meeting was in about July. I say "oyster fact-finding mission" because the committee was engaged in prising out information.

Hon Kate Doust: I thought you were referring to the number you had consumed.

The PRESIDENT: Order! We do not need to divert the speaker any further. Hon Derrick Tomlinson has the call.

Hon DERRICK TOMLINSON: The committee prised out information on these matters. I travelled with the committee and met with the staff of the commonwealth parliamentary joint statutory committee. I must say that in its early operation it had demonstrated an awareness of the needs of accountability and a relationship with accountability that the previous Joint Committee on the National Crime Authority had not been able to achieve. I am confident that the parliamentary oversight of the board and the intergovernmental committee will be successful. There is a difference. The committee's report makes reference to the appointment of a parliamentary inspector in the case of the Corruption and Crime Commission in Western Australia and a parliamentary commissioner in the case of the Crime and Misconduct Commission in Queensland. There is a difference between the state commissions and the Australian Crime Commission in that the Australian Crime Commission has two levels of oversight. The first is the board, which consists of 14 members and includes the Commissioner of the Australian Federal Police, the Secretary of the Attorney-General's Department, the Chief Executive Officer of the Australian Customs Service, the chairperson of the Australian Securities and Investments Commission, the Director-General of Security, the commissioner or head of the Police Force of each State and the Northern Territory, and the Chief Police Officer of the Australian Capital Territory. Before the Australian Crime Commission can initiate any investigation, it must refer the matter to the board of management, so that the national cooperative body supervises the functions of the Australian Crime Commission. In addition to that is the intergovernmental committee, which at any time may call upon the board for information. The board has a right to refuse to provide information if the chairman is of the opinion that divulging the information might jeopardise the confidentiality of ongoing investigations. Appeal procedures are in place. The important point is that there are two levels of oversight of the functioning of the CCC; that is, a cooperative board of management with representatives from all States and an intergovernmental committee with representatives from all States. There is a significant difference between parliamentary oversight of the CCC in Western Australia and oversight of the ACC at the national level.

The committee has made 11 recommendations. I understand that the Government has acceded to all but one of them. However, my advice from the minister behind the Chair indicates that he is awaiting further advice and it could well be that the Government will accede to the final recommendation for amendment. Given the Government's cooperative attitude and the high quality of the report by the Standing Committee on Uniform Legislation and General Purposes, the Opposition is comfortable with this legislation and concurs with its passage.

HON GIZ WATSON (North Metropolitan) [10.33 am]: The Greens (WA) will not support this Bill, and I will outline the reasons for that. This area of jurisdiction is reasonably contentious given the powers that are involved and that will be conferred. I acknowledge that in some respects this is a technical Bill, because it obviously relates very closely to the relation between commonwealth and state powers. Frankly, if I had had more time to thoroughly digest the Bill, I probably would have been able to give a more informed analysis of it. However, I appreciate the fact that the Bill was referred to the Standing Committee on Uniform Legislation and General Purposes and that the committee has produced a very useful report.

I will refer to some of the committee's comments in its report on the Australian Crime Commission (Western Australia) Bill 2003. Paragraph 3 of the executive summary states -

The broad role of the Australian Crime Commission is to provide an enhanced national law enforcement capacity with respect to criminal activity of national significance. In performing this role, the Australian Crime Commission conducts intelligence operations and investigations into serious and organised crime.

It further states -

- 6 Pursuant to the *Australian Crime Commission Act 2002* (Cth) the Australian Crime Commission is able to conduct investigations and intelligence operations concerning serious and organised crime relating to Commonwealth offences or State offences (with a federal aspect).
- 7 The primary purpose of the Australian Crime Commission (Western Australia) Bill 2003 is to complement the *Australian Crime Commission Act 2002* (Cth) and enable the Australian Crime Commission to conduct intelligence operations and investigations into serious and organised crime in relation to State offences (irrespective of whether those offences have a federal aspect).
- 8 In conducting intelligence operations and investigations into serious and organised crime, the Australian Crime Commission is vested with coercive powers such as the power to require witnesses to attend and give evidence. The use of these powers must be authorized by the Board of the Australian Crime Commission which comprises 13 voting members, nine of whom are the heads of the various Commonwealth and State police forces.

On that note, the Greens have particular concern about the composition of the commission. The combination of the fact that the commission has coercive powers and comprises the nine heads of the various state and territory Police Forces means that if we support this Bill, we will accede to the prospect that the police will be able to direct and oversight coercive powers being used by the police. That in itself is a fundamental proposition that the Greens cannot support. The executive summary goes on to state -

- 9 Under the National Crime Authority regime, the Inter-Governmental Committee (comprising the State and Commonwealth Ministers) approved references by the Commonwealth and State Ministers to the National Crime Authority for the investigation of criminal offences using coercive powers. Under the Australian Crime Commission scheme, the Inter-Governmental Committee is instead responsible for oversight of the Australian Crime Commission.

The report refers to the committee's recommendations, and I seek some indication from the minister whether the Government intends to support the recommendations of the committee in total or whether some recommendations will not be supported. I also note that issue No 2 of the supplementary notice paper for this Bill - it might just be the way the supplementary notice paper is laid out - is not couched in terms of the minister moving the amendments; it simply refers to recommendations of the committee. Perhaps the minister in his response will indicate whether the Government will support the committee's recommendations. In addition to the 11 recommendations of the committee, the report further states -

- 11 In addition, there are a number of other matters the Standing Committee on Uniform Legislation and General Purposes noted:
 - The shift in the responsibility for the authorization of the use of coercive powers from the Inter-Governmental Committee to the Board and the accountability mechanisms relating to the powers of the Australian Crime Commission and the Board . . .

I will talk about that a little more in a moment. It continues -

- The fact that, unlike the National Crime Authority regime, the Board can authorize the Australian Crime Commission to conduct intelligence operations and investigations using coercive powers in relation to State offences within Western Australia irrespective of the consent of the State representative on the Board . . .
- The potential overlap in jurisdiction between the Australian Crime Commission and the Corruption and Crime Commission . . .
- Clause 3 and the potential for the definition of 'serious and organised crime' to be expanded by regulation . . .

That is a significant concern -

- Clause 3(3) which enables the Australian Crime Commission to investigate incidental offences to 'serious and organised crime' . . .

- Clause 22 and offences of disclosure . . .
- Clause 23 and the abrogation of the privilege against self-incrimination . . .
- Clause 24 and the ability of the Australian Crime Commission to detain persons pursuant to arrest warrants . . .
- Clause 47 and obstructing, hindering or disrupting the Australian Crime Commission or an examiner . . .

I will talk about those matters in a little more detail in a minute. I want to refer first to the background section in chapter 1 of the committee report. At page 5 the committee makes the following observations in paragraph 1.24 -

The Committee observes that the Intergovernmental Agreement relating to the ACC is limited to seven points in a wider agreement relating to terrorism and multi-jurisdictional crime. The Intergovernmental Agreement and the August Agreement canvass broad general principles only.

Paragraph 1.25 states -

The Committee has previously reported its concerns to the House where there is little or no written material recording the original agreement between the Commonwealth, States and Territories when uniform legislation is proposed.

A footnote to that statement, which adds a little more information, states -

Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, *Report No 5: National Crime Authority (State Provisions) Amendment Bill 2002*, November 2002, p1. In the case of that bill there were no documents available to the Committee on the National Crime Authority (State Provisions) Amendment Bill 2002. In addition, there was no state held record of why that bill had been introduced, whether its provisions accorded with the Inter-Governmental Committee's agreement and whether other options had been considered.

It also refers to report No 14 of the Standing Committee on Uniform Legislation and General Purposes in relation to the Commonwealth Powers (De Facto Relationships) Bill 2003, which made similar comments.

If I understand the indications from Hon Derrick Tomlinson correctly, the House is set to pass this Bill. Particularly in this area of law and jurisdiction, there has been a lack of information for the State Parliament to come to an informed decision. That in itself is enough for the Greens (WA) to reject this Bill. Indeed, over and above that, we do not think that the case has been made that there is a necessity for this Bill.

I go to page 11 of the report, where the committee deals with the National Crime Authority (State Provisions) Amendment Bill 2002 in more detail. It states -

- 1.46 As indicated, the *Australian Crime Commission Establishment Act 2002* (Cth) amended the *National Crime Authority Act 1984* (Cth) to create the ACC. Consequently, a large number of the provisions of the *National Crime Authority Act 1984* (Cth) are replicated in the *Commonwealth Act* and thus the State Bill.
- 1.47 The Committee notes that in 2001, the *National Crime Authority Act 1984* (Cth) was amended by the *National Crime Authority Legislation Amendment Act 2001* (Cth). Significantly, the *National Crime Authority Legislation Amendment Act 2001* (Cth) amended the defence of reasonable excuse, the privilege against self-incrimination and provisions relating to search warrants in relation to the operations of the NCA.
- 1.48 To effect these amendments at a State level, the National Crime Authority (State Provisions) Amendment Bill 2002 was introduced into the Western Australian Parliament in March 2002 to amend the *National Crime Authority (State Provisions) Act 1985*. This bill was considered and reported on by the Committee in November 2002. As a result of the commencement of the ACC on January 1 2003, the National Crime Authority (State Provisions) Amendment Bill 2002 has not been progressed or considered by the House. The Committee commends that report to the House.
- 1.49 Where the provisions of the National Crime Authority (State Provisions) Amendment Bill 2002 are reflected in the State Bill, this Report notes the relevant clauses and reiterates the Committee's previous comments.

My comment on that is that this area of jurisdiction has been subject to a lot of changes, and a lot of confusion, in my view. Amendments were made to the ACC legislation, and now there is a new body. It is very difficult for anybody to understand exactly where this area of law is at. I have had an opportunity to take some advice on

this from people who are a lot more informed on legal matters than I. However, the broad comment I make is that we are making significant changes to provide powers to the ACC to operate in the State on matters that are not limited to commonwealth matters but will now include state matters. Quite frankly, I think the whole thing is a dog's breakfast. It is about time we all took a deep breath and decided whether we need to put in place more legislation that will enable coercive powers to be used. I believe that is one of the most abhorrent aspects of this kind of legislation. It is all part of a kind of ongoing hype about terrorism that, quite frankly, is mostly just that.

At page 19 of the report, the committee deals with the powers of the ACC and states -

- 2.27 When the Board has authorized an intelligence operation or an investigation into 'federally relevant criminal activity' pursuant to the *Commonwealth Act* the ACC is able to access two types of powers.
- 2.28 Firstly, the ACC has **general statutory powers**. Examiners of the ACC are able to:
- request information from Commonwealth agencies; and
 - require information from Commonwealth agencies in certain cases.

We do not have a problem with that. The report continues -

- 2.29 Secondly, in addition to these powers, the ACC is able to access **coercive powers** when a 'special operation' or 'special investigation' is authorized by the Board.
- 2.30 The terms 'special operation' and 'special investigation' are not defined in the *Commonwealth Act* however 'special ACC operation/investigation' is defined to mean:
- (a) an intelligence operation that the ACC is undertaking and that the Board has determined to be a special operation; or*
- (b) an investigation into matters relating to federally relevant criminal activity that the ACC is conducting and that the Board has determined to be a special investigation.*

We must bear in mind that this board is primarily made up of the most senior police from each State and Territory. It has a very broad power to determine what is a special operation and a special investigation. My concern is that there is no ability to scrutinise that decision.

To be fair, I should say that the committee goes on to state -

- 2.31 There are two hurdles that must be overcome in obtaining the Board's authorization for a 'special operation' or 'special investigation' using coercive powers:
- Firstly, before the Board authorizes a 'special operation' it must consider whether methods of collecting the criminal information and intelligence, not involving the use of powers in the Act, have been effective. Similarly, before the Board authorizes a 'special investigation' it must consider whether ordinary police methods of investigation into the matters are likely to be effective.

I guess that indicates that these powers to establish a special operation or special investigation should be called upon only when other powers have been ineffective. The report goes on to state -

- Secondly, a determination by the Board that an intelligence operation or an investigation is a 'special operation' or 'special investigation' requires at least nine of the 13 voting members (including at least two eligible Commonwealth Board members) to vote in favour of the determination.

That is not much comfort to me. It leaves an enormous amount of power in the hands of those senior police and, in my view, that is totally inappropriate. The report continues -

- 2.32 Once these hurdles are overcome, the coercive powers available to the ACC under the *Commonwealth Act* are:
- the power of examiners to summon witnesses and take evidence;
 - the power of examiners to require persons to produce documents;
 - the ability to apply to a Judge of the Federal Court, State or Territory or a Federal Magistrate for a search warrant;
 - the ability to apply to a Judge of the Federal Court, State or Territory or a Federal Magistrate for a search warrant by telephone;

- the ability to apply to an examiner or a Judge of the Federal Court for an order for the delivery of a passport of a witness; and
- the ability of examiners to apply for warrants for the arrest of witnesses.

That is for the arrest of witnesses, not the accused. This Bill contains similar powers to the Bill referred to by Hon Derrick Tomlinson, which has been dubbed the “bikie Bill”, which we also oppose. At the end of chapter 2, which contains the background to the Bill, the committee made the following observations -

- 2.46 The Committee notes that the *Commonwealth Act* and the State Bill enable the Board of the ACC to authorize intelligence operations and investigations in relation to State offences (with or without a federal aspect) and the consent of the State representative (the Police Commissioner) is not required.

In effect, it is handing over a significant power to the commonwealth body. The report continues -

- 2.47 This is a significant shift from the manner in which the NCA operated in the various States. However, this issue has not been highlighted in the Intergovernmental Agreement, the August Agreement or the associated material.
- 2.48 Although it is open to the Committee to recommend amendments to address this issue, the Committee is aware that the uniform nature of the legislative scheme means that any amendment proposed by this Committee would only affect the operations of the ACC pursuant to the State Bill, that is in relation to State offences (without a federal aspect). Consequently, any amendment would be of limited effect and could potentially undermine the uniformity of the scheme. However, the Committee draws this issue to the attention of the House.

I hope, in quoting from the committee report, I have done so. I now refer to the committee’s additional observations that are not dealt with by way of formal recommendations. The first refers to the shift of responsibility for the authorisation of the use of coercive powers from the intergovernmental committee to the board and the accountability mechanisms relating to the powers of the ACC and the board. This issue is covered at paragraph 4.2, which states -

As part of its inquiry, the Committee considered the report of the Commonwealth Parliamentary Joint Committee on the NCA (**PJC**) which reported to the Commonwealth Parliament on the Australian Crime Commission Establishment Bill 2002 (Cth) in November 2002. One of the major issues for the PJC was the power of the Board to authorize the use of coercive powers. The concerns raised as part of the PJC’s inquiry included:

- Given that the majority of the Board is police officers, it cannot be expected to give a measured and unbiased consideration of the use of coercive powers.

Hon Derrick Tomlinson: Do you mean you don’t trust police officers?

Hon GIZ WATSON: More people than the Greens think that, actually. It is not our exclusive view.

Hon Paddy Embry: Do you mean perhaps not all police officers?

The PRESIDENT: Order! Members are interrupting Hon Giz Watson’s train of thought, like the Queensland train.

Hon GIZ WATSON: Absolutely, Mr President. The report continues -

- The new body will be dominated by police forces and possessed of powers which the Parliament has always refused to give to police forces.
 - As a matter of precedent, neither the NCA nor the State Crime Commissions currently allow the level of police force influence on the activation of the coercive powers as will be the case with the ACC.
- 4.3 Similarly, this Committee is concerned about the shift in the responsibility for the authorization of the use of coercive powers from the IGC, comprising Ministers, to the Board, the majority of whom represent the various police forces.
- 4.4 The Committee notes that this shift in responsibility has removed a key accountability mechanism. The State Minister as part of the IGC was directly accountable to the Western Australian Parliament for determinations of the NCA to authorize the use of coercive powers. The State Minister, as a member of the IGC, is now limited to an oversight role in relation to the authorization of the use of coercive powers. The Police Commissioner, who represents the

State of Western Australia on the Board of the ACC is not directly accountable to the Western Australian Parliament.

- 4.5 This could give rise to a situation whereby the Police Commissioner as part of the Board agrees to the use of coercive powers or sets priorities for the ACC that the Government does not agree with.
- 4.6 The Committee notes that the Police Commissioners on the Board may well have common interests and approaches in dealing with authorizations. The same commonality was less likely to occur with a Board comprising Ministers with disparate State interests. This potentially operated as an internal 'check and balance' on the authorization of the use of coercive powers for the NCA.
- 4.7 As a result of its concerns, the Committee evaluated the accountability mechanisms operating in relation to the ACC and the Board namely:
- the IGC;
 - the Commonwealth Minister;
 - the State Ministers;
 - the Parliamentary Joint Committee on the ACC;
 - the Commonwealth Ombudsman; and
 - the courts.

Hon Derrick Tomlinson: They comprise 13 voting members. Yes, they have a majority, but wouldn't you have confidence in the chief executive officer of the Australian Customs Service, the chairperson of the Australian Securities and Investments Commission and the secretary of the Attorney General's department?

Hon GIZ WATSON: My previous point was that only nine of the 13 are required to authorise the use of special investigations.

Hon Derrick Tomlinson: Do you think they might subvert their authority?

Hon GIZ WATSON: I am suggesting that nine of 13 is enough to authorise a special investigation. If all the heads of the various police departments are there, they have the nine.

Hon Derrick Tomlinson: You and I are in trouble then.

Hon GIZ WATSON: Particularly Hon Derrick Tomlinson. The report continues -

- 4.53 The Committee has concluded that there are deficiencies in the accountability mechanisms applying to the ACC and the Board of the ACC. The Committee is principally concerned about the oversight role of the IGC. Although the IGC was intended to have an important role in overseeing and monitoring the work of the ACC, the Committee considers that the IGC is considerably circumscribed in its ability to do so. The Committee considers that a major impediment facing the IGC is the ability of the Chair of the Board to withhold information on the basis of a prejudice clause. As the former PJC on the NCA observed "*information is the lifeblood of accountability*".

Hon Derrick Tomlinson: You are making the same mistake as I did, putting an amendment to delete that clause.

Hon GIZ WATSON: There is an amendment; okay, that is comfort. The report continues -

- 4.54 The Committee observes that former PJC and the former Joint Standing Committee on the Anti-Corruption Commission in Western Australia (which both had an oversight role) indicated that the inability to access operational information prevented them from ensuring the operational accountability of those agencies. Both Committees suggested that this could be overcome by the appointment of an independent Inspector with a function of auditing and scrutinising the operations of those agencies.
- 4.55 The CCC, which recently replaced the Anti-Corruption Commission in Western Australia, has an independent Parliamentary Inspector with extensive powers to obtain information and, if necessary, the ability to conduct an inquiry with all the powers of a Royal Commission.
- 4.56 The Committee recognises that the restrictions on the provision of information by the former NCA and the former Anti-Corruption Commission to the relevant parliamentary committees differ as the IGC is not a parliamentary committee. However, the Committee notes that the same problems will arise in the IGC's performance of its oversight role.

- 4.57 The Committee is mindful that the CCC is also operating in Western Australia in relation to organised crime and has the Parliamentary Inspector as a powerful and independent accountability mechanism.

It will be interesting to see whether both the CCC and the ACC could be investigating the same matter. That is where there is a potential for overkill. The report continues -

The Committee draws the attention of the House to the issue of the overlapping jurisdiction of the ACC and the CCC and, in particular, the evidence of Mr Michael Cashman, Director of Legal Services, CCC at paragraph 3.19. Mr Cashman indicated that at an anecdotal level, there is a view that it is easier for the Western Australian Police Force to enter into a taskforce with the ACC rather than obtaining approval for the use of coercive powers from the CCC. As the Committee has indicated, it is of the view that there is no effective independent accountability mechanism in relation to the operations of the ACC.

The Committee considered a number of options to address this issue but the uniform nature of the legislative scheme would mean that any amendment to the State Bill would only affect the operations of the ACC pursuant to the State Bill.

I guess we have been snookered.

Hon Derrick Tomlinson: It is interesting to compare the CCC in Western Australia with others. The decision to invoke the special powers at the request of the Commissioner of Police rests entirely with the commissioner. The crime commissions in Queensland and New South Wales use a referral of a request to invoke those powers to an oversight body similar to that which is now advocated for the ACC. Western Australia has less scrutiny in the CCC than the other three bodies.

Hon GIZ WATSON: Although there is the role of the parliamentary inspector.

Hon Derrick Tomlinson: No. The operations of the special powers may not come within the jurisdiction of the joint standing committee if it is a police matter.

Hon GIZ WATSON: It is a very complicated area in which to get right the checks and balances to allow a degree of covert operation and investigation without excessively trampling on the principles of rights, liberties and law.

Hon Derrick Tomlinson: I share your concern but I think they are okay.

Hon GIZ WATSON: I acknowledge that the member has had a lot more experience in this area than me. However, I feel it is necessary to clarify why the Greens (WA) will not support this Bill. I am referring to the committee's findings to support our position.

Unlike the National Crime Authority regime, the board can authorise the Australian Crime Commission to conduct operations and investigations using coercive powers in relation to state offences in Western Australia irrespective of the consent of the state representative on the board. The committee report deals with this matter at paragraph 2.42 - "Comparison with the NCA". It states -

As part of its inquiry, the Committee considered the extent to which the ACC differs from the NCA. In considering the powers of the ACC, the Committee noted an important distinction from the operations of the NCA.

Paragraph 2.43 states -

As indicated in paragraphs 1.36 to 1.39, pursuant to the *National Crime Authority Act 1984*, the NCA had special functions pursuant to which the agency could use coercive powers. The special functions of the NCA were to investigate matters referred by either the Commonwealth Minister or State Ministers. The references by the State Ministers required the approval of the IGC. Significantly, these references had no effect unless the State Minister on the IGC representing that State voted in favour of the resolution.

Paragraphs 2.44 and 2.45 state -

- 2.44 The Board instead of the IGC is now responsible for the authorization of the use of coercive powers by the ACC. If the ACC wishes to conduct an intelligence operation or investigation in relation to State offences (with or without a federal aspect) then a special majority being nine of the 13 voting Board members must vote in favour of the authorization. However, notably, there is no requirement in either the *Commonwealth Act* or State Bill that the State representative on the IGC (the Police Commissioner) vote in favour of the authorization.

- 2.45 The omission of such a requirement means that the Board can agree to the ACC conducting intelligence operations or investigations using coercive powers in relation to State offences within Western Australian irrespective of the consent of the State.

The Greens believe that is a huge problem.

The next point I will elaborate on is the potential overlap in jurisdiction between the Australian Crime Commission and the Corruption and Crime Commission. The committee deals with this matter at paragraph 3.11, which states -

The Corruption and Crime Commission (CCC) commenced operation in Western Australia on January 1 2004 pursuant to the *Corruption and Crime Commission Act 2003*. The CCC has a number of functions including an organised crime function.

Paragraphs 3.12 to 3.16 state -

- 3.12 In pursuance of the organised crime function police officers can apply to the Commissioner of the CCC to use coercive powers when dealing with certain offences committed in the course of an 'organised crime'. The *Corruption and Crime Commission Act 2003* defines 'organised crime' as:

activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences [listed offences] are committed, the commission of each of which involves substantial planning and organisation. . . .

- 3.13 Similarly, the definition of 'serious and organised crime' in the State Bill involves **2 or more offenders** and **substantial planning and organisation**.

- 3.14 A number of the offences relevant to the State Bill are similar to the Schedule 1 offences for the purposes of the *Corruption and Crime Commission Act 2003* thereby creating a potential overlap of jurisdiction with the CCC. The Committee has prepared a comparative table (see Appendix 5) which identifies those offences where the potential for an overlap of jurisdiction arises.

- 3.15 In relation to the potential overlap of jurisdiction, the Western Australian Police Service submitted that:

Whilst it is arguable that the newly formed Corruption and Crime Commission (CCC) will have a similar role in terms of investigating Western Australia based organised and major crime, the passing of the proposed Bill would service to fill in "gaps" between the roles of the ACC and the CCC. In addition, the activities of the ACC would provide the Western Australian Police Service with additional information and intelligence to enable it to better target criminals and crime syndicates operating within the state jurisdiction...

The Western Australian Police Service supports the role and functions of the ACC in investigating Western Australia based crime, particularly as it is arguable that the CCC will be significantly involved in post-Kennedy Royal Commission issues and its primary responsibility for the investigation of suspected criminal misconduct and corruption in Western Australia.

- 3.16 The Minister provided advice to the Committee on this issue as follows:

The definition of 'serious and organised crime' is set out in s 4(1) of the Commonwealth Australian Crime Commission Act 2002. That definition includes offences that relate to such matters as theft, fraud, tax evasion, money laundering, illegal drug dealings, extortion, violence, perverting the course of justice, firearms and cybercrime.

In regard to the definition of 'organised crime' in s 3 of the Corruption and Crime Commission Act 2003 (WA), specific offences are set out in Schedule 1 of that Act. Those offences include matters relating to perverting the course of justice, murder, endangering safety, explosions, property laundering and drug trafficking, which could conceivably also fall within the jurisdiction of the ACC. (This list is indicative and is not meant to be exhaustive.)

If it should occur that the activities of the two agencies, i.e. the CCC and the ACC, result in an investigation of the same matters or suspected crimes, this would not be an entirely novel situation. It is expected the agencies will cooperate and establish

protocols in determining how such matters are to be progressed. Legislative provisions also contemplate this scenario arising from time to time and section 17(1) of the Commonwealth Australian Crime Commission Act 2002 requires this in the case of the ACC.

It is further advised that the CCC and the ACC have already developed a memorandum of understanding.

The Committee asks whether the ACC can 'take over' a CCC investigation. As a matter of law, the answer is no. Both the ACC and the CCC are separate independent governmental agencies. The ACC has no power to limit or control in any way the work of any other agency. Legislation governing the ACC in no way limits or affects the CCC.

Hon Derrick Tomlinson: But it is conceivable that the CCC can refer a matter to the ACC.

Hon GIZ WATSON: I understand that, yes.

The committee's observations are listed at paragraph 3.17. The report states -

- 3.17 The Committee noted that where there is an overlap of jurisdiction between the ACC and the CCC, the Police Service may opt to use the ACC in preference to the CCC.

The Committee considers that this is likely to occur due to:

- the less restrictive definition of 'serious and organised crime' under the *Commonwealth Act* and the State Bill in comparison to the *Corruption and Crime Commission Act 2003*; and
- the absence of an effective independent oversight mechanism in relation to the ACC.

When this Parliament considered the Corruption and Crime Commission legislation, we did a lot of work examining the Bill and putting in place additional safeguards and recommendations that had the support of all parties in this place. It seems to me that with this Bill we are now about to close the door on many of the accountability mechanisms that we fought very hard to have in the Corruption and Crime Commission. Basically this is saying that the Australian Crime Commission is likely to be used in preference to the CCC to investigate certain matters, because there is a less restrictive definition of "serious and organised crime" and an absence of an effective independent oversight mechanism. For that reason also, the Greens will oppose the Bill. The committee observations continue -

- 3.18 In relation to the definition of 'serious and organised crime', Mr Michael Cashman, Director of Legal Services, CCC, indicated that at an anecdotal level those working in the organised crime area of the Western Australian Police Service see the definition of 'organised crime' in the *Corruption and Crime Commission Act 2003* as restrictive whereas the definition in the *Commonwealth Act* and the State Bill is more expansive.

- 3.19 Mr Cashman further indicated that:

It is easier for the Western Australian Police to enter into, for example, a task force with the ACC to investigate aspects of organised crime, rather than having to jump through hoops or cross a threshold in terms of getting the CCC to make an exceptional powers finding on the basis of that definition of organised crime.

- 3.20 The Committee also notes that a consideration of Appendix 5 reveals that the CCC is limited to operating in relation to specific offences. In contrast, the ACC is able to operate in relation to offences involving broadly described criminal conduct such as 'fraud' or 'violence' (where the offence is punishable by imprisonment for a period of three years or more). The Committee observes that the breadth of these descriptions could enable the ACC to work in relation to a wider range of offences and potentially less serious offences.

Hon Derrick Tomlinson: Only if the board of management consents.

Hon GIZ WATSON: We know who comprise the board of management. We will revisit that one. The committee's report continues -

- 3.21 In relation to accountability mechanisms, the Committee observes that the CCC has a powerful and independent accountability mechanism in the form of the Parliamentary Inspector who has unrestricted access to information about the activities of the CCC.

Again, that is something that the Greens (WA), among others, fought very hard to have included in the Corruption and Crime Commission Act. It continues -

In contrast, the Committee notes that there is no effective independent accountability mechanism operating with respect to the ACC as there are limitations on the IGC accessing information about the activities of the ACC. . . .

- 3.22 The Committee is mindful that the complementary nature of the uniform legislative scheme means that any amendments to the State Bill to deal with this issue could undermine the scheme and therefore it does not propose an amendment.

Once again the Commonwealth wins in this regard. I probably will not have time to deal in detail with all the other matters that the committee discussed that will not be specifically addressed by way of recommendations and amendments, but I will see how much more ground I can cover in the next five minutes.

The next matter relates to clause 3 and the potential for the definition of “serious and organised crime” to be expanded by regulation. The committee discusses this at paragraphs 3.5 to 3.10. The report reads -

- 3.5 Sub-clause (d) of the definition of ‘serious and organised crime’ in the State Bill and the *Commonwealth Act* allows the list of offences to be expanded by ‘regulations’. The question arises whether the Commonwealth is able to expand by ‘regulation’ the list of offences for the purposes of the *Commonwealth Act* **and** the State Bill.
- 3.6 Both the *Acts Interpretation Act 1901* (Cth) and the *Interpretation Act 1984* effectively provide that the word ‘regulation’ within an Act refers to regulations made under the Act in which the term is used.
- 3.7 Consequently, the Committee understands that the Commonwealth cannot expand the list of offences for the purposes of the State Bill by regulations made under the *Commonwealth Act*.

That provides some relief. It continues -

If the ACC wished to expand the list of offences in relation to both the *Commonwealth Act* and the State Bill then:

- the Commonwealth would need to enact regulations expanding the list for the purposes of the *Commonwealth Act*; and
- the State would need to enact regulations expanding the list for the purposes of the State Bill. These regulations would be subject to the scrutiny processes in the *Interpretation Act 1984*.

That at least allows the possibility of scrutiny by this Parliament. It continues -

- 3.8 The Committee observes that whilst the operation of the State Bill is not directly affected by any Commonwealth regulations that are passed, the complementary nature of the legislation needs to be taken into account. An expansion of the list of offences under the *Commonwealth Act* will mean that unless the State passes commensurate regulations, the complementary scheme could be undermined.
- 3.9 Hence, the Commonwealth can readily effect changes to the scope of the list of offences through regulations (rather than the full legislative process required for an amendment to the principal Act) and place an onus on Western Australia (and other State and Territories) to similarly expand the relevant regulations.
- 3.10 The Committee is concerned that the use of regulations to expand the list of offences for the purposes of the *Commonwealth Act* denies the State of Western Australia an opportunity to comment on that expansion despite the fact that it necessarily impacts on the complementary legislation in this State.

I might seek an extension of time. I have a couple more points.

The PRESIDENT: The member may keep going and, when the time expires, request leave.

Hon Nick Griffiths: It will save my having to read the report again. I will just read *Hansard*.

Hon Derrick Tomlinson: Ignore him.

Hon GIZ WATSON: We could talk about speaking times, but maybe that is for another debate.

Hon Nick Griffiths: It is getting close to Christmas.

Hon GIZ WATSON: This is a very serious matter. I do not appreciate it being suggested that I might be going on at more length than I should, because I think that is totally inappropriate.

Clause 3(3), which enables the Australian Crime Commission to investigate incidental offences to serious and organised crime, is dealt with at paragraph 3.23 of the committee's report. It reads -

- 3.23 Clause 3(3) (which replicates section 4(2) of the *Commonwealth Act*) expands the ambit of the definition of 'serious and organised crime' as follows:

If the head of an ACC operation/investigation suspects that an offence (the "incidental offence") that is not a serious and organised crime may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a serious and organised crime (whether or not the head has identified the nature of that serious and organised crime), then the incidental offence is, for so long only as the head so suspects, taken, for the purposes of this Act, to be a serious and organised crime. . . .

- 3.24 The Committee notes that the head of the ACC operation/investigation is only required to 'suspect' the commission of the incidental offence. There is no requirement that the head of the ACC operation/investigation 'reasonably suspects' or 'has reasonable grounds to suspect' the commission of the incidental offence.

- 3.25 In *George v Rockett* (1990) . . . the Full Court of the High Court held that a 'suspicion' is:

...more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to 'a slight opinion, but without sufficient evidence'...

It goes on to compare a reasonable suspicion, but I will not read out paragraph 3.26. I would draw the House's attention to the observations of the committee.

[Leave granted for the member's time to be extended.]

Hon GIZ WATSON: I appreciate that. I will try to keep my remaining comments as brief as possible.

Hon Derrick Tomlinson interjected.

Hon GIZ WATSON: I am obviously entertaining at least one member of the House.

Hon Derrick Tomlinson: I think it is a very good to include the report. It is a very important report and should be discussed.

Hon GIZ WATSON: It is a very good report, absolutely. We are very fortunate to have a committee to do this kind of report.

Hon Nick Griffiths: I am very glad that you are reminding us of it.

Hon GIZ WATSON: There is absolutely no way in which I could do this level of investigation.

Hon Derrick Tomlinson: No.

Hon GIZ WATSON: The report continues -

- 3.27 The Committee understands that the 'ongoing obligation' referred to in the Minister's advice is that part of clause 3(3) which provides that the incidental offence is taken to be a 'serious and organised crime' "*for so long only as the head so suspects*". The Committee notes that this test may be difficult to objectively determine.

- 3.28 The Committee observes that the subjective nature of clause 3(3) circumscribes the ability of a court to review the appropriateness of an investigation or intelligence operation. As clause 3(3) expands the ambit of the definition of 'serious and organised crime' and thus the jurisdiction of the ACC, the Committee draws this matter to the attention of the House.

I refer also to clause 23, which is reported on by the committee at paragraph 3.47 of the report. I will limit my comments to the observations that are made in paragraph 3.56 of the report, which states -

- 3.56 The Committee notes that unlike the National Crime Authority (State Provisions) Act 1985 the State Bill does not provide for derivative use immunity. As with the National Crime Authority (State Provisions) Amendment Bill 2002, this Committee does not object to the absence of derivative use immunity in view of the fact that there will be a review at the Commonwealth level of the effect of the abolition of derivative use immunity in the National Crime Authority Act 1984 (Cth) and its successor legislation, the Commonwealth Act.

The report continues -

Extract from Hansard

[COUNCIL - Wednesday, 17 November 2004]

p8208b-8224a

Hon Derrick Tomlinson; President; Hon Giz Watson; Hon Nick Griffiths; Chairman

- 3.57 In addition to the Commonwealth review, the Committee recommends (in Chapter 4) an amendment to create such a review at the State level.

The committee considers these issues further later in the report.

I recommend that the committee report be examined carefully by anyone who has an interest in this area, because there is sufficient in that report for me to say that the Greens (WA) will not support this Bill. The Greens (WA) have grave concerns about the potential for overlap between the two corruption commissions, the amount of power that is proposed to be handed over to the heads of the Police Service in each state, and the fact that these powers are inquisitorial powers. We oppose this headlong rush to enact significant pieces of legislation on the basis that these sorts of powers are needed in order to deal with terrorism, because, in our view, in nine out of 10 cases this sort of argument is just political hype. However, it is clear that both the Labor Party and the Liberal Party will support the passage of this Bill. We are interested to see the amendments. Hopefully the amendments will address some of our concerns. However, I do not see anything that is foreshadowed on the supplementary notice paper that will make this Bill one that we can support.

HON NICK GRIFFITHS (East Metropolitan - Minister for Housing and Works) [11.22 am]: I thank Hon Derrick Tomlinson for his observations and support on behalf of the Opposition for the Bill. Hon Derrick Tomlinson made reference to committee recommendation 10, which is that the Bill be amended to require a state review. The Government's view is that such a state review is unnecessary. However, noting that the world is not perfect, I propose on behalf of the Government to agree to the recommendations of the committee in total. Hon Derrick Tomlinson gave us the benefit of his experience as chairman of the committee that oversights the Corruption and Crime Commission. I note that Hon Derrick Tomlinson also had considerable experience in the previous Parliament, and also in this Parliament, as chairman of the committee that oversights the Anti-Corruption Commission. I thank him for bringing to the attention of the House those issues of overlap between the ACC and the CCC. Hon Derrick Tomlinson also dealt with the accountability mechanisms and drew to the attention of the House the observations of the committee as set out on page 74 of the report.

Hon Giz Watson on behalf of the Greens (WA) said that she was opposed to the Bill. In doing so she set out reasons consistent with what she has said on behalf of the Greens (WA) in respect of many law and order issues over recent years. I think it is fair to say that the position of the Greens (WA) is well known on these matters, and she has put forward their position with appropriate eloquence. I also thank Hon Giz Watson for bringing to the attention of the House in some detail matters set out in the committee report. The report is worth reading. The committee has given the issues considerable deliberation. I note that the committee recommends in recommendation 11 that the Bill be amended to provide for a review of the provisions of the Bill. The committee does not oppose the Bill. I infer that the committee at the very least supports the passage of the Bill and recommends amendments. I look forward to those amendments being made. In those circumstances, I commend the Bill to the House.

Question put and a division taken with the following result -

Ayes (25)

Hon Alan Cadby	Hon Paddy Embry	Hon Frank Hough	Hon Bill Stretch
Hon George Cash	Hon John Fischer	Hon Barry House	Hon Derrick Tomlinson
Hon Kim Chance	Hon Jon Ford	Hon Kevin Leahy	Hon Ken Travers
Hon Murray Criddle	Hon Peter Foss	Hon Norman Moore	Hon Ed Dermer (<i>Teller</i>)
Hon Bruce Donaldson	Hon Graham Giffard	Hon Simon O'Brien	
Hon Kate Doust	Hon Nick Griffiths	Hon Louise Pratt	
Hon Sue Ellery	Hon Ray Halligan	Hon Barbara Scott	

Noes (4)

Hon Dee Margetts	Hon Jim Scott	Hon Christine Sharp	Hon Giz Watson (<i>Teller</i>)
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Pair

Hon Adele Farina

Hon Robin Chapple

Question thus passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon George Cash) in the Chair; Hon Nick Griffiths (Minister for Housing and Works) in charge of the Bill.

The CHAIRMAN: I note that there is a report from the Standing Committee on Uniform Legislation and General Purposes, but some of the recommendations appear to be in a narrative form; therefore, it is not possible to put the question contained in Standing Order No 234A. We will therefore rely on supplementary notice paper No 266, issue No 2, which has a number of recommendations standing in the name of the committee.

Clauses 1 and 2 put and passed.

Clause 3: Terms used in this Act -

Hon NICK GRIFFITHS: In the absence of a committee member moving the recommendation, I move -

Page 5, after line 23 - To insert -

- (2a) For the purposes of this Act (except the definition of “Commonwealth body or person” in subsection (1)) the definition of “member of the staff of the ACC” in section 4(1) of the ACC Act is taken to extend to a legal practitioner appointed under section 7.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 4 to 23 put and passed.

Clause 24: Warrant for arrest of witness -

Hon NICK GRIFFITHS: I move -

Page 26, line 20 - To insert after “Supreme Court” -

sitting in chambers

Hon DERRICK TOMLINSON: The Opposition supports the amendment, but before we proceed further I will ask a question. Subsection (1) states -

Where, upon application by an examiner, a Judge of the Federal Court or the Supreme Court is satisfied . . .

It has come to the attention of the Joint Standing Committee on the Corruption and Crime Commission that under the terms of the Telecommunications (Interception) Western Australia Act it is necessary for the CCC, as it was necessary for the Anti-Corruption Commission before that, to make application to a court of federal jurisdiction or a judge of a court of federal jurisdiction for authorisation of telecommunications interception. Due to Western Australia’s peculiar circumstances, the ACC and the CCC have found that the only federal jurisdiction court available is the Family Court of Western Australia. Therefore, they have had to resort to using a judge of the Family Court to authorise telephone interceptions. I note in this provision that the definite article is used: a judge of “the Federal Court” and “the Supreme Court”. We know about the Supreme Court. Am I correct in assuming that the definite article precludes a court of federal jurisdiction other than the Federal Court of Australia?

Hon NICK GRIFFITHS: Yes.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 25 to 27 put and passed.

Clause 28: Order for delivery to examiner of passport of witness -

Hon NICK GRIFFITHS: I move -

Page 29, line 17 - To insert after “Court” -

sitting in chambers

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 29 to 31 put and passed.

Clause 32: Functions not affected by State laws -

Hon NICK GRIFFITHS: I move -

Page 37, after line 11 - To insert -

- (2) Despite subsection (1), the performance of a function conferred by this Act is subject in every case to the *Parliamentary Privileges Act 1891*.

Parliamentary counsel has considered this amendment to be a preferred form of wording after consideration was given to the best way of achieving the result that the committee wished to achieve in its recommendation.

Hon DERRICK TOMLINSON: Before agreeing to this amendment, I would like the minister to give us a further explanation of this preference. In its amendment, parliamentary counsel has dropped the words “or exercise” from the committee’s recommendation. Does this give the assumption that the words “performance” and “exercise” are synonymous, and that the repetition is redundant, or will the minister recognise that the words “performance” and “exercise” might be more embrative, and, likewise, the words “function” and “power”. Parliamentary counsel has recommended that the wording in the amendment be also restricted to the word “function”. However, the words “function” and “power” are two quite different things. I might be willing to accept that the words “performance” and “exercise” are synonymous; however, the words “function” and “power” are not. I would like to hear why the reference to “power” in the committee’s recommendation is objectionable to parliamentary counsel.

Hon NICK GRIFFITHS: I am putting forward what I am advised are the views of parliamentary counsel. The answer to the first part of the question is yes. The answer to the second part of the question is that, in the view of parliamentary counsel, “function” also does the job; that is, in this instance it includes function or power.

Hon DERRICK TOMLINSON: If I accept that “performance” and “exercise” are synonymous, that might be the case. I am not wasting time. I am trying to make sure that we get the correct form.

Hon Nick Griffiths: You didn’t hear what I said. I was not accusing you of wasting time. I made the observation that every time somebody recommends some change at the last minute, it ends in using up time.

Hon DERRICK TOMLINSON: I thank the minister for that, and I apologise for eavesdropping.

Hon Nick Griffiths: Frankly, I do not care whether the committee passes the amendment I have moved or the preceding amendment. If it is an issue for the member, I am quite happy to withdraw this amendment and move the preceding one.

Hon DERRICK TOMLINSON: I will, but before I do that, I make the observation that if the minister accepts that “performance” and “exercise” are synonymous, as he indicated -

Hon Nick Griffiths: I have given you the advice that has been given to me, which are the reasons of parliamentary counsel.

Hon DERRICK TOMLINSON: I know the circumstance under which the minister gave the advice and I accept the circumstance, but I want it clarified.

Hon Nick Griffiths: As you are entitled to.

Hon DERRICK TOMLINSON: I am entitled to do so. If the minister were to read “performance” and “exercise” as synonymous, then “function” would be fine. One could perform a function but not a power; one would exercise a power. However, I will short-circuit the debate. It has been drawn to my attention that “function” in section 5 of the Interpretation Act includes powers, duties, responsibilities, authorities and jurisdictions. If that interpretation of “function” applies, I am quite satisfied to go ahead with what the minister has proposed.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 33 to 42 put and passed.

Clause 43: Furnishing of reports and information -

Hon NICK GRIFFITHS: As I read the committee’s recommendations, amendments 5/43 and 6/43 standing in my name on the supplementary notice paper relate to the same issue. I therefore move -

Page 42, line 6 - To delete “Subject to subsection (3),”.

Page 42, lines 12 to 16 - To delete the lines.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 44 put and passed.

Clause 45: Delegation -

Hon NICK GRIFFITHS: I move -

Page 46, line 12 - To insert after “under” -
another provision of

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 46 to 63 put and passed.

Clause 64: Transitional regulations -

Hon NICK GRIFFITHS: I move -

Page 53, line 19 to page 54, line 6 - To delete the lines.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 65 put and passed.

Clause 66 put and negatived.

Clauses 67 to 70 put and passed.

Clause 71: *Surveillance Devices Act 1998* amended -

Hon NICK GRIFFITHS: I move -

Page 58, line 23 - To insert after “Commonwealth” -
as extended by section 3(2a) of the *Australian Crime Commission (Western Australia) Act 2004*

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 72 to 74 put and passed.

New clause 49A -

Hon NICK GRIFFITHS: I move -

Page 49, after line 8 - To insert the following new clause -

49A. Tabling of the review of the ACC Act

At the earliest opportunity after the State Minister becomes aware that a report under section 61A of the ACC Act has been laid before the Commonwealth Parliament the State Minister must -

- (a) cause a copy of the report to be laid before each House of Parliament; or
- (b) if copies of the report are not then available, notify each House that a report has been presented under section 61A and indicate when it is expected that a copy will be laid before it.

New clause put and passed.

New clause 49B -

Hon NICK GRIFFITHS: I move -

Page 49, after line 8 - To insert the following new clause -

49B. Review of Act

- (1) The State Minister must cause an independent review of the operation and effectiveness of this Act to be undertaken as soon as possible after the expiration of 3 years after its commencement.

- (2) A person who undertakes such a review must give the State Minister a written report of the review.
- (3) The State Minister must cause a copy of the report of the review to be laid before each House of Parliament of the State within 4 years after the commencement of this Act.

Hon DERRICK TOMLINSON: As I have indicated, this new clause was the subject of a discussion behind the Chair. The minister has given his response and has moved the committee's recommended amendment. To avoid the potential for the minister to have moved the recommendation and to then vote against it as he did, I think, with clause 66 -

Hon Nick Griffiths: Are you alluding to the possibility that although I moved the amendment I might vote against it?

Hon DERRICK TOMLINSON: Yes.

Hon Nick Griffiths: If you persuade me to vote against it, I might, but I'm not minded to go against what I said I would do.

Hon DERRICK TOMLINSON: I am aware that some questions have been asked elsewhere about why a review of the Act is necessary when the federal Australian Crime Commission Act is to be reviewed. I listened with some interest to the matters raised by Hon Giz Watson. I partly disagree with what she said about this Bill being motivated in part by - I think she said "hype" - about terrorism. Quite clearly, terrorism is not directly a matter of state jurisdiction; it is a matter of commonwealth jurisdiction, particularly under laws passed by the previous federal Parliament, and they raised considerable public interest.

The application of the ACC power and authority in the state jurisdiction is a matter that comes within state criminal law. Although I agree that it is essential that the commonwealth Act be reviewed by commonwealth authorities, we are talking about the referral of investigations of matters that come under state jurisdiction; therefore, I also agree that the operation of this Bill, which will become the Australian Crime Commission (Western Australia) Act, should be subject to an independent review.

Hon Giz Watson raised concerns about the abuse of these extreme powers. She even referred to the possibility that the nine Commissioners of Police might collude in some way for the exercise of powers that might not be in the country's best interests. I do not believe that they would go to that extreme. However, Hon Giz Watson pointed out, quite correctly, that Parliaments have been reluctant to confer upon police authorities powers of those nature without extraordinary scrutiny provisions. That is because those powers can deny conventional legal privilege, such as the right to refuse information and the protection of property. All those things are overridden in the exercise of those powers. Therefore, it is absolutely essential that Parliament scrutinise the exercise of those powers. Although it might be argued that a scrutiny, or review, of the operation of the Act at the national level should satisfy possible concerns about the exercise of those powers at the national level, because we are giving the state Commissioner of Police the power to refer matters, a review of the operation of the Act at a state level must be held.

I acknowledge that the ACC Act has much stronger constraints on the initiation of the exercise of power than does the Western Australian CCC Act. I drew attention by interjection to the fact that the crime commission in New South Wales and the Crime and Misconduct Commission in Queensland must refer any investigation for approval to a state management authority, which comprises the Attorney General, the Commissioner of Police and so on. They are similar in structure to this only, obviously, nine police commissioners are not involved. That is a much more powerful constraint upon the exercise of the extraordinary powers than is available in Western Australia, where the Commissioner of Police merely applies to the Commissioner of the CCC for authority to exercise those powers, in which case they are exercised by the CCC overseeing the operations of the Police Service.

Those matters that Hon Giz Watson raised are proper matters for review. I can stand here and say that my past experience gives me confidence in the integrity of our Police Service, particularly since the royal commission, or, as I have called it, the royal omission! My confidence needs to be reaffirmed by a review of the Act. Although some people might want to argue that this is an unnecessary provision, we are dealing with the operation of state criminal law and the referral of investigation under state criminal law; therefore, the State Parliament should be authorised to review it.

New clause put and passed.

Title put and passed.

Bill reported, with amendments.

Leave granted to proceed forthwith through remaining stages.

Report

Report of committee adopted.

Third Reading

Bill read a third time, on motion by Hon Nick Griffiths (Minister for Housing and Works), and returned to the Assembly with amendments.