

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

Tenth Report — “How the Corruption and Crime Commission Can Best Work Together with the Western Australian Police Force to Combat Organised Crime” — Tabling

MR J.N. HYDE (Perth) [10.15 am]: I present for tabling the tenth report of the Joint Standing Committee on the Corruption and Crime Commission entitled, “How the Corruption and Crime Commission Can Best Work Together with the Western Australian Police Force to Combat Organised Crime”.

[See paper 2458.]

Mr J.N. HYDE: I commend this report very strongly to members and urge them all to read it and fully consider our findings and recommendations. Our committee has devoted a year of solid research, debate, analysis and argument within dozens of closed hearings and interviews with key operatives who are at the cutting edge of fighting modern, organised crime. In looking at how the Corruption and Crime Commission can best work together with Western Australia Police to combat organised crime, we have had to rigorously examine how changing the current role of the CCC would impact on its own core business as well as on the best practice commitment of WA Police to tackling organised crime. Above all, we have had to focus on what legislative, policy or funding changes in WA would have the greatest impact on organised crime.

The four committee members—two government and two opposition—have unanimously and strongly endorsed our major finding, as has the Parliamentary Inspector of the Corruption and Crime Commission, Hon Chris Steytler; a former assistant commissioner of the Queensland Crime and Misconduct Commission, Mr Felix Grayson; and the deputy chairman of the Hong Kong Legislative Council Panel on Security, Hon James Kun-sun.

Our major recommendation is that the CCC not take on an organised crime-enhanced crime-fighting role. The committee found that the major obstacle to the police and the CCC accessing existing joint organised-crime powers is the deficient, limiting definition of organised crime in the Corruption and Crime Commission Act. A simple amendment, as previously recommended by the JSCCCC, and the Gail Archer review, should be included as a priority in planned amendments to the act later this year.

The CCC and WA Police have put forward a joint proposal for the CCC act to be amended to allow the CCC to undertake investigations into organised crime. This would represent a significant increase in the CCC’s jurisdiction. It would see the CCC become both an integrity agency and a crime fighter. The committee found a significant number of fundamental flaws with the proposed model. While the idea of the CCC and the WA Police working together to combat organised crime looks good in theory, such a close working arrangement would clearly compromise the authentic independence of the CCC. Organised crime has long proved to be a major source of police corruption worldwide. Our committee has found that the CCC can best aid the fight against organised crime in WA by ensuring that WA Police remain free of corruption rather than engage in its own organised crime investigations.

The committee also found that WA Police is under-resourced in combating organised crime compared with its interstate and commonwealth counterparts. WA Police has told us that it had to approach its commonwealth and interstate peers in the hope of borrowing the resources necessary to tackle organised crime syndicates in this state, which is clearly most undesirable. The CCC has told us that it will need \$42 million over five years to establish an effective organised crime-fighting capacity. If the government considers that additional money should be spent on the fight against organised crime, the committee unanimously believes that any such money would be better spent on enhancing the organised crime-fighting capacity of WA Police.

I would like to put our 285-page report into a context. I urge the government and this Parliament, which must scrutinise any amendments to the CCC act, to reject the proposal to duplicate the functions of the WA Police by changing the CCC into an organised crime-fighting body. For nearly 10 years, I have been either a member of the Joint Standing Committee on the Corruption and Crime Commission or the parliamentary secretary to the Attorney General—two roles that both involve oversight and liaison with the CCC and that apply best practice in corruption fighting.

Our CCC was formed primarily as a response to police corruption and misconduct, revealed through the Kennedy royal commission. The existence and the operation of the CCC has been very successful in revealing corruption and misconduct within the police and other public sector bodies. But, more important, it has deterred corruption and misconduct. My colleague the member for Swan Hills will detail later the successes of the CCC, which some people ignore. WA Police is a very different body today from the one that was exposed by the royal commission. One of the biggest successes of the CCC is that it has fostered agencies like the police to take ownership of their ethical behaviours and cultures. It is arguable also that WA Police, when benchmarked with

other police agencies, is today a highly ethical body, and, because of this, it is also a much more successful organised crime-fighting body.

Our CCC, like all the other corruption-fighting bodies in Australia, has been modelled on the spectacularly successful Independent Commission Against Corruption in Hong Kong. Our CCC, as the most recent of the Australian bodies, is based most closely on the Crime and Misconduct Commission model in Queensland. However, in setting up the CCC in this state, we did not follow the Queensland model of creating a crime commission by staffing the CCC with serving police officers and giving it the state's witness protection responsibility, as happened in Queensland. In Western Australia, those roles are well conducted by WA Police.

Our committee is convinced, after research, and after speaking with current and former operatives and associates of both bodies, particularly in Queensland and Hong Kong, and also in Western Australia, that to try to turn a successful anti-corruption body like the CCC into an organised crime-fighting body via the reference group model would be a major mistake. In saying that, let me quote from Felix Grayson, formerly the most senior police officer within the Crime and Misconduct Commission in Queensland —

I would advise WA Parliament not to permit the CCC to conduct joint operations with the police, but to enhance the police access to extraordinary powers by the CCC. Such an emphasis would facilitate the greatest incidence of the CCC and the police working together rather than in competition with each other.

This committee was rigorously thorough, constantly referencing back to the CCC and WA Police as we developed arguments for and against a reference group model. Philosophically, it became evident that the reference group model, under which only the CCC and the Commissioner of Police would share organised crime information, and sometimes not even share its context, plus retain an individual veto, would not be effective. It is clear that best practice organised crime fighting needs total trust and transparency at all levels.

I want to pay tribute to the fine serving officers of WA Police and the CCC, who frankly shared information, sometimes confidential operational material, in camera with us. I also salute the professionalism and integrity of both police commissioners in allowing us access to their officers, even as it must have become evident to them that we might recommend against the reference group model that they support.

Our report frankly details that the CCC would anticipate spending \$42 million over five years to set up its own organised crime division. This would have serious budget implications, be it from new allocations, or from the CCC cutting back on current activities or contingency planning. The committee then thoroughly examined how a much better organised crime result could be achieved by spending that same \$42 million on the under-resourced WA Police's organised crime-fighting activities. This Parliament should be better informed on how WA taxpayers' money is being spent. We were very impressed with much of the cutting-edge equipment and modus operandi that WA Police are successfully employing in fighting organised crime. We were equally dismayed at the under-resourcing in key areas, and the subsequent practice of having to borrow state-of-the-art equipment and techniques from interstate. Clearly for operational reasons and sub judice considerations, we have not publicly detailed these issues in any depth.

Our report details how official views on the costing of the CCC's organised crime function have varied over time, from a cost neutral position, to \$5 million, and to now a more accurate estimate of \$42 million. Let me drill down to just one line item in an organised crime-fighting budget to illustrate our macro findings in this report. I will give the example of the translation services that are needed today in combating organised crime in Western Australia. Organised crime is international in nature. In chapter 4 of our report, members can read a detailed budget of what the organised crime unit in WA Police would spend if it had a similar budget to that proposed for the CCC. The extra \$330 000 to be spent annually on translation services far exceeds the WA Police current published budget for translation services across all its function. Clearly, from the publicly available police budget, this is currently an under-resourced area. Given the languages used in international organised crime operations in Western Australia, and the absolute accuracy needed to provide the best possible translation for intelligence and evidence gathering, secure and accurate translation services are fundamental to fighting organised crime. A CCC with a function of fighting organised crime would need to also replicate this important tool in combating organised crime.

In 2007, police commissioner O'Callaghan put a cogent case to the then joint standing committee as to why the CCC should not have the ability to engage in organised crime investigation. Our report details the reasoning from the commissioner as to why by 2009 he had changed his position to one of supporting the reference group model. The committee's clear finding at paragraph 4.1 of our report is —

The WA Police are under-resourced in combating organised crime compared to their State and Commonwealth counterparts.

The committee report goes on to say at paragraph 4.2 —

Certain technologies to combat organised crime are now available to other law enforcement agencies throughout Australia that the WA Police do not have access to, and that deficiency will not be remedied by the Reference Group Model.

Thus, the committee recommends that government should resource the WA Police additionally before any consideration should be given to giving additional resources to the CCC to enable it to undertake organised crime investigations.

Our report does detail as much public information as we could reveal from Charlie Carver, the detective superintendent in charge of the serious and organised crime division of WA Police. In chapter 6 of our report, we detail how the CCC foresees the reference group model working, with WA Police not able to use CCC resources as they deem necessary, with the CCC commissioner vetoing such a proposition, and with WA Police not having direct access to CCC technology. Unlike in Queensland, the CCC in Western Australia does employ serving police officers. The CCC, quite rightly as a corruption prevention and police oversight body, would not want WA Police, or corruption suspects, to be aware of the CCC's full capabilities. The committee sees this as the core conflict between the CCC continuing to be a successful anti-corruption agency and also trying to be an anti-organised crime body. As outlined in the report, Mr Carver's response to this was —

The [Reference Group] model could be a great idea, but it will not work with the current attitude and philosophy.

He went on to say —

I will go on record to say that I would prefer to work with the CCC using their abilities with technical capabilities, but there has to be a need to share. If they do not share, I would say that would be almost impossible to work with.

So, the evidence from Queensland and Hong Kong, and from Mr Carver here in Western Australia, is that to minimise distrust and to promote cooperation between an integrity agency and a police force, the rank and file of both agencies must be able to integrate and co-mingle on organised crime. In Hong Kong, it appears that integrated joint operations are the rare exception. In Queensland, it appears that the CMC crime area is effectively a branch of the Queensland Police Service, although subject to a civilian boss.

The committee's seventh finding is that the CCC, if it were given an enhanced organised crime-fighting function, will compete with WA Police for funding to discharge the same function. This is a finding with which Mr Carver agrees.

The dearth of skilled operatives in Western Australia to combat organised crime is another issue. Mr Carver states —

Having another agency investigating organised crime in this state would only confuse things.

Our committee has produced much evidence to support our ninth finding that the reference group model is an inefficient way to combat organised crime. We also strongly conclude that it is premature to argue that the exceptional powers regime has been ineffective. I argue that the original legislation actually got it right, although as discussed previously the definition of organised crime was too narrow. We believe the reference group model carries with it an unacceptable risk that the CCC's integrity and independence will be compromised. The WA public has enormous confidence in the CCC's integrity, which we display in this report. Yet the CCC will be exposed to greater risks of corruption if it engages in organised crime investigations. We include a lengthy summary of the Kennedy Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. Fewer than 20 years ago, before the advent of the CCC, WA Police were exposed in major corrupt activities. The Kennedy royal commission details corruption that occurred when police were involved in private security work for individuals, companies, local hotels and others. At a time when the WA government is considering WA Police charging private operators of events for services, the WA community would want to be confident that its CCC was focused on oversight, so that any potential for police to be diverted to private profit-making events rather than core business was transparent.

Our finding 16 warns against the police being given the power to self-authorise the use of exceptional powers beyond that which presently exist. We believe that this will lead to an unacceptable and unnecessary erosion of civil liberties in WA and would increase the risk of harm to the public. Again, it highlights our view that we need a focused CCC, strong on police oversight and deterrence. I draw members' attention to a draft in the report's appendix on page 210, which shows that use of telephone intercept warrants by the WA Police has greatly increased in 2008–09, while the CCC's use of them has trended down to just 50. Telephone intercepts are an important tool in the fight against organised crime, yet the police use of them gets nowhere near the scrutiny that the CCC's use does. As our police are given more and more powers by the government, a stand-alone,

independent CCC is even more vital. This committee strongly and unanimously believes WA is best served by a strong anti-corruption-focused CCC and a strong well-resourced, organised crime-focused WA Police.

I wish to thank my fellow committee members, our chairman, Hon Nick Goiran; Mr Frank Alban; and Hon Matt Benson-Lidholm, for their dedication during the intense 12 months of work we have shared in this report. I thank also our principal research officer, Scott Nalder, and research officer, Michael Burton, who have proved invaluable contributors to this report, for not only their professionalism but also their intellectual support for us to rigorously pursue questioning and research that some may find upsetting and uncomfortable.

I believe this report is a solid example of the value of parliamentary committees. That four members who represent as diverse a spectrum as possible in the political make-up and belief system in this Parliament have come to an identical conclusion should not be ignored by our colleagues in both chambers when we come to evaluate legislative changes in the Corruption and Crime Commission Act. I commend our report to the house.

MR F.A. ALBAN (Swan Hills) [10.32 am]: I would like to add my contribution to debate on the report tabled. At present the Corruption and Crime Commission is an integrity agency. Its resources are devoted to maintaining and enhancing the integrity of the public sector, which includes the police. Its role in combating organised crime is limited to conferring upon Western Australia Police certain exceptional powers to combat organised crime. Its role is to act as a gatekeeper to the police. There is now a proposal on the table for the CCC to become a fully fledged crime fighter. It is proposed that there be a reference group comprising the CCC commissioner and the Western Australian police commissioner. This reference group will issue grants of authority for the CCC to undertake organised crime investigations. This is known as a reference group model.

A reference group model was put to the government by a working group comprising representatives of the Corruption and Crime Commission, the office of the Director of Public Prosecutions, WA Police, the Department of the Attorney General and the State Solicitor's Office. This report details the committee's examination of the reference group model. The purpose of the Joint Standing Committee on the Corruption and Crime Commission's report is to provide members with an analysis of the issues and the potential problems of the reference group model. The committee looked at two main issues. The first is how the reference group model would work in practice. We wanted to know if it was realistic to assume that the CCC and Western Australia Police could work collectively together when the CCC is also the watchdog of WA Police. The second issue was that we wanted to know what effect the CCC fighting organised crime would have on the ability of the CCC to discharge its existing integrity function. I want to start with the last point first as I think it is the most important.

I have no doubt that if the CCC were to acquire jurisdiction to fight organised crime, it would do a good job. However, it would need lots of money to do it. It is not simply a case that the CCC would stop what it is doing now and start fighting organised crime. We would be asking the CCC to do the job of two organisations, and it would need more funds to do this. We are not talking about a small amount of money. As the previous speaker and fellow committee member said, the CCC will need at least \$42 million over five years with an ongoing \$9 million a year after that. I will return to the issue of money later. Of more importance, I think, and what members must ask themselves is: if the CCC becomes a crime fighter, will this compromise the independence of the CCC and its ability to discharge its job in looking after the public sector and, more specifically, Western Australia Police?

Western Australia has an enviable reputation of having low levels of corruption in its private sector. The integrity of the public sector is an extremely valuable asset of Western Australia. Businesses are willing to invest billions of dollars in Western Australia, and Western Australians have a high level of confidence in dealing with public institutions. The lead organisation entrusted with the responsibility of overseeing the integrity of the public sector is the CCC. It is a massive job. In the 2009–10 financial year the CCC in its education role delivered 101 corruption prevention and education presentations and workshops to more than 3 500 public officers. This is an extremely significant aspect of this work that the CCC considers to be one of its most important. The CCC reviewed the policies and procedures relating to misconduct of the then Department for Planning and Infrastructure and the Department of Health. The CCC received more than 3 200 allegations of misconduct; it referred four per cent of those to WA Police for investigation and referred 78 per cent to the agency concerned for investigation. The CCC monitored 1 600 agency investigations. It reviewed the conduct and outcomes of 1 800 agency investigations, undertook 143 new misconduct investigations, continued a review of Taser use by the police and charged nine persons with 174 criminal offences.

I hope members can appreciate from what I have said that looking after the public sector is a full-time job and the CCC does it well. If I can be even more specific, looking after the Western Australian police force is a full-time job. Organised crime has long proved to be a major source of police corruption worldwide. My fellow committee members and I believe that the CCC can best aid the fight against organised crime in Western Australia by ensuring that the Western Australian police force remains free of corruption, rather than engaging in its own organised crime investigation. A powerful police force requires a powerful CCC to oversee it.

The committee went to Hong Kong to listen to the premier corruption fighting body in the world, the Independent Commission Against Corruption. Everyone there told us that the reason why the Hong Kong ICAC was so successful was that it protected its brand and reputation by ensuring that its independence and integrity were bulletproof. They advised against allowing the CCC to work together with the police in fighting against organised crime. They said very clearly that the CCC should stick to what it does best—corruption fighting—and let the police stick to what they do best—fighting crime. The committee heard evidence from the Queensland Crime and Misconduct Commission. In Queensland, the CMC has a dual role to oversee Queensland Police and at the same time work with Queensland Police to combat serious and organised crime. The committee was told the CMC is a great example of an integrity agency that could fight organised crime at the same time as carry out its other functions. We thought we could learn much about how the CMC managed the inherent conflicts arising from its dual roles. We learned that the CMC crime unit is practically a branch of Queensland Police. Queensland police officers sit inside the CMC and deal with Queensland police officers outside the CMC. It is police all the way inside the crime unit of the CMC. The second in command of the CMC crime unit is a police officer. The committee was told by a former chairman of the CMC, Mr Robert Needham, that without this secondment arrangement, the CMC would not even be looked at by Queensland Police. Mr Needham had this advice for us —

... quite frankly, if they —

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do not have police officers in the CCC, I do not know that there will ever be good cooperation in investigating together organised crime.

We then learnt from the CCC commissioner that he did not permit police inside the CCC. How then, in light of Mr Needham's evidence, is there ever going to be genuine cooperation between the CCC and police?

We also heard evidence from the current head of the serious and organised crime division of Western Australia Police, Detective Superintendent Charlie Carver. He believes that without police secondees working within the CCC, there will not be the requisite level of trust to enable the CCC and police to work together cooperatively. I add that I do not for one minute criticise the CCC commissioner for refusing to allow police officers to work within the CCC. It merely underscores how difficult it will be for the CCC to have a meaningful partnership with police to combat organised crime on one hand, and on the other hand to remain a strong watchdog over police.

The committee's inquiry also uncovered two important pieces of information. The committee received a confidential briefing from Western Australia Police on how it tackles organised crime. The presenter of the brief said Western Australia Police lags behind other law enforcement agencies in this country in terms of technology and skilled personnel to track, monitor and apprehend organised criminals. We were given a graphic example in which Western Australia Police had to beg and borrow resources from a commonwealth agency to continue an investigation. It was obvious to all members of the committee that Western Australia Police needs to immediately acquire this technology and associated staff in its own right. However, this technology is very expensive, which then brings me back to the issue of money. The CCC said it would need \$42 million over five years to have, in its words, a mature, organised crime function without sacrificing its current misconduct function.

I commend this report to the house.