

Corruption and Crime Commission Amendment (Investigative Function) Bill 2007

Explanatory Memorandum (E262)

(Introduced by Hon Paul Omodei MLA)

This bill amends the *Corruption and Crime Commission Act 2003* to give the Corruption and Crime Commission (the **Commission**) the power to investigate serious crime independently of the Western Australian Police.

Under the current legislation, the Commission is only capable of granting exceptional powers to the police to assist in their investigations of organised crime investigations in limited circumstances. The Commission cannot actively participate in the investigative process with the police, nor can it enter into task forces with the police or other law enforcement agencies.

Unlike Western Australia, Queensland and New South Wales legislation empowers their respective crime commissions to investigate major or serious crime matters that have been referred to them by a referral or management committee.

The proposed amendments have been drafted in accordance with the recommendations put forward by the Joint Standing Committee on the Corruption and Crime Commission Report 31 2007 (the **Report**).

The bill is modelled on the following legislation referred to by the Standing Committee:

- *Crime and Misconduct Commission Act 2001* (Qld) (**CMC Act**)
- *New South Wales Crime Commission Act 1985* (NSW) (**NSWCC Act**)
- *Independent Commission Against Corruption Act 1988* (NSW) (**ICAC Act**)
- *Australian Crime Commission Act 2002* (Cth) (**ACC Act**)
- *Australian Crime Commission (Western Australia) Act 2002* (WA) (**ACC(WA) Act**)

The bill proposes to give the Commission the power to investigate serious crime matters that are referred to it by the Corruption and Crime Commission Reference Group. The Corruption and Crime Commission Reference Group will consist of the Commissioner of the Commission and the Commissioner of Police.

The term “serious crime” is wider than the current definition of “organised crime”. The proposed definition of “serious crime” incorporates organised crime, indictable offences punishable by a term of imprisonment of not less than 14 years, ancillary offences and indictable offences. The Commission will only have the power to investigate offences that fall under this category.

The bill also allows the Commission to enter into joint taskforces with the police or operational agreements with other law enforcement agencies.

The Commission will be required to report on the number of serious crime matters referred to them by the Reference Group, and auditing and monitoring procedures may be put in place to ensure accountability.

Part 1 – Preliminary

Clause 1 Short Title

Provides for the Act to be cited as the *Crime and Corruption Commission Amendment (Investigative Function) Act 2007*.

Clause 2 Commencement

Provides for this Act to come into operation on the day it receives Royal Assent.

Part 2 – Amendments to the *Crime and Corruption Commission Act 2003*

Clause 3 The Act amended

Provides that the amendment to this Part is to the *Crime and Corruption Commission Act 2003*.

Clause 4 Section 3 amended

Subsection 3(a) inserts the definition of an “ancillary offence” as recommended in Recommendation 4 of the Report. The definition is modelled on the ACC Act.

Subsection 3(b) inserts the definition of a “law enforcement agency” to include the police force of another State or Territory, the Australian Federal Police and any other law enforcement authority or person in Australia.

Subsection 3(c) repeals the current definition of “organised crime” and replaces it with the ACC Act definition as suggested in Recommendation 1 of the Report.

Subsection 3(d) inserts the definition of “serious crime” as the definition given in section 5.

Subsection 3(e) amends the definition of “organised crime examination” by replacing the words “organised crime” with “serious crime”.

Subsection 3(f) amends the definition of “organised crime summons” by replacing the words “organised crime” with “serious crime”.

Subsection 3(g) inserts the definition of “Reference Group” to mean the Corruption and Crime Commission Reference Group.

Subsection 3(h) deletes the definition of “Schedule 1 offence”.

Subsection 3(i) deletes the definition of “Section 5 offence”.

Subsection 3(j) inserts definition of an “incidental offence” as it appears in the ACC and ACC(WA) Acts. This is based on Recommendation 3 of the Report.

Clause 5 Section 5 replaced

Replaces the current section 5 and inserts the definition of “serious crime” according to Recommendation 2 of the Report. The definition is modelled on the definition of “major crime” under the CMC Act and encompasses indictable offences punishable by a term of imprisonment of 14 years or more, organised crime, an ancillary offence and an incidental offence.

Clause 6 Section 7A amended

Amends section 7A(a) by deleting the term “organised crime” and replacing it with “serious crime”.

Clause 7 Section 7B amended

Amends section 7B(2) by deleting the term “organised crime” and replacing it with “serious crime”.

Clause 8 Section 17 amended

Amends section 17(2)(a) by deleting the term “organised crime” and replacing it with “serious crime”.

Clause 9 Section 21 amended

Amends this section by deleting the term “organised crime” and replacing it with “serious crime”.

Clause 10 Part 4 replaced

Repeals the current Part 4 (Organised Crime Function) and replaces it with a new Part 4 (Serious Crime) modelled on the CMC Act. This part empowers the Commission to independently investigate serious crime matters that are referred to it by the Reference Group and as stated in Recommendation 5 of the Report.

Division 1 defines the Commission’s serious crime function and the performance of its investigative powers.

Division 2 outlines how the Reference Group is to refer matters to the Commission. This includes the matters that need to be taken into account before the Reference Group may be satisfied that a matter should be referred. The Reference Group can also give directions to the Commission in regards to the investigation.

Division 3 allows the Commissioner to make arrangements to establish joint task forces with the Commissioner of Police and to enter operational agreements with other law enforcement agencies. This Division is drafted in light of Recommendation 6 of the Report and is modelled on the provisions of the CMC Act.

Clause 11 Section 91 amended

Inserts section 91(1)(r) to require the Commission to include in its Annual Report to Parliament the number of serious crime matters that are reported to the Commission by the Reference Group.

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Clause 12 Section 137 amended

Amends this section by deleting the term “organised crime” and replacing it with “serious crime”.

Clause 13 Section 140 amended

Amends section 140(1) by deleting the term “organised crime” and replacing it with “serious crime”.

Clause 14 Part 12A inserted

Inserts a new Part 12A to establish the Corruption and Crime Commission Reference Group. The Reference Group consists of the Commissioner of the Commission and the Commissioner of Police as recommended by the Report. The Commissioner may delegate the responsibility to the Acting Commissioner in exceptional circumstances if either the Commissioner or Commissioner of Police is unable to participate in a Reference Group meeting. Both Commissioners must be satisfied before referring a serious crime matter for investigation.

Clause 15 Section 195 amended

Inserts section 195(1)(bb) to extend the Parliamentary Inspector’s functions to enable him to undertake appropriate auditing and monitoring of the Reference Group.

This is inserted in light of the Recommendation 8 of the Report.

Clause 16 Schedule 1 repealed

Repeals Schedule 1 as the Schedule is redundant due to the amendment to the definition of organised crime.