

**CORRUPTION AND CRIME COMMISSION AMENDMENT (MISCONDUCT) BILL 2014**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Attorney General)**, read a first time.

*Second Reading*

**HON MICHAEL MISCHIN (North Metropolitan — Attorney General)** [12.30 pm]: I move —

That the bill be now read a second time.

This bill aims to amend the Corruption and Crime Commission Act 2003 to transfer the oversight of minor misconduct by public officers from the Corruption and Crime Commission to the Public Sector Commissioner. The CCC's misconduct prevention and education function will also be transferred to, and exercised by, the Public Sector Commissioner. In this aspect, the CCC's role will be redefined to oversight of serious misconduct of public officers. However, the CCC's current jurisdiction over all matters of police misconduct, including prevention and education, will be retained. In this way the CCC will continue to oversee the conduct of police officers and other government officers employed by WA Police. To the extent to which its oversight and prevention functions are entwined, the CCC will be given power to assist, in cooperation with the Public Sector Commissioner, any public authority that it identifies in the course of performing its other functions as having a "special need" to increase its capacity to prevent, or combat, misconduct.

To ensure that suitably qualified candidates can be attracted for possible appointment to the position of Commissioner of the Corruption and Crime Commission, it is proposed to change the remuneration arrangements that apply to the commissioner. The intention is to encourage high quality candidates to make themselves available for appointment. This is in order to meet the requirement to have an appropriately qualified and experienced person appointed as the CCC's commissioner and accountable authority. Part of the difficulty in seeking to attract suitably qualified candidates is the current remuneration. Bodies similar to the Corruption and Crime Commission in New South Wales and South Australia, on which retired judges serve, provide remuneration for the commissioner equivalent to a judicial salary. If the commissioner is a retired judge receiving a pension, there is no reduction in the salary. The amendment in this bill has the effect that the Commissioner of the Corruption and Crime Commission will receive the remuneration of a judge of the Supreme Court. In broad terms, only a judge, serving or retired, of an Australian court, or a legal practitioner of more than eight years' standing, are qualified for appointment as the Commissioner of the Corruption and Crime Commission. A serving judge must retire upon appointment as commissioner. The remuneration of the commissioner is the same as that of a judge of the Supreme Court, but if the commissioner is a retired judge receiving a pension, the commissioner receives the difference between that pension and the full judicial salary. So, if the commissioner is a retired judge, he or she will receive 40 per cent of a judicial salary for doing a full-time job. All commissioners to date have been retired judges, and it is hoped and expected that this tradition will continue. The commissioner is appointed by the Governor on the recommendation of the Premier. The Premier can recommend only a person who is on a list of three candidates submitted to the Premier by a nominating committee comprising the Chief Justice, the Chief Judge, and a community representative. The person appointed must have majority and bipartisan support of the Joint Parliamentary Standing Committee on the Corruption and Crime Commission. Consultation has been undertaken with the Chief Justice, who chairs the nominating committee, and the Solicitor-General, and they each endorse this proposal.

This bill is aligned with the Liberal Party's 2013 public sector management policy in aiming to provide greater focus on achieving better outcomes in public sector performance. The CCC's priorities will be redirected from minor misconduct matters to its core police oversight role and to more serious misconduct matters. Matters of minor misconduct comprise the largest number of disciplinary issues concerning public bodies and officers. As the Public Sector Commissioner already has a strong presence in advising, educating and training on disciplinary matters, the transfer of minor misconduct and prevention and education functions from the CCC will complement his current responsibilities.

Some members will recall that in June 2012, the Premier introduced the Corruption and Crime Commission Amendment Bill 2012 to the preceding Parliament. That bill proposed, in addition to transferring oversight of minor misconduct by public officers from the CCC to the Public Sector Commissioner, a number of other changes to the CCC. Those earlier proposals involved a closer cooperative working relationship between police and the Corruption and Crime Commission, and provided the CCC with an investigative function into serious and organised crime.

Aspects of the 2012 bill were criticised in some quarters as having the potential to damage the independence, and hence the effectiveness, of the CCC in regard to its role of overseeing police conduct. The 2012 bill did not proceed past the second reading stage due to the 2013 election. As the *Hansard* record reflects, the Premier has

said previously that the government is not ignorant of the potential risks to the CCC's independence by enabling it to work more closely with police. Further work will therefore be undertaken to refine the legislative mandate of the CCC and its structure in order to enhance its capacity to combat organised and serious crime. The government plans to introduce additional amendments to this effect at a later stage.

The bill that I am now introducing entails transferring the oversight of minor misconduct by public officers from the CCC to the Public Sector Commissioner and largely reflects the 2012 bill with respect to the transfer of functions to the Public Sector Commissioner. The Public Sector Commissioner's minor misconduct jurisdiction will not include police misconduct, misconduct by members or the Clerks of the Parliament or local government members or councillors. The Public Sector Commissioner's jurisdiction is, however, expanded under the bill to include minor misconduct of staff and board members of government trading enterprises, local government staff, and university staff and board members, which already fall within the public interest disclosure regime administered by the Public Sector Commissioner. "Minor misconduct" is constituted by the conduct defined in section 4(d) of the current definition of "misconduct". However, paragraph (v) of that definition, which relates to an offence against the Statutory Corporations (Liability of Directors) Act 1996, has been removed as it is considered superfluous. "Serious misconduct" of public officers is all conduct mentioned in sections 4(a), (b) and (c) of the current definition of "misconduct" in the CCC act. Serious misconduct is therefore misconduct that involves corruption or a criminal offence punishable by two or more years' imprisonment. The CCC's jurisdiction with respect to serious misconduct remains unchanged with respect to public officers other than members of Parliament. The role of the CCC in relation to members of Parliament has been clarified to avoid any concurrent role for the CCC over matters in which the Parliament is able to exercise its authority pursuant to parliamentary privilege. Because members and the Clerks of the Parliament will also be excluded from the ambit of the Public Sector Commissioner's minor misconduct role, sections 27A and 27B will serve no further purpose and are to be repealed.

This bill will also transfer the prevention and education function from the CCC to the Public Sector Commissioner. Provision is made for the Public Sector Commissioner and the CCC to consult, cooperate and exchange information. It is envisaged that the two commissioners will, for example, consult when preparing guidelines under the CCC act to ensure that those guidelines are integrated and do not create duplicated reporting requirements. The bill will also rename the principal act as the Corruption, Crime and Misconduct Act 2003.

The government believes that this bill enhances the integrity and accountability of public officers by refocusing the CCC as the state's pre-eminent corruption-fighting body. To provide greater, and more responsible, levels of protection to Western Australians, this bill proposes directing the CCC's attention and efforts towards more serious misconduct and corruption matters. With the Public Sector Commissioner absorbing responsibility for oversight of less serious misconduct by public officers, and undertaking a key role in prevention and education, this government believes the Public Sector Commissioner's independent statutory functions, which are integral to the performance of the public sector, will be further enhanced. I commend the bill to the house.

I advise the house that the bill is not a uniform legislation bill as it does not ratify or give effect to an intergovernmental agreement to which the government of the state is a party, nor does the bill by reason of its subject matter introduce a uniform scheme or uniform laws.

I commend the bill to the house and table the explanatory memorandum.

[See paper 2166.]

Debate adjourned, pursuant to standing orders.