JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

Seventeenth Report — "Meaningful Reform Overdue: The Corruption, Crime and Misconduct Act 2003" — Tabling

MS M.M. QUIRK (Girrawheen) [11.48 am]: I present for tabling the seventeenth report of the Joint Standing Committee on the Corruption and Crime Commission titled "Meaningful Reform Overdue: The Corruption, Crime and Misconduct Act 2003".

[See paper 4017.]

Ms M.M. QUIRK: It seems apt, at the conclusion of the fortieth Parliament, to table a report that will provide guidance and an overview for the Joint Standing Committee on the Corruption and Crime Commission of the forty-first Parliament. In the seventeenth report of the Joint Standing Committee on the Corruption and Crime Commission, unambiguously entitled "Meaningful Reform Overdue", members will find a compilation of matters either deficient, obsolete or unclear in the Corruption, Crime and Misconduct Act 2003. These were identified by either stakeholders, the Parliamentary Inspector of the Corruption and Crime Commission, the committee of the thirty-ninth Parliament, the current committee or the CCC itself. There is a growing consensus that tinkering with incremental and piecemeal changes to the existing act is no longer satisfactory. It is time for a replacement act that clarifies ambiguity and resolves aspects of the existing laws that have proved unworkable or ineffectual.

It should be noted that the committee does not express any opinion on the appropriateness or otherwise of recommended changes. That is a matter for government policy to address. We would, however, say that given the last statutory review by Gail Archer, SC, occurred in 2008, it is timely, if not overdue, to address the issues set out in this report. Optimally, there should be a total overhaul of the legislative regime by the introduction of a new act. Without much-needed change, the seamless operation of the peak anti-corruption body in the state cannot be achieved. For example, as the legislative scheme now operates, serious misconduct is dealt with by the Corruption and Crime Commission and, on the other hand, allegations of minor misconduct are addressed by the Public Sector Commission. On its face, that appears to be a straightforward demarcation. In some cases, whether it is the CCC or the Public Sector Commission that handles an allegation is a matter of negotiation and triage between the two agencies. In evidence the committee heard less than a month ago, it seems that the threshold has been lowered by the CCC, and it is now prepared to look at some cases that previously it would have defined as minor misconduct and consigned to the Public Sector Commission. It is not clear why this has occurred. Whilst it might seem to be a pedantic quibble, it illustrates that legislative definitions are fluid and require attention.

Likewise, in a recent committee report, we queried why so few allegations of excessive use of force by police have been investigated by the CCC. That report reminds us that the rationale for establishing the CCC arose out of the Kennedy royal commission into police. Unlike other jurisdictions, in WA, the CCC is charged with investigating both public sector corruption and the oversight of police in order to maintain police integrity and, as a corollary to that, give the public confidence in our police. The committee's inquiry found that there is little appetite on the part of the CCC to look at allegations of excessive use of force even when police internal investigation processes have failed or been demonstrably deficient. It may well be that police internal investigations are now sufficiently professional, thorough and robust for it to take the lead, but that does not change the legislative role allocated to the CCC. This is a case in which, as a matter of practice, the legislative intent is no longer reflected in how the CCC allocates its priority work. Although a matter of government policy, it begs the question of whether a new act should reflect this change in priorities.

Likewise, the so-called organised crime function to be undertaken in concert with police is rarely used. The only area that it could be argued touches upon organised crime investigations is the relatively recently conferred power to look at unexplained wealth. Such powers are fundamental to any focus on organised crime and corruption. The original legislative regime contemplated as an adjunct for organised crime investigations is not, in fact, used. We have also heard evidence during the fortieth Parliament of the many technical flaws in the current act that practically hamper the CCC from optimally performing its important role.

All of this begs the question: what do we want to focus upon in any new legislative regime for the CCC? The kinds of issues we must address in any new incarnation of the CCC, or more specifically its legislative framework, are similar to those currently facing the federal government. The commonwealth is moving at glacial speed to establish an integrity commission. Earlier this month, it released a mind-boggling 390 pages of draft laws. Under these, the integrity commission would be split into two divisions. One would investigate enforcement agencies, the Australian Federal Police and the Department of Home Affairs and the other would look at the public sector and members of Parliament. The first division will have the power to hold public hearings, but that will not extend to those that investigate politicians. This somewhat artificial distinction is controversial and has left its proponent, no doubt grateful for any distraction, federal Attorney-General Christian Porter asserting —

> … that ultimately a court should be making a public determination of guilt or innocence."

Independent MP Helen Haines has introduced her own bill. Impatient at the lack of progress, she proposes —

> … public hearings when in the public interest, with ethical safeguards to prevent "the unfair trashing of reputations".

Leading academic Professor A.J. Brown in an article published on The Conversation website on 2 November considers that there are three elements to establishing a successful anti-corruption body—that is, resources, scope and powers. The proposal for the new federal body is that it be allocated $42 million annually. This compares with the $27 million allocated in Western Australia alone for the CCC. Brown asserts that the $42 million is not enough to fix all the gaps in the federal government's accountability framework but it is a move in the right direction.

Of more concern is the scope of the new body. It will extend to only 20 per cent of the public sector. Law enforcement and regulatory bodies like the Australian Securities and Investments Commission and the Australian Taxation Office will be covered by the existing Australian Commission for Law Enforcement Integrity. The powers of the new body will be exercised in private but only when there is a reasonable suspicion of a criminal offence. Although broad powers like phone taps, compelling evidence and search and seizure under warrant will be conferred, the grey area of corruption, such as undisclosed conflicts of interest, will not be examined unless a criminal offence, such as theft or fraud, is already evident. Likewise, the obligation for agency heads to report suspected corruption offences will be limited in the same way; namely, there must be a reasonable suspicion of criminal activity at the outset.

Even more alarming according to Professor Brown is the fate of public sector whistleblowers who approach the integrity commission. Not only will they be turned away if there is no actual evidence of a criminal offence; they even risk prosecution for an unwarranted allegation. We know from the Western Australian experience that the role of whistleblowers is vital and they should not be deterred from acting. In most, if not all, of the high-profile cases in WA, investigations were initiated by virtue of information from whistleblowers.

Madam Acting Speaker, it is also argued that the federal integrity commission will not be able to act on anonymous tip-offs, only on referrals from other government agencies. A power will also be conferred on the federal Attorney-General to declare that certain information should not be disclosed to the integrity commission on the broad grounds that it would harm Australia's defence, prejudice relations between the commonwealth and the states, harm national security, interfere with a trial or reveal deliberations or decisions of cabinet or one of its committees. This will provide generous wriggle room to avoid scrutiny.

It is worth noting that polls have consistently shown that the public overwhelmingly supports the creation of a federal integrity commission. A recent Guardian Essential poll shows that 81 per cent of the public support the establishment of an anti-corruption watchdog. No doubt respondents based their views on experience of the good work of state bodies. The underlying question remains: if official corruption exists and is disclosed at a state level, why is it that the commonwealth is so reluctant to concede corruption must also occur at a federal level? I doubt that the public would support the model currently proposed, which I have briefly outlined, which contains exceptions and exclusions minimising its scope and transparency.

I have used the example of the current deliberations in the federal sphere to illustrate that we would be ill-advised to completely discard the current CCC model and start from scratch. It is a long and tortuous process. However, a new act should be drafted that draws on experience, more clearly sets out legislative intent on the way forward and resolves technical issues that hamper the efficient and seamless operation of the commission.

From the committee's perspective, robust parliamentary oversight of the operations of the commission is a given in any new act. A recent paper published by the Westminster Foundation for Democracy earlier this month titled "Combatting Corruption Capably" sets out five components for the relationship between Parliament and an anticorruption agency. These are: first, Parliament's role in establishing the legal framework and mandate of the anticorruption agency; second, Parliament's role in the selection, appointment and removal of the leadership of the anticorruption agency; third, Parliament's role regarding resources allocated to the anticorruption agency; fourth, Parliament's consideration of and follow up to annual and other reports of the anticorruption agency; and, finally, Parliament's policy and awareness-raising cooperation with the anticorruption agency. It goes without saying that any reiteration or redrafting of the Corruption, Crime and Misconduct Act must incorporate all those elements.

Throughout the term of this Parliament, the committee has been afforded excellent cooperation and assistance by the Corruption and Crime Commission. Our requests for information, and background on occasions, were comprehensive and may have required the diversion of resources. The committee was mindful of this, but appreciated the thoroughness and compliance that effectively informed our deliberations. I wish the CCC well in its future endeavours. The work it does is important. Likewise, the ready assistance from the Office of the Parliamentary Inspector of the Corruption and Crime Commission, the Public Sector Commissioner and the Auditor General was valuable.

It goes without saying that I thank members of the committee who diligently and conscientiously wrestled with a wide range of issues: deputy chair, Hon Jim Chown, MLC; Mr Matthew Hughes, MLA, member for Kalamunda; and Hon Alison Xamon, MLC. We were ably and assiduously supported by committee research officers Vanessa Beckingham, Sylvia Wolf and Lucy Roberts. Clerk Assistant, Liz Kerr, was also readily at hand if required, and I thank them all.

In conclusion, I remind members that combating corruption goes to the very heart of our democracy and, if not eliminated, disproportionately impacts on those most in need of government attention and support. Nowhere is this more cogently expressed than by the man of the moment and then Vice President, Joe Biden, in 2014 when he said —

> Corruption is a cancer, a cancer that eats away at a citizen's faith in democracy, diminishes the instinct for innovation and creativity; already-tight national budgets, crowding out important national investments. It wastes the talent of entire generations. It scares away investments and jobs.

MR M. HUGHES (Kalamunda) [12.02 pm]: The seventeenth report of the Joint Standing Committee on the Corruption and Crime Commission titled "Meaningful Reform Overdue: The Corruption, Crime and Misconduct Act 2003", as outlined by the chair of the committee, provides a useful summation of the observations made over three successive Parliaments for why the act is in much need of review, if not a complete rewrite. I would urge all members of the fortieth Parliament, in anticipation of the forty-first Parliament, to give it a good read over the summer.

I would also like to acknowledge the work of the chair and my fellow committee members, Hon Alison Xamon, MLC, and Hon Jim Chown, MLC. I note that Hon Jim Chown will not be contesting the election next year and I wish him all the best in whatever future endeavours he has beyond his career in Parliament.

I have a particular matter that I want to refer to in relation to the deficiencies of the current act. In my contribution to the Assembly in May on the matter of the deficiencies of the Corruption, Crime and Misconduct Act 2003, I enumerated the revealed shortcomings of the act regarding the appointment of the Corruption and Crime Commissioner or, in the case of the fortieth Parliament, the reappointment of a serving commissioner. In the short time that I have available to me to speak on the report, I want to return to the deficiencies of the act as they pertain to the reappointment of a serving commissioner. It became abundantly clear when I brought this matter to the attention of the Parliament earlier in the year that there is no guidance on the appointment process that is to be followed. If bipartisan and majority support is not provided by the Joint Standing Committee on the Corruption and Crime Commission, as happened, what happens then? We know what happens. We are now in the position that we have yet to appoint a commissioner to the position. It is also clear that the committee or dissenting members are not required to provide reasons for not supporting the recommended candidate and there is no provision in the act to resolve deadlocks. The act is silent on the process to follow if the commissioner seeks reappointment. Because of the unsatisfactory nature of the current process, this matter alone points to the fact that the act needs to be amended. My comments on the deadlock in the joint standing committee about the reappointment of Hon John McKechnie became public following the government's decision to bring in a bill to amend the 2003 act to facilitate his reappointment. The fact that that act has not progressed through Parliament is a matter for the opposition to explain. The opposition was provided opportunities to negotiate a positive outcome on the amendments to the bill that were brought before this house, but the opposition was unable to do anything about that.

There is a difference in the act between the appointment and reappointment of a commissioner, but, procedurally under the act, there is not a difference. I remain steadfastly of the view that in the circumstances of a known candidate who is the incumbent, serving commissioner seeking reappointment, written justification needs to be provided when there is either bipartisan dissent or a failure to achieve bipartisan concurrence. It bothers me, as an elected member of the Assembly to this fortieth Parliament, that the act does not require this and that the incumbent, who has the right to seek reappointment, has no right to know why the reappointment has been denied or to challenge those grounds. Members of the Parliament and the Assembly, where is the natural justice in that? There is no natural justice at all. If an action were taken to dismiss a serving commissioner, the act is quite clear about what has to happen. The matter would be brought before each house of Parliament and aired publicly and transparently. More importantly, the incumbent would have, I trust, the opportunity of a right of reply. My commentary on this matter has always been directed towards what I believe to be the significant deficiency of the operation of the act in the case of a deadlock. As I said, the act is silent on this matter and it should be amended to secure a clear pathway out of a deadlock. That is unfinished business of the fortieth Parliament and it needs to be on the agenda of the forty-first Parliament. I hope to be a member of the Assembly when that bill comes before us.

I again note the comments of Hon Nick Goiran in the Council regarding his experience as Chair of the Joint Standing Committee on the Corruption and Crime Commission under the previous government. I do not believe they were particularly helpful. None of the previous commissioners served the full term and none therefore sought reappointment. I understand that in a previous Parliament the joint standing committee agreed not to support the Premier's nominee from a list of three equally suitably qualified candidates, for reasons known to the committee, but suggested to the Premier that he consider the appointment of one of the other candidates. That was quite a different set of circumstances from the one that we faced in this Parliament, which recommended the reappointment of an incumbent commissioner for a second allowable five-year term. Everyone recognises that Hon John McKechnie has been the most effective Corruption and Crime Commissioner that this state has had. I reiterate that the remedied lines in the act being amended will ensure that the situation faced by Hon John McKechnie will not be faced by successive commissioners.

These are the facts at the end of the fortieth Parliament: Mr McKechnie's term as head of the Corruption and Crime Commission expired on 28 April 2020. Mr McKechnie was the only commissioner to serve a full term and the first to seek reappointment. Mr McKechnie was the outstanding candidate of three eligible nominees identified by the nominating committee, which was chaired by the Chief Justice of Western Australia, Hon Peter Quinlan, SC, and a recommendation to that effect was made to the Premier. However, for reasons unknown to this Parliament and the people of Western Australia, the Joint Standing Committee on the Corruption and Crime Commission was unable to concur with that recommendation. That is a condemnation of the ineffectual nature of the opposition to join an open invitation to engage with this government to remedy the failings of the act and to overcome what was a palpable misuse of the power of the Joint Standing Committee on the Corruption and Crime Commission. Members of this house, I will do all that I can to ensure that the public of Western Australia, certainly the people in my electorate, realise what has happened in this place with the reappointment of Hon John McKechnie. I will drive that home in the election campaign, and opposition members will be answerable for their inability to adopt a bipartisan approach to the invitation offered to them by the Premier of this state to overcome a deadlock, which was a patent misuse of that committee. Thank you, Madam Acting Speaker, for your indulgence.