

CORRUPTION AND CRIME COMMISSION AMENDMENT BILL 2012

Introduction and First Reading

Bill introduced, on motion by **Mr C.J. Barnett (Premier)**, and read a first time.

Explanatory memorandum presented by the Premier.

Second Reading

MR C.J. BARNETT (Cottesloe — Premier) [11.57 am]: I move —

That the bill be now read a second time.

Before beginning with the second reading of this bill, I would like to indicate the government's thanks to the member for Bateman for his work in overseeing the development of this legislation in his former capacity as Attorney General.

This bill aims to amend the Corruption and Crime Commission Act 2003 to achieve nothing less than significantly improving the CCC's statutory ability to fight organised crime and corruption in this state. These proposed amendments align with significant recommendations that emanated from the Kennedy royal commission in 2001, and have been endorsed by the former Joint Standing Committee on the Corruption and Crime Commission, and subsequently by the Archer review.

Building upon the efforts of a cross-sector working group established in 2008, the Corruption and Crime Commission Amendment Bill 2012 proposes three significant elements of reform. Firstly, the CCC will receive a new organised crime investigative function that will enable it to investigate organised crime by utilising exceptional powers. The CCC will also be able to assist and support police investigations into serious offences and will have the capacity to investigate serious or criminal offences involving public officers.

Secondly, this bill transfers the oversight of minor misconduct by public officers from the CCC to the Public Sector Commission. In this aspect, the CCC's role will be redefined to oversight of serious misconduct of public officers. However, its current jurisdiction over all matters of police misconduct will be retained. With specific regard to this matter, I can inform the house that since August 2009, His Honour Judge Robert Cock, QC, then Special Counsel to the Premier, had, up until his appointment to the District Court, been working within the PSC on projects to improve the capacity of the WA public sector to respond to and deal with suspected misconduct.

Thirdly, the CCC's misconduct prevention and education function will be transferred to, and exercised by, the Public Sector Commissioner. To the extent to which its oversight and prevention functions are entwined, the CCC will be given power to assist, in cooperation with the PSC, 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.

With respect to providing a major organised crime response, it is the government's belief that the CCC has the capacity to establish a highly efficient crime investigation capability. For example, there has been considerable capital investment in the CCC's technical and investigative resources; the CCC has a well-developed capacity to conduct covert, long-term investigations, employing a broad range of law enforcement capabilities; and a significant proportion of the staff come from organised crime fighting agencies throughout Australia and possess requisite skills. Combining conventional police investigative techniques with the CCC's wider powers would facilitate more effective, proactive investigations into organised crime than has been otherwise achieved. Of course, this is all the more relevant given the increasingly evolutionary nature of organised crime—in particular, its adoption of emerging technology, requiring sophisticated and adaptive responses.

During the development of this bill there has been certain opposition to this fundamental shift that proposes a closer cooperative working relationship between police and the CCC. The primary argument against providing the CCC with an investigative function into serious and organised crime is that it has the potential to damage the independence, and hence the effectiveness of the CCC in its role of overseeing police conduct. The government is not ignorant of the potential risks to the CCC's independence by enabling it to work more closely with police. In order to minimise those risks, the government has decided not to confer on the CCC an investigative function in respect of serious crime. Accordingly, under the proposed amendments, the CCC will be able to assist police investigating organised crime and major crime by providing police with access to exceptional powers, currently only available to police investigating organised crime. Major crime is defined in part 3 of the bill by reference to a major offence, which is an offence punishable by 14 years' imprisonment, or an incidental offence or an ancillary offence. However, the CCC will not be able to join the investigation of major crime unless it involves a public officer. In light of the demonstrable link between organised crime and corrupt public officers and the difficulties of fully and successfully investigating organised crime, the new investigative function is conferred only in respect of organised crime. Moreover, by limiting the opportunity for cooperative investigations, it is the

government's anticipation that the risk of diminishing the independence of the CCC will be minimised. The important expansion of the CCC's role will enable it to provide critical support to WA Police investigations via analysts, investigators and lawyers. An organised crime-fighting agency achieves effective outcomes only when it has the capacity to engage in investigations and to do so in cooperation with other states and national law enforcement agencies. The commissioner has been consulted in the course of drafting this bill and it is considered that the CCC will be able to manage or prevent any actual or perceived conflicts of interest.

The CCC has also indicated that appropriate processes, systems and structures will be established to ensure clear separation between the area responsible for dealing with major and organised crime and that area responsible for police misconduct investigations. To make absolutely clear the need to separate the organised crime and misconduct roles, it has been suggested that the government should consider further amendments that will specify a clear separation between these roles, and we are willing to do this. This might occur through the appointment of a separate assistant commissioner or mandating other procedures; however, consultations between the CCC and other stakeholders regarding this issue are ongoing and are presently occurring.

The definition of "organised crime" in this bill has been carefully drafted to ensure that the CCC's jurisdiction does not unduly intersect with the jurisdiction of the WA Police. Importantly, this bill adopts legislative amendments proposed in recommendations 2 and 3 of the Archer review to extend the CCC's jurisdiction to enable it to conduct organised crime investigations, subject to the approval from a reference group. The proposed organised crime reference group established under proposed section 84D would consist of two or three members. The reference group would comprise the Commissioner of Police and the Corruption and Crime Commissioner with the capacity for a third member to be appointed by the Governor. This third member would not have a deliberative vote and would essentially act as a facilitator to minimise deadlocks. The reference group may refer either a general referral or a specific referral to the CCC for investigation. Both referrals must be in writing to the CCC and signed by each member of the reference group as a demonstration of bipartisan support.

With respect to exceptional powers provisions under part 4 of the act and the ability of a person or group of people to reconstruct a fortification on premises previously the subject of a fortification removal, this bill expressly declares that the construction or installation of fortification on premises at which other fortifications have previously been removed or modified in accordance with a fortification removal notice will be a crime. The CCC's contempt powers have also been enhanced. Members will be aware that there are new arrangements proposed for undercover operatives under the Criminal Investigation (Covert Powers) Bill 2011 currently before the Legislative Council. Accordingly, amendments are also proposed to part 4 of the CCC Act, specifically adding new reporting arrangements, which will align with the provisions in both bills.

A further significant reform to enhance the CCC's serious and organised crime function is providing it with the ability to apply to the court for unexplained wealth declarations and for other relevant court declarations and orders in a similar manner to the Director of Public Prosecutions under the Criminal Property Confiscation Act 2000. The CCC will be given various powers under that act that are considered prudent to investigating incidents of unexplained wealth. In such cases, the CCC will consult with the DPP to avoid overlapping criminal property confiscation-related operations between the CCC, the police and the DPP.

The second key element of this bill entails transferring the oversight of minor misconduct by public officers from the CCC to the Public Sector Commissioner. The Public Sector Commissioner's minor misconduct jurisdiction will not include police misconduct, misconduct by members of Parliament or local government members or councillors. The PSC's jurisdiction is 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. Minor misconduct is constituted by the conduct defined in section 4(d) of the current definition of "misconduct" in the CCC act. However, subparagraph (v) of that definition, which relates to an offence against the Statutory Corporation (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 over 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 under parliamentary privilege.

That brings me to the third element of this bill, the transfer of the prevention and education function from the CCC to the Public Sector Commissioner. This government believes this function to be integral to the Public Sector Commissioner's new functions as a statutory officer that is independent and directly accountable to Parliament.

Other miscellaneous amendments to administrative anomalies and inefficiencies include amending the short title of the act to the Corruption, Crime and Misconduct Act 2003 to more accurately reflect the act's scope.

Amendment has been made to the conditions of service, appointments and resignation provisions currently applicable to the commissioner and the Parliamentary Inspector of the Corruption and Crime Commission. For example, the role of the nominating committee has been removed and a new statutory office of Assistant Corruption and Crime Commissioner has been created. A recent review by the Parliamentary Inspector of the CCC focused on the importance of recognising legal professional privilege when the CCC uses telephone interceptions and exercises warrants. The parliamentary oversight committee reviewed this report and recommended the creation of new positions of assistant commissioners, with power for the Corruption and Crime Commissioner to delegate some of his functions to assistant commissioners. The bill adopts the recommendation of the committee and will also replicate the new process for dealing with claims for legal professional privilege found under the Criminal Investigation Act 2006.

Finally, with respect to reporting arrangements, this bill proposes the introduction of oversight systems similar to those utilised by the United Kingdom's Serious Organised Crime Agency. In essence, these new reporting requirements will require the CCC, in consultation with the responsible minister, and other persons that the CCC considers appropriate, to determine its strategic priorities for the ensuing financial year. The CCC will also establish annual plans in consultation with, for example, the Commissioner of Police, which set out its performance targets and associated financial resources. The strategic priorities and annual plans will be required to be published in an appropriate form.

The state government has decided, in a careful and deliberative manner, to make far better use of the unique capabilities and expertise of the CCC in the continuing battle against organised crime in this state. To provide greater and more responsible levels of protection to Western Australians, this bill proposes unshackling the CCC and focusing its attention and efforts towards more serious misconduct, corruption and organised crime. To aid the CCC in the operation of its new duties, the Public Sector Commissioner will absorb responsibility for oversight of less serious misconduct by public officers. This bill enhances the integrity and accountability of public officers by providing the CCC, as the state's pre-eminent corruption and organised crime-fighting body, with wider authority to exercise its powers and the focus to more effectively apply its resources. I commend the bill to the house.

Debate adjourned, on motion by **Ms L.L. Baker**.