

# Corruption and Crime Commission Amendment (Investigative Function) Bill 2007

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Western Australia

LEGISLATIVE ASSEMBLY

*(Introduced by Hon. Paul Omodei, MLA)*

**Corruption and Crime Commission Amendment  
(Investigative Function) Bill 2007**

**A Bill for**

**An Act to amend the *Corruption and Crime Commission Act 2003*.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Corruption and Crime Commission Amendment (Investigative Function) Act 2007*.

5 **2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

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**Part 2 — Amendment to the *Corruption and Crime Commission Act 2003***

**3. The Act amended**

5 The amendment in this Part is to the *Corruption and Crime Commission Act 2003*.

**4. Section 3 amended**

Section 3 is amended as follows —

(a) by inserting after the definition of “**allegation**” —

“

10 “**ancillary offence**” means —

- (a) an offence of conspiring to commit the serious crime offence;
- (b) an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of a serious crime offence; or
- (c) an offence of attempting to commit a serious crime offence;

”.

20 (b) by inserting after the definition of “**investigation**” —

“

“**law enforcement agency**” means —

- (a) a police force of another State or Territory;  
or
- 25 (b) the Australian Federal Police;
- (c) any other authority or person responsible for the enforcement of the laws of the Commonwealth of the State, another State or Territory;

30

”.

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- (c) by repealing the definition of “**organised crime**” and inserting instead —

“

“**organised crime**” means criminal activity —

- 5 (a) that involves 2 or more offenders and substantial planning and organisation; and
- (b) that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques; and
- 10 (c) that is committed, or is of a kind that is ordinarily committed, in conjunction with other offences of a like kind; and
- (d) that is a confiscation offence within the meaning of the *Criminal Property Confiscation Act 2000*, an offence of a kind prescribed by the regulations or an offence that involves any of the following —
- 15 (i) theft;
- (ii) fraud;
- 20 (iii) (state) tax evasion;
- (iv) property laundering;
- (v) illegal drug dealings;
- (vi) illegal gambling;
- (vii) obtaining financial benefit by vice engaged in by others;
- 25 (viii) extortion;
- (ix) violence;
- (x) bribery or corruption of, or by, an officer of the State;
- 30 (xi) perverting the course of justice;
- (xii) harbouring of criminals;

- 5
- (xiii) firearms;
  - (xiv) armament dealings;
  - (xv) fauna trafficking;
  - (xvi) cybercrime;
  - (xvii) paedophilia;
  - (xviii) terrorism;
  - (xix) matters of the same general nature as one or more of the matters listed above;
- 10
- (e) that is —
    - (i) punishable by imprisonment for a period of 3 years or more; or
    - (ii) a confiscation offence within the meaning of the *Criminal Property Confiscation Act 2000*;
- 15
- but —
- 20
- (f) does not include an offence committed in the course of a genuine dispute as to matters pertaining to the relations of employees and employers by a party to the dispute, unless the offence is committed in connection with, or as part of, a course of activity involving the commission of a serious crime other than an offence so committed; and
  - (g) does not include an offence the time for commencement of a prosecution for which has expired.
- 25
- ”.
- 30
- (d) by amending the definition of “**organised crime investigation**” by deleting “organised crime” in each place where it occurs and inserting instead —  
“ serious crime ”.

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- (e) by amending the definition of “**organised crime examination**” by deleting “organised crime” in each place where it occurs and inserting instead —  
“ serious crime ”.
- 5 (f) by amending the definition of “**organised crime summons**” by deleting “organised crime” in each place where it occurs and inserting instead —  
“ serious crime ”.
- (g) by inserting after the definition of “**record**” —  
10 “  
“**Reference Group**” means the Crime and Corruption  
Commission Reference Group established under  
section 187A;  
”.
- 15 (h) by inserting after the definition of “**reviewable police action**” —  
“  
“**serious crime**” has the meaning given by section 5;  
”.
- 20 (i) by deleting the definition of “**Schedule 1 offence**”;  
(j) by deleting the definition of “**Section 5 offence**”;  
(k) after sub-section (2) the following is inserted —  
“
- 25 (3) If the head of a Corruption and Crime Commission  
operation/investigation suspects that an offence (the  
“**incidental offence**”) that is not a serious offence may  
be directly or indirectly connected with, or may be  
used as part of, a course of activity involving the  
commission of a serious crime offence (whether or not  
30 the head has identified the nature of that serious  
offence) then the incidental offence is, for so long only  
as the head so suspects, taken, for the purposes of the  
Act, to be a serious crime offence.  
”.



**5. Section 5 replaced**

Section 5 is repealed and the following section is inserted instead —

“

5       **5. “Serious crime”, meaning of**

A serious crime consists of —

- (a) criminal activity that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years; or
- 10       (b) criminal paedophilia; or
- (c) organised crime; or
- (d) ancillary offence;
- (e) incidental offence.

”.

15       **6. Section 7A amended**

Section 7A(a) is amended by deleting “organised crime” and inserting instead —

“ serious crime ”.

**7. Section 7B amended**

20       Section 7B(2) is amended by deleting “organised crime” and inserting instead —

“ serious crime ”.

**8. Section 17 amended**

25       Section 17(2)(a) is amended by deleting “organised crime” and inserting instead —

“ serious crime ”.

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**9. Section 21 amended**

Section 21 is amended by deleting “organised crime” and inserting instead —

“ serious crime ”.

5 **10. Part 4 replaced**

Part 4 is repealed and the following part is inserted instead —

“

**Part 4 — Serious crime**

**Division 1 — Serious crime function**

10 **45. Serious crime function**

- (1) The Commission has a function to investigate serious crime referred to it by the Reference Group.
- (2) The Commission may, in considering whether or not to conduct, continue or discontinue an investigation have regard to such matters as it thinks fit, including  
15 whether or not (in the Commission’s opinion) —
  - (a) the subject-matter of the investigation is trivial;  
or
  - (b) the conduct concerned occurred at too remote a  
20 time to justify investigation; or
  - (c) if the investigation was initiated as a result of a complaint – the complaint was frivolous, vexatious or not in good faith.

**46. How Commission performs its serious crime function**

Without limiting the ways the Commission may perform its serious crime function, the Commission performs its serious crime function by —

5

- (a) investigating serious crime; and
- (b) when conducting investigations under paragraph (a), gathering evidence for —
  - (i) the prosecution of persons for offences; and
  - (ii) the recovery of the proceeds of serious crime; and
- (c) liaising with, providing information to, and receiving information from, other law enforcement agencies and prosecuting authorities, including agencies and authorities outside the State of Australia, about serious crime.

10

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**Division 2 — Referrals by Reference Group**

**47. Referrals to Commission**

20

- (1) The Reference Group may refer serious crime to the Commission for investigation —
  - (a) on its own initiative; or
  - (b) if asked by the Commissioner of Police.
- (2) The referral must be written.

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**48. Reference Group must be satisfied before making a referral**

- 5
- (1) The Reference Group may, on its own initiative, refer serious crime to the Commission for investigation only if it is satisfied —
- (a) an investigation into the serious crime is unlikely to be effective using powers ordinarily available to the police service; and
- 10 (b) it is in the public interest to refer the serious crime to the Commission.
- (2) The Reference Group may, if asked by the Commissioner of Police, refer serious crime to the Commission for investigation only if its satisfied —
- 15 (a) the police service has carried out an investigation into the serious crime that has not been effective; and
- (b) further investigation into the serious crime is unlikely to be effective using powers ordinarily available to police officers; and
- 20 (c) it is in the public interest to refer the serious crime to the Commission.
- (3) Without limiting the matters to which the Reference Group may have regard in deciding whether it is in the public interest to refer serious crime to the Commission, the Reference Group may have regard to the following matters —
- 25 (a) the number of persons that may be involved;
- (b) the degree of planning and organisation likely to be involved;
- 30 (c) the seriousness of, or the consequences of, the serious crime;

- (d) the person or persons likely to be responsible for planning and organising the serious crime;
- (e) the likely involvement of the person or persons in similar activities;
- 5 (f) the financial or other benefits likely to be derived by any person;
- (g) whether investigation by the Commission is a justifiable use of resources.

**49. Directions to the Commission about investigations**

- 10 (1) The Reference Group may give the Commission direction imposing limitations on a crime investigation, including limitations on the exercise of the Commission's powers for the investigation.
- 15 (2) The Reference Group may also direct the Commission to end a particular crime investigation if the Reference Group considers —
  - (a) it may be more appropriate for another entity to undertake the investigation; or
  - 20 (b) it may be more effective for another entity to undertake the investigation; or
  - (c) investigation by the Commission is not a justifiable use of resources.
- (3) The Commission must comply with a direction given under subsection (1) or (2).

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**Division 3 — Task forces and other operational agreements**

**50. Police task forces**

- 5
- (1) The Commissioner may make arrangements with the Commissioner of Police for the establishment of a police task force to help the Commission to carry out a serious crime investigation.
- (2) A police task force is under the control and direction of the Commissioner of Police.

**51. Operational agreements**

10 The Commission may, in connection with its serious crime function, enter into operational agreements with other law enforcement agencies to —

- 15
- (a) arrange for the establishment of task forces within the State; and
- (b) seek the establishment of joint task forces with authorities of the Commonwealth or other States or Territories;
- 20
- (c) co-operate with State task forces, Commonwealth task forces, joint task forces or other task forces;
- (d) co-ordinate or co-operate in co-ordinating any such task forces.

”.

**11. Section 91 amended**

25 After section 91(1)(q) the following paragraph is inserted —

“

- (r) the number of matters referred by the Reference Group to the Commission for investigation under section 47.

30

”.

**12. Section 137 amended**

Section 137 is amended by deleting “organised crime” and inserting instead —

“ serious crime ”.

5 **13. Section 140 amended**

Section 140(1) is amended by deleting “organised crime” and inserting instead —

“ serious crime ”.

**14. Part 12A inserted**

10 After Part 12 the following part is inserted —

“

**Part 12A — Corruption and Crime Commission  
Reference Group**

15 **187A. Crime and Corruption Commission Reference  
Group**

(1) The Corruption and Crime Commission Reference Group is established.

(2) The Reference Group consists of the Commissioner and the Commissioner of Police.

20 **187B. Delegation to Acting Commissioner**

The Commissioner may delegate responsibility to the Acting Commissioner in exceptional circumstances when either the Commissioner or the Commissioner of Police is unable to participate in a Reference Group meeting.

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**187C. Functions of Reference Group**

The Reference Group has the following functions —

- 5 (a) to refer, as provided under this Act, serious  
crime to the Commission for investigation;
- (b) to coordinate, to the extent the Reference Group  
considers appropriate, investigations into  
serious crime conducted by the Commission in  
cooperation with a police task force or another  
law enforcement agency;
- 10 (c) to review and monitor generally the work of the  
Commission.

**187D. Meetings of Reference Group**

- 15 (1) Meetings of the Reference Group shall be held at such  
times and places as are from time to time agreed upon  
by the members of the Reference Group.
- (2) The quorum for a meeting of the Reference Group is 2  
members.
- (3) A decision supported by all of the members of the  
Reference Group shall be the decision of the Reference  
20 Group.
- (4) The Reference Group is to keep full and accurate  
minutes of the proceedings of each meeting.

**187E. Transaction of business outside meetings**

- 25 (1) The Reference Group may hold meetings, or allow  
members to take part in its meetings, by telephone,  
closed-circuit television or other means.
- (2) A member who takes part in a reference group meeting  
under subsection (1) is taken to be present at the  
meeting.



(3) A resolution if validly made by the Reference Group,  
even it is not passed at a reference group meeting, if —

(a) all members give written agreement to the  
resolution; and

5 (b) notice of the resolution is given to all members.

”.

**15. Section 195 amended**

After section 195(1)(a) the following paragraph is inserted —

“

10 (bb) to audit the operations and performance of the  
Reference Group for the purpose of monitoring  
compliance with the provisions of this Act.

”.

**16. Schedule 1 repealed**

15 Schedule 1 is repealed.

