



***JOINT STANDING COMMITTEE ON
THE CORRUPTION AND CRIME
COMMISSION***

**JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION
TO CONTINUE AFTER DISSOLUTION OF
PARLIAMENT**

**Report No. 16
in the 37th Parliament**

2006

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Joint Standing Committee on the Corruption and Crime Commission

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Report No. 16

Presented by:

Mr John Hyde, MLA and Hon. Ray Halligan, MLC

Laid on the Tables of the Legislative Assembly and the Legislative Council
on 26 October 2006

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COMMITTEE'S FUNCTIONS AND POWERS

On 31 May 2005 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

CHAIRMAN'S FOREWORD

A major omission in the existing *Corruption and Crime Commission Act, 2003* is the provision for the continuity of oversight of the Corruption and Crime Commission once Parliament is dissolved. Oversight is unpredictable and demanding - while sewerage, schools and hospitals keep working once an election has been called, it is a 19th century anachronism for the important parliamentary committee oversight to go into a five month recess until a new Parliament convenes.

As unpredictable events such as the resignation of Assistant CCC Commissioner Moira Rayner, CCC staff being charged with an offence, appointments of Commissioners and Parliamentary Inspectors and the like show, corruption fighting and needed oversight do not go into recess. The Queensland legislation provides for the Committee to remain in oversight mode.

If existing members lose their seat in the election, the legislation provides for their party leader to nominate a substitute immediately without Parliament needing to reconvene. The Committee strongly, unanimously and in bipartisan agreement concurs with this change.

MR JOHN HYDE, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

Act	<i>Corruption and Crime Commission Act, 2003</i>
CCC	Corruption and Crime Commission
CMC	Crime and Misconduct Commission (Queensland)
Committee	Joint Standing Committee on the Corruption and Crime Commission
Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission
WA	Western Australia

MINISTERIAL RESPONSE

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

CHAPTER 1 INTRODUCTION

1.1 Background

Section 216A of the *Corruption and Crime Commission Act, 2003* provides for the establishment of the Joint Standing Committee on the Corruption and Crime Commission:

- (1) *The Houses of Parliament are to establish a joint standing committee comprising an equal number of members appointed by each House.*
- (2) *The functions and powers of the Standing Committee are determined by agreement between the Houses and are not justiciable.*

Legislative Assembly Standing Order 289 provides that:

At the commencement of every Parliament, a Joint Standing Committee on the Corruption and Crime Commission will be appointed by resolution of the Assembly and forwarded to the Council for its concurrence.

Although it is a joint standing committee comprising equal members from each House, the Committee is administered by the Legislative Assembly. The Legislative Council administers the only other joint standing committee, the Joint Standing Committee on Delegated Legislation.

In accordance with section 21 of the *Constitution Acts Amendment Act, 1899*, the "Legislative Assembly shall exist and continue for 4 years ... subject, nevertheless, to being sooner ... dissolved by the Governor". This dissolution is required prior to a general election, under the *Electoral Act, 1907*. In essence, once the Legislative Assembly is dissolved by the Governor, it ceases to 'exist' and does not 'exist' again until the House meets in the new Parliament.

As committees are creatures of their Houses, all Legislative Assembly committees and joint committees also cease to exist from the moment of dissolution of the Legislative Assembly, and are not re-established until the relevant motion(s) are passed in the new Parliament. Therefore, between dissolution of the Legislative Assembly and re-establishment by both Houses in the new Parliament, there is no Joint Standing Committee on the Corruption and Crime Commission.

Even after a new Parliament has commenced, it may be a further several months before new standing committees are established. For example, the Joint Standing Committee on the Corruption and Crime Commission of the previous 36th Parliament ceased to exist when Parliament was prorogued and the Legislative Assembly was dissolved on 23 January 2005. Although the election was held a month later on 26 February 2005, the current Joint Standing Committee on the Corruption and Crime Commission was not established until 31 May 2005. As such, there was no formal oversight of the independent CCC and Parliamentary Inspector for over four months.

Given the increasing workload of the Corruption and Crime Commission, it is imperative that the parliamentary committee overseeing the CCC is empowered to operate at all times, even during

dissolution of the Legislative Assembly. As the CCC's operations continue unaffected throughout periods of dissolution, the Joint Standing Committee on the Corruption and Crime Commission should also continue to fulfil its statutory oversight function, especially if an urgent matter arises.

The Queensland Parliament's equivalent committee overseeing the Crime and Misconduct Commission, the Parliamentary Crime and Misconduct Committee, continues to exist despite dissolution of Queensland's Legislative Assembly. Other parliamentary committees cease to exist, but the State of Queensland recognised the need for the committee charged with responsibility to oversight the powerful CMC to have the statutory power to operate at all times. WA's *Corruption and Crime Commission Act, 2003* is modelled on much of Queensland's successful CMC legislation.

The Committee met with the Parliamentary Crime and Misconduct Committee in Brisbane on 11 October 2006. Members of the Queensland Committee discussed the merits of being able to meet with the CMC during dissolution of the Legislative Assembly. In fact, during the most recent dissolution in Queensland between August and 10 October 2006, the Parliamentary Crime and Misconduct Committee met on a number of occasions to finalise and table its statutory three-year review of the CMC. Continuity of committee membership enabled the three-year review to be completed, as a new committee comprising new members would not have had the corporate history to undertake such a comprehensive oversight function.

Unlike other parliamentary standing committees that generally inquire into discreet and unrelated matters each term of Parliament relating to specific government portfolios, the Joint Standing Committee on the Corruption and Crime Commission's oversight role is of an ongoing nature. Committee members develop a depth of knowledge of corruption-related issues over time. This includes relevant State and Commonwealth legislation, operations and procedures of the CCC and the Parliamentary Inspector, and corruption prevention research activities.

Developing sufficient "corporate" knowledge to undertake a thorough oversight function takes time. Being empowered to meet during dissolution of the Legislative Assembly ensures continuity in the Committee's oversight role. It allows the Committee to meet with the CCC if necessary, and also facilitates smooth handover and transmission of accumulated knowledge to a new Joint Standing Committee on the Corruption and Crime Commission should the membership of the Committee change. This occurs in Queensland, where the former Chairman of the Parliamentary Crime and Misconduct Committee was promoted to Cabinet following the recent State election, and several new members were appointed to the Committee.

1.2 Legislative Amendment

Attached as Appendix 1 is an extract from Queensland's *Crime and Misconduct Act, 2001* setting out the relevant provisions that deal with the Parliamentary Crime and Misconduct Committee. In Western Australia, the Joint Standing Committee on the Corruption and Crime Commission's membership, functions and powers are derived from the Legislative Assembly Standing Orders rather than the *Corruption and Crime Commission Act, 2003*.

Section 301 of the Queensland legislation is the most significant provision for the purposes of this report, as it deals with membership of the parliamentary committee during dissolution. Section 301 provides that:

- (1) *...[F]rom the dissolution of the Legislative Assembly, the parliamentary committee consists of its members immediately before the dissolution.*
- (2) *A member under subsection (1) continues to be a member of the parliamentary committee until whichever of the following first happens -*
 - a. *the member resigns by notice given to the clerk of the Parliament;*
 - b. *the member dies;*
 - c. *the returning officer for the electoral district in which the member was nominated as a candidate for the election notifies the electoral commission that a person other than the member has been elected for the electoral district;*
 - d. *fresh members are appointed by the Legislative Assembly.*
- (3) *If a member stops being a member of the parliamentary committee under subsection (2)(c), the person recognised as the leader of the political party that nominated the member to the committee may nominate another person as a member of the committee until fresh members are appointed by the Legislative Assembly.*

Recommendation 1

The Joint Standing Committee on the Corruption and Crime Commission recommends that the *Corruption and Crime Commission Act, 2003* be amended to include a similar provision to section 301 of the Queensland *Crime and Misconduct Act, 2001* providing that the membership of the Committee continues after dissolution of the Legislative Assembly.

Recommendation 2

The Committee recommends that the Attorney General include this amendment as part of the package of amendments to the *Corruption and Crime Commission Act, 2003* approved pursuant to the Attorney General's legislative review and currently before Cabinet to introduce into Parliament.

APPENDIX ONE

CRIME AND MISCONDUCT ACT, 2001 (QUEENSLAND) - CHAPTER 6, PART 3



Queensland

Crime and Misconduct Act 2001

Reprinted as in force on 11 August 2006

Reprint No. 3

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the Office of the Queensland Parliamentary Counsel
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**Part 3 Parliamentary Crime and
 Misconduct Committee**

**Division 1 Establishment of parliamentary
 committee**

291 Establishment of parliamentary committee

A committee of the Legislative Assembly called the Parliamentary Crime and Misconduct Committee is established.

Division 2 Functions

292 Functions

The parliamentary committee has the following functions—

- (a) to monitor and review the performance of the commission's functions;
- (b) to report to the Legislative Assembly, commenting as it considers appropriate, on either of the following matters the committee considers should be brought to the Assembly's attention—
 - (i) matters relevant to the commission;
 - (ii) matters relevant to the performance of the commission's functions or the exercise of the commission's powers;
- (c) to examine the commission's annual report and its other reports and report to the Legislative Assembly on any matter appearing in or arising out of the reports;
- (d) to report on any matter relevant to the commission's functions that is referred to it by the Legislative Assembly;
- (e) to participate in the selection of commissioners and the removal from office of a commissioner as provided under this Act;

- (f) to review the activities of the commission at a time near to the end of 3 years from the appointment of the committee's members and to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission;
- (g) to issue guidelines and give directions to the commission as provided under this Act.

Division 3 Powers

293 Powers

- (1) The parliamentary committee has power to call for persons, documents and other things.⁸⁰
- (2) Also, the parliamentary committee has the power—
 - (a) necessary to enable the committee to properly perform its functions, including power to appoint persons having special knowledge or skill to help the committee perform its functions; and
 - (b) conferred on it by resolution of the Legislative Assembly with a view to the proper performance by the committee of its functions.
- (3) Further, the parliamentary committee or a person appointed, engaged or assigned to help the parliamentary committee may—
 - (a) inspect any non-operational record or thing in the commission's possession; and
 - (b) make copies or extracts of the record or thing for use in connection with the parliamentary committee's functions to which the record or thing is relevant.
- (4) In this section—

⁸⁰ See also the *Parliament of Queensland Act 2001*, chapter 3 (Powers, rights and immunities), part 1 (Powers to require attendance and production).

non-operational record or thing does not include a record or thing that relates to an investigation by the commission that is not finalised.

294 Directions by parliamentary committee to undertake investigation

- (1) The parliamentary committee may, by notice, direct the commission to investigate a matter involving misconduct stated in the notice.
- (2) A direction under subsection (1) is effective only if it is made with the bipartisan support of the parliamentary committee.
- (3) The commission must—
 - (a) investigate the matters stated in the direction diligently and in a way reasonably expected of a law enforcement agency; and
 - (b) report the results of its investigation to the committee.

295 Referral of concerns by parliamentary committee

- (1) This section applies if the parliamentary committee—
 - (a) receives a complaint, or has other concerns (including concerns arising out of a recommendation made by the parliamentary commissioner), about the conduct or activities of the commission or a commission officer; or
 - (b) is notified by the chairperson of conduct of a commission officer that the chairperson suspects involves, or may involve, improper conduct.
- (2) If the committee decides to take action on the complaint, concern or notification (the *matter*), the committee may do 1 or more of the following—
 - (a) ask the commission to give a report on the matter to the committee;
 - (b) ask the commission to investigate and give a report on the matter to the committee;

- (c) ask the police service or another law enforcement agency to investigate and give a report on the matter to the committee;
 - (d) ask the parliamentary commissioner to investigate and give a report on the matter to the committee;
 - (e) refer the matter to the director of public prosecutions;
 - (f) take other action the committee considers appropriate.
- (3) A decision under subsection (2) is effective only if it is made with the bipartisan support of the parliamentary committee.
- (4) The commission, police service, parliamentary commissioner or another investigative agency must investigate and report on matters as asked by the committee.

296 Guidelines on operation of commission

- (1) The parliamentary committee may issue guidelines to the commission about the conduct and activities of the commission.
- (2) Before issuing a guideline, the committee must consult with the commission on the proposed guideline.
- (3) The committee may issue a guideline only with the bipartisan support of the parliamentary committee.
- (4) The commission must comply with the guidelines.

297 Guidelines to be tabled

- (1) The chairperson of the parliamentary committee must table each guideline issued under section 296 in the Legislative Assembly within 14 sitting days after it is issued to the commission.
- (2) If a guideline is not tabled under subsection (1), it stops having effect.

298 Disallowance of guideline

- (1) The Legislative Assembly may pass a resolution disallowing a guideline under section 296 if notice of a disallowance motion

is given by a member within 14 sitting days after the guideline is tabled in the Legislative Assembly.

- (2) On the day set down for its consideration under the standing rules and orders of the Legislative Assembly, the Speaker must put the question that the Legislative Assembly resolve to disallow the guideline.
- (3) If the resolution is passed, the guideline stops having effect.

299 Limited saving of operation of guideline that ceases to have effect

The fact that a guideline stops having effect under section 297(2) or 298(3) does not affect anything done or suffered under the guideline before it stopped having effect.

Division 4 Membership

300 Membership of parliamentary committee

- (1) The parliamentary committee must consist of 7 members nominated as follows—
 - (a) 4 members nominated by the Leader of the House;
 - (b) 3 members nominated by the Leader of the Opposition.
- (2) The chairperson of the parliamentary committee must be the member nominated as chairperson by the Leader of the House.

301 Membership of parliamentary committee continues despite dissolution

- (1) Despite section 300, from the dissolution of the Legislative Assembly, the parliamentary committee consists of its members immediately before the dissolution.
- (2) A member under subsection (1) continues to be a member of the parliamentary committee until whichever of the following first happens—
 - (a) the member resigns by notice given to the clerk of the Parliament;

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235

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Crime and Misconduct Act 2001

- (b) the member dies;
 - (c) the returning officer for the electoral district in which the member was nominated as a candidate for the election notifies the electoral commission that a person other than the member has been elected for the electoral district;
 - (d) fresh members are appointed by the Legislative Assembly.
- (3) If a member stops being a member of the parliamentary committee under subsection (2)(c), the person recognised as the leader of the political party that nominated the member to the committee may nominate another person as a member of the committee until fresh members are appointed by the Legislative Assembly.

Division 5 Meetings**302 Quorum and voting at meetings of parliamentary committee**

At a meeting of the parliamentary committee—

- (a) a quorum consists of 4 members appointed to the committee; and
- (b) a question is decided by a majority of the votes of the members of the committee present and voting; and
- (c) each member of the committee has a vote on each question to be decided and, if the votes are equal, the chairperson of the committee has a casting vote.