



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

**INQUIRY INTO LEGISLATIVE
AMENDMENTS TO THE CORRUPTION
AND CRIME COMMISSION ACT, 2003**

**Report No. 3
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Joint Standing Committee on the Corruption and Crime Commission

Inquiry into Legislative Amendments to the Corruption and Crime Commission Act, 2003

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Report No. 3

Presented by:

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

Laid on the Table of the Legislative Assembly and Legislative Council
on 17 November 2005

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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

Since its passage through Parliament, there has been an acknowledgment that such a complex, comprehensive piece of legislation as the *Corruption and Crime Commission Act, 2003* would require some amendments.

Both the previous and current Joint Standing Committees on the Corruption and Crime Commission have commented on suggested areas of potential legislative reform. Hindsight provides legislators with the ability to revisit compromises made in various amendments; some made just weeks before the Corruption and Crime Commission came into operation on 1 January 2004.

Our Committee believes that Parliament needs to be alerted to the possibility of amendments before the statutory three-year review begins.

While legislators and Parliaments may have a strong view on what the intent and meaning of legislation encompasses, the independent judiciary has the right to interpret it in a different manner.

Clearly, the recent judgment in the Aboudi-Sorani case provides an impetus for us to inquire into possible amendments to the organised crime and contempt areas of the legislation. We believe it is important that Parliament review legislation, first mooted out of concern at the operation of bkie gangs, to ensure that it meets the intentions of today's changing society.

Our Committee wants to begin the process of reviewing the *Corruption and Crime Commission Act, 2003* in a transparent and thorough manner.

MR JOHN HYDE, MLA
CHAIRMAN

CHAPTER 1 INTRODUCTION

1.1 Background

In response to the Court of Appeal decision handed down on 3 November 2005 in the matters of *Hammond v Aboudi* and *Hammond v Sorani*, the Committee requested a briefing from the Commissioner of the Corruption and Crime Commission as to whether he considered that amendments to the *Corruption and Crime Commission Act, 2003* were required in relation to the organised crime and contempt provisions.

1.2 Court of Appeal proceedings

On 25 February 2005 the Commissioner of Police obtained an “exceptional powers finding” from the Corruption and Crime Commission pursuant to s.46 *Corruption and Crime Commission Act, 2003*, to enable the Police to investigate two suspected Schedule 1 offences committed at the Metro City Nightclub on 23 January 2005. Troy Mercanti and John Kizon were charged with intending to cause grievous bodily harm and attempting to pervert the course of justice.

The Commissioner of Police applied to the Corruption and Crime Commission to summons and examine on oath Mr Aboudi and Mr Sorani, neither of whom had been charged with an offence.

At the commencement of the examinations, the Commissioner informed each witness that he would be in contempt if he failed to answer any question the Commissioner required him to answer. According to Commissioner Hammond, the Commission formed a preliminary view that the witnesses had committed contempt under the *Corruption and Crime Commission Act, 2003*. The Commissioner wrote to the witnesses expressing the Commission’s preliminary view and required them to attend a further examination. The witnesses gave the same answers as at the first examination: namely, that they were too drunk to remember what had happened on the night in question.

According to the Commissioner, their answers could not have been truthful, as extensive video footage demonstrated movements and a demeanour that bore no indication that they were intoxicated to the extent claimed. Consequently, the Corruption and Crime Commission commenced contempt proceedings in the Supreme Court, pursuant to s.160(1)(b) *Corruption and Crime Commission Act, 2003*.

In a unanimous decision, the Court of Appeal found that:

1. The Corruption and Crime Commission failed to identify the contempt committed; and
2. The elements of a contempt charge pursuant to s.160(1)(b) *Corruption and Crime Commission Act, 2003* were not established beyond reasonable doubt.

1.3 Briefing with the Corruption and Crime Commission

On 16 November 2005, the Committee met with the Corruption and Crime Commissioner, Hon. Kevin Hammond; Executive Director, Mike Silverstone; and Director of Special Operations, Nick Anticich.

The Commissioner provided the Committee with a draft report dated 16 November 2005 setting out his concerns with various provisions of the *Corruption and Crime Commission Act, 2003* in respect of organised crime and contempt.

In his draft report, the Commissioner made the following recommendation to the Committee:

The Commission respectfully recommends that the Joint Standing Committee on the Corruption and Crime Commission:

- a. notes the concerns raised as a result of the recent Court of Appeal contempt judgment;*
- b. notes the failure of the Corruption and Crime Commission Act, 2003 to achieve its organised crime purpose to date;*
- c. agrees that an amendment to the contempt powers is required;*
- d. agrees that an amendment of the definition of organised crime is required;*
- e. agrees to the need to amend those elements of the Act that impose tension and discontinuity on the exercise of the organised crime function;*
- f. agrees that there is a need to amend the Corruption and Crime Commission Act, 2003 in order to permit the Commission to conduct organised crime investigations; and*
- g. recommends to the Parliament that the Corruption and Crime Commission Act, 2003 be amended accordingly.** [emphasis added]*

In his draft report to the Committee, the Commissioner also stated that:

[t]he Commission believes that the best remedy would be through legislative amendment rather than through intermittent and uncertain incremental adjustments achieved through the appeal process. The alternative is to wait for the 3 year review due to start in January 2007 but this would see no effective progress in the exercise of the organised crime function until the passing of any subsequent legislation, which could well be delayed until into 2008.

CHAPTER 2 INQUIRY INTO LEGISLATIVE AMENDMENTS TO THE *CORRUPTION AND CRIME COMMISSION ACT, 2003*

2.1 Joint Standing Committee on the Corruption and Crime Commission Resolution

As a result of its meeting with the Corruption and Crime Commission on 16 November 2005, the Committee resolved to conduct an inquiry pursuant to Legislative Assembly Standing Orders 290(a) and 290(b).

Standing Order 290(a) states that it is a function of the Committee to 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.

Standing Order 290(b) states that it also a function of the Committee to inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector.

Section 226 *Corruption and Crime Commission Act, 2003* provides that the Minister is to carry out a review of the operation and effectiveness of the Act as soon as practicable after the expiration of 3 years after its commencement.

In view of the Commissioner's concerns raised on previous occasions, and again in connection with the Court of Appeal decision in relation to organised crime and contempt, the Committee considers it imperative to conduct an inquiry prior to the statutory review.

To this end, the Commissioner has agreed to present a further report to the Committee as soon as possible detailing the recommended legislative amendments. The Committee aims to table the Commissioner's further report in the Legislative Assembly and the Legislative Council by December 2005.

2.2 Public Hearing with the Corruption and Crime Commission on 19 October 2005

The Committee held a public hearing with the Corruption and Crime Commission on 19 October 2005 in relation to the Commission's Annual Report 2004-2005. During the course of the hearing, Commissioner Hammond raised with the Committee several perceived problems with the *Corruption and Crime Commission Act, 2003*. The Committee has also resolved to consider all these matters as part of its Inquiry.

2.3 Inquiry Terms of Reference

Pursuant to Legislative Assembly Standing Orders 290(a) and 290(b), the Joint Standing Committee on the Corruption and Crime Commission will inquire into and report to Parliament on:

1. Proposed amendments to the *Corruption and Crime Commission Act, 2003* in relation to the Corruption and Crime Commission's organised crime functions, contempt provisions under the Act, and any other amendments deemed necessary to ensure the proper functioning of the Corruption and Crime Commission; and
2. In particular, the Committee will examine the recommendations presented to the Committee in a draft report by the Commissioner of the Corruption and Crime Commission on 16 November 2005.