



Joint Standing Committee on the Corruption and Crime Commission

Current Committee Confirmed

Clarifying the legal composition and powers of the Committee

**Report No. 5
October 2017**

Parliament of Western Australia

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Clarifying the legal composition and powers
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Report No. 5

Presented by

Ms M.M. Quirk, MLA and Hon J.E. Chown, MLC

Laid on the Table of the Legislative Assembly on 19 October 2017
and the Legislative Council on 2 November 2017

Chair's Foreword

Upon the commencement of the 40th Parliament, the nomination of committee members for the Joint Standing Committee on the Corruption and Crime Commission (Committee) caused a level of controversy.

It was argued that the appointment of two members of the Government from the Legislative Assembly and, from the Legislative Council, a member of the Opposition and the Greens party, was contrary to legislation and defied established conventions.

The position persistently asserted was that there needed to be an Opposition committee member appointed from the Legislative Assembly. This was not a view with which the Government concurred. Reliance was selectively placed on some provisions in the *Corruption, Crime and Misconduct Act 2003* and on past practice and convention.

The raising of these objections had the effect of delaying the establishment of the Committee and its work. It also created an unacceptable level of uncertainty about the legal competence of committee members. Out of an abundance of caution, the Committee resolved to seek the opinion of senior counsel to resolve the matter once and for all.

This report contains a number of findings based on the comprehensive opinion of K M Pettit SC. He is routinely chosen by the Parliament to independently provide advice. He is thanked for his prompt consideration of the issues raised and his unequivocal conclusions that will ensure that future Parliaments will not be burdened by perceived uncertainty.

The Committee now looks forward in focussing on substantive issues.



MS M.M. QUIRK, MLA
CHAIR

Contents

Findings and Recommendations	ix
1 The Committee’s composition	1
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The controversy about the Committee’s membership	1
Legal advice sought and received by the Committee supports that it is effectively constituted and able to carry out its functions	1
Appendices	5
<hr/>	
1 Legal advice	5
2 Committee’s functions and powers	9

Findings and Recommendations

Finding 1

Page 2

The current composition of the Joint Standing Committee of the Corruption and Crime Commission, being two Labor members, one Liberal member, and one Greens member, is compliant with the *Corruption, Crime and Misconduct Act 2003*.

Finding 2

Page 2

Achieving “bipartisan support” would require both Labor members’ support as well as the Liberal member’s support.

Finding 3

Page 2

The definition of “bipartisan support” in the *Corruption, Crime and Misconduct Act 2003* does not mean nor imply equal numbers of members from the major parties. It means only that there must be no dissent by any member of the Joint Standing Committee on the Corruption and Crime Commission who is a member of one of the two major parties.

Finding 4

Page 2

The definition of “bipartisan support” in the *Corruption, Crime and Misconduct Act 2003* implies that the Joint Standing Committee on the Corruption and Crime Commission may have one or more members who are not from the two major parties. If the Act intended that only members of the two major parties could be members of the Committee, there would be no need to require *majority* support in addition to *bipartisan* support.

Finding 5

Page 3

The *Corruption, Crime and Misconduct Act 2003* does not require the Joint Standing Committee on the Corruption and Crime Commission’s membership to be bipartisan; it only requires certain functions to have bipartisan support within the Committee.

Finding 6

Page 3

No member of the Committee, including the Greens member, is precluded from any function of the Committee under the Act.

Finding 7

Page 3

The Committee reiterates that specific legislative requirements take precedence over perceived past conventional practice.

Chapter 1

The Committee's composition

The controversy about the Committee's membership

A controversy arose during debate in the Legislative Assembly on the establishment of the Joint Standing Committee on the Corruption and Crime Commission (Committee) over the composition of the Committee.

Specifically, members of the Liberal party argued that the Committee was not effectively established because the proposed composition of the Committee – two WA Labor party members, one Liberal Party member and one The Greens (WA) party member – is required to, but does not, meet the definition of “bipartisan support” in section 3 of the *Corruption Crime and Misconduct Act 2003* (CCM Act).

Although the Committee considered it was effectively constituted and able to carry out its functions under the CCM Act, the Committee sought independent legal advice to put the matter beyond doubt.

Legal advice sought and received by the Committee supports that it is effectively constituted and able to carry out its functions

Legal advice dated 21 September 2017 was received from Mr K M Pettit SC. It is attached at Appendix One.

The advice sets out that the Committee is effectively constituted and able to carry out its functions under the CCM Act. It states that:

the Act does not require the Committee's membership to be bipartisan, it only requires certain functions to have bipartisan support within the Committee.

Further:

The use of the plural “members” in the section 3 definition of “bipartisan support” does not imply that the Committee must have more than one member from each of the two major parties.

Therefore, having two members of the party of which the Premier is a member, and one member of the party of which the Leader of the Opposition is a member, satisfies composition requirements under the CCM Act and enables the Committee

Chapter 1

to perform its role in the appointment of the CCC Commissioner and other positions.¹

To achieve bipartisan support:

would presently require both Labor members' support as well as the Liberal member's support. The Green's member's support is not relevant to "bipartisan support".

Therefore, in exercising its appointment role under the CCM Act:

Under the present composition of the Committee, if Labor and Liberal members support a nominee, then majority support and bipartisan support will both be achieved, regardless of whether the Greens member supports a nominee. If one member from a majority party does not support a nominee, then the nomination will have majority support, but will fail for lack of bipartisan support regardless.

Finding 1

The current composition of the Joint Standing Committee of the Corruption and Crime Commission, being two Labor members, one Liberal member, and one Greens member, is compliant with the *Corruption, Crime and Misconduct Act 2003*.

Finding 2

Achieving "bipartisan support" would require both Labor members' support as well as the Liberal member's support.

Finding 3

The definition of "bipartisan support" in the *Corruption, Crime and Misconduct Act 2003* does not mean nor imply equal numbers of members from the major parties. It means only that there must be no dissent by any member of the Joint Standing Committee on the Corruption and Crime Commission who is a member of one of the two major parties.

Finding 4

The definition of "bipartisan support" in the *Corruption, Crime and Misconduct Act 2003* implies that the Joint Standing Committee on the Corruption and Crime Commission may have one or more members who are not from the two major parties. If the Act intended that only members of the two major parties could be members of

1 *Corruption, Crime and Misconduct Act 2003* (WA), s9 Commissioner of the Corruption and Crime Commission, s14 Acting Commissioner of the Corruption and Crime Commission, s189 Parliamentary Inspector of the Corruption and Crime Commission, s193 Acting Parliamentary Inspector of the Corruption and Crime Commission.

the Committee, there would be no need to require *majority* support in addition to *bipartisan* support.

Finding 5

The *Corruption, Crime and Misconduct Act 2003* does not require the Joint Standing Committee on the Corruption and Crime Commission's membership to be bipartisan; it only requires certain functions to have bipartisan support within the Committee.

Finding 6

No member of the Committee, including the Greens member, is precluded from any function of the Committee under the Act.

Finding 7

The Committee reiterates that specific legislative requirements take precedence over perceived past conventional practice.

A handwritten signature in black ink, appearing to read 'M.M. Quirk', is positioned above the printed name.

MS M.M. QUIRK, MLA
CHAIR

Appendix One

Legal advice

Opinion

Constitution of the Joint Standing Committee on the Corruption and Crime Commission

Instructions

By letter dated 6 September 2017 from the Chair of the Joint Standing Committee on the Corruption and Crime Commission, I have been asked to advise on these issues:

- i. The interpretation of the legislative requirements for the Committee under the *Corruption Crime and Misconduct Act 2003*
- ii. Whether the current composition of the Committee can be described as “bipartisan” given there is only one member of the Leader of the Opposition’s party and section 3(1) of the Act refers to “members”.
- iii. If the current composition of the Committee complies with the Act, are there decisions or performance of functions from which participation by a member of a party other than that of the government or opposition is precluded?

The Act

Section 216A of the *Corruption Crime and Misconduct Act 2003* (**the Act**) is the sole provision in that Act expressly dealing with the establishment, composition and function of the Joint Standing Committee on the Corruption and Crime Commission (**the Committee**).

As to composition, section 216A provides that the Houses of the Parliament are to establish a joint standing committee comprising an equal number of members appointed by each House. Read alone, s 216A contains no requirement for membership of the Committee to be influenced by party affiliation.

However, there are other references in the Act that have implications for the Committee’s membership.

Section 9(3a) deals with the appointment of the Crime and Corruption Commissioner (**the Commissioner**). A nominating committee is to provide the Premier with a list of three nominees for Commissioner. The Premier is to recommend one of those persons, provided that person has the support of the “majority” of the Committee and also has “bipartisan support” within the Committee.

Sections 14 and 189 contain similar provisions for the appointment of an acting Commissioner and the Parliamentary Inspector respectively.

Appendix One

Under the definition in section 3(1), “bipartisan support” means the support of —

- (a) *members of the Standing Committee who are members of the party of which the Premier is a member; and*
- (b) *members of the Standing Committee who are members of the party of which the Leader of the Opposition is a member.*

“Bipartisan support” is confined to two major parties

The express terms of the definition are clear enough that the criteria for “bipartisan support” are confined to the support of Committee members from the two major parties.

Further, the word “*party*”, while not defined, is used in the Act in a manner that recognises that the Parliament may have members who are not from the two major parties. Section 9(4) requires consultation with (if there is no Standing Committee) “*the Leader of the Opposition, and the leader of any other political party with at least 5 members in either House*”.

Therefore, the Act’s recognition of the possibility of more parties than the two major parties is consistent with the plain meaning of the definition of “bipartisan support”, namely that it relates only to the Committee members from the parties of the Premier and the Leader of the Opposition, and does not relate to a Committee member from any other party.

Currently, the Committee comprises two Labor Party members, one Liberal Party member and one Greens Party member. Bipartisan support would presently require both Labor members’ support as well as the Liberal member’s support. The Green’s member’s support is not relevant to “bipartisan support”.

Act requires Committee to include a member from both major parties

The definition of “bipartisan support” implies that all those Committee members who belong to one of the two major parties must support the nominee in order to constitute bipartisan support.

Sections 3, 9, 14 and 189 imply that the Committee’s membership must be such as to permit the Committee to reach bipartisan support, which necessitates at least one member from the Premier’s party and one member from the Leader of the Opposition’s party.

The definition cannot be properly interpreted to require only the support of such members from the two major parties who happen to be appointed by the Parliament, if any. Rather, the need under each limb of the definition of “bipartisan support” to achieve “support” of a member from each of the two major parties requires the Committee to have a member from each of the two major parties.

Act does not require equal number of member from two major parties

The use of the plural “members” in the section 3 definition of “bipartisan support” does not imply that the Committee must have more than one member from each of the two major parties.

Section 10(c) of the *Interpretation Act 1984* provides that words in the plural include the singular. That rule of interpretation will apply to the Act unless either the Act expressly provides otherwise (which it does not) or the intent and object of the Act, or something in the subject or context of the Act, is inconsistent with application of s 10(c) of the *Interpretation Act*.

Nothing in the intent, object, subject or context of the Act is inconsistent with application of s 10(c) *Interpretation Act*.

“Bipartisan support” does not mean or imply equal numbers; it means only that there must be no dissent by any member of the Standing Committee who is a member of one of the two major parties.

The fact that the Committee includes two members from the Labor Party does not mean that it must therefore include two from the Liberal Party.

Act allows Committee to include member from minor party

Section 216A requires only equal representation between the two Houses, not between any two or more parties, and therefore allows a member of a minor party to be a Committee member.

Also, the definition of “bipartisan support” implies that the Committee may have one or more members who are not from the two major parties. That is because, if the Act intended only the two major parties to be included, there would be no need to require *majority* support in addition to *bipartisan* support.

Act does not require the Committee to be bipartisan

I have noted from the debate on 13 May 2004 that the Parliamentary Committee considered that the former Joint Standing Committee should have even numbers in order to allow a balance between membership from the ruling party and membership from non-governing parties. That is a matter for the Parliament. It is not required by the Act, notwithstanding its obvious merit.

The Act does not require the Committee’s membership to be bipartisan, it only requires certain functions to have bipartisan support within a Committee.

Under the present composition of the Committee, if the Labor and Liberal members support a nominee, then majority support and bipartisan support will both be achieved, regardless whether the Greens member supports a nominee. If one member from a major party does not support a nominee, then the nomination will have majority support, but will fail for lack of bipartisan support regardless.

No member of current Committee precluded from statutory functions

The current composition of the Committee is compliant with the Act.

No member of the Committee, including the Greens member, is precluded from any function of the Committee under the Act.

Appendix One

The support of the Greens member for a nominee under the Committee's functions in section 9, 14 and 189 is included for the purpose of achieving majority support, but is not relevant to bipartisan support. That does not preclude the Greens member for participation in any matter arising for Committee consideration.



K M Pettit SC

Francis Burt Chambers

21 September 2017

Appendix Two

Committee's functions and powers

By concurrence between the Legislative Assembly and the Legislative Council, the Joint Standing Committee on the Corruption and Crime Commission was established on 15 June 2017.

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, Crime and Misconduct Act 2003*.

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