

CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2023

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [6.19 pm]: I move —

That the bill be now read a second time.

The bill will amend the Corruption, Crime and Misconduct Act 2003 to deliver two key reforms: firstly, to provide timely and effective appointment processes for commissioners and acting commissioners; and, secondly, to provide for the new position of deputy commissioner. The CCM act provides for the establishment of the Corruption and Crime Commission as the pre-eminent anti-corruption body in Western Australia, with functions in relation to serious misconduct by public officers, the confiscation of unexplained wealth and criminal benefits, and the investigation of organised crime. This bill represents the first tranche of work in the modernisation of the CCM act and will address the appointment process to ensure stability and accountability in the leadership and management of the CCC. Work on other reforms to the act remains ongoing.

The appointment process for the position of Corruption and Crime Commissioner begins with the requirement for a nominating committee to provide a list of three persons eligible for appointment to the Premier, who then submits a recommended appointee to the Joint Standing Committee on the Corruption and Crime Commission for approval. Under the current process, the appointment can proceed only if it has the support of the majority of the standing committee and bipartisan support. Given the importance of the role of the Corruption and Crime Commissioner, it is appropriate for a degree of parliamentary involvement in the process for appointing the commissioner, and this is a feature common to all Australian states and territories. However, an identified flaw in the WA appointment process is that it is susceptible to inappropriate manipulation as a single member of the standing committee may block the appointment process indefinitely.

The standing committee consists of four members, each of whom has a single deliberative vote. The current requirement in the CCM act for both majority support and bipartisan support to approve a proposed appointment gives undue weight to a particular individual's vote in certain circumstances. When there is only one standing committee member from the opposition, for instance, that single member's refusal to support an appointment would result in an indefinite impasse due to the lack of bipartisan support. Members may recall that the Attorney General highlighted this flaw in the appointment process during debate on the Corruption, Crime and Misconduct Amendment Bill 2021 in June 2021 when he noted that it had resulted in a lengthy 14-month vacancy in the crucial position of Corruption and Crime Commissioner. It was never the intent of Parliament for any one member of the standing committee to unilaterally wield the power of veto. This bill will remedy that problem. Clause 6 of the bill will insert new section 9C into the CCM act to confer on the standing committee a power of veto instead of the flawed requirement for positive bipartisan and majority approval by the standing committee.

Under new section 9C, the Premier will be required to refer to the standing committee a proposal to appoint a person to the position of commissioner. The standing committee will then have 14 days after the day the referral was made to respond, and a further 30 days if it notifies the Premier within the first 14-day period that it requires more time to consider the matter and determine whether to exercise the power of veto. Unlike the problematic current approach, section 9C will provide that the proposed appointment will progress unless the standing committee resolves to veto the appointment. Under the standing orders, a resolution by the standing committee requires a quorum of three committee members. As such, a single individual member would not be able to disrupt the appointment process on their own by simply declining to provide support. This new approach will reinforce the concept that the power of veto lies with the standing committee and not just any one member acting on their own.

The key benefit of the new section 9C approach is that it will address the identified problem in the current appointment process while supporting the standing committee's important function of scrutiny and its ability to prevent the appointment of an unsuitable person as commissioner when the standing committee believes this is appropriate. This approach is aligned with the processes in New South Wales and Victoria for the appointment of the head of their equivalent pre-eminent anti-corruption bodies.

Clause 12 of the bill also introduces new sections 14(2A) to (2C), which will provide that when the period of appointment for an acting commissioner is less than 12 months, such an appointment may be made directly by the Governor on the recommendation of the Premier without the need to go through the time-consuming processes of nomination and consideration by the standing committee. This will enable the timely appointment of a short-term acting commissioner to minimise periods of vacancy and address situations in which it may be inappropriate for the commissioner to act due to a perceived conflict of interest, for instance. When the appointment is for a period

that is longer than 12 months, the new process that will apply to the appointment of the commissioner will also apply to the acting commissioner.

I now turn to the second key reform in this bill, the creation of the deputy commissioner position. It was recognised some 20 years ago by the Standing Committee on Legislation, which was charged with closely scrutinising the then bill during its passage through Parliament, that workload pressures would eventually require positions to be established to assist the commissioner in discharging their duties, in particular, the crucial non-delegable powers set out in section 185(2). This resulted in a requirement being included in section 226 of the act to specifically consider the need for the appointment of assistant commissioners in the next statutory review of the act. Accordingly, the statutory review, conducted in 2008 by Gail Archer, SC, as she was then, specifically considered the significant workload of the commissioner due to the volume of non-delegable powers, and recommended that the legislation be amended to “allow for the appointment of deputy commissioners to whom specific functions may be delegated by the commissioner, and who are able to act as the commissioner in the commissioner’s absence”.

This call for a deputy commissioner has since been repeatedly echoed in successive standing committee reports in 2011, 2012, 2014 and 2020. Although the reports often referred to such positions as assistant commissioners, it is clear from the descriptions within the reports that the term encompassed what the 2008 statutory review referred to as a deputy commissioner.

This bill delivers on the long-awaited deputy commissioner position to assist in managing the workload of the CCC and support impartial decision-making on an ongoing basis.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to a bilateral or multilateral intergovernmental agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper [2471](#).]

Debate adjourned, pursuant to standing orders.

House adjourned at 6.26 pm
