



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

**INTERIM REPORT ON AMENDMENTS TO
THE CORRUPTION AND CRIME
COMMISSION ACT, 2003**

**Report No. 10
in the 37th Parliament**

2006

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Joint Standing Committee on the Corruption and Crime Commission

Interim Report on Amendments to the Corruption and Crime Commission Act, 2003

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COMMISSION ACT, 2003**

Report No. 10

Presented by:

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

Laid on the Tables of the Legislative Assembly and the Legislative Council
on 22 June 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.

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.

CHAIRMAN'S FOREWORD

The passage of the *Corruption and Crime Commission Act, 2003* saw arguably the most comprehensive, effective anti-corruption legislation in English-speaking jurisdictions introduced into Western Australia.

The legislation has enabled the Corruption and Crime Commission to realise its considerable powers and to grow into an effective corruption deterrent body. Yet as in all jurisdictions, unforeseen flaws can arise. The statutory requirement of a three-year review provides for a considered re-evaluation of the intent and application of the legislation.

The Committee sees the recommendations contained in this report as being of such urgency and common sense that they should be addressed by Parliament expeditiously.

The Committee also anticipates that other amendments, including those of a more contentious nature, could be considered in the near future. The Committee will table further reports on these future proposed amendments.

MR JOHN HYDE, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

Act	<i>Corruption and Crime Commission Act, 2003</i>
CCC	Corruption and Crime Commission of Western Australia
Committee	Joint Standing Committee on the Corruption and Crime Commission
DPP	Office of the Director of Public Prosecutions for Western Australia
Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission of Western Australia
Acting Parliamentary Inspector	Acting Parliamentary Inspector of the Corruption and Crime Commission of Western Australia

RECOMMENDATIONS

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Recommendation 1

The Committee recommends that the definition of “organised crime” in the *Corruption and Crime Commission Act, 2003* be amended to reflect the clearer wording in Queensland’s *Crime and Misconduct Act, 2001*.

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Recommendation 2

The Committee endorses the amendments to the *Corruption and Crime Commission Act, 2003* proposed by the CCC in relation to:

- expanding the definition of “public officer”;
- simplifying the definition of “misconduct”;
- clarifying the definition of “principal officer of a notifying authority”;
- clarifying the offence of knowingly making a false or malicious report;
- adding a provision for the CCC to give a report about a proposed commissioned police officer to the Commissioner of Police;
- preventing persons who are not public officials from disclosing restricted information;
- making provision for witness and interpreter fees; and
- amending a drafting error in section 27A(3).

The Committee recommends that the Attorney General introduce the amendments into Parliament as soon as possible.

In relation to the category of person to be included in the definition of “public officer”, the Committee recommends that the Attorney General consider what category of carers, if any, should be included. The Committee has concerns that genuine carer volunteers should not be included in the definition of “public officer”.

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Recommendation 3

The Committee endorses the CCC's opinion that amendments to the *Corruption and Crime Commission Act, 2003* are not necessary at this stage in relation to:

- a multi-person Commission;
- the appointment of up to two Assistant Commissioners;
- jurisdiction over private entities executing public functions;
- provision for public interest monitor; and
- adoption of the legislative scheme of the *Crime and Misconduct Act 2001* (Qld).

The Committee recommends that these matters be reconsidered as part of the statutory three-year review in 2007.

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Recommendation 4

The Committee recommends that the *Corruption and Crime Commission Act, 2003* be amended to empower the CCC to perform a witness protection function.

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Recommendation 5

The Committee recommends that the *Corruption and Crime Commission Act, 2003* be amended to allow the Commissioner to delegate the power to conduct examinations on oath to suitably qualified and experienced legal practitioners appointed by the CCC as "examiners".

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Recommendation 6

The Committee recommends against establishing a separate judicial commission in Western Australia at this stage, and recommends that the *Corruption and Crime Commission Act, 2003* be amended to empower the CCC to fully oversight the conduct of holders of judicial office.

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Recommendation 7

The Committee recommends that the *Corruption and Crime Commission Act, 2003* be amended to include a provision that the Standing Committee has the right to interview the Executive's preferred candidates to the positions of Commissioner, Acting Commissioner, Parliamentary Inspector and Acting Parliamentary Inspector.

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Recommendation 8

The Committee recommends that the *Corruption and Crime Commission Act, 2003* be amended to include a provision that prospective appointees to the positions of Commissioner, Acting Commissioner, Parliamentary Inspector and Acting Parliamentary Inspector must obtain the highest level security clearances as part of the recruitment process.

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Recommendation 9

The Committee recommends that sections 10(1) and 190(2) of the *Corruption and Crime Commission Act, 2003* be amended to allow other suitably qualified people to be considered for appointment as Commissioner and Parliamentary Inspector.

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Recommendation 10

The Committee recommends that the *Corruption and Crime Commission Act, 2003* be amended to include a provision that no officers of the CCC may, except in the course of and for the purpose of that officer's duties, save with the approval of the Commissioner, communicate in any manner with any person known by the officer to be or likely to be under investigation or surveillance by the CCC, and to make it an offence to do so.

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

In its 2004-2005 Annual Report, the Corruption and Crime Commission highlighted a number of provisions of the *Corruption and Crime Commission Act, 2003* that required amendment to ensure that the CCC could fulfil its statutory functions satisfactorily. The Committee discussed these and other possible legislative amendments with the CCC at a public hearing on 19 October 2005.

Commissioner Hammond subsequently met with the Committee on 16 November 2005 to discuss his concerns with various provisions of the Act in respect of the CCC's organised crime function and contempt powers in particular. Commissioner Hammond requested that the Committee consider the CCC's proposed amendments and endorse the amendments in Parliament.

On 16 November 2005 the Committee resolved to conduct an inquiry to examine the amendments proposed by the CCC in relation to the organised crime and contempt provisions, and any other amendments deemed necessary to ensure the proper functioning of the CCC.

The Committee tabled a report in the Legislative Assembly and the Legislative Council on 17 November 2005 setting out the background issues and terms of reference for the *Inquiry into Legislative Amendments to the Corruption and Crime Commission Act, 2003*.

As agreed, the CCC tabled a report in Parliament in December 2005 formalising its recommendation to the Committee for amendments to the Act with particular reference to organised crime and contempt.

1.2 Committee's Inquiry Process

The Committee wrote to a number of relevant stakeholders requesting formal submissions to assist its inquiry. From the written submissions received as at the end of April 2006, it is clear that the legislative amendments sought by the CCC in relation to organised crime and contempt involve complex legal and policy considerations. The Committee will progress its investigation into these issues by convening briefings and public hearings with a range of stakeholders. However, all bodies agree that the definition of "organised crime" needs amending and the Committee addresses this aspect of organised crime in this report.

The Committee hopes to table a final report on the organised crime and contempt provisions in Parliament by December 2006. In the meantime, however, the Committee has resolved to table an interim report addressing other miscellaneous amendments to the Act, some of which are sought by the CCC, and others which the Committee itself considers necessary to achieve the original intentions of Parliament when it passed the legislation in 2003.

1.3 Concurrent Reviews of the Corruption and Crime Commission Act, 2003

(a) Section 226 Statutory Review

In recognition that the new legislation would inevitably require some amendment, the Parliament inserted a provision in the Act requiring the Minister to carry out a review of the operation and effectiveness of the Act as soon as practicable following the expiration of three years after its commencement. Section 226 sets out a number of specific matters to be considered as part of the review. These are dealt with briefly in Chapter 2.

(b) Attorney General's Review

Although the s.226 statutory review is due to occur in 2007, the Attorney General announced in early December 2005 that he would conduct a review of specified legislation within the justice portfolio, including the *Corruption and Crime Commission Act, 2003*.

The Attorney General sought a formal written submission from the CCC. The CCC's submission in January 2006 addressed all its proposed amendments to the Act, including those previously raised with the Committee. Notwithstanding the Attorney General's contemporaneous review of the Act and the overlapping nature of the inquiries, the Committee has resolved to include these amendments in its interim report.

Given the complexity and contentious nature of the proposed amendments with respect to organised crime and contempt, the CCC specifically requested the Attorney General to omit these areas from his legislative review. Rather, the CCC has requested that these areas be addressed by the Committee as part of its broader inquiry.

CHAPTER 2 AMENDMENTS SOUGHT BY THE CORRUPTION AND CRIME COMMISSION

2.1 Miscellaneous Amendments

As stated in Chapter 1, the Committee will table a further report dealing with amendments proposed by the CCC in relation to its organised crime function and contempt powers.

Since its establishment in January 2004, the CCC has raised a number of other desirable legislative amendments with both the current and previous Committee. The proposed amendments are set out in detail by the CCC in its submission for the Attorney General's review, including suggested wording for specific amendments.

The Committee endorses the following amendments sought by the CCC:

(a) Amending the definition of "organised crime"

In submissions to the Committee, the CCC, WA Police and Queensland's Crime and Misconduct Commission (CMC) agree that there is a need to clarify the definition of "organised crime". The CCC has stated to the Committee on a number of occasions previously that it had reservations from the start about the definition of organised crime which is "so circular and difficult to fathom" that the implementation of the organised crime function has always been vulnerable to legal challenge.

In its submission to the Committee, the CMC stated that:

The definition under which the CMC operates is what might be called a fairly "traditional" one which dates back to the matters adverted to in the report of the so-called "Fitzgerald Inquiry". The definition does not descend into detailed scheduling of offences but is focussed on criminal activity that "involves" indictable offences punishable by not less than 7 years imprisonment; two or more persons; ingredients of planning, organisation, system or continuity; and a purpose to obtain profit, gain, power or influence.

Significantly, a reference to such criminal activity includes suspected activity and activity that is preparatory to the commission of, or undertaken to avoid detection of or prosecution for, organised crime.

Accordingly, activity capable of constituting organised crime has been construed by the CMC and, by implication, courts which have considered various applications for warrants and certifications of contempt, not to have a temporal context so that the criminal activity susceptible of investigation as being "organised crime" includes activity which occurred in the past, is currently occurring, or may occur in the future.

Recommendation 1

The Committee recommends that the definition of “organised crime” in the *Corruption and Crime Commission Act, 2003* be amended to reflect the clearer wording in Queensland’s *Crime and Misconduct Act, 2001*.

(b) Expanding the definition of “public officer”

The current definition of “public officer” in s.3 adopts the definition in the *Criminal Code*. The CCC recommends that the definition be expanded to add specific classes of persons to the list of public officers and to allow the government to prescribe additional classes of public officers by regulation.

Examples of classes of persons who perform functions similar to public officers and whose conduct the CCC claims should be overseen by it in relation to any suspected misconduct are foster carers, candidates for elections to local government or Parliament who are not already public officers, and a range of employees of private companies and incorporated associations that provide public services or are contracted to the public sector.

In its submission to the Attorney General, the CCC sets out several possible forms of amendment and the implications of each. The CCC recommends that the definition of “public officer” be amended in the *Criminal Code* only and that the *Corruption and Crime Commission Act, 2003* continue to adopt the Code’s definition.

(c) Simplifying the definition of “misconduct”

Section 4 of the Act defines “misconduct” and sets out various categories of misconduct. The CCC claims that s.4(d)(v) and (vi) are overly complex provisions that notifying authorities find difficult to apply. The CCC recommends that s.4(d) be simplified by deleting subparagraphs (v) and (vi), and amending subparagraph (iv) accordingly.

(d) Clarifying the definition of “principal officer of a notifying authority”

Section 28 of the Act provides that a principal officer of a notifying authority has a duty to notify the CCC of any suspected misconduct. According to the CCC, the current definition in s.3 of a “principal officer of a notifying authority” is unclear at paragraph (d), which applies to local governments, universities and other organisations that do not have a natural sole principal officer.

The CCC recommends that the provision be amended to clarify who has the duty to notify where two or more principal/senior officers have equal or similar status, such as Mayor or Chancellor

(head of decision-making arm), and Chief Executive Officer or Vice-Chancellor (head of administrative arm) in local authorities and universities respectively.

In the CCC's view, the provision should be amended to allow more than one principal officer to be prescribed in such circumstances. The CCC also seeks approval from the Attorney General to draft regulations prescribing the person/s as principal officers.

(e) Clarifying the offence of knowingly making false report or making malicious report

There appears to be a typographical error in s.25(5) that provides that a person who makes a report:

- a. knowing that the content of the report is false or misleading in a material respect;
- b. maliciously or recklessly,

is guilty of a crime. The subsection is not clear as to whether both elements must be established as there is no "or" or "and" between paragraphs (a) and (b). The CCC recommends that the provision be amended by joining the two paragraphs with "and", thereby requiring maliciousness or recklessness to be established.

(f) Adding provision for CCC to give a report about a proposed commissioned police officer to the Commissioner of Police

Sections 90(4) and (5) of the Act allow the CCC to prepare an "integrity" report about a person proposed to be appointed as a non-commissioned police officer, constable, special constable or Aboriginal aide, and for the report to be given to the Commissioner of Police.

Section 90(3), however, only allows reports about proposed commissioned police officers to be given to the Minister. It does not permit the CCC to give a report to the Commissioner of Police.

The CCC recommends that s.90 be amended to remove the current differentiation between commissioned and non-commissioned police officers so that reports about both types of police officers can be given to the Commissioner of Police.

(g) Preventing persons who are not public officials from disclosing restricted information

The CCC seeks to tighten the disclosure rules by creating a new offence in the Act of disclosing confidential CCC information on the part of persons not already covered as public officials.

Currently, s.151 prevents the disclosure by any person of a "restricted matter", but there is no provision to prevent a "lay" person from disclosing other information they might obtain in confidence by being interviewed by the CCC or that they have provided to the CCC. The risk area includes informants, persons involved in controlled operations and integrity tests, and members of the general public.

The CCC recommends that a new provision be added to ss.151-153 of the Act making it an offence for any person to disclose or communicate information given by the CCC in confidence, provided the CCC officer made the person aware that the information was confidential and was not to be further disclosed.

(h) Provision for witness and interpreter fees

The CCC recommends that interpreters be paid a fee for assisting witnesses or the CCC in examinations. The CCC suggests that s.146 relating to witness fees be extended to apply to interpreters or that a new provision be added dealing specifically with interpreters.

(i) Amending a drafting error in s.27A(3)

Section 27A(1) provides that any allegation against a Member of Parliament must be referred to the Presiding Officer of the relevant House, unless the allegation is one of “serious misconduct” as defined in s.4.

Section 27A(3) seeks to provide that the CCC’s normal assessment, referral and investigative processes set out in Part 3, Division 4 do not apply to the above allegations, as they must be referred to the Presiding Officer. However, due to an apparent drafting error, the provision incorrectly states that Division 4 of Part 2 does not apply, instead of Division 4 of Part 3. The CCC recommends a simple amendment to correct the drafting error.

Recommendation 2

The Committee endorses the amendments to the *Corruption and Crime Commission Act, 2003* proposed by the CCC in relation to:

- expanding the definition of “public officer”;
- simplifying the definition of “misconduct”;
- clarifying the definition of “principal officer of a notifying authority”;
- clarifying the offence of knowingly making a false or malicious report;
- adding a provision for the CCC to give a report about a proposed commissioned police officer to the Commissioner of Police;
- preventing persons who are not public officials from disclosing restricted information;
- making provision for witness and interpreter fees; and
- amending a drafting error in section 27A(3).

The Committee recommends that the Attorney General introduce the amendments into Parliament as soon as possible.

In relation to the category of person to be included in the definition of “public officer”, the Committee recommends that the Attorney General consider what category of carers, if any, should be included. The Committee has concerns that genuine carer volunteers should not be included in the definition of “public officer”.

2.2 Section 226 Review Matters

In its submission to the Attorney General, the CCC listed separately the matters specified in s.226 which are to be the subject of the Minister’s three-year review of the Act.

Of those not already addressed above, the Committee endorses the views of the CCC in relation to the following proposed amendments:

(a) S.226(1a)(b) - Multi-person Commission

The CCC does not consider there is a need for more than one Commissioner.

(b) S.226(1a)(b) - The appointment of up to two Assistant Commissioners

The CCC does not consider there is a need for any Assistant Commissioners. The appointment of Acting Commissioners is the preferred model of the CCC to address workload and conflict issues, and absences of the Commissioner.

(c) S.226(1a)(c) - Jurisdiction over private entities executing public functions

First raised by the Legislative Council's Standing Committee on Legislation, the CCC does not recommend a general amendment to make any private entity exercising public functions subject to the CCC's jurisdiction due to the complex legal and policy issues involved, the significant additional resources required, and the significant increase in the role of the CCC so soon after its establishment.

However, the CCC submits that if the definition of "public officer" was extended as discussed above, employees of some private entities such as prison staff and incorporated associations could be included as public officers on a case-by-case basis either by amendment to the Act or by regulation.

(d) S.226(1a)(e) - Provision for a public interest monitor

The CCC does not consider there is a requirement for a public interest monitor as the public interest is adequately protected by the Parliamentary Inspector and the courts.

(e) S.226(1a)(f) - CCC performing a witness protection function

The CCC does not make a recommendation on this matter, but states that it has the capacity to manage this function if appropriately resourced.

On 29 May 2006, the Committee resolved to conduct a separate inquiry into the future of witness protection programmes in Western Australia. The Committee's findings and recommendations in relation to the role of the CCC in future witness protection programme/s in WA will be addressed in a future report.

(f) S.226(1a)(g) - CCC taking over the confiscation of proceeds of crime from the DPP

Again, the CCC does not make a recommendation on this matter, but states that it has the capacity to manage this function if appropriately resourced.

(g) S.226(1a)(i) - Adoption of legislative scheme of the Crime and Misconduct Act 2001 (Qld)

The CCC submits there is no need for the scheme under the Queensland legislation to be adopted in WA.

Recommendation 3

The Committee endorses the CCC's opinion that amendments to the *Corruption and Crime Commission Act, 2003* are not necessary at this stage in relation to:

- a multi-person Commission;
- the appointment of up to two Assistant Commissioners;
- jurisdiction over private entities executing public functions;
- provision for public interest monitor; and
- adoption of the legislative scheme of the *Crime and Misconduct Act 2001* (Qld).

The Committee recommends that these matters be reconsidered as part of the statutory three-year review in 2007.

Recommendation 4

The Committee recommends that the *Corruption and Crime Commission Act, 2003* be amended to empower the CCC to perform a witness protection function.

2.3 Non-delegable powers of the Corruption and Crime Commission

In a letter dated 6 June 2006, Commissioner Hammond requested the support and assistance of the Committee to expedite a further amendment to the Act.

Section 185(2) sets out a number of powers that cannot be delegated by the CCC, including the power to conduct examinations on oath. The Commissioner constitutes the CCC by virtue of s.9(1). Commissioner Hammond stated in his letter to the Committee that

It is my firm belief that sooner rather than later it will be absolutely essential for the Commission to delegate the conduct of examinations on oath probably to senior legal practitioners external to Western Australia...

Unless the constraints currently inherent in the CCC Act are altered I can foresee the Commission's functions being compromised even before the end of this calendar year.

The Committee acknowledges the concerns of Commissioner Hammond. The CCC's workload has increased enormously since its establishment in January 2004. The Committee considers that it is an unnecessary burden upon the Commissioner to conduct all examinations on oath, when this function could be performed by suitably experienced legal practitioners engaged to assist the CCC in this discrete function.

Commissioner Hammond requests that the Act be amended to allow the CCC to engage "examiners" to conduct examinations on oath. A similar approach is adopted at the Independent Commission Against Corruption of NSW, although it appoints "Assistant Commissioners" as opposed to "examiners".

An alternative to Commissioner Hammond's proposal is to amend the Act to appoint additional Commissioners or Assistant Commissioners, as discussed above at Chapter 2.2 (a) and (b). In its submission to the Attorney General, the CCC states that it does not support such amendments at this stage. It could also be possible for Acting Commissioners to conduct examinations on oath.

However, as this matter needs to be remedied on an urgent basis due to the workload demands on the CCC, the Committee supports Commissioner Hammond's request that appropriately qualified legal practitioners be engaged as "examiners" to assist the CCC in the conduct of examinations on oath.

The Committee is satisfied that this will address the immediate needs of the CCC, and that the other options of additional Commissioners or Assistant Commissioners can be considered more fully in the context of the statutory three-year review of the Act.

Recommendation 5

The Committee recommends that the *Corruption and Crime Commission Act, 2003* be amended to allow the Commissioner to delegate the power to conduct examinations on oath to suitably qualified and experienced legal practitioners appointed by the CCC as "examiners".

2.4 Amendments to other legislation

The CCC's submission to the Attorney General also addresses miscellaneous amendments to other legislation that affects its operations, such as the *Criminal Procedure Act 2004*, *Criminal Code*, and *Prisons Act 1981*. As these amendments go beyond the scope of the Committee's inquiry they are not dealt with in this report.

CHAPTER 3 COMMITTEE'S RECOMMENDED AMENDMENTS TO CORRUPTION AND CRIME COMMISSIONS ACT, 2003

In addition to the specific amendments sought by CCC, the Committee also considers that the following amendments should be made to the Act.

3.1 Allegations about holders of judicial officers

Pursuant to s.27(3) of the Act the CCC can only receive/initiate an allegation about a judicial officer if it relates to an offence of "judicial corruption" under s.121 of the *Criminal Code*, "or is of a kind that, if established, would constitute grounds for removal from judicial office."

Tenure of judges of the WA Supreme Court and District Courts is predicated on their continuing "good behaviour". The CCC stated in recent correspondence to the Committee that in determining the second limb of s.27(3), it will consider prevailing standards of judicial conduct and legal precedent at the relevant time. The CCC submits that the extent of its jurisdiction will be determined by court decisions as to the interpretation of s.27(3). In the meantime, the interpretation of "grounds for removal" is unclear and there may be a gap in the type of conduct by judicial officers that can be investigated.

Section 27(5) requires the CCC to act in accordance with conditions and procedures formulated in consultation with the Chief Justice when investigating a judicial officer. The CCC is yet to meet with the new Chief Justice to develop such procedures.

The CCC has raised with the Committee the possible need for independent oversight of the conduct of judicial officers, such as a judicial commission. A judicial commission could either be separate from the CCC or an extension of the CCC's jurisdiction. If a separate judicial commission were to be established, the CCC recommends that the CCC's current powers relating to judicial officers be transferred to the new body.

NSW has a judicial commission that has powers to investigate the grey area of conduct that is not clear corruption/misconduct and might not justify removal from office, but nevertheless warrants further examination on the ground that it may affect the judicial officer's duties or performance.

The Committee is not convinced of the merits of a separate judicial commission at this stage. The Committee remains of the view that a powerful, independent CCC should have equal and similar powers to oversight judicial misconduct, in the same way it can oversight senior public servants and Members of Parliament. The perpetuation of a judicial elite is a potential result of establishing a judicial commission that excludes oversight from the CCC.

Recommendation 6

The Committee recommends against establishing a separate judicial commission in Western Australia at this stage, and recommends that the *Corruption and Crime Commission Act, 2003* be amended to empower the CCC to fully oversight the conduct of holders of judicial office.

3.2 Role of Standing Committee in appointment of Commissioners, Parliamentary Inspectors and Acting appointments

Sections 9(3a)(b) and 189(2)(b) of the Act require the Premier to recommend the appointment of a person to the positions of Commissioner and Parliamentary Inspector “who, if there is a Standing Committee, has the support or the majority of the Standing Committee and bipartisan support.” This does not apply to the first appointment for either Commissioner or Parliamentary Inspector. The same requirements apply in relation to Acting Commissioners and Acting Parliamentary Inspectors pursuant to ss. 14(2a) and 193(2a) respectively.

In the case of Commissioners, the Premier must also “consult” with the Standing Committee before making an appointment pursuant to s.9(4)(b). This is not required for Parliamentary Inspectors.

Unlike New South Wales and Queensland, however, the legislation does not confer upon the Committee a veto power over proposed appointments. The parliamentary oversight committees in NSW and Queensland meet with preferred candidates prior to indicating their endorsement or otherwise. This approach is considered both appropriate and necessary by the committees and applicants due to the close working relationship with the oversight committee.

Whilst the Committee has begun working with the Department of Premier and Cabinet on a Memorandum of Understanding with regard to an appointments protocol, the Committee believes that similar wording as in the Queensland and NSW legislation would best clarify the role of the Committee in appointments in WA.

Recommendation 7

The Committee recommends that the *Corruption and Crime Commission Act, 2003* be amended to include a provision that the Standing Committee has the right to interview the Executive’s preferred candidates to the positions of Commissioner, Acting Commissioner, Parliamentary Inspector and Acting Parliamentary Inspector.

3.3 Security clearances for Commissioners, Parliamentary Inspectors and Acting appointments

The Act does not currently require prospective appointees to these senior positions to obtain security clearances prior to an appointment being confirmed. The Commissioner did submit to security vetting, but this should be a mandatory requirement under the Act. Prospective appointees should be required to pass the highest level of security clearance given their powers under telecommunications interception legislation.

Recommendation 8

The Committee recommends that the *Corruption and Crime Commission Act, 2003* be amended to include a provision that prospective appointees to the positions of Commissioner, Acting Commissioner, Parliamentary Inspector and Acting Parliamentary Inspector must obtain the highest level security clearances as part of the recruitment process.

3.4 Eligibility for appointment as Commissioner and Parliamentary Inspector

Section 10(1) provides that in order to be eligible for appointment as Commissioner of the CCC, the person must have served or be qualified for appointment as a judge of the Supreme Court of WA, another State or Territory, the High Court of Australia, or the Federal Court of Australia.

Section 190(2) provides that a person is only eligible to be appointed as Parliamentary Inspector if s/he is or has been a legal practitioner or is a practising barrister of the High Court of Australia, and has at least eight years "legal experience" as defined in s.190(1).

The Committee questions the need and appropriateness of the current qualification requirements for appointments as Commissioner of the CCC and Parliamentary Inspector on the basis that otherwise suitable people may be excluded.

Recommendation 9

The Committee recommends that sections 10(1) and 190(2) of the *Corruption and Crime Commission Act, 2003* be amended to allow other suitably qualified people to be considered for appointment as Commissioner and Parliamentary Inspector.

3.5 Communication by CCC officers with persons under or likely to be under investigation or surveillance by the CCC

Mr Malcolm McCusker QC, the Parliamentary Inspector of the CCC, suggested to the Committee a further amendment to the Act in view of charges against the CCC's former Acting Commissioner, Ms Moira Rayner. Although it could be implied, the Act does not currently prevent and sanction a CCC officer from communicating with a person known by the officer to be or likely to be under investigation or surveillance by the CCC.

Recommendation 10

The Committee recommends that the *Corruption and Crime Commission Act, 2003* be amended to include a provision that no officers of the CCC may, except in the course of and for the purpose of that officer's duties, save with the approval of the Commissioner, communicate in any manner with any person known by the officer to be or likely to be under investigation or surveillance by the CCC, and to make it an offence to do so.

APPENDIX ONE

SUBMISSIONS RECEIVED

Date	Name	Position	Organisation
28.11.05	Hon. Kevin Hammond	Commissioner	Corruption and Crime Commission of WA
6.12.05	Mr Mike Silverstone	Chief Executive Officer	Corruption and Crime Commission of WA
14.12.05	Hon. Kevin Hammond	Commissioner	Corruption and Crime Commission of WA
31.1.06	Hon. Kevin Hammond	Commissioner	Corruption and Crime Commission of WA
10.3.06	Hon. Justice Murray	Acting Chief Justice	Supreme Court of WA
28.3.06	Mr Alistair Milroy	Chief Executive Officer	Australian Crime Commission
30.3.06	Dr Karl O'Callaghan	Commissioner	WA Police
12.4.06	Ms Michelle Collins		
13.4.06	Mr Robert Needham	Chairperson	Crime and Misconduct Commission, QLD
26.4.06	Mr Ken Martin	President	WA Bar Association

APPENDIX TWO

LEGISLATION

Legislation	State
<i>Corruption and Crime Commission Act, 2003</i>	Western Australia
<i>The Criminal Code</i>	Western Australia
<i>Crime and Misconduct Commission Act, 2001</i>	Queensland