

EXECUTIVE SUMMARY AND RECOMMENDATIONS

EXECUTIVE SUMMARY

- 1 On June 26 2003, the Corruption and Crime Commission Bill 2003 and the Corruption and Crime Commission Amendment Bill 2003 (“Bills”) were referred to the Standing Committee on Legislation (“Committee”).
- 2 The Bills initially formed one bill known as the Corruption and Crime Commission Bill 2003 (“original Bill”). The original Bill was split in the Legislative Council, in order to enable the provisions dealing with the establishment of the Corruption and Crime Commission (“CCC”), to be promptly enacted.¹
- 3 The provisions relating to the establishment of the CCC formed the Corruption and Crime Commission Bill 2003 which was passed on June 26 2003 and received Royal Assent on July 3 2003. As the Corruption and Crime Commission Bill 2003 has been assented to, it is referred to in this Report as the *Corruption and Crime Commission Act 2003* (“*CCC Act*”). At the time of the presentation of this Report, the *CCC Act* has not yet come into operation.²
- 4 The remaining provisions of the original Bill became the Corruption and Crime Commission Amendment Bill 2003 (“CCC Amendment Bill”).
- 5 The *CCC Act* and the CCC Amendment Bill replace the Anti-Corruption Commission with a new agency, the CCC. The CCC is to have the following functions:
 - a **misconduct function** which involves investigation and action against police and general public sector misconduct;
 - a function called an **organised crime function** which despite its name actually leaves this function to the police and assigns to the CCC the exercise of powers previously to be exercised by a special commissioner under the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*;
 - a **prevention and education function**; and
 - a **function of completing Police Royal Commission matters**.
- 6 This Report is wide ranging, however the Committee’s main concern has been the proper balance between power and accountability. This has led the Committee to look at such matters as the structure, composition and model of the CCC, and its functions and powers.

¹ Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, June 26 2003, p57. See also Western Australia, Legislative Assembly, *Parliamentary Debates (Hansard)*, June 26 2003, p78.

² Section 2(1) of the *CCC Act* provides that it comes into operation on a day to be fixed by proclamation. At the time of the presentation of this Report, the *CCC Act* had not been proclaimed.

Given the breadth of this Report, the Committee highlights the following amendments which it considers will be fundamental to ensuring the success of the new agency:

- The amendments in relation to the misconduct function which are intended to enable the CCC to direct its resources to allegations of serious misconduct rather than less serious allegations thereby enabling the agency to properly perform its functions.
- The amendments to involve the parliamentary committee with oversight of the new agency in the appointment process for the Commissioner of the CCC and the Parliamentary Inspector. These amendments make both these roles accountable to the Parliament and the people of Western Australia through a parliamentary joint committee.
- The amendments directed to creating the office of the Parliamentary Inspector as an agent of the parliamentary committee with oversight of the CCC. The Committee considers that this is the most comprehensive and effective model of accountability.
- Given the CCC's extensive coercive powers, the Committee recommends an amendment which provides that the Parliamentary Inspector is to have the ability to directly audit any operation carried out pursuant to the powers conferred or made available by the *CCC Act*. This will include operations conducted by the Police Service using exceptional powers granted by the CCC pursuant to the organised crime function.
- The amendments in relation to the prevention and education function of the CCC which are directed to creating a clear link between the intelligence gathering role of the agency and its prevention and education function.

7 Apart from these matters, the Committee has recommended a number of significant amendments to the *CCC Act* and the CCC Amendment Bill in order to address the issues raised during the course of the inquiry. The Committee also has made a number of recommendations for the Government to consider.

RECOMMENDATIONS

8 Recommendations are grouped as they appear in the text at the page number indicated:

Recommendation 1: The Committee recommends that clause 5 and proposed sections 30, 31, 33 and 38 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in accordance with Appendix 14.

Recommendation 2: The Committee recommends that the definition of “disciplinary action” in clause 5 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 4, line 15 after “means” – To insert –

“ any ”.

Recommendation 3: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to insert a provision into the *Corruption and Crime Commission Act 2003* in relation to reviewable police action, and to make consequential amendments to clauses 6 and 10 in the following manner:

New Clause 10:

Page 13, after line 31 - To insert the following new Clause -

“10 Section 21A inserted

After section 17 the following section is inserted -

“

21A. Reviewable police action

(1) The Commissioner of Police is required to notify the Commission of matters concerning, or that may concern, reviewable police action in accordance with guidelines issued under section 30.

(2) The Commission is not to receive or consider any matter that concerns, or may concern, reviewable police action unless it determines that a matter should be dealt with for the purposes of this Act.

”.

”.

Clause 6:

Page 10, lines 27 to 30 – To delete “ ; or” in line 27 and delete the lines that follow.

Clause 20, proposed section 28:

Page 18, line 2 – To delete the line.

Page 19, lines 18 to 22 - To delete the lines.

Recommendation 4: The Committee recommends that clause 6 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

‘Technical amendments’ recommended by the Anti-Corruption Commission:

Page 9, line 23 – To insert after “person” -

“ or to cause a detriment to any person ”.

Page 9, line 33 – To insert after “officer” -

“
whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct
”.

Page 10, line 13 – To insert after “or” -

“ the benefit or detriment of ”.

Amendment relating to “public body:

Page 9, line 32 – To delete “body” and insert instead –

“ authority ”.

Recommendation 5: The Committee recommends that in relation to allegations against Corruption and Crime Commission officers amendments be made to clauses 10 and 13 of the Corruption and Crime Commission Amendment Bill 2003 in the following manner:

Clause 10, proposed section 27:

Page 17, lines 8 to 10 – To delete the lines.

Clause 13, proposed section 196:

Page 112, after line 23 – To insert -

“(4) The Commission is to notify the Parliamentary Inspector whenever it receives an allegation that concerns, or may concern, an officer of the Commission and at any time the Parliamentary Inspector may review the Commission’s acts and proceedings with respect to its consideration of such an allegation.

(5) Upon a review under subsection (4), the Parliamentary Inspector may notify the Commission that the matter is to be removed to the Parliamentary Inspector for consideration and determination.

(6) On receipt of a notice under subsection (5), the Commission is to comply with its terms.

(7) Upon a removal under subsection (5), the Parliamentary Inspector may -

(a) annul the Commission’s determination and substitute another; or

(b) make any decision the Parliamentary Inspector might otherwise have made had the Parliamentary Inspector exercised an original jurisdiction; or

(c) make any ancillary order, whether final or provisional, that is remedial or compensatory.

(8) Where the Parliamentary Inspector proposes to act under subsection (7)(a), the Commission must be given a reasonable opportunity to show cause why its determination should not be annulled.

(9) The Parliamentary Inspector must not undertake a review of a matter that arises from, or can be dealt with under, a jurisdiction created by, or that is subject to, the *Industrial Relations Act 1979*.

”.

Recommendation 6: The Committee recommends that proposed section 27 in clause 10 of the Crime and Corruption Commission Amendment Bill be amended in the following manner:

Page 17, line 22 - To insert after “Code” -

“

or is of a kind that, if established, would constitute grounds for removal from judicial office

”.

Page 17, after line 22 - To insert -

“

(4a) The Commission, when performing its functions in relation to the conduct of a holder of judicial office must proceed having proper regard for preserving the independence of judicial officers.

(4b) When investigating a holder of judicial office, the Commission must act in accordance with conditions and procedures formulated in continuing consultation with the Chief Justice.

”.

Page 17, line 23 - To delete “subsection (4)” and insert instead -

“ this section ”.

Recommendation 7: The Committee recommends that in relation to a decision to take no action, proposed section 18 in clause 7 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 13, after line 18 - To insert -

“

(3) When the Commission is deciding whether further action for the purposes of this Act in relation to an allegation is warranted, the matters to which it may have regard include the following —

- (a) the seriousness of the conduct or involvement to which the allegation relates;
- (b) whether or not, in the case of an allegation under section 4, the allegation is frivolous or vexatious or is made in good faith;
- (c) whether or not the conduct or involvement to which the allegation relates is or has been the subject of appropriate investigatory or other action otherwise than for the purposes of this Act;
- (d) whether or not, in all the circumstances, the carrying out of further action for the purposes of this Act in relation to the allegation is justified or is in the public interest.

”.

Recommendation 8: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to insert a provision into the *Corruption and Crime Commission Act 2003* similar to section 26 of the *Anti-Corruption Commission Act 1988*. This can be effected by amending clause 10 of the Bill to insert a new proposed section in the following manner:

Page 22, after line 6 - To insert -

“

35A. Person investigated can be advised of the outcome of the investigation

The Commission may inform a person to whom an allegation relates as to the outcome of any investigation carried out by the Commission or an appropriate authority in relation to the allegation if —

- (a) the person requests the information; or
- (b) the Commission considers that giving the information to the person is in the person’s best interests,

and the Commission considers that giving the information to the person will not prejudice the carrying out of any further action in relation to the allegation.

”.

Recommendation 9: The Committee recommends that proposed section 25 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 16, after line 20 - To insert -

“

- (5) A person who makes a report under this section and who does so –
- (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.
- (6) A charge cannot be brought against a person under subsection (5) other than by the Director of Public Prosecutions.

Penalty: Imprisonment for 3 years and a fine of \$60,000.

Summary penalty: \$10, 000.

”.

Recommendation 10: The Committee recommends that proposed section 25 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 16, after line 20 - To insert -

“

- (5) A publication by -
- (a) a complainant;
 - (b) a person who has relied upon information derived from a complainant; or
 - (c) a person who has no reliable source of knowledge (which shall be presumed in the absence of proof to the contrary),

that an allegation has been made about a person to the Commission carries with it, an inference that there were reasonable grounds for making the complaint.

”.

In the event that Recommendation 9 is agreed to the Committee observes that this amendment will become subsection (7).

Recommendation 11: The Committee recommends that when matters are referred to the Corruption and Crime Commission by the Anti-Corruption Commission and the Ombudsman, the informant be notified of a decision to take no action. The Committee recommends that proposed section 35 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended so that it reads as follows:

“35. Informant to be notified of decision not to take action

If -

- (a) a person makes an allegation under section 25 or 28(2);
- (b) an allegation under the A-CC Act is referred to the Commission; or
- (c) a complaint under the *Parliamentary Commissioner Act 1971* is referred to the Commission,

and the Commission decides to take no action, the Commission must notify the person who made the allegation or complaint that the Commission has decided that no action will be taken.

”.

The statutory amendments required to effect these changes in the House are as follows -

Page 22, line 3 – To insert after “If” –

“
-
(a) ”.

Page 22, line 4 – To insert after “28(2)” –

“
;
(b) an allegation under the A-CC Act is referred to the Commission; or
(c) a complaint under the *Parliamentary Commissioner Act 1971* is referred to the Commission
”.

Page 22, line 5 – To insert after “person” –

“ who made the allegation or complaint ”.

Recommendation 12: The Committee recommends that the Government seriously consider amending the *Crime and Corruption Commission Act 2003* to provide that the Crime and Corruption Commission is to perform a function of investigating serious and organised crime.

Recommendation 13: The Committee recommends that proposed section 50(2) in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended so that it reads as follows:

“(2) For the purposes of this section a person stands charged with an offence when -

(a) the person is informed by the person investigating the offence that he or she will be charged with the offence;

(b) the persons investigating the offence ought to have formed the view that the person should be charged with the offence,

whether or not at that time a complaint in respect of the offence has been made or sworn; or

~~(b)~~ (c) a complaint in respect of the offence is made or sworn,

whichever happens first. ”.

The statutory amendment required to effect these changes in the House is as follows -

Page 31, line 5 - To insert after “offence” –

“ ;

(b) the persons investigating the offence ought to have formed the view that the person should be charged with the offence

”.

Recommendation 14: The Committee recommends that proposed section 51 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 31, line 13 - To delete “this Division” and insert instead -

“ Divisions 3, 4 and 5 ”.

Page 31, after line 31 - To insert -

“

(6) The Commission may at any time revoke an exceptional powers finding by notice to the Commissioner of Police.

”.

Recommendation 15: In relation to proposed sections 60(2) and 64(3) in clause 10 of the Corruption and Crime Commission Amendment Bill 2003, the Committee draws the attention of the House to its comments at paragraphs 5.59 to 5.61 of this Report. The Committee recommends that:

(a) during debate in the Council the responsible Minister clarify the operation of proposed sections 60(2) and 64(3); and

(b) before establishing the Corruption and Crime Commission, the Government do consider and address the practical consequences that arise,

in light of the matters raised in those paragraphs.

Recommendation 16: The Committee recommends that proposed section 62(2) in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 38, line 31 - To insert after “notice” -

“ as soon as is reasonably practicable ”.

Recommendation 17: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to amend section 40 of the *Corruption and Crime Commission Act 2003* in the following manner:

Page 110, after line 23 – To insert the following new Clause –

“

16. Section 40 amended

(1) Section 40(1) is amended as follows: -

(a) before paragraph (a) the following paragraph is inserted -

“ (aa) to audit the operation of the Act; ”;

(b) before paragraph (c) the following paragraph is inserted -

“ (cc) to audit any operation carried out pursuant to the powers conferred or made available by this Act; ”;

(c) in paragraph (e) before “Parliament” – To insert -

“ either House of ”;

(d) in paragraph (e) by deleting “Standing Committees” and inserting instead -

“ the Standing Committee ”.

(2) Section 40(2)(d) is amended by inserting before “Parliament” -

“ either House of ”.

”.

Note: Proposed section 16(1)(d) relates to the matter discussed in Recommendation 46.

Recommendation 18: The Committee recommends proposed section 76(7) in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 49, line 18 - To insert after “premises” -

“ where there is fresh evidence ”.

Recommendation 19: The Committee recommends that proposed section 79 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 50, after line 19 - To insert -

“

(3) Subsection (2) does not extend to prevent claims in tort in relation to premises other than those in respect of which the fortification notice is given.

”.

Recommendation 20: The Committee draws the attention of the House to its comments at paragraphs 6.19 to 6.24 of this report and recommends that the Government, as a matter of priority, seriously consider amending the *Corruption and Crime Commission Act 2003* with a view to providing for a multiperson commission.

Recommendation 21: The Committee recommends that the Government, as a matter of priority, seriously consider amending the *Corruption and Crime Commission Act 2003* to provide for the appointment of up to two Assistant Commissioners to assist the Commissioner.

Recommendation 22: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to amend section 8 of the *Corruption and Crime Commission Act 2003* in the following manner:

Page 10, after line 34 – To insert the following new Clause -

“

9. Section 8 amended

Section 8 is amended as follows:

(a) by deleting subsections (1) and (2) and inserting instead -

“ (1) A person is qualified for appointment as the Commissioner if the person has served as, or is qualified for appointment as, a judge of the Supreme Court of Western Australia or another State or Territory, the High Court of Australia or the Federal Court of Australia. ”;

(b) after subsection (3) the following subsection is inserted -

“ (4) A person holding a judicial office shall retire upon appointment as Commissioner. ”.

”.

Note: Proposed section 9(a) relates to the matter discussed in Recommendation 24.

Recommendation 23: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to amend Schedule 1 of the *Corruption and Crime Commission Act 2003* in the following manner:

Page 117, after line 27 – To insert the following new Clause –

“

16. Schedule 1 amended

Schedule 1 is amended as follows:

- (a) clause 1 is repealed and the following clause is inserted instead -

“1. Tenure of office

Subject to this Act, the Commissioner holds office for a period of 5 years and is eligible for reappointment once. ”;

- (b) clauses 4(4) and 4(5) are repealed.

”.

Note: Proposed 16(1) also relates to the matter discussed in Recommendation 26.

Recommendation 24: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to address the Committee’s concerns about the restrictions created by the current definition of “legal practitioner” in section 8 of the *Corruption and Crime Commission Act 2003*. The statutory amendments required to effect these changes are contained in Recommendation 22 which inserts a new clause to amend section 8 of the *Corruption and Crime Commission Act 2003*.

Recommendation 25: The Committee recommends that the appointment process for the Commissioner be amended as proposed in Appendix 8.

Recommendation 26: The Committee recommends that clause 1 of Schedule 1 of the *Corruption and Crime Commission Act 2003* be amended to provide that the Commissioner holds office for a period of 5 years and is eligible for reappointment once. The statutory amendments required to effect this change in the House are set out in Recommendation 23.

Recommendation 27: In the event that the Government amends the *Crime and Corruption Commission Act 2003* as recommended by the Committee in Recommendation 21, the Committee recommends that the Assistant Commissioners should be appointed by the Governor. In addition, the Commissioner should be able to delegate to the Assistant Commissioners all the powers vested in him/her other than the power of delegation and the power to determine whether a hearing should be public.

Recommendation 28: The Committee recommends that the *Corruption and Crime Commission Amendment Bill 2003* be amended to delete section 34 of the *Corruption and Crime Commission Act 2003* and replace it with a new section in the following manner:

Page 110, after line 23 – To insert the following new Clause -

“14. Section 34 amended

Section 34(1) is amended by deleting subsections (1), (2) and (3) and inserting instead -

- “(1) The Parliamentary Inspector is appointed by the Governor by commission issued under the Public Seal of the State on the joint recommendation of the President of the Legislative Council (“the President”) and the Speaker of the Legislative Assembly (“the Speaker”) and holds office subject to this Act.
- (2) The President and the Speaker are to recommend the appointment of a person from a list submitted by the nominating committee, who has bipartisan support. ”.

”.

Recommendation 29: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to amend Schedule 2 of the *Corruption and Crime Commission Act 2003* with regard to the term of appointment for the Parliamentary Inspector in the following manner:

Page 119, after line 8 – To insert the following new Clause -

“

17. Schedule 2 amended

Clause 1 is deleted and the following clause is inserted instead -

“1. Tenure of office

Subject to this Act, the Parliamentary Inspector holds office for a period of 5 years and is eligible for reappointment once. ”.

”.

Recommendation 30: The Committee recommends that a new Part be created in the *Corruption and Crime Commission Act 2003* addressing the parliamentary standing committee. Accordingly the Committee recommends that the *Corruption and Crime Commission Amendment Bill 2003* be amended in the following manner:

Page 117, after line 16 – To insert the following new Clause -

“14. Part 13A inserted

After section 50 insert the following new Part -

“

Part 13A - Standing Committee

216A. Standing committee of Houses of Parliament

- (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.
- (3) The committee established under the name of the Joint Standing Committee on the Anti-Corruption Commission shall -
 - (a) carry on the functions conferred on the standing committee under this Act; and
 - (b) have the same powers with respect to the Commission and the Parliamentary Inspector as it has with respect to the Anti-Corruption Commission,

until such time as the Houses appoint the Standing Committee.

”.

”.

Recommendation 31: The Committee recommends that the definition of “Standing Committee” in clause 5 of the Crime and Corruption Commission Amendment Bill be amended to read:

“**Standing Committee**” is the committee referred to in section 216A.

The statutory amendment required to effect this change in the House is as follows:

Clause 5, page 8, lines 26 to 33 - To delete “means -” in line 26 and delete the lines that follow and insert instead -

“ is the committee referred to in section 216A; ”.

Recommendation 32: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to amend section 33 of the *Corruption and Crime Commission Act 2003* in the following manner:

Page 110, after line 23 – To insert the following new Clause –

“

13. Section 33 amended

After section 33(3) the following subsections are inserted -

“

(4) The Parliamentary Inspector is an officer of Parliament whose primary function is to assist the standing committee.

(5) The Parliamentary Inspector is an officer of the Parliament who helps the standing committee in the performance of its functions.

”

”.

Recommendation 33: The Committee recommends that the Government, as a matter of priority, do consider and introduce into the Legislative Assembly, legislation to amend the *Corruption and Crime Commission Act 2003* by creating a Public Interest Monitor who will have a role in relation to:

- (a) applications by the Corruption and Crime Commission under:
 - (i) the *Surveillance Devices Act 1998*;
 - (ii) the *Telecommunications (Interception) Act 1979* (Cth); and
 - (iii) search warrants referred to in proposed section 101 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003; and
- (b) applications by the Commissioner of Police to the Corruption and Crime Commission for an exceptional powers finding under proposed section 46 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003.

Recommendation 34: The Committee recommends that the Parliament be excluded from the definition of “appropriate authority” and that the process in proposed new sections 27A and 27B be utilised in relation to allegations concerning Members of Parliament. The Committee refers readers to Appendix 10 which contains the statutory amendments required to effect these changes in the Council.

Recommendation 35: The Committee recommends that clause 10 of the Crime and Corruption Commission Amendment Bill 2003 be amended in the following manner:

Page 15, lines 1 to 11 - To delete the clause.

Page 27, after line 21 - To insert -

“

(6) A recommendation made by the Commission under this section is not a finding, and is not to be taken as a finding, that a person has committed or is guilty of a criminal offence or has engaged in conduct that constitutes or provides grounds on which that person's tenure of office, contract of employment, or agreement for the provision of services, is, or may be, terminated.

”.

Recommendation 36: The Committee recommends that proposed sections 87(2) in clause 10 and proposed section 202(2) in clause 13 of the Corruption and Crime Commission Amendment Bill 2003 be deleted. This may be effected in the following manner:

Page 54, lines 5 to 7 - To delete the lines.

Page 114, lines 24 to 26 - To delete the lines.

Recommendation 37: The Committee recommends that clause 5 and proposed sections 94 and 100 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Clause 5:

Page 3, line 21 – To insert before “Section” –

“ (1) ”.

Page 9, after line 10 – To insert -

“(2) Section 3 is further amended by inserting the following subsection –

“

(2) Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable exclusively by a House of Parliament, unless that House so resolves.

”.

”.

Clause 10, proposed section 94:

Page 60, lines 22 to 23 – To delete the lines.

Clause 10, proposed section 100:

Page 66, lines 4 and 5 – To delete the lines.

Recommendation 38: The Committee recommends that proposed section 138 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 90, after line 5 - To insert -

“

(1) Before the Commission conducts an examination for the purposes of an investigation under this Act, the Commission is to inform the witness of the general scope and purpose of the investigation.

(2) Subsection (1) does not apply if the Commission considers that in the circumstances it would be undesirable to so inform the witness.

”.

Page 90, line 6 – To insert before “Except” -

“ (3) ”.

Recommendation 39: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended as proposed by the Crown Solicitor’s Office in Appendix 11 under the heading “Proposed amendment relating to the *Telecommunications (Interception) Act 1979 (Cth)*” in section 1.2 of the letter, however the amendment is to be made at page 146, after line 29.

Recommendation 40: The Committee recommends that the long title of the Crime and Corruption Commission Amendment Bill be amended in the following manner:

Page 1, line 1 - To insert after “2003” the following -

“

;

- repeal the *Anti-Corruption Commission Act 1988*;
- repeal the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*; and
- make amendments and provide for transitional matters as a consequence of the enactment of this Act and the repeal of other Acts

”.

Recommendation 41: The Committee recommends that clause 1 of the Crime and Corruption Commission Amendment Bill be amended in the following manner:

Clause 1, page 2, line 4 - To insert after “Amendment” the following –

“ and Repeal ”.

Recommendation 42: The Committee recommends that the Crime and Corruption Commission Amendment Bill be amended by inserting two new clauses in the form shown in Appendix 12. However, the Committee observes that clause 18 (which renumbers the *Corruption and Crime Commission Act 2003* so that it appears the same as the original Bill when introduced into the Legislative Assembly) will need to be further amended to accommodate the new sections that the Committee has recommended be inserted, if those new sections are adopted by the House.

Recommendation 43: The Committee recommends that the Crime and Corruption Commission Amendment Bill be amended to amend section 12 of the *Crime and Corruption Commission Act 2003* in the following manner:

Page 10, after line 34 – To insert the following new Clause –

“

10. Section 12 amended

Section 12 is amended by inserting the following subsection after subsection (2) -

“

(2a) The process for nomination and consultation with regard to the appointment of a person to act in the office of Commissioner shall be the same as that for the appointment of the Commissioner except that -

- (a) the process may be carried out prospectively even though the necessity for an appointment has not arisen;
- (b) it may be carried out with respect to a number of persons each of whom is eligible to be appointed should the necessity arise; and
- (c) any bipartisan support for a person lapses on the expiration of 12 months from the date of the resolution.

”.

”.

Recommendation 44: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to amend section 15 of the *Corruption and Crime Commission Act 2003* in the following manner:

Page 13, after line 19 – To insert the following new Clause –

“

8. Section 15 amended

Section 15(2) is amended in the following manner -

(1) by deleting paragraph (a) and inserting instead -

“

- (a) analysing the intelligence it gathers in support of its investigations into organised crime and misconduct; and
- (b) analysing the results of its investigations and the information it gathers in performing its functions; and
- (c) analysing systems used within public authorities to prevent misconduct; and
- (d) using information it gathers from any source in support of its prevention and education function; and

”.

(2) after paragraph (c) to insert -

“

- (g) ensuring that in performing all of its functions it has regard to its prevention and education function; and
- (h) generally increasing the capacity of public authorities to prevent misconduct by providing advice and training to those authorities , if asked, to other entities: and

”.

”.

Recommendation 45: The Committee recommends that the *Corruption and Crime Commission Amendment Bill 2003* be amended to amend section 38 of the *Corruption and Crime Commission Act 2003* in the following manner:

Page 110, after line 23 – To insert the following new Clause –

“

15. Section 38 amended

Section 38 is amended by inserting the following subsection after subsection (2) -

“

(2a) The process for nomination and consultation with regard to the appointment of a person to act in the office of Parliamentary Inspector shall be the same as that for the appointment of the Parliamentary Inspector except that -

(a) the process may be carried out prospectively even though the necessity for an appointment has not arisen;

(b) it may be carried out with respect to a number of persons each of whom is eligible to be appointed should the necessity arise; and

(c) any bipartisan support for a person lapses on the expiration of 12 months from the date of the resolution.

”.

”.

Recommendation 46: The Committee recommends that section 40 of the *Corruption and Crime Commission Act 2003* be amended to provide for a reference to “the Standing Committee”. The statutory amendments required to effect these changes are contained in Recommendation 17 which inserts a new clause to amend section 40 of the *Corruption and Crime Commission Act 2003*.

Recommendation 47: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to amend section 60 of the *Corruption and Crime Commission Act 2003* in the following manner:

Page 97, after line 27 – To insert the following new Clause -

“

11. Section 60 amended

- (1) Section 60(1) is amended by deleting “5” and inserting instead -
“ 3 ”.
- (2) After section 60(1) the following subsection is inserted –
“(1a) In addition to any matters that the Minister may determine, the Minister shall also have regard to whether the Act should be amended to include -
- (a) a multi person Commission;
 - (b) the appointment of up to two Assistant Commissioners;
 - (c) jurisdiction over private entities executing public functions;
 - (d) the commission having an investigative crime function;
 - (e) a public interest monitor;
 - (f) the commission performing a witness protection function;
 - (g) the commission taking over the confiscation of proceeds of crime from the Director of Public Prosecutions;
 - (h) provision for witness and interpreter fees; and
 - (i) the adoption of the legislative scheme of the *Crime and Misconduct Act 2001*(Qld).
- (3) Section 60(2) is amended by deleting “6” and inserting instead –
“ 4 ”.
- ”.

Note: Proposed section 11(2) relates to the matter discussed in Recommendation 48.

Recommendation 48: The Committee recommends that section 60 of the *Corruption and Crime Commission Act 2003* should be amended to include certain matters as “terms of reference” for the review (although the review should not be limited to these matters). The statutory amendments required to effect these changes are contained in Recommendation 47 which inserts a new clause to amend section 60 of the *Corruption and Crime Commission Act 2003*.

Recommendation 49: The Committee recommends that clause 2 of the *Corruption and Crime Commission Bill 2003* be amended in the following manner:

Page 2, after line 15 – To insert -

“

(4) In the event that any provision of this Act has not been proclaimed within 12 months of the act being assented to, it shall come into operation upon the date 12 months after assent.

”.

Recommendation 50: The Committee recommends that proposed section 28(2)(b) in clause 10 of the *Corruption and Crime Commission Amendment Bill 2003* be amended in the following manner:

Page 18, line 11 - To insert after “of” -

“ relevance or ”.

Recommendation 51: The Committee recommends that proposed section 42(5) in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 27, lines 19 to 20 - To delete the words “for the purposes of section 103 of the *Justices Act 1902* and section 611B of the *Criminal Code*” and insert instead -

“

by the independent agency for the purposes of discharging its obligations under section 103 of the *Justices Act 1902* and section 611B of the *Criminal Code*

”.

Recommendation 52: The Committee recommends that proposed section 43 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be deleted. The statutory amendment required to effect these changes in the Council is as follows:

Page 27, line 22 to page 28, line 2 - To delete the lines.

Recommendation 53: The Committee recommends that proposed section 83 in clause 10 be amended by inserting the following words at the start of subsection (1):

“Except with the consent of the Parliamentary Inspector”.

The statutory amendment required to effect this change in the House is as follows -

Page 51, line 27 – To delete “A” and insert instead –

“ Except with the consent of the Parliamentary Inspector, a ”.

Recommendation 54: The Committee recommends that proposed section 94(2)(a) in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 59, line 28 - To delete “concerned” and insert instead -

“ required ”.

Recommendation 55: The Committee recommends that proposed section 94 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 60, line 29 – To insert after “Act;” –

“ or ”.

Page 60, line 30 to page 61 line 2 – To delete the lines and insert instead -

“ (c) disciplinary action. ”.

Recommendation 56: The Committee recommends that proposed section 95 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 61, line 13 - To delete “document” and insert instead -

“ record ”.

Recommendation 57: The Committee recommends that proposed section 101 in clause 10 of the Corruption and Crime Commission Bill 2003 be amended in the following manner:

Page 66, line 15 - To insert after “suspected” -

“ serious ”.

Page 67, after line 26 - To insert -

“(7) the law and practice relating to search warrants issued under section 711 of the *Criminal Code* shall apply to an application for a search warrant under this section.

(8) Before the authorised person uses force that may cause damage to a place or thing to gain entry or access to the place or thing the authorised person must, if reasonably practicable -

- (a) ask the occupier of the place to allow the authorised person to enter the place or to have access to the thing; and
- (b) give the occupier a reasonable opportunity to allow the entry or access. ”.

Recommendation 58: The Committee recommends that proposed section 122(1)(a) in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended so that the beginning of it reads as follows –

“(1) A participant in a controlled operation must not -

(a) intentionally induce another person to engage in misconduct that there is no reason to suspect that person has previously engaged in; or

(b) engage in conduct ”.

The statutory amendments required to effect this change in the House are:

Page 80, line 26 – To delete “An authority to conduct” and insert instead –

“ A participant in ”.

Page 80, lines 27 to 28 – To delete the lines.

Page 80, line 29 – To delete “inducing a” and insert instead –

“ induce another ”.

Page 80, line 30 - To insert after “misconduct” –

“ that there is no reason to suspect that person has previously engaged in ”.

Page 80, lines 30 to 31 - To delete “of a kind that the person would not otherwise have intended to engage in ”.

Page 81, line - To delete “engaging” and insert instead –

“ engage ”.

Recommendation 59: Committee recommends that proposed section 130(a) in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended so that it reads as follows –

“(a) the activity or conduct does not involve any participant in the operation intentionally inducing a person to engage in misconduct that there is no reason to suspect that person had previously engaged in; and ”.

The statutory amendments required to effect this change in the House are:

Page 86, lines 15 and 16 – To delete “the person would not otherwise have intended to engage in” and insert instead -

“ there is no reason to suspect that person had previously engaged in ”.

Recommendation 60: The Committee recommends that proposed section 145 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 93, line 13 – To insert after “Act;” –

“ or ”.

Page 93, lines 14 to 19 – To delete the lines and insert instead -

“ (iii) disciplinary action. ”.

Recommendation 61: The Committee recommends that in relation to arrest warrants, proposed sections 148 and 150 in clause 10 of the Corruption and Crime Commission Amendment Bill 2003 be amended as proposed in Appendix 13.

Recommendation 62: The Committee recommends that clause 32 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 125, after line 26 – To insert -

“(ba) the rights, interests and welfare of any person employed by the A-CC are transferred to the Commission; ”.

Page 125 line 28 – To delete “and” where it second appears and insert instead -

“,”.

Page 125, line 28 – To insert after “b” –

“ and (ba) ”.

Page 126 line 8 – To delete “and” and insert instead -

“,”.

Page 126, line 8 – To insert after “b” –

“ and (ba) ”.

Page 126 line 12 – To delete “and”.

Page 126, line 12 – To insert after “b” –

“ and (ba) ”.

Recommendation 63: The Committee recommends that clause 51 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 135, line 18 - To delete “that contain a provision”.

Page 135, line 18 - To delete “(4)” and insert instead -

“ (2) ”.

Recommendation 64: The Committee recommends that the Corruption and Crime Commission Amendment Bill 2003 be amended to insert a new Part 1, Division 2 into the *Corruption and Crime Commission Act 2003* in the following manner:

Page 10, after line 34 – To insert the following new Clause –

“

7. Part 1 amended

(1) Part 1 is amended by inserting after “**Part 1 – Preliminary**” -
“ **Division 1 – Introduction** ”.

(2) After section 5 the following Division is inserted -

“

Division 2 – Purpose

7A Act’s purposes

The main purposes of this Act are -

- (a) to combat and reduce the incidence of organised crime; and
- (b) to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.

7B How Act’s purposes are to be achieved

(1) The Act’s purposes are to be achieved primarily by establishing a permanent commission to be called the Corruption and Crime Commission.

(2) The Commission is to be able to authorise the use of investigative powers not ordinarily available to the police service to effectively investigate particular cases of organised crime.

(3) The Commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.

”.

”.

Recommendation 65: The Committee recommends that the Government, as a matter of priority, do consider and introduce into the Legislative Assembly, legislation that will amend the *Corruption and Crime Commission Act 2003* to incorporate a provision similar to section 48 of the *Anti-Corruption Commission Act 1988* in relation to fees for witnesses and interpreters.

Recommendation 66: The Committee recommends that the Government, as a matter of priority, do introduce legislation that will amend the *Criminal Property Confiscation Act 2000* to enable the Corruption and Crime Commission to utilise the powers available under that Act.

Recommendation 67: The Committee recommends that clause 11 of the Corruption and Crime Commission Amendment Bill 2003 be amended in the following manner:

Page 109, after line 2 – To insert -

“

177A Summary prosecutions may be brought at any time with consent

Despite section 51 of the *Justices Act 1902* a complaint with regard to a simple offence may be made within 36 months from the time that the matter of complaint arose or thereafter at any time with the consent of the Attorney General.

”.

Recommendation 68: The Committee recommends that subject to the passage of the amendments contained in Recommendations 1-11, 13-14, 16-19, 22- 26, 28-32, 34-64 and 67 the Committee recommends the Corruption and Crime Commission Amendment Bill 2003 do pass.