

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [4.23 p.m.]: I move:

That this bill be now read a second time.

When this Government was in opposition, we committed that if elected we would ensure that an independent inquiry into the Crime Commission was conducted. We did as we promised. I am pleased to deliver my second reading speech on the Crime Commission Bill 2012. This bill does two things: it implements the recommendations of the Patten report and it re-enacts the New South Wales Crime Commission Act 1985, making the legislation modern and up-to-date. Following the sentencing of the former Assistant Director of the Crime Commission, the Government established the Special Commission of Inquiry into the New South Wales Crime Commission. David Patten was appointed to conduct the inquiry. Mr Patten was the Deputy President of the Administrative Decisions Tribunal. He had also been an acting judge of the Supreme Court and a judge of the District Court. I thank Mr Patten and his team for his rigorous, well thought out and hard work in this inquiry. The Patten inquiry examined the structure, procedures, accountability and oversight of the New South Wales Crime Commission. The report of the Special Commission of Inquiry into the New South Wales Crime Commission by Mr David Patten was handed down on 30 November 2011.

Mr Patten found that overall the New South Wales Crime Commission was performing its duties effectively and lawfully, and that it should continue to do so. Credit must be given to the men and women of the New South Wales Crime Commission who work tirelessly to catch the worst criminals Australia has to offer. Often the work they do goes unreported and is not publicly acknowledged. They work in the background, but they achieve phenomenal law enforcement outcomes for this community. However, the Crime Commission has been operating for more than 20 years without review and as a result of the inquiry Mr Patten made 57 recommendations to improve the structure, oversight, accountability, and powers and procedures of the Crime Commission. The Crime Commission Bill 2012 implements the vast majority of these recommendations and brings the legislation underpinning the Crime Commission into modern times.

The bill strengthens the accountability of the Crime Commission to limit corruption. This includes increased oversight and management of the Crime Commission, a stronger independent management committee, oversight by a parliamentary joint committee, scrutiny of an independent inspector and improved procedures relating to employment, management and human resources handling. I will explain these new initiatives in detail. The bill amends the Act to ensure that the management committee of the Crime Commission is more independent, transparent and effective. The management committee will consist of an independent chairperson appointed by the Minister, the Commissioner of Police, the chair of the Board of the Crime Commission, the commissioner and the Chief Executive Officer of the Ministry for Police and Emergency Services.

The primary function of the management committee is to refer matters to the Crime Commission for investigation, to make arrangements for task forces to assist the commission and to review and monitor the work of the commission. The management committee will also

be able to require the internal audit and risk committee to provide it with reports. The management committee will play the integral role of gatekeeper for the commission. I turn now to the Office of the Inspector. The next level of oversight this bill adopts is the establishment of an Inspector of the Crime Commission. The role of the inspector will be to audit the operations of the commission to ensure compliance with the law, assess the effectiveness and appropriateness of its procedures, and deal with complaints of misconduct and conduct amounting to maladministration.

The inspector will be a completely independent person who will have the real time power to audit every facet of the commission's operations, to have immediate access to the commission's records and staff, to spend time at the commission's offices and to be an independent person with whom concerns and complaints about the commission can be raised. The role of the inspector will complement the existing role of the Police Integrity Commission. However, investigations and preliminary investigations where no complaint has been received will not be able to be pursued by the Police Integrity Commission without the consent of the Crime Commission inspector. I should note that the bill was amended in the other House to give the inspector a right to make reasonable use of the services or staff or facilities of the Police Integrity Commission.

To be clear, the inspector already had this power under the bill as proposed. I refer members to clause 66 (2) (a) of the bill, which makes clear that the inspector may make use of any staff or facilities of any government agency. The Police Integrity Commission is a government agency. While I think the amendment was a matter of semantics, in this instance the Government was prepared not to oppose it. I am confident that the scrutiny of the Crime Commission by the inspector will ensure that any corruption is minimised and, if it does develop, is discovered quickly.

I turn to discussing the joint parliamentary committee. The top tier of accountability comes from the oversight of what is called the Committee on the Office of the Ombudsman and the Police Integrity Commission, which this bill names the Committee on the Office of the Ombudsman, the Police Integrity Commission and the Crime Commission. The role of the joint committee will be to have oversight of the commission and the inspector. The joint committee will not, however, be authorised to reconsider a decision of the Management Committee, litigation subject to the approval of a court under the Criminal Assets Recovery Act 1990 or operational decisions or procedures in relation to a particular reference or investigation. Instead, the joint committee provides high-level accountability to minimise the opportunity for corruption at all levels.

I turn now to the internal structures. Perhaps the more important oversight changes are those that will be occurring with the Crime Commission. Two full-time assistant commissioners will be appointed; one will be a retired or former judge of an Australian court or qualified for appointment to a superior court of Australia. The commission will also hold formal and minuted meetings to evaluate the relationships with all human sources at least every six months and review any payments to human sources. The commission will also put in place procedures for complaints made by legal practitioners and any complaints that are made against the commissioner. While these two changes are not legislative, they will further assist in the provision of the increased accountability of the Crime Commission. There will also be an increased requirement for transparency for all staff of the Crime Commission. All staff will need to obtain Commonwealth security clearances.

The Commonwealth security clearances will be a rigorous vetting process of the commission's staff. This is an important step to ensuring that only the most trustworthy applicants are able to be employed by the commission. In addition, all new staff will be required to provide a full employment history, which will be verified. Perhaps most importantly, all staff will be required to disclose personal particulars and financial information. This information will need to be verified and updated when there is a significant change in circumstances. I say that perhaps this is one of the most important reforms as it is thought that one of the reasons a former senior officer of the Crime Commission committed the crime he did was due to financial difficulties he had as a result of a gambling habit. These amendments would allow such problems to be quickly identified. All recruitment will be done on the basis of selection on merit and policies developed for managing unsatisfactory performance.

I turn to considering the removal of ordinary police powers. At the heart of the Crime Commission's criminal investigatory work is the work that it does pursuant to references from the management committee. Currently the Crime Commission Act provides that the management committee is not to refer a matter to the commission for investigation unless it is satisfied that ordinary police methods of investigation into the matter are unlikely to be effective. This requirement emphasised what police could not do rather than what the commission could do in the public interest. Many of the powers and techniques of the Crime Commission are currently used in situations where methods that are now, in a modern law enforcement agency, considered ordinary police methods. The major exception is the commission's power to compel witnesses to attend hearings and answer questions. However, the great majority of the commission's investigations do not make use of this power.

The Crime Commission often works in conjunction with the NSW Police Force as it is the most effective investigative approach, rather than because the methods used by police have failed or are unlikely to succeed. This bill adopts a new approach. It takes a positive formulation of the commission's capacity, rather than a negative formulation of the capacity of the Police Force. This bill amends the Crime Commission Act to provide that the management committee may refer a serious crime concern to the Crime Commission for investigation and removes the ordinary police method requirement. Patten considered amending the Crime Commission Act to provide that the management committee may refer a serious crime concern to the Crime Commission for investigation, but on balance was not persuaded.

However, the Government's view is that allowing the management committee to make references on the basis of a serious crime concern will enable the Crime Commission's expertise to be effectively used for the best interests of the community. The bill, therefore, amends the Crime Commission Act to allow references on the basis of a serious crime concern but also provides accountabilities and limitations to the broader reference power. A "serious crime concern" is defined to include any circumstances implying, or any allegations, that relevant offences of a particular type or class are being, and are likely to continue to be, committed in an organised, systemic or sustained way so as to have, or be likely to have, a significant impact on the community, or to involve, or be likely to involve, substantial proceeds of criminal activity.

Further, the bill amends the Crime Commission Act to prevent the management committee from referring matters relating to a relevant criminal activity or a serious crime concern to the commission for investigation unless it is satisfied that the use of the commission's functions

may be necessary to fully investigate the relevant criminal activity or serious crime concern; the investigation of the relevant criminal activity or serious crime concern by the commission is in the public interest; and the relevant criminal activity or serious crime concern is sufficiently serious or prevalent to warrant its investigation by the commission. This formulation ensures that the Crime Commission's powers and expertise are able to be utilised through appropriate references from the independent management committee.

I turn now to the Criminal Assets Recovery Act. The Crime Commission does a significant amount of work under the Criminal Assets Recovery Act, confiscating up to \$20 million in criminal assets per year. However, there has been a recent decline in confiscation orders and this is directly related to the decision of the *New South Wales Crime Commission v Cook*, which required the court to examine evidence where the settlement involves legal expenses. If the principle of the Cook decision were extended to all confiscation settlement agreements, as recommended by Patten, this may result in a further reduction in annual confiscations. This legislation overcomes the Cook decision by clarifying the role of the court in issuing consent orders for confiscation under the Criminal Assets Recovery Act. It provides the court with the discretion to determine if it gives consideration to the matters it otherwise may have in making a consent order.

Particularly, the court has the discretion not to consider the matters contained in the section of the Criminal Assets Recovery Act that addresses restrictions on payment of legal expenses from restrained property. However, to ensure that Crime Commission settlements are held to high levels of accountability, as was the intention of the Patten report, additional safeguards for confiscated proceeds settlements have been introduced. The bill provides that the management committee may develop a binding set of guidelines detailing the steps required before a settlement is reached, including full justification for allocation of legal costs. In addition, the bill provides that the Criminal Assets Recovery Act be amended to require the Commissioner of the Crime Commission to certify to the Supreme Court, in respect of every application for confiscation orders by consent, that the guidelines have been adhered to. Any proposal for settlement would therefore have to be approved by the commissioner. Confiscation of the proceeds of crime is a vital deterrent when dealing with organised crime. This bill will ensure that criminal assets are forfeited in an efficient and effective manner.

I turn to the subject of drug trafficking. This bill also removes drug trafficking from the objects of the New South Wales Crime Commission Act 1985. However, drug trafficking will remain part of the objectives of the Crime Commission because it is part of organised and other serious crime, which will remain in the objects of the Crime Commission Act. The issue of the relevance of drug trafficking as an object of the Crime Commission Act was considered by Patten to be outside his terms of reference. However, Patten noted that should the Act be further amended in the future, consideration should be given to this point. I add that when the commission was originally created, it was called the State Drug Crime Commission Act.

It has always been envisaged that the Crime Commission's focus should be on serious and organised crime. Drug trafficking was the principal activity of organised crime; however organised crime is now becoming increasingly diverse. The 2011 Organised Crime Threat Assessment [OCTA] undertaken by the European Police Office [Europol] noted that, "Organised crime is changing and becoming increasingly diverse in its methods, group structures, and impact on society." The Organised Crime Threat Assessment highlights:

That criminal groups are increasingly multi-commodity and poly-criminal in their activities, gathering diverse portfolios of criminal business interests, improving their resilience at a time of economic austerity and strengthening their capability to identify and exploit new illicit markets.

The Australian criminal environment reflects these international experiences and the objects of the Act should allow for a flexible and responsive Crime Commission. The bill also modernises the Crime Commission Act, largely drawing from the structure of the Police Integrity Commission Act 1996. I am confident that our reforms get the balance right. These reforms will ensure that there is stringent accountability and oversight of the Crime Commission whilst enabling the Crime Commission to complete its work in an ethical, effective and efficient manner. I commend the Crime Commission Bill 2012 to the House.