CORRUPTION, CRIME AND MISCONDUCT AND CRIMINAL PROPERTY CONFISCATION AMENDMENT BILL 2017

Second Reading

Resumed from 6 September.

MS M.M. QUIRK (Girrawheen) [10.05 am]: When I spoke yesterday on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill, I referred to paper 523 of 2016 from the Australian Institute of Criminology, "Procedural impediments to effective unexplained wealth legislation in Australia". The authors of that report identified a number of deficiencies in the existing Western Australian laws. The first is that the risk of losing a case at trial and the consequent requirement to pay court costs and damages means that few unexplained wealth cases are pursued. The second is that in unexplained wealth cases, it takes several months to obtain examination orders, and that gives respondents time to plan an explanation for their financial situation or rearrange their affairs. The third is that there are often problems with communication and collaboration between agencies involved in unexplained wealth cases.

The authors point out that in Western Australia, over a 10-year period, about $6.9 million was paid into the confiscation proceeds account from unexplained wealth investigations, whereas in a three-year period in New South Wales, $14.4 million was recovered, and in Tasmania in a one-year period, $820 000 in cash, assets and firearms was recovered.

In a larger monograph by the same authors, "Exploring the procedural barriers to securing unexplained wealth orders in Australia", they expand on some of these issues and say that unexplained wealth confiscation action can be taken against persons who although not personally engaged in criminal activity are associated with criminals. They say also that in Western Australia, the Director of Public Prosecutions applies for wealth confiscation orders rather than WA Police, and they regard that as being slightly unusual. They note that only a small number of unexplained wealth cases have been pursued in Western Australia to date. They go on to say that one factor that might explain why this is the case is the risk of losing a case at trial and having to pay costs. They note also that the Director of Public Prosecutions prefers to schedule examination orders at a later stage of the investigation, whereas the police may seek examination orders at an early stage of the investigation. The authors say that the issue for police is that it may take up to three months to obtain an examination order, and that gives the respondent time to devise an explanation for their wealth or rearrange their financial affairs, as I have said.

There is also some contention about how unexplained wealth should be calculated. One approach is to do what is done by the Australian Taxation Office and go back seven years prior to the start of the investigation and work forwards. The other approach is to begin at the present and work backwards, which addresses the issue of criminals legitimising their assets over time. In any event, the onus is on the individual to demonstrate that there is a legitimate source for their funds and assets.

The authors make another point that I think is key to why we need to amend the legislation. They say that there may be communication difficulties between police and the DPP. WA Police records show that only two production orders have been issued in 14 years and no monitoring orders have been made. They say also that the police do not have the power to issue orders, and that this function sits with the DPP, and that orders must be obtained in the Supreme Court of Western Australia or the District Court of Western Australia. Obtaining orders is an investigative role that presents difficulties for the Director of Public Prosecutions, being outside its normal functions, and the police require the support of the DPP to pursue unexplained wealth orders and rely on the DPP to conduct examinations and obtain monitoring orders. They conclude that, as a result, the police and the DPP must make these decisions in partnership. There are a number of problems and, hopefully, if most of the work is done within one agency, some of the silo problems will be avoided. The authors concluded that courts probably take a more conservative view of unexplained wealth in Western Australia than elsewhere. The member for Scarborough insists that the police could do the job. The facts over the last decade prove otherwise, and I am looking forward to a more robust regime under the Corruption and Crime Commission. If we were writing a school report about WAPOL's performance in this area, one might say, "Does not work well with others."

I also note the Leader of the Opposition's concern about resources. As I have already said, there is the issue of whether the CCC has divested itself of functions that it did under the previous government, such as education and prevention and the investigation of minor misconduct, which is now with the Public Sector Commission. Given that, it seems to me that the CCC believes that it has spare capacity and it is also my understanding that it has actively pursued that new role. One would not have anticipated that it would be doing it if its resources were stretched. Moreover, I think that these investigations are analogous to those of illicit enrichment, which involves detecting bribery, especially among public officers. That is very much within the CCC's remit. Exactly the same

methodology is used for illicit enrichment cases that run throughout globally. Therefore, it is equivalent that the CCC should also develop the methodology in the current unexplained matters.

To conclude, I commend the bill to the house. I once again congratulate the Attorney General for acting on yet another issue that his predecessor was unable or unwilling to act on and I leave members with a quote attributed to Balzac or Mario Puzo in *The Godfather* —

> The secret of a great success for which you are at a loss to account is a crime that has never been found out, because it was properly executed.

MR J.E. McGRATH (South Perth) [10.12 am]: I rise to make a few comments on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. I have been looking at the Attorney General's second reading speech and first I want to point out that the opposition will not be opposing this legislation because we see the need to crack down on people who are involved in organised crime and on drug lords, who are the scourge of our society. Drug taking in Western Australia has become a very big issue. The Attorney General mentioned figures that more than 60 per cent of Australia's highest-risk serious and organised crime targets are involved in the methamphetamine trade, and the 2013 National Drug Strategy Household Survey found that methamphetamine was used by more people in WA than in any other state or territory. We have to find more ways of cutting these people out of the game. If the police are not able to find these people through their resources, this is a way that we can confiscate their ill-gotten gains and maybe that will be a disincentive for people who want to look squeaky-clean on the outside, but are involved in very nefarious arrangements and organised crime and the like. The suggestion that Western Australia is an attractive and profitable market for serious and organised criminals is interesting. I have just read the book about the murder of Shirley Finn. It is very interesting. Even back then, the underworld figures from Sydney were coming to Perth and profiting from the prostitution trade. The drug trade was not there then, but the prostitution trade was, basically, run by the kingpins from Kings Cross.

Mr P.A. Katsambanis: Colourful racing identities.

Mr J.E. McGRATH: Not all of them were racing identities, but people such as Abe Saffron and even the prostitutes were brought over from Sydney. They were very involved in what was obviously a lucrative trade for them because Western Australia was a state that although it had booms and busts, they could see it as a profitable market. I do not think that there is anything new in what is happening in our state. People obviously see our state as a place where they can bring in drugs and they will find people who will buy them and use them.

Another thing is that the more we look at it, I do not think the Director of Public Prosecutions will worry at all if it loses this. It is not losing the power, but it does not have to chase this. I think the DPP has probably a lot more important things to do than chase up the assets of criminals under the Criminal Property Confiscation Act. The CCC obviously has the resources, even though we have asked on this side whether it will run out of resources because we can see this becoming quite a busy time for the commission. I imagine that quite a lot of people will be ringing the CCC like they ring the Australian Taxation Office. Someone down the road buys a big car or boat or races 10 or 12 racehorses and people say, "Well, where is he or she getting the money?" When we had the briefing from the CCC, it was prepared for that. I am sure that the commission is very capable of filtering out claims or allegations that are made against certain people. It will be able to separate the wheat from the chaff and it will be able to deal with any red herrings that are thrown up.

We support the legislation but we have some questions that will be asked during the consideration in detail stage and that is the proper way to deal with any legislation. Our spokesman on this bill, the member for Hillarys, will ask questions during consideration in detail. The other reference that the Attorney General made in his second reading speech indicated that the current system is probably not working because in 16 years there have been only 28 applications for unexplained wealth declarations and since 2011 there has been only one. People out there making big sums of money through illegal means or the proceeds of crime are not being caught up with. I hope it will not come to it that anyone who has a boat over 50 feet at Royal Perth Yacht Club, Freshwater Bay Yacht Club or Hillarys marina will suddenly have to explain where they got that wealth. I think we might find a lot of people saying that they won the quadrella at the races at Ascot or Flemington several times! That is the job of the people from the CCC. They will have to go through all that.

I heard the speech by the member for Vasse and the Attorney General appears to have done a backflip on this issue, because in an article in the November 2015 edition of the *Western Independent*, he talked about the injustice of the current legislation with proceeds of crime. He said that it was a —

> … "great injustice" upon some innocent people, including those who had lost their home because of offenses committed by family members.

In the same article, he said —

> "Upon becoming Attorney-General, I would ask the law reform commission to prepare an urgent report on these injustices and publish it for the community's and Parliament's consideration," …

I must admit that I agree with the Attorney General a little bit on that because I read a story about an 85-year-old lady who will lose her house because her son was dealing in drugs or something and because of the ownership of her house. I did not agree with that. I thought it was wrong. If the son had any assets, they had to be taken off him.

The other thing is that the Attorney General has done backflips before. I remember when he was sitting over here once and we accused him of doing a backflip. His words were: "There's nothing wrong with doing a backflip as long as you land on your feet!" The Attorney General is good at backflips; he has perfected the art.

The opposition supports what the government is doing in this legislation. It will be interesting to see how the Corruption and Crime Commission will handle it. I believe there will be some review of the CCC's funding in three years or something, but that will have to be monitored. I think it is worth a try. When this legislation was introduced in 2014 we had a problem, but I do not believe it is in this bill. We were concerned back then that the intent was for the CCC to work with police and we felt that as the body sitting over the police, it would not work; the police and the CCC could not work together. The same will apply to this bill. The police might be doing an investigation into someone and staking out a property or the place that a person frequents, and the CCC officers might be over the road in another car. I wonder whether they will work together and how it will all work. I guess that will be found out. The opposition is supportive of the thrust of what the Attorney General is trying to do. I do not think that the Office of the Director of Public Prosecutions has the resources to take it as far as the Attorney General wants to go with this legislation. The CCC is better resourced to do it.

Another issue that has been raised by our members is a bit unusual. A statement at the end of the Attorney General's second reading speech, which is also included in an amendment to the bill, is about the Corruption and Crime Commission dealing with members of Parliament. I quote —

> The second purpose of this bill is to restore the power and jurisdiction of other authorities, particularly the Corruption and Crime Commission, into misconduct by members of Parliament, which could constitute a breach of section 8 of the Parliamentary Privileges Act 1891 and a breach of the Criminal Code. The jurisdiction of the Corruption and Crime Commission to investigate members of Parliament for such breaches was removed by the Corruption and Crime Commission Amendment (Misconduct) Act 2014.

That was when the Liberal Party was in government. It continues —

> The restoration of this power will be achieved by a minor amendment to the Corruption, Crime and Misconduct Act. The proposed amendment leaves the powers and privileges of Parliament unaffected.

There will be some concern in this area because it has been attached to the bill and we suggested that these two issues should be separated. The first issue would go through with fairly smooth sailing but I think the second issue will need to be looked at by Parliament. I am pretty sure that it will be looked at when the bill goes to the other place. The reason that we amended the act in 2014 was that an issue with parliamentary privilege had been raised with us. If the Attorney General wants to make changes to that, I am fairly sure that Parliament will want to be involved. In this Parliament, all members work under a regime under which we are monitored very closely by our peers and by the people who control Parliament—the Procedure and Privileges Committee in this house and the Standing Committee on Procedure and Privileges in the other house. Our conduct is always monitored and some serious penalties have been handed down in Parliament against members who have acted inappropriately.

Mr J.R. Quigley: Both in your time and my time.

Mr J.E. McGRATH: In both our times. The difference is that Parliament deals with its own transgressors. Members of Parliament who transgress against the rules of this Parliament are dealt with by Parliament. MPs who break the law and are found to be corrupt are dealt with by the courts. If a person breaks the law of the land, whether or not they are an MP, they go before the courts. Firstly, I want to mention what happened in Victoria; this is about Parliament dealing with its own members. A member in Victoria, whose name was Geoff Shaw—I think he became an Independent —

Dr A.D. Buti: The infamous Geoff Shaw!

Mr J.E. McGRATH: Yes, Geoff Shaw. A motion was passed in Parliament to suspend Independent MP Geoff Shaw from the Legislative Assembly. An article states that Shaw was unable to take his seat in the Legislative Assembly until 2 September, and the issue happened in June. He was suspended from Parliament for three months. He was also fined $6 838 and ordered to apologise for his misuse of parliamentary entitlements. That is pretty serious. He had to pay back the money; he was disgraced because he was kicked out of Parliament;

and he had to face his electors, who would have wondered what he had done. That is an example of a Parliament taking action against one of its own.

I was here in 2007, in opposition. That was in the famous Julian Grill–Brian Burke era. I was here, sitting on this side of the chamber, when Julian Grill had to come in and stand at the Bar of the house to apologise to this Parliament. It was like Christ going to the Crucifixion! This guy had to stand among all the MPs, with the press in the gallery up there and all the cameras outside, and apologise because he had done the wrong thing. As a member of Parliament, it showed us that Parliament will not stand for any misbehaviour or breaking of the code of conduct.

There was another occasion when Parliament voted on the future of John Bowler, who by then was an Independent MP. The Premier got up and spoke, and he said that he supported a motion that the state Parliament give the toughest penalty in its history to a former minister. The Premier's comment was that he had "done something that was unwise and stupid" and "Therefore, he must suffer the consequences". He did not break any law; it was not seen as a criminal act, but he did something that Parliament could not countenance. It went to a vote —

Mr W.J. Johnston: Are you talking about John Bowler?

Mr J.E. McGRATH: Yes.

Mr W.J. Johnston: John Bowler did break the law; he broke it on several issues.

Mr J.E. McGRATH: Yes, but he was not charged in a court.

Mr W.J. Johnston: No, he was not charged but he broke the law.

Mr J.E. McGRATH: He was not charged in a court.

Mr W.J. Johnston: No, but that is not the same thing.

Mr J.E. McGRATH: But Parliament took action against him. He was suspended from Parliament —

Mr W.J. Johnston: And then he went on to support the Liberal government gaining power.

Mr J.E. McGRATH: No, he became an Independent. He was voted in again.

Mr W.J. Johnston: Yes, after the CCC inquiry and after his apology to Parliament, he was re-elected at the next election.

Mr J.E. McGRATH: Yes, then he was re-elected.

Mr W.J. Johnston: Then he made the member for Cottesloe Premier.

Mr J.E. McGRATH: Well —

Mr W.J. Johnston: Every single day for the first four and a half years that the former Premier was in government, he relied on John Bowler's vote.

Mr J.E. McGRATH: The point I am making —

Mr W.J. Johnston: Is that the Liberal Party saw nothing wrong with somebody being found to have acted corruptly by the CCC and accepting their support in Parliament.

Mr J.E. McGRATH: He was re-elected by his people.

Mr W.J. Johnston: Yes, I know. I am not saying he was not.

Mr J.E. McGRATH: He is now Mayor of Kalgoorlie.

Mr W.J. Johnston: He was shown to have broken the law and acted corruptly.

Mr J.E. McGRATH: Yes, but no action was taken in court against him. He was not charged with anything.

Mr W.J. Johnston: Yes, but the decision not to charge him was after the change in government.

Mr J.E. McGRATH: Anyway.

Mr W.J. Johnston: What an outrage!

Mr J.E. McGRATH: The member for Cannington has his opinion on that, but all I am saying —

Mr W.J. Johnston: I'm just explaining what happened.

Mr J.E. McGRATH: The point I am making, member for Cannington —

Mr W.J. Johnston: The point you're making is that the Liberal Party —

Mr J.E. McGRATH: Yes, well, that is irrelevant. That happens —

Mr W.J. Johnston: — was led by a Premier who was investigated by the CCC, and relied on a member who had been found to have acted inappropriately —

Mr J.E. McGRATH: Things happen —

Mr W.J. Johnston: — the only reason you formed government was the support of a person who had —

Mr J.E. McGRATH: That is the political nature of politics —

Mr W.J. Johnston: What the hell was—the member for Cottesloe was investigated by the CCC and went on to be Premier.

Mr J.E. McGRATH: A lot of people have been investigated by the CCC.

Mr W.J. Johnston: I know. But that's the point I'm making—so what?

The ACTING SPEAKER: Members!

Mr C.J. Barnett: I tell you what, I wasn't!

Mr W.J. Johnston: Yes, you were! You were investigated by the CCC!

Mr C.J. Barnett: No, I wasn't!

Mr W.J. Johnston: Yes, you were!

Mr C.J. Barnett: No, that is a lie.

Mr W.J. Johnston: You were!

The ACTING SPEAKER: Members!

Mr W.J. Johnston: It's a statement of fact.

The ACTING SPEAKER (Mr T.J. Healy): Members! I would ask you to continue your remarks and speak to the Chair, member for South Perth.

Mr J.E. McGRATH: I do not think the Premier was investigated by the CCC.

Mr W.J. Johnston: He was!

Mr J.E. McGRATH: It was an issue about the Triffids or something —

Mr W.J. Johnston: Yes!

Mr J.E. McGRATH: Yes.

[Member's time extended.]

Mr J.E. McGRATH: It was a minor matter. But the point I am trying to make is does the member for Cannington want the CCC investigating everything that a member of Parliament does—a backbencher? What can a backbencher in opposition possibly do?

The ACTING SPEAKER: Member —

Dr A.D. Buti: Speak through the Chair.

Mr W.J. Johnston: Do you want me to respond? What happened when you were investigated?

Mr J.E. McGRATH: As the Attorney General said, I got an elephant stamp—I got a finding of no misconduct.

Mr W.J. Johnston: Yes, okay, but —

Mr J.E. McGRATH: I was a backbencher. I could not do anything.

Mr W.J. Johnston: Okay. But the point I am making is —

Mr J.E. McGRATH: But I was doing my best to achieve an outcome.

Mr W.J. Johnston: — was the fact that you were investigated by the CCC a problem?

The ACTING SPEAKER: Sorry. Members, you can seek the protection of the Chair, but if you seek to take the interjections, please receive them. But if you would like the protection of the Chair, please talk through the Chair.

Mr J.E. McGRATH: Yes.

Two elections ago I got the highest primary vote —

Mr W.J. Johnston: Yes, but that's not the point. You said it is a problem to be investigated by the CCC. Why?

Mr J.E. McGRATH: Because there was a slur over anyone who went before the CCC. The Attorney General has been before the CCC. If the member for Cannington really wants to know, when I spoke to Brian Burke about getting some action I was told that he had members on the Labor side—there were plenty of them; the member for Cottesloe mentioned a whole football team—and he said, "I'll be able to get you some help, and we'll get —

Mr W.J. Johnston: The member for Cottesloe's famous football team speech was a joke —

Mr J.E. McGRATH: Let me speak! Do not interject!

Mr W.J. Johnston: — it was an embarrassment! It was entirely wrong.

Mr J.E. McGRATH: Let me speak! You are an embarrassment! He said, "I will get you to talk to the member for Victoria Park."

Mr W.J. Johnston: And did you?

Mr J.E. McGRATH: I did. I came in the chamber and I spoke to the member for Victoria Park.

Mr W.J. Johnston: What did he say?

Mr J.E. McGRATH: And he got a bit, "Oh, you know"; he did not know what to say. But Brian Burke said to me, "I've been tutoring the member for Victoria Park."

Mr W.J. Johnston: And so just because somebody asserts something it makes it true?

Mr J.E. McGRATH: No, no, but I do not—I like the member for Victoria Park —

Mr W.J. Johnston: But it was a false accusation!

Mr J.E. McGRATH: But the member for Cannington is full of this. This is him. This is how he carries on; he whinges and whines. The Labor Party is in government, and all I am asking is whether the member for Cannington wants his backbenchers, who might be working for their constituents, investigated? Every time a constituent comes into a member's office, they are a lobbyist. The member might be doing something that they believe is right, and it might impact on that constituent's business or give them an advantage because of a town planning scheme or something. Provided the member has not taken anything or made any benefit out of it and they are acting on behalf of their constituent, they have not done anything wrong. Does the member for Cannington want the CCC looking at everything any backbencher in his house becomes involved in?

Mr W.J. Johnston: But that's not what this law says.

Mr J.E. McGRATH: No, but that is what I am saying.

Mr W.J. Johnston: But that is not what this law does.

Mr J.E. McGRATH: It will give the CCC more power. The thing about it is —

Mr W.J. Johnston: No, it restores the power that was removed from them.

Mr J.E. McGRATH: Yes, and we removed it because there was a concern about the Parliament —

Mr W.J. Johnston: Why was the removal of this authority for the CCC not mentioned in the second reading speech at the time it was removed?

Mr J.E. McGRATH: I was not the minister. It was removed because there were concerns about parliamentary privilege.

Mr W.J. Johnston: Why wasn't it discussed in Parliament?

Mr J.E. McGRATH: All I am saying is—the member for Cannington can talk about it—when this goes to the upper house, does the member think Parliament will want to have some say in this?

Mr W.J. Johnston: But Parliament is having a say. The question I have —

Mr J.E. McGRATH: Yes?

Mr W.J. Johnston: — is why was it removed?

Mr J.E. McGRATH: I cannot answer that because I was not —

Mr W.J. Johnston: You were in government at the time!

Mr J.E. McGRATH: Yes, I know, but I was not the Attorney General. That was done by our Attorney General on advice.

Mr W.J. Johnston: Whose advice?

Mr J.E. McGRATH: When it goes to the upper house —

Mr W.J. Johnston: It wasn't done on the CCC's advice.

Mr J.E. McGRATH: — it will be debated and it will more than likely go to a committee, and then it will be up to Parliament to decide —

Mr W.J. Johnston: It's always up to the Parliament to decide.

Mr J.E. McGRATH: — what happens in this case. That is all I am saying. We are all here doing a job —

Mr W.J. Johnston: Yes.

Mr J.E. McGRATH: — we all know the conditions under which we work, we all know what we can and cannot do and how we have to conduct ourselves. We know that if we do not conduct ourselves well in this place—does the member for Cannington not think the Procedure and Privileges Committee is getting calls or letters all the time about members of Parliament constituents are not happy about? That is the system we have —

Mr W.J. Johnston: I was referred to the privileges committee and it found that I had told the truth and I was an honest person.

Mr J.E. McGRATH: I was the same. So those things happen. I am saying that there is a stigma attached to anyone who goes before the CCC —

Mr W.J. Johnston: I don't have a stigma.

Mr J.E. McGRATH: I have a personal view that some of the Labor ministers who lost their ministries actually did not do that much wrong —

Mr W.J. Johnston: Of course!

Mr J.E. McGRATH: — but they made mistakes —

Mr W.J. Johnston: Yes.

Mr J.E. McGRATH: — and in politics we cannot make mistakes.

Mr W.J. Johnston: Yes, that's right.

Mr J.E. McGRATH: They were not criminals —

Mr W.J. Johnston: No, of course not.

Mr J.E. McGRATH: — but they made mistakes. That can happen. We are under so much scrutiny.

Mr W.J. Johnston: In the whole of that time when Carpenter was Premier, the only person that the CCC found had done something wrong was John Bowler. All the other ministers —

Mr J.E. McGRATH: Yes, but that is irrelevant.

Mr W.J. Johnston: — were shown not to have broken the rules.

Mr J.E. McGRATH: Yes, well that is on the record.

Mr W.J. Johnston: I know. That's the point.

Mr J.E. McGRATH: The member for Cannington is only repeating something that is on —

Mr W.J. Johnston: That is the opposite of the ones you are —

Mr J.E. McGRATH: We do not want to go back through history about what happened in politics, because in politics people take votes from a lot of people. Julia Gillard took votes from people —

Mr W.J. Johnston: Yes. The member for Cottesloe came in here as recently as yesterday to say that the CCC had somehow found that the Labor government was corrupt, when actually the CCC found only one person was corrupt—that was John Bowler—who then put the member for Cottesloe into the Premier's job! Do you see the irony?

Mr J.E. McGRATH: No, he did not. He did not need John Bowler's vote to become Premier.

Several members interjected.

The ACTING SPEAKER: Minister, you will be able to make your contributions at a later time. Member for South Perth, to enable you to continue making your learned contribution I would ask you to speak through the Chair and address the bill.

Mr J.E. McGRATH: Attorney General, in closing, we will not oppose this legislation. We will support the main thrust of the legislation, but we believe that the second part involving members of Parliament being investigated by the CCC is a matter for Parliament to take a very long, hard look at. We are sure that will happen, because we are dealing with a convention that has been in place for a long, long time. With that, I conclude my remarks. Thank you.

Mr C.J. BARNETT: Mr Acting Speaker —

The ACTING SPEAKER: Member for Cottesloe, I think you have already spoken on this. Member for Cottesloe —

MR C.J. BARNETT (Cottesloe) [10.37 am]: Yes, I would like to speak on this just very briefly.

Several members interjected.

Mr C.J. BARNETT: I have spoken? Just check that out.

The ACTING SPEAKER: Just a moment, sorry.

Mr C.J. BARNETT: I have? All right, I will leave it.

The ACTING SPEAKER: Can we allow him to —

Mr C.J. Barnett: No, no.

MR R.S. LOVE (Moore) [10.38 pm]: As we have heard in the debate so far, this bill has two real purposes. The first is the clauses that deal with unexplained wealth and the changing of those provisions. My party has absolutely no problem whatsoever with that. The Attorney General's office provided a briefing on those changes, and we are quite satisfied with the explanations given for the need for the change.

The second purpose of the bill, as outlined in the Attorney General's second reading speech, is to insert "exclusively" into section 3(2) of the act. At the first briefing from the Attorney General's people, no explanation was provided for the change, which said to us that this is perhaps some sort of a later addition to the bill after it was originally drafted. A subsequent briefing and some advice were provided by the Attorney General.

Mr J.R. Quigley: The Solicitor-General.

Mr R.S. LOVE: Yes, sorry, the Solicitor-General—arranged through the Attorney General's office. That advice failed in my mind to establish a case for this change. I have been listening to the debate to and fro about things that have happened in this house and its relationship with the Corruption and Crime Commission over many years, which are outside my level of experience. I do not have the full knowledge of all the interplay between the CCC as it stands and the Parliament of Western Australia. However, it seems that it is a change sought without any real explanation, to me at least, and to members of our party for why it is needed. I understand work is being done on developing a memorandum of understanding between the two houses of Parliament and the CCC on how the CCC can operate in and around members of Parliament. I would have thought the development of the MOU would throw up some areas in which there might be challenges to the current legislation and that legislation would be introduced to support that better working relationship if it were agreed by both houses of Parliament and the CCC together, if that is what was required and, from that, some changes to the legislation might be advanced. However, it is not clear to me that there is that level of understanding between those institutions and a correlation between the work in determining the relationship between those institutions and the need for changes to the legislation. It seems to me that some further discussion is needed—I will ask questions or listen with some interest to the discussion during, I assume, consideration in detail—particularly around the term "exclusively" and its insertion into section 3(2) of the Corruption, Crime and Misconduct Act. From what has been said by Liberal Party members, it appears that if the bill goes through the Legislative Council in its current form, we expect it to be referred to a committee where it could be held up for some time. I wonder if perhaps it might not be more expedient to remove the second part of the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill and put through the admirable sections dealing with unexplained wealth. Then a bill could be introduced that deals specifically with Parliament's position and there could be a well-structured and considered debate around that provision on its own.

We will see what happens with the progression of the bill through Parliament. My suspicion is that when it gets to the other place as it stands, it will be referred to a committee and it will probably take some time for it to be passed. That will mean that the first section of the bill will be held up for some time, something that could be avoided if the bill were split into two and presented separately. We will see what happens and I will listen to the debate with some intensity.

MR J.R. QUIGLEY (Butler — Attorney General) [10.43 am] — in reply: I thank members for their contributions of somewhat varying quality; nonetheless, most matters have been canvassed. In addressing the

general points made by members in their second reading contributions, it is important at the outset to once again stress to the chamber that this is not an ideological bill of the Labor Party or the government. Both opposition parties, the Liberals and the Nationals, have indicated that they will support the bill except perhaps for the proposed amendment to section 3(2). In my summation of the second reading contributions, I repeat that the genesis of this bill is to be found in a request from the Corruption and Crime Commission itself. As I look around, I can see only one former government member who sat in cabinet. When one comes to government, one receives briefings from the agencies that fall within their portfolio. The CCC falls within the Attorney General's portfolio. At my first briefing with the Corruption and Crime Commissioner, he attended upon me two matters. The first matter was administrative and the second matter concerned unexplained wealth. When the Corruption and Crime Commissioner attended upon me, he presented me with a briefing note, from which I will read and may be called upon to table; I do not mind. It answers some of the concerns raised during the opposition's second reading contributions, especially the Leader of the Opposition's contribution, who, in a flourish or a rant—whichever way we want to describe his speech—indicated that this was the Attorney General's idea to generate publicity unnecessarily. The briefing note states —

BRIEFING NOTE TO THE ATTORNEY GENERAL

UNEXPLAINED WEALTH

Proposal

The Commission seeks your support for amendments to the *Criminal Property Confiscation Act 2000* (CPC Act) and the CCM Act to confer unexplained wealth functions upon the Commission in addition to the Director of Public Prosecutions. The Commission's expertise and experience as a multidisciplinary investigative agency is well suited to this function. The conferral of a new unexplained wealth function on the Commission will act as a measure to enable the Commission to fulfil its statutory purpose as a 'Crime Commission' to combat and reduce the incidence of organised crime.

This proposal seeks to:

- give the Commission the function to conduct investigations into unexplained wealth and civil confiscation proceedings where there is evidence of unexplained wealth;
- enable the Commission to self-initiate unexplained wealth investigations or to act on a referral from another law enforcement agency (including intra-state or interstate, territory or Commonwealth);
- draw on the experience and resources of the Commission and make use of under-utilised unexplained wealth provisions in existing legislation;
- enable the Commission to use its existing compulsory powers under the CCM Act to complement those under the CPC Act.

The Commission's unexplained wealth proposal does not diminish existing statutory functions available to the DPP and WA Police, but empowers the Commission to exercise a function provided for in the CPC Act which is not currently utilised by these agencies, particularly due to resourcing and operational limitations. Despite their relatively recent development in Australia, unexplained wealth legislative regimes have been implemented in most Australian jurisdictions and are considered an effective deterrent by removal of the financial incentive and profitability associated with criminal activity.

The Commission proposes initially to establish an unexplained wealth investigative team and legal practice using the Commission's existing resources, however the diversion of funds to unexplained wealth will have an impact on other investigative outputs. It is envisaged that the ongoing costs of the unexplained wealth function may be realised by the success of confiscation proceedings. Accordingly, the Commission seeks a review and evaluation of its performance within three years after the conferral of an unexplained wealth function.

Background

Past efforts by the Commission to amend the *Corruption, Crime and Misconduct Act 2003* … and confer upon the Commission a non-conviction based asset confiscation function have not effected legislative change. The impetus for conferral of unexplained wealth functions on the Commission was a recommendation by Gail Archer SC in the February 2008 *Review of the Corruption and Crime Commission Act 2003*. That recommendation was supported by the bi-partisan Joint Standing Committee on the Corruption and Crime Commission endorsed in two separate reports (No. 28 of 2012 and No.1 of 2013).

> A draft bill, prepared in consultation with the Department of the Premier and Cabinet, was introduced into the Legislative Assembly on 21 June 2012 but lapsed with the prorogation of parliament.
>
> The conferral of an unexplained wealth function on the Commission has had, and continues to have, the support of the Director of Public Prosecutions and the Commissioner of Police WA.

I think that this addresses two points raised by the member for Scarborough in her contribution. The note continues —

> The objectives of the Commission's proposal are closely aligned to the Labor Government's Law Reform Initiatives, and particularly, the Methamphetamine Action Plan. Serious and organized crime are known to be heavily involved in the methylamphetamine trade. Crime reduction in this trade particularly will be greatly enhanced by enforcement of effective legislation that reiterates the message that crime does not pay.
>
> …
>
> A Cabinet submission has been prepared for your consideration that seeks Cabinet approval to prepare a draft bill to grant the Corruption and Crime Commission powers and functions to investigate unexplained wealth and to conduct civil confiscation proceedings with respect to unexplained wealth.

Mr P.A. Katsambanis: I seek that that document be tabled.

Mr J.R. QUIGLEY: I am happy to table that document.

[See paper 577.]

Mr J.R. QUIGLEY: The initiative came from the commission itself, and the Western Australian government was responding directly to a request by the commissioner. I recall, leading into the 2013 election, that the then Premier said he would redirect some of the efforts of the Corruption and Crime Commission from some minor corruption and get it involved in fighting serious crime.

Mr C.J. Barnett: Organised crime.

Mr J.R. QUIGLEY: Organised crime—thank you, member for Cottesloe. That was part of his election promise going in. A bill was prepared that was not amenable to a lot of members on both sides of the house. As noted by the commissioner, it lapsed, and lapsed in its entirety so that the unexplained wealth aspect lapsed as well. The commissioner mentioned to me that he reapproached the former Attorney General, but there was not a positive response and nothing further happened in this space. It was not my first day of office, but it was my very first meeting. There are a lot of briefings, as the member for Cottesloe would understand, when a member takes on a portfolio, and a lot of agencies come within this portfolio. His Honour Commissioner McKechnie, QC, got to see me within the first 21 days. His first request was this, and I said that I would definitely look at it positively. He left my office and very shortly after I was presented with that submission.

The commission then presented me with another paper, a folio of which I am reading from now and will no doubt be called upon to table in due course. I am doing this because this should be bipartisan.

Mr P.A. Katsambanis: It is.

Mr J.R. QUIGLEY: I know; my approach is bipartisan. I am not holding any documents back, in other words.

We have been asked about the costing. The Leader of the Opposition made a big hoo-ha yesterday about this legislation being for publicity in *The Sunday Times*, but if there are not additional costings then it is all flim-flam and not genuine. In a document that I am holding, the commissioner states —

> Since 2000, in NSW alone $14.4m has been confiscated through either unexplained wealth proceedings alone or by commencing unexplained wealth applications but resolving matters using other assets confiscations procedures.
>
> As described above, in most States or Territories, the unexplained wealth scheme requires cooperation by two agencies to act (usually the DPP and Police). However, recent research has indicated that the Crime Commission model, similar to that administered in NSW (and adopted by Queensland) is the preferred approach for efficiently and effectively restraining unexplained wealth.

Under the headline, member for Hillarys, "Costing/Financial Implications", Hon John McKechnie, QC, states the following —

> The Commission proposes to establish an unexplained wealth investigative team and legal practice using the Commission's existing resources. The Commission does not require additional funding from the State Government to begin to investigate, or to initiate and conduct civil confiscation proceedings relating

> to unexplained wealth. As demonstrated in the table below, the Commission's proposal does not have an impact on the Commission's expense limit, net operating balance or net debt and does not require additional full time employees:

He then sets out a chart with the funding implications for 2017–18, 2018–19, 2019–20 and 2020–21. The adjustment to expense limit is nil; the net operating balance is nil; the asset investigation program cost is nil; and the total public sector cost is nil. The document continues —

> **Footnote:** Above information verified by Emma Milne, Director Corporate Services, Corruption and Crime Commission.
>
> While the Commission's unexplained wealth team will be established using existing resources, the diversion of those resources from the Commission's existing functions will have an impact upon other investigative outputs. The transfer of Commission resources to the investigation of unexplained wealth will require the Commission to rearrange its current operational and investigative priorities. While there will be an impact on the Commission's capacity to investigate matters arising out of the performance of the Commission's existing functions, the value of the impact upon organised crime of an effective scheme for the confiscation of unexplained wealth cannot be overstated.
>
> The Commission proposes to review and evaluate the performance of its unexplained wealth team within three years of the conferral of an unexplained wealth function. That review may result in a revised funding approach.

I seek to table that document from Hon Mr McKechnie, QC.

[See paper 578.]

Mr J.R. QUIGLEY: I did then, as a result of matters raised by the opposition in debate yesterday, have a further telephone conversation with the Corruption and Crime Commissioner before this debate resumed this morning. I asked him about the reorganisation of priorities and whether any serious allegation of misconduct had been pushed aside. The commissioner explained to me that the Corruption and Crime Commission receives hundreds of allegations that have got to be filtered, assessed and prioritised. Hon John McKechnie delivered a letter to this chamber just moments ago. It states —

> Thank you for your letter of 7 September …

There is a problem with the email here and I have not got that letter of 7 September, but I am happy to give it to the member.

Mr P.A. Katsambanis: That would be good.

Mr J.R. QUIGLEY: The letter continues —

> You have asked me to clarify our approach to resources in relation to serious misconduct and unexplained wealth:
>
> 1. Yes, The Commission has undertaken—

Sorry, the letter of 7 September has just been handed to me. I will go to that letter—

Mr P.A. Katsambanis: The Attorney General does not need to read it.

Mr J.R. QUIGLEY: I would like it put on the record because this is the question I raised and it comes straight out of the debate from yesterday. The letter states —

> I refer to the above *Bill*, which will confer upon the Commission powers and functions to investigate unexplained wealth and initiative and conduct civil proceedings relating to unexplained wealth.
>
> You will recall that your memorandum to me dated 4 April … you advised that the Commission had the resources and the capability to undertake these functions within its existing resources.

The member for Hillarys got that memo —

> Queries have since arisen as to these issues.

These queries were raised in the debate yesterday —

> In that regard, I would be grateful for your specific advice as to the following matters:
>
> 1. Do you consider that the Commission currently has sufficient resources to be able to undertake the unexplained wealth functions proposed by the *Bill* in addition to its existing functions? …

That was question one. I will now read the commissioner's reply to that question. His letter states —

> Yes. The Commission has undertaken to exercise the proposed function within existing resources and review after three years. The scourge of the illicit drug trade and serious misconduct both impact on the state. The Commission will manage the priorities as to deal with what is regarded as most urgent from time to time.

I asked a second question in my letter, which states —

> 2. Do you consider that the unexplained wealth functions proposed by the *Bill* will, or could in any way, distract the Commission from fulfilling its existing functions in relation to potential serious misconduct and corruption by public officers?

I asked that question of the commission because yesterday it was put during debate that this was some ruse by the Labor Party to distract the commission from its core function. I put that question fairly to the commissioner. His reply stated —

> No. Under the CCM Act all allegation of serious misconduct must be assessed. This will continue.
>
> The Commission regularly assigns priorities and if necessary suspends or terminates an investigation if resources should be committed to a more important investigation.
>
> This practice will continue.
>
> The proposed unexplained wealth power is an important State tool in the disruption of criminal activity, particularly the illicit methamphetamine trade.
>
> However if the public interest is better served from to time by a particular serious misconduct investigation, resources will be diverted accordingly.

I will table a copy of the letter I wrote to the commission and the commission's reply, because they relate directly to and answer specific queries raised by the opposition during the second reading debate yesterday.

[See papers 579 and 580.]

Mr J.R. QUIGLEY: I regard it as a matter of rhetorical flourish by the member for Hillarys when he said that the amendments to section 3(2) were buried in the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. In fact, they are set out clearly in the bill, but, moreover, I did not arrange for there to be just a briefing for opposition members by the department of the Attorney General; I went to the extent, and I did not experience this in opposition myself, of making available to the opposition the Solicitor-General for Western Australia, Mr Peter Quinlan, SC. Just because of that little dig in the paper yesterday that a judge happened to be appointed by me, I want to make it clear that Mr Peter Quinlan, SC, was appointed to the statutory independent office of the Solicitor-General of Western Australia with a five or seven-year tenure by the former government and the former Attorney General. He was in position when I came to office.

On my first day of attending cabinet, I was approached by a wall of media holding up the front page of *The West Australian* with the word "untouchable" written on it. It related to an article published by the Corruption and Crime Commissioner, Mr McKechnie, QC, who had delivered a paper at a university not directly upon the CCC, but generally upon the constitutional arrangements for oversight of the Parliament of Western Australia. The commissioner noted that in amendments recently passed by the former government, and as a consequence of those amendments, he no longer had the statutory authority to look at members of Parliament on an allegation of a criminal offence. Let us be clear here: we are talking about a breach of privilege of this Parliament that can involve matters that are to be dealt with exclusively by this Parliament.

Mr C.J. Barnett: The Attorney General is wrong.

Mr J.R. QUIGLEY: The Solicitor-General was wrong?

Mr C.J. Barnett: The Attorney General is wrong in the conclusion he is drawing. It relates to privilege; it does not relate to criminality.

Mr J.R. QUIGLEY: We will do this in debate.

Several members interjected.

Mr J.R. QUIGLEY: Mr Acting Speaker—

The ACTING SPEAKER: The Attorney General, please.

Mr J.R. QUIGLEY: Thank you, Mr Acting Speaker. After the "untouchable" headline, I did attend upon the Commissioner, Hon McKechnie, QC, with his paper that he published. Bear in mind that the Honourable John

McKechnie, QC, prior to his appointment as the Corruption and Crime Commissioner, was also a very longstanding prosecutor and had also been appointed a Supreme Court judge, serving for many years on the Supreme Court and the Court of Appeal. On the premises of the Corruption and Crime Commission, he took me through it, and this is what he said. Prior to the amendments of 2016, when the word "exclusively" was removed from the section, he could look at any matter that involved a crime committed by a member of Parliament. He specifically drew my attention to the Parliamentary Privileges Act 1891, which specifically mandated to the privileges committee the authority to look at bribery and corruption by any member as a breach of privilege. A member might commit a crime of bribery. Prior to the excision of the word "exclusively", the CCC could not look at any matter—it was the jurisdiction of this Parliament alone, not any business of the CCC—that was exclusively a breach of the privileges of the Parliament but not a criminal offence. That is, if a member, as has been shown in the past, has surreptitiously changed a committee report and tabled it in this Parliament, that would constitute a breach of privilege, but it would not constitute a criminal offence. If I, by my conduct in this chamber, and by language most foul, addressed the Chair, that would constitute a breach of privilege and I could be referred to the Procedure and Privileges Committee, because these matters are exclusively matters of privilege. Once the word "exclusively" was taken out, that prohibited the CCC from looking at any matter that was a breach of privilege, including one that was also a criminal offence. If I, as the Attorney General—as I think happened in New South Wales with a guy called Jackson, who was either the Attorney General or Minister for Corrective Services—received money to sign off on a parole, that would be a criminal offence. It would also be a breach of the privileges of this chamber for me to do that as a member of this chamber. With the word "exclusively" taken out, the CCC cannot look at any matter that is a breach of the privileges of this chamber, even if it is a criminal offence. The police could look at it as an offence under the Criminal Code, but the CCC would be debarred from looking at it.

Once this was explained to me by the Honourable John McKechnie, QC—as I said, a very experienced Supreme Court justice who sat on the Court of Appeal—I asked the independent Solicitor-General for Western Australia to, first of all, explain it to me, because it is a little complex when one is first introduced to it, and he explained it to me. Once I understood, I asked whether he would attend upon the Corruption and Crime Commissioner to determine whether we could return it to what it always was, and whether there was a simple fix to return it to how it had been for the previous 12 years. The Solicitor-General was then requested to prepare a legal opinion on this matter—on this specific aspect. As I understand, at the briefings arranged, the Solicitor-General provided his briefing note—I am just getting an indication from the Solicitor-General—which is some five pages long and signed off by Mr P.D. Quinlan, SC, Solicitor-General for the state of Western Australia, Solicitor General's Chambers, 25 August 2017, on this very point. I trust that I have paraphrased it reasonably well. I table the Solicitor-General's opinion on this matter.

[See paper 581.]

Mr J.R. QUIGLEY: It is unusual to table briefing notes from the Solicitor-General to the Attorney General, but I want to do this —

Mr Z.R.F. Kirkup: You don't usually table legal advice.

Mr J.R. QUIGLEY: I cannot hear what the member is saying. He should put a question on notice.

I table the Solicitor-General's advice for the information of all members of the chamber. This is not the government seeking surreptitiously to extend the powers of the government and, more importantly, it is not the government seeking to diminish the privileges of this chamber, because the matters being referred to are not exclusively matters of privilege; they are crimes and other offences that in any event can be investigated by the police. The police can investigate these matters, but by reason of the amendments made in 2016, the CCC cannot look at them, even though the police can.

I have gone back and read the *Hansard* of the debate on those amendments. They were introduced by the then Premier, the member for Cottesloe, who had the CCC within his portfolio at that time. At that time, in the debate, there was no mention of this matter. On day 2 of consideration in detail, the member for Cottesloe sought leave of the Chair to read into the record a little dissertation on parliamentary privilege and the importance of maintaining parliamentary privilege, but it did not mention exclusivity and the shift that was happening. I do not believe that the people who drafted the amending legislation at the time understood the significance of that one word, "exclusively". It was not mentioned in the dissertation, nor was it mentioned during the debate. I reflected on my own performance, asking whether I should have raised this at the time. It was never raised as an issue of import in this chamber by the then Premier, who had carriage of the matter. It also was not mentioned in the second reading speech. The Labor opposition of the day supported the bill that was brought in by the Premier at the time.

I then looked at the proceedings in the Legislative Council, in which the then Attorney General, Hon Michael Mischin, had carriage of the bill. Not once was the word "exclusively", or the excision of the word

"exclusively", raised in the Legislative Council. It escaped the attention of every member in the other place. The first it came to anyone's attention was when the paper was delivered to the students at Murdoch University.

Mr P.A. Katsambanis: Curtin, I think.

Mr J.R. QUIGLEY: Yes, Curtin; thank you. It then came to the attention of members on that Monday morning when we saw the headline in the paper, "The Untouchables". I want to stress this, too. All that the word "exclusively" does is prevent the CCC from investigating a criminal offence committed by a member of Parliament. The police can still investigate a member who commits a criminal offence, but the CCC cannot do that. That is the only difference. I note also that when the bill went to the Legislative Council, the fact that we were proposing to take out the word "exclusively" was not cause for the Legislative Council to refer the bill to a committee.

Mr A. Krsticevic: It should have been.

Mr J.R. QUIGLEY: I do not think any of us realised at the time, member, otherwise the member or I might have raised it. It was because of the hawk eye of the commissioner who sat on the Court of Appeal that it was picked up. It was not drawn to the attention of the Legislative Council, and the bill was not referred to a committee of the Legislative Council, that the excision of the word "exclusively" would mean that the police could investigate a crime committed by a member of Parliament but the CCC could not. That word had been in the act for 12 years before it was cut out. That was not a problem, because during the time of what the opposition would like to refer to as WA Inc II, the CCC had the power to investigate whether a criminal offence had been committed by a member of Parliament. Ironically, had the amendment moved by the Liberal Party been in place when the CCC investigated the lobbyist allegations, the CCC would have been hampered in that investigation, because if any action had constituted an offence—we know that offences did come out of that—the CCC would not have been able to look at it; it would have been prohibited from investigating that.

Mr P.A. Katsambanis: Not if they were ministers. The commission distinguishes between backbenchers and ministers.

Mr J.R. QUIGLEY: I take the interjection that the commission distinguishes between backbenchers and ministers. I say this not just because I am a minister, but should a backbencher be protected from being investigated for a crime?

Mr P.A. Katsambanis: I do not disagree with your premise. You say they would not have been able to be investigated. I am saying that the commissioner has indicated that they would have been investigated, because in that instance they were ministers. That is the point.

Mr J.R. QUIGLEY: But people like Mr Burke could not have been investigated, because they were not a minister.

Mr P.A. Katsambanis: He was not a member of Parliament.

Mr J.R. QUIGLEY: He was not a minister either. All we are seeking to do is restore the act to give it the full force and effect that it had for 12 years before that word was excised. Perhaps I am being too benevolent and gracious. I believe that had the then Premier and member for Cottesloe had his attention drawn to the consequences for the CCC of the excision of the word "exclusively", he would have mentioned it in his second reading speech or in the dissertation that he presented to Parliament at the time. I do not think his attention was drawn to that at any stage, and nor was it drawn to the attention of the then Attorney General, because he did not mention it either. The first person to raise this problem was the Corruption and Crime Commissioner. I have told the commissioner that we intend to restore his power to investigate criminal offences committed by a member of Parliament. It is only to restore that power; that is as far as we intend to go. It is the government's intention to pass this bill as it has been presented. We do not intend to roll the Liberal Party on this point. This is not a party-political matter. It is about the running of this Parliament and the investigation by the CCC of a member who has committed a criminal offence. In good faith, I have already started to talk to members of the upper house. We do not have the numbers in the upper house.

Mr A. Krsticevic: Nobody has the numbers in the upper house!

Mr J.R. QUIGLEY: It is interesting, is it not! It might be that in the upper house, a group of members, which might involve the Liberal Party, the National Party and some crossbenchers —

Mr P.A. Katsambanis: The Greens.

Mr J.R. QUIGLEY: Forgive me, member, but there are so many. I will call them the crossbenchers. The major parties, together with some of the crossbenchers, may decide to knock out our amendment to put that word back into the act.

Mr A. Krsticevic: They might follow your advice and review it to ensure they get it right now when they did not get it right the first time.

Mr J.R. QUIGLEY: That might be the case, member. I have started those negotiations in good faith. It also might be the case that the upper house refers this bill to a committee to look at this word and at the Solicitor-General's opinion. However, I have one plea in this regard, because I will not be on the floor of the upper house. My plea is that if the upper house believes it is necessary to refer this bill to a committee, it sets up a narrow term of reference so that the committee will look just at that clause and not the whole bill. We do not want to see—I will not use colloquial language—a delay in considering the substantive part of the bill. We must be able to work together in this Parliament —

Mr P.A. Katsambanis: It is your decision.

Mr J.R. QUIGLEY: I have confidence that the substantive part of the bill will pass through this chamber. What happens in the other place and whether it will delay the substantive part of the bill is up to other people. If the upper house wants to split the bill, that is beyond my power. If it wants to send it to a committee on a term of reference, let us hope it is a narrow term of reference.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr C.J. BARNETT: I want to the make a brief comment. Obviously, the member for Hillarys is lead speaker for the opposition and he has stated clearly that we support the bill. The one sticking point, and the member was very reasoned in his comments, relates to privilege. With due respect to the Solicitor-General and the Corruption and Crime Commission and everyone else, Parliaments will jealously guard privilege because privilege is about freedom of speech in this chamber. Members of Parliament need the capacity to speak their mind, and any restriction on that is bound to attract attention. I do not doubt the legal opinions provided, but I think it would have been wise for the Attorney General to delete that clause and then this bill would go through without delay in both houses. We run the risk of the upper house getting bogged down in privilege. If members doubt that, the second reading debate has basically all been about the issue of privilege. My gratuitous advice is that it would be wise to simply take that out now and then I think the main substance of the bill would go through. Members can bet their bottom dollar that the upper house will probably form a committee or the Procedure and Privileges Committee will look at that issue, and it should. There have been centuries of protecting privilege. I am no expert; I do not have a strong view. No-one wants to see members of Parliament protected from scrutiny and investigation of criminal matters in any way. That is not what the debate is about. The debate will become about freedom of speech and the right of parliamentarians to speak without fear of retribution through the courts. However, that is not the reason that I rose.

During the debate this morning an accusation was made that I had been investigated by the Corruption and Crime Commission. I have been called all sorts of names in this Parliament over 27 years, including by the now Speaker, and I have never objected to that. I just cop it and it is fair game play. However, I take some exception. Even during maiden speeches, some of the new members referred to me as a liar and I did not react to that particularly. But I take some exception if the accusation is made that I have been investigated by the Corruption and Crime Commission. In 27 years I have never, ever misappropriated or taken a dollar of money for my personal benefit—never, ever. Never have I been subject to an investigation. But it is true, and indeed the Attorney General conceded, that people can make accusations, unfounded accusations, any accusation, to the CCC, the police or anyone else. In my career, two accusations against me were made to the Corruption and Crime Commission, both of them by the Labor Party. Neither had any substance.

The first accusation related to a decision by a former Greens member, then Independent, Adele Carles, the member for Fremantle when she left the Greens party and, basically, said that she would support the government of the day on supply issues and the like. The Labor Party referred that to the Corruption and Crime Commission, which immediately said that is not a matter for the Corruption and Crime Commission; that is a political issue and it was not interested.

The second issue was somewhat more bizarre and amusing. Some may know of a heritage-listed property called The Cliffe, which is in my electorate in Peppermint Grove. It is quite a gracious-looking home from the outside; it is well over 100 years old. It was built from timber by a timber merchant to try to change the building regulations in Peppermint Grove that stated that people could not build timber houses. It was a display home and it looks grand from the outside. Having walked through the interior, it was very bland. It was just a display project. However, it was heritage-listed and the owner at the time, a well-known Western Australian mining entrepreneur, wanted to remodel the house. He did not think that he needed fireplaces in every room. I supported that and I went to the Labor minister at the time, who agreed. But a series of articles in the local *Post* newspaper referred to the matter.

Mr J.E. McGRATH: I would like to hear more from the member for Cottesloe.

Mr C.J. BARNETT: I will be very brief. A series of somewhat sensationalist articles in the local *Post* newspaper stated that somehow I was behaving in an illegal or corrupt way to have this property removed from the heritage list. I wanted the property preserved, but it was not going to survive unless it had modifications not to the exterior, but to the interior of the house. The then minister agreed and it was removed from the list. It has been restored on the inside and outside and it survived. An accusation was made that I was somehow corruptly dealing with the owner to achieve this. There is no substance in that accusation at all. The only thing that really offended me was that my son was brought into it, and the accusation was made that he had had dealings with the owner and he was involved. Naturally, I rang my son; he is an honest young man. He said that he had never spoken to the owner; maybe 10 years earlier when he started out as a junior stockbroker he may have discussed a share listing. With great credit to my electorate officer, they pursued this issue because the accusations were coming from an individual living in New South Wales. We eventually tracked down this individual and I did not know the person; no-one could work out why this person was making all these outrageous accusations about me being corrupt or whatever else. Do members know who the individual was? We found the person. Many members will know the band the Triffids and the McComb family. The Triffids had composed and recorded a lot of their music at this home. The father of the lead singer owned the property way back in the 1980s and the person in New South Wales was a latter-day groupie who was lying and saying everything he could to preserve this monument to the Triffids, and that is what it was all about.

Dr A.D. Buti: Great band.

Mr C.J. BARNETT: They were a good band. Was not *Wide Open Road* their main hit? That is what it was about. It is an example of someone with a bizarre motive to preserve the history of the Triffids saying and doing anything they could to discredit me and my son, who did not even know who the Triffids were because he was a primary school boy at the time. But who made the accusation to the Corruption and Crime Commission? The Labor Party did. It was not me. The Labor Party made an allegation to the CCC that I was somehow corruptly involved in delisting this heritage place. To the credit of the CCC, it dismissed the allegation out of hand as absolute rubbish. The point is that accusations will probably be made against some of the new members of Parliament. But that is a different matter. The point I made yesterday and I make today is that I have never been investigated by the CCC. The Labor Party historically has made two accusations against me, both of which were immediately dismissed by the CCC. It is a different matter, however—I made this point yesterday—if the Corruption and Crime Commission chooses to investigate someone, then I think we can quite correctly say that the person has been investigated by the CCC. For the Labor Party to make an accusation against me as a Liberal member of Parliament and Premier does not amount to investigation by the CCC. I have cleared that. Members opposite can carry on and I will cop the slang, insults and foul language I have over the years. I do not mind that; that is Parliament. It is wrong, but I will cop it. I will not cop an accusation that I have been investigated when it is not true.

Mr J.R. QUIGLEY: I want to address the first part of the member for Cottesloe's remarks that relate to parliamentary privilege. I want to limit myself to that. I will refer to and rely on the Solicitor-General's advice here because I think he puts it succinctly.

Mr P.A. Katsambanis: Are you speaking on clause 1?

Mr J.R. QUIGLEY: The member for Cottesloe stood on clause 1 and I want to respond to one remark on clause 1. We will get to clause 5 in a moment, because clause 5 amends section 3.

The member for Cottesloe said is very important to protect the freedom of speech of members of Parliament—to speak openly in this Parliament and raise issues, in this Parliament, free from sanction outside Parliament—within responsible bounds. That freedom of speech is rooted in article 9 of the Bill of Rights 1689. It provides, I quote —

> That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

In a particular case, it may have an impact on the extent of an investigation by the Corruption and Crime Commission or a prosecution in a court for an offence against the Criminal Code. That means that a member may say something in here that might offer evidence or constitute evidence against him of an offence, but what he or she says in here cannot be used outside in court or by the CCC. The Bill of Rights unequivocally protects freedom of speech within this Parliament. The proposed amendment to section 3 does not have any impact upon that parliamentary privilege. I will say more of that when we get clause 5, which deals with section 3.

Mr C.J. Barnett: I don't disagree with you, but no doubt that will be debated in the upper house and I am trying to take a pragmatic view.

Mr J.R. QUIGLEY: I appreciate that, member for Cottesloe.

Mr P.A. KATSAMBANIS: It is important to properly scrutinise the bill. I think that some of the answers the Attorney General provided in his second reading response covered some of the issues but not all the issues that

were raised in the second reading debate. I want to cover those issues. I am sure we will deal with clause 5(3) in a minute but questions were raised, particularly by me, about what sort of relationship the CCC will build with the non-state bodies—the Australian Taxation Office, AUSTRAC, the Australian Criminal Intelligence Commission, and any other bodies—to enable them to undertake the work they have been commissioned to do by this bill. I think that is vitally important.

Mr J.R. QUIGLEY: This will be dealt with in detail in clause 8 of the bill. A number of sections—the member for Cottesloe is shaking his head—in clause 8 will insert proposed amendments to section 21AD, which is to do with the supply of information. The commissioner will also have the ability to issue section 94 and 95 notices for the production of information. These notices, as they operate at the moment, can empower the commissioner to issue notices on banks, accountants, and all manner of people who might be able to provide information on where particular funds, wealth or criminal benefit was derived.

Mr P.A. KATSAMBANIS: I understand that the section 94 and 95 notices can be issued to those groups—banks, accountants, solicitors and others. Can they be issued to commonwealth authorities or can the commission only get information from commonwealth authorities upon some form of memorandum of understanding and cooperation with those commonwealth authorities that keep a lot of this information?

Mr J.R. QUIGLEY: The source of power is to be found in proposed section 21AD(5)(b), which states —

> consult, cooperate and exchange information with independent agencies, appropriate authorities and any other relevant persons and bodies.

One would expect cooperation from those other bodies, which might also be the National Crime Commission and other bodies interstate who are making those investigations.

The ACTING SPEAKER (Mr I.C. Blayney): Members, I have given you a fair amount of leeway but I want to bring you back to the fact that we are talking about the short title of the bill.

Mr P.A. KATSAMBANIS: I will deal with this in clause 8 then because I think there are still questions here. I will let you, Mr Acting Speaker, get through clause 1 and we will deal with it when we get to clause 8.

Clause put and passed.

Clauses 2 to 3 put and passed.

Clause 4: Long title amended —

Mr P.A. KATSAMBANIS: This may seem rather pedantic but it might become important in practice. Clause 4 amends the long title of the Corruption, Crime and Misconduct Act 2003. The first dot point of the long title of the bill states that it is an act to —

- provide for the establishment and operation of a Corruption and Crime Commission with functions with respect to serious misconduct by public officers and organised crime; and

There is a semicolon and an "and" followed by the next dot point —

- confer on the Public Sector Commissioner functions with respect to misconduct …

The long title is being amended by removing the words "organised crime; and" and inserting the new words —

> **organised crime and with respect to the confiscation of unexplained wealth and criminal benefits; and**

I understand what it is trying to do, and I am reading from the blue copy of the act. Would it be better, more preferred, and better grammatically and legally, if the existing word "and" after the words "public officers" was removed and a comma was inserted? Otherwise, it both looks clumsy and could lead to confusion as to conjunctive or subjunctive "and".

Mr J.R. QUIGLEY: We are satisfied with the title as it is, with the conjunctive "and" —

> **organised crime and with respect to the confiscation of unexplained wealth and criminal benefits;**

We think that is grammatically and descriptively appropriate.

Mr P.A. KATSAMBANIS: I will leave that point there then. If the Attorney General is satisfied, we will let it be and we will see what effect, if any, it has in practice.

Why has the purpose in the long title not also been amended to indicate the changes being made to proposed amended section 3(2)? Was it considered to not be worthwhile to also suggest that this is an act to clarify the relationship between the Corruption and Crime Commission and the Parliament in relation to parliamentary privilege?

Mr J.R. QUIGLEY: Because may I say that "public officers" in the first dot point is of course inclusive of members of Parliament and their conduct. That is what the description was before the excision of the word "exclusively".

Mr P.A. KATSAMBANIS: All right. I am satisfied with that.

Clause put and passed.

Clause 5: Section 3 amended —

Mr P.A. KATSAMBANIS: I do not have any issue with clause 5(1) or (2); subclause (3) is the issue. The two lines read —

> In section 3(2) after "determinable" insert:
>
> exclusively

This is the issue in relation to the impact on parliamentary privilege by the changes previously made and the changes being made today. This issue is quite minor—it is two lines of a lengthy bill inserting one word—but as all members, including the Attorney General in his second reading summation, have indicated, it has the potential to delay the passage of the whole bill unless we find a mechanism to treat this separately. I will try to explain why. Section 3(2) of the substantive act—the Corruption, Crime and Misconduct Act 2003—reads —

> 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 by a House of Parliament, unless that House so resolves.

The passage of the Corruption and Crime Commission Amendment (Misconduct) Act 2014 removed the words "exclusively" and "unless that House so resolves". The bill proposed by the government today reinserts the "exclusively", but not "unless that House so resolves." So it does not return us to that period of time before the Corruption and Crime Commission Amendment (Misconduct) Act 2014. It creates the third in a series of clauses that purport to define the limitations and delineations between the powers of the Corruption and Crime Commission and Parliament in relation to privilege. There is nothing insurmountable and nothing wrong with that. The debate about what occurred in relation to those powers when the word "exclusively" was removed a few short years ago can seem esoteric. The Attorney General indicated in his summation that until it was brought to his attention and carefully explained to him, he was none the wiser. When it came before Parliament a few years ago he let it slip through to the keeper; so did everyone else who looked at it. I and the Liberal Party have no concern whatsoever about giving the CCC full powers to investigate everyone in Western Australia, including members of Parliament, but this is complex and is making a change to the relationship between an external body and Parliament in relation to parliamentary privilege. As the commissioner himself pointed out —

Mr S.K. L'ESTRANGE: I would like to hear a bit more from the member.

The ACTING SPEAKER (Mr I.C. Blayney): Carry on, member for Hillarys.

Mr P.A. KATSAMBANIS: As the Corruption and Crime Commissioner, the eminent former Justice John McKechnie, QC, pointed out in that speech to the Curtin University Eminent Speaker series on 7 March this year—in America they keep the titles "Justice" and "President" for those sorts of things; they do not seem to here—the essence of parliamentary privilege can be traced all the way back to the Bill of Rights 1688, article 9 of which stipulates —

> That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

Since that ancient time we deduced and then introduced into our legal system and into our Parliament a raft of mainly unwritten privileges that have existed since at least 1688. Conventions were built up around them, they eventually got here, were codified in 1891 and have been altered since then. It happens. No-one should say that these privileges should be set in stone or that they should be immovable, but we then have to focus on what these changes mean to our parliamentary privileges as a Parliament. I have read the dissertation made during the debate on the Corruption and Crime Commission Amendment (Misconduct) Act 2014 by the then Premier in this place—the current member for Cottesloe—and that of the former Attorney General in the other place, and I have read the commissioner's speech. I have also had the opportunity and privilege to read the advice of the Solicitor General, and I thank him and the Attorney General both for the advice and for making it available to the opposition and to Parliament. I have some sympathy for the view expressed by the Corruption and Crime Commissioner at the outset because when a clause is changed, it must change the relationship. If the commissioner himself is questioning how much power he has or where the limits of his power are, we should clarify that. I agree with that. I do not want to put words in the Attorney General's mouth—I am paraphrasing; it was clear that in his response to the second reading debate—the Attorney General suggested that the commissioner alluded, obiter if you like, that if the word

"exclusively" had not been in the act at the time of the Gallop and Carpenter governments, the commissioner at the time may not have been able to investigate ministers who were investigated by the CCC during that period.

Mr J.R. Quigley: People other than the ministers.

Mr P.A. KATSAMBANIS: Or other people. The fact is the ministers were not investigated in their capacity as members of Parliament but as ministers and public officers. We know that is different. The other people were not members of Parliament at the time, so it would not have applied to them anyway. I am highlighting that to indicate how confusing this whole area is. It is confusing. It begs a number of questions. Firstly, why, in the first place, did we take out "exclusively". There does not appear to be a lot of clarity around that. Secondly, what constructive change was made when "exclusively" was taken out.

Mr J.E. McGRATH: I would like to hear more from the spokesman on this matter.

The DEPUTY SPEAKER: Certainly, member. If there is a change of guard, we can move back.

Mr P.A. KATSAMBANIS: What did it mean when "exclusively" was removed; what was the substantive difference? What does it mean now that "exclusively" is being returned? Why are we returning only the word "exclusively" but not the other important power —

Mr J.R. Quigley: By resolution of the Parliament.

Mr P.A. KATSAMBANIS: — "unless that House so resolves".

Mr J.R. Quigley: I'm happy to answer as soon as you're ready.

Mr P.A. KATSAMBANIS: I may be pre-empting what the Attorney General will say, but in absence of those words in 2003, I would interpret a section like this quite widely in saying the house of Parliament has loads of power, including the power to refer a matter to the CCC, and we do not need to spell out that in legislation—but we did.

Mr J.R. Quigley: We did; we had to.

Mr P.A. KATSAMBANIS: We did. Did we have to for legal or political purposes?

Mr J.R. Quigley: As soon as I get a chance I will tell you. We had to for legal purposes.

Mr P.A. KATSAMBANIS: It was for legal purposes, but we had to. In 2003, there was a question about whether either house had that power so we clarified it in 2003. Our predecessors clarified it—neither I nor most of the members of the opposition were here—with the words "unless that House so resolves". It gave the houses of Parliament specific power when they had exclusive jurisdiction over a matter to refer it to the CCC and say to the CCC that they wanted its help.

Mr J.R. Quigley: That is correct.

Mr P.A. KATSAMBANIS: I think they had that power anyway, although there may have been some question marks. Houses of Parliament have some extraordinary powers. The CCC may not have accepted that but that might have been the reason. Why are we not giving back to the houses of Parliament the same power that was included in the 2003 legislation and has existed since that time? This is a matter that obviously has some answer. I am sure the Attorney General, the Solicitor-General and everyone else involved in and who advise the CCC considered this. But it is not explained in the second reading speech nor in debate so far, even though I and others raised it during the second reading debate. It is another matter that would exercise the minds of parliamentarians when weighing up parliamentary privilege. This is important.

I will try to wind up in the next few minutes. No-one is saying today that we should not support this clause. We are saying that this is the third change to the relationship between parliamentary privilege and the CCC, historically, in a very short period given the time since the seventeenth century when the Bill of Rights clarified parliamentary privilege and now. Every parliamentarian would have some questions, and the appropriate places to consider changes to parliamentary privilege are the Procedure and Privileges Committees of each house. That takes some time. I agree with what the Attorney General said before about that consideration; namely, it should be narrowed to this clause and nothing more. I agree with that. However, we cannot fetter the discretion of either house to look at this matter, so we have asked the Attorney General in good faith and we expect some form —

Mr J.E. McGRATH: I would like to hear more from the member. I am really interested in what he is saying.

Mr P.A. KATSAMBANIS: We expect some form of answer for why he cannot excise this provision from this Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill and allow the rest of the bill, which deals with a completely separate issue, to give the commissioner power to go after unexplained wealth of nefarious individuals, colourful racing identities or whatever they are called. I think in Sydney they are called frequenters of Kings Cross; in Melbourne colourful racing identities; and in Perth I think they used to be called entrepreneurs, but that is unfair, because it is a term of endearment about people who create real wealth.

The DEPUTY SPEAKER: Member, can I interrupt you to ask you to ask a question?

Mr P.A. KATSAMBANIS: I will. I am trying to do it all in one package so we can get one answer and finish this off. My questions to the Attorney General are; firstly, why can we not excise it from this bill—treat it separately and let it go through its own passage, including a privileges committee inquiry? It should happen in both houses but at the very least in the other place. It should happen by the Attorney General bringing this change to this place and referring it to the privileges committee of this place, and we go from there, and allow the rest of the bill to have its own, hopefully, very speedy passage. Some people are still worrying about the principles around unexplained wealth that I spoke about in my second reading contribution on this bill but I think we overcame them two decades ago. Some people might want to consider that, but that is their issue, not mine.

I am not questioning the return of "exclusively" but I am seeking an explanation for why the other words, "unless that House so resolves", are not in there—for starters. I am also seeking an explanation for why the Attorney General sees it so difficult to excise this component now rather than, as he indicated in his second reading response, negotiate with the people in the other place and seek their input into excising it. I think that would cause more delay. It would mean the substantive bill will have to come back to this place. That would be silly and a waste of time. If we want the commission to get on with tracking down these nefarious individuals and their unexplained wealth and confiscating it, why do we not get going on that path and let the privileges issue be settled separately. Once all members of Parliament have had the opportunity to properly consider the advice from the Solicitor-General, they will be comforted by that fact.

Mr J.R. QUIGLEY: There were quite a few questions so I hope I can answer each of them from memory. Firstly, why are the words "unless by resolution of the chamber" not included. It was not political. There was a change in the law. Once, on a matter not involving serious misconduct but minor misconduct, the CCC had to refer back to the Procedure and Privileges Committee to investigate matters of minor misconduct under sections 27A and 27B. This was very circuitous and was driving the Parliament nuts. The commission was investigating something, and in the course of investigating it came across some minor misconduct. It could not report on that minor misconduct; it was not allowed to. With minor misconduct of the parliamentarian, the commission had to write to the Speaker and the privileges committee and report to the privileges committee. Then, because the investigation was being conducted at the CCC, the privileges committee had to inquire into the matter and then report back to this chamber upon its inquiry with a recommendation that the chamber refer this matter of minor misconduct from whence it came—the CCC. It did not have to do this with matters of serious misconduct. I pause for a moment to define "serious misconduct" as something that involved a penalty of possibly two years or more. The CCC might have been investigating serious misconduct by a member, but in the course of investigating that serious misconduct, it also turned up an instance of minor misconduct. It could not deal with minor misconduct unless the Parliament referred the minor misconduct to the commission. The Parliament would not know about this minor misconduct had it not been for the commission investigating it, and that is all in camera. It had to then say, "Look, we are investigating serious misconduct. Whoops, here is a circumstance of minor misconduct. We cannot complete our inquiries yet; we have to write to the Speaker." The Speaker has to take it to the privileges committee, which has to look into whether there is minor misconduct involved and then it reports to this chamber. This chamber then says, "Yes, we agree it is minor misconduct", and by resolution of the chamber, we refer the minor misconduct back to the commission. Talk about a circuitous route! Section 27B states —

> **Dealing with referrals under s. 27A(1)**
>
> (1) The presiding officer, on receipt of a referral made under section 27A(1), must —

That is the CCC saying, "Look we have come across a bit of minor misconduct."

> (a) where the allegation is made under paragraph (a), require a committee of the House whose functions include considering matters relating to the practice, procedure and privileges of the House (the **"Privileges Committee"**), to inquire into the matter;
>
> …
>
> (2) If the Privileges Committee resolves to carry out its own inquiry, it must do so by directing the Commission to act on its behalf.

Then it has to have a resolution of this place to get the CCC to do the inquiry for the privileges committee. This might have sounded good at the start.

Mr P.A. KATSAMBANIS: I know that nobody on the minister's side stood up, but I actually want to hear the end of the minister's response.

The DEPUTY SPEAKER: Certainly, member.

Mr J.R. QUIGLEY: I know that the member for Hillarys wants the answer.

There was this absolutely cumbersome circuitous route and the privileges committee could not deal with minor misconduct if it had a referral. We have now done away with that requirement. The privileges committee can look

at minor misconduct matters now—that was part of an earlier amendment—whilst the CCC looks at matters of major misconduct. It then did not require the words "unless the house so resolves" to be in the act anymore because that whole cumbersome circuitous procedure had been dispensed with and it made it easier for the privileges committee to inquire into minor misconduct and not delegate those matters. Those words "unless the house so resolves" were to facilitate the CCC to do the work of the privileges committee, on resolution of this chamber. That does not happen now. In restoring the status quo, it was not necessary to put those words back in.

I will now deal with the next issue the member raised. The word "exclusively" means that the commission cannot look at and is debarred from looking at any matter that is exclusively a matter of a breach of privilege. A breach of the Criminal Code, the Misuse of Drugs Act 1981 and the Firearms Act 1973—all these acts—are not exclusively matters of privilege. The police can look at them. There is nothing to stop the police inquiring into these matters. When the police inquire into bribery of or by a member of Parliament, they are not breaching privilege. We know that the police can look at that. All we are saying is that if the police can look at it, why can the CCC not look at it as well? That is the simple proposition. Why is the act constructed in such a way—unintentionally, I suggest; the benefit of the doubt—that the police can investigate an act of bribery, but the CCC is not allowed to? We are trying to restore where it was and how it operated for 12 years.

The third question is: why split this? This is not a confusing area. We can make, as my children are sometimes wont to do, the manufacture of a pancake in a skillet a very confusing undertaking. However, in essence, it is not confusing. Flour, water and eggs—bang! We submit that this is not confusing, but the public perceives that we have somehow rigged the system so that parliamentarians—cabinet excluded because they are office holders—are not the subject of investigation of criminal offences by the CCC.

Debate interrupted, pursuant to standing orders.

[Continued on page 3604.]