

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

Second Reading

Resumed from an earlier stage of the sitting.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [2.48 pm]: I rise to continue my remarks on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. As I was saying before we adjourned for question time, the unexplained wealth provisions in Western Australia are quite robust. The Western Australian legislation has a requirement that allows the courts to make an order to restrain the property.

Ms R. Saffioti interjected.

The SPEAKER: There is no phone there, member. She is reading off paper, as far as I can see. Member for Scarborough, I advise that if you are reading off your phone and if anyone wants to see whether it is an official document, you will have to hand your phone to me, or lay it on the table for the rest of the day.

Mrs L.M. HARVEY: I am not reading from official documents.

The SPEAKER: Okay, I am just advising you.

Mrs L.M. HARVEY: I am the Deputy Leader of the Opposition. I do not have access to many official documents anymore, Mr Speaker.

The SPEAKER: Okay.

Mrs L.M. HARVEY: I have notes on my phone. There is a notes function in modern technology.

The SPEAKER: That is what I just said. If you have notes on your phone and someone queries whether it is an official document, you will have to hand your phone in. That was a decision that I announced in the chamber a couple of weeks ago.

Point of Order

Ms R. SAFFIOTI: Mr Speaker.

Several members interjected.

The SPEAKER: Members!

Ms R. SAFFIOTI: Mr Speaker, you made a ruling three weeks ago that if a member read from a phone, they would potentially have to table that phone. The Deputy Leader of the Opposition has been reading from her phone.

The SPEAKER: It is not a point of order. We said that if you read out something on your phone, and someone queries whether it is an official document, your phone will have to be handed in. Sorry, it is only if a minister quotes from a phone; it is not for a member. You are okay, member for Scarborough.

Ms R. Saffioti: She would not be able to operate.

The SPEAKER: I call you to order for the first time, Minister for Transport. Member for Scarborough, fire away.

Debate Resumed

Mrs L.M. HARVEY: Thank you, Mr Speaker. I look forward to the Minister for Transport behaving like a minister.

Several members interjected.

The SPEAKER: Now, now! Come on; be nice, everyone.

Mrs L.M. HARVEY: As I was saying, the existing provisions within the legislation for Western Australia allow for police to make application to the court to restrain assets and property if they reasonably believe they have been derived from proceeds of crime or from a criminal activity.

Several members interjected.

The SPEAKER: Members!

Mrs L.M. HARVEY: Mr Speaker, I am finding it difficult to concentrate with half a dozen conversations around me.

The SPEAKER: With the member for South Perth and the Minister for Police having a chat, that is probably why you cannot hear. Also on this side, the Whip and the Leader of the House are having a nice chat. If you want to do it, go outside. There is someone on their feet. You would not like someone interrupting when you are on your feet.

Mrs L.M. HARVEY: Thank you, Mr Speaker.

As I was outlining, unexplained wealth provisions have an existing reverse onus of proof on an individual who has had a property restraining order put against their assets to then provide and prove to the Crown that those assets were not derived from illegal activity and that they had the ability to purchase those assets through their lawful income. That currently exists. The difficulty in trying to prosecute these cases is that it is up to the Director of Public Prosecutions to bring those cases forward after police have conducted their investigations. I am advised that there seems to be somewhat of a cultural issue within the DPP whereby there is a reluctance, over time, to bring forward these unexplained wealth actions—and this is the case even with confiscations for individuals who have been convicted of serious crimes when there has been an application or an ability to confiscate all their assets as a result of their criminal offending. There are not as many of those as the community would expect, given the successful prosecutions that have occurred in this state with respect to the methamphetamine trade et cetera. Indeed, some of the difficulty that we have is in tracking where the wealth finally ends up. These organised crime rings have very sophisticated means of moving money around and out of countries where unexplained wealth provisions exist to ensure that they move the money expeditiously out of a country and into a favourable place where they can purchase assets and enjoy the proceeds of their crime without the scrutiny or legislation that countries like Australia have put in place to try to combat criminal activity and disrupt the activity of criminal and organised crime gangs.

The crux of the matter and the issue with the DPP and police prosecuting these cases has always been the ability to pay for and obtain forensic accountants—the specialist intelligence people who are required to try to follow the money trail to the individuals who ultimately receive the bulk of the wealth from this criminal offending. One could ask why putting additional resourcing into the agencies that currently have the capacity to perform these roles has not been considered by the government. That has not been explained. In conferring this ability to the Corruption and Crime Commission without an additional funding boost, I put to you, Mr Speaker, may in fact not have the desired outcome the government hopes to achieve. I found a matter of concern in the second reading speech. I understand and agree that New South Wales probably has the most effective method of confiscating unexplained wealth. My concern relates to the following in the Attorney General's second reading speech, which states —

... matters are dealt with by a single agency with experienced specialist financial intelligence analysts, are investigated using the agency's coercive powers to obtain information,

The Corruption and Crime Commission will have coercive powers to force individuals to hand over information, but then they are settled, in almost all cases, without the need for costly litigation. I hope that that does not mean that our key crime and corruption agency in Western Australia will be sitting down with organised crime figures for some kind of settlement that does not involve a court process.

Ms M.M. Quirk interjected.

The SPEAKER: Member for Girrawheen!

Mrs L.M. HARVEY: I am hoping that that is not the case. I take some comfort that the Attorney General says that the Director of Public Prosecutions will still be involved and that power in relation to unexplained wealth and criminal benefits will remain. However, whether the actions that the Corruption and Crime Commission bring forward will still need the cooperation of the DPP or whether it will act independently has not quite been explained. That then begs the question: will the DPP, as the prosecutorial agency on behalf of the CCC, get the additional funding it needs to prosecute these cases and take them through what is often a very lengthy process in the courts? Organised crime figures value their assets. They are well funded through their criminal activities and they fight ruthlessly through the courts to hold onto their assets. Those court processes can cost taxpayers a lot of money—and sometimes with no result. Regardless of which agencies perform the role of investigating these organisations and try to track the money, there still may be a long involved process to try to determine whether those proceeds were from crime or otherwise.

The other issue is whether police should be seconded to the CCC, because we have a number of very talented individuals in police who investigate these matters. Will those individuals still perform their operations or will this activity be removed entirely from the jurisdiction of WA Police and put into the hands of the CCC? It would seem somewhat counterintuitive to have two agencies investigating, given that they might cross over with their investigations and, indeed, impede the ability of each other to investigate. If WA Police and the Corruption and Crime Commission are investigating concurrently, there would need to be very good communication between those two agencies to ensure that they do not impede each other's investigations and, if they both have the ability to perform covert operations, that their covert operations do not intersect with each other. Should the police no longer have this responsibility, I would implore the government to take those very talented individuals in WA Police who currently perform this work and second them to the CCC, if the government can be convinced that the relationship between the CCC and police officers can be somewhat prickly, because the CCC is the agency that has oversight of police. Therein lies another issue. If WA Police officers are seconded to the CCC and if the CCC, as the organisation that oversees police, is working side-by-side with police officers, we would need to be

very, very careful to ensure that we can assure the community that those activities are sufficiently ring-fenced and that, indeed, there is some oversight of those operations as they occur.

[Member's time extended.]

Mrs L.M. HARVEY: As we know, organised crime figures have a way of getting to those individuals who are trying to disrupt their activities, and that is often where corruption comes in. Corruption comes in because the people investigating these individuals can, indeed, be quite fearful of the outcome, should they find out who is investigating them.

I would like to add to the comments made by the member for Vasse with respect to the parliamentary committee that has oversight of the Corruption and Crime Commission. We have been through the debate in this house and it currently has no representatives from the party of the Leader of the Opposition in the Legislative Assembly. There is a new piece of legislation giving a broad suite of new powers to the CCC, and the CCC will be conducting its investigations into organised crime. We know the risks and the dangers in those sorts of activities, and there is no opposition member of this chamber on the CCC oversight committee. When the CCC oversight committee looks into the activities of the CCC with these new powers that the Parliament will confer on it if this legislation goes safely through both houses, no member in this chamber from the Liberal Party or the National Party will be able to participate in any of those parliamentary inquiries into the activities of the CCC—none of us. It is a fairly big ask by the state government to expect the opposition to accept new legislative powers for the CCC when we have no ability to perform a function on the committee that looks into the activities of the CCC. If one of these operations goes pear-shaped and instead of the CCC investigating organised crime and rooting out corruption, it becomes party to corruption —

Ms M.M. Quirk interjected.

The ACTING SPEAKER (Ms S.E. Winton): Member for Girrawheen! I am surprised you are not on this rather full hymn sheet here, but I call you to order for the first time.

Mrs L.M. HARVEY: As I have said previously in this place for some of the new members who are starting to understand committee processes, they will have been informed that none of the activities of the parliamentary committees or the deliberations of those committees can actually be discussed with any other member or with any other individual without the express permission of the committee. That means that even though Hon Jim Chown—who is a fantastic appointment to that committee, and we have great faith in his ability to perform his duties under the functions of that committee—is on the committee, he will not be allowed to talk to us about any of those inquiries or any investigations of the CCC oversight committee. He is not permitted to. He cannot talk to us prior to a report of that parliamentary committee until that report has been tabled in this house. Even once that report is tabled —

Ms M.M. Quirk interjected.

Mrs L.M. HARVEY: Member for Girrawheen, it is becoming tedious. I only have 10 minutes left.

The ACTING SPEAKER: Member for Girrawheen, could we please hear from the Deputy Leader of the Opposition uninterrupted. Thank you.

Mrs L.M. HARVEY: As I was saying, no member on this side of the chamber, no member of the party of which the Leader of the Opposition is leader, will be party to the deliberations of the committee. There will be no person on this side of the house who can speak to that committee report because until that committee report is tabled, we are barred from actually seeing it. All members on this side will have is the opportunity to sit and read the report once it is tabled while we listen to the contributions of the two government members of that committee. We could scan through the report and stand up and make a five-minute contribution about what we have seen in the executive summary without one member on this side of the house being able to contribute and talk to the contents of that report. That is atrocious. Now we find ourselves in this place knowing that no opposition member will be party to those committee deliberations, with the government asking us to significantly expand the remit of the CCC to give the CCC more powers to investigate—indeed, to give the CCC the power to take wealth away from people if it has a reasonable belief that they are involved in crime. That is a great thing to be doing, but why give that to the CCC, which is the only organisation that opposition members in this chamber have been denied scrutiny of through the parliamentary process? Why give it to the CCC when currently that power exists with police and the DPP? Why not just give those two agencies more capacity and more resources to perform the functions that they are already enabled to perform?

The opposition will support this legislation. The opposition's role is to point out where we see flaws in legislation and where we see legislation is potentially unnecessary. Obviously, we support anything that is going to take wealth from organised crime, disrupt their activities, and try to remove the scourge of methamphetamine and other drugs from our streets, not to mention illegal firearms and the extortion rackets that exist out there, and other criminal activities from which these criminal organisations extract funds to line their pockets. It is a big ask to

expect us to just roll over without even commenting on these matters when we have been denied visibility of the actions of the Corruption and Crime Commission because we have been excluded from participation in the activities of the oversight committee.

I am not going to further labour the point. The second component of the legislation apparently clarifies that the Corruption and Crime Commission has jurisdiction over members of Parliament. I understand that the amendments to the Corruption and Crime Commission Act made by the previous Barnett government did not, in effect, alter what existed previously. Indeed, there has been some conjecture over whether the CCC had the ability to prosecute and bring charges against police officers, and there have been some challenges to the jurisdiction of the CCC to bring forward any actions against certain individuals. We have seen some long, involved cases. In fact, just recently I believe, former Premier Brian Burke brought yet another appeal and action against the CCC, questioning whether in fact it had the jurisdiction to investigate him many years ago in the fallout from the WA Inc era in this state. That action was unsuccessful and it was determined that the CCC did in fact have jurisdiction to investigate former Premier Brian Burke. His action in the court failed and the court upheld the jurisdiction of the CCC. If this expands the remit and makes it very, very clear that the Corruption and Crime Commission can investigate all members of Parliament, and if that is what this amendment will achieve, of course we are supportive of that; it is incumbent upon members of Parliament to be scrupulous in the way that they conduct themselves and to not engage in any kind of corrupt process with any individual or act in any way that provides a financial or other benefit to themselves through the position of being a member of Parliament. If that is what this amendment will achieve—we are told it will—we would obviously support that because the community expects members of Parliament to be answerable to a corruption authority. They expect the Corruption and Crime Commission of Western Australia to be sufficiently resourced and have sufficient powers to ensure oversight of the activities of members of Parliament—indeed any Western Australian public officer—with respect to corruption activities.

We will support this legislation, but we felt that it was important to point that out. It is incumbent upon the Attorney General to explain and demonstrate that this will result in better outcomes and the confiscation of more assets of organised crime in this state.

DR M.D. NAHAN (Riverton — Leader of the Opposition) [3.11 pm]: I want to go to the resourcing of this organisation. The Corruption and Crime Commission has played a really seminal role in keeping corruption out of our state. It is not an old institution and it has clearly had its teething problems in trying to get convictions. But without this, WA Inc mark 2 that took place last decade would never have been exposed.

Several members interjected.

Dr M.D. NAHAN: It is a very important institution. I know the government wants to scream it down, but it was a reality! There was corruption in the state of Western Australia that was exposed for all to see except the Labor Party. It was blind to it. By the way, the screaming of the Labor Party indicates a concern to the rest of us. It is in denial. So what do we have —

Several members interjected.

The ACTING SPEAKER (Ms S.E. Winton): Members! Shoosh!

Several members interjected.

The ACTING SPEAKER: Thank you. Members on both sides, could we please refrain. The call sheet is really full. We do not want to send the first one home under my patch, so please continue.

Dr M.D. NAHAN: My concern is that whether by purpose or outcome the changes here, without additional resources, are going to inhibit this institution from functioning in the way it has over the years. As with many aspects of Western Australia's budget, there is virtually no growth in the budget for the Corruption and Crime Commission over the next four years—0.2 per cent a year. No additional staff. Staff has flatlined. It has actually been reduced, and there will be no growth whatsoever. We have an institution that, because of the previous government's restraint on the growth of expenditure and administrative overheads, has had virtually no growth in personnel or expenditure.

Mr M.J. Folkard: Read their annual report!

Dr M.D. NAHAN: I have it in front of me, mate! I have not seen any indication that there is slack in the Corruption and Crime Commission.

Mr J.E. McGrath: Yes, people just sit around!

Dr M.D. NAHAN: None! People are just sitting around, doing nothing.

Several members interjected.

Dr M.D. NAHAN: In fact, from what I saw in the annual report or the assessment of the Auditor General it is an organisation that is working well under really difficult circumstances. In view of that, this bill gives it a couple of

other functions, particularly around organised crime and its pursuit, so I would expect it to have its resources expanded. I would expect that an expansion in functions, if to be pursued in reality, would mean more resources, but that is not the proposal. The proposal is to introduce expanded requirements to pursue the proceeds of crime and organised crime without any additional money. Either the CCC is not going to carry out its new functions or it will water down its existing functions. These things are largely about people and other expenditure, and we were told during the briefing that over the next three years the CCC will have to live with its existing budget, which is no growth whatsoever.

How can the government expect the CCC to carry out its additional and existing functions satisfactorily? Unless the government has evidence of inefficiencies or waste or it is going to tell the CCC to chop certain functions, that reform will not be possible. Firstly, we expect the Attorney General to indicate whether there will be an expansion in money for the operations of these new functions; and, secondly, tell us what functions will be cut, or de-resourced, I should say. The government will not cut them—it will not be that transparent—but there is a limited bucket of money that will have no growth, there are no additional people in the forward estimates, and the government is giving the CCC a substantial increase in function. Something has to give. What will it be?

Ms M.M. Quirk: The education function and the public sector management function.

Dr M.D. NAHAN: So the CCC is not going to manage its staff. It is not going to train new staff? When new staff come in there is always changeover. Is it being told not to train them because they are already trained, and not to manage them? Is that right? I tell members —

Ms M.M. Quirk: How many FTEs are there?

Dr M.D. NAHAN: There are 129 FTEs.

Ms M.M. Quirk: Good! Excellent.

Dr M.D. NAHAN: No growth or expansion in FTEs has been forecast at all. Does that mean that the CCC will have to get rid of some human resources people and change the staff and go after organised crime? That is a really good idea! Is the CCC going to stop teaching trainees the laws, regulations and processes of the Corruption and Crime Commission? It is a very important role because the powers of the Corruption and Crime Commission require its staff to know their limitations and abilities in undertaking their work. The government will get rid of the training and human resources, and send the staff onto the streets after Mr Big! That is a bright idea!

The reality is that if the government wants to go out —

Mr J.R. Quigley: “Let’s not do it”, you are saying, aren’t you? “Let’s not do it —

Dr M.D. NAHAN: No, I am saying fund it! The Attorney General goes out grandstanding, saying, “We’re going to give them these new functions.” We are not arguing against those functions being carried out —

Mr J.R. Quigley: You wouldn’t give it to them! You wouldn’t give it to them! You refused!

Dr M.D. NAHAN: Come on! The Attorney General went out and big-noted himself around the town, saying, “The previous government failed. We’re going to give them a new function”, but he has not given the CCC the resources to carry it out. That is what the government has done and is doing! Do members know what else the Attorney General is doing? He is not giving it any functions to carry out; this is just another Attorney General smokescreen meant for *The Sunday Times*, and it is not functioning. The CCC deserves better than this. If the Attorney General wants this to happen, we expect to see in the budget tomorrow an additional allocation of resources for the Corruption and Crime Commission. Otherwise, this is just nothing. It is another Attorney General, member for Butler, smokescreen. It is just empty verbiage, as we see over and over from that minister, who is, by the way, a disgrace as Attorney General.

Several members interjected.

Dr M.D. NAHAN: He is a complete disgrace. So far his carriage of that very important position of the top law officer in the state has been just a disgrace.

Several members interjected.

Dr M.D. NAHAN: The truth is, without an additional allocation of resources to the Corruption and Crime Commission these additional functions will not be carried out, but more importantly, I think the Attorney General will water down the existing functions of the Corruption and Crime Commission, limiting its ability to validly carry out its oversight functions of Parliament, parliamentarians and other actions of the state. That cannot be argued against. Something has to give.

Mr J.R. Quigley: If you don’t calm down, your boiler will give!

Dr M.D. NAHAN: The Gollum of the Labor Party—“Precious, precious”. He pursues the Attorney General position, but is as vacuous as can be.

My point is obvious. Giving a department of this importance additional responsibility of substantial magnitude will require additional resources. That is a simple fact. If the government does not do that, something will have to give—either the CCC will not take on those new functions, or it will give up some of its existing functions. We cannot allow the Corruption and Crime Commission to go soft on its essential function of making sure that corruption does not come into this state.

Ms M.M. Quirk: It’s already here, buddy!

Dr M.D. NAHAN: It has been here, buddy, on the member’s side, repeatedly! That is what I am talking about. We do not want that to come back. We do not need to be paranoid to think that the Attorney General might want the Corruption and Crime Commission to divert its attention to areas away from its core function of preventing corruption and crime in the public sphere. We support the Corruption and Crime Commission, if it is appropriate, in going after the Mr Bigs and organised crime. However, the Corruption and Crime Commission needs to have the resources to enable it to do that, and the government is not going to give it those resources. We are not being paranoid. However, when the government appointed members to the Joint Standing Committee on the Corruption and Crime Commission, which oversees the Corruption and Crime Commission, it purposefully kept members of the Liberal Party out of that committee.

Several members interjected.

Dr M.D. NAHAN: That committee will be coming out with reports on the Corruption and Crime Commission. We will not have access to that, and we will not input to the oversight of the Corruption and Crime Commission. It will be the government’s operation. The government is now proposing to defund the Corruption and Crime Commission. It is giving it additional functions of a substantial magnitude, but it is not giving it any additional resources. That will reduce its ability to function. Why is the government doing that? Why would the government reduce the funding for the Corruption and Crime Commission?

Mr M. Hughes: Give me the answer! I am waiting to hear it!

Dr M.D. NAHAN: I am asking the government. Why would the government do that? We have not seen the budget, but, from what I hear, the government will be cutting the funding even more. All departments will get reductions in funding. We will see tomorrow whether that is the case. We know from the briefing that, despite the increase in responsibilities of the Corruption and Crime Commission, it will be given no additional resources beyond the forward estimates. The forward estimates have no growth—no additional people, no money. We will probably see further reductions tomorrow. Why is the government doing that? The Attorney General has been saying on the airwaves and in the paper that he will be giving the Corruption and Crime Commission extra responsibilities. However, he is not giving it any extra money. It is tokenism—the Attorney General is giving the Corruption and Crime Commission additional responsibilities but not the additional resources to enable it to carry out those responsibilities. Why would the Attorney General want to dilute the functions of an organisation that is overseeing and preventing corruption and crime?

Mr J.R. Quigley: Are you going to support the bill or not?

Dr M.D. NAHAN: Why is the Attorney General doing that? The Attorney General is in government now. The Attorney General has made a lot of noise about how the Corruption and Crime Commission will be given extra responsibilities. The Corruption and Crime Commission will need additional resources to carry out those responsibilities. I am asking the Attorney General to commit to providing resources for the Corruption and Crime Commission commensurate with the additional functions that will be given to it. Will the Attorney General fund the Corruption and Crime Commission for the extra functions that he will be giving it?

Mr J.R. Quigley: Are you going to vote for the bill or not?

Dr M.D. NAHAN: Is the Attorney General going to fund it?

Mr J.R. Quigley: Are you going to vote for the bill or not?

Dr M.D. NAHAN: Is the Attorney General going to fund it? He will not answer. That is because he is not going to fund it. This is all a facade. It is all done for the front page of *The Sunday Times*. I bet the criminals in Western Australia are really worried that the Attorney General is going to send the Corruption and Crime Commission after them!

Mr J.R. Quigley: They are worried!

Dr M.D. NAHAN: But there is no-one there to go after them! The Attorney General is not going to give it any more money.

Mr J.R. Quigley: You people who protect murderers! You people who protect criminals!

The ACTING SPEAKER (Ms S.E. Winton): Members! Attorney General, I call you to order for the second time. Let us hear from the Leader of the Opposition.

Dr M.D. NAHAN: The Attorney General, the first law officer in this state, has just accused us of supporting murderers and criminals. Why would he ask that? It is because we are asking him to put resources into the Corruption and Crime Commission commensurate with the additional responsibilities it will be given. That is the type of logic we get out of this government.

I will go back to where I started. There are certain people like me who started in the public service in this state 30 years ago who were right in the midst of the corruption in our state—WA Inc 1. Those processes and the royal commission gave birth to the Corruption and Crime Commission. The Corruption and Crime Commission stopped that sin or stain from coming back into our public sector again in the last decade. The Corruption and Crime Commission is an important resource. It is an important function. We are not arguing necessarily against the expansion of the functions of the Corruption and Crime Commission. As the Deputy Leader of the Opposition said, if the Corruption and Crime Commission needs to be given the additional power of overseeing Parliament, so be it. However, for the government to say that it will keep the resources at zero growth—no additional funding, no additional people—and it will fund this expansion in responsibilities by getting rid of the human resources and training departments is a complete and utter joke. Call me suspicious, but I think the government is trying to nobble the Corruption and Crime Commission, not improve it.

MR C.J. BARNETT (Cottesloe) [3.26 pm]: In speaking on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017, I want to take a slightly different tack. The Corruption and Crime Commission is clearly an important body, and it should be supported by Parliament in a professional and sensible way. As the Leader of the Opposition has just said, the reason we have a Corruption and Crime Commission is because of the scandals that occurred during the period of the Burke and Dowding governments, which came to be known as WA Inc. That was the most destructive period in the history of Western Australia. It put a slight on this state that took many, many years to eradicate.

During the time of the Gallop and Carpenter governments, we saw a repeat of WA Inc—not with the same financial consequences—when four ministers were called before the Corruption and Crime Commission and had to resign. Another minister resigned for having a conflict of interest and failing to declare that to cabinet. It is not a proud record. I would have thought that a third Labor government would go to extraordinary lengths to make sure that the Corruption and Crime Commission cannot be attacked and can do its job properly without fear of intimidation or compromise. The Deputy Leader of the Opposition made the point very well, as did other members, that the fact that the oversight committee of the Corruption and Crime Commission will not have on it a member of this side of the house is a weakness. It will compromise from the very start the operation of the Corruption and Crime Commission under this Labor government. That should never, ever have happened. The government may think that is clever politics. The government will rue the day it did that—it will regret that.

The point I want to make in my comments, which will not go on for very long, is that in my view the member for Butler is not a suitable person to be Attorney General of Western Australia. I do not doubt his ability as a lawyer. I do not doubt his compassion in the Andrew Mallard case, and other cases, in which he fought for justice. However, I do not believe the member for Butler has the qualities that the state's first law officer, the Attorney General, should have.

Ms S.F. McGurk: The Attorney General on your side did nothing!

Mr C.J. BARNETT: We did not have ministers go before the CCC.

Several members interjected.

Mr C.J. BARNETT: I think that today, new members would have seen a display of erratic behaviour by the Attorney General. The position of Attorney General requires a calm and professional approach to issues. We saw that in question time today—not relating to this particular bill, but we are talking about the CCC in a broad sense—with respect to the imminent release of a very dangerous sex offender.

People can make points about issues moved by the Labor Party in opposition. That is fair for debate in this chamber. But the simple fact is that if this dangerous sex offender, paedophile, is to be released, and it seems that will happen if it has not already, it is happening under the Labor government. It is happening under this Attorney General and it was a decision of a judge appointed by this Attorney General. They are facts. I do not draw any conclusion from that. People cannot go around and make the sorts of claims that this Attorney General made during question time. I do not have a copy of *Hansard*, but my memory and I think the memory of my colleagues on this side of the house is that in reference to the member for Churchlands, the Attorney General said words to the effect—I tried to write them down—of “You are personally responsible for the release of this dangerous sex offender”. He said to

the member for Churchlands, “You are personally responsible for the release of a dangerous sex offender.” When that immediately received a predictable response from this side of the house, he said that he was reading it from *Hansard*. If that is the case, the Attorney General should produce the quote from *Hansard*. He cannot because it is not there. He was reading out how people voted. He added “personally responsible”, and when he was challenged on that, he repeated it but he left out “personally”. That was highly unparliamentary. It was totally unprofessional and it was not befitting of a senior lawyer, as he is, and certainly not befitting of an Attorney General. That behaviour was shrill, erratic and irresponsible and certainly unparliamentary and should have been called to the point at that time. That did not happen.

I am not going to dwell on history too much but just for the benefit of new members, so they are aware, another reason that this member of Parliament should not be Attorney General and should not have the responsibility for the Corruption and Crime Commission is that he has been subject to investigation by the Corruption and Crime Commission. He has been subject —

Mr J.R. Quigley: Same as you and Sam.

Mr C.J. BARNETT: I will get to that. That would immediately rule out the member for Butler in a decent Parliament; he would be ruled out on a matter of conflict simply because he has been subject to investigation under the CCC. That rules him out, not from being a minister but from being Attorney General with responsibility for the CCC.

There are other issues. An unfavourable finding was found against the member for Butler by the Legal Practitioners Disciplinary Tribunal. The matter was referred from that tribunal to the State Administrative Tribunal, which upheld it, and it was referred to the Supreme Court, which upheld it. Here is an adverse finding from his own professional group about his conduct that has gone to higher authorities in the Supreme Court and confirmed that adverse finding—and he is the Attorney General? There was another incident, which he has never explained. I think up to six squad cars bailed him up at Swanbourne. He has never explained what six squad cars were doing rounding him up in Swanbourne. I know his motive in proving the innocence of Andrew Mallard and I commend him for that. He is a person who pursues justice. I do not deny that at all. But in doing so he threatened—my understanding is that it was recorded by the CCC—to disclose the identity of a serving undercover police officer.

Mr P. Papalia: He put false evidence on. He had given false evidence to the police.

Mr C.J. BARNETT: I do not care. People do not, as this man did, come into this Parliament and threaten to reveal the identity of an undercover police officer and boast that they will use parliamentary privilege to disclose his identity and potentially put him at risk. There are several reasons that a person who would use parliamentary privilege to identify an undercover officer, whether he was innocent or guilty, should not be Attorney General.

Mr P. Papalia interjected.

Mr C.J. BARNETT: The junior minister can speak if he wishes to, but right now I am speaking. If the now Attorney General had that view about that undercover officer—he may have been correct, and I think he was—there are avenues to address that. He should not come into Parliament and like a coward use parliamentary privilege to threaten that undercover police officer. That is not the action of a person fit to be Attorney General. There are several reasons that he could be a minister, but he should never be Attorney General. What will happen now if a minister in government gets himself into trouble, like five did in the last Labor government? What will his actions with the Corruption and Crime Commission be and what is the capacity of the now opposition to challenge that? There is no capacity.

Labor has been in government for only six months. It has already corrupted the processes of the Corruption and Crime Commission within six months and it can see it. Do not forget that the CCC had evidence of the Premier talking to one Brian Burke and using his wife’s email account so he could not be detected. Labor has a bit of history there. We would think with that history, and the erratic behaviour of the member for Butler, Labor would have selected an impartial and innocent Attorney General, but it failed to do so. Labor is on notice from now on.

Several members interjected.

The ACTING SPEAKER: Thank you, members!

MS M.M. QUIRK (Girrawheen) [3.37 pm]: Before I give my speech on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017, I am reminded of some words that the member for Cottesloe used about enforcing ministerial standards and they are, “I’ll ride him like Black Caviar.” Guess what—he did not.

Several members interjected.

The ACTING SPEAKER (Ms S.E. Winton): Thank you! Members, I have not had the opportunity, but I am quite looking forward to the opportunity to kick someone out of this place. A number of people have three strikes, so those people should be a bit careful.

Ms M.M. QUIRK: I have sat here idly while the integrity of the members of the Joint Standing Committee on the Corruption and Crime Commission is imputed. I must admit that if I was Hon Jim Chown, I would be particularly offended by the Deputy Leader of the Opposition, who expressed no confidence in his ability.

Mrs L.M. Harvey: I expressed full confidence.

Ms M.M. QUIRK: Only after some prodding by me.

Mrs L.M. Harvey: Do not mislead. Check *Hansard* tomorrow.

Ms M.M. QUIRK: I am not misleading.

Mrs L.M. Harvey: That is what I said.

Ms M.M. QUIRK: Yes, the Deputy Leader did say that but only after some considerable prompting.

Mrs L.M. Harvey: Just withdraw it.

Ms M.M. QUIRK: I am not going to withdraw it, because the Deputy Leader of the Opposition needed to be prompted. For the record, in the time that we have been meeting, Hon Jim Chown has made a valuable contribution and value-adds a lot to the committee.

Mrs L.M. Harvey: Where is Jim? He is not here. He is in the other place. That is my point.

Ms M.M. QUIRK: Even if he was in this chamber, he could not say anything. He or she could not say anything until the report is tabled, so it makes no difference.

Anyway, I want to address some issues that arise out of this bill, some other issues relating to investigations by the Corruption and Crime Commission and the issues relating to resourcing raids by the Leader of the Opposition.

The first thing I need to say about resourcing is that the previous government's amendments to the Corruption and Crime Commission Act meant the Corruption and Crime Commission—the Leader of the Opposition might listen to this. He might learn something!

A member interjected.

Ms M.M. QUIRK: The Leader of the Opposition might like to know that his government reviewed oversight of minor misconduct by the Corruption and Crime Commission. Minor misconduct can involve many millions of dollars so the Public Sector Commissioner is now in a position that he investigates minor misconduct without any oversight by the Corruption and Crime Commission or anyone else. Similarly, the Corruption and Crime Commission lost its education function and I have been advised —

Mr P.A. Katsambanis: That decision was made three years ago. People haven't been sitting around for three years.

Ms M.M. QUIRK: The CCC has divested itself of those functions. The agreement was that in the capacity the Corruption and Crime Commission had, it would now have those functions. It has been lobbying for some time, member, to have the unexplained wealth power plus the broader powers under organised crime.

Mr P.A. Katsambanis: Are you saying that people have been sitting around for three years? They haven't been.

Ms M.M. QUIRK: Member, I do not know who briefed the opposition, but certainly, in the briefing I had, the CCC was very happy with the idea that it could take on this new work, which is incredibly interesting and, for reasons that I will say later, directly linked to broader issues of corruption. It could do so within its current capacity. All I can see is crocodile tears over there and it bears no resemblance to reality.

As I said, before I deal with the issues in this legislation, I want to refer to the other plank of these amendments, which were put very succinctly by the Attorney General in his second reading speech. It states —

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. 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.

Mr P.A. Katsambanis interjected.

Ms M.M. QUIRK: The jury is still out on whether that amendment, via removal of the word “exclusive” was intentional. We do know that the amendment has created real uncertainty, and I am sure that the member for Hillarys has conceded that.

Did the government act to exclude the CCC from examining possible corrupt conduct of state members of Parliament? That was certainly the view —

Mr P.A. Katsambanis interjected.

Ms M.M. QUIRK: Madam Acting Speaker!

The ACTING SPEAKER: Yes, member for Girrawheen.

Ms M.M. QUIRK: The member for Hillarys did not permit interjections from me. I will kindly reciprocate and say that I will not accept interjections from him.

Mr P.A. Katsambanis: That’s fine.

Ms M.M. QUIRK: Great.

The question that Commissioner McKechnie and others have raised is: did those amendments to the legislation act to exclude the CCC from examining possible corrupt conduct of state members of Parliament? I think it is generally conceded that ministers were still covered under the jurisdiction of the CCC but ordinary members of Parliament were in doubt. As I said, that was certainly the view of the commissioner. In an article in *The West Australian* of 20 March this year, author Daniel Emerson reports —

State MPs have granted themselves immunity from investigation by the Corruption and Crime Commission to enjoy special status as the only public officers not subject to its extraordinary powers, according to the watchdog’s chief.

In a sensational speech to Curtin University this month, CCC Commissioner John McKechnie declared a Barnett government overhaul of its Act in 2015 effectively meant Parliament would deal with offending MPs in-house.

“The consequence is that the commission has jurisdiction to investigate allegations of serious misconduct in respect of all public officers except members of Parliament,” he said.

During the speech delivered during the caretaker period on March 7, Mr McKechnie, a senior Supreme Court judge and director of public prosecutions ... said the CCC’s original remit included politicians.

...

But under the 2015 structural reform aimed primarily at transferring low-level misconduct from the CCC to the Public Sector Commission, Parliament “reaffirmed exclusive jurisdiction over its own”.

He said MPs were protected from scrutiny unless Parliament made a referral to a privileges committee, which lacked the CCC’s full suite of powers, including covert operations.

...

“I will adopt a prudent, some might say timorous course in future on any matter which could conceivably fall within parliamentary privilege,” Mr McKechnie said.

Whether the commissioner’s stance was overly cautious is now moot since we have this amendment. We will once and for all resolve the ambiguity, thereby clarifying the issue.

Another issue arose out of the 2014 bill, which I want to raise briefly. It relates to minor misconduct. As I have said, minor misconduct can include behaviour or misconduct that, for example, involves many millions of dollars so the word “minor” is somewhat misleading.

The Joint Standing Committee on the Corruption and Crime Commission tabled its twenty-first report in June 2015. It looked at the recent amendments to the Corruption and Crime Commission Act and the implications they have for Western Australia’s integrity. The standing committee made the following recommendation —

The Standing Committees on Procedure and Privileges in the Houses consider inquiring into amending their Standing Orders describing the functions of the Joint Standing Committee on the Corruption and Crime Commission so that it is expressly empowered to oversee the activities of the Public Sector Commission in relation to the education and minor misconduct matters it will have responsibility for in the Corruption, Crime and Misconduct Act 2003.

The committee’s contention was that in its current terms of reference, its capacity to oversight the education and minor misconduct matters ceded to the Public Sector Commission did not extend to the exercise of those powers. An amendment was requested to the standing orders of each house so that the joint standing committee could have oversight of the activities of the Public Sector Commission’s investigations of minor misconduct matters.

In the course of looking at this matter in the last Parliament, both procedure and privileges committees met jointly and had hearings to call in certain witnesses who could give evidence germane to that issue. For example, the Public Sector Commissioner gave evidence about what his role would be. He said it would be —

To assess minor misconduct and to deal with those matters ... but also to undertake a prevention and education function, which is basically, amongst other things, a capacity-building and an awareness-raising program, right across the public authorities

The Attorney General, giving evidence to that same Procedure and Privileges Committee, stated that these amendments will allow the Public Sector Commissioner —

... in the government's view, for the CCC to prioritise and focus on serious misconduct, police oversight, and assisting the police with reducing organised crime, and for the Public Sector Commissioner, who already had a role in advising, education and training in respect of disciplinary matters in the public sector, to deal with minor misconduct by public officers and to take on the corruption prevention and education function.

The now Attorney General was then a member of the Procedure and Privileges Committee and he asked of Mr Wauchope —

Mr J.R. QUIGLEY: ... what transparent process is there at the moment to check that your assessment of the investigations conducted by the agency has been both fulsome and forensically justified in the result?

Mr Wauchope: I go back to my original point—that is, Parliament at any time could require me to appear before it and justify what we have done.

If I can comment at this stage, that is if we actually know what he has done —

As I said, I am appearing before another committee on Wednesday. I could equally be asked that question by that committee as well. So, the answer is Parliament has the power to satisfy itself if it should so wish.

Mr Quigley made the comment —

The Public Sector Commissioner, Mr Wauchope, whose evidence you doubtless heard, said that he does not conduct investigations of the matters referred to him but refers them back to the agency and that some of those matters, whilst defined as minor misconduct, are certainly more than minor matters, but they are investigated by the agency.

When misconduct occurs, it is referred back to that very agency to investigate —

Without an oversight committee, how can the Parliament and the community satisfy itself that those investigations conducted by the agency of allegations of misconduct within the agency are being thoroughly investigated?

Hon MICHAEL MISCHIN: It is my understanding that the Ombudsman has broad powers to investigate the manner ...

It seems to me that the previous Attorney General suggested that the Ombudsman's office is the appropriate place to complain about the Public Sector Commission's conduct.

I apologise for pursuing what might seem like a very arcane or esoteric issue, but with the prorogation of Parliament, this issue was not resolved. It means that so-called minor misconduct is referred from the Corruption and Crime Commission to the Public Sector Commission. Using the sort of rhetoric that the member for Hillarys used, we do not understand on what basis that is done or how that is done and whether there are any protocols or memorandums of understanding. No-one oversees the Public Sector Commission or scrutinises it. I need to emphasise, as Mr Quigley did in his previous role, that the description of "misconduct" as minor is highly misleading. It could include actions that amount to many millions of dollars lost to the state. I think this lacuna needs expeditious resolution. The Legislative Council Standing Committee on Procedure and Privileges also recommended this in October 2016. If I can use the words of that great American baseball player who is known for his turn of phrase, Yogi Berra, "It's like déjà vu all over again."

I now turn to the question of unexplained wealth. It has been observed recently that Western Australia was the first state to legislate for unexplained wealth. For various reasons, which I will go into shortly, the legislation has been under-utilised compared with the situation in other jurisdictions that introduced similar laws. Before looking at the existing shortcomings in the system, I will make some general observations about the rationale for these kinds of laws. For those members who are new to this place, before being elected to Parliament I worked for 10 years at the Australian Criminal Intelligence Commission's predecessor, the National Crime Authority, on multidisciplinary teams. Even then, over a decade ago, we were certainly following the money trail. Forensic accountants and analysts were included in our investigative multidisciplinary teams. Unexplained wealth legislation is based on the rationale that it seeks to undermine the business model of organised crime by removing the financial return, punishing offenders, compensating society, preventing the improper use of assets and deterring

participation in crime. That is the rationale for doing so. Of course, it goes back to prohibition days. We all recall the famous case of Al Capone who was in fact prosecuted for tax evasion.

[Member's time extended.]

Ms M.M. QUIRK: That was of course based on an observation by Eliot Ness and his comrades that Al Capone was living far in excess of his known means of income. It is by no means a new strategy but it is very effective. This legislation is basically civil proceedings and does not rely on a criminal conviction being obtained, which of course happens under proceeds of crime.

The member for Hillarys stated that the Australian Crime Commission estimates that serious and organised crime costs Australia \$3.6 billion—I think that is what he said. It was \$36 billion in its 2013–14 annual report.

Mr P.A. Katsambanis: I said \$36 billion.

Ms M.M. QUIRK: Another way of looking at it is that organised crime amounts to about five per cent of gross domestic product. It is certainly worthwhile for some serious and concerted effort and a more integrated attack on organised crime.

Gail Archer, Senior Counsel, reviewed the corruption and crime legislation. I will not go through that. Also, the Joint Standing Committee on the Corruption and Crime Commission produced a report on this dated 20 June 2013. It was the committee's first report during the last Parliament. The committee made a number of findings, including —

Law enforcement strategies that target criminal proceeds are complex and as such require a multi-disciplinary investigative approach, so as to ensure that diverse arrays of specific skills are able to be deployed in the investigative effort.

...

The viability of organised criminal activity is contingent upon the ability of criminal enterprises to successfully launder ill-gotten profits. As such, financial intelligence must form an integral component of any contemporary organised crime investigation.

...

Investigating organised criminal activity is an inherently challenging and time-consuming process, and as such demands resolute leadership within law enforcement agencies that are engaged in this endeavour.

...

At present, examinations in support of unexplained wealth investigations under the provisions of the *Criminal Property Confiscation Act 2000* are regarded as ineffective by the Office of the Director of Public Prosecutions, owing to the need for these examinations to be conducted as part of a court process.

...

The optimum model for conducting investigations of unexplained wealth in Western Australia under the provisions of the *Criminal Property Confiscation Act 2000* would require the creation of a new 'confiscations agency' which would operate independently from both the WA Police and the Office of the Director of Public Prosecutions.

That is the environment in which this legislation is introduced.

We are very lucky because we have a report that was undertaken last year by Marcus Smith and Russell G. Smith from the Australian Institute of Criminology. They looked in depth at all the unexplained wealth regimes around the country. In particular, they proffered reasons why the Western Australian legislation had been ineffective. Page 2 of the report states —

Under the WA provisions the respondent bears the onus of proof, and their entire wealth is presumed to be unlawfully acquired unless they can establish otherwise. In this jurisdiction the court has limited discretion when making an unexplained wealth declaration; one must be made if it is more likely than not that the respondent's total wealth is greater than their legally acquired wealth.

At the time of writing, there had been 28 applications for unexplained wealth declarations since 1 January 2001 with 24 successful, three unsuccessful and one pending. A total of \$6.9m has been paid into the Confiscation Proceeds Account from unexplained wealth investigations in Western Australia.

Issues identified in Western Australia include:

- the risk of losing a case at trial and consequent requirement to pay court costs and damages means few cases have been pursued;
- it takes several months to obtain examination orders in unexplained wealth cases, which gives respondents time to plan an explanation for the situation or rearrange their financial affairs; and

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- there have been problems with communication and collaboration between the agencies involved in unexplained wealth cases.

That is a good cue to return to expand on that issue when the occasion next arises.

Debate adjourned, pursuant to standing orders.