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

Second Reading

Resumed from 14 September 2017.

HON MICHAEL MISCHIN (North Metropolitan — Deputy Leader of the Opposition) [7.43 pm]: I rise as the opposition's lead speaker on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 to indicate that the opposition will support the bill. That is not to say that we in any way believe it is going to be an unalloyed success or that there may not be some difficulties with it and some potential shortcomings with what is proposed. It is also not necessarily to give an endorsement that this is the right way to go about what the Attorney General and the government indicate they are trying to achieve. Nevertheless, we will support the proposed legislation although we have a number of points to make regarding it and some things to point out about its history and the manner in which it will operate, and to contrast that with the current system. I also point out that there are differing views, and have been for some time, about the manner in which the state ought to approach the question of confiscation of the proceeds of crime and criminal property, particularly unexplained wealth.

Before I get to that, I will say something about the history of this bill. It was indicated that this is one of the priority bills that the government would like passed before we rise for the winter recess in a couple of weeks' time. It is one of those bills that, among the half-dozen that have been discussed behind the Chair, the government has indicated are important enough to be given priority over all other legislation that is on the notice paper. It had its genesis with a media release on Wednesday, 16 August last year, from the Attorney General, Hon John Quigley, MLA, under the headline "Bill to target unexplained wealth from organised crime". The media release stated —

- Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 introduced into State Parliament

  The McGowan Labor Government will today introduce new legislation which will provide the Corruption and Crime Commission (CCC) with important powers in the fight against corruption and organised crime in Western Australia.

  The Bill also restores the CCC's powers to investigate certain types of misconduct by Members of Parliament, closing a loophole created by the Liberal National Government in 2015.

I will come to that very shortly. Under the heading "Comments attributed to Attorney General John Quigley", the media release states —

> "Before the election, WA Labor made a commitment to the people of WA that in terms of the methamphetamine trade we would attack the head of the snake.

The head of the snake! Continuing —

> "Today, the McGowan Government is honouring the promise we made the community to crackdown on the organised crime syndicates that are poisoning our families with this evil drug.

There is a particular focus for this legislation. It goes on —

> "This legislation unleashes the power of the Corruption and Crime Commission to investigate unexplained wealth that has been gathered by those in the drug trade and other criminal activities.
>
> "It won't be charged criminals that are called before the CCC to explain their ill-gotten gains; it will be individuals who have put themselves beyond the reach of the police and those who have got their profits without getting their hands dirty.

I ask members to mark the fact it will not be charged criminals who will be called before the CCC but others—it appears to be uncharged criminals. I ask them to bear that in mind along with some other elements of this in light of what has been done in the past and proposed in the past in respect of the CCC's function in this area and potential role in dealing with organised crime, as well as some of the implications for the manner in which unexplained wealth and other criminal-derived property matters are dealt with by the state. It may be that what is proposed in this legislation will be ideal and will work effectively and without any difficulties, but they are matters that need to be considered. It is one of the reasons that this sort of legislation has taken some time to develop and there was no quick fix as far as the previous government was concerned. But I digress and will return to this media release. It goes on —

> "Serious and organised criminals are motivated by money and the illicit drug market is known to be their main source of profit.

> "Individuals with assets and a lifestyle way beyond any obvious means of earning that lifestyle will be the target of these laws.
>
> "This legislation sends a clear message to drug traffickers, financiers of large scale drug operations and bikie gangs that they are not untouchable and that the Corruption and Crime Commission stands ready to engage them.
>
> "The second purpose of this Bill is to restore the power of the Corruption and Crime Commission to investigate certain types of misconduct by Members of Parliament.
>
> "This will close a loophole created by the Liberal National Government which protects backbenchers from investigation."

I digress for a moment again to say that that too is something that is of interest given the rather embarrassing and unfortunate events in the other place involving a member of Parliament and the difficulties that it appears are being encountered in the other place in having anything done about that particular backbencher. No doubt this Attorney General will blame us for it in some way because it seems that just about everything that goes wrong in this state, whether we are in government or not, is attributed to the Liberal–National grouping. It also seems odd that with this determination to clear out corruption and lies and dishonesty and other misconduct among members of Parliament, nothing is being done by this government to deal with that particular matter. Members might recall that I have asked on several occasions what action is being taken to deal with that particular person for the false curriculum vitae that he would have submitted as part of his applications, to get not only endorsement to be a member of Parliament, but also jobs with the police and corrective services. The answer is, apparently, nothing in respect of corrective services because he is not a corrective services officer anymore. So much for dealing with backbenchers and the like! Nevertheless, we will come to the history of that. That particular part of the original bill was hived off in order to achieve a particular purpose and I will come to that in a moment.

This was all very heady stuff. Once again it gives the impression of the Attorney General as a man of action, eyes swivelling, striding out into the cesspool of crime wielding the paperknife of justice in order to decapitate indigenous reptilian wildlife—the heads of the snakes that are the criminal organisations in this state. This is heady stuff!

Hon Jim Chown: Does he wear a mask?

Hon MICHAEL MISCHIN: I do not know, but I can remember a photograph in "Inside Cover" of him in his Bali shorts at some conference, so who knows.

This is powerful stuff and it promises a great deal. More was said about this down in the other place indicating the importance and urgency of this bill. The bill was introduced in the other place on 16 August last year, which was the day of the media release. Much was promised about it, and we will get to all that in a moment. By happy coincidence, on the same day Attorney General Dorothy Dix was asked a question by the member for Armadale. He was asked —

> (1) How will this government's anti-corruption legislation introduced today reverse the previous soft approach to organised crime?
>
> (2) How will this legislation reverse the previous Liberal–National government's decision to make MPs untouchable and immune from investigation?

Of course, at that stage he did not know anything about a certain Barry Urban, MLA, sitting within arm's reach of him, but this sparked the first law officer to say —

> The member for Armadale was quite right to characterise the previous government's approach as very soft on organised crime. Not only was it soft on murderers who will not give up the whereabouts of the remains of the deceased —

This is the level that this man goes to. An interjection was swatted down by the Speaker and he continued —

> … having frustrated the no body, no parole bill in the other place, —

That is here —

> why can we justly say that the opposition was this soft on organised crime during its term of government?

He went on and talked about that. He talked about a bill that was introduced in the other place, and I will come to that again shortly as part of the history of this legislation. He continued —

> Then it introduced a bill that it went to sleep on, allowing it to lapse, so it was asleep on organised crime. It did not proceed with its bill. The joint standing committee came back in 2013 and made a recommendation to transfer the unexplained wealth powers to the CCC. The former government did nothing.

He then spruiked how increasing the penalty on drug traffickers to life will be a big step forward and how it will help. He then said —

> I have had a number of discussions with the Corruption and Crime Commissioner, Hon John McKechnie, QC. He has assured me that, in anticipation of this legislation, the CCC is already —

This is back in August last year —

> scoping targets, so there should now be criminals out there worried that the CCC is already scoping them. We will be right on their track and right on their neck so long as those people in the other place —

That is here, members —

> do not do what they have done to the no body, no parole laws and try to hold this up.

Does Hon Aaron Stonehouse not know that he had no legitimate questions to ask about that bill? He was just trying to hold it up, as was every other member who referred that bill to a committee in order to get some clear questions answered about it. It was not after long filibustering but right from the start when it was introduced. We were trying to hold it up! We were trying to stymie the prosecution of criminal justice in this state! He went on —

> The CCC's most important role in our community is to use its coercive powers to attack those people at the head of the syndicates —

I do not know about that. I thought it had a number of roles in this community, among them dealing with official corruption among the police and public figures but not, apparently, certain members of Parliament. But there we go! It is a loophole that has to be fixed. He continued —

> … those people who never get their hands dirty touching ice or other drugs but finance it, organise it and reap the huge wealth from it and then have ostentatious cars, houses and everything else. They will lose the lot so long as the Liberal and National Parties do not go tummy up in the other place and let them off the hook.

Because it is important when considering anything that falls from the mouth of this man, even if it is via the Leader of the House, who represents him as his proxy in this place, I mention that he takes the view that the Liberal Party controls this place. A few weeks ago when dealing with problems with his dangerous sex offender legislation, he said a dangerous sex offender was out loose and doing all sorts of nefarious things and his bill was all held up because of the Liberal-controlled upper house. The last I looked there were 36 members in this place—14 of them Labor, nine of them Liberal, and a whole raft of others. But do the members of the Greens not know that they are really the hand puppets of the Liberal Party? Do the Nationals not know that they are the Liberal Party? Do the crossbenchers not know that we apparently control them? It is comforting to know, though, that his arithmetic is sound. Every Liberal member here—all nine of us—is worth probably one and a half or two Labor members, so I am prepared to accept that as a rule of thumb. The very arrogance of the idea that we somehow held up legislation in this place just to be difficult is an insult. But there we go!

On 6 September this bill next came on for debate in the other place. The Liberal Party and the Nationals indicated their support for the bill and there was some discussion about it. The elements dealing with members of Parliament, which were grafted on to the other bill and were a very distinct and separate matter from the rest of the legislation, he, quite sensibly, eventually agreed to cut off and make it a separate bill. His rationale for doing that, though, was typically dishonest. When it was proposed that that happen because there were issues with the question such as parliamentary privilege and the like and how the government could go about fixing this loophole, as he called it—one that, incidentally, was passed with the concurrence of the then Labor opposition in both places—and which no-one appears to have picked up, he asked whether, if it was hived off, there would be a guarantee of the passage of this bill through the Assembly on that day. The member for Hillarys responded —

> Attorney General, we have some scrutiny. I will try my best; if not today, possibly tomorrow. I do not know; we have some scrutiny. We will do it this week, Attorney General. We will get it through this week.

That was not good enough for him, so he smarmily replied —

> The answer's no, then.

Apparently, scrutiny is not something that this government enjoys. Having seen the history of several of the bills that have been proffered to this place, it is not surprising. Nevertheless, he says more about the question of how important this bill is. At one stage, asked about resources in order to finance the CCC's ability to do what is proposed in this legislation and whether any more money is going there, he responds with —

> You people who protect murderers!

That is the level of maturity of our first law officer, the best of the best lawyers in the Labor Party caucus room—"protect murderers". That is the standard of ministerial conduct for the Labor Party and its maturity. A few other

people spoke on this bill, including the member for Girrawheen. The only bit that I raise that was of any value is when she responded at one stage by saying —

> I have sat here idly while the integrity of the members of the Joint Standing Committee on the Corruption and Crime Commission is imputed.

It was not being imputed, but the fact that she was sitting there idly is probably about right.

Then we get to the importance of this bill again, on 7 September 2017, when at about page 3604 of *Hansard* the Attorney General said —

> It would indeed be a sad thing if the substantive parts of the bill—that is, all the bill other than clause 5(3) —

That is the bit dealing with members of Parliament —

> were held up. I have been informed by the commissioner—this relates to the interplay between the commission and other agencies, especially Western Australia Police, and we have discussed this before—that in anticipation of the early delivery or passage of this bill through this Parliament, people within the organised crime squad have already been scoping targets for the CCC, which was hoping to close in on those targets as soon as possible and get them into the hearing room.

A little later he said —

> … I have concluded that if this would guarantee —

That is, splitting off the MP element —

> the swift passage of the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 without it being bogged down interminably in committees, as I understand it would be —

Ignorance is bliss —

> … I would be prepared to move an amendment to split the bill and take out all the words in lines 1 to 3 of page 4 of the bill.

That is that particular clause.

There we go, this is really important! The bill was duly passed down there. Its passage through the other place was completed, I think, on 7 September 2017. It was introduced in this place on 14 September 2017. This very important bill to allow the Attorney General and the CCC to vanquish organised crime in this state has been sitting on the notice paper in this place for nine months. It is 12 June now, almost nine months to the day. Such is the importance of this legislation that he demanded that we not have the impudence to hold it up. It is only now, on the threshold of a winter recess, that the bill is thought important enough to bring up here, after all the talk of how this place, to wit the Liberals and Nationals, delay things. It is only now that the government has thought fit to bring this bill up for debate. So much for the urgency and priority of vanquishing the Mr Bigs and cutting the heads off wildlife. The man puffs himself up like a blowfish for a newspaper headline and then, having rushed this in, having had to split bits off because they were going to be an impediment and because they had totally different subject matter that appropriately should have been the subject of two bills in the first place, we had to wait around for nine months. It is his own government that has held up the bill. That has some implications for a number of reasons and not only for what has passed for the very lazy policy on drug trafficking—that is, increasing maximum penalties, and one day, perhaps on the 12-month anniversary of that bill being passed, we will see how much of a difference it has made to drug trafficking in this state. This delay will have had an impact on the resources allocated to the CCC, if any, and I will get to that also, in order to give effect to the policy behind this bill.

As I have mentioned, the Liberal opposition supports the bill. The opposition has its reservations about whether it will achieve anything like what the Attorney General has bragged about, but the bill will be useful and it is probably worth a try. But we do have questions. I expect anyone who does have a legitimate question about this bill and its operation will be accused by the Attorney General of having delayed it and encouraging and being friends of organised crime. I am prepared to take that risk. He will be untruthful about it, as he has been in the past and in the history of this bill to date. What I think has happened here is that this is policy on the run. It has been done in order to show that something is being done about organised crime and drug trafficking. But like the no body, no parole promises, the bill may be promising more than it can deliver. This suggests that once again he would rather do something, rather than do something right.

The difficulty with the area of unexplained wealth confiscation, as with criminal property confiscation generally, is how to do it most effectively. The purposes of seizing and forfeiting criminally acquired property are several-fold. They include removing the incentive and reward from criminal activity and to deter engagement in

criminal activity. One of the perennial questions is whether it is right and proper that someone have all their property forfeited to the state if they are declared a drug trafficker within the meaning of the Misuse of Drugs Act. In those cases, not only can any profit that they have obtained from the drug dealing be taken away from them, but also all their property, whenever it has been acquired, is subject to forfeiture. Some say that that is draconian and unjust. Another argument is that it is one of the consequences of gambling in that particular area of misconduct and crime, to make the point to people that if they want to engage in drug trafficking, they are gambling everything, not just what they choose to put on the table. They stand to win an enormous amount if they are lucky, and they may be lucky for a long time, and sometimes they may always be lucky and build up a fortune, but if they happen to fall foul of the law, they lose the lot, so they must prepare to gamble on that basis, and that in itself is meant to be a deterrent. We have had a number of cases, sad stories allegedly, of people saying they were trafficking in drugs, but now the house they had has been taken away from them and their kids will be on the street, and it is all the state's fault and it is a terrible thing. The answer is no, it is not state's fault; it is their fault because they chose to do it and they knew the consequences. That is an argument for another day. Another reason for the forfeiture of criminally acquired property is to meet public expectations that criminals will not profit from their wrongdoing, and that is the purpose of the unexplained wealth extension to the criminal property confiscation regime, because, unfortunately, not all criminal activity can be detected, still less proved, hence, unexplained wealth proceedings are important.

I will not go into the detail of the cost to the community and the like that was talked about in the second reading speech, but I suggest public confidence in the administration of justice requires that there be some means of tackling the crime that is undetected but obvious to all by those who have excessive amounts of wealth that cannot be possibly explained through any discernible legitimate activity. The question, of course, is how to go about the exercise effectively and efficiently, and in deciding that and determining whether this bill achieves what has been promised, I propose to contrast the present situation with what is proposed. It would be of assistance to members perhaps to know the current criminal property confiscation scheme in Western Australia.

The current unexplained wealth scheme in the Criminal Property Confiscation Act 2000 of Western Australia was the first unexplained wealth scheme in Australia. It was pioneering work. It is not surprising that there may be defects in it and it may not be as effective as we would have hoped almost two decades ago, but it was a worthy effort. It allows for an application to the court for an unexplained wealth declaration against a person without the need to show reasonable grounds to suspect that the person has committed an offence. Unexplained wealth orders are to be distinguished from the forfeiture of crime-used or crime-derived property, which can be conviction or non-conviction based. Apart from forfeitures of a declared drug trafficker's property, which was dependent upon a person's conviction and a declaration as a drug trafficker under the Misuse of Drugs Act 1981, the Criminal Property Confiscation Act is a non-conviction based civil confiscation proceeding. The WA police are the primary investigating agency and it refers unexplained wealth matters to the Western Australian Director of Public Prosecutions. At the moment the DPP has primary responsibility for taking action under the Criminal Property Confiscation Act 2000, although it may delegate the performance of any of its functions to an officer referred to in section 30 of the Director of Public Prosecutions Act 1991. The DPP may apply to a court for an unexplained wealth declaration against an individual. The application could be made in conjunction with an application for a freezing order over a property to prevent its disposal, use and dissipation; it can be in conjunction with proceedings for the hearing of an objection to confiscation or at any other time. The court must make an unexplained wealth declaration when it is satisfied on the balance of probabilities that the total value of the respondent's wealth is greater than the value of their lawfully acquired wealth. The burden then shifts to the respondent to produce evidence to establish lawfulness of the property the subject of an application for an unexplained wealth declaration. Any property, service, advantage or benefit that is a constituent of the respondent's wealth is presumed not to have been lawfully acquired, unless the respondent establishes the contrary. The Criminal Property Confiscation Act provides for automatic confiscation of property if the respondent does not object to the seizure and the forfeiture of the property within 28 days of being served with an order restraining property. Those investigation and search powers are contained in part 5 of the Criminal Property Confiscation Act and provide that the DPP may apply to the District Court for an order for the examination of a person, a production order for a property tracking document, a monitoring order, or a suspension order. The court has the power to make such orders on reasonable grounds. When the court makes an unexplained wealth declaration, the respondents are liable to pay to the state the amount specified in the declaration within one month. Money recovered by the Crown under an unexplained wealth order must be paid into the confiscation proceeds account.

Currently, the regime is that the DPP has a very central role in the administration of the Criminal Property Confiscation Act. That includes commencing proceedings for unexplained wealth; criminal benefits and crime-used property substitution declarations; commencing applications for examination of people for the production of documents and so forth; monitoring and suspension orders seeking freezing orders over property on any of the grounds as well as on crime-used and crime-derived grounds; dealing with all the proceedings on

objections to the confiscation of frozen property; and managing frozen and confiscated property. WA police also play a critical role. It is able to commence proceedings on crime-used, crime-derived and drug trafficker grounds and the police have extended powers of investigation under the Criminal Property Confiscation Act and conduct investigations for potential confiscation action on all grounds provided for in the act, and then the fruits of those investigations are referred to the DPP for the institution or continuation of confiscation action. The vast majority of the work done by the DPP's confiscation team within the Office of the Director of Public Prosecutions comes from referrals from the WA police. I have mentioned that it is essentially a non-conviction based civil confiscation scheme with one exception, and that is property of drug traffickers. Generally, although it is largely non-conviction based, in practice, as I understand it, the confiscation of property has tended to be connected with criminal proceedings and dependent on successful criminal proceedings. In the case of unexplained wealth that is rather different, there is no obligation on the DPP to show that a person has engaged in criminal activity at all and there have been a number of cases conducted by the DPP like that. However, I understand that in those cases there is generally an investigation in place or contemplated with a view to laying criminal charges. I raise this because it raises the interesting implication about how it is going to work if the Corruption and Crime Commission has the power to deal with unexplained wealth and there are investigations in train or being contemplated by the police of people who may be the subject of such an order or proceedings, or may be broadly connected with that. Because, if the CCC is getting involved, targeting so-called Mr Bigs and the like, it may compromise investigations that have been conducted covertly by the police. It may very well be the case that certain protocols can be agreed between the various agencies so that does not happen. But it does seem to me that having the power to investigate for the purposes of making unexplained wealth declarations split between two and perhaps three agencies being involved in it may very well lead to the compromise of criminal proceedings and to investigators getting in each other's way, if not compromising each other's operations. But the minister can explain how it is meant to work.

Unexplained wealth cases do in fact fall into two broad categories. One of them is when the respondent has been found in possession of a significant quantity of cash for which he or she does not appear to have a lawful explanation. That would generally occur in the course of a police search in which they have arrested someone, whether or not it is the person who is found with the proceeds. There may not be enough evidence to charge that person with an offence, but they may be found with cash that they cannot explain. The other case is when we consider the financial affairs of the respondent over several years and consideration of those affairs indicates that he or she has unexplained wealth. But both of those sorts of cases, and particularly the latter, requires specialised resources to be available to the investigators and those who are bringing the proceedings. Both require, for example, a financial report from a forensic accountant. It is particularly critical in the second type of case that I mentioned when we are looking at people's financial affairs. In the second class of cases, the investigation process is undertaken before the initiation of confiscation action and it can take an enormous amount of time and can be hampered by the need to keep that investigation covert so that the target of that investigation, the person whose financial affairs are being looked at, is not aware of it. Otherwise they become more careful, they may alter their behaviour, they may destroy records or conceal them, or they may flee the jurisdiction.

As I have mentioned, I understand that in the latter type of case, in any event, they are almost always connected to an ongoing criminal investigation, not only one into financial affairs, and in the usual case finally handled by the Director of Public Prosecutions, so the respondent will be faced with criminal charges as well as confiscation charges at some point. That affects the ability of the confiscation action to proceed until after the resolution of the criminal charges, because as a matter of practice and commonsense, civil proceedings, whether they are for the confiscation of proceeds of crime or other matters, take second place to the resolution of the criminal proceedings.

It was said in the course of the second reading speech that the experience of New South Wales, for example, and its equivalent of our Corruption and Crime Commission, which is vested with the power to seek unexplained wealth declarations, is that the use of its coercive powers to determine whether someone has wealth that is unexplained can lead to a settlement being negotiated between the respondent and the investigating agency—the CCC. That may be right. But it raises a number of issues, and I would like to hear the minister's comments on this matter. It raises the role of an anticrime agency sitting down with a target—who may be one of these dreadful Mr Bigs; one of these snakes, this odious person, this arch-criminal who must be vanquished and be brought to account—and debating how much he or she is going to pay to get off the hook to save some of their assets and get the proceedings disposed of while leaving them with something. It raises a very serious propriety issue.

I am not suggesting for a moment that it is not a pragmatic approach and it may be necessary, but I deplore the idea that people can be brought into an agency and its coercive powers can be used against them to squeeze out some kind of financial settlement that is favourable to the state, and then they are shown the door until they get looked at the second time in the future. It raises a significant matter of probity and a necessity for sufficient oversight. We have the Parliamentary Inspector of the Corruption and Crime Commission. We also have a joint standing committee of this Parliament to oversee the actions of the inspector and the CCC in its operations. However, we have had instances when the CCC has been under scrutiny. I have no doubt that the current commissioner is doing his best to ensure that things are done properly. That is not to say that things will be done

properly in the future. There is a significant risk, especially when one is dealing with organised crime and debating the terms of a negotiated settlement as to how much they can pay to get off the hook, that there will be a compromise that is not in the public interest and the public may lose confidence in an anticrime and anti-corruption agency to behave properly when it is making deals with criminals. We are not talking here about a negotiation of which charges will be proceeded with on the basis of public interest and the strength of a case; some charges against someone may be dropped because there is no way of proving them beyond reasonable doubt or the penalty that will be ultimately obtained from a plea of guilty to some charges makes proceeding with the others pointless. We are talking here about financial settlements and haggling over how much someone pays in order to keep something for their own benefit that we say is prima facie criminally obtained wealth from drug dealing and other nefarious activity. That is the first point.

Secondly, I understand from the experience of the DPP, at least as last advised on it, that most unexplained wealth proceedings conclude by way of negotiated settlement, but it does not come early in any action, even when the respondent has been the subject of an examination order. It has not been the DPP's experience that respondents are willing to consider settlement at an early stage. It seems to take some time before they and their lawyers get to the point of meaningfully considering settlement options. Investigations into unexplained wealth may, of course, be hampered by other considerations and not only an unwillingness on the part of a respondent to settle the matter. As I have mentioned, the question of criminal proceedings may take priority and people may want to see just how those are finalised before they proceed with negotiating their way out of an unexplained wealth application. It may also be hampered by obtaining information from other relevant agencies. The onus of proof is reversed to a degree, which is ironic in this case because over the course of two terms of the last government, we heard the Labor Party opposition complain about fundamental human rights and reversing the onus of proof in matters. It seems rather ironic that it is relying on this as part of the unexplained wealth procedures and on the coercive powers of the CCC to give effect to what it proposes here. Leaving that aside, the state still has to conduct a full investigation.

The state has to do a full investigation of a respondent's financial affairs because the state may have to refute explanations that are proffered by a respondent to an unexplained wealth declaration proceeding. The examination powers under the Criminal Property Confiscation Act are not as effective as they could be. It may very well be that the powers available to the CCC will be better than those and will be more effective, but that raises its own question about to what extent the information obtained by the use of those coercive powers can be applied in the civil proceedings to confiscate unexplained wealth. If the evidence is obtained in a coercive fashion, the general rule of thumb is that it cannot be used against the person who has given that evidence. The minister can explain, I hope, how that will work and whether there are potential problems in that regard by using the CCC's powers. It would be useful to have that confirmed on the record so that in the future we are aware of the situation and so are people who are interested in the manner in which this bill is meant to operate.

There are also problems with state agencies and investigating agencies obtaining financial information on the respondent, and I will come to that shortly. It must be noted that the Director of Public Prosecutions is not an investigative agency. It depends on its work in this area and on referrals from the WA police. I understand that matters that have been referred to the DPP by the WA police almost invariably have resulted in confiscation action, though not necessarily in unexplained wealth applications. From the period 1 January 2001 through to 6 April 2011, the amount confiscated to the state under the Criminal Property Confiscation Act was some $52 709 266.30—those were the last figures that I had handy to me—of which $6 027 794.84 or about 11.4 per cent of the total value of criminal property confiscated was unexplained wealth. The last I recall, the DPP had never seen an unexplained wealth case from the police proceeds of crime squad that did not arise from a related criminal prosecution or investigation, as opposed to arising from the investigation that originated from the proceeds of crime squad. The question then is: will the CCC be in a different position in being able to investigate those people whom the Attorney General says are not charged criminals? We will not be investigating charged criminals. We will be investigating those who are not suspected of criminal activity, but have simply profited from it.

As I understand it, some of the problems in bringing these applications include that, at the present stage, as the DPP is not involved in investigations from the outset, which necessitates an extensive and urgent briefing once the proceeds of crime squad chooses to refer the matter to the DPP, certain decisions might have been made along the way that have compromised any successful confiscation action. Part of that difficulty will be eliminated, presumably, if there is a suitable multidisciplinary unit such as the Corruption and Crime Commission drawing on not only investigators but also financial analysts and lawyers to give advice along the way and to direct the course of an investigation. That is a positive. However, the police have at their disposal at the moment analysts as well as investigators. The difficulty is making decisions along the way that are informed with a view to confiscation proceedings rather than simply an investigation.

Another difficulty has been that the proceeds of crime squad often requests and acts upon advice that has been given by the DPP on a paucity of materials and evidence. Frequently, it does not make full disclosure to the DPP so the DPP gives it poor advice, which it acts on. That causes problems for the ultimate success of any declarations that are sought on the basis of unexplained wealth. The proceeds of crime squad frequently lacks the expertise to

provide meaningful briefs of evidence that will satisfy the forensic demands of unexplained wealth cases. That may have improved over the last couple of years because my information is old, but it was one of the problems that the DPP would routinely encounter because, again, it acts on the basis of material that is provided by investigators and it has to work with what it is given. The DPP can ask for further information but by the time the request is made, it may already be too late or otherwise impossible to obtain it. There was always a problem with a perceived inability of proceeds of crime squad accountants to provide high-quality financial reports and there were other issues of a similar nature about expertise and coordination between the two agencies.

From the point of view of the DPP also, there were real questions of whether the role was suitable to be conferred on the DPP. It was perceived as being a distraction from the core business of that office, which was criminal prosecutions rather than civil confiscation proceedings. As I have mentioned, non-conviction-based confiscation actions are very often the subject of compromise and settlement negotiations, which occur in a civil litigation environment. That presents its own policy and practical difficulties for what is meant to be a prosecution agency. Also, civil confiscation proceedings require extensive resources and special expertise more suited to a specialist agency in a civil law firm. The DPP tended to find it extremely difficult to allocate the appropriate level of resources needed in such actions and to recruit and retain the necessary expertise. That was one of the concerns in the event that the DPP might be required to act as the lawyer for any agency that was conducting investigations with a view to ultimately taking criminal property confiscation proceedings, whether for unexplained wealth or otherwise. It is a prosecuting agency. It is not a solicitor acting at the instruction of other parties, nor should it be. It is an independent statutory authority with its own function and its independence could be compromised if it is required to act as a solicitor being instructed by others. In fact, when I was Attorney General, the position of the Director of Public Prosecutions was that he wanted the DPP to cease having any role and involvement in any confiscation proceedings, whether conviction or non-conviction based.

What are the alternatives? There are a couple. We have heard mention of the Archer report and how the last government did nothing and all the other glib untruths or ignorant and uninformed comments, but it was a difficult matter of policy as to how to improve a system without compromising it completely and making it worse than it was. The conviction-based stuff tended to work. Certainly, the confiscation of proceeds and assets as a result of declarations of someone being a drug trafficker could be dealt with relatively efficiently. There were complications with that; some of them involved the management of the property seized and its wastage if it was not dealt with in a prompt fashion and so forth. The difficulty with unexplained wealth applications, of course, is that they require an enormous amount of resources in order to examine a person's financial situation over a considerable period and access to information, as I have mentioned.

The Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill is not the first time that the problem of how we deal with organised crime has been sought to be tackled. In fact, the Barnett government introduced the Corruption and Crime Commission Amendment Bill on 21 June 2012. It was not passed before Parliament prorogued for the March 2013 state election. Sufficient disquiet was expressed about that bill that it was not reintroduced in that form in any event, but what it sought to do, apart from hiving off things like minor misconduct matters from the CCC so it could focus on more serious issues, was to provide a power to the CCC to investigate organised crime more explicitly.

Upon returning to government after 2013, a number of amendments were introduced. The first tranche of amendments, those related to minor misconduct responsibilities, were introduced and passed in the Corruption and Crime Commission Amendment (Misconduct) Act 2014, which was assented to on 9 December 2014. The second tranche of amendments were to include allowing the CCC to have access to unexplained wealth provisions of the Criminal Property Confiscation Act 2000. It was proposed by the then Corruption and Crime Commissioner, Commissioner Macknay, that those provisions be expanded so that the CCC would be able to use unexplained wealth provisions on anyone whom it considered to be under reasonable suspicion of involvement in serious criminal activity. However, as that would make a significant change to the scope of the CCC's then powers and expand the state's power over individual citizens, particularly individual wealth, rather than keeping the CCC's jurisdiction to the oversight of public bodies including public officers, police and the judiciary, it was not pursued. It was thought to be a step too far at that stage. As part of the second tranche of amendments, it was intended that the CCC's power would be extended to include investigation into serious and organised crime. At that time also, the police expressed concerns about that proposal, given the overlap in responsibilities. As I recall it, the Joint Standing Committee on the Corruption and Crime Commission also expressed concerns about how an investigative body that was meant to police the police ought be involved in cooperating with the police with a view to dealing with organised crime and potentially unexplained wealth. That is precisely what seems to be envisaged in this case.

There has been mention in the other place of a thing called the Archer report. It is more properly titled the "Review of the *Corruption & Crime Commission Act 2003*" by Gail Archer, SC, as she was then. She is now the Honourable Gail Archer, Justice of the Supreme Court. She looked at the question of confiscation of proceeds of

crime and took into account the situation back when the report was tabled by the then Attorney General, Hon Jim McGinty, on 18 March 2008 in the other place. For reasons best known to him, he did not table it or arrange for it to be tabled here. For reasons best known to those who manage the website and the like, there is no copy of it on the Parliament's website under "Tabled Papers".

Nevertheless, it is often referred to by the Joint Standing Committee on the Corruption and Crime Commission, and so it is a worthwhile document to have access to. Ms Archer proposed amendments to the Criminal Property Confiscation Act to give the Corruption and Crime Commission the same powers as those given to the Western Australia Police Force under that act, and that the Criminal Property Confiscation Act be amended to allow the CCC to apply for unexplained wealth declarations, criminal benefits declarations, and crime-used property substitution declarations. Another of her recommendations was that the question of whether the Director of Public Prosecutions' functions under the Criminal Property Confiscation Act should be transferred to the CCC be reconsidered within five years, and, if the recommendation that there be a further review was accepted, the next review would be required to consider that question.

One of the objections recorded by Ms Archer, to which she gave some weight, was the concern raised by the Commissioner of Police at the time that it was less than desirable to have the CCC occupy the role of oversight body in addition to working with WA Police in its investigative function. Then commissioner Dr Karl O'Callaghan said that the two roles were self-evidently contradictory. Nevertheless, Ms Archer seemed to think that it could be managed. I would like to hear of any proposals the government has to ensure that the two roles do not merge, and that the necessity of cooperation with the police by the CCC to bring these sorts of applications does not compromise its role, which I challenge the Attorney General to correct, because I do not think its priority and main role is dealing with organised crime and the heads of syndicates. The Corruption and Crime Commission suggests that its primary role is one of ensuring the integrity of public organisations and people, including agencies such as the police, the Department of Corrective Services and other public sector bodies.

Other work was done under the previous government on organised crime. The Criminal Organisations Control Act was bitterly criticised by the then Labor opposition about its operation. It turned out that it was a very conservative approach to the problem. Since then, there had been plans to make it more effective by facilitating the declaration of organisations as criminal organisations, but that did not come to fruition before the election. I do not know what its current status is, or whether anything will be done in that regard. The approach taken at the time, in the light of the law, was very conservative to ensure that it did not compromise civil liberties more than was absolutely necessary to give effect to its policy. In fact, it emerged that it was too conservative and did not work effectively, but that is a story for another day.

Western Australian provisions for unexplained wealth have not been used extensively. I made mention of the amount, which was just over $6 million over the course of about a decade—just over 11 per cent of the total proceeds obtained back then. I do not know what the current figures are, but only 24 unexplained wealth declarations had been made in WA up until 30 June 2009. A moratorium was put in place by the Director of Public Prosecutions, partly because of resourcing, but more to the point were the difficulties in mounting these sorts of applications, having regard to the expertise and the special skills available to both Western Australia Police and the Director of Public Prosecutions at the time. I will come to that also in a moment, because there are implications of that that I do not think are addressed by the current legislation. A lot of work had been done in trying to correct that problem, but I would like to know what the status of that work is now.

The idea that the CCC can bring to bear a multidisciplinary approach to investigations and proceedings has merit. I should add that the last Director of Public Prosecutions, now His Honour Justice McGrath—Joe McGrath, SC, as he was back in those days—supported the idea of a standalone agency or, if it were to be the CCC, that it take over the matter of criminal property confiscations from the DPP. His view was that it would not be effective or viable to merely work in parallel with the CCC, with two and potentially three agencies involved—the Western Australia Police Force, compiling briefs on a variety of criminal-based proceedings for the confiscation of property, instructing or providing briefs to the DPP for it to pursue, working in parallel with another agency doing its own thing and mounting investigations at its own initiative, which may very well be investigations that the police are already conducting, or which may cut across operations that the police have in place or propose to conduct, or are linked to investigations that they are conducting. This could compromise all the agencies.

The bill proposes to confer power on the CCC, and the function to investigate, and initiate and conduct confiscation proceedings. However, I understand from what has been said in the other place and in here that that will not take away from the DPP the responsibility to deal with all the other matters, nor will it take away the role of the police. It works on the premise that, because the CCC is a multidisciplinary agency employing the services of lawyers, investigators, financial analysts and covert operatives, and has coercive powers, it would be best equipped to perform this function of investigating a person's financial circumstances and bringing the necessary applications. That may be right, and there has been some comment in the other place from the Attorney General, based on

material provided by the commissioner, that what is proposed can be done within the resources currently available to the CCC. That may be right, at least in the short term, but I also note from the latest budget papers that no additional resources are being provided. In fact, the resources to the DPP will diminish over the next couple of years, according to the forward estimates. It is also quite plain from what is being said by the commissioner, and from the budget papers, that embarking on the role of taking on unexplained wealth investigations and applications for declarations will come at a cost to other work of the CCC—the investigation of serious misconduct. In that regard, I draw the attention of members to page 386 of budget paper No 2.

In 2016–17, the net amount appropriated to deliver services was $29 612 000. For this coming financial year, there is a reduction of some $3 million. On page 387 is a forecast reduction of some 439 allegations to be received and investigated. Under outcomes and key effectiveness indicators, the number of investigations actual in the last financial year, 2016–17, was 71. The budget target is 50. That is a drop of 70 per cent on what there was before. The notes explain —

> The variance between the 2017–18 Estimated Actual and the 2018–19 Budget Target reflects the reduction in the number of investigations target, based on the assumption that the Commission will redirect resources to the new unexplained wealth provisions.

The Corruption and Crime Commission may be going off to try to find people who are the heads of snakes, so that they can be cut off and their wealth seized, or at least barter over bits of their wealth in order to show some results, but it comes at the cost of investigations that I would have thought are the important core work of the CCC to ensure the integrity of public agencies and officers—quite a substantial reduction.

It has to be said that the money seized, if any money is seized, through operations of the CCC will go into the criminal proceeds account. I note that when the Attorney General was asked in the other place where the money would go, he said, "I get it." That is not quite right. There are limits as to how the money is to be spent. Part of that money is spent by way of an arrangement between Western Australia Police Force and what was then the Department of the Attorney General and is now the Department of Justice. Members will recall that I asked some questions about what will happen to that money and how much is forecast to be in that account. Apart from going out on grants for various things supposedly to do with crime prevention, victim services and the like—although now there seems to be increasing amounts granted to community legal centres that have no discernible involvement in crime prevention or victim assistance, although there may be some small involvement on some cases, but it is hardly their core work and it hardly fits with the idea of what the proceeds of crime account is meant to service—another proportion of that money goes into financing the operations of the proceeds of crime unit at the Office of the Director of Public Prosecutions and the police proceeds of crime unit. One of the challenges over the last several years is that there has been a decreasing amount of money or property seized that can provide funds into that account. Once upon a time, in its early days, people would have plantations of cannabis, for example. They seized the plantation, they seized the land and they flogged it off, and it may be worth something. In the case of methylamphetamine, the labs can be very mobile. They can be set up in rented accommodation, so there is no property to seize other than that of an innocent third party, or they can be set up anywhere without any great investment of assets. Over the years, it has been found that the property realised through conviction or even non-conviction-based proceedings has been limited.

Unexplained wealth promises an awful lot. The way the Attorney General tells it we have people with fast cars and living in mansions who are living well beyond their means, but whether they actually have any property that can be seized is another question. It may be that someone is living beyond their means but they do not have much property. They may have a lot of cash but whether that is obtainable is a different thing. The image of drug lords in their mansions with "Mr Big" on the gatepost may be rather fanciful. It may be the case that there are some people like that. I hope that if there are, then the CCC actually manages to seize their property for the benefit of the community, but I will wait to see whether that happens. It may be that what has been promised will not be achieved, quite apart from the difficulties and the legal problems that we have. It may very well be that it will not be achieved in the near future, because the mounting of a case can take considerable time and resources. But no doubt we will be told more about that. Plainly, the consensus, at least the view of the DPP, was that if we are going to set up a proper unexplained wealth regime, or even a criminal property confiscation regime, it ought not to involve the DPP; it ought to be a multidisciplinary agency that is properly resourced. That is not what is proposed in this legislation. On the contrary, this legislation provides a role for the CCC that will run in parallel to a regime that is already in existence.

I raise another element on proceeds of crime and what is hoped for it. It comes from a paper tabled in the other place. It is tabled paper 578, which appears to be a page out of what suspiciously looks like a cabinet submission. It is page 7 of a cabinet submission and 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.

I am not quite sure what that means, but that $14-odd million compares not unfavourably with the figure of some $52 million that I cited earlier, of which $6 million was unexplained wealth, particularly when looking at the size of our jurisdiction and the like. Nevertheless, the other tabled papers suggest that there will be resources that the Corruption and Crime Commission could draw on within its current organisation to pursue these matters, but once again, as I have indicated, there is also the qualification that it will not be able to maintain its other core work while pursuing these applications. I would like to know whether any work has been done on determining some kind of memorandum of agreement about the financing of the CCC out of the moneys that it manages to negotiate and obtain through its new function. It certainly appears that the Attorney General and the government do not have in mind allocating any additional resources to the CCC. I would also like to know what legal and other resources are available to the CCC. As I understand it, more recently there had been talk that the CCC was having trouble attracting staff. I suspect things might change with the way the economy goes, with its ups and downs and the like, but one of the problems always encountered by the DPP was attracting suitably qualified staff for significant periods who would be worthy of investing resources into training up to do specialist tasks without losing them in due course. What is important with these long-term investigations is that there be some stability, but I hope that the minister can tell us what the arrangements are and whether any difficulties have been forecast by the CCC.

Another option that is available and has been looked at from time to time but would take quite some time to develop in detail and require money to do is the creation of a discrete office or agency that conducts all confiscation proceedings. That is one of those things that has its pluses and minuses. Once again we have a prosecuting agency or the police who may conveniently obtain orders in the course of a prosecution action, whereas having an independent agency raises difficulties of coordination and collaboration. What is being proposed here is what the previous DPP at any rate did not favour as a model; it was simply empowering a multidisciplinary agency such as the CCC to conduct investigations while retaining the DPP's role. The DPP would be instructed by that other agency to take proceedings using its lawyers when the investigations had been done by that other agency.

I would like to know the views of the current DPP and who has been consulted on the crafting of this particular model, or whether it was solely based on the Corruption and Crime Commissioner, as would appear from the debate in the other place, approaching the Attorney General and saying, "It would be a good idea if I had the ability to use my coercive powers in order to help disrupt organised crime by seeking unexplained wealth declarations" and the Attorney General deciding, "That sounds like a pretty good idea. Let's do something. I'm going to get in there and craft this bill and let's go." I am interested to know whether there was any input from the director, whether this current director has a different view from the previous director, and why the view was changed and how it will work. I would also like to know whether the police were consulted on how they are going to function in this scheme and whether there will be any working at cross-purposes or compromising of each other's work.

There is one other element to this, which was a considerable problem and one of the reasons why unexplained wealth proceedings have not been as successfully pursued in Western Australia as one would have hoped—that is, access to the relevant information. Considerable work had been done at a ministerial level from the days of the Gillard federal government to try to negotiate the referral of limited powers to the commonwealth to enable the commonwealth to use its criminal property legislation, the Proceeds of Crime Act 2002, to overcome the problem of cross-border crime because these alleged "snakes" may have several heads in several jurisdictions. There may be assets that are concealed in several jurisdictions. There may be different laws applying in those jurisdictions. There is also the difficulty of getting access to the data to support any investigation.

The commonwealth had a problem because the commonwealth could only pursue criminal conviction–based confiscations. As far back as the days of Attorney General Nicola Roxon under the Gillard government, circa 2012, the commonwealth had been seeking a limited referral of power. It was actually not that limited—it wanted to have a referral of power from the states to be able to mount unexplained wealth investigations and applications. The trouble was the commonwealth could only base it on convictions and that could only be on commonwealth offences. What it was seeking was, at the very least, a referral of the ability to charge under state offences as a particular jurisdiction required and to base its unexplained wealth proceedings on that. For a variety of reasons, the states resisted that approach from the commonwealth at the time, primarily because of the rather heavy-handed way that it went about it. Under the current commonwealth Liberal government, then Minister for Justice Hon Michael Keenan, MP, took a rather different approach—a more conciliatory and cooperative approach—and I am pleased to say that Western Australia was able to persuade a number of other jurisdictions to entertain the idea of a limited referral power. But there was going to be a quid pro quo in it—it would be a limited referral for a limited amount of time with a sunset clause, it would allow the state to back out of it at any time if the commonwealth was not prepared to do it properly and keep up its end of the bargain, and it would provide equitable sharing arrangements for any of the proceeds that were obtained as a result of the use of state laws and cooperation with state authorities by the commonwealth. There were positives in it for the state. It would also allow for

reciprocal enhanced information sharing, removing legislative and administrative barriers to the state having access to commonwealth information such as from the Australian Taxation Office, Centrelink, the Department of Immigration and Border Protection, the Department of Human Services, the Department of Social Services, and the ability to use telecommunication interception information for unexplained wealth proceedings. It would also provide the commonwealth with access to state sources of information such as licence and registration records, revenue information and the like. There would also be protections against anti-consistency provisions that would negate state law and a variety of other things to protect state interests. The intent was that states and territories would retain and continue to use their existing unexplained wealth seizure schemes.

By the time of the last election, work on that was very far advanced when we entered into caretaker mode. I would like to know the status of that work. It seems to me that it is all very well for the Corruption and Crime Commission to be given the power to investigate and make applications in relation to unexplained wealth but, given that determining whether someone has unexplained wealth also means having access to records that can build a financial case against someone and to refute evidence of where the wealth may have come from is also important, that would require cooperation with not only state authorities and access to state material, but also material from the commonwealth. We were very close to sealing deals in that regard. I would like to know what has been done by the Attorney General since then, if anything.

There are a number of questions regarding the proposal that is before us and a number of issues that I would like the minister to address—for example, confirming the government's expectations for what is being proposed. At the moment we have had clichés in media releases about following the money, Mr Bigs, and cutting the head off the snake and so on, but I would like to know what the government realistically expects from this. How will this scheme's success be measured? Will it be measured by means of how many unexplained wealth investigations are conducted, how many result in declarations, or how much wealth is seized? At one stage there was an edifying photograph of Jim McGinty astride a Harley–Davidson that had been seized from bikies. Will that be a measure of the success of this scheme? Will we see Quigley in a bathtub full of coins? How will we measure the success of this? How will the public know that it is not the usual hot air and puffery and that something is actually being achieved, that this is successful and that it is providing value for money?

I have mentioned that I would like to know who has been consulted on the bill—the police or the Director of Public Prosecutions? Has there been consultation with the Law Society of Western Australia? The Law Society of Western Australia was consulted by Gail Archer way back in 2008 and gave its views on how things should be structured. I would be curious about that. Has the Criminal Lawyers' Association been consulted? If so, what did it say?

What resources are going to be devoted to this particular exercise and where will they come from? The Attorney General has said, in the other place at least, that the CCC will not need any more resources and has enough and that the CCC has confirmed that it can operate within its resources but, again, it is a question of what has to suffer and what has to give in order to make this work and whether the CCC will change direction from being a probity and integrity body that polices public agencies to one that searches for proceeds of crime in competition with the police and the DPP.

How will the recovered money be used? Will it be going into consolidated revenue? Otherwise, if it will go into that confiscation proceeds account, will the CCC be subsidised by the money it raises? What mechanisms will be put in place to ensure that the powers of the CCC will not be misused to extort money by way of settlements in order to subsidise its operations? Given that the confiscation proceeds account is currently used to fund the operations of the DPP and the WA Police Force proceeds of crime units, will a fresh memorandum of understanding be negotiated with the CCC? What will its terms be? If, as it has been claimed, the new powers are intended by the government to target Mr Bigs, heads of snakes and methylamphetamine traffickers, will the police be investigating persons who are also likely to come to the attention of the CCC? What will prevent overlapping investigations that could interfere with and potentially compromise each other? Could the evidence extracted in CCC investigations be used for other investigations and how? To what extent could it or could it not be used to support the civil proceedings for unexplained wealth declarations, given that the evidence is obtained coercively under CCC powers? What is the status of the national unexplained wealth cooperative scheme and how will that work alongside what the government proposes here? As I mentioned, the idea was that the state could still pursue its scheme while the commonwealth had the ability to look more nationally and use its resources. I would like to know what the status of all that is or whether that has been too hard to do, rather than jumping in and having this urgent piece of legislation sitting around for nine months. When will legislation to do that referral of power to give effect to that national scheme be introduced? What is being done to obtain greater cooperation between the states and the commonwealth for access to information that is critical for not only the commonwealth to be able to do its job, but also the state to do its job on unexplained wealth and criminal property confiscation matters more generally?

That covers the field of matters that I think ought to be explained a little more fully. A lot has been promised for this legislation, simplistically claiming that it will achieve all sorts of things. I would like to know a little bit of the

reality about what is expected and what we can expect to see in budget papers and annual reports in the future about the success of what is being proposed so we will be able to gauge whether this has been a worthwhile exercise or whether something more sophisticated is required that might not have been able to be rushed into Parliament quickly so that it can stall for nine months, but actually involve a little bit of work and thought to craft and which will be far more effective. I query whether a multidisciplinary agency that is set up as a specialist to deal with all these sorts of things and requires resources that are dedicated to the task is the way to go, but maybe it is not. I wonder what has been thought about in this sphere and how the public will know whether this is another headline grabber that will not achieve anything and will not achieve what is being promised for it. I look forward to the minister addressing that. Otherwise, as I say, we will be supporting the bill. We do not for a moment think that it will achieve anything like what has been promised for it or that it will suddenly reform organised crime in the state, but good luck to it. I hope that there will be some successes for it. I hope that the CCC manages to use its powers effectively and for the public interest, but I am also anxious to ensure that it does not compromise itself by getting too close to criminal organisations in negotiating criminal settlements for proceeds of crime. I would like to hear more about that.

HON AARON STONEHOUSE (South Metropolitan) [9.19 pm]: Among other things, the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 deals with an amendment to the Criminal Property Confiscation Act 2000, which I will be speaking to mostly in my remarks in this second reading debate. It deals with expanding to the CCC the unexplained wealth confiscation powers that the DPP currently wields. I think it is more accurate to call it civil criminal property confiscation rather than criminal property confiscation. As has already been pointed out by Hon Michael Mischin, criminal charges need not be laid, let alone a conviction reached, for property to be confiscated under unexplained wealth provisions. I see this expansion of unexplained wealth confiscation and the Criminal Property Confiscation Act 2000 as it currently stands as part of an ever-escalating war on drugs and part of a tit-for-tat arm wrestling competition between the two major parties, as both Labor and Liberal try to one-up each other and look to be tougher on crime. Since the original laws to allow for the confiscation of unexplained wealth were brought in back in 2000, there have been remarkably few examples of those particular unexplained wealth provisions having been used. The Attorney General recently cited a lack of Director of Public Prosecutions resources as one of the reasons for this, but he will forgive me if I have my doubts. At their height there were some 24 unexplained wealth declarations sought and granted between 2000 and 2009. However, worryingly, only 14 of those led to successful confiscations. I say "worryingly" because 10 of them, well over one-third, were ultimately unsuccessful. Those 14 successful cases netted, according to the DPP's own figures, just in excess of $5.3 million. That is $5.3 million from 14 confiscations of what we are assured are, as Hon Michael Mischin put it, the heads of the snake, the kingpins, the Mr Bigs, in the drug trade. These provisions have been largely unsuccessful. It will be argued by the government that the DPP lacks the resources to pursue unexplained wealth confiscations, but if we look at similar laws in other jurisdictions, we see a similar pattern. In fact, the federal law, being section 20A in part 2-6 of the Proceeds of Crime Act 2002, which has been on the statute book since 2010—the unexplained wealth confiscation provisions at least—has been used only once in the last eight years, despite the resources available to federal agencies. Despite the broad sweeping powers enacted by the Criminal Property Confiscation Act 2000 and similar powers in other legislation, successive governments have argued that law enforcement agencies are toothless and that new powers are needed to finally deal the killing blow to organised crime. In September 2000, when what is now the Criminal Property Confiscation Act was being debated, Kevin Prince, the police minister, said —

> The first target … will be those who have enriched themselves through drug dealing …

He went on to stress —

> I do not refer to the street dealer or the user-dealer … The targets will be those who never touch the drugs and acquire a monumental amount of wealth as a result of their dealing.

That had not quite materialised two years later, but Jim McGinty, who was quick to pose outside this building astride a confiscated Harley-Davidson, was still doing his best to make it a reality. He said —

> "We plan to make it very hard for these people to enjoy their ill-gotten gains," …
>
> "Their luxury lifestyles will simply be stripped away."

In 2013, one of McGinty's successors as Attorney General, Hon Michael Mischin, was busy telling us that all we needed was the ability to declare organisations to be criminal and he would be able to "turn their strength against them, and make it difficult for them to function". When the current Attorney General introduced the present bill, we heard the same tired old tune. He said —

> This bill sends a clear message to those involved in organised crime at the upper levels that they are not untouchable …

The Attorney General has used some strangely powerful language when describing this legislation. In an article by Graeme Powell on the ABC on 28 April 2017, the Attorney General is quoted as saying —

> … the CCC front doors will become the gates of hell because they will have to go in there and explain how they obtained these luxury items …

He went on to say —

> "These syndicates are evil serpents in our community and we intend to cut their heads off."

There is a really weird biblical serpent theme there from the Attorney General, but I digress!

Such broad powers are sure to catch the guilty and innocent alike. Take the case, for instance, of Mr A, a Perth resident who shared the details of his case with me, but has asked, for obvious reasons, to remain anonymous. In August 2014, a search warrant was executed by WA Police at Mr A's residence and four bundles of cash were located and seized. These bundles contained $46 000, $21 350, $26 700 and $12 900; that is just shy of $107 000 in total. One hundred and ten days, three and a half months, after the cash was seized, Mr A was served with a freezing notice issued pursuant to the CPC act, the act we are now looking to extend. The cash was frozen on the basis that there were reasonable grounds to suspect that it was either crime-derived or crime-used. Mr A was never charged with a criminal offence arising from the search. Mr A opposed the confiscation and provided the state with an affidavit explaining the origins of the sums of cash. He explained that the bulk of cash came from bank withdrawals from his own account and he produced bank statements to that effect—the same bank statements that, incidentally, he had shown Western Australian police at the time of the search and seizure. He further explained that he was in possession of the cash for legitimate business purposes, which he outlined in some detail. The DPP received Mr A's affidavit in November 2014. The matter came to trial in October 2015, almost 12 months later. At this point the state had been in possession of just shy of $107 000 owned by Mr A for 14 months. On the first day of the trial, the state, which had been in receipt of Mr A's affidavit for about 11 months at this point, dropped the matter and set aside the freezing notice. All Mr A was guilty of at this point was not trusting banks, but it seems that perhaps he should not have trusted the state! On term deposit rates with one of the big four banks, Mr A would have perhaps received 3.75 per cent interest on a 12-month deposit back in 2014. That is worth about $4 000 of his $107 000 sum, but the state did not offer to reimburse him for that lost revenue, it did not compensate him for his lack of access to his original cash and it did not offer to pay his court and legal fees. What the state did do is walk away with impunity, because legislators in this place and the other place have allowed it that latitude.

Now, the McGowan government wants to extend those very provisions further. It wants to give them to the Corruption and Crime Commission, an organisation that we have heard in other debates recently in this chamber is struggling to keep up with its current workload and only has the ability to review a fraction of the cases presented to it. I thank Hon Adele Farina, who is currently away on urgent parliamentary business, for highlighting this figure for us when she discussed report of the Joint Standing Committee on the Corruption and Crime Commission on Dr Cunningham and Ms Atoms in March. Out of the 4 939 allegations received by the CCC in 2016–17, only 16, that is 0.3 per cent, were reviewed independently by that body.

The second reading speech to this bill states —

> The DPP will maintain exclusive jurisdiction over investigating or initiating proceedings in relation to crime-used property, crime-derived property and drug trafficker declarations.

However, the statement seems to contradict the amendments within the bill. The amended section 41(1) of the CPCA will read —

> The DPP or the CCC may apply to the court for a freezing order for property.

Section 43(8), which deals with freezing orders made on crime-used and crime-derived grounds, reads —

> The court may make a freezing order for property if there are reasonable grounds for suspecting that the property is crime-used or crime-derived.

Referring back to amended section 41(1), this empowers the court to make crime-used or crime-derived freezing orders upon application by the CCC. Section 43(5), which deals with drug trafficker freezing orders, will be amended to refer to "the applicant for the freezing order". Going back to amended section 41(1), this will include the CCC. Generally, drug trafficker freezing orders have been sought as some part of the related criminal proceedings; however, expanding this power to the CCC concerns me deeply, as in recent months I have been made aware of many cases of drug trafficker confiscations resulting in unjust outcomes.

One such case is Mr P, who was convicted in 2013 of having less than three kilograms of useable cannabis on his property for his own use. Against him, the Director of Public Prosecutions subsequently took out a drug trafficker's declaration claiming that the legislation left it no discretion. Mr P fell into sustained cannabis use as a result of insomnia and no charges of commerciality were levelled against him. Mr P's partner, a wholly innocent party who

took no part in growing or using the drugs concerned, but whose share of the property was likewise frozen is, as I stand here, still being actively pursued by the Crown. Mr P's case is not unique; he just happens to have come through my office in recent months. If his case does not provide members with sufficient proof that the legislation we are being asked to amend today is flawed almost beyond hope of redemption, then let us add the case of Ms Nguyen, whose estranged husband had not contributed to the mortgage for upwards of two years when he was arrested in 2012, yet who still faces the forced sale of and eviction from her property. Ms Nguyen does not have a parking ticket against her name and survives on close to minimum wage, yet the DPP is currently pursuing her estranged husband's share of the home's equity—a man who moved out of the home almost 10 years ago and has not paid a single penny in support of his family or their mortgage since. If members want a prime example of the ill-conceived harm that legislation such as this can cause, they do not have to look any further than Tam Nguyen. However, one might also consider the case of Mr and Mrs L, constituents of mine in the South Metropolitan Region. Mrs L has a serious pain management issue, which was improved by the use of medical cannabis, the same strain that the government is now encouraging licensed producers to grow. Mrs L used to have chronic back pain. Now she has chronic back pain and no home. That is the level of help that the state has provided to her and her husband, facilitated by this odious legislation. Or we could take the Lesmurdie family, whose father copped a fine of $6 000 for cultivating cannabis, while the innocent mother and her children were forced out of their $900 000 home, legally bought and paid for over decades, because protections for innocents and third parties were not considered; they were actively dismissed when this legislation was first introduced.

The second reading speech explicitly states that the DPP will maintain exclusive jurisdiction over crime-used and crime-derived property and drug trafficker declarations; however, the bill will expand the power of the Corruption and Crime Commission to seek freezing orders from the court. I hope the minister will address this in her second reading reply. I certainly hope it was not the government's intention to mislead anybody with that statement. Perhaps it can clear that up for me. The most egregious aspect of this bill is that it empowers the CCC to make examination orders. Currently, the DPP must apply to the courts for an examination order. This bill will enable the CCC to make examination orders at will. The CCC will be the investigator and the litigator and will now determine who should be examined. Whether an examination order is issued, or is about to be issued, is the basis upon which courts make a freezing order for property. Currently, courts make determinations on examination orders and will issue freezing orders based on an examination order. If the CCC can make its own examination orders, it removes the courts' discretion and runs the risk of reducing them to merely rubberstamping freezing orders. That raises some serious questions about how it may undermine the institutional integrity of our courts, let alone the constitutional legitimacy of such a change.

The Auditor General's report on criminal property confiscation provides some insight into what might be driving such egregious use of the powers in the Criminal Property Confiscation Act. It is not a long report and I would urge all members to take the time to read it if they can. In fact, I would urge the Attorney General to read it. When I tabled a question on it in Parliament some two weeks after its publication, I was told by his staff that he had not had the time to consider the recommendations yet—that is, the Auditor General's report into an aspect of the Department of Justice. The Auditor General's report lays out some fascinating facts and figures. The average house confiscation is well below the Perth median, and the average car confiscation is worth just $24 000. Clearly these are the kingpins, and the Mr Bigs, living in 4x2 suburban houses and driving second-hand sedans. But this report lists something even more damning, to my mind. It reveals, in black and white, that both the police and the DPP get bonus funding. That is not my language; that is the language that the Auditor General uses. The police and the DPP are eligible for bonus payments if they exceed their annual confiscation targets. Will the government be back here in 12 months' time asking for similar pervasive incentives for the CCC?

The Criminal Property Confiscation Act 2000 is perhaps one of the most unjust laws on our statutes. With a single act of Parliament we have eroded the founding principles of our common law. In fact I am reminded, I think it was raised in Hon Michael Mischin's remarks, about confiscation matters being settled out of court to reach a quicker resolution. Members should be concerned about extrajudicial property confiscation—property confiscation taken without the oversight of the courts, without appropriate due process. Law professor Ben Clarke of the University of Notre Dame said of the CPCA —

> … depriving citizens of privately-owned assets is a highly intrusive act of state. Such conduct is prima facie in conflict with norms such as the sanctity of property ownership, freedom of citizens from unnecessary interference by the state, and the right to privacy.

On 15 June in the year 1215, King John agreed to the Magna Carta Libertatum—forgive my poor Latin—or the great charter of liberties, as we know it in English. Now, 803 years later, almost to the day, we are discussing expanding confiscation powers to the CCC that fly in the face of the principles enshrined in the Magna Carta. Clause 39 of the charter reads —

> No free man is to be arrested, or imprisoned, or disseized, or outlawed, or exiled, or in any other way ruined, nor will we go or send against him, except by the legal judgment of his peers or by the law of the land. To no one will we sell, to no one will we deny or delay, right or justice.

The Magna Carta established the crucial principle that no-one was above the law, not even the Crown. It established the principles of due process and the presumption of innocence. We are all aware that the CPCA reverses the onus of proof, completely removing the right to the presumption of innocence. It undermines due process, by making the CCC the judge, jury and executioner in unexplained wealth confiscations. In the second reading of the CPCA 2000, the then Attorney General, Hon Peter Foss, said right here in the Legislative Council —

> The intention of the Bill is that the courts may not exercise any discretion in relation to confiscation; that is, once certain matters are established in relation to, for example, a declaration that a person has unexplained wealth, the court must make the declaration. In this regard I emphasise that the intention of the Act is to ensure that a person is deprived of property which is not lawfully acquired.

Not only does the CPCA have no regard for judicial discretion, but also the bill will further undermine it by granting the CCC the power to make examination orders. Hon Peter Foss went on to say —

> One of the strongest features of the Bill is that provision is made for the confiscation of all property of a declared drug trafficker … all the property owned, effectively controlled, or given away by a declared drug trafficker is confiscated.

For those unaware, one of the first limits the Magna Carta placed on the Crown was a proportionality requirement. A fine was required to relate to the gravity or degree of the predicate offence. The second limit was a livelihood-protection requirement, the salvo contenemento principle. The essence of the salvo contenemento principle is that a fine may not deprive one of his livelihood; the individual fined must still have sufficient means to sustain himself and his dependants. Thus, in imposing a fine, the government had to tailor the fine to the gravity of the offence and it had to take into account the individual's financial situation, lest he be robbed of his livelihood.

This principle was undermined in the years that followed the Magna Carta. However, it re-emerged in the 1689 English Bill of Rights. Who here can claim wisdom to throw away 800 years of common law? Who is willing to put their name to a bill that undermines our most basic human rights, 800 years of bloody civil wars and dead tyrants? Are we so eager to disregard our hard-won freedoms? On the 800th anniversary of the Magna Carta, just three years ago, in this very chamber once again, Hon Peter Katsambanis spoke of the significance of the Magna Carta. He said —

> Over time, though, it has come to symbolise a lot more. Over time, it has been accepted as the foundation of the rule of law that runs through the thread of all common law countries, flowing from England and the United Kingdom to Australia and other nations that still subscribe to the common law as the principle of our rule of law. It is a document that ensures that individual freedom has a greater weight than any divine right of kings or any form of arbitrary control. It was put best, I think, by one of the great jurists of the twentieth century, Lord Denning, when he said that the Magna Carta is the greatest constitutional document of all time—the foundation of the individual against arbitrary authority of the despot. It is that individual freedom that the Magna Carta has come to symbolise over 800 years for many people in many societies across the world …

Hon Peter Katsambanis put it quite well. Those principles of the presumption of innocence, of due process, of the rule of law, are the very basis of our common law institutions that we enjoy today. I appeal to anyone who considers themselves a classical liberal, a Liberal, or even a conservative, that we should not be so quick to throw away 800 years of legal tradition because we think we might snatch a kingpin once in a while. The evidence is that we are not catching the bigwigs, the kingpins and the drug lords. We are not getting their villas and their mansions. We are getting below-median-price houses and below-brand-new-price cars. In the meantime, the unintended consequences are dispossessed innocent people, such as Ms Nguyen, who has never committed a crime—at least none that the state is aware of—but will be dispossessed of her property for the misdeeds of her estranged husband.

To the progressives, to those who value social justice, you cannot back a bill such as this and claim to be progressive or champions of the every man. These laws are routinely used against people who are self-medicating for physical ailment, people such as Mr and Mrs L, who suffer chronic back pain and grew their own cannabis crops because at the time medicinal cannabis was not available; that is not justice. I do not think anyone in good conscience who values justice can support this bill. I will move an amendment to insert a review clause into the act. It will not review simply the expansion of powers that the Director of Public Prosecutions enjoys to the Corruption and Crime Commission. It will review the entire act. It will come into place in three years. I do not place a lot of stock in statutory reviews, but I think it is the very least we can do to force some introspective view of criminal confiscation in this state to see whether it is working as intended.

HON ALISON XAMON (North Metropolitan) [9.44 pm]: I am aware that I do not have time to really commence my speech, but I will at least put on the record that I am the lead speaker for the Greens on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. I have much that I wish to say about this legislation, and I need to make it clear from the outset that the Greens will not support this legislation.

Debate adjourned, pursuant to standing orders.