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

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 5: Section 3 amended —

Debate was interrupted after the clause had been partly considered.

Mr P.A. KATSAMBANIS: When we concluded, the Attorney General was on his feet. His time had expired but he was halfway through an explanation that I would be very keen to hear the end of.

Mr J.R. QUIGLEY: During the debate on clause 1—I am not going backwards; I am just repeating part of what was said by the member for Cottesloe—the member for Cottesloe expressed concern that if not constitutional arrangements at least privilege arrangements would be altered by this bill. He forecast that this would result in this bill being sent to a committee for investigation of that matter. During debate on clause 5, just before lunch, the member for Hillarys expressed the same concerns. In response, I sought to point out that the reinsertion of the word "exclusively" will simply empower the Corruption and Crime Commission to look at matters that involve criminality and that are not exclusively matters of privilege. However, I gathered from the responses in the toing and froing that the members for Cottesloe and Hillarys were less than persuaded by the clarity of my argument and the propositions contained therein. Over the luncheon adjournment, I took the opportunity to discuss this with Hon John McKechnie, QC, the Corruption and Crime Commissioner, and discussed the alternatives. It would indeed be a sad thing if the substantive parts of the bill—that is, all the bill other than clause 5(3)—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. The opposition speakers, despite whatever other criticisms they might have had of the bill or me personally, unanimously expressed the opinion that this bill should be supported and that those with unexplained wealth should be pursued. I sought advice from and discussed the options with Commissioner McKechnie and at the conclusion of those consultations I have concluded that if this would guarantee 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—I would like to hear a response—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. I will resume my seat and prepare a quick amendment in that regard, but before moving that motion I look to the opposition for an indication that this will, indeed, expedite the passage of this bill through this Parliament.

Mr P.A. KATSAMBANIS: I thank the Attorney General for his comments. Clearly, the position he has put just now is in line with what I and the rest of the opposition speakers have been putting since this bill came into this place. I put on record my thanks to the Corruption and Crime Commissioner, Hon John McKechnie, QC, for his understanding, as communicated by the Attorney General to this house. As I said earlier, I have significant sympathy for the views expressed by the Solicitor-General about the amendment to clause 5(3). It is just a matter of the processes of the houses of Parliament that issues of privilege are looked at by committees that tend to slow things down. The Attorney General has now accepted that and we welcome him excising this subclause. We would also welcome an indication of whether he intends to split the bill in two and proceed with two bills now, or to bring the subclause that is proposed to be excised back as a separate bill or as part of some other bill; and, if so, an indication of the time frame because, again, we do not want to unduly hamper the Corruption and Crime Commission or the commissioner from their job. They have expressed concerns about wanting this subclause back in. We have nothing to hide as a Parliament or as parliamentarians, so it would be good to bring it back in due course so that it can be examined through the process by which matters of privilege are traditionally examined in this Parliament.

With regard to the rest of the bill—although we have some questions around not so much the inherent internal operations of the clauses but what is going to happen once this bill is passed, and we want to ventilate those today; it will not take too long, I do not believe—we do not have any objections to the bill. In fact, we support the bill. Our biggest concern is to ensure that the commissioner has all the resources available to him and his office that he needs to go after these people who apparently are being scoped right now. That has been our biggest concern all along. The Attorney General indicated in his reply to the second reading debate that the commissioner thinks he has all the resources he needs, and we will monitor that in due course. Attorney General, I hope that is satisfactory. We would like some sort of indication of what the Attorney General intends to do with the subclause that is being excised, just for completeness and for the record, and to give the commissioner some comfort that at some point he will get these changes he has been asking for.

Mr J.R. QUIGLEY: I can answer those questions. Firstly, I had a brief discussion with Ms Lee Harvey from the Parliamentary Counsel's Office over the luncheon break and she suggested a separate, one-clause bill would be the most expeditious way of doing it, but the Labor government and I, as Attorney General on behalf of the Labor government, undertake to present such a bill as soon as is reasonably possible. I have said that to the commissioner himself. There has been a little difficulty—a little overload, shall I say—at the Parliamentary Counsel's Office in drafting bills, but we think that with the assistance of my learned friend the Solicitor-General, to my right, such a small bill could be prepared for the next session. I undertake to produce such a bill in this Parliament.

Mr C.J. Barnett: He should be able to manage one line!

Mr J.R. QUIGLEY: I am sure the Solicitor-General and I could struggle with one line! I have some sympathy for him because he is part of a senior executive service whose wages were frozen and he does not get paid as a barrister by the line anymore, but notwithstanding that, he is going to help me do it for the public good! We will put this before the Parliament this year, hopefully in the next session. Therefore, I have an amendment that I have signed and would like to move. I move —

Page 4, lines 1 to 3 — To delete the lines.

Mr P.A. KATSAMBANIS: The opposition supports that amendment, and thanks the Attorney General.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Section 21AD inserted —

Mr P.A. KATSAMBANIS: The Attorney General indicated that he had an amendment; which clause was that?

Mr J.R. Quigley: Clause 37.

Mr P.A. KATSAMBANIS: Okay; we have plenty of time for that.

As I said, we do not want to take up too much of the time of the house; we have ventilated most of the issues. There is the issue of cooperation with other authorities. The Attorney General helpfully indicated at clause 1 that it is dealt with under clause 8 with proposed new section 21AD of the Corruption, Crime and Misconduct Act 2003. There are two primary acts being amended here. The Attorney General clearly indicated that this clause gives power to the commission to enter into agreements of cooperation with other bodies. We do not doubt that; we have read that and we understand that, but we are really seeking an update on what advance there has been in entering into these sorts of agreements with some of the commonwealth bodies that would hold significant information that the CCC would need to go after the people we are going after. I ask that in the knowledge and understanding that some of these commonwealth bodies often guard this information jealously and are loath to share it with anyone, particularly state bodies, albeit state crime-fighting bodies.

Mr J.R. QUIGLEY: As the member for Hillarys is aware, for at least these past six years and beyond there has been little activity in this area. I think he noted that there had been only one application since 2011, so there has not been a lot of activity in developing these memoranda of understanding, and certainly not by the CCC, because the CCC has not had the power for unexplained wealth. The wide terms of proposed section 21AD will enable the Corruption and Crime Commission to seek support and assistance from, or consult or exchange information with, any relevant body. The CCC will determine the relevance by reference to the nature of the investigation and the functions of that other body. That empowers the CCC to not only receive information, but also transmit information that the act would otherwise require it to hold unto itself, because obviously it cannot get information or entice another body to give it information unless it tells that other body what it is about.

The CCC is not restricted in whom it may ask for information; however, it recognises that statutory bodies and law enforcement authorities may have limitations on the information that can be disclosed under their respective statutory schemes. The CCC will consult and exchange information with, or receive information from, commonwealth, state or interstate law enforcement bodies and other entities such as the Australian Transaction Reports and Analysis Centre and the Australian Taxation Office. Arrangements for information sharing will be made via modification of existing arrangements and memoranda of understanding to ensure that the CCC can effectively investigate unexplained wealth. The CCC may also investigate cooperatively with other relevant bodies. It is the CCC's intention to negotiate these memoranda of understanding. Obviously, agencies like the Australian Taxation Office will be central to that. The experience in other jurisdictions in the past has been—we have seen evidence of this quite recently in the massive fraud of hundreds of millions of dollars that was disclosed in the Australian Taxation Office—that the Australian Taxation Office also has been well disposed to cooperating with law enforcement officers in the pursuit of crime.

Mr P.A. KATSAMBANIS: I have no doubt that the Western Australian commission will endeavour to put those arrangements in place. Unfortunately, we are left to the will, be it good or otherwise, of all these other bodies to cooperate. The Attorney General's answer guided me to my next line of questioning in this area, because this is about the functions of the commission and how it will go after unexplained wealth. It is really all about how it will function. The Attorney General indicated that there is scope at least—we will see how much desire there is in practice—for some form of joint operations, be they formal or informal joint operations. Who would ultimately determine the flow of the proceeds of any funds from such joint operations?

Mr J.R. QUIGLEY: I do not know whether the member has been speaking to Mr Michael Keenan, but at the moment the commonwealth is trying to enter into a federal scheme whereby we share confiscation proceeds. However, Western Australia has been a particularly successful jurisdiction and since the institution of the legislation for asset seizure, from memory, approximately $112 million has been collected. It averages out at about $9 million a year.

Mr P.A. Katsambanis: That is on the conviction basis, just to clarify?

Mr J.R. QUIGLEY: That is on the conviction basis. The moneys will go into the confiscation account. I have made it clear to Mr Keenan that at this stage we are not keen to enter a national scheme whereby we send money to Canberra, because our experience so far is that we get precious little back. Our confiscation account is doing quite well. At last count, I think it stands in credit of about $11 million or $11.9 million, and I stand to be corrected on that, but we will get it through the estimates hearing. Section 131 of the legislation states —

> (2) Money may be paid out of the Confiscation Proceeds Account at the direction of the Attorney General, as reimbursement or otherwise —
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> (a) for a purpose associated with the administration of this Act; and
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> (b) for the development and administration of programmes or activities designed to prevent or reduce drug-related criminal activity and the abuse of prohibited drugs; and
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> (c) to provide support services and other assistance to victims of crime; and
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> (d) to carry out operations authorised by the Commissioner of Police for the purpose of identifying or locating persons involved in the commission of a confiscation offence; and
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> (e) to carry out operations authorised by the Commissioner of Police for the purpose of identifying or locating confiscable property; and
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> (f) to cover any costs of storing, seizing or managing frozen or confiscated property that are incurred by the Police Force, … or a person appointed under this Act … and
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> (g) for any other purposes in aid of law enforcement.

At the moment, a large sum from the account, which I have to sign off on but only on the recommendation of Treasury, goes to the police for the pursuit of organised crime and confiscated assets. We also have a memorandum of understanding with the Office of the Director of Public Prosecutions under which that office gets a bonus on the funds that it receives. We also disburse funds for other purposes according to law. That has included in recent times, at my discretion but only on the advice of Treasury, an allocation of, I think, $1.2 million to prop up community legal centres, which are also involved in the administration of law. That was after there had been some savage federal cuts to those centres. I was advised that I could dip into that account and do some disbursements. In answer to a question on notice from the shadow Attorney General in the Council, I have detailed the disbursements that were made from the fund. We anticipate that that confiscation account will grow and it may be necessary after the first three years—bearing in mind that the commissioner has said that the CCC has sufficient resources to fund this for the first three years—for some funds to go back to help fund further confiscation proceedings.

Mr P.A. KATSAMBANIS: The Attorney General has given us some interesting and valuable information, but he has not answered the question that I asked, and he may not be able to answer it in the absence of a national agreement. If cooperative arrangements are struck with commonwealth or other agencies, who will determine the percentage of proceeds that will be recovered? Some of the path that the Attorney General went down in his answer has raised some other questions that I will ask, but perhaps he could just focus on that question. It may well be that he does not know and the answer may well be that it will be determined in each individual circumstance, but I just want that on the record.

Mr J.R. QUIGLEY: It would be determined in the memorandum of understanding on a joint operation, because the operation would be run under our local legislation. If it were a target from interstate and we pulled them in, there would be a memorandum of understanding on the split of those proceeds.

Mr P.A. KATSAMBANIS: In relation to the flagged idea of a national agreement in this area, does the Attorney General think that the discussions or negotiations will lead to an agreement in the foreseeable future or will we be interminably stuck on the distribution of funds issue or any other issue?

Mr J.R. QUIGLEY: At the last conference of state and territory Attorneys General, there was certainly not unanimity by the Attorneys General around the table, so I think we are some distance from a national scheme. As I said, unless it can be demonstrated that a dividend is coming to Western Australia—it is not as though we are stuck with this—we do not want to send any money east of the border unnecessarily. We want to try to keep it all here. We have just heard the budget speech.

Mr P.A. KATSAMBANIS: Yes, I understand that part of it. I have spruiked that issue for a long time too—I think we all have in this place—but, at the same time, if we can have more effective operations that lead to a bigger pool, we can all share in those benefits and, most importantly, deprive people from benefiting from their ill-gotten gains. We will see how that works in practice.

I will move on to the distribution of proceeds that the Attorney General indicated, quite rightly, is done under a legislative scheme within the principal act. The Attorney General mentioned the "bonus"—I assume he had the word in inverted commas—available to the Office of the Director of Public Prosecutions in these circumstances to help it with its work in obtaining conviction-based criminal confiscation proceeds. The Attorney General indicated that in the future, after three years, there might be a possibility that the Corruption and Crime Commission will also benefit in that regard. In this three-year period when the commissioner has indicated that he can undertake this work without calling on further resources for his office, is it clearly the intention that no extra or bonus funds would be made available to the CCC from the confiscation fund or would it still have the opportunity to apply for it in the three-year period?

Mr J.R. QUIGLEY: It could apply but it is not foreseen that any distribution will be made at this stage. When I talked about the bonus for the DPP, I was not using a colloquial term; it is in fact described in the agreement as a bonus. If the office of the DPP recovers funds above a certain level, it will get a bonus of about $1 million. It is not anticipated, because no-one knows. This matter was raised by the Leader of the Opposition and the member for Scarborough who wanted to know what it is expected to get. I cannot, as the Attorney General, tell members what is expected because the commissioner is not confiding in me who the targets are or what their source of wealth might be. I trust in the commission; it will do its best. That is why the commission said, "Let's look at it for three years" and it will fund it. Then we will all have a good idea what funds should flow back to the commission by way of a bonus or ancillary funding.

Mr P.A. KATSAMBANIS: I recognise that starting off in this area by asking what the anticipated returns are is like asking: how long is a piece of string? However, the Attorney General, in bringing this legislation to this place, is telling us that the commission will be able to go after these bad guys, grab their property, and take away their ill-gotten gains. That is what this is all about. We are going to empower the commission to identify people who have ill-gotten gains—unexplained wealth; they will be unable to explain it. Those proceeds will flow through into the coffers of the state.

Mr J.R. Quigley: Into the confiscation account.

Mr P.A. KATSAMBANIS: It is into the confiscation account or into the coffers of the state—the confiscation account is part of the consolidated fund.

Mr J.R. Quigley: I say lightheartedly that the confiscation account is the Attorney General's account!

Mr P.A. KATSAMBANIS: As the Attorney General indicated earlier, quite rightly, he might consider it his account but nothing happens without the imprimatur of Treasury. The Attorney General has already, in other discussions in this place, indicated how he has come back battered and bruised from Treasury!

I guess I am probably doing the job of Treasury here because it will be keen to know the answer to this question. I understand that it is a little like trying to gaze into a crystal ball but the Attorney General must have some sort of indication of what he would think success would be in this regime over a three-year period. What would the Attorney General consider to be an appropriate amount to flow into the coffers, taking into account that ill-gotten gains cost Australia $36 billion a year? I think the Attorney General or another member even gave a percentage of gross domestic product; it was quite a high percentage of GDP. We are told that lots and lots of money out there is ill-gotten gains or unexplained wealth. Over that three-year period, what monetary amount would the Attorney General consider to be a success? Would it be the number of successful actions or does he have some other formula to measure that success?

Mr J.R. QUIGLEY: To be candid, I do not know and I am not going to hazard a guess. We will just have to see. I really do not know the answer to that question and I do not know that anyone knew the answer when the confiscation accounts kicked off. However, here this morning, I tabled the memorandum of advice from the

commissioner himself. He asked for these powers; he sought the government's support for these powers; and he said he could do it out of his current resources. The commissioner has told me that in other states, often during an inquiry into a big business person on an unexplained wealth application, the target is invited to surrender and an agreement is entered into of how much to surrender. Not all inquiries involve expensive litigation but in some cases, we know what happens—I am not suggesting that the Bell Group case was criminal, but we have seen it in big litigation—money gets burnt on lawyers. When the crime commissions in the eastern states believe they have a case on the balance of probability, they put a proposition to the person to surrender. Often, to avoid adverse publicity, the person surrenders. For the litigation itself, it is not anticipated that the commission will appear in court and conduct the litigation—sorry, it is. I am now thinking about confiscation. The commission will do that through its own legal department. I have another arrangement going with another agency in which it will be taken over by the State Solicitor's Office, but not from the commission.

I will be frank with Parliament; I do not know. The speech that I prepared and read as the second reading speech was prepared in consultation with the Corruption and Crime Commission, obviously. The figures given as total amounts and percentages of the GDP came from the CCC's own intelligence and its national bodies. Of course, in the confiscation account at the moment, Treasury allows for an average of $9 million a year. We think that this will considerably boost that account. I am sorry; I cannot give the member a measure against which success will be measured.

Mr P.A. KATSAMBANIS: Obviously, we will monitor it. Part of the reason for my question is not that I think three years is too long to wait, but, as I said in my contribution to the second reading debate and as other members of this chamber have indicated, the people we are talking about as potential targets are not holders of all this unexplained wealth because they have been silly or a bit lax in how they organise their affairs; it is quite the converse—they have managed to organise their affairs in a way that they have been able to hide their income-generation capacity and criminality from authorities. Although some of them may be motivated to roll over and have their tummies tickled upon presentation of a brief of evidence against them—I understand that is a component of it—many of them, particularly those with immense wealth, may well be motivated to drag it out forever and a day.

If we want an example of, again, not criminal conduct but litigation with parties that have a lot of money at stake, then the Bell example, which the Attorney General used, is the classic one in this state. It has dragged on and on. It will probably still be going after the Attorney General and I leave this place, given the rate it is going at the moment. I hope it is not.

Mr J.R. Quigley: It will.

Mr P.A. KATSAMBANIS: The Attorney General says that it will. When I am feeling less optimistic than I usually am, I have that same view. I am an optimistic person by nature and do not usually have that view, but on occasion I, too, come to that view. There is absolutely no doubt that for many of these targets, particularly the really big fish—the ones with extraordinarily deep pockets and an extraordinary need to preserve their entire enterprise or edifice from collapsing, and perhaps some who may well have diversified—it is the origins of their business empire that is really in question, rather than today's income-generation capacity. Be that as it may, there will be a big incentive for those people to continue to litigate for as long as is humanly possible—to litigate every step of the procedures, drag them out and not even get to the stage at which this might appear as an application for orders in a court. Is three years really the right time frame or should we be looking at a slightly longer time frame initially for the CCC to start generating funds out of this procedure? Is it likely that in the interim three-year period the anticipated legal costs may start mounting and we may need to consider the resourcing available to the CCC to do this quite onerous and difficult task?

Mr J.R. QUIGLEY: No-one can say never, but let me say this: there is a real incentive for people to surrender. These people are not convicted. Once litigation starts in the Supreme Court, it will be in open court, and all their family business—the whole lot—will be litigated in an open courtroom and not in the closed hearing room of the CCC. That has to be weighed in the balance too. People who have wealth might want to litigate to protect that wealth but, on the other hand, they will not want the exposure that that litigation is going to bring. As to the time of three years, it does not matter what this Parliament sets as a review period; this is a period that the commissioner is setting himself internally. He said, "I will let you know in three years, Attorney, where we are up to." I am not putting the pressure on him. He has come to the government and asked for these powers. He said that he is going to review where he is up to in three years and he will tell us how it is going. I trust him unequivocally. I will say this about the man—he is probably watching: I practised law in this town for 30-odd years and I would say that we have been, at times, robust opponents. He was the Director of Public Prosecutions and I was a defence counsel, so I know well his forensic abilities, his intellect and his determination. I have every faith that no matter how hard they try to fight it, they will not want to try to hide it from Hon John McKechnie, QC. I know that from experience—not an experience of him trying to find me! I did contemplate whether I would ever be on the end of

one of these applications, but it would be for unexplained poverty of how come I have worked for so long and ended up with so little!

Mr P.A. KATSAMBANIS: I, too, must say that I think Western Australia is blessed to have someone of the calibre of Hon John McKechnie, QC, who has accepted this role as Corruption and Crime Commissioner after what was an interesting and sometimes difficult time for the commission prior to him accepting the role. I have every faith and confidence in his ability to execute all his tasks, including the task that he is gaining through this legislation that is passing through here. I hope he has some better things to do than listen to us chattering in here today, but I dare say that he is probably watching.

The only other issue I wanted to clarify in this clause relates to the cooperation that will be absolutely necessary and that the Attorney General alluded to when he said that people are waiting for this legislation to come into force—that is, the necessary cooperation between the police and the CCC in identifying and pursuing these targets. How is the balance going to be struck in any situation in which a conflict or an apparent conflict may arise, be it in an investigation or simply in the timing of an investigation and the pursuit of various actions that may be open to each of the authorities? A balance has to be struck between obtaining unexplained wealth in a non-conviction–based regime and pursuing what may well be fruitful and ultimately successful criminal prosecution for people who have been avoiding criminal prosecution for a long time.

Mr J.R. QUIGLEY: It goes back to what the member said about confidence and trust. It will go back to the cooperative arrangements between the commission itself and law enforcement officers. If we take out unexplained wealth and just do it as an investigation, of course the commission would report to the DPP any crime that it came across in the course of an investigation and would leave it to the DPP to prosecute that, because it cannot initiate a prosecution itself. Once again, with all these matters, it gets down to a question of balance and trust in the people who exercise the power. Under the act already, the CCC has the ability to work cooperatively with WA Police and to conduct joint operations regarding serious misconduct. That works well. There is no reason to suspect that once this legislation is passed and it gets its new power that it will not continue in that vein. As the member has already recognised, under the stewardship of the current commissioner there has been a real shift in both its operations and its reputation, which has climbed immeasurably in this community.

Mr P.A. KATSAMBANIS: My only other area of investigation—I think it fits in well here because we are talking about the functions of the commission—is in relation to consultation with the Parliamentary Inspector of the Corruption and Crime Commission. Was there any consultation on the drafting of this bill or on proceeding down the path of this bill with the parliamentary inspector; and, if there was not, why not?

Mr J.R. QUIGLEY: There was not, because the parliamentary inspector has a different function. That function was hammered out in a series of hearings before the joint standing committee when Mr Len Roberts-Smith, QC, was the commissioner and Mr McCusker, QC, was the parliamentary inspector. It was agreed that the parliamentary inspector would not operate as a court of appeal in the functions of a particular operational matter. Neither the parliamentary inspector nor the joint standing committee were consulted about the terms of this bill because it was designed to pick up the powers that already exist in the Criminal Property Confiscation Act—there are powers of unexplained wealth—and enliven them within the Corruption and Crime Commission. There was no consultation with the parliamentary inspector; doubtless, in due course, people will go knocking on his door. But his duty is separate; his duty is to look at the act and the functions of the commission and see whether they are done lawfully.

Mr P.A. KATSAMBANIS: Can the Attorney General confirm that the parliamentary inspector will still have the same oversight of this area of the CCC's powers as he currently has in all other operations of the CCC?

Mr J.R. QUIGLEY: Most assuredly.

Clause put and passed.

Clauses 9 to 36 put and passed.

Clause 37: Section 43 amended —

Mr J.R. QUIGLEY: I move —

> Page 18, line 7 — To delete "and (5)(a)"

This was a little oversight in the drafting of the bill, which was picked up by an eagle-eyed officer; actually, it was picked up by the Director of Public Prosecutions during consultation. This amendment to delete "and (5)(a)" will ensure that there is no confusion about which agency may seek a freezing order in drug trafficker matters. To be declared a drug trafficker, a person must be in possession of drugs over the prescribed amount. From memory, it

is over 28 grams for amphetamines, for example. A person convicted of or found in possession of over 28 grams of amphetamines would be a declared drug trafficker and only the DPP can seek the freezing order. The position of the CCC in consultation was that perhaps the amendment is not really necessary because when we look at the act overall, it was never the intention of Parliament that the CCC would be moving on drug traffickers but would be moving on people with unexplained wealth. The DPP was concerned, however, that if the CCC made a move against a drug trafficker without consulting the DPP, suddenly the DPP would be responsible for the management of the whole show—that is, the assets seized, the freezing order, the whole lot. Within the last two weeks, a meeting was held between the commissioner of the CCC, the DPP and Parliamentary Counsel's Office. Those three got together and said that it was never the intention that the CCC would move against declared drug traffickers; that would remain the sole province of the DPP, while the CCC would look at unconvicted people who could not explain their wealth.

Mr P.A. KATSAMBANIS: Just to clarify, we are looking to amend section 43 of the Criminal Property Confiscation Act 2000. As originally drafted, the bill will allow either the DPP or the CCC to make an application for a freezing order under section 43(3) or section 43(5). But from what the Attorney General has told us today, it was not the intention that the CCC would have the power to bring such a freezing order under section 43(5) because that relates to orders that only the DPP can effectively make. I am comfortable with that. I have read through the provision and I think that makes sense.

Mr J.R. Quigley: If I can just interpolate there for a moment, section 43(5)(a) relates to a person who has been charged with an offence.

Mr P.A. KATSAMBANIS: Correct. Only the DPP can bring those sorts of orders. That clarifies that. In practice, the DPP would be the only applicant, but I understand that it is better this way. We saw what happened the other day in one of those statutes (minor amendment) bills when words were unintentionally taken out of two sections relating to family provisions when they should have been taken out of only one. In this case, some overeager person went through the act and decided to replace "DPP" with the words "applicant for a freezing order" right throughout. Quite clearly, this indicates that there is one limb that is effectively civil, for want of a better term. The applicant for a freezing order will be the CCC, but we are still preserving the DPP's powers, as we have already discussed.

Mr J.R. Quigley: My advisers concur with you.

Mr P.A. KATSAMBANIS: I am trying to get it clear for me and the public.

In the case of section 43(5), only the DPP will bring an order, so let us just keep it the DPP and keep it narrow. I am happy with that. On that basis, we can pass the amendment and pass the clause.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 38 to 77 put and passed.

Title put and passed.