CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2017

Second Reading

Resumed from 18 October.

MR P.A. KATSAMBANIS (Hillarys) [1.21 pm]: I rise to speak on the Corruption, Crime and Misconduct Amendment Bill 2017 as the lead speaker for the opposition. I point out at the outset that the opposition supports the passage of this bill, but in my comments today I will highlight how I think the process is likely to go from here. This is a very short bill; it has four clauses. Really, only one clause—clause 4—does anything substantive. Clause 4 inserts one word into section 3(2) of the Corruption, Crime and Misconduct Act 2003—it returns the word "exclusively" to that provision.

This bill has an interesting history. The provision that it seeks to amend—section 3(2)—was inserted during the course of parliamentary proceedings when the original bill was debated in the chambers. This short but important provision was inserted into the primary act and sat there for many years. During the course of the last Parliament, the government of the day made some amendments to ostensibly allow the Corruption and Crime Commission to get on with its main task, which is to look into serious misconduct, and to not burden the CCC with what would be considered to be minor misconduct by public officials who may require some counselling or discipline, or perhaps just simply some guidance or advice to those public officials. After an effluxion of time, it was considered that minor misconduct is not something that the CCC should focus on. It was taking up a lot of its time and a lot of its resources. Legislation was brought in at the time to move minor misconduct matters relating to public officials to the Public Sector Commission, which is fair and reasonable, because in any employment situation the employer or the body within the employer organisation that deals with human resources matters is the body that deals with minor misconduct, be it in a public company, in a private company or in government. That was all well and good. As a result of those changes to that legislation, section 3(2) of the Corruption, Crime and Misconduct Act 2003 was amended. It was amended to clarify that those provisions around minor misconduct would apply to minor misconduct of members of Parliament, if you like. Earlier this year, in the consideration in detail debate on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017, the Attorney General highlighted the possible circuitous nature of some minor misconduct that may be referred to the Corruption and Crime Commission, back to the parliamentary privileges committees, back across to the CCC and back to the parliamentary privileges committees. That was all well and good, but in making that amendment in the last Parliament, another minor change was made—I will get to all this in more detail in a minute—that removed the word "exclusively" that has caused us all the problems and all the consternation since then.

I think it is worthwhile putting on the record the provisions of section 3(2) as it read at the time the Corruption, Crime and Misconduct Act came into being. It reads —

> Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable exclusively by a House of Parliament, unless that House so resolves.

That was the provision. The changes to the legislation in the last Parliament removed those last few words "unless that House so resolves", but they also removed the word "exclusively". As I said earlier, it was done in the context of changes that were being made to free up the CCC to look at serious misconduct and pass on minor misconduct by public officials to the Public Sector Commission to deal with. Not a lot of attention was paid to a provision that impacted on the privileges of Parliament and members of Parliament, but it was done, and none of us paid attention to it. The Attorney General was in this place at the time as shadow Attorney General. I was in the other place with the then Attorney General. The member for Cottesloe was here as Premier and had responsibility for carriage of the bill in this place, and at the time he read a statement into the record around this provision and no-one picked up that there may be problems. As I said, the reason that the words "unless that House so resolves" were removed was articulated very clearly by the Attorney General in the debate earlier this year. It was to get away from that circuitous process around minor misconduct. We accept that that happened; no-one is bringing that back today, which is good. But then there was the removal of the word "exclusively". The changes came into being and a new Corruption and Crime Commissioner was appointed, Hon John McKechnie, QC, former Justice McKechnie. I point out again that in Western Australia and Australia, we refer to former justices as former justices. But in other places, such as the United States, they keep the title of "Justice"—a bit like presidents keep the title of "President".

Mr C.J. Barnett: Premiers should keep the title of "Premier"!

Mr P.A. KATSAMBANIS: I hear the member for Cottesloe; I think that interjection should possibly be put on the record for posterity!

Hon John McKechnie looked at this matter and in a paper that he delivered at Curtin University, he suggested that the removal of the word "exclusively" may have removed his ability to investigate serious misconduct of members of Parliament, even when a criminal offence had possibly been committed. Parliament retained its privilege to look at the conduct of members of Parliament and in the case of criminal conduct, the police could investigate members of Parliament, a practice that has long been the case. But the CCC could not. The commissioner articulated the issue very well in the paper that he delivered at Curtin University. Some of us quoted parts of that paper in the debate earlier this year on what I will call for the purposes of brevity the confiscation amendment bill. That was the commissioner's position and it ended up attracting publicity from the media. *The West Australian* ran a headline, "The Untouchables", which, based on the commissioner's commentary, may well be the case. Subsequently in the debate on the confiscation amendment bill, the unexplained wealth powers bill, the Attorney General tabled—I thanked him at the time and I thank him again now—the advice of the Solicitor-General, which tended to back up Hon Justice McKechnie's commentary. It was therefore determined that the term would be put back in the legislation. It should be pointed out that towards the end of the previous Parliament, the former government had picked up on this matter and was working on an amendment to put the word back in the legislation. This is not in any way an us-and-them situation; this is a bipartisan agreement. When the CCC commissioner suggests that some of his powers may have been accidentally removed, we are happy to put them back, and that is why the opposition supports this bill. We do not believe that the CCC should be precluded from looking at these matters and we do not believe that the CCC should be precluded from looking at any serious misconduct of members of Parliament. It should be pointed out that when I refer to "members of Parliament" in this context, I am referring to members of Parliament who are not members of the executive, because ministers, who are members of the executive, are covered under other sections and are not able to walk away from this. We have no problem with any of that. An amendment was in train towards the end of the previous government and now this government has brought it forward. Unfortunately, the minor amendment, the small amendment, was included in a bigger bill earlier this year. I said at the time, and I say it again now, I do not think it was done surreptitiously or with any malfeasance in mind; rather, it was done because it seemed convenient at the time.

The bill at the time, the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017, primarily dealt with the issue of giving the CCC power to use the unexplained wealth provisions in the criminal property confiscation regime to go after unexplained wealth of criminals—people who may be avoiding the criminal system but who have amassed great amounts of wealth that they cannot explain and that appear to be the proceeds of crime—and confiscate it to punish them, and possibly in the meantime hopefully uncover some evidence that could lead to criminal charges. We did not oppose it; we supported it. They were powers that that Corruption and Crime Commissioner asked for himself and we supported them. But at the time, during the second reading debate on the bill, we pointed out that when parliamentary privilege is amended, parliamentarians get a bit worried and concerned; they get a bit excited about the whole area. Both chambers have their own procedure and privileges committees that look at the procedure and privileges of Parliament. Both of those committees have the most senior office bearers; they are usually headed by the Speaker and the President. I think the Deputy Speaker may be on the Procedure and Privileges Committee.

The DEPUTY SPEAKER: Yes.

Mr P.A. KATSAMBANIS: The Deputy Speaker confirms that she is on that committee. Those committees are certainly taken extremely seriously and they like to inquire into these changes to make sure that there are no unintended consequences. It should be pointed out that when those changes were made in the previous Parliament, the change to section 3(2) of the act was not looked into by any procedure and privileges committee—not the committee in this place and not the committee in the other place. Had those committees looked into it at that time, we might not even be in the circumstance we are in today. I have said before, and I will continue to say, that the procedures of the committees of this Parliament are crucial to its operation—they are crucial to the scrutiny of legislation and they are crucial to ensuring that the work we do in this place is done in the absolute best interests of the people of Western Australia, whom we are here to serve. So, doing the right thing, the procedure and privileges committees would have been looking at the bill that came in earlier this year and would have been totally and utterly unconcerned by 99 per cent of it—that is, unexplained wealth—but concerned about one word, and those other words that used to exist in section 3(2) of the act that had been previously removed. The committees would have been debating and arguing, and collating opinions of the Corruption and Crime Commissioner and the Solicitor-General, as well as other learned opinions from legal scholars who had expressed the contrary view; that is, the inclusion or exclusion of the word "exclusively" may not mean as much as the Solicitor-General or the Corruption and Crime Commissioner might suggest. They would have weighed all that up. In the meantime, it would have delayed the passage of the bill and the handing down of those unexplained wealth powers to the CCC, which would have hampered it in its own critical work of going after these people with unexplained wealth, who most likely accumulated it through non-traditional and illegal means. We, as the opposition, pointed that out. It

took a little while in the debate, but to their credit, the Attorney General and the government came to the conclusion that our construction and suggestion that the passage of the bill be delayed were right and so they chose to sever that particular clause from the bill and then that bill had its own passage. As a result of removing that clause from that bill, it has appeared here in essentially what is a one-clause bill. There is only one substantive clause in this bill and it inserts only one word.

Now that it is here, what should happen with this? I have looked at the advice from the Solicitor-General. I have looked at the commentary in that lecture at Curtin University from Hon Justice John McKechnie, QC, and I personally have significant sympathy for the view that was expressed—that the return of the word "exclusively" clarifies beyond doubt that the Corruption and Crime Commission has powers over members of Parliament in relation to serious misconduct. However, as I pointed out in the debate earlier this year, any alteration to parliamentary privilege is something that we should look at carefully because of the very genesis of parliamentary privilege itself. It has really come about to preserve and protect the rights of elected members of Parliament and the people we represent—in this case the public of Western Australia—from excesses of executive government. Whether we are ministers or former ministers—some people in this place may aspire to be ministers—we should not forget that when we come into this place, our primary responsibility and task is to be parliamentarians. We should guard those privileges that first arose out of the Bill of Rights 1688. We are talking about 330-odd years of important privileges. They have changed over the years. They were first codified in this state under the Parliamentary Privileges Act 1891 and the Parliamentary Papers Act 1891. As I said, parliamentarians of all persuasions like to make themselves certain of any changes. Given the history of this provision that I just outlined, it is probably just as important that this be looked at prior to it being given final passage through the houses of Parliament.

That brings us to another dilemma. There are two separate procedure and privileges committees in this Parliament. There is the one here in the Legislative Assembly and there is a separate one over in the Legislative Council. For the majority of procedures in relation to parliamentary procedure, that probably makes sense. Each house is master of its destiny, and should be master of its destiny in relation to its procedure, but in relation to parliamentary privilege, it is parliamentary. Parliamentary privilege is not Legislative Assembly privilege or Legislative Council privilege. Using this tiny amendment that gives rise to questions about changes to parliamentary privilege as an example, imagine if the Procedure and Privileges Committee of this place looked at it and came to one conclusion and then the bill passed, with or without amendment in this place, and went over to the other place and its Standing Committee on Procedure and Privileges looked at it and came to a different conclusion about the impact of the change we are making. Perhaps this highlights the fact that there may be room in the committee structure of Parliament to create some form of joint standing committee that is presided over by the Presiding Officers, or some other format that people agree to, that looks at parliamentary privilege. Having been in both chambers, I understand and agree that we ought to be masters of our own destiny when it comes to procedure. We saw some discussion take place yesterday about the procedures of this place. It was a really good discussion that will lead to a very positive outcome, but I cannot see why we need to do two sets of work on privilege and why there should be any possibility for the two houses to view privilege—which is parliamentary, not chamber based—in different ways. This tiny matter highlights that problem, from a parliamentary perspective. From a procedure perspective, as a parliamentarian, I would have preferred to have a report from my Procedure and Privileges Committee about the impact of this change to parliamentary privilege before I considered and voted on a bill that will make a change to parliamentary privilege. I put that on the record. I know that that is not the intention of the government. The government has the numbers in here, so we can run around and put motions to this chamber about referring it to the Procedure and Privileges Committee but the government, as I understand it—the Attorney General can correct me if I am wrong—does not think that is necessary so there is absolutely no point in wasting time if it is going to be voted down by the numbers. We know it will go to the other place, we know the make-up of the other place is different and we also know the history of the other place. I probably know it a bit better than most people, apart from the member for Morley who also served in the other place with me in a past life, and we know that this will at least be examined by the Legislative Council's Standing Committee on Procedure and Privileges and it will publish a report. I for one will be interested in seeing what its report states and I am sure many other members of this place will be as well.

That is some commentary on the small "p" procedures that this bill may encounter in its passage through both houses of Parliament. In relation to the change itself, as I said, there are differing views. I have a legal background. Like the rest of us, my view is as valid as most other people and my view tends to concur with the view of both the Corruption and Crime Commissioner and the Solicitor-General. But I know there are other members of Parliament—maybe not in this place; perhaps in the other place—who have a different view. They have a legal background—they are possibly more learned than I may ever be—and consider that this construction that I have accepted as being correct may not necessarily be correct. I will leave that to the other place's Standing Committee on Procedure and Privileges to come to a final determination. But I am 100 per cent with the principle enunciated by the Corruption and Crime Commissioner, Honourable Justice John McKechnie, that members of Parliament should not be seen in any way to be avoiding proper scrutiny of the Corruption and Crime Commission, and so is

everyone on the opposition benches. We do not believe that members of Parliament should be above the law or above scrutiny of any kind and we do not believe that members of Parliament should somehow or other not be subject to investigation by the CCC on matters that fall under the purview of the commission. We do not oppose the principle in any way. As I said, it was accepted in the previous government that the changes that had been made in good faith needed to be fixed up in relation to this one little word—"exclusively". I do not want to debate the legal niceties of what would or would not happen if we included "exclusively". I accept the propositions put by the Corruption and Crime Commissioner and the Solicitor-General. The Attorney General kindly made the Solicitor-General's advice publicly available, which has been very helpful in the process. However, the process that we have gone through in the last few months should be instructive to us as we go forward. When we combine different principles in legislation, we are likely to encounter pitfalls so we should not do that. We know that there are reasons for doing that sometimes in omnibus bills and things like that, but when we have two clearly unrelated principles that have different pathways, we should be cognisant of that. It probably would have saved some time. It certainly would have saved some time in the debate on the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill. I do not think that it would have saved any time in the debate on this bill. This bill always needed to be a standalone bill and always would have been debated in the way that we will debate it here and in the other place over the next few months.

I think it has highlighted the other issue that I raised. Perhaps not in this debate, but in the fullness of time I would be interested in hearing the views of somebody like the Deputy Speaker, who has significant experience in this area—that is, the issue of whether we need two separate committees of the two chambers to look at privilege. I agree that we need two separate committees to look at procedures. But do we need two privilege committees in 2017? My personal view is that we do not. I will leave that for the powers that be to determine. This bill highlights that, and it is important to put that on the record.

In relation to the operation of the CCC, in the debate on the previous bill this year we spent a lot of time talking about the resources that the CCC would devote to the unexplained wealth provisions. As an opposition, we are looking forward to seeing the fruits of the labours of the CCC. I would like to think that we will never have to use the subject matter of the bill before us today in this state. I would like to think that section 3(2) of the Corruption, Crime and Misconduct Act will never trouble the CCC in any way, shape or form in the future in Western Australia. We know the history so I will not trawl over it. It is a potted and sometimes quite shameful history and we hope that it is consigned to history and that, going forward, every parliamentarian will conduct themselves in a way that never raises any of the CCC's alarm bells. We hope that is the case with ministers of the Crown all the way into the future as far as we can possibly contemplate. In supporting this amendment, I hope that it is never used because there is no need to use it.

With those words, I do not think there is any use in me taking up the house's time any further. A lot of my views on this were expressed in the debate on the previous bill. This legislation will be supported by the opposition. As I said, we hope that it never needs to be used. If it needs to be used in the future, we hope that this change clarifies that the Corruption and Crime Commission has the power to do what it ought to do in those sorts of circumstances. We await what may happen to this bill in the other place. Without foreshadowing what it might do, we await the report by the upper house's Standing Committee on Procedure and Privileges so that we can see how this change may or may not affect the powers of the CCC.

MR A. KRSTICEVIC (Carine) [1.55 pm]: I, too, want to comment on the Corruption, Crime and Misconduct Amendment Bill 2017. I indicate my support for all the words said here today by the member for Hillarys, who is the shadow minister responsible for dealing with this bill in this house. Obviously, the opposition supports this bill and its intention and agrees that nobody should be above the law or above investigation or able to undertake criminal activities without being brought to task.

I will cover a couple of different points. Firstly, I also acknowledge the Corruption and Crime Commissioner, Hon John McKechnie, for his contribution in this area and for bringing to the attention of Parliament his concerns about changes that were made previously to section 3(2) of the Corruption, Crime and Misconduct Act 2003 when minor misconduct was removed from the realm of the Corruption and Crime Commission and transferred to the Public Sector Commission. I think that that was the right thing to do because, as I think we all agree, the Corruption and Crime Commission needs to deal with the pointy end and the more significant criminal activities undertaken by potentially more significant individuals in the state.

I want to quickly touch on the "Overview of the Bill" in the explanatory memorandum, which states —

> The Corruption, Crime and Misconduct Amendment Bill 2017 proposes an amendment to the *Corruption, Crime and Misconduct Act 2003* (WA) to restore the power and jurisdiction of the Corruption and Crime Commission … in relation to misconduct by Members of Parliament which could constitute a breach of s 8 of the *Parliamentary Privileges Act 1891* and a breach of the *Criminal Code*.

As I read that, I thought to myself: I will have a closer look at the Parliamentary Privileges Act 1891, and I turned to section 8. Considering that the explanatory memorandum refers to section 8 as an area of concern for the Corruption and Crime Commission, I thought: let us see what sorts of things are included in section 8 and whether they come under an area that might be of interest to the Corruption and Crime Commission. Without reading the entire section, section 8(a) states —

> disobedience to any order of either House or of any Committee duly authorised in that behalf to attend or to produce papers, books, records, or other documents, before the House or such Committee, unless excused by the House in manner aforesaid;

I thought that obviously the CCC would not be interested in section 8(a). The disobedience of members is not something that the Corruption and Crime Commission would want to deal with. Then I looked at section 8(b), which states —

> refusing to be examined before, or to answer any lawful and relevant question put by the House or any such Committee, unless excused by the House in manner aforesaid;

I thought that the CCC would not be interested in section 8(b) and a member refusing to be examined before the house. Then section 8(c) states —

> assaulting, obstructing, or insulting any member in his coming to or going from the House, or on account of his behaviour in Parliament or endeavouring to compel any member by force, insult, or menace to declare himself in favour of or against any proposition or matter depending or expected to be brought before either House;

I thought that obviously that is not an area that the Corruption and Crime Commission would be interested in. It probably deserves a little bit more examination, but this is probably not the right forum to be looking at that. Section 8(d) states —

> sending to a member any threatening letter on account of his behaviour in Parliament;

Debate interrupted, pursuant to standing orders.

[Continued on page 5946.]