

**CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2017**

*Second Reading*

Resumed from 22 November.

**MR A. KRSTICEVIC (Carine)** [10.07 am]: It is my pleasure to have a third opportunity to finish my contribution to this very important debate on the Corruption, Crime and Misconduct Amendment Bill 2017. I know that members have been keen to listen to my contribution and I thank them for their interest. I apologise to the Attorney General for keeping him up all night, as he said to me earlier today, because he was thinking about the question I asked as I was finishing my contribution yesterday about the areas of exclusivity of the Parliament in terms of this amendment. Obviously, we are talking about putting the word “exclusively” into section 3(2) of the act. Instead of a matter just being determinable by a house of Parliament, it would be exclusively determinable by a house of Parliament. I do not know whether the Attorney General wants to make a contribution at this point.

**Mr J.R. Quigley**: Not at this point, but I will. I will hear all the speeches.

**Mr A. KRSTICEVIC**: The Attorney General will hear the speeches first—fair enough. I am glad, because I am keen to understand that a bit better. As I have said in this house previously, I am an accountant, not a lawyer, so sometimes I get a little bit confused when taking a commonsense approach to legislation and information, not understanding how lawyers can twist and turn these things in a thousand different ways. Therefore, the obvious interpretation is sometimes nowhere near what people may well debate. But, as we know, it is not about what the lawyers think; it is ultimately the judiciary that decides what the answer is. As I have said before, they sometimes even come up with a third interpretation and do not agree with the other two. I am looking forward to that part of it.

I think it was the right decision by the Attorney General to separate this bill from the original Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. I am glad he took our advice on that bill when he introduced it, because they deal with two very different matters that impact in different ways—one on the community and one on the Parliament. As was stated earlier in this debate, no-one disputes the fact that the Corruption and Crime Commission should have the powers to investigate members of Parliament. As history has shown, on occasions the Corruption and Crime Commission has undertaken those investigations and has been successful. That process has made the Parliament all the more stronger.

In saying that, it is important to note that a lot of the offences also fall under the Criminal Code. Members of Parliament can be picked up in lots of parts of the Criminal Code, including giving false evidence before Parliament, witnesses not attending and, under section 60, members of Parliament receiving bribes. Section 61 relates to bribery of a member of Parliament. Of itself, the Criminal Code gives powers to police and, by extension, obviously to the judiciary to deal with members of Parliament. The Corruption and Crime Commission is obviously another layer.

It is interesting to note that in the past the Corruption and Crime Commission has gone into areas other law enforcement agencies have not gone into but probably should have gone into. It goes to show that that extra layer ensures all bases are covered. When dealing with things affecting the Parliament, I believe that the Procedure and Privileges Committee should be part of that process—not in trying to stop something good and appropriate getting through Parliament or stopping something from being introduced that will ensure Parliament is operating above board; it is more about making sure that there is a proper review to ensure it meets all the benchmarks required in the Parliamentary Privileges Act 1891. That is important. It would have been appropriate at the time of the previous amendment to this legislation under the previous government. That should have happened at that time. It is worth noting that that would have probably stopped this legislation coming back to this Parliament. Obviously that will not happen in this place. I cannot comment about what will happen in the other place. Most of us wait with bated breath when legislation goes into the upper house to see what it will do with it. It has a will of its own, as has been shown over many years and over many Parliaments. We can only hope.

**Mr D.A. Templeman**: Would you support its abolition?

**Mr A. KRSTICEVIC**: I do not know about abolition but I always think things should be up for review. They should be tested in the current environment to make sure we are following the right processes. They seem to be doing a good job. One thing I do like about the upper house is its committee structure. Its committees do very good work. They take on board —

**Mr J.E. McGrath**: As opposed to the lower house?

**Mr A. KRSTICEVIC**: The lower house committees do as well. We do not get to refer many bills to committees. I cannot remember the last time that was done. But it does not happen in here very often. In the upper house, bills are frequently referred to committees. That scrutiny is done in a bipartisan way and it is done in a way that adds value. In the lower house, there is obviously a lot of theatre and drama. The Leader of the House knows all about that. The Attorney General is very good at that as well. The theatre and drama sometimes gets in the way of quality.

**Mr Z.R.F. Kirkup** interjected.

**Mr A. KRSTICEVIC:** I have mentioned his skills and abilities. The theatre and drama sometimes gets in the way of the quality of the legislation. It is important for the upper house. It has frequently come back to this house with amendments to legislation or recommendations, and they have been accepted by this house. That can only lead to the fact that the work they have done has been of value. Their considered opinion has been respected when it has come back here. I am unsure whether this bill will go through that process but it is worth mentioning here in the debate.

I would be interested to hear how the Attorney General sees the whole of section 8, in particular, of the Parliamentary Privileges Act 1891 working. As I said, I do not think that much of it applies to this legislation. However, it is an integral part of the explanatory memorandum as well as the Criminal Code. Previously, the member for Hillarys spoke about the privileges, immunities and powers of the Council and the Assembly. He referred to article 9 of the Bill of Rights 1689, which provides that freedom of speech in debates or proceedings in Parliament ought not be impeached or questioned in any court or place outside of Parliament. But of course one needs to remember that that component of the act, which comes under the House of Commons in the Parliament of the United Kingdom, does not give protection when other acts seem to state that it does not give that protection. A good example of that would be the Criminal Code that by necessary abrogation in some instances nullifies article 9. I will leave it to the lawyers to debate the accuracy of my assessment.

In closing, I support this bill. I support the fact that the Corruption and Crime Commission needs to have these powers to investigate wrongdoings by members of Parliament. It is just another layer of oversight, and I know that all members, as do all community members, give very serious consideration to and respect the Corruption and Crime Commission. None of us like our names associated with that organisation in any way, shape or form, apart from supporting it. I think it has a great reputation; it does a great job. Unfortunately, sometimes when people's names get mentioned in the context of that organisation, they can be unnecessarily tarred with a brush. That is probably the only concern I have about the way it does its job and how well it does it. At the end of the day, if that leads to better outcomes and to people being honest, open and transparent, then I suppose that is a small price to pay to achieve the right outcome in the community—to get the right outcome from our parliamentarians, public officials and others and to deal with serious crime. I wish the CCC all the best with this ability coming back again, and I will not say that I wish it fruitful outcomes. I hope that everyone in Parliament does the right thing moving forward and that the Corruption and Crime Commission does not see the need to investigate members of Parliament because of wrongdoing. I hope that we all treat the organisation and referrals to the organisation with the seriousness they deserve and that we do not just have unsubstantiated, frivolous referrals for the sake of a bit of publicity or political gain, rather than for the intention for which the organisation has been established and the principles on which it stands. I am not sure whether the composition of the CCC committee, as it was formed in this Parliament, will affect the ability of the Corruption and Crime Commission to conduct its business or make an impact.

[Member's time extended.]

**Mr A. KRSTICEVIC:** Obviously, under the current commissioner it will not, but that may change under a new commissioner and with bipartisanship. We have had a bit of debate about this and legal opinion from the State Solicitor, which is fantastic. As I said before, solicitors have different opinions and at the end of the day, judges ultimately make the decisions. I hope that if there is a change of commissioner, and if the composition of the Corruption and Crime Commission changes, some well-funded individual who has the right legal capacity behind him or her is not able to squirm out of things because of what this Parliament has put together on this occasion, obviously for political reasons rather than good judgement, good practice and convention not being followed. There are a whole range of question marks over that process. As we have said before, it is also the opposition's inability to speak on those reports with the benefit of having been involved in their research, establishment and presentation to Parliament. We have to quickly, on our feet, try to understand what is being presented and give some considered debate to that report. That will be a little bit challenging. As I have said before to the Chair of the Joint Standing Committee on the Corruption and Crime Commission, tabling the reports on one sitting day and speaking on them on another sitting day would at least give the opposition a chance to read the reports, have some considered debate and discussion, and be able to contribute. At the end of the day, we are all here to represent the people of Western Australia and our constituents. If members were to talk to members of the public about these things, I think we all know what they would say and what they would expect. I am sure that we would all agree with them if we faced them one on one. We would not dispute that all members of Parliament should have the ability to contribute, that there should be a fair and balanced approach in both houses of Parliament, or that we should be able to express the views of the people of Western Australia from many diverse areas and angles to make sure that what is presented here meets the needs of the state, is accurate and is also reflected accurately in the debate.

**Extract from Hansard**

[ASSEMBLY — Thursday, 23 November 2017]

p5991c-6012a

Mr Tony Krsticevic; Ms Margaret Quirk; Mr Bill Marmion; Mr Shane Love; Mr Colin Barnett; Mr Simon Millman; Mr John Quigley; Mr Peter Katsambanis

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Debates in Parliament take us in many different directions. Occasionally, we land on the mark, but a lot of times we are way off and the debate is not relevant to the legislation that is being debated. It is a necessary evil. Sometimes it is entertaining, but other times it is just frustrating and a long process to get to the end result, which is a good piece of legislation being enacted through Parliament. I suppose we are used to that. From the opposition's perspective, we are a lot better at that. I do not think that we speak just to fill in time necessarily. We try to stick to the topic at hand, without getting into areas of our constituency. It is very important that we try to stay as close as possible to the area we are debating. In this case, we are debating the Corruption and Crime Commission and members of Parliament. It is quite a significant area that has a significant reach. I think that the community would expect us to make sure that we cover all the bases so that this area works well and that no questionable decisions that have been made in the past or will be made in the future take away the ability of the Corruption and Crime Commission or members of Parliament to do their jobs. Ultimately, we need to make sure that any piece of legislation we bring in here does not restrict us from representing our community or stop us from expressing our views on the floor of Parliament. I think that we do reasonably well in that department. As an opposition, we will contribute where contribution is needed and allow legislation to go through as quickly as possible so that it can be enacted. That is ultimately what we are trying to do. We just want to make sure that we have a fair and balanced approach and that legislation is scrutinised and achieves results. Ultimately, that is what the government wants to achieve. Through proper scrutiny in this and the other house, I think we end up at that point more often than not.

In closing, I thank the Attorney General for bringing this legislation forward as a separate piece of legislation and seeing the need to ensure that the Corruption and Crime Commission can do its job as it has done under previous Parliaments and hold not just ministers, but also other members of Parliament to account so that we are held to the highest level of scrutiny and deliver the best results for the community in an impartial way and that we do things legally.

**MS M.M. QUIRK (Girrawheen)** [10.25 am]: I was not intending to speak for very long in the second reading debate of the Corruption, Crime and Misconduct Amendment Bill 2017 because the points I had wanted to make about members of Parliament not being above the scrutiny of the Corruption and Crime Commission were in fact made on the last occasion. However, for some unknown reason there has been some resistance from the Liberal Party which has meant that the Attorney General, who I think has been overly cooperative with the opposition, has agreed to withdraw that clause and put it in a separate bill. In terms of this bill, I think it is clear that if some anomaly or ambiguity were created by the comments of the Corruption and Crime Commissioner, then the legislation as it currently stands may not cover members of Parliament. It is good that that is being unambiguously clarified through this bill now. As I have said, I think it is good from a transparency point of view that politicians are covered by that regime, just as everyone else is.

The member for Carine mentioned the use of the Procedure and Privileges Committee for disciplining parliamentarians. The issue that arises is that the only way matters can be referred to the Procedure and Privileges Committee is by a motion of this house and that, by definition, requires a majority vote. Accordingly, things will not automatically be investigated. I think from a public perception point of view politicians need to be under the same regime as the public service and members of local government.

In that regard, I want to say something about the Western Australian Local Government Association's reaction to a recent report of the CCC, which I thought was disproportionate to the received wisdom throughout Australia that there is a high risk of corruption at the local government level. I think the comments made by the CCC in the context of, I think, the Shire of Exmouth council were warranted. WALGA needs to look more closely at its own affairs and councils and not react so quickly and be in denial that there is a strong risk of unacceptable levels of corruption at the local government level. Parliamentarians need to be included in the CCC scrutiny, but I also make the point that we should be mindful that local government and the affairs of local government, by definition of their handling ratepayers' money and procuring goods and services, are also prone to levels of corruption that require good levels of scrutiny. I also make the point that I believe WALGA's overreaction to the comments of the CCC were a sign it is not yet in a position to appreciate that the corruption risk is very high at the local government level.

I also wanted to say that I think it is very unfortunate the last government removed the education and prevention function of the CCC's role, which is now with the Public Sector Commission. We hear from similar institutions throughout Australia and the rest of the world that there should be a strong focus on educating public servants and politicians about areas of vulnerability and risk of corruption, and to understand conflicts of interest and that certain transactions need to be handled with kid gloves. I am concerned that the Corruption and Crime Commission no longer has that role, and I think that in the medium to long term we will see the unfortunate outcomes of having taken that responsibility away from the CCC.

Then, of course, there is also the question of whether the CCC should have public or private hearings. People's reputations can be ruined without evidence backing the allegations ultimately ever being shown to have been

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produced. I am pleased that the Corruption and Crime Commissioner has said that the commission will act with more circumspection before holding public hearings that have the potential to ruin people's reputations and never, in fact, result in either criminal or civil proceedings.

The legislation needs reviewing in a number of areas. One such area that I think may need some more careful scrutiny relates to a matter that I was made aware of. In a 2 November 2017 report of the CCC, "Report on Corruption in Respect of Truck Driving Licence Applications", the commission uncovered corrupt behaviour in a truck driving school; hundreds of drivers had been licensed without their competence being adequately assessed. I am advised that the results of such investigations are not automatically forwarded to police and that the police sometimes take the matter up on their own motion. The police do not always receive formal notification that they should proceed to prosecution. I think a mechanism needs to be in place through which the findings of the CCC are always formally communicated to either the police or the Director of Public Prosecutions so that, even after a lengthy investigation by the CCC, there are no further delays in bringing matters before a court.

We heard again from the member for Carine, and I have to say that it fell into the category of "broken record". The member for Carine, although thirsty for more information, clearly has not read the learned legal opinion that was tabled in this house some weeks ago about the composition of the committee.

**Mr A. Krsticevic** interjected.

**Ms M.M. QUIRK:** Does my respected and learned friend concur with that opinion? Does he concur with the opinion?

**Mr A. Krsticevic** interjected.

**Ms M.M. QUIRK:** Does he concur with the opinion, yes or no?

**Mr A. Krsticevic** interjected.

**Ms M.M. QUIRK:** What was the third word on page 2, if he has read it? With respect, I am just saying that we have gone there; we have visited that issue. We have gone to some expense, in both time and money, to get an independent legal opinion, but the member still does not accept it. Do not let the facts ruin a good story. I really do not want to waste the chamber's time revisiting that issue, other than to say that the member for Carine is frankly overstating the forensic skills of members opposite, and their capacity to analyse anything. I continue to look forward to unexceptional contributions from them in the future. I have to say that if the member continues in this vein, talking about how the composition of the committee is in some way inadequate and that there is a lack of integrity, it may well be that he will be in contempt of this Parliament for criticising a duly constituted committee that is functioning very well in a sincere and conscientiousness manner. I think the continued repetition and reflection on the committee borders on contempt. If the member continues to do so, I might have to take further action.

**MR W.R. MARMION (Nedlands)** [10.35 am]: I want to talk briefly on the Corruption, Crime and Misconduct Amendment Bill 2017. Before I get to the points that I want to make, I will take up a couple of the member for Girrawheen's points that I agree with. I will not go into the points I disagree with, but I totally agree that public servants need to be educated in what it means to be a public servant. I think the training and ethics of public servants have gone downhill over the last three decades. I will give one example. When I was Minister for Housing, there was a joint venture development between the state government's Department of Housing and a private developer in Albany. People did not know what the private developer looked like. He would regularly travel on a plane down to Albany. There was a lot of concern about the percentage of land that would be set aside for public open space and the preservation of the environment in the state government's joint venture with the private developer. It obviously had to go through environmental approvals, which the former Department of Environment and Conservation was involved in. The private developer stayed in Albany one weekend when a public protest was held in the town. A petition was signed. The developer—I will not mention his name—went through the petition and found that 14 people who worked in the department of environment in Albany had signed the petition and three or four of them were leading the charge in that Saturday morning protest in the street. What did I do when the developer rang me and told me about this? All I could do—fortunately, it did happen—was get in touch with Malcolm Wauchope through my chief of staff. Mr Wauchope sent a team to Albany to tell the people what they were supposed to be doing and give them ethics training. That is one small example to show how we are losing sight of what it means to be public servants. I totally agree with that point made by the member for Girrawheen.

The other point made by the member for Girrawheen that I agree with, which I understand from the member has been taken up by the Corruption and Crime Commission, is that people have to be very careful when they question public servants in public hearings. I will name this person, because his reputation has been vindicated; Mike Allen was absolutely pilloried about the fact that he was brought before the Corruption and Crime Commissioner. I think he was successful in his appeal against that. People have to be very careful. Public servants sometimes get phone calls from people they do not want to take calls from. They might take the call and say things on the phone to

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appease that person but they are not really going to deliver what they say. Once they hang up, they might say something that is not recorded, which I cannot mention in Parliament because it is too crude. From that conversation, we know that the public servant will not act on the phone call, even if they may have said, “No worries; leave it with me.” That does not mean they will do it. After 24 years in the public service, I know we have to be very careful if public servants are cross-examined and being recorded, because what they say does not mean they will follow through on something. I wanted to mention those two points before I move back to the bill.

It is a very simple bill; it is one of the simplest bills I have ever seen. It adds only one word to the act, so we are talking about one word—“exclusively”. Why would members need to talk about one word? One word can make a big difference. I am seeking clarity on this one word; I am just a simple engineer. The second reading speech indicates that we are putting back one word that used to be in the previous act. It explains it but it is a little bit misleading. When the word “exclusively” was taken out last time, some other words also were taken out. They are mentioned in the second reading speech, but it does not explain why. I would like some clarification of that. I am encouraged somewhat knowing Dr Jim Thomson is providing advice. Jim is probably among Australia’s top three constitutional lawyers.

**Mr C.J. Barnett** interjected.

**Mr W.R. MARMION:** A couple of constitutional lawyers at the Australian National University consider their capability beyond Jim’s, but I would debate that. They are on the radio all the time but Jim is not. He is equal to the ANU constitutional lawyers. The second reading speech on section 3(2) states —

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 is what the second reading speech says was originally in the Corruption and Crime Commission Act 2003. The word “exclusively” was taken out and the words “unless that House so resolves” were also taken out. As an engineer reading “unless that House so resolves” I assume that if the Commissioner of the Corruption and Crime Commission were investigating a member of Parliament, those words would allow the house an opportunity to say, “Hang on, we’re handling that through our Parliamentary Privileges Act.” I think it is a good idea but I would not mind getting advice from the Attorney General on whether it is correct. I question whether the words “unless that House so resolves” should be put back in as well as the word “exclusively”. That is probably the main point I want to make about this bill. I will not go into section 8 of the Corruption, Crime and Misconduct Act because my colleague who spoke previously went through it. Section 8 defines what the Parliament can do. Some aspects are quite interesting. Indeed, in her closing comments, the member for Girrawheen talked about the possibility of my colleague misleading the house or doing something against the interests of the house.

**Ms M.M. Quirk:** I said contempt.

**Mr W.R. MARMION:** The meaning of that is covered under section 8, but I will not go there because I do not have much time.

I want to talk about whether the CCC can or cannot investigate members of Parliament right now. I looked on the Corruption and Crime Commission’s website, which has a section headed “Frequently Asked Questions”. One of the questions on its current website states —

Can the commission investigate allegations against state politicians?

I understand we are including the word “exclusively” so that the commissioner can investigate politicians. The answer is yes; the commission can investigate allegations of serious misconduct against members of state Parliament. I am absolutely confused. I am just a simple engineer trying to read words.

**Mr F.M. Logan:** Maybe you should do a bit more research.

**Mr W.R. MARMION:** I am reading from the CCC website.

Several members interjected.

**Mr W.R. MARMION:** That is why we are here. I am sure when the Attorney General is giving his response to the second reading debate, he will respond to my questions. I am just an engineer posing questions. I know that the learned Attorney General has the answer.

**Mr F.M. Logan** interjected.

**Mr W.R. MARMION:** I know that the minister does not know the answer, but I am sure the Attorney General will come up with the answer. I can see that he is nodding his head. He knows what the answer to that question is, so thank you very much.

**Extract from Hansard**

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I have had a little experience of corruption in the public service. My experience started when I was just a student engineer at Main Roads Western Australia. The culture of an organisation is very important. If there is some sort of corruption within an organisation, I can tell members that everybody knows about it, even if it is small. My experience from starting as a student and working in the public service at Main Roads was that if someone was doing something that was a little bit naughty, everyone knew about it. The problem is that when another person gets to that same position, they want to do it as well. I will mention a couple of examples that might seem small. When I was surveying some roads—I had better not say where I was because these people are still alive—we had a supervisor and our own plant. This particular supervisor had a caravan. Main Roads crews use caravans for people to camp in when they are building a road. If Main Roads did not have enough caravans and the supervisor happened to have a caravan, he could hire it to Main Roads to use in the camp. In this particular division, one of the people in a supervisory position had his caravan on stand-by over winter when he did not need it. He could also access it for his holidays. How did I find that out? It was not by me looking at it.

**Mr D.A. Templeman:** You stayed in it for two weeks!

**Mr W.R. MARMION:** Very close; someone else did. Everyone in that division knew about this. The Corruption and Crime Commission was not around then, nor was its predecessor, which I think was the Anti-Corruption Commission, which was established in the late 1990s. What would happen now in that same situation? As verified again by the questions and answers on the CCC website, if a public officer found out about that activity and was concerned about it, he would have to report it

**Mr D.A. Templeman:** What was your second example?

**Mr W.R. MARMION:** I have four examples, and if the minister keeps interjecting, I might have to talk about all four. The interesting thing now is that the Corruption, Crime and Misconduct Act covers a lot of things that could not be done in the past. If a young engineer wants to do in a person, he does not know what other people in that organisation are also doing, which leads me to a more serious example of something that happened in a northern division of Main Roads. This fraudulent activity—a very clever one—was organised by the chief supervisor. In the olden days when we used to build our own roads, road base material was delivered to a Main Roads job and a tally man would sign off on the load. At the end of the day, the supervisor would countersign the tally and the truckies would be paid for the number of loads that they had delivered, which could be seven or eight. In a particular division a fair while ago, the supervisor who had to deal with all the truckies added another load onto the tally every day. This had been going on for some years and it was a nice little cosy arrangement. I think it was a 50–50 split on the extra load between the supervisor and each of the truckies. How did this arrangement unravel? One of the truckies died and his wife took over the business. She did not think that it was a very good idea. She was not in on the original deal and it all unravelled. This particular supervisor won the citizen of the year prize in the country town in which he lived, and the situation caused a lot of turmoil in that area of Main Roads. The person responsible went to jail for 12 months but the culture was ruined in that particular division. That was a serious outcome. Another serious issue, in which someone was simply dismissed, involved a person who ran the reprographics section in Main Roads, and had also won the commissioner's award for community service. He had his own reprographics business on the side, and a lot of the stationery of his business had come free from Main Roads. That is the experience I had as a young engineer in an organisation that I rate very highly.

The ACC, as it was then called, came into existence when I was a public servant in the Department of the Premier and Cabinet. The father of my next-door neighbour lived in Geraldton, in a caravan park, and was very concerned about a Main Roads maintenance driver, who also lived there, filling up his personal car with petrol from the Main Roads maintenance truck. He had a photo of the man transferring petrol from the Main Roads truck into his personal vehicle, and he gave it to me. I am a public servant, and the frequently asked questions section of the Corruption and Crime Commission website states —

Is there a duty to notify the CCC of serious misconduct?

... all Principal Officers of public authorities must notify the CCC in writing of any matter which they suspect on reasonable grounds concerns or may concern serious misconduct.

I put it in writing, and sent the photographs to the ACC. Some weeks later I received a phone call to the effect that there was not enough evidence. They wanted the numberplate of the truck. I was saying, "Hello, how many Main Roads maintenance trucks are there in Geraldton?" There would be either one or two. I called my next-door neighbour and told him to tell his father to get another photograph showing the numberplate next time the employee did this.

[Member's time extended.]

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**Mr W.R. MARMION:** He got another photograph of the man filling up his car, which included the numberplate of the truck, and sent it to me. I sent it off, and about six months later I got a letter thanking me for the evidence that I had provided, but stating that there was not enough evidence to proceed. That was the end of the story. I was pretty dejected, because in the olden days I would have just telephoned from the Department of the Premier and Cabinet to the divisional engineer in Geraldton, and asked him to sort this out. I do not know what happened. Maybe it did get sorted out behind the scenes.

The Corruption and Crime Commission plays a very important role. I will conclude with a very important message about the promotion of a culture of integrity. The CCC is all about integrity. According to its website, the Joint Standing Committee on the Corruption and Crime Commission is —

... principally tasked with monitoring and reporting to Parliament on the exercise of the functions of the Commission and the Parliamentary Inspector of the Commission and for promoting integrity within the public sector.

That is very important, and I think we all agree with that. With that in mind, I have considered the composition of the committee over the last 10 to 15 years. Quite rightly, as the member for Girrawheen has pointed out, the joint standing committee, according to the act, will consist of four members, of whom two will be members of the Legislative Assembly and two will be members of the Legislative Council. That is simple—black and white. However, there have been times, which I will go through in a moment, when there have been more than two. I will just bear that in mind. There is no question at all that the current composition of the committee complies with that provision. I will not argue with that. Currently, there are two members from the Assembly, both of whom are Labor members, and two members from the Council, one Liberal and one Green. Prior to the present Parliament, there were also two members from the Council and two members from the Assembly.

In 2017, the committee had two Liberal members and two Labor members. The Liberal members were the chairman, Hon Nick Goiran, from the Legislative Council; and Nathan Morton, the then member for Forrestfield, from the Legislative Assembly. The Labor members were the deputy chairman, Peter Watson, the member for Albany, from the Legislative Assembly; and Hon Adele Farina, member for South West Region, from the Legislative Council. That was prior to the current composition of the committee.

Several members interjected.

**Mr W.R. MARMION:** Members should let me finish without interjecting halfway through a sentence. I am trying to show that the composition of the committee has always been two Liberal members and two Labor members.

Several members interjected.

**Mr W.R. MARMION:** I am not disputing that it does not comply. I am saying that we need to have integrity. The Corruption and Crime Commission and the joint parliamentary committee on the Corruption and Crime Commission should be beyond reproach and have the highest level of integrity. I am saying that if we want to solve this problem, we should continue with the practice of having two Liberal members and two Labor members on the committee.

Several members interjected.

**Mr W.R. MARMION:** I know members opposite disagree. They have to be right. In this case, they are wrong. They are wrong on integrity. The Corruption and Crime Commission should be beyond reproach. Lawyers can understand this. I can see that the lawyer in the room, the Minister for Local Government, can understand this.

**Mr D.A. Templeman:** I'm not a lawyer, but I'll take the badge!

**The DEPUTY SPEAKER:** Members, I think it is time I brought some order to the house and stopped the member who is on his feet from making accusations about the career and qualifications of the Minister for Local Government.

**Mr W.R. MARMION:** Madam Deputy Speaker, I did at one stage erroneously put the minister in the same light as Peter Foss, and I saw his head bulge!

In 2012, the Labor members of the committee were John Hyde and Hon Matt Benson-Lidholm, and the Liberal members were Frank Alban and Hon Nick Goiran. In 2007, there were some changeovers, and the Labor members were John Hyde and Judy Hughes, and the Liberal members were Hon Ray Halligan and Hon Margaret Rowe. In 2006, the Labor members were John Hyde and Judy Hughes, and the Liberal members were Hon Ray Halligan and Hon Margaret Rowe. Way back in 2004, the Labor members were John Hyde and Hon Graham Giffard, and the Liberal members were Hon Derrick Tomlinson and Cheryl Edwardes.

This is the first time in the history of this committee that the committee has not had two Liberal members and two Labor members. Members opposite think that is great. If there was ever a joint standing committee that should be

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beyond reproach in terms of integrity and the culture of integrity—because we need to promote integrity through a culture—it is this committee. It is important that we in this Parliament set the highest standard of integrity. I have always set a high standard of integrity. I still remember from when I was at Main Roads Western Australia every single example—even a tiny one—in which a person did not have integrity. Once we start to erode integrity, even though we may think it is insignificant, we start on a slippery slope.

**MR R.S. LOVE (Moore)** [10.58 am]: I rise to speak on the Corruption, Crime and Misconduct Amendment Bill 2017.

**Mrs R.M.J. Clarke**: Why can't you be on the committee?

**Mr R.S. LOVE**: Because the standing orders of this house preclude me from being on the committee. I will talk about that a bit further down the track.

I thank the member for Nedlands for raising this issue. As we know, this bill is a spin-off from the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017. The continued inclusion in that bill of the clause relating to matters of parliamentary privilege would probably have meant that the bill would be held up in either this place or the other house by referral to a committee. Therefore, the Attorney General decided to split the bill to enable that matter to be debated separately. I think that was so that he could get the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017 through the upper house as quickly as possible. The Attorney General is not here at the moment. Perhaps when he comes back, he can update me on the progress of that legislation. I am very interested to know whether it has gone through the upper house.

**Mr P. Papalia**: He has gone for a comfort break.

**Mr R.S. LOVE**: Okay. I cannot ask him if he is not here; it is his bill, after all. Thank you, Minister for Tourism; your expertise in matters of the law is renowned! When the Attorney General returns, I am sure he will be able to give an answer about what has happened to the bill that was so urgent that it was split in two and sent to the other house. I suspect that it is up there languishing similar to other legislation.

Several members interjected.

*Point of Order*

**Mr W.R. MARMION**: I cannot hear the member on his feet.

**The DEPUTY SPEAKER**: Neither can I.

A government member: Turn your hearing aid up!

**The DEPUTY SPEAKER**: I do not have a hearing aid and I could barely hear the member for Moore. Please continue, member for Moore.

*Debate Resumed*

**Mr R.S. LOVE**: Now that the Attorney General has returned —

**Mr J.R. Quigley**: I had to go to the little room.

**Mr R.S. LOVE**: I am glad that the Attorney General made it successfully and has come back to the chamber. I was just discussing the fact that the Corruption, Crime and Misconduct Amendment Bill 2017 was originally part of a larger bill to do with the confiscation of property. The provisions of this bill were tacked onto the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill, but the Attorney General kindly agreed to separate the two. How is the original bill going? Has it progressed through the other place?

**Mr J.R. Quigley**: Not quite.

**Mr R.S. LOVE**: It has not been discussed up there?

**Mr J.R. Quigley**: It has; I believe so.

**Mr R.S. LOVE**: It has not come back here. I was wondering what happened to it because despite seeming rather urgent, it does not seem to have progressed.

**Mr J.R. Quigley**: We do not control the numbers up there in terms of going to committees.

**Mr R.S. LOVE**: The government does not control the numbers up there but it does control what goes into the house for debate. To some extent the government has control of the agenda, if not the numbers.

This bill deals with the insertion of the word “exclusively” into section 3(2) of the Corruption Crime and Misconduct Act 2003, which will mean that the Corruption and Crime Commission will have some jurisdiction to investigate members of Parliament for matters under section 8 of the Parliamentary Privileges Act 1891. An 1891 act is an act from quite a while ago, which indicates that there is probably quite a bit of history and a few reasons

that matters that are dealt with in that area do not change a lot. I know that some of those privileges go back to the 1600s and the Bill of Rights. This area is jealously guarded by Parliaments of all sorts. I listened to the contributions of members who are quite willing to subject members of Parliament to the same oversight as other individuals, but that is a rather simplistic view of the world. Being a member of Parliament is different because we are lawmakers; we are the representatives of the people who put us here for four years. It is up to them to decide whether we are fit and proper people to represent them. It is not up to a body of appointed people to decide those matters, unless Parliament thinks there is a need for that to happen. It is a matter for Parliament to decide to some extent, and it should not be bullied into a view by the pronouncements of people outside this chamber.

I note the words of the shadow Attorney General, who said that in the ordinary course of events, a matter such as this should emanate from one of the two Procedure and Privileges Committees of this Parliament—the one in the Legislative Assembly or the other in the Legislative Council. I am still of the view that this matter should be examined by one of those committees—if not the committee of this place, the committee of the other place. The only reason I say that is that in the other place it is more likely that the government will not be able to bully Parliament into accepting this change without it being reviewed, without Parliament seeking proper advice and without it being given due consideration by members of Parliament—not by solicitors, media commentators or public servants, but members of Parliament, the people who actually should determine what happens with matters of parliamentary privilege. Unfortunately, although the committee of this house is probably quite capable of examining this matter, I doubt the government would support that view. Given the fact that the government has an overwhelming numeric advantage in this house, it is probably unlikely that it would accept a referral to a committee of this house. We never know; maybe it will.

It is interesting that we are now talking about providing the Corruption and Crime Commission with oversight of members of Parliament when I, as a member of the National Party in the Legislative Assembly, am precluded, under the current arrangements, from taking a place on the Joint Standing Committee on the Corruption and Crime Commission. There was a debate in this house when that committee was formed in this term of government, and we highlighted that that was a problem. From recollection, it is the standing orders rather than anything else which state that on that committee should be a member of the government and a member of the official opposition, being the Liberal Party. That precludes a National from being on that committee. To me, that is undemocratic. In principle, if not in fact—we all know that in practice things happen on numbers—there should be no reason that a National Party member of this Assembly could not be on that committee. One day, when the numbers swing around again and when we may be in a position to do some more intense bargaining over issues, we may be able to rectify that situation. To have a committee that is being asked to be placed over the affairs of members of Parliament and, at the same time, to preclude certain members of Parliament from sitting on the oversight committee of that organisation is not a good situation and something that needs to be rectified at some point. I know that the member for Murray-Wellington is very keen to see a National on that committee—I heard her interjections before—and I look forward to her support, perhaps, in making some changes to that arrangement. The current arrangement is undemocratic.

At the heart of all these matters we must remember that the Parliament is a democratic organisation. We should be able to represent the people who put us here without fear or favour. If we make a mistake along the way, the people will find us out and we will not return to this place. Perhaps the party we represent may also suffer from our personal misconduct. We have seen in the past when the culture of an organisation or party changes and it becomes the norm for things to not be done correctly. Not only the individuals but also the party will be punished eventually by the people of this state when that occurs. That is proper process. It has been in place since the early days of the English Parliament. It is not something that should change at the whim of public servants, media commentators or the government of the day. It is a good thing that we have two houses of Parliament in Western Australia. It is a good thing that the other house has more balanced numbers at the moment, which enables the proper consideration of important matters such as this.

**Mr P. Papalia** interjected.

**Mr R.S. LOVE:** The Minister for Tourism has interjected again. He is displaying his erudite knowledge of legal matters. I thank him for his interjection!

**MR C.J. BARNETT (Cottesloe)** [11.08 am]: I want to make a few observations about this amendment and some aspects that have been raised in the debate on the Corruption, Crime and Misconduct Amendment Bill 2017. This is probably the most innocuous bill that this Parliament has seen for a long time. It will reinstate a single word, “exclusively”, into section 3(2) of the Corruption, Crime and Misconduct Act. Yet, it brings to the fore the interplay between the Corruption and Crime Commission, the Public Sector Commission and Parliament itself. I have no doubt that there will be a student thesis in the law faculty about this one-word bill and its meaning, because it lends itself to that sort of academic treatment.

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I had a bit of help and advice from the back of the chamber on the history of this legislation and I want to place it on record. The first legislation in this area was the Official Corruption Commission Act 1988. Then, under the Court government there was a change of name and an expansion of the legislation to become the Anti-Corruption Commission Act in 1996. When the Gallop government came in, that was replaced by another version of the legislation, which is the current one, the Corruption and Crime Commission legislation we are dealing with today. There has been a bit of a history. It was probably the events of the 1980s, the so-called WA Inc period, that strongly brought on this legislation. I think every state now has some sort of corruption or integrity legislation. The commonwealth does not, and I agree with those who suggest that the commonwealth should have it; I think that is appropriate. I think every state now has legislation of some form in place. The legislation has an origin that goes back some time—nearly 20 years—and it was certainly brought on by the WA Inc royal commission, the Gregor report into the Commission on Government and so on. The legislation has a history.

There are a few aspects from recent times I want to comment on. In many respects, my own approach to Parliament is probably fairly conservative. I believe that, despite its deficiencies, our Westminster system is the best system of government we are ever likely to find, and we need to be conscious of that, particularly the role of Parliament. As I said, this one-word bill brings into play the interaction between the Corruption and Crime Commission, the Public Sector Commission and Parliament. The Public Sector Commission had a previous history, but it was essentially re-established with the Public Sector Commissioner in 2008 when the Liberal–National government was elected. That is something I personally drove for a couple of reasons. Firstly, I did not think that the Premier of the day should be seen as the head of the public sector and nor did I think that the head of the Department of the Premier and Cabinet should be seen as the head of the public service, because part of the role of the Department of the Premier and Cabinet is to implement the policies of an elected government, so it inevitably comes into a political realm. I think that, in a sense, automatically compromises the public service so I separated those roles and created the Public Sector Commission. I do not want to get into politics too much, but —

**Ms M.M. Quirk:** This is sounding like a valedictory.

**The ACTING SPEAKER:** Members!

**Mr C.J. BARNETT:** It is not, I assure the member.

The Westminster principle in believing we should have a professional and independent public service was the prime motivation for separating management of the public sector from the Department of the Premier and Cabinet and establishing a Public Sector Commissioner, and obviously a Public Sector Commission, as the head of the public service to deal with public service issues. The second reason I did that, and I guess the more political one, was that I was dismayed that the Gallop government, when it was elected in 2001, removed some 30 public servants. I knew many of those public servants. They were not Liberal or Labor; they were long-term professional public servants. Some of them had spent their entire careers —

**Ms M.M. Quirk:** It's all right, we left the best man there.

**The ACTING SPEAKER:** Order, member!

**Mr C.J. BARNETT:** That is an example of what I mean about taking a prejudicial view against a person who is currently the Public Sector Commissioner; it is wrong. It is true that the current Public Sector Commissioner is a person I knew through school days, but I can tell the member that in that time our politics were very different—not that that is relevant. He is an esteemed, long-term, permanent public servant, and a little chip in from the other side demonstrates the point I am making. The public sector and the head of the public sector have to be absent, in a sense, from day-to-day politics, electioneering and the like.

The removal of some 30 public servants was totally inappropriate. Sometimes a public servant does not perform and therefore can be encouraged to move on, but people were simply moved without any justification at all. It was very unfortunate with the election of the now Labor government that another 20 public servants were removed under similar circumstances. The sorts of arguments that are put in this chamber are that they retired and left.

**Ms M.M. Quirk** interjected.

**The ACTING SPEAKER (Mr T.J. Healy):** Member for Girrawheen, you have made your contribution. The member for Cottesloe did not interject during that time. He is not taking your interjections; please allow him the respect to make his contribution.

**Mr C.J. BARNETT:** Around 20 public servants were removed with the election of the now Labor government. Again, many of those were permanent public servants.

**Ms M.M. Quirk** interjected.

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**The ACTING SPEAKER:** Member for Girrawheen, I call you to order for the second time. Please allow the member to make his contribution.

**Mr C.J. BARNETT:** Many of those public servants were long-term, permanent public servants, including several director generals and heads of departments. Many of them were approaching the end of their career, yet they were treated without any respect or consideration.

**Mr F.M. Logan:** Mine weren't. Mine just left; they went to other jobs.

**Mr C.J. BARNETT:** I am talking generally, but there were a number of them; I know them and I know exactly their views. They felt humiliated, embarrassed and badly treated. That was unfortunately a repeat of what happened under the Gallop government. When I created the Public Sector Commission with a Public Sector Commissioner in charge of the public service, I thought that we would not see a repeat of that, but sadly we did. If the government wants to change the administration, that is the prerogative of the government, but it can treat people with respect and dignity.

**Ms M.M. Quirk** interjected.

**Mr C.J. BARNETT:** The member for Girrawheen is interjecting, and that is okay. She referred to term-of-government employees. Yes, contracts of term-of-government employees who work in ministerial offices expire.

**Ms M.M. Quirk:** There was a wholesale transfer to the permanent public service of those people, who have stuck with us.

**Mr C.J. BARNETT:** During the government I led, only one term-of-government employee was in the public service, and that was a junior administrative person who had been in a term of government under the Gallop government and had been working in the Department of the Premier and Cabinet. Just out of consideration and not in any sense political, that was the one person who was a term-of-government contractor who worked in the public service. All term-of-government employees, during my time as Premier, worked in ministerial offices. They did not work in public sector agencies. That was one of the responsibilities of the Public Sector Commission. Every government can appoint its chosen or political appointees, if it likes. What I insisted on, with that one exception of a long-term servant of the state, was they worked only in ministerial offices. We now have term-of-government employees becoming public servants.

**Ms M.M. Quirk:** That is rubbish.

**Mr C.J. BARNETT:** Name them. Can the member for Girrawheen name one? Because there was one.

**Ms M.M. Quirk:** Yes, I can, but I am not going to.

**Mr C.J. BARNETT:** It was not to stop someone applying for a position, if they came up in the public service, but we did not have term-of-government employees in the public service department with the exception of this one woman who had been a long-term employee under successive governments.

**Ms M.M. Quirk** interjected.

**Mr C.J. BARNETT:** In any case, the member for Girrawheen's performance referring to a long-serving almost 50-year public servant in this debate reflects exactly the point I am making. We do not interfere or politicise senior public servants. That is a principle of the Westminster system and that is what is important. It is something I adhered to and applied as a Premier. The member can judge it as she wishes.

I now return to the issue that we were talking about. That was a bit of background. I want to add one more thing, and that is that when Richard Court was elected Premier, only one government employee was identified as a person who could not stay on under a Liberal-National government—a person who was very loyal to Carmen Lawrence as Premier and was very public and very political. I remember Richard Court saying to me, "I was about to speak to her about her job and she walked into the room and said, 'Don't worry, Richard. I have to go. I know it, and I'm happy to leave'." That was one person. The member for Nedlands would know who I am referring to. When I became Premier in 2008, not one person—not a single person—was told they should leave. That is the distinction. However, I have made my point.

There is no doubt that the Corruption and Crime Commission was strengthened during the Gallop years, and that is the current legislation. The CCC deals with corruption, particularly corruption within government or government agencies. I want to see it do more work in the area of organised crime and serious misconduct. The Attorney General and I have chatted about that over the years. I know he is making some moves in that regard. Serious misconduct typically relates to politicians and maybe senior bureaucrats—issues that are clearly wrong but probably not criminal, but they are necessary. A person taking on an elected or senior public position needs to be accountable. What they do may be wrong and deemed to be misconduct, but it is not necessarily criminal. I do not want to talk about the situation facing the member for Darling Range at the moment. He is under scrutiny in the media and in this Parliament. Allegations have been made, but I do not think anyone has made an allegation

that would constitute a criminal act. It is a matter of conduct and propriety, not of criminality. For those sorts of issues, particularly if they relate to a minister, or more serious issues that may potentially border on corruption, clearly the CCC is the body to deal with that, not the police.

In my time in politics I have never referred anyone to the Corruption and Crime Commission. If I had had a situation during my time as Premier that warranted that, I would have done so, but I did not have a situation that meant that. I was referred to the Corruption and Crime Commission by the Labor Party. It was a trivial referral that misused the important responsibilities of the Corruption and Crime Commission. I received a letter about two days later from the commissioner of the day, dismissing it as nothing of concern or interest to the CCC. It was purely a parliamentary and political issue. It should never be trivialised, as has been done in the past, and there have been other examples of that.

**Mr P. Papalia:** Kim Chance was another example.

**Mr C.J. BARNETT:** I do not know. I have never referred anyone to the CCC. But if I thought there was unlawful, corrupt behaviour, I would not hesitate to do so. That is the body to investigate and determine whether there is criminality or misconduct, whether serious or minor.

During the time of the Liberal–National government, we amended the CCC act. It was an initiative that I put forward with the Attorney General of the day. The CCC had gravitas in the community. If a person was described or named in the media as being under investigation by the Corruption and Crime Commission, that was potentially a heavy stain on their reputation. I guess going into public office as an elected politician or into local government opens us up to that. Everyone in this chamber probably will have some experience during their career around that. But for a public servant to be investigated by the Corruption and Crime Commission, or indeed any member of the community, I think that a different standard applies. It was certainly my view and the Public Sector Commission’s view that for relatively minor issues within the public service by public servants, yes, it needed to be acted upon and there could be penalties—a person could lose their job—but it was not the sort of thing that should go before the Corruption and Crime Commission. I am referring to petty theft or disclosing information, or whatever else. Sure, people need to be rapped over the knuckles or perhaps dismissed, depending on how serious it is, but we decided that we should remove investigations into minor misconduct from the Corruption and Crime Commission and let it be handled by the Public Sector Commission. However, if the Public Sector Commission, in dealing with it, found that it was more serious than initially thought, it could send it straight back to the Corruption and Crime Commission to handle, so there was no escaping or lessening of the situation. As the member for Nedlands has said, a number of public servants were drawn into investigations and had their reputations and careers ruined because of the status of the organisation investigating them. If their conduct had been dealt with by the Public Sector Commission, they probably would have escaped all that. Some of those people had serious health issues. It basically terminated their careers and had dramatic and damaging effects on their lives and their families. That should not happen for minor issues. That was the purpose of the Corruption and Crime Commission Amendment (Misconduct) Act 2014.

I cannot remember any real debate in cabinet or anywhere else about removing “exclusively”. I think that it was probably just some legal advice to the Attorney General that we should do that because there was a problem that the Corruption and Crime Commission Act might in some way limit the standing of Parliament in terms of the supremacy of Parliament and could somehow impact on parliamentary privilege, which would not be a good thing. It was not seen as anything of any significance. It was perhaps seen as a technical tidying up of the CCC act to make sure that changes to the act did not impede Parliament in any way. As the Attorney General said to me the other day, if he does not mind me saying, the opposition of the day did not raise it. It was not seen as an issue by anyone. It was seen as a technical change that did not even attract attention in the chamber. There was certainly no intent at any stage to somehow limit the CCC’s ability to investigate members of Parliament. I hope that the Attorney General agrees with that.

**Mr J.R. Quigley:** I do.

**Mr C.J. BARNETT:** Yes.

[Member’s time extended.]

**Mr C.J. BARNETT:** There was no intent at all to do that. However, the now Corruption and Crime Commissioner, former Justice McKechnie, presented a paper and argued that it could limit the CCC, so it needed to be addressed. The previous government set about addressing it, but the legislation did not get through before the proroguing of Parliament. I am pleased that the current Attorney General is dealing with it now to tidy it up. As other speakers have said, we support reinstating “exclusively”. There was some public debate and media commentary that somehow Parliament or the previous government had tried to protect members of Parliament from investigation by the CCC. If that was the consequence, it was an inadvertent and accidental result. I want to make the point that ministers were never protected in that sense. As public officers, ministers could still be investigated by the CCC.

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Indeed, if the action of a backbencher was seen to be criminal, the police could still investigate it and the Criminal Code would apply. If there had been criminal activity by a backbencher, that could still have been investigated. But the CCC technically, according to the Corruption and Crime Commissioner, could not do so. There might be a legal argument about that. I have great admiration for former Justice McKechnie and I accept his position, and I think that is why everyone is supporting this bill.

The “supremacy of Parliament” sounds a bit pompous, does it not? But it is important in a democracy that Parliament is the body that makes, interprets and changes the laws; and that governs or goes into opposition. The quality of Parliament is a function of the quality of the members of Parliament. That is a reality, and people elect a broad cross-section of the community. Parliament has to have the capacity to take on those responsibilities. At the same time, it has to be reflective of all parts of our community. I think that most Parliaments do a pretty good job of that. Parliamentary privilege gets described in various ways. The term “coward’s castle” is used. Over the years, I have heard some examples of members on both sides of politics inappropriately using parliamentary privilege. It also happens in the federal Parliament. People have used parliamentary privilege to try to score a political point. Sometimes they have used it to try to settle some sort of vendetta, which is unrelated to parliamentary matters, with a person outside Parliament. It should not be misused or abused but, equally, it is important that people can speak their mind in this Parliament. If people have a suspicion about something improper or wrong happening in the community, they have to be careful in their choice of words, even under parliamentary privilege, but parliamentary privilege is there for them to raise that concern. Hopefully they do it in a way that it does not damage individuals, but we need to be able to speak freely and openly in this Parliament about issues. Members should not be in a situation of suspecting some corrupt behaviour and worrying that if they go out and comment, they are going to be sued by someone. Parliamentarians should not be at that risk, but they have to be very circumspect and responsible about how they use parliamentary privilege. That right is fundamental to the Westminster system—that we are protected and that we can speak our mind freely in this Parliament without the threat of recriminations. We know we live in a very litigious society these days so it is important that parliamentary privilege is protected. It is equally important that it not be abused or misused. Some might disagree. I do not think I have ever taken advantage of parliamentary privilege. I do not think I have ever really had a need to—some might disagree with that—but I have seen an example. Perhaps the worst example of the use of parliamentary privilege in this state’s history in my time would have been the Easton affair in the early 1990s, and perhaps the response of the government of the day was also over the top. That had a tragic consequence with the suicide of a young woman. We have to be very, very careful when we use parliamentary privilege when making any sort of claim or accusation or bringing evidence, but, at the same time, we need parliamentary privilege in the Westminster system.

During the time I was Premier, as I said, on no occasion did I refer something to the CCC. I think we perhaps need to be careful about how we as parliamentarians use or relate to the CCC as distinct from the Public Sector Commission. I made two referrals, from memory—I think it was only two—to the Public Sector Commission. The first was an investigation into the abuse of boys at St Andrew’s Hostel in Katanning, and that was appropriate. It was a government-run hostel and accusations were being made by former students. The Blaxell inquiry was set up under the Public Sector Commission Act because it related to a publicly run institution. Of course, out of those findings criminal charges were laid and people, particularly the major perpetrator, are still in jail, so that was the proper process. The other one related to Healthway. Complaints were coming about the abuse of sponsorship arrangements and about members of the board not conducting themselves properly. Again, there was no suggestion of criminality in that case, but it was not proper behaviour. It was a government body and, therefore, I asked the Public Sector Commission, under the act, to investigate.

As Premier—I am sure the current Premier will experience this over the time he has that role—situations will come to our attention, sometimes from within the parliamentary or public sector area and sometimes from outside. Generally, in my experience, some issues come and one wishes they had not. I am not going to name the examples or individuals, but they can be on a different scale. I can certainly think of proposals that were put to government or put to me as Premier that I certainly considered not to be in the interests of the state. As I said—I am not going to name it—the one in my mind I simply rejected out of hand. I can think of another proposal that again was not criminal but that I thought was highly improper and would have compromised organisations in this state and the like. I can think of another proposal that was put to me, again from outside of government, which I considered not only to be highly improper, but also could have bordered on being corrupt. I immediately rejected that so it did not go anywhere, nothing happened, and I felt no need to take it any further.

There was also another circumstance more recently that concerned me greatly in terms of the potential compromising of the role of government and of Parliament. It was not criminal. It was not illegal. People could have formed their view as to whether it was improper or the like, but I was concerned about that, and that was the only occasion when I called in the Corruption and Crime Commissioner and I simply shared with him my concerns about a situation in our community. I also called in the Public Sector Commissioner and did the same thing because

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I was concerned about whether it would compromise public servants, but that was not a referral. I simply said that I was concerned about the situation and left it at that because, as I say, there was no corruption, although in my view it could have led towards that path.

There are all those judgements, but I conclude with this: the Public Sector Commission is for investigating public sector matters. The Corruption and Crime Commission is for investigating corruption and, hopefully, for doing more work on organised crime, where its extraordinary powers can be used. It can also investigate misconduct by public officers—principally ministers, members of Parliament, local government officials and the like.

There is an investigation currently underway under the Public Sector Management Act, headed by John Langoulant, into a whole lot of the financial activities, if you like, of the previous government. It is the choice of this government to set up this investigation and, as I have said publicly, I regard it to be politically motivated; one could argue that, but the wrong vehicle is being used. It should not be under the Public Sector Management Act. The Public Sector Management Act and the Public Sector Commission are for investigating matters relating to the public service, not for undertaking political investigations. It is the wrong vehicle.

The Premier is grinning away. If the government wanted to hold such an investigation, it had a couple of choices. It could have used a parliamentary committee, it could actually have used the Corruption and Crime Commission, or it could have used a royal commission. They are the vehicles available to the government, in order of seniority, going from simply a parliamentary committee to the Corruption and Crime Commission to a royal commission, yet the government chose to use the Public Sector Management Act.

If it had used a parliamentary committee, so what? They come and go. If it had used the Corruption and Crime Commission, it would have had to make an allegation of corruption, and as I have rhetorically asked the media: what is the allegation? Similarly, if the government set up a royal commission, it would have had to detail the allegations. We will see what comes out of the Langoulant report, but I simply make the observation that it is not the vehicle that should be used for what I think is a political exercise. The Public Sector Commission, the commissioner and the commission's powers of investigation relate to the public service. It should not be used in a political way.

However, that is nothing to do with this bill. As I say, I support the bill. It corrects an inadvertent error and it is an issue that was raised by the Public Sector Commissioner. By putting the word “exclusively” back in, we remove any uncertainty about that, and I do not think it will in any way impede the ability of the Corruption and Crime Commission to investigate parliamentary issues, members of Parliament, local government mayors or whatever else.

**MR S.A. MILLMAN (Mount Lawley)** [11.37 am]: I propose to make some very brief comments about the Corruption, Crime and Misconduct Amendment Bill 2017. I might start by acknowledging the presence, at the back of the chamber, of Jim Thompson. As the member for Nedlands said, he is an eminent legal mind and one of the best constitutional lawyers in the country. I propose to make only a couple of ascendant remarks about the history of the parliamentary process and then perhaps some more prosaic remarks, picking up on—to quote the member for Cottesloe—the innocuous nature of the piece of legislation that is up for debate.

It is a great privilege for me to stand and speak on this bill. Students of law, history and politics will recognise that for hundreds of years in Westminster systems we have been debating how we locate parliamentary privilege, what the rule of law represents, the fact that we are all subject to the rule of law and that no-one is above it, but that at the same time, Parliament is sovereign. When we come to debate this bill, all that history, heritage and legacy of which we are now the custodians is cast into sharp relief. For me, this is frankly an amazing opportunity to speak on something that is fundamental to the interplay between the rule of law and the exercise of parliamentary sovereignty. This goes to the fundamental nature of our democratic system and plays on the primacy of parliamentary democracy.

I thank the member for Cottesloe for his contribution, not least because he reminded the chamber that it was a Labor government that, in 1988, introduced the Anti-Corruption Commission Act. That year was, in fact, the 300<sup>th</sup> anniversary of the Glorious Revolution in Britain, which led to the authoring of the 1689 Bill of Rights, from which we derive the provision that proceedings in Parliament are not justiciable. Perhaps the member for Cottesloe was right; perhaps this will be the subject matter of a student thesis at some stage in the future.

**Mr C.J. Barnett:** I can see you doing your doctorate on it.

**Mr S.A. MILLMAN:** For the time being, member for Cottesloe, my primary role in society is to advocate staunchly on behalf of the good people of Mount Lawley and I hope to do that for as long as I can.

**Mr I.C. Blayney:** Tell us what you're studying.

**Extract from Hansard**

[ASSEMBLY — Thursday, 23 November 2017]

p5991c-6012a

Mr Tony Krsticevic; Ms Margaret Quirk; Mr Bill Marmion; Mr Shane Love; Mr Colin Barnett; Mr Simon Millman; Mr John Quigley; Mr Peter Katsambanis

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**Mr S.A. MILLMAN:** I am not studying anything at the moment, member for Geraldton. I had the great privilege of studying at the University of Western Australia where Professor Thompson was a lecturer in constitutional law. I undertook a law degree and a Bachelor of Arts in politics at UWA. I thank the member for the interjection.

On a more prosaic note, this innocuous amendment sends a message of clarity and certainty about transparency and accountability. I am sure, and I take the member for Cottesloe at his word, that the amendment that was moved during the term of the last government was never intended to limit the powers and jurisdictions of the Corruption and Crime Commission. His Honour Justice McKechnie made comments, which are on the public record. It is incumbent upon us to ensure that both Parliament and the CCC continue to maintain and enjoy the respect they have in the community. It is incumbent upon us to address the issues that His Honour raised. The Attorney General has discharged his obligation by bringing this legislation to Parliament to provide that clarity and certainty to members of Parliament, members of the community, members of the judiciary and the CCC, so there is a clear understanding about everyone's rights and responsibilities, and duties and obligations. This is a necessary amendment to a bill but it gives us an opportunity to pause and reflect on just how important our Westminster parliamentary system is and how important is our fiducia obligation of preserving and protecting the heritage we have inherited from the Westminster system. I will say one more thing about that regarding referrals to the Corruption and Crime Commission. I heard the member for Cottesloe say, and I think it is right to say, that he never referred anyone to the Corruption and Crime Commission. If we are going to treat the instruments of our democratic liberal democracy and our judicial system with the respect they deserve, people should not be making frivolous and vexatious referrals.

I will give two examples to highlight how, from my background, I came to understand the danger of frivolous and vexatious legal proceedings and how I also came to understand that making complaints or threatening to make complaints without a proper foundation could amount to professional misconduct. I will give two simple and straightforward examples. Under the legal profession's conduct rules that govern the behaviour of lawyers in practice, there is a temptation to refer other lawyers for professional misconduct. Lawyers will often engage in significant debates and disputes, which can get heated and sometimes get personal, but to threaten to make a complaint of professional misconduct against a fellow practitioner itself constitutes professional misconduct. We should all bear in mind, both in this Parliament and in the broader political sphere, that the power we have to refer people to the CCC should be a power exercised only in the most pertinent or extreme circumstances.

That is my first example. My second example is that we all have standing as citizens in society to commence legal proceedings in our courts. It is a fantastic right that we are entitled to, yet if a person is a participant in legal proceedings and they routinely and without basis commence legal proceedings, they can expose themselves to being declared by the Supreme Court as a frivolous or vexatious litigant. Such a declaration imposes a significant burden on or hurdle to them, which will potentially prevent them from accessing the right that we all enjoy to commence legal proceedings. There sounds a warning bell for anyone considering making referrals to the Corruption and Crime Commission frivolously, vexatiously or without proper basis. Admittedly, the legal profession is more regulated than Parliament, and that is appropriate, but in those two spheres we can see that if we have a right, we have a corollary responsibility to make sure that we exercise that right appropriately. If we abuse that right and abandon that responsibility, then we should be subject to the opprobrium that follows. The Corruption and Crime Commission should conduct the investigations it is required to conduct. We should make this amendment so that any opacity is removed and we have the clarity and certainty required. We should all pause and reflect on the amazing custodianship we all now hold—the responsibility we have as parliamentarians to carry forward a tradition that stretches back more than 300 years.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

*Consideration in Detail*

**Clause 1: Short title —**

**Mr W.R. MARMION:** In his second reading speech, the Attorney General referred to section 3(2) of the CCM act, which contained the words “unless that House so resolves”, which were deleted. The word “exclusively” is being put back in, but not “unless that House so resolves”.

**Mr J.R. QUIGLEY:** Those words were removed, along with the word “exclusively” during the previous Parliament when the minor misconduct function was taken away from the CCC and referred to the Public Sector Commission. At that time, there was a very arcane procedure. I am going back now to the answer I provided in *Hansard* to the member for Hillarys, who asked the same question during the second reading debate. Once, on a matter not involving serious misconduct but minor misconduct, the Corruption and Crime Commission had to refer back to the Procedure and Privileges Committee allegations of minor misconduct for the privileges committee

to investigate and make a recommendation under sections 27A and 28B. After the privileges committee looked at minor misconduct, it had to report back to this chamber for this chamber to pick it up and refer it back to the CCC if required. It was a very circuitous and cumbersome procedure, which was removed by the amendments introduced by the former Premier, the member for Cottesloe. We took out, by resolution of the house, this whole arcane procedure of referring. Once a matter went to the CCC, if it was serious misconduct, the CCC could look at it. If the CCC determined that it did not fit within—I am going from memory now—section 4(a), (b) or (c) of the Corruption and Crime Commission Act, which were the serious misconduct paragraphs of section 4, and if it was minor misconduct, the CCC had to refer it to the privileges committee, which reported to this house, and this house then reported back to the CCC. It was the most cumbersome procedure. I am sure that what this would involve was not contemplated by the chamber at the time, but it was very time consuming. That provision was taken out by the previous government.

**Mr C.J. Barnett:** That was in our consideration of the original CCC Act.

**Mr J.R. QUIGLEY:** That was in the original version of the act and, member for Cottesloe, when the previous government moved the amendments that went through, that was taken out as well as the word “exclusively”, because we were taking out that arcane procedure. That is why, by resolution of the house, it was in but was not needed once the amendments went through. At the same time, the word “exclusively” was taken out. If the member wants to ask me about the need to reinsert the word “exclusively”, I am happy to do so either now or in the third reading debate, but I note that the opposition supports the reinsertion of that word.

**Mr W.R. MARMION:** The Attorney General has experience in this matter. Despite the fact that it states “unless”, I would have thought that the process would be that the CCC would carry on regardless of an issue, unless the house intervened; that is how I read it. However, the Attorney General is saying that the CCC chose to put a mechanism in place to make sure that it did not tread on the house’s feet, I suppose—that is one way to put it. Is the Attorney General saying that a bit of bureaucracy was involved in going around in circles?

**Mr J.R. Quigley:** That is right.

**Mr W.R. MARMION:** The provision states “unless the house so resolves”. I would have thought that one way this could have operated was for the CCC to carry on regardless, unless the house, by some mechanism, addressed the CCC. There is no mechanism with the way we have it now. I am not saying that there needs to be one, but by not putting these words back in, is there a normal mechanism, which we may not want to have, by which the house can intervene on the basis that the privileges committee is looking at it.

**Mr J.R. QUIGLEY:** No. These are matters dealing with minor misconduct. Once we reinsert the word “exclusively” into the act, we are dealing with serious misconduct, because it is matters that can be, in any event, and as the member for Cottesloe referred to in his speech, investigated by the police or other agencies. Once the word “exclusively” was taken out, it was the view of the commissioner, and the member for Cottesloe was right, that no-one in this or the other chamber, where the member for Hillarys formerly sat, really appreciated that the removal of the word “exclusively” would deny the CCC the jurisdiction to investigate matters of serious misconduct. Minor misconduct should always be looked at by this chamber, or by the Procedure and Privileges Committee. It was previously dealt with by this chamber, in a circuitous way, in the case of the Corruption and Crime Commission coming across minor misconduct and referring it back to the Procedure and Privileges Committee. There would then be an investigation here, and the privileges committee would report to this chamber, and this chamber, by motion, would report it back to the CCC. It was a most circuitous and cumbersome procedure. This bill proposes to reinsert the word “exclusively”. The member for Cottesloe said, and I agree with him, that no-one had picked up the significance of removing the word “exclusively” from the legislation. It was not realised until the headline about the untouchables appeared, over the by-line of Daniel Emerson. That article about parliamentarians being beyond the scrutiny of the CCC really began to cause the community angst. I remember letters to the paper asking why the Lord Mayor of the City of Perth could be investigated by the CCC, but not a backbencher or non-officeholder in this chamber. It seemed wrong. As soon as I saw that headline I contacted the CCC, and attended upon the commissioner for a fuller explanation, and he took me through it. Having received that explanation, I then had the Solicitor-General attend upon me to go through it with me. I have tabled his advice. It is a matter of perception as much is anything.

**Mr C.J. Barnett:** It is my understanding that, even if “exclusively” is not in the act, then you are saying that serious misconduct by a backbencher could still be investigated by the CCC?

**Mr J.R. QUIGLEY:** The commissioner’s view was that it could not. There may be some cases under section 3(2) that might not constitute criminal offences, but generally, the definition of serious misconduct in the act states —

Misconduct occurs if —

- (a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;

**Extract from Hansard**

[ASSEMBLY — Thursday, 23 November 2017]

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That probably involves bribery, but not necessarily. The commissioner might look at that. The definition continues —

- (b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself ...

That would be an offence under the code, and he could not look at that, if the commissioner has that view. The definition continues —

- (c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment ...

The commissioner says that he cannot look at that, because it is a matter that is also within the Parliamentary Privileges Act. However, if the word "exclusively" is put back in, as previously explained, the commissioner cannot look at matters that are exclusively a breach of privilege of this chamber.

**The ACTING SPEAKER (Mr T.J. Healy):** Members, I have been advised to inform you that the clause we are looking at is the short title only, at this stage. Some of the questions might be more relevant to clause 4.

**Mr W.R. MARMION:** I do not have a problem with clause 4, because I understand all the logic and the rationale behind the word "exclusively". I will rephrase the question. The bill reinserts the word "exclusively", and that is fine; we will support that.

**The ACTING SPEAKER:** I advise you to be as relevant as you can to clause 1, the short title, at this stage.

**Mr W.R. MARMION:** I am asking my question in a different way. What would be the impact of inserting the words "unless that house so resolves", which were the original words inserted under the Gallop government? I do not know the answer. What would be the impact on the operation of the act of inserting the words "unless the house so resolves"?

**Mr J.R. QUIGLEY:** I will explain the reason. By reason of an amendment that was passed through the Parliament by Act No 35 of 2014, sections 27A and 27B—which deal with minor misconduct—were deleted from the Corruption and Crime Commission legislation altogether. That has made redundant the arcane procedure that was in place before the former government saw fit to delete sections 27A and 27B—without concurrence from the opposition of the day—and the necessity for those sections to be in the act, unless the house so resolves, because it would never get to the Procedure and Privileges Committee and there would not be a report. That whole procedure has been deleted by Act No 35 of 2014.

**Mr W.R. MARMION:** The Attorney General has half-answered my question. We will have to allow the legal people to sort that out. I understand that the act has changed and the procedure is now redundant. If it is redundant, the Attorney General could have said it is in the act but it does not mean anything, so it has no impact. However, I did not get that from the Attorney General's answer, so I am still a bit lost. That might be because I do not have a background of knowing the implications of those two sections.

**Mr J.R. QUIGLEY:** Those two sections were deleted at the same time. Under that procedure, the CCC would refer matters to the Parliament to be dealt with by the Parliament, and our Procedure and Privileges Committee would then have to report back to this chamber, and this chamber would then by way of resolution go back to the CCC. That whole loop has been removed. However, at the same time, the word "exclusively" was removed, and that has created the minor problem that we have now.

**Mr R.S. LOVE:** I have been listening to the discussion and, the more I listen, the more confused I am getting. I must be getting very old! I do not understand exactly how complex it could be to put in one word or leave out one word. It would seem to me that matters of parliamentary privilege are very difficult to consider. As I said during the second reading debate, in my view these sorts of issues should be considered by a committee of one or other of the houses of this Parliament. Unfortunately, this Parliament does not have a joint procedure and privileges committee that could consider such matters.

Consideration in detail interrupted.

[Continued on page 6012.]

*Referral to Procedure and Privileges Committee*

**MR R.S. LOVE (Moore)** [12.01 pm]: I move without notice —

That the Corruption, Crime and Misconduct Amendment Bill 2017 be referred to the Procedure and Privileges Committee to examine and report on the bill by 22 March 2018.

I do not have a lot of prepared notes on this matter. This bill specifically affects the rights and privileges enjoyed by members of this Parliament by making members of this Parliament subject to a body outside of this Parliament

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to examine conduct in which they may be involved. These are very serious matters. The Attorney General is a very decent person; I do not think he is trying to do anything that is of itself evil. But these matters should be decided on after they have been given the consideration of Parliament and undergone a process of Parliament that is different from the normal interaction that involves the government bringing a bill to Parliament that is then considered. It really deserves deeper consideration.

In the second reading debate of the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017, we intimated that we felt that this matter would eventually go to a committee. When the Corruption, Crime and Misconduct Amendment Bill 2017 eventually reaches the upper house, we will seek to send this bill to committee. We will probably be able to do something up there because of the numbers. We might be able to persuade other parties to the view that this bill should be examined further.

**Ms M.M. Quirk:** What are you afraid of, member?

**The ACTING SPEAKER:** I would like to hear the member in silence, please.

**Mr R.S. LOVE:** I am not afraid of interjections from the member for Girrawheen, but they do not help very much. If the other place sends this bill to committee, that will be good. Yesterday, I listened to the shadow Attorney General talk about this matter.

An opposition member interjected.

**Mr R.S. LOVE:** Sorry, the shadow Minister for Police. He is a lawyer as well and is handling such affairs down here.

There are two parliamentary privileges committees, one operating in each house of Parliament. We do not have a joint committee and maybe we should consider allowing the two committees to work together and discuss this issue. I do not know what mechanism would enable that. It seems to me that both houses of Parliament have the right to examine what will be a fundamental change to the operations of the privileges system and the Parliamentary Privileges Act 1891. These matters are equally within the ambit of the Procedure and Privileges Committee of the Legislative Assembly and the Standing Committee on Procedure and Privileges of the Legislative Council. There is no reason that the Legislative Assembly's Procedure and Privilege Committee cannot examine this. I doubt that this referral motion will receive the support of the government. It will use its 41 seats to railroad Parliament into effecting change on the parliamentary privileges system, which has been in operation for many years. That will be an unfortunate event.

I do not know that there is any great urgency with any of these matters. I note that bills have been declared urgent and pushed through this house with great abandon, only to sit in the other place and receive no further action. Given that there is no urgency to this bill whatsoever, we should take our time to examine it thoroughly.

Parliamentary privilege, as I understand it, goes back to the 1600s. I think it was first encoded in the Bill of Rights. I am sure that the lawyers and historians in this house understand these matters far better than I do, but I do know that people have fought wars over this stuff. This is not necessarily a simple thing. Parliamentary privilege goes to the heart of the Westminster system of government and to the heart of our democracy. Although I am not saying that there is anything wrong with what has been proposed, I am not equipped to make that judgement on my own. The member for Nedlands said that he is just an engineer, but he is probably better educated than I am. I am just a farmer so what the hell would I know about these types of deeply legalistic matters? I want to be assured that this matter has been thoroughly examined by the more learned members of the Legislative Assembly. That would be with the advice of the clerks and others who support the Procedure and Privileges Committee, because we have to remember that their knowledge, experience and training on matters involving the operations of the Parliament is far deeper than that of mere MPs. What we have now is the view of a government minister, supported by his department and others. Although they may be fine legal minds and they may know a lot about the law, they are not actually of the Parliament. It is more important that this matter be discussed by people of the Parliament. We have within our ranks a number of members who know a lot about the law and the Parliament. We also have the staff who support the committees. We really should be referring and deferring to their knowledge, to some extent. Unfortunately, the way this bill is being put through at the moment, that is simply not going to happen.

I do not intend to talk a great deal more on this matter. I do not have the learning in this area to stand up and talk for an hour about all the legal implications of what we are dealing with, as the shadow police minister would be able to do. All I know, as a fairly simple person, is that these matters are ingrained in and fundamental to the operation of our democracy. They should not be tossed aside on the advice of public servants and others without the Parliament seriously examining the effect of what is being proposed. I urge other members to consider what I have put forward with the support of the rest of the Nationals. We have consistently held this view. We are not necessarily opposed to what has been put forward. We do not want to hide ourselves from due oversight. However,

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we do have lingering resentment that, as Nationals in this house, we cannot sit on the oversight committee for the CCC. As I said before, that is something we need to address into the future.

**Mr A. Krsticevic:** Neither do we.

**Mr R.S. LOVE:** The Liberal Party does have a member in this house.

**Mr A. Krsticevic:** Not in this house.

**Mr R.S. LOVE:** Not in this house? They are in the other house. That is even worse!

**Mr A. Krsticevic:** They have politicised the whole thing.

**Mr R.S. LOVE:** Okay. That is even worse than I thought. There needs to be a re-examination. I do not know why the committee has to be so limited in number. Why can we not just expand the committee so that a range of people can be involved?

**Mr T.J. Healy** interjected.

**Mr R.S. LOVE:** The Greens are sort of the government's allies, are they not? Not to worry. We do not want to go too far down that path. As I understand it, at the moment I, as a National, cannot put myself forward to be on that committee. That is not right. To me, that needs to be addressed, along with this other matter. Perhaps that is something that also needs to be referred to the Procedure and Privileges Committee, because the operation surrounding that provision is wrong as well. We are not necessarily opposed to what has been put forward in this bill. We do not really know what the word "exclusively" will mean in the day-to-day operations of the Parliament, MPs or the CCC. I do not think there is any great urgency attached to this. The government has three years left of its term to get this through. I do not think there would be any harm in referring this bill to a committee for due consideration. It will probably happen in the Council, but there is no reason why our own privileges committee cannot be involved. It is important that if there is to be consideration of this matter, both houses have a say, and that the Clerk of this chamber has the ability to provide advice to members of this place, just as may happen in the Council. Why we would seek to limit the Parliament to just one house looking at a matter that is fundamental to all members of Parliament is beyond me. I am putting forward the option. I am giving the government the chance to do that and to not railroad this through at a time when we do not really need to push it. I doubt that it will progress that quickly, but time will tell. I urge members of the house to consider supporting what I put forward. We will see what eventuates. I suspect that the government will not support what I have proposed, and I hope that when this bill goes to the other place, it refers it to the committee.

**MR P.A. KATSAMBANIS (Hillarys)** [12.15 pm]: If I did not know better, I would say that never before has one word caused so much debate and consternation, but sadly, or maybe not sadly, the history of the law and parliamentary procedure shows that for many, many years—hundreds of years—we have often debated one word for a long time. It is no different in this case. The bill before us simply adds one word to the statute book, but that one word does significant things. Its primary object is to clarify whether the Corruption and Crime Commission has power over backbench members of Parliament when there are allegations of serious misconduct. It is an issue that has been raised by the Corruption and Crime Commissioner himself; we know that. I do not think any member of Parliament in this place has spoken against clarifying the position to ensure that the CCC has the power. I think there is absolutely multi-partisan support from the three parties represented in this chamber to ensure that when there is a lack of clarity and the commissioner himself has raised that issue, the position is clarified and the commissioner has that power. But consequentially to making that change, we know that this will impact on parliamentary privilege—the privilege that we enjoy as members of Parliament and that the Parliament holds dear, since, as the member for Moore rightly said, wars were fought over this matter and the original Bill of Rights came into place towards the end of the seventeenth century. As I said in my contribution to the second reading debate yesterday, in an ideal world, as a parliamentarian I would have preferred to have had a report from the Procedure and Privileges Committee of this place about the possible impact of the changes we are contemplating on parliamentary privileges before I got to vote on this legislation. That is what the motion moved by the member for Moore intends.

I got into a bit of a discussion yesterday about parliamentary privilege and the way our committee structure operates between this house and the other house. I think this is an opportune time to again reflect briefly on this issue. In an ideal world the government could have brought this bill in and referred it immediately to the Procedure and Privileges Committee of this chamber to assess the impact it has on privilege. The government chose not to do so. It is clearly the government's intent to get this bill through this chamber and have the other chamber worry about issues relating to privilege and whether it refers the bill to the Standing Committee on Procedure and Privileges. But this creates a gap for us as parliamentarians in assessing the bill in our chamber.

The other issue raised as a result of that gap is: why do issues of privilege need to be considered separately by the Assembly and/or by the Council? Issues of privilege are parliamentary. If there is parliamentary privilege attached to any of the work that we do in this chamber, it ought to equally attach to the other chamber and there should not be circumstances in which that privilege can be interpreted in different ways between the chambers—that is at the very least. I will not get into how it is interpreted in other Parliaments, but certainly in our Parliament it is parliamentary privilege. It is a privilege of the Parliament. It is not a privilege of the Assembly or a privilege of the Council that is separately debated. Our procedures are different. There are very good reasons that we have separate procedures. There are historic reasons going back to those wars. The other place was originally a creature of the Crown or a representation of the Crown; this place is the representation of the people. Perhaps this is something we can look at in the future. In an ideal world, perhaps we could separate the procedures of the chambers from parliamentary privilege in the way that we structure our committees. I said yesterday that probably in modern parliamentary procedures, a joint privilege committee would make far more sense. If there were such a joint privileges committee, it could consider this issue before either chamber got to vote on it.

I am glad that the member for Moore says there is no rush at the moment. As I said yesterday, I hope this provision never has to be used. I do not think it ever has been used since the act came into force about 13 or 14 years ago, and I hope it never has to be used. It might need to be one day and we need to be prepared. It is my understanding that the member for Moore—correct me if I am wrong—intends to test this provision on the voices.

**Mr R.S. Love:** I think after discussion with some others, we might put it to the vote.

**Mr P.A. KATSAMBANIS:** It is important that we treat ourselves firstly as parliamentarians in this place because that is what we are elected to be. We are being asked to vote on an impact on the privileges of Parliament without having had the appropriate parliamentary committee assess how those privileges are impacted. As the member for Moore rightly said, parliamentary privilege is not something that lawyers in the main are adept at; this is a unique area. Looking at the make-up of the Procedure and Privileges Committee of this place, it is chaired by the Speaker, who is the most senior office-bearer of the Assembly. The Deputy Chair is the Deputy Speaker. Looking at the staff of the committee, it is the Sergeant-at-Arms, the Clerk and the Deputy Clerk. They are senior parliamentary officers. The other parliamentary representatives of the committee are Acting Speakers. We are using some of the sharpest minds and some of the most senior office-bearers of our Parliament, both in an MP sense and in a staff sense, to assess procedure and privileges, as it should be, because this is a unique area. It has been written about in tomes and tomes over the years by very senior exponents of the craft of parliamentary Clerks and parliamentary Presiding Officers. It is not easy. It is not something that should simply be dismissed as a lawyers' picnic. The average lawyer would have very little practical experience or knowledge about parliamentary procedure. With respect, the average judicial officer would also have very little practical knowledge or experience. Parliamentary privilege or procedure is not litigated, so our judicial officers do not get that experience either—it happens in this place.

With those words, I welcome the fact that the member for Moore has brought this motion to the chamber. In an ideal world, I would have preferred the government to have sent this off to the appropriate committee, the Procedure and Privileges Committee, before we debated this bill. I pointed that out yesterday. I know that the government has a different view. I understand from practical experience that the Council may look at this before it votes on the bill, but that is cold comfort to us. That does not give us any comfort at all because we do not get to see its report before we vote on the bill. We do not get to see what aspects the Council considers on this minor but important change and how it may impact on parliamentary privilege. We are operating in a vacuum in the dark when we get to vote on this bill, unless we have seen a report.

With those words, I will sit down and let this motion run its due course, recognising and understanding that the government does not support it. Unfortunately, without government support, this motion will not go anywhere, but as a result, all 59 of us parliamentarians, as members of this chamber, will be voting on an important change to parliamentary privilege without having had the appropriate parliamentary committee assess the impact of that change. In no way should this speech be interpreted as not supporting the actual change being made by the bill. As I said at the outset, this is something that the Corruption and Crime Commissioner has said is in question. He believes that because of the changes made in 2014, he has lost a power to investigate backbench members of Parliament. We believe he should have that power and he should have the clarity he is seeking. We just want to make sure that we know exactly what impact that change will have on parliamentary privilege.

**MR J.R. QUIGLEY (Butler — Attorney General)** [12.26 pm]: The government will not be supporting the motion, and I wish to explain to the chamber why the government will not, on this occasion, be supporting the motion. If the amendment to the Corruption, Crime and Misconduct Act in any way dealt with the issue of parliamentary privilege, it would perhaps be appropriate to examine the privileges of this chamber and how they may be affected. The understanding is that this legislation is not an amendment to the Parliamentary Privileges

Act, the standing orders or any way that this Parliament operates. It is not an amendment or does not encroach upon the notion of parliamentary privilege in any way whatsoever. All the word “exclusively” does is seek to restore to the Corruption and Crime Commission the jurisdiction that it always had to investigate crimes committed by members of Parliament. Clearly, these matters may already be investigated by the police. It was not suggested by either the member for Moore or the member for Hillarys that the Western Australian police department’s jurisdiction to investigate criminal offences committed by members of this chamber encroaches upon the parliamentary privilege enjoyed by members of this chamber. Neither member suggested that. On matters such as an allegation of bribing a member of Parliament, when the member for Hillarys said that it has never been used and he hopes it will never be used, I am sure that the member for Cottesloe would agree with me that during the Smiths Beach inquiry those very matters were investigated when it was alleged that members of Parliament were involved in receiving favours or bribes. They were also capable of being looked at by the Western Australian police department. But the Corruption and Crime Commission had the advantage of compelling attendance and compelling people to answer questions, which gave it extra purchase in the investigation of those matters, many of the arrangements for which could take place in secret. Restoring the jurisdiction of the CCC to investigate those matters—matters that the police department can already investigate—does not diminish in any way the privilege that members enjoy in this chamber. On this occasion, I am in furious agreement with the member for Cottesloe. In his contribution during the second reading debate, the member for Cottesloe pointed out that the word “exclusive” existed in the Corruption and Crime Commission Act from 2013 right through to 2014. No-one is suggesting —

**Mr C.J. Barnett:** It was 2003.

**Mr J.R. QUIGLEY:** I am sorry—it was 2003 to 2014. I think the act might have been proclaimed in 2015. For more than a decade—those 12 or 13 years—“exclusive” was in the legislation. Neither of the privileges committees nor anyone in this Parliament ever suggested that the CCC’s ability to investigate matters encroached in any way upon the privileges of this Parliament. It is misconceived to say that allowing the CCC to investigate criminal activity itself, such as the bribing or receiving of a bribe by a member of Parliament, in any way encroaches on the privileges of Parliament. We are not protected by a privilege of this Parliament to be corrupt, to receive bribes or to conduct ourselves as parliamentarians in a criminal way. All those matters that I have just referred to can already be investigated by the police and it is not suggested by either of the speakers to this motion that that in any way diminishes any privilege enjoyed by the members of this Parliament.

The member for Moore, both in his contribution to the motion and the second reading debate, said that the government would use its numbers to bully its way through to get “exclusively” restored to the legislation. If not offensive, that is just out of order. I have not sought to bully by weight of numbers any aspect of the CCC legislation. This was a suggestion made by the member for Cottesloe and taken up by the member for Hillarys during debate on the previous bill for granting the CCC jurisdiction over unexplained wealth. During consideration in detail, a suggestion came that if we split off the section that dealt with the restoration of this word to the legislation, the opposition would agree with the bill and let it go through. They said that once the other chamber got to this word, it would end up before a committee because we do not have the numbers up there. All we are seeking to do is to restore what the member for Cottesloe described as perhaps an oversight or mistake in the amendments that went through in 2014. I accept what the member for Cottesloe said in his contribution to the second reading stage of the bill: it was not the intention of the former government to take away that jurisdiction from the Corruption and Crime Commission. I accept what the member for Cottesloe says in that regard. I accept what the member for Cottesloe says that in bringing those amendments forward it was not appreciated that the Corruption and Crime Commission would take the view that it could no longer investigate matters that were a criminal offence and a breach of parliamentary privilege at the same time—they could not look at the criminality of it. This is not political ideology; this is a response to a concern raised by the Corruption and Crime Commissioner, Mr Justice McKechnie, QC, whom I might pause to say was, I believe, one of the better, if not the best, appointment by the previous administration for his knowledge of criminal and administrative law and his forensic ability, which was demonstrated over many, many years as the Director of Public Prosecutions for the state of Western Australia prior to his appointment to the Supreme Court.

We are not seeking to change anything to do with privilege. What I note and I am a little confused about, but it strengthens me in my opposition to the motion, is that each of the Liberal Party members who has risen during the second reading stage has been at pains to point out that they support the bill. It was now only during the consideration in detail stage that this matter arose. Firstly, I was told that we would not go into the consideration in detail stage—but I do not hold the opposition to that; anyone can call for it—because the bill was not contentious. However, it was only during the consideration in detail stage that the member for Moore, while confessing that although he recognises that parliamentary privilege is important—he does not understand the law regarding it—moved the motion to send the bill to a committee. I do not think that the Procedure and Privileges

**Extract from Hansard**

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Committee is the correct committee in any event. When it gets to the upper house, it would sit more appropriately within the Standing Committee on Legislation because it does not affect parliamentary privilege.

The member for Nedlands—I suppose this affirms that what we say in this chamber is listened to elsewhere outside of this chamber—referred to the webpage of the CCC, which has a question and answer section in which the public can ask set questions and the CCC can provide answers. The member for Nedlands read from that page the question, “Can the commission investigate allegations against state politicians?” He said that the answer on the website was: yes, it can. Today at 11.19 am, just to confirm that our words are listened to elsewhere, I received an email from the CCC, which states —

The frequently asked questions on the Commission’s website contain an outdated answer relating to the Commission’s jurisdiction. That question was current up until 1 July 2015. The correct answer under the *Corruption, Crime and Misconduct Act ...* as amended, is that the Commission does not have jurisdiction to investigate allegations of serious misconduct against members of State Parliament. The Commission apologises for any confusion that may have been caused.

Then I got a subsequent email, stating that the commission intends to correct that straightaway to advise the public that the commission does not have jurisdiction to investigate members of Parliament for serious misconduct. I think that causes disquiet amongst members of the public, and I am told by the Corruption and Crime Commission that this will have been posted by now. The commission obviously listened to the member for Nedlands’ comment —

**Mr W.R. Marmion:** Very prompt!

**Mr J.R. QUIGLEY:** — promptly, and informed the public that it does not have the jurisdiction to look at it. We want to correct that. Giving the commission the jurisdiction to look at allegations of serious misconduct will not in any way impact on the privileges of this chamber. For these reasons, the government on this occasion opposes the motion. We want to get this legislation through this chamber and into the other chamber, and I stress that every member of the Liberal Party who has spoken on the bill during the second reading debate has supported it; I thought it had bilateral support. I think it still does, but this process is just slowing it down.

For the record, I will lay that document on the table so that members can see that it came from the CCC to my office at 11.19 am.

[See paper 974.]

**Mr J.R. QUIGLEY:** For those reasons, the government opposes the motion and wants to see this bill through the Legislative Assembly with the support of the Liberal opposition and, hopefully, Nationals members, but that is up to them. May it please Mr Acting Speaker.

*Division*

Question put and a division taken, the Acting Speaker (Mr I.C. Blayney) casting his vote with the ayes, with the following result —

Ayes (16)

Mr C.J. Barnett  
Mr I.C. Blayney  
Ms M.J. Davies  
Mrs L.M. Harvey

Mr Z.R.F. Kirkup  
Mr A. Krsticevic  
Mr S.K. L’Estrange  
Mr R.S. Love

Mr W.R. Marmion  
Mr J.E. McGrath  
Dr M.D. Nahan  
Mr D.C. Nalder

Mr K. O’Donnell  
Mr D.T. Redman  
Mr P.J. Rundle  
Ms L. Mettam (*Teller*)

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Noes (32)

Ms L.L. Baker	Mr W.J. Johnston	Mrs L.M. O'Malley	Ms J.J. Shaw
Dr A.D. Buti	Mr F.M. Logan	Mr P. Papalia	Mrs J.M.C. Stojkovski
Mrs R.M.J. Clarke	Mr M. McGowan	Mr S.J. Price	Mr C.J. Tallentire
Ms J. Farrer	Ms S.F. McGurk	Mr J.R. Quigley	Mr D.A. Templeman
Mr M.J. Folkard	Mr K.J.J. Michel	Ms M.M. Quirk	Mr P.C. Tinley
Ms J.M. Freeman	Mr S.A. Millman	Ms C.M. Rowe	Mr R.R. Whitby
Mr T.J. Healy	Mr Y. Mubarakai	Ms R. Saffioti	Ms S.E. Winton
Mr M. Hughes	Mr M.P. Murray	Ms A. Sanderson	Mr D.R. Michael ( <i>Teller</i> )

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Pairs

Mr P. Katsambanis  
Mr V.A. Catania

Mr R.H. Cook  
Mr B.S. Wyatt

Question thus negatived.

*Consideration in Detail*

Resumed from an earlier stage of the sitting.

**Clause 1: Short title —**

Debate was interrupted after the clause had been partly considered.

**Clause put and passed.**

**Clauses 2 to 4 put and passed.**

**Title put and passed.**

Leave granted to proceed forthwith to third reading.

*Third Reading*

**MR J.R. QUIGLEY (Butler — Attorney General)** [12.48 pm]: I move —

That the bill be now read a third time.

**MR W.R. MARMION (Nedlands)** [12.49 pm]: The opposition will support the Corruption, Crime and Misconduct Amendment Bill 2017.

Question put and passed.

Bill read a third time and transmitted to the Council.