CORRUPTION, CRIME AND MISCONDUCT AMENDMENT BILL 2023

Second Reading

Resumed from 28 February.

HON TJORN SIBMA (North Metropolitan) [12.25 am]: It is always a little awkward to reprise remarks given on a previous day. However, to maintain the flow and to recap, I was speaking to an important document of this Parliament concerning the resourcing, capability and structure of the Corruption and Crime Commission. From memory, I believe that I was referring to the March 2022 report of the Joint Standing Committee on the Corruption and Crime Commission, whose chair is the member for Kalamunda, titled *The Corruption and Crime Commission's unexplained wealth function: The review by The Honourable Peter Martino*. That report canvassed another report and assessment conducted by Hon Peter Martino. Towards the end of the chair's comments, he refers to Mr Scott Ellis, who was the acting commissioner of the CCC—the only acting commissioner.

The report states —

> In September 2021 Commissioner McKechnie told the committee that consideration should be given to appointing a second acting commissioner but the commission is at the stage where a deputy commissioner is required. This was said in the context of discussing the Department of Justice's current project to modernise the *Corruption, Crime and Misconduct Act 2003*. The power to appoint a deputy commissioner should be considered during that project.

My question for the parliamentary secretary, if he is able to provide a response in his reply, is: whether or not the origin of this bill, insofar as it relates to the creation of a deputy commissioner role, was advocated for by the Department of Justice or by the Corruption and Crime Commissioner, Mr McKechnie? It appears very much that this was a matter under serious consideration and, to a degree, within the confines of the normal public sector approach to these things—the quiet advocacy. The origin of this idea seems to go back more than two and a half years at least in its current form.

Furthermore, the report states that the Corruption and Crime Commission —

> has made a submission to government for funding to undertake its unexplained wealth function over the next 5 years. It seeks funding just short of $5 million a year to fund 20 full time equivalent officers …

I take it that that submission from the CCC was provided to the government in or around late 2021 or early 2022. It is very unusual ordinarily for any statutory authority or agency of the government to advise even a committee of a submission that it has put to a government for budgetary consideration, let alone canvas the barest outline of the resource draw, being the actual quantum of funds and the likely requirement for FTEs. That is actually a bit unusual. What I seek to do additionally, if the parliamentary secretary does not mind, is to find out whether those considerations were made in tandem with the concept of proving up or developing the deputy commissioner role or whether they were effectively made in parallel. What I am attempting to get to—I have asked previously in both the original briefing and the refresher briefing—is whether it is the object, be it undisclosed, that the deputy commissioner role of the Corruption and Crime Commission will take principal carriage of operationalising or overseeing the unexplained wealth function or whether this is still a delegable function that might come to the deputy commissioner. I am just attempting to ascertain the connection between those two things. There might be some relationship, there might be no relationship, or there might be a possible relationship.

The second matter, which I think was addressed in either the last budget or perhaps the midyear review—I cannot quite remember off the top of my head, but I remember seeing something—is to what degree has the unexplained wealth function or capacity within the CCC been funded by government. I believe a budget announcement was made. If that is the case, and I think it is, that is all well and good. However, the organisation does not run on announcements alone. Is it possible to provide some information on whether the roles of the 20 FTE, I think it is, with a range of specialties—forensic accountants and the like—have been filled yet? What is the gap and is it likely to be filled?

The issue of inquiry I have had in parallel to this, bearing in mind the progress of this bill through the other place and this house, is: why has it taken so long to provide authority for the creation of a deputy commissioner function if indeed giving the CCC all the tools it needs in its toolkit to get on with the job is one of the primary objects of the bill? My assertion is that it is really not the principal objective of the government, although this is what the government is saying it is doing. The principal objective of the Attorney General, and through him, the government, is to change the appointment process, which will take place hereon in. In a question without notice on 15 June 2023 about the Corruption, Crime and Misconduct Amendment Bill 2023, I asked —

> (1) With whom did the drafters of the bill consult on the drafting of clause 6 of the bill, in particular proposed section 9C, which will have the effect of avoiding the previous safeguarding requirement

for majority and bipartisan agreement among the membership of the Joint Standing Committee on the Corruption and Crime Commission to facilitate the appointment of a proposed Corruption and Crime Commissioner?

(2) On whose instruction was this proposed section drafted?

It may well be that it was the Department of Justice conveying a view from the Attorney General through to the Parliamentary Counsel's Office to draft that proposed section of this bill in that particular way. I would like to understand whose fingerprints are on the aspects of the bill that relate solely and utterly to the creation of the deputy commissioner role because that seems to be a pretty uncontroversial, straightforward organisational amendment. However, the process of an appointment seems to be where the political tradecraft makes itself evident. The Attorney General, through the honourable parliamentary secretary, answered —

(1)–(2) As the member will recall, an identified flaw in the current appointment process is that it is susceptible to inappropriate manipulation, as a single member of the Joint Standing Committee on the Corruption and Crime Commission may indefinitely block the appointment of a candidate recommended by the nominating committee chaired by the Honourable Chief Justice of Western Australia. The government approved the drafting of a bill to address this flaw.

That is just part of the answer, but I think herein lies the problem: this bill is premised on a complete and utter inversion of the facts. Members will note that I am struggling to maintain the course of this argument within the standing orders' allowed parameters because I have not said that the bill is premised on a word beginning with an "L", and I am not calling anybody a liar—if members catch my drift.

Hon Sue Ellery: It took me a minute.

Hon TJORN SIBMA: That is okay; I have a few minutes left, Leader of the House.

It is an absolute mistruth to state that the previous appointment process was flawed in any way. It was not flawed, but it did not deliver the outcome that the then Premier or Attorney General wanted. Guess what? That process of going through a pool of three or so applicants or nominated persons was devised expressly for this purpose: so the preferred nominee of a Premier or Attorney General would not be just waved through. It was evidence of the process working as it was supposed to work, but it was very inconvenient, and that inconvenience provided the government with a political opportunity, which I have already described as a very scurrilous, demeaning, defamatory and incorrect process. I thought that the government had left it there but, unfortunately, it did not and this bill emerged.

I must say that, generally speaking, although we have opportunities and occasions in this house to trade fire with one another, the rule is that the quality of the debate and the decorum of the house are largely maintained to a degree that would do the other place and its membership benefit to learn from. I do not necessarily want to read back into *Hansard*, word for word, the second reading speech of Hon Paul Papalia, Minister for Police. He repeated slurs, allegations and lies, but he was never called up on it. He demeaned one of my colleagues in this place, Hon Peter Collier, especially, and through that he demeaned all the colleagues I presently serve with or previously served with in this Parliament. The fact is that a process of this Parliament—approved and agreed to by the Labor Party and the previous Labor government—somehow proved itself inconvenient to the then Premier's political purposes. Throughout this process, there have been murk, slurs and defamation. We have not taken up or issued concern notices on the defamation. The privileges conferred by this Parliament have been abused and traduced. The great irony for me is that, as a member of the Standing Committee on Procedure and Privileges, I was upholding the virtues that were daily being made a mockery of by the then Premier of this state, Mark McGowan, and that continue to be made a mockery of by the present state Attorney General, John Quigley. That explains why I do not go in for the full lionisation of the Attorney General: I think he still has to be held account for some historical sins.

That, my dear friend the parliamentary secretary, brings me to the conclusion of my contribution to the second reading debate. Let me reiterate: providing the Corruption and Crime Commission with the necessary organisational structure and additional roles, functions and capabilities is a very good idea. It is a long-held and long-remarked upon idea, and I am pleased that we are finally getting around to it, but I am mostly and egregiously displeased about the continuing political tinkering and silly games that the government, particularly through the Attorney General, continues to indulge in. It needs to be called out, and if there were any people of integrity here, they would call it out as well. We do not write out bipartisanship easily, but that is what the government will be doing upon the passage of the Corruption, Crime and Misconduct Amendment Bill 2023. It is completely unnecessary and avoidable, but that is the game that the government plays with every bill that comes from the Attorney General, in particular. It says one thing and absolutely does another thing, and hopes that no-one is looking too hard and that no-one will call it out.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [12.41 pm] — in reply: I thank the honourable member for his contribution to the second reading debate on the Corruption, Crime and

Misconduct Amendment Bill 2023. He gave me some forewarning of the nature of his contribution, and I think he will appreciate that, as is my practice with such matters, I will not jump into the political toing and froing but rather focus on the substance of the bill before us and some of the more technical aspects that the member has raised, particularly with regard to adjustments to the appointment process through the committee. I will try during my reply to provide answers to some of the questions the member has asked, but they may have to be dealt with in further detail during Committee of the Whole House, so if I miss any of those answers, it will not be because I do not want to answer them. The member asked some quite technical questions around funding arrangements and those sorts of things, and it might be easier if I have access to my advisers at the table; I will see what comes to me.

The member in his contribution to the debate yesterday talked about the absence of a requirement for bipartisanship in the commissioner appointment process being discordant, and he contrasted it with the appointment process for another important oversight position, the Auditor General. I think it is important here to set out the process for the appointment of the Auditor General; it is quite important to understand the difference between the two positions. Although the member has made his point, it will be better to set this out in as matter-of-fact way as we can.

The Auditor General appointment process requires consultation with the Standing Committee on Estimates and Financial Operations. I do not want to misrepresent the member, but I think he said in his contribution that it also requires the concurrence of the parliamentarians involved in that committee. However, as the member indicated during his speech, he was working from memory and did not have the luxury of having the legislation before him, so I will detail the provisions of the Auditor General Act 2006, which sets out the appointment process for the Auditor General.

That act requires the Treasurer to consult with the Public Accounts Committee and the Standing Committee on Estimates and Financial Operations—obviously, the Public Accounts Committee is a Legislative Assembly committee and the Standing Committee on Estimates and Financial Operations is a Legislative Council committee—as to the appropriate selection criteria before applications for the position are sought. Importantly, at that stage, the roles of those two committees do not relate to the individual applicants; they are about the selection criteria.

The act also requires the Treasurer to consult with the parliamentary leader of each political party that has party status. Off the top of my head, I think that means parties with more than five members within Parliament, so currently that would include the Liberal Party and the Nationals WA. The Treasurer must consult with the party leaders within the Parliament, then the Public Accounts Committee and the Standing Committee on Estimates and Financial Operations. However, the act does not set out either the form of any such consultation or the outcomes required from the consultation before the Treasurer can recommend the appointment by the Governor. There is no capacity in the appointment of the Auditor General for there to be an effective veto by either of those two committees, and it does not require the concurrence of the leaders of the major political parties. The veto part, if I could call it that, is the difference between the process we are talking about here. Obviously, consultation with party leaders is not a requirement under this act for the appointment of the Corruption and Crime Commissioner. Regardless of the views of the relevant committees or whether the party leaders agree with the appointment, the appointment may go ahead. Nothing in the act provides the committee and the party leaders with any approval power in relation to the appointment. That is similar to the situation with appointments for other oversight bodies in Western Australia. For instance, the Public Sector Management Act 1994 provides that the Minister for Public Sector Management shall consult the parliamentary leader of each party in the Parliament before recommending that the Governor appoint a person as a Public Sector Commissioner. Again, no requirements are specified as to the form of the consultation process or any particular outcomes that are required from the consultations. Parliamentary party leaders have no legislated approval power, bipartisan or otherwise, in relation to the appointment.

The Parliamentary Commissioner Act 1971 requires that the Parliamentary Commissioner for Administrative Investigations, more commonly known as the Ombudsman, be appointed by the Governor. There is no legislative requirement for any parliamentary input at all into the appointment of the Ombudsman. We do not accept the honourable member's point of view or suggestion that removing the bipartisanship requirement would make the appointment process for the Corruption and Crime Commissioner discordant or somehow out of kilter with the appointment process for other bodies. I think even with the amendment to the process that we are talking about, it will perhaps be of a higher standard of oversight than provided by those other two bodies. I think it is important to reiterate that it is consistent with the processes in New South Wales and Victoria. We can go into more detail on the appointment processes that apply in the other states. If I recall correctly, only Queensland requires a bipartisan and majority requirement for the appointment of its equivalent person to its anti-corruption-type body.

The member also asked: what is the identified problem with the current process, which requires bipartisan support of the Joint Standing Committee on the Corruption and Crime Commission? As I noted in my second reading speech, we see that the key problem caused by the bipartisanship support requirement is that it enables a single member of the committee, whether it be a member of the government or the opposition leader's party, to block an appointment indefinitely regardless of the views of the committee, regardless of the stringent nominating process

and, potentially, regardless of the outcome of consultation between the Premier and the Leader of the Opposition. We take the view that it is inappropriate that a single member's unilateral action or inaction could override the will of the committee and the appointment process. I note that there is an amendment relating to this matter standing in the honourable member's name on the supplementary notice paper. We will get to our position on that. The honourable member can appreciate that we are not going to support his amendment. It cuts across. We will address our reasons in more detail when that amendment is moved.

We need to understand, and it is important to put on the record, exactly what "bipartisanship" means. It is not a colloquial term; it is a technical term. It has a specific meaning under the act. "Bipartisanship" means the members of the Premier's political party who are on that committee and the members of the Leader of the Opposition's political party. If we think about the make-up of the current Joint Standing Committee on the Corruption and Crime Commission, we see that it is constituted of two Labor members, one Liberal member and one Nationals WA member. To receive bipartisan support, both Labor members would have to agree with or approve the appointment, and the National Party member would have to agree because, as we know, the Leader of the Opposition is Shane Love, and he is a member of the National Party. I think the concept of bipartisanship, which is commonly understood to be concurrence between, in this case, a Labor government and an opposition, is not quite the same as what is technically required. For example, the Liberal Party member in that role may not agree, but there could still be a majority. If the two Labor Party and one Nationals WA members agree, then they have majority and bipartisanship, and what the Liberal member says could be of no consequence. Of course, that will still be the case, with respect, but we are proposing that three of the four would have to exercise their veto power, and that would leave a single member out if one member was inclined to not exercise their veto power. It kind of flips it a little bit.

If we want to talk about it in technical terms, again, this is about how a future joint standing committee might be constituted. Of course, there is a possibility that there may not be multiple members of a political party on that committee. All four members could be from different political parties. It could be the case that the committee of a future Parliament might constitute one Labor, one Liberal, one National and one Greens member, for whatever reason, or a crossbencher; therefore, the import of the bipartisanship would effectively change as well. We are trying to have a simplified system in which that committee would exercise a positive act in refusing or vetoing a particular person, rather than the current arrangements.

The opposition does not agree with that; it has its reasons. I do not think we are ever going to have a meeting of minds on that. I do not accept that it would politicise the process any more than it is currently politicised. I think there is an argument that once we get members of Parliament—politicians—involved in any decision-making of this kind, there will always be a political element to it, but, going forward, I do not think it would be inherently more politicised than any other process. As I said, we have picked up the model here that applies in other jurisdictions.

I think we also must understand that the last part of the recruitment process is the act of the joint standing committee. Members of that committee are not involved in the actual recruitment and selection of candidates; they are simply there as a matter of oversight to exercise their role at that last point. We have the nominating committee and the esteemed members who are part of that; the Premier will then make a choice out of the three names submitted to the Premier and forward that name to the joint standing committee.

The member also expressed concerns about funding and said that he had yet to see a submission to fund the deputy commissioner role. In a briefing, he asked about the likely costs of the position. Subsequent to the briefing, he was provided with information on the salary range of the position, which will vary depending on the immediate previous role of the appointee and other incidentals that are likely to be incurred, such as a vehicle and the employment of an assistant. I can confirm that the salary determination for the deputy commissioner is set out in the bill at clause 26, and we can unpack that a little more if and when we get to that stage. The Corruption and Crime Commission may make a funding submission for such a position in the future should this bill be enacted; however, of course, it is not possible for such funding to be provided unless and until that happens, which is why the honourable member has not seen any such funding request to date.

I have some additional notes here; I will check them. The member also asked about the origin of the idea to establish the deputy commissioner position. I have noted in my second reading speech that the suggestion that such a position might be required, depending on the workload of the commissioner, was first raised by the Standing Committee on Legislation. It was also raised in a number of reports by the joint standing committee and during the course of consultation between the department and the commission during the project to consider reforms for the modernisation of the act. I think I have some more detailed notes here, and I think it is important to go through that to really set the scene.

I am now putting the issue of the appointments process to one side and talking about the deputy commissioner position. To set the scene of how it is we came here—it is a long story, to be frank. Section 185(2) of the Corruption, Crime and Misconduct Act 2003 provides that certain crucial powers and duties, such as the power to

conduct examinations and make exceptional powers findings, must be exercised personally by the commissioner to ensure accountability in their exercise.

During the passage of the then bill in 2003, the Standing Committee on Legislation proposed that consideration be given to the establishment of a position to whom the commissioner may delegate some of the powers invested in him or her as the workload of the Corruption and Crime Commission grew. It is important to understand conceptually that the commissioner cannot delegate any of those powers. It may be different for other comparable positions. The only way that we can assist the commissioner is with the appointment of an acting commissioner, which has generally been accepted as a suboptimal response. This proposal was further considered in the statutory review of the act in 2008, which was conducted by Gail Archer, SC, as she was then. Her review noted the significant growth in the commissioner's workload since 2003 and recommended that the act be amended to allow for the appointment of a deputy commissioner who could exercise the functions of the office of the commissioner at the direction of the commissioner and who could act in the absence of the commissioner. The call for a deputy commissioner has been repeatedly echoed by the Joint Standing Committee on the Corruption and Crime Commission in 2011, 2012, 2014, 2020 and, most recently, 2021. Although the joint standing committee reports often refer to such a position as an assistant commissioner, it is clear from the descriptions within the reports that the term also encompassed what the Archer review referred to as deputy commissioners; that is, persons who are able to exercise the functions of the commissioner as well as act as the commissioner in his or her absence.

The establishment of the role of deputy commissioner in this bill will facilitate impartial decision-making within the CCC and help avoid perceptions of bias. Hon Peter Martino observed that in the exercise of the CCC's unexplained wealth function, it is highly desirable that the commissioner who is considering an application for an examination order has not been involved in any earlier decisions about the use of the CCC's investigative powers in the same matter. In this way, a decision about whether to make an examination order will be made impartially and will not be inadvertently influenced by earlier involvement in the investigation. This comes to Hon Tjorn Sibma's questions about the potential role for the deputy commissioner in the unexplained wealth function. Again, we can unpack that more during the committee stage. To this end, the Martino review recommended that there be at least two people who can concurrently exercise the power of the commissioner to ensure that decisions made in the exercise of unexplained wealth functions are made impartially. Although the Martino review focused on the CCC's unexplained wealth powers in particular, similar considerations should be given to the CCC's exercise of the serious misconduct functions to ensure impartial decision-making and accountability. Accordingly, this bill provides for a deputy commissioner to assist in the ongoing management of the workload of the commission and support impartial decision-making.

The gestation of this bill has been long. Hon Tjorn Sibma indicated that the opposition alliance has no issue with the creation of the deputy position. It has been sensibly recommended. It is very hard to pin down the event that precipitated the creation of a deputy commissioner position because this has been so well recommended and advocated for that it is like its time has come. In his second reading contribution, Hon Tjorn Sibma sought an explanation of why it has taken so long to debate this bill. I cannot really give an explanation of that from the time that the legislation committee made its suggestion in 2003. Sometimes these things take a long time. We are here now; the bill is before us.

The passage of this bill, subject to the house exercising its role, will precipitate the creation of that position. It is obviously the government's intention to recruit a person to fill that position. We are not providing for it in the bill just to have it there. By its very nature, the recruitment process in this type of area can be a long one. We will not necessarily fill the position in the short term, but there is obviously a desire to get on with it. I do not have anything more to add.

Sitting suspended from 12.59 to 2.00 pm

Hon MATTHEW SWINBOURN: I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon TJORN SIBMA: I commend the parliamentary secretary for moving from second gear into third gear so swiftly!

Concerning some of the elements around this bill, I ask the parliamentary secretary what the overall time line was for its formulation. I ask him to do this without betraying any issues that contravene the principle of cabinet confidentiality. However, as I have already read into the record—because they are on the public record—it was very clear that work has been underway to generate what has eventuated in this bill at least since June 2021, when the initial Mr McKechnie amendment to the Corruption, Crime and Misconduct Act was debated and follow-up references were made to the engagement that the Joint Standing Committee on the Corruption and Crime Commission had had with both the commissioner and the acting commissioner of the CCC. Its origins were from at least two sources. The first was the fixation that the Attorney General has had for some time about the appointment process, and the second was the necessity of creating a position that was eventually settled on and framed as the deputy commissioner. A little work was done after that, and that work was discussed in a public forum going back almost two and a half to three years. Over the course of the three years, before this bill was introduced into the other place in June last year, who was consulted? Who led the consultation? What feedback, if any, was conveyed throughout that consultation process? How would I find evidence of that consultation being listened to, enacted and given life to in this bill?

H**on MATTHEW SWINBOURN**: I think it is important to put the time line for its development into a broader context. A body of work has been undertaken on the substantive Corruption, Crime and Misconduct Act. I think that is a matter of public record. The government has indicated that it is working on and contemplating other amendments to that act, which it has not yet brought to Parliament. I am told that is a complex piece of work. Given that there is an impetus, as I reflected on in my second reading reply, for the development of the deputy commissioner's role that goes as far back as the 2003 debates on the original bill, we think it is important to proceed with this matter.

I refer to the comments made by Justice Martino and the Corruption and Crime Commissioner. Hon Tjorn Sibma in his second reading contribution brought to the fore the commissioner's views about the necessity of a deputy-type role. We proceeded with that part of reform to the act by bringing that measure in now. We will probably not meet minds on this, but that also gave rise to the issue of the appointment process. The deputy commissioner's appointment process is identical to that of the commissioner, except that the nominating commission must consult the commissioner about names for the deputy position. We can get into that when we deal with that part of the bill and also consider the member's questions about why that is. We are addressing what we see to be the deficiencies of the current process for the commissioner by amending it together with this one, because the process for the deputy commissioner and the commissioner is essentially the same.

Again, my understanding is that this is in the context of recommendations to introduce a deputy commissioner role from the Gail Archer report and from the Joint Standing Committee on the Corruption and Crime Commission on a number of occasions. It says here that the Department of Justice consulted the CCC itself on the preparation of the bill currently before us. It also worked with the Parliamentary Inspector of the Corruption and Crime Commission and the Public Sector Commissioner and provided them with progressive iterations of the bill during the drafting process. As the member can imagine, that consultation was conducted on a confidential basis, given the nature of the positions involved, so I am not in a position to say that X issue was raised and that the government has responded with Y. We sought their feedback on the development of the bill, and they provided it, and to the extent that we can, we believe we have addressed it in the bill. However, I cannot get into any more detail than that because of the confidential nature of the consultations. Obviously, the Corruption and Crime Commissioner is an independent, statutory office holder. He can express his own views as he likes, as can the parliamentary inspector. I do not think the Public Sector Commissioner would do such a thing, given the nature of her role.

Hon TJORN SIBMA: If I hear the parliamentary secretary correctly, consultation about the bill and how it might be drafted was limited to interactions between the Department of Justice and three bodies—that is, the Corruption and Crime Commission, the Parliamentary Inspector of the Corruption and Crime Commission and the Public Sector Commissioner. Can I understand what the purpose of the interaction or consultation with the Public Sector Commissioner might have been? I understand and accept that the parliamentary secretary is not at liberty to, and nor should he, provide detail about the substance of that consultation, but can he identify why the Public Sector Commissioner's view was taken on the suitability or appropriateness of the instrument that we are giving consideration to now?

Hon MATTHEW SWINBOURN: The consultation with the PSC was to provide her with draft copies of the bill, not to determine whether there was a desirable policy outcome. It was about some of the technical aspects of creating a new statutory office that the PSC would obviously have some interaction with, including on things like remuneration and what is appropriate. That was the purpose of sharing the iterations of the bill with the PSC. It was not to say, "Do you think it is a good idea that we proceed down the path of appointing a deputy commissioner or changing the nomination and endorsement process in that regard?"

Hon TJORN SIBMA: That is fair. It is fair to categorise the consultation as a confidential version of the draft bill being provided to the Public Sector Commissioner, with perhaps an explanation of the purpose of the bill and

a request that the office of the Public Sector Commissioner read it and provide some commentary on those aspects that the parliamentary secretary has identified. That is fine, because that seems to be a reasonable office to consult, now that the parliamentary secretary has put it that way. Can the parliamentary secretary confirm when—it does not need to be a specific date—the Department of Justice provided the Public Sector Commissioner with a draft version of the bill?

Hon MATTHEW SWINBOURN: In terms of the initial description that Hon Tjorn Sibma gave about the purpose, it was to get feedback from the perspective of the Public Sector Commission on technical matters in the draft. The honourable member referred to a letter or something like that. I cannot say what form it took, but I am advised that it would have happened in about the middle of 2022. I cannot be more specific about the date.

Hon TJORN SIBMA: That is fine; I thank the parliamentary secretary. I presume that the other two parties that were consulted—to the degree that they got a draft copy of the bill and a request that relevant aspects be the focus of their attention for possible comment and amendment, if necessary—were the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission. Is it reasonable for me to assume that the CCC and the parliamentary inspector were provided with a copy of the draft bill around the same time, the middle of 2022?

Hon MATTHEW SWINBOURN: Around that time, member; I cannot be more specific than that. I have already given the broader context, in that there is a larger body of work happening with this legislation. The CCC is the agency that is the subject of the act, so, in terms of engagement, there has been more detailed and ongoing work with the CCC. There is a little bit of cross-pollination, but it was in and around that period.

Hon TJORN SIBMA: I think that is a reasonable assumption. I understand the distinction—that there was an overall conversation about certain objectives and outcomes and then a conversation in parallel, although I am not sure whereabouts in the time line, about the specifics of the bill. I understand that. Would it be fair for me to assume that it was determined appropriate for the Department of Justice to consult with those three organisations because, to some degree, they have skin in the game in terms of the potential outcomes following the passage of this bill or will be involved in the delivery or oversight of the outcomes of this bill in some way?

The CHAIR: Parliamentary secretary.

Hon MATTHEW SWINBOURN: Thank you, deputy chair. Sorry, you are not a deputy chair; I will take that back, chair. I will get it right! Do you prefer to be called "chairman"?

The CHAIR: Chair of Committees.

Hon MATTHEW SWINBOURN: Thank you, Chair of Committees.

I do not think we are quite comfortable with Hon Tjorn Sibma's use of the phrase "skin in the game" because it might chuck everyone in the same basket. Obviously, with respect to the PSC, it is quite technical. Its primary concern is not the broader policy considerations and internal operations of the CCC; it is the appointment of statutory officeholders.

Obviously, this bill governs the Corruption and Crime Commission's activities and sets the parameters of what it does, so, absolutely, it has skin in the game. I think that is appropriate. I think it would be fair to say that the parliamentary inspector has an interest in what generally happens with the CCC, but some of the issues here probably go beyond what they are truly interested in their role as the Parliamentary Inspector of the Corruption and Crime Commission. I do not want to say that it was provided as a courtesy. It was more about being judicious. I think we will have an explanation once I know where the member's question is going.

Hon TJORN SIBMA: Do not worry. The parliamentary secretary would not be the first to express some sort of alarm or discomfiture at the turns of phrase that I turn out every now and again. If it comforts him in any way, he is not the only one to offend against the Chair of Committees today; I parked in his car bay! Getting the naughty boy chat is not something that is unusual for me. I have probably committed a bigger sin against the Chair of Committees today than the parliamentary secretary has by getting his title confused. I find it a little bit cumbersome.

The parliamentary secretary referred to a word that we both agree is important and relevant, and that is the word courtesy. I thought his description of why these organisations would take an interest in the draft bill was very fairly expressed. I think the Parliament also takes an interest in these sorts of matters. The Parliament has obviously taken a very strong interest in recent history in the appointment process of the commissioner of the CCC.

I presume that the Department of Justice provided courtesy drafts of the bill to those three organisations and no other organisation or individual other than the Attorney General and his office.

Hon MATTHEW SWINBOURN: That is correct.

Hon TJORN SIBMA: I take offence to this. I just wish to confirm that not even a courtesy copy was provided to the Joint Standing Committee on the Corruption and Crime Commission?

Hon Matthew Swinbourn: No, member.

Hon TJORN SIBMA: Was there not a courtesy briefing between the Attorney General and the Leader of the Opposition on this bill?

Hon MATTHEW SWINBOURN: No—not before the bill put before Parliament.

Hon TJORN SIBMA: I think this is absolutely clearly indicative and, in fact, the normal practice engaged upon by the Attorney General in his consideration of what consultation constitutes. We saw that most recently with the Electoral Amendment (Finance and Other Matters) Bill 2023 last year that consultation was effectively a briefing on the bill after the bill had been introduced. That is a matter of record, but I want to put it on the record again, because when I hear the word consultation uttered, especially by the Attorney General, I get a little worried. This is not criticism of the parliamentary secretary or the fine people at the table with him. That is not my question. My question is about comparable appointment processes as they apply in other Australian jurisdictions.

I think the argument being made is that the government's proposal is consistent with what occurs in New South Wales and perhaps Victoria. However, the present appointment process, particularly the specific need to involve bipartisan consultation or support, exists in Queensland. Does the parliamentary secretary have a document that summarises the different appointment processes in the different jurisdictions?

Hon MATTHEW SWINBOURN: I do not have a document as such, but it is quite straightforward. I will tell the member what it is. In New South Wales and Victoria, the proposed appointment proceeds unless a majority of the parliamentary committee vetoes the appointment. I think I indicated that in my second reading reply. In Queensland, it requires the bipartisan and majority support of the parliamentary committee, which is similar to the current process. In South Australia, the Attorney-General must advertise the position throughout Australia and obtain approval and not receive within seven days written notice that the Statutory Officers Committee does not approve the appointment. In Tasmania, the Integrity Commission is headed by a chief commissioner who is appointed by the Governor on the advice of the Attorney-General. Before a person is appointed as chief commissioner, the Attorney-General is to consult with the Joint Standing Committee on Integrity. The form of the consultation is not set out in legislation and there is no prescribed mechanism for either veto or approval by the committee. In the two smaller jurisdictions of the Australian Capital Territory and the Northern Territory, both territories have a unicameral Parliament, and the relevant legislation makes provision for all members to vote on the proposed appointment. In the ACT, a person may be appointed as commissioner only if the Parliament approves the appointment by a resolution passed with a two-thirds majority. In the Northern Territory, the Chief Minister must table the proposed appointment, which would then be considered and voted on by the Parliament.

Hon TJORN SIBMA: Thank you, parliamentary secretary. I will identify that the New South Wales and Victorian —

Hon Matthew Swinbourn: It is just a majority. That is what we are doing here.

Hon TJORN SIBMA: Does the parliamentary secretary happen to know the size of those committees and whether they comprise either an odd or even number of parliamentarians?

Hon MATTHEW SWINBOURN: We do not have access to that. It would obviously be a matter of public record under their standing orders or in their resolutions, but we do not know at the table what the size of those particular committees is.

Hon TJORN SIBMA: Thank you. To be fair to the parliamentary secretary, I think he addressed this next matter in his second reading reply. We found ourselves in a particularly vexatious situation some years back. The Attorney General describes that as reflecting a flawed process, but others are of the view that this is the way the process was designed to work. In my contribution to the second reading debate, I acknowledged that perhaps some of the trouble we have encountered owes a little to the fact that the body of the Joint Standing Committee on the Corruption and Crime Commission comprises only four members. That is why I also asked about the process of consultation and whether parliamentary officers or the members of the Joint Standing Committee on the CCC might have seen a copy of this bill.

If the government and the Attorney General in particular were so wrought by what he considered to be a flawed appointment process resulting from the legislation, I thought that he would also have contemplated that this was an opportunity for the Parliament to amend its standing orders and either increase or decrease—I would say increase—the membership of this committee to become a five-member committee. That would be akin to the Standing Committee on Procedure and Privileges, but obviously that has not occurred.

Can I understand whether any consideration was given to other methodologies or opportunities to amend the so-called flawed process, or was this the one that was settled on? Whose brainchild was it? Did it emanate from the Department of Justice or did it come from the attorney's office?

Hon MATTHEW SWINBOURN: Without getting into stuff that is subject to cabinet confidentiality—the formulation of these sorts of bills is covered by that process—it is within the context of the broader review of the Corruption, Crime and Misconduct Act, that stuff going on and the impetus to bring about the deputy commissioner's role. When it came to this process, an evaluation was done of what other jurisdictions were doing and what we do with other similar statutory officeholder positions—we have talked about the positions of the Ombudsman, the Auditor General and the Public Sector Commissioner in regard to that sort of stuff. These things do not just land. Hon Tjorn Sibma has been in this position himself, of course. There is obviously some work that happens. We cannot necessarily point the finger and say something was this person's bright idea, although sometimes that happens. As I said, there was work done. Research was undertaken by the Department of Justice and there would have been propositions for a recommended path. This is what we have landed on.

Coming back to the member's point on the joint standing committee and whether consideration is being given to changing the standing orders, to be fair, that is a matter for the Parliament rather than the Department of Justice or executive government.

Hon Tjorn Sibma: I appreciate the distinction. To add to the question, has the Attorney given that consideration?

Hon MATTHEW SWINBOURN: It would be fair to say in the big scheme of things that thought has been given to that, but that is not what we landed on in relation to these things. To be quite frank, it is still open to the Parliament to do that. The privileges and procedures committees of both houses would first look at that. I am not quite sure how that works with the joint standing committee and who would precipitate that. There would have to be agreement between the houses and conferencing between the different bits and pieces to make that all happens. I am not even sure it is a less complicated process to go through that earnestly and not just barge it through Parliament. Again, we are focused here on what we want to do with the appointments process for the commissioner, and following that, the deputy commissioner.

Hon TJORN SIBMA: I would like to be reminded of the government's definition of "bipartisan". In his reply to the second reading debate, I think the parliamentary secretary said something along the lines of the word "bipartisan", or the concept of bipartisanship, as it relates to the present bill not being what he assumes that I assume it means.

For my benefit, can the parliamentary secretary provide his working definition and explain why it is considered by the Attorney General to be a superfluous or disposable concept in relation to the appointment of a commissioner and a deputy commissioner to the Corruption and Crime Commission?

Hon MATTHEW SWINBOURN: I take the member to section 3 of the current act, which is "Terms used; relationship with other Acts". It states —

> **bipartisan support** means the support of —
>
> (a) members of the Standing Committee who are members of the party of which the Premier is a member; and
>
> (b) members of the Standing Committee who are members of the party of which the Leader of the Opposition is a member;

To answer the member's question about why we think we should not proceed with bipartisanship in that regard, we could contemplate circumstances in which there is no member from an opposition party in the committee. It is possible but not necessarily probable, from a technical point of view. The constitution of the committee in future Parliaments may mean there is only one member from each of those categories. That is probably not something that the member will agree with, but crossbenchers may have the view that the requirement for bipartisan support devalues and discounts the contribution of members of the committee who are not from the same party as the Premier or the Leader of the Opposition. I think the member made the point that that would mean that the current views of the Liberal Party members of the committee do not fall into the definition of bipartisan support; however, clearly, they could constitute part of the majority.

Having said that, given the current constitution is two Labor members, one National and one Liberal, the views of the Liberal member are effectively nugatory because if there is bipartisan support between two Labor members and the National Party member, then there is majority support as well. We are advocating for a less technical approach in this bill, but in our view, it does not devalue the important work of the committee. I do not think that what we are doing is particularly novel—for the want of a better phrase. We have kind of stolen the homework of New South Wales and Victoria in the ways that they deal with their committees. We are not aware of any great controversy about their processes. I accept that the member does not agree with that and the position of the opposition alliance

is to not agree to that; however, as I said, I do not think that what we are doing here is a radical departure from the current role of the Joint Standing Committee on the Corruption and Crime Commission in the appointment process.

Hon TJORN SIBMA: If we accept the Attorney General's proposition that the present process is demonstrably flawed because the original request or attempt to reappoint Mr McKechnie to serve another term as Corruption and Crime Commissioner was thwarted through the operation of the statute, what guarantee is there in the current bill that there will not be a flaw?

Is the flaw, really, that the government did not get its way—I think that is absolutely the case—or is the flaw that we had this process whereby the government required people not of the government's party to agree to the suitability of the appointment of an individual? How should we rationally accept that the model provided here by the Attorney is flawless? Is it flawless? Is it perfect? Will it deliver more easily and more readily a preferred candidate or will it not?

Hon MATTHEW SWINBOURN: I will quibble with the "demonstrably flawed" part of what the member said. I do not have access to all the things that the Attorney General said on these matters, but if I can come to what we say is the nub of our argument about the legislation being demonstrably flawed, this relates to the fact that under the current model, one member of the committee can frustrate the whole process. The majority of the committee could support a candidate and one member of the committee could not, and then there is no outcome because the committee cannot resolve the matter because one person's view overrides the views of the rest of the committee. If that is the desired outcome, the test for the committee should be unanimous support for the person rather than having the capacity for a single person to override the decision; it kind of cuts against each other. That is what we are trying to address here.

We are certainly not turning the committee into a rubberstamp on this matter. It will mean that three members of the four-person committee, as it is currently constituted, will have to positively exercise their right of veto and, in doing so, three of the four members are, therefore, sending their view back to the Premier of the day that the person who has been put forward is unacceptable to the committee, and the committee is bound by that particular decision—as opposed to what we say is the likely outcome whereby a single person or potentially more than one person overrides the decision. We do not absolutely know this because the committee does not report on how it makes its decisions, but, by deduction, I am saying that it was a single person in the last case. But I do not know because I am not a member of the Joint Standing Committee on the Corruption and Crime Commission.

Hon Nick Goiran: Well, we know that that's not the case because the member for Kalamunda used parliamentary privilege to breach committee confidentiality and tell us exactly —

Hon MATTHEW SWINBOURN: How he voted.

Hon Nick Goiran: No, not how he voted; he decided to, essentially, name and shame Hon Jim Chown and Hon Alison Xamon, and it was outrageous when he did that at the time.

Hon MATTHEW SWINBOURN: I do not want to get into the ins and outs of that issue. The point is that we are trying to deal with what we say is the existing demonstrable flaw in the process, and my point is that the issue still exists that one person on that committee can frustrate the appointment process. That is where we are coming from. We are saying that the model of the exercise of a veto that we are now pushing to adopt—I was going to say void but I have my v's around the wrong way—is a positive act by the members of the committee. We also recognise that we are attaching that positive act to a time frame, which is 14 days plus the possibility of an additional 30 days; therefore, the matter could be dealt with in that period.

I understand that the opposition does not agree with that and no amount of talk from me is going to change its position. I am just explaining the government's position.

Hon TJORN SIBMA: I actually thought the interjection from Hon Nick Goiran was very helpful because it helps to reinforce that, effectively, the whole construction and argument taken on by the Attorney General is based on a falsehood and a misrepresentation of the facts. I understand, as well, that in debate in the other chamber, a suggestion was made by the Attorney General that one of those members of the then Joint Standing Committee on the Corruption and Crime Commission was under investigation themselves. Is that true?

Hon MATTHEW SWINBOURN: I am not sure what the Attorney General said in the other place. I do not have the *Hansard* at hand right now. I am sure that the member could take me to it if he wished, but from my point of view, getting into those particular things does not carry the debate any further. Whether or not the CCC was investigating anybody is not knowable because we do not know to what degree the CCC is conducting any investigation. I do not want to cast any idea, from my point of view, and at this table right now, about whether the CCC was investigating any members of that committee, any members of this chamber or anything else like that. The CCC will report back to Parliament about its activities when it is appropriate. Investigating does not mean that there has been or will be a finding against the act of corruption or misconduct. It is a process, so I do not know. I am not saying.

Hon TJORN SIBMA: It is good to be cautious when dealing with these kinds of issues. I only wish that the attorney was as judicious as the parliamentary secretary, because he has a track record of being very creative with the facts—very creative indeed.

Another limb to the argument in defence that this is somehow a flawed process is that this single member can derail an appointment. Is it true that under this bill the majority of the committee will be required to exercise a veto?

Hon Matthew Swinbourn: Yes.

Hon TJORN SIBMA: Would it be a flawed process if we had a 2–2 split on the appropriateness of the appointment of an individual? If I am to be consistent with the attorney's logic, that would appear to be the case, because according to the Attorney General—I think this is the most generous and honest way one could construct his argument—it is a flaw when the government does not get its person. What would happen in the event that committee opinion is tied in relation to suitability of a proposed candidate for the position of either the deputy commissioner or the commissioner? Is there a potential flaw, is there the potential for an impasse and what action would result?

Hon MATTHEW SWINBOURN: The first thing to put on the record is that the name that is put forward by the Premier —

Hon Nick Goiran: The three names.

Hon MATTHEW SWINBOURN: No, the Premier puts forward only one name.

Hon Nick Goiran: It's three.

Hon MATTHEW SWINBOURN: The Premier receives three names from the nominating committee and then forwards one of those names.

Hon Nick Goiran: They've always forwarded three names and provided one recommendation, unless the practice has changed.

Hon Tjorn Sibma: Are you proposing to change that practice?

Hon MATTHEW SWINBOURN: No, the practice has not been changed.

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: Unlike the honourable member, I have not had the privilege of sitting on the joint standing committee, so I do not have any insight into what happens internally.

Hon Nick Goiran: Eight long years.

Hon MATTHEW SWINBOURN: I am not sure what Hon Nick Goiran did to be punished in that way, but I am sure he deserved every one of those eight years!

The point I am trying to make is that the names that are furnished to the committee have been through a vetting process. First, they have to meet certain criteria to be suitable to apply in the first place—being eligible to be a Supreme Court judge in one of the states or territories of Australia. Second, they must have been through the nominating committee that is constituted by the Chief Justice of the Supreme Court, the Chief Judge of the District Court and a selected member of the community, usually of some standing. The member opposite can cast whatever shade he likes on the role of the Premier of the day in a particular appointment process, but it is the role of the Premier to put forward his or her preferred nominee. The committee's role is one of oversight, not selection, if I can put it that way. The committee is there to be the last step if there is a good reason, I would hope, to not appoint a particular person.

We were all here in 2021 when we debated the five clauses of the bill that named the current incumbent as the CCC commissioner. We ventilated a lot of these arguments at that time. I am not sure I can add anything further to the merits or otherwise of those arguments in this debate to take this matter any further than we can. One of the questions Hon Tjorn Sibma asked, which I think deserves an answer, was in relation to a 2–2 split. Under the current arrangement, it would effectively mean that majority support was not obtained and, therefore, approval did not happen. However, because it requires a majority veto, the 2–2 split proposed by the government would not have the consequence of blocking the progression of the nominee because a majority is required to exercise the veto—three of the four to exercise that veto for it to take effect. It changes things—it flips it around—so it is possible for the nominee to proceed to be endorsed by the committee with a 2–2 split.

Hon TJORN SIBMA: I want to afford the parliamentary secretary the courtesy of drawing to his attention a contribution in *Hansard* by the Attorney General on 29 August 2023 on why we were debating the bill to begin with. The Attorney General said —

> What has brought us to this point is that which the Leader of the Opposition and the member for Cottesloe deny over and over; that is, the reappointment of the Honourable John McKechnie, KC, was stymied by a corrupt Liberal, Jim Chown, who was on the standing committee and under investigation.

As the parliamentary secretary has said, we could not possibly know that for good reason, but how is it that the Attorney seemed to know that?

Hon MATTHEW SWINBOURN: Thank you. I cannot take it any further. The member can make the points he wants to make, but I cannot explain it, any more than any of us could get into the mind of the Attorney General and explain it. It is a matter for the Attorney General and for opposition members in the other place to pursue if they so desire, but I cannot take it any further in this debate because the member is asking me to speculate.

Hon TJORN SIBMA: I am not asking the parliamentary secretary to speculate. I just want to put on the record that it is one of two interpretations. Either the Attorney General completely made it up and used it as the justification for accepting the bill that we are now contemplating or he was telling the truth but could have been made aware of this only through some unlawful or inappropriate means. Which is it? This is not a question for the parliamentary secretary to answer; it is an answer that the Attorney General should give. Frankly, either he is lying about it or information that he should not know about was made available to him. Why should he not know? It is because there needs to be absolute independence and separation between the chief law officer and the Corruption and Crime Commission. As I discovered and reported—I am a member of the Standing Committee on Procedure and Privileges and I referred to its sixty-first report yesterday—there seemed to be some interesting interaction between the Attorney General and the CCC that we would describe, at a minimum, as inappropriate. That absolutely colours our interpretation of the motivations for introducing this bill and our response to it. Despite all that, we are big enough to recognise that the important aspect of the bill we are dealing with is allowing the creation of the role of deputy commissioner so the CCC can go about its business and do its job properly.

As the parliamentary secretary is a person of great integrity and capacity, I am sorry he has to listen to this harangue, but it encapsulates exactly why we are so concerned. At the end of that, my question is: can anybody explain why the Attorney General gave the description or explanation in the way he did in the other place in August last year?

Hon MATTHEW SWINBOURN: I cannot take it any further. I think the member's point was more rhetorical in some respects, but he cannot possibly think that we can answer what he just asked.

Hon NICK GOIRAN: I will take this up. If we do not take it up now, perhaps members opposite could indicate to me when would be a more appropriate time to take it up. As I understand from Hon Tjorn Sibma, during debate on this bill in the other place prior to its passage here, the Attorney General of Western Australia accused a former member of this house of corruption and used that as the justification for the bill. At the very least, he implied that that member stymied the appointment of a CCC commissioner and that is why this bill is necessary. If this matter's genesis is alleged corruption by a former member of the Legislative Council, I would like to know about it, and I imagine that the other 35 members of the Legislative Council would also like to know about the alleged corruption of the former member. Saying that on the public record with the protection of parliamentary privilege is no small allegation for the Attorney General of Western Australia to make. As far as I know, Hon John Quigley has not made the same remarks outside the chamber without the protection of parliamentary privilege, but he very bravely decided to do so in the Legislative Assembly during debate on this bill.

His long-suffering, hardworking parliamentary secretary represents him in debate on this bill and on other matters in this chamber. Hon Tjorn Sibma, other members of this place and I do not have the luxury to cross-examine Hon John Quigley about his allegations of corruption against a former member of the Legislative Council. The only person to whom we can pose these questions is Hon Matthew Swinbourn, in his capacity as Parliamentary Secretary to the Attorney General. I share Hon Tjorn Sibma's sentiment: we sympathise with Hon Matthew Swinbourn for having to fulfil this role; he has this duty to perform. We have no options other than to either drop this matter completely and pretend that the Attorney General never said what he said or pose these questions and ascertain the veracity of these claims. To be very clear, if it is the case that a former member of the Legislative Council has acted corruptly, I distance myself entirely from that member, and I could confidently say the same for my parliamentary colleagues and all members in this place. We would all distance ourselves entirely from any former member of the Legislative Council who was found to have acted corruptly. That is not the point here; the point is that the Attorney General has clearly said that this is the case. We want to know whether there has, indeed, been an investigation or whether that claim is a complete fabrication by the Attorney General.

Let us remember that this is a minister of the Crown and former—perhaps still practising—legal practitioner with form. There is a pattern of behaviour with this member of Parliament. He has a long history of flagrant exaggeration. He is widely regarded—sometimes in a positive light—as being a "flamboyant" member of Parliament. There is nothing wrong with being a flamboyant member of Parliament, and I am sure he is not the only one to have fallen into the trap of exaggeration from time to time; it is an easy trap for any of us to fall into. But to assert that a former member of this house, who currently has no capacity to defend himself with parliamentary privilege, has been corrupt and had been under investigation by the Corruption and Crime Commission is a serious allegation.

I ask the parliamentary secretary—rhetorically, at this time—whether it would be okay for me to simply say the same about any of the honourable members opposite? Would any members of the WA Labor Party recoil if I were to say that one of them or one of their colleagues had been under investigation by the CCC because of their corrupt behaviour? This house, which is currently in order, would be in uproar the moment I did so, and I could understand why. If that were to be the reaction of members opposite if Hon Tjorn Sibma or I were to make such a claim, why is it okay for the Attorney General, who is responsible for this bill, to do exactly that in the other place and for us to be expected to just live with it? It is not okay. I ask: does the parliamentary secretary have any information presently before him that could verify whether Hon Jim Chown was under investigation by the CCC, as asserted by the Attorney General?

Hon MATTHEW SWINBOURN: I will make some short comments about this line of inquiry from the opposition, particularly given the high esteem in which they hold the privileges and rights of Parliament. The matters raised by Hon Nick Goiran about the conduct of the Attorney General are matters for the Legislative Assembly. It is with the Legislative Assembly's Procedure and Privileges Committee, and it is a matter for the member's colleagues in the other place to pursue directly with that committee, if they wish to make accusations of the kind that Hon Nick Goiran is making here. It is not for me or any of us to impugn the Attorney General in respect of that relationship in the other place. That is a matter for the Legislative Assembly. We would guard jealously from the Legislative Assembly the rights of our own members in respect of matters of privilege and any allegations of impropriety on their part in the performance of their functions. I do not intend to get into the ins and outs of the Attorney General's comments in the other place insofar as members opposite have raised the matter. I have already indicated to Hon Tjorn Sibma the degree of my knowledge of the matters to which the honourable member has referred and I cannot take this matter any further than that. He is entitled to make any rhetorical points he wishes to make on those things, but I am in no position to take it further.

The DEPUTY CHAIR (Hon Stephen Pratt): Before I give the Leader of the Opposition the call, I have been listening to the line of questioning and it is starting to stray from the provisions of the bill, and I ask that members please bring it back to the provisions of the bill.

Hon PETER COLLIER: Deputy Chair, I take your point and I take your counsel and I will adhere to that. But I have to say something on this; I just have to. I was the recipient of comments from the Attorney General and the Premier over a period of time on this issue. It became personal.

Hon Darren West interjected.

Hon PETER COLLIER: You are not the Presiding Officer, thank you! No, not the parliamentary secretary, sorry; I am talking about the member behind him.

Hon Darren West: You said you'd take counsel and you're not taking counsel.

Hon PETER COLLIER: Quite frankly, honourable member, you are one of the people who should not be opening their mouth in relation to this issue because you made similar claims in this chamber.

I want to put it on the public record. The parliamentary secretary is right in the point that he has raised. I have a great deal of respect for him, and I appreciate that he cannot respond to the comments that we are making. I appreciate that. But also, I want the parliamentary secretary and members in this place to understand our frustration. Yes, I know it is debate in the other place and we have no control of debate in the other place. But for the record of Parliament, I want to reinforce once again that every ounce of motivation that the opposition took on this issue, when this whole tardy exercise was being carried out in the Legislative Assembly and the public arena, was for the protection of the privileges of Parliament.

To assert that we were terrorists or corrupt, which was articulated on a regular basis, and then to tarnish one of our former members and accuse them of being corrupt is just unacceptable. It really is unacceptable. As I have said over and again in this place, our motivation—not only ours, but that of all other seven parties in the previous Parliament—is to protect the privileges of Parliament. All other seven parties agreed. The only party that did not agree with our position was the Australian Labor Party. Every other party agreed with our position on this issue.

Hon Darren West: It doesn't mean anything.

Hon PETER COLLIER: I beg your pardon. It is exactly that attitude that frustrates us. If you do not mind, you are not the Presiding Officer.

Several members interjected.

Hon PETER COLLIER: Thank you, parliamentary secretary. As I said, I have not said a word in this debate; I am not holding up this debate. But I heard the parliamentary secretary's comments about the Legislative Assembly. I have had plenty to say on this on numerous occasions, but I just could not let that one go. I want to state once again that our motivation on this issue was always the protection of the privileges of Parliament. There was no corruption.

There was no terrorism. There was no underhand activity and, as far as I know, there was absolutely no illegal or corrupt activity on the part of a former member. If the Attorney General has evidence to the contrary, I ask him to bring it forward.

Other than that, I speak on behalf of all those members who voted on this issue to say once again that our motivation in this whole issue was entirely driven by the protection of parliamentary privilege.

Hon NICK GOIRAN: I thank the Leader of the Opposition for that excellent contribution. I go back to my question, which was: Does the parliamentary secretary have any information to verify that Hon Jim Chown was under investigation? Is there any information before the parliamentary secretary at all? I accept the parliamentary secretary's response; if I was sitting in his chair, I would say the same thing about the privileges of the two houses, so I accept that. But in terms of the actual question posed, which is whether the parliamentary secretary has any information to verify that he was under investigation, it seems that the answer is no.

Hon Matthew Swinbourn: By way of interjection, I have nothing before me at the table. The member cannot draw any conclusion beyond that.

Hon NICK GOIRAN: I will draw a conclusion; of course, the parliamentary secretary can rebut that conclusion if he likes. The conclusion I draw is that the Attorney General's representative in this chamber—the only person in this chamber qualified to represent the Attorney General in this matter on this bill with the benefit of advice—is unable to produce any evidence. There is nothing before him at this time to support what the Attorney General has said. That is the conclusion I draw. Does that mean there is no evidence in the ether, outside this chamber, that might be speedily brought into the chamber by the Attorney General and his advisers and brought to the attention of Hon Matthew Swinbourn so that he might table it? Of course, it is possible. Hon Tjorn Sibma might assist me somewhat at this time by indicating to me the date that Hon John Quigley made these remarks.

Hon Tjorn Sibma: It was 29 August.

Hon NICK GOIRAN: Last year.

Hon Tjorn Sibma: Yes.

Hon NICK GOIRAN: Since August last year, the Attorney General has had plenty of time to provide one piece of information to his hardworking parliamentary secretary so that he would be able to support not some mystical question, but something that he has actually said on this matter in the other place. We have all been to parliamentary committees; we have seen the huge files that public servants bring. They come well prepared to answer questions. I note that Hon Matthew Swinbourn has a significant file in front of him, as do the hardworking advisers with him, and yet we are told that nowhere in those documents is there anything to suggest that Hon James Chown was under investigation—nothing.

The DEPUTY CHAIR (Hon Stephen Pratt): Order, member! I will remind you again to bring the line of questioning back to the provisions of the bill. I think that this issue has been canvassed and the parliamentary secretary has answered it to its fullest.

Hon NICK GOIRAN: Thank you, honourable deputy chair. I take it from that that the inference is that the remarks made by the Attorney General in the other place were out of order and irrelevant to the debate with regard to the matters before us, because if the members of this place cannot address that, that must be the case for the Attorney General.

In light of that, I draw to the attention of the parliamentary secretary the thirty-first report of the Joint Standing Committee on the Corruption and Crime Commission from November 2016. It is titled *The efficiency and timeliness of the current appointment process for commissioners and parliamentary inspectors of the CCC*. At chapter 4, page 48, the report states —

> It has been the practice in this Parliament —

I pause here to indicate that the Parliament in question is the Parliament from 2016 —

> for the Premier to attach the Chief Justice's report from the nominating committee when he writes to the Committee with his recommendation for the appointment of a Commissioner or PICCC. The Committee has found this useful and on occasion has interviewed more than one nominee.

That is on the public record from 2016. My question to the parliamentary secretary is this. That practice was clearly in place in 2016. Has that practice continued since 2016? Particularly under Premier McGowan and Premier Cook, the two Premiers who have followed the Premier in 2016 referred to here, has that practice continued, and is it the intention for that practice to continue irrespective of the outcome of this bill?

Hon MATTHEW SWINBOURN: As Hon Nick Goiran highlighted, that was the practice of the Premier of the day. I am representing the Attorney General; I do not have advisers from the Premier's office at the table, so I cannot provide an answer as to whether that was the practice. There was only one recruitment process for a commissioner between the 2016 report and now, and there is much controversy about that process and John McKechnie. It is a matter of fact that it happened. I do not have access to that information. Given that I was not on that committee—neither was Hon Nick Goiran—I would not have known about that. The two members of this chamber who were on that committee are no longer members of this chamber. I do not have that information available. We can make efforts to try to secure it, but I doubt that we would be able to do that before the end of the afternoon. I am not trying to be difficult; we do not have access to that information.

Hon Nick Goiran: By way of interjection, is it possible to indicate whether the practice is intended to continue in the future?

Hon MATTHEW SWINBOURN: Again, that is a matter for the Premier and the Premier's office. That is not dictated by the act; it is a convention, if I can call it that. Again, we would have to consult with the current Premier's people, and I doubt whether they have turned their minds to it because they have not been put in the position of appointing anybody to the commission, either as commissioner or as acting commissioner, since the new Premier came on board. It is in Hon Nick Goiran's hands.

Hon NICK GOIRAN: This bill will create a new office of deputy commissioner. As I understand it, the process of appointing a commissioner and the intended process of appointing a deputy commissioner are one and the same.

Hon Matthew Swinbourn: There is one minor difference. The commissioner will be consulted about the appointment of a deputy commissioner by the nominating committee.

Hon NICK GOIRAN: Will the process of appointing a deputy commissioner involve providing the report of the nominating committee to the Joint Standing Committee on the Corruption and Crime Commission?

Hon MATTHEW SWINBOURN: Neither the bill nor the act dictates that; it is a convention that has happened in the past. I can only take the member back to what I said before, in that we do not have advice from the Premier's office about what that convention might entail and whether it has turned its mind to that in recent times. I do not want to speak too far out of turn, but that is the sort of thing that the Premier's office will turn its mind to when that situation arises. I cannot give an undertaking one way or the other; I do not know at this particular junction. As I said, I could seek further advice, but at this late stage on a Thursday afternoon, I do not think we would get that advice to the member before we stop dealing with this matter today.

Hon NICK GOIRAN: Whether or not the full report from the nominating committee is provided to it—I make it clear that I support the past practice strenuously—the current practice of the involvement of the Joint Standing Committee on the Corruption and Crime Commission is that it will have a role in the appointment of both the Corruption and Crime Commissioner and, as a result of this bill, a deputy commissioner. We currently have acting commissioners. I believe that is still intended to continue.

Hon Matthew Swinbourn: We will still have acting commissioners, and there is currently an acting commissioner.

Hon NICK GOIRAN: Acting commissioners are also appointed in a way that involves the joint standing committee. That has been the case in the past and will continue under the statute.

Hon Matthew Swinbourn: The appointment process is not initially changing. This bill will extend the time for an acting commissioner in terms of not having to go through the formalised nominating committee process. That is dealt with further in the bill.

Hon NICK GOIRAN: Yes, that is for a continuing one, but a new one will still be subject to the oversight of the joint standing committee. That has been the case for the commissioner. That is the case for the Parliamentary Inspector of the Corruption and Crime Commission, who is also subject to oversight by the committee with the nomination process.

Hon Matthew Swinbourn: Nothing in the bill will impact on the process for the parliamentary inspector.

Hon NICK GOIRAN: No; that is right. Also, for an acting parliamentary inspector, the Joint Standing Committee on the Corruption and Crime Commission, the oversight committee, will continue —

Hon Matthew Swinbourn: That will not change either.

Hon NICK GOIRAN: That is right. In each of those instances, there is a role for the special CCC oversight committee of both houses of Parliament—a joint standing committee that has been entrusted by Parliament to oversee these important recruitment processes by executive government. It is a very interesting interaction with the judiciary, which is clearly a participant in the role of a nominating committee as it provides a recommendation through to executive government, in particular the Premier, who then will deliver that to the oversight of the Parliament through the joint standing committee. We have three branches working together to make these very important appointments.

As a side note, one does wonder whether something like that might be appropriate for the appointment of judicial officers, but that is a debate for another day.

We can see, and the parliamentary secretary has conceded, that this process, which involves the joint standing committee, will continue, albeit with modifications. In other words, the joint standing committee will continue to have a role with these appointments. It will have a role in the appointment of a deputy commissioner. There has been plenty of discussion between the parliamentary secretary and Hon Tjorn Sibma about the very high profile dispute that arose between the government and the joint standing committee in the previous Parliament regarding the reappointment of the current commissioner. There have been plenty of appointments to the roles of commissioner, acting commissioner, parliamentary inspector and acting parliamentary inspector, other than the reappointment of Mr McKechnie, which is the genesis of the bill that is before us—or at least the part of it that will change that process. Have any other disputes emerged between executive government and the joint standing committee that has led to the Premier's recommendation not proceeding?

Hon MATTHEW SWINBOURN: On the member's behalf, I have interrogated the advisers at the table on this particular point. I suspect that given his previous eight years on the committee, he knows more than they do about whether there has been any issue between the committee and executive government, as he described. To the best of our knowledge, nothing of the magnitude—if I can describe it as that—of the McKechnie appointment happened, but we are not particularly privy to whether there was some toing and froing with the Premier. We have some sense that there may have been something way back in the annals of history, but there is nothing that we can speak with any confidence about.

Hon NICK GOIRAN: That is interesting. There is information before the Joint Standing Committee on the Corruption and Crime Commission that will clearly be subject to the confidentiality provisions for the respective joint standing committee. Of course, even a former member of that committee would not be at liberty to disclose those things. It is understandable, then, that the current government and its advisers may not have that information. In fact, they ought not to have that information available to them.

There is, of course, information that is in the public domain. I will draw to the parliamentary secretary's attention the thirty-first report, published on November 2016, which I referred to earlier, entitled *The efficiency and timeliness of the current appointment process for commissioners and parliamentary inspectors of the CCC*. Page 48 was where I was earlier. The parliamentary secretary will recall that I quoted from that page as follows —

> It has been the practice in this Parliament for the Premier to attach the Chief Justice's report from the nominating committee when he writes to the Committee with his recommendation for the appointment of a Commissioner or PICCC. The Committee has found this useful and on occasion has interviewed more than one nominee.

That is where I got up to when we finished a little earlier.

Chapter 4 ends with this sentence. It states —

> In one case, it recommended —

I will pause there to say that "it" is a reference to the Joint Standing Committee on the Corruption and Crime Commission —

> to the Premier that he appoint a person other than the proposed candidate due to a specific operational reason for the Commission.

I know exactly what that matter was because I was the chair of the committee at the time. Without divulging what I cannot discuss, I simply make the observation that it is on the public record that the joint standing committee recommended to Premier Barnett that he appoint a person other than the candidate he had proposed. There is a suggestion that it would somehow be unprecedented for the joint standing committee to have a different view to the Premier of the day. I am not suggesting that Hon Matthew Swinbourn has said that, but I am just saying that anyone who holds that view about that suggestion is manifestly incorrect. The public record confirms that this has happened on at least one other occasion that we know of.

If I then consider this matter, it is not difficult for members to infer that when the committee said on page 48 of its thirty-first report on November 2016 that it found this useful, and, to paraphrase, that on one occasion it said to the Premier of the day, "No, we don't support your recommendation", that it is obviously referring to the period between the 2013 state election and the 2017 state election. In fact, it is obviously referring to the period from the 2013 election until this report was tabled in 2016, right at the end of that particular Parliament. Sometime during the four-year period of that Parliament, the Joint Standing Committee on the Corruption and Crime Commission said to Premier Barnett that it did not agree with his recommendation.

There are members opposite who enjoy looking at the composition of committees when we consider committee reports, so they will be interested to know that it is a matter of public record that in this particular case, apart from myself as the chair, the deputy chair was the then member for Albany, Mr Peter Watson, MLA, and the two members of the committee were Hon Adele Farina and Mr Nathan Morton, who was the then member for Forrestfield. Again, it does not require a political genius to discover that that means that, at that time, there were two members of Parliament who were members of the Liberal Party and two members of Parliament who were members of the Labor Party. Those four members of Parliament—two Liberal members and two Labor members—must have said to the Premier of the day at some point that they did not agree with his recommendation. What is not on the public record is whether that was a unanimous finding of the committee—that is, whether three members of the committee said to Premier Barnett that they did not agree with his recommendation or whether two members said that.

I make this point: the composition of the joint standing committee is a matter entirely for the two chambers of Parliament. The other place appoints two members and this house appoints two members. It has always been the case that there have been two members of the Liberal Party and two members of the Labor Party, until such time as the geniuses within the WA Labor Party in the last Parliament decided that two members of the Labor Party from the other place would be appointed to the committee. It had never happened before. It had always been one Labor member and one Liberal member from the other place. But after Labor won the election in 2017, the geniuses at that time thought it would be a very intelligent thing to stack the Joint Standing Committee on the Corruption and Crime Commission. Of all the committees to try to stack and make political, this is the one that is supposed to fight corruption and has always been bipartisan. When I was the chairman of this committee, the deputy chair was the then member for Perth, John Hyde. John and I constantly joked about it. You probably could not get two more opposite members of Parliament. We still joke about it to this day. We are still in regular contact. We put our political allegiances aside because we had a job to do on behalf of the Parliament and the people of Western Australia on the oversight committee of the Corruption and Crime Commission in Western Australia, and it worked well. But in 2017, the geniuses in the Labor Party thought that they would stack the committee and appoint two members of the Labor Party from the Legislative Assembly, and then, of course, two members from this place were appointed. As it happens, one was from the Liberal Party and one was from the Greens.

I again make the point that it is for the Parliament of Western Australia and the two chambers to decide who is going to serve on this committee. Again, it does not require great political intellect to realise that in an ordinary Parliament, the government of the day will have the most influence over what that looks like. The government of the day will be able to choose either a fair and proper process that will facilitate bipartisanship with regard to the anti-corruption commission or to politicise the process. In 2017, the Labor Party decided to stack the committee with two Labor Assembly members. As a consequence, there was only one Liberal member on the committee instead of two, as had always been the case previously, as there had always been two Labor members when Labor was in opposition. Members opposite will need to forgive members on this side for taking umbrage at the Attorney General's statement that the entire problem happened during that Parliament, when it was actually the Labor Party that caused the problem in the first place. Imagine, for a moment, that two Labor members and two Liberal members had been on the committee during that Parliament, and there had been no Greens member. I mean no disrespect whatsoever to Hon Alison Xamon, who was one of the most hardworking and outstanding parliamentarians I have had the honour of serving with.

The DEPUTY CHAIR (Hon Stephen Pratt): Hon Nick Goiran.

Hon NICK GOIRAN: We disagreed on many things, but I absolutely respected her work ethic and integrity. She was a very fine member of that committee. However, it was odd and bizarre that somebody from a minor party was appointed to that committee in light of previous convention and history. Let us imagine for a moment that there had been two Liberal and two Labor members on the committee, as was always the case prior to that. If the appointment of Mr McKechnie had been rejected at that time, it would have been impossible for the honourable Attorney General to say that it was because one person had stymied that process. The only reason he was able to say that is that as the law stands at the moment, one member of the government and one member of the opposition must agree to the appointment. If we do not get that agreement, we do not have bipartisanship. If there is only one member of the Liberal Party on the committee and they say no, it follows that bipartisanship cannot be achieved. What if two Liberal members had been on the committee and one had held a contrary view? The genesis of this bill and the rhetoric from the Attorney General would have evaporated overnight. That disturbs me greatly.

As I said at the time, that was not the way to make the appointment, but the arrogant Attorney General and the arrogant Premier at the time, Mr McGowan, knew everything. They always knew everything. They probably still think that they know everything. They insisted on that process, which has brought this bill before us. As Hon Tjorn Sibma said, we support the appointment of a deputy commissioner, which is half of the bill before us. Of course I support that; it was a recommendation of the committee that I chaired. We made that recommendation on multiple occasions. I am glad to see that it will finally happen. It is beyond me why the government undermined and disturbed the very

fabric of the anti-corruption oversight committee all because of the arrogance of the Premier of the day and the Attorney General back in 2017.

What government members probably do not realise is that once this change is made, they will have to live with it. Mr Quigley is getting ready to jet off into retirement, but he will leave a legacy for whichever party is in opposition here. Members opposite seem to think that that will never happen to them, but we will wait to see. One day, Labor members will be on this side of the chamber and they will say, "Gee whiz, it's pretty hard to get any bipartisanship with regard to the anti-corruption commission, all because we had to follow the party line and do what Mr Cook and Mr Quigley told us to do with regard to the appointment of the Corruption and Crime Commissioner. It will not matter whether we think the best candidate will go forward, because our party will never have three-quarters of the members on the committee." The then Liberal government will be able to appoint whomever it likes, without needing to stack the committee. That is the outcome that we will deliver.

The problem is: why are we doing this in the first place? What grave injustice has occurred that would justify disturbing the system like this? I have taken time to draw to the attention of the parliamentary secretary that it is indeed not unprecedented—I hasten to add that I am not suggesting the parliamentary secretary said that it was—that the Joint Standing Committee on the Corruption and Crime Commission can reject the application or the recommendation of the Premier of the day and say, "Look, with all due respect, we think there's another way." This is why I encourage the government, once this bill inevitably passes, to continue with the process of providing the nominating committee's full report to the joint standing committee. The committee cannot do its job properly if it is blindfolded. If the committee gets only one recommendation, and it does not know the other two names that were put forward, it cannot properly do due diligence and due justice to the process. It simply cannot do that because it has only one name and has to say either yes or no to that name and cannot then weigh up the benefits of the other names. The committee may be aware of certain operational information and specific operational reasons why another person may be better suited and why the recommended person would not be suitable. I hope the process and practice, which, as the parliamentary secretary says, is up to the Premier of the day, has not stopped. If it has, I hope that it is reinstated forthwith, in particular for the appointment of a deputy commissioner.

Moving to the appointment of a deputy commissioner. Is the parliamentary secretary able to indicate to the house whether anyone has been approached for that role?

Hon MATTHEW SWINBOURN: The technical answer to the member's question is no. I do not know whether anybody has had conversations and told someone that they might be good as a deputy commissioner. I am purely speculating there. The process will be formalised in the sense that, firstly, the role currently does not exist, so there is no role to offer anybody, and, secondly, once the position is created and filled, there will be a process in the act outlining how that will happen. This will include advertising the position, the nominating committee and all those sorts of things. If the member is suggesting that it has been promised to anybody, I can tell him that is not the case. We are creating the position statutorily, and then a process will commence once there is a budget for it.

Hon NICK GOIRAN: Is the qualification to be a deputy commissioner the same as a commissioner?

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: Is the only difference in the process that the commissioner, Mr McKechnie, will be consulted with about the proposed recommendation?

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: Will that consultation with the commissioner be on just the final recommendation or will all three names be put to the Premier?

Hon MATTHEW SWINBOURN: We were trying to clarify exactly what the consultation obligation on the nominating committee will be. That is why we took a bit of time. I take the member to proposed section 9B(3), which states —

> Before submitting a list under subsection (1), the nominating committee must —
>
> (a) advertise throughout Australia for expressions of interest; and
>
> (b) if the Premier's request specifies that the list is for the purpose of recommending the appointment of a person as Deputy Commissioner under section 9A(1) and there is a Commissioner appointed under section 9A(1) — consult with the Commissioner.

The legislation does not really dictate in that regard the nature of the consultation with the commission. Obviously, that will be a matter of comity between the nominating committee and the commissioner. The nominating committee may choose to consult early in the stage for some reason or it may decide to furnish the proposed names, but that will be a matter for the nominating committee. Given the stature of the people involved, I am sure that will be done with the necessary degree of, as I say, comity between them.

Hon NICK GOIRAN: The parliamentary secretary was referring to clause 6 on page 6 of the bill. What is the intention? I accept that the scope of the consultation is not absolutely clear, but is it the government's intention that the commissioner of the day should be consulted about the list, as set out at proposed section 9B(3)(b)? Will the consultation be about the list or about the recommendation? Given that it is not clear, it would be preferable if it was made expressly clear. In the absence of that—I assume, there is also no appetite to agree to an amendment to make it clear—what is the intention, at least?

Hon MATTHEW SWINBOURN: To put it in its fullest context, the commissioner will not have a veto power. I think it is prudent that the commissioner of the day, who will be working with any deputy commissioner, will be involved at a very early stage and be able to give feedback to the nominating committee about any potential candidates. Whether that is at the point at which the three names that are proposed are put forward or whether it is at an earlier stage will be a matter for the nominating committee to determine what is appropriate in those circumstances. Obviously, the earlier the consultation is, the better so that the nominating committee will not go down the path of investing time and energy on interviewing people whom the commissioner might identify as clearly inappropriate for whatever reason. I think that would develop over time between the two by way of convention and practice.

As the member knows, although there have been several appointments over the years, this is a relatively infrequent event because commissioners, and we hope deputy commissioners, have, off the top of my head, a five-year appointment period, and sometimes they continue on. Without putting it into someone else's responsibility, it will depend on who the Chief Justice of the Supreme Court is and what their practices and styles are. There is obviously a secretariat that helps to support this. As the member can appreciate, we want this to be done earlier. I am also advised that this practice is consistent with some of the other jurisdictions, which is partly why we have seen fit to replicate it. In Victoria, the Independent Broad-based Anti-corruption Commission Act requires the concurrence of the IBAC commissioner before the minister can recommend the appointment of deputy commissioners. Queensland's act requires consultation with the chairperson on the appointment of the deputy chairperson and ordinary commissioners of the Queensland Corruption and Crime Commission. In New South Wales, the chief commissioner of the Independent Commission Against Corruption must be consulted on persons to be appointed as commissioners. The concurrence of the chief commissioner is also required before the appointment of an assistant commissioner. Obviously, the constitution of those bodies does not entirely replicate what we do in Western Australia but the process largely reflects—I do not really want to say "best practice"—common practice around the country.

Hon NICK GOIRAN: Interestingly, the parliamentary secretary indicated that IBAC in Victoria requires the concurrence of the commissioner. Why has the government chosen in this instance to go with consultation rather than concurrence?

Hon MATTHEW SWINBOURN: I do not really have a very strong answer to why the government went down this path rather than that path in the way the member has framed his question. On assessment, it was really what was deemed to be appropriate in reaching that level. We thought consultation was appropriate in the circumstances and that concurrence was not necessary. Given the stature of the people involved, if the Corruption and Crime Commissioner expressed grave concerns about a person, it would be reasonable to expect that the nominating committee would not go there. If the commissioner expressed that kind of view, we would be very surprised that they would then take it further. Having said that, there is many a slip 'twixt the cup and the lip on these sorts of things, as they say. It is not impossible that the commissioner could express a view about certain candidates but the nominating committee did not agree and proceeded anyway, but we did not think it was necessary for the commissioner to give their endorsement. I suppose there is also another question. I do not know whether this was part of the consideration about whether the concurrence of the commissioner creates a sense of—what is the word?—fealty, if I can call it that, between the deputy commissioner and the commissioner, given that there is a degree of independence between the roles. Having had the commissioner give a person the tick of approval, if I can put it that way, might not be the culture or relationship we want to develop for the way the CCC works.

Hon NICK GOIRAN: If there is a complaint of misconduct against the Corruption and Crime Commissioner, it is presently handled by the Parliamentary Inspector of the Corruption and Crime Commission. If there is a complaint of misconduct against the deputy, who will handle that?

Hon MATTHEW SWINBOURN: It will be the parliamentary inspector. I think the member will agree that that is appropriate.

Hon NICK GOIRAN: This will be the last question on clause 1. Is the maximum tenure for a Corruption and Crime Commissioner two five-year terms?

Hon MATTHEW SWINBOURN: I suspect the member already knows the answer to that question, as he almost always does; however, five years plus an additional five years is correct. In anticipation of where the member is heading, it is the same for the deputy commissioner.

Hon Nick Goiran: It is or it isn't?

Hon MATTHEW SWINBOURN: It is the same. The bill proposes —

> **Schedule 2A — Terms and conditions of service of Deputy Commissioner**
>
> **1. Tenure of office**
>
> Subject to this Act, the Deputy Commissioner holds office 17 for a period of 5 years and is eligible for reappointment 18 once.

It is two periods. The provisions that relate to the commissioner in the current act under "Schedule 2 — Terms and conditions of service of Commissioner" state —

> **1. Tenure of office**
>
> Subject to this Act, the Commissioner holds office for a period of 5 years and is eligible for reappointment once.

Hon NICK GOIRAN: The parliamentary secretary will recall, because he had carriage of the bill, that an extraordinary piece of legislation was passed that specifically dealt with the reappointment of the current commissioner. Does the fact that he was reappointed via what I would call an extraordinary legislative instrument rather than the ordinary process set out in the statute change the restriction on his tenure? Is he still able to serve only a maximum of two five-year terms and he is currently serving the second of those five-year terms?

Hon Matthew Swinbourn: Yes, we agree with you.

Hon WILSON TUCKER: I was not in the chamber during the second reading debate; therefore, I did not get a chance to put forward my position on the bill. Clause 1 is that opportunity. The parliamentary secretary might be shocked and filled with horror to know that I will not support the passage of this bill. We have had some behind-the-scenes discussions, so I do not think my position will be a surprise. My take is that what has been fleshed out quite thoroughly by the opposition, which is that it will diminish the role of Parliament in the selection process, will make it much harder to veto and block an appointment. I think that having a member from one party cross the floor against the party line and use the power of veto will be much harder and there will be a much higher bar to overcome in the future. I know that committees are supposed to be independent of political parties, but we all know that there is inherent bias in all of us as humans so I do not think that process will be completely independent, and it will therefore be much harder to block that appointment, which will shift the onus from one of approval to one of veto and raising that bar.

When we talk about how we landed in this position of debating the government's intentions and motivations in moving to change this process, we say we are not going to see eye to eye. The position of the government, the Attorney General and the Premier was that the selection process in the last term of Parliament was broken and it did not work as intended. My take is that it did work as intended; it is just that Labor did not like the outcome of that process, and so here we are, two bills later, completely changing the process. Within the current process that is in place, what other avenues did the government use to try to get into the minds of the committee members or have an understanding of whether the process was working as intended?

We have had some behind-the-scenes discussions about the possibility of moving a motion in Parliament to potentially request the minutes of the meetings of the joint standing committee to try to get an understanding of the thought process of some members and whether any political bias was coming into play, thereby short-circuiting the process and not looking at the viability of the candidates at the time. That seems like a legitimate process that could have been followed previously. What other avenues did the government look at rather than completely throwing the process in the bin and changing it to the position that we are dealing with now? There is a question here, parliamentary secretary. Was a motion contemplated around trying to get the minutes of the meeting of the joint standing committee in the previous term of Parliament?

Hon MATTHEW SWINBOURN: I cannot speak to that because I just do not know what that was. That was in the previous Parliament. I was neither the parliamentary secretary and nor was I involved in that matter. The discussions I had with the member behind the chair were more in the sense that all parliamentary committees remain accountable to the chamber from which they are created; therefore, by substantive resolution, the chamber could require the minutes of a particular committee to be furnished to the chamber and all those sorts of things. That is the rule for all committees and the Joint Standing Committee on the Corruption and Crime Commission is no different; it is a child of both chambers of Parliament, and it is really up to Parliament if it wishes to make further inquiries to do that. It was not up to the government to do that. Any member could have done that at that time, but that is really speculating about those things and getting into the details of those events that happened before. I am reluctant to get into those details because I do not have perfect knowledge of all those aspects. I have already been corrected previously on a particular point because some members here are more intimate with the details than me.

I am intimate with the provisions of the bill currently before the chamber, and I am happy to answer questions on its provisions, but getting stuck into that sort of stuff is a rabbit hole that I have almost fallen into once today, and I am perhaps trying to avoid falling into it twice.

Hon WILSON TUCKER: The parliamentary secretary mentioned that the government can compel Parliament to request the minutes of the meeting of the joint standing committee. Are any other avenues open to learn the reasoning behind the decision made by those members?

Hon MATTHEW SWINBOURN: In a general sense, all committee deliberations are confidential, but not all committee deliberations are included in the minutes. Strictly speaking—this is advice that the member might want to take to the clerks, which is what I said to him before—a member of a particular committee could be brought before the Standing Committee on Procedure and Privileges and examined in that regard, but we are really getting deep into the weeds of parliamentary procedure. The best people for the member to discuss those sorts of elements with are probably the clerks of the house, who advise us about those sorts of things, or he could even speak to the President about the almost theoretical nature of that process. I do not represent the Parliament. I am here to represent the Attorney General. They are parliamentary processes on which a Parliament or a chamber could make resolutions.

Hon WILSON TUCKER: Thank you, deputy —

Hon Matthew Swinbourn: Chair.

Hon WILSON TUCKER: Thank you, deputy chair. It has been a long week, and it is still going. I will not labour the point for too much longer. I will probably jump in on some of the other clauses, but it seems like the government made a pretty big assumption that this process was broken and some members were acting with bias or unscrupulously and affecting the approval of a legitimate candidate. What does the government base that claim on? As we have heard, the committee is a sort of black box for legitimate reasons, so that it can act independently. But it seems like a very big assumption to make and then quite a strong reaction to end up with a process in which the role of Parliament is diminished. What was the basis for the government's position that the previous process was broken?

Hon MATTHEW SWINBOURN: I have to disagree with some of the points that the member made. In his opening contribution, he said that we are proposing to completely change the process. We are not completely changing the process. We are dealing with one important aspect of that process. The process for appointing commissioners and deputy commissioners to the Corruption and Crime Commission starts with the Premier notifying the Chief Justice, who is the chair of the nominating committee, of the need to appoint a new person to the CCC as a commissioner or deputy commissioner. Advertisements are then sent out across Australia for expressions of interest by suitably qualified people. None of that is changing. The only change to the nominating committee's process will be with respect to the appointment of a deputy commissioner, and that the nominating committee must consult with the commissioner about the appointment of a deputy commissioner. We are not changing any other stuff. We are just dealing with the introduction of a new deputy commissioner position. The nominating committee will still furnish three names to the Premier of the day, who will then put forward their preferred nominee out of those three names to the Joint Standing Committee on the Corruption and Crime Commission. The change is that instead of requiring majority and bipartisan support, the committee must actively veto the appointment. We are not completely pulling the process apart at all. The committee will still have oversight and the capacity to reject a nominee, and that is the important part of that process. As I said, we do not agree with the member on those things.

When we lifted up the hood of the CCC in terms of this process and wanted to create a deputy commissioner position, we contemplated the process by which we would appoint that deputy commissioner. It was appropriate that that process be essentially identical to that used to appoint a commissioner. This is our opportunity to address the concerns that we and the member have identified with the very end of that process, which is the flawed part that requires majority and bipartisan support. Hon Wilson Tucker is a member of the crossbench. He is a member of a minor party. It is possible that he, Hon Dr Brian Walker, Hon Sophia Moermond or other members could be part of the Joint Standing Committee on the Corruption and Crime Commission. Under the current system, the member would not be included in the additional requirement of bipartisanship. That would diminish the role of the member on the committee because it would elevate the role of the Leader of the Opposition's political party, the Nationals WA, and the government. In Hon Nick Goiran's long contribution, he gave his view that the committee should be constituted in the way that it was in the past, with only members of the Labor Party and the Liberal Party. He outlined what would be appropriate in future. The requirement for bipartisanship does not affect that quarter of the benches here. Hon Wilson Tucker does not support this clause, but the government saying that we should go to a veto model would elevate each member of that committee to the same status in terms of their role in deciding whether a person is approved or not approved. I do not think that would diminish the role of Parliament; I do not agree with that comment either.

Hon Dr BRIAN WALKER: I take this opportunity to put on the record our stance on the changes, which I am sure will be passed. There is a fundamental change in the way the committee and the Parliament are being treated.

It had been the case that the standing committee reviewed and made a recommendation to the Premier. That is appropriate because it is a committee of Parliament that will work independently of personal insights of the Premier. It also needs to be said that when we speak about bipartisanship, it is a misnomer because we are looking here at electoral levels of around one-third for the Labor Party and one-third for the Liberal Party, at least in past years, and one-third for other parties. We are not really looking here at bipartisanship; we are excluding the opinion of one-third of the population and assuming that a bipartisan, two-party preferred political model is the only valid political model. That takes away the right of people to have an opinion equal to all parts of Parliament. The changes will also give the Premier, as the executive, the role of being the one who will make the decision, rather than Parliament. That is a dangerous precedent because then we will be allowing one member of an elected Parliament, the Premier, to have the sole choice and the sole power. If we take this as a precedent and extend it into other areas, we will get into a very dangerous political state. Although I appreciate the intent of the changes and I appreciate the honour of all involved, I think the intent, as I have often said before, will have hidden, unforeseen and unintended consequences. That is a danger for our democracy. Although this provision may well pass, I hope that future Parliaments will review and revert it because I would dearly like to see Parliament, not one person, maintain control. The parliamentary secretary might want to comment on that, but it is merely my rhetorical point of view being put on the record.

Clause put and passed.

Clause 2: Commencement —

Hon TJORN SIBMA: It would not be a proper committee examination if we did not at least make an attempt to ask a question at clause 2, just to demonstrate that we do not tip all our energy into clause 1. This is a straightforward clause, but what will be the operational implications of this commencement clause in relation to when the process by which a deputy commissioner might be sought and that position stood up organisationally within the CCC might commence? Does the government have a view as to when it would be desirable to have that position of deputy commissioner filled?

Hon MATTHEW SWINBOURN: Obviously, with the way the commencement clause is drafted, there will be no proclamation, so the provisions will come into effect almost immediately following royal assent, or the next day.

The member is most interested in when we will get a deputy commissioner. I cannot be certain about when that will happen. The government's view is certainly that there should be a deputy commissioner. We have not commenced this process, but, as we have indicated before, there are budget considerations. It really becomes an operational question for the commission to say when it might be ready to proceed with that. Of course, then the Premier must formally notify the nominating committee to start the recruitment process. I cannot tell the member how long that will take because it will depend on the number, quality and suitability of candidates who come forward, yadda yadda yadda. The member is most familiar with this, so I do not need to browbeat him with it. Obviously, there are some monetary considerations because it has to be funded, but we expect that this would all happen as soon as it is practicable over the coming months.

Hon TJORN SIBMA: Thank you. The parliamentary secretary was being very generous in answering that question because, strictly speaking, it was not to do with the bill's technical aspects but its implications. Is any budgetary allocation already available to the Corruption and Crime Commission to fill this position or will that have to be met through its regular budget allocation for the next financial year? In short, we do not yet have a shell with the money ready to fund that position. I take it from the parliamentary secretary's contribution that the CCC, the Department of Justice or whatever will have to go through the regular Expenditure Review Committee process and make a business case for the position, and because we do not have a budget yet, we do not know the outcome. Would that be fair?

Hon MATTHEW SWINBOURN: The member is right. I think the member said that there is no shell of money.

Hon Tjorn Sibma: A shell position—almost like an office without a person in it.

Hon MATTHEW SWINBOURN: The CCC could conceivably fund it out of its existing budget if it has space for it. I do not know whether it does. If it needs additional funding, it cannot ask for money for that position until this is the law of the land, but once the bill has passed, it can then make approaches to government through the normal processes. This includes going outside the normal budget process, given that this has been passed through Parliament. I think that gives the member the answer he is looking for. A pot of money is not currently set aside to be allocated to this role.

Clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Section 9 amended —

Hon NICK GOIRAN: Page 4 of the bill is one of two pages that deal with clause 5. I am particularly interested in line 12. The instruction from Parliament to Parliamentary Counsel at clause 5(3) is —

> Delete section 9(3), (3a), (3b), (4), (4a) and (4B).

I return to the report I referred to earlier when we considered clause 1—the thirty-first report of the Joint Standing Committee on the Corruption and Crime Commission of the thirty-ninth Parliament from November 2016, titled *The efficiency and timeliness of the current appointment process for commissioners and parliamentary inspectors of the CCC*. At page 48 there is a recommendation, the second recommendation made by that committee; there were three recommendations in all in that report. Recommendation 2 reads —

> The Attorney General prepare an amendment to sections 9(3a)(a) and 9(3b) of the *Corruption, Crime and Misconduct Act 2003* to:
>
> 1. remove the role of a nominating committee in the appointment process for Commissioners and Parliamentary Inspectors; and
> 2. in lieu thereof, mandate that the Premier propose one name from a list of three people to the Committee for its bipartisan and majority support.

I see that the instruction at clause 5 of the bill will give effect to that recommendation insofar as it will remove the role of the nominating committee, but the following clause, clause 6, seems to re-institute the nominating committee. Given that recommendation 2 was that the nominating committee role be removed, why has it been retained?

Hon MATTHEW SWINBOURN: I have not had an opportunity to read that report and the recommendations that the member is referring to, so I do not want to besmirch that committee in terms of the work it did on that. I am also not familiar with the committee's line of reasoning with regard to why it made that recommendation. I think the easiest way for me to answer the question of why the government has not removed the nominating committee is to say that we still see value in what the committee does, and we certainly see value in the involvement of those esteemed people in the identification of suitable candidates to fill the roles of Corruption and Crime Commissioner and Deputy Corruption and Crime Commissioner. I understand that there may have been a view that it was a difficult position to put those judges in, but I do not know; as I said, I have not read that report, so I do not know what the line of reasoning for that recommendation was. I am sure the member can enlighten me, if he thinks it is important to do so. But to get back to the nub of his point, why did we not remove it? It is because we still see value in that body in the appointment decision-making process.

Hon NICK GOIRAN: What value do they provide to the process?

Hon MATTHEW SWINBOURN: I think the value is that they are people of such standing in our community that their motivations for who they put forward as the chief corruption investigators in this state, the commissioner and the deputy commissioner, cannot be impugned. We already had comments made about the politicisation of the process at the other end. It would be extremely difficult to talk about anybody involved in a nominating committee being in a political role, and, therefore, they act as gatekeepers in some respect of what gets to the Premier of the day. If we remove them and just had the Premier of the day, I do not know that we would necessarily have the rigour and the independence and, potentially, we might get people impugning the nominees because they might be considered to be someone's mate or things of that kind.

I hope that addresses what the honourable member thinks. Obviously, he was part of recommendation 2 of the report and he has a countervailing view for his own reasons, but that is the value we see in it.

Hon NICK GOIRAN: To be clear, what the parliamentary secretary said regarding my role on that committee is true. That said, I am somewhat relaxed about this matter. It is a case of simply receiving the evidence that has been provided to the parliamentary committee at the time, faithfully reporting it to Parliament and saying that, on balance, the preponderance of evidence suggests that this role is no longer necessary. It is clear from the evidence that was provided to the committee that there was not a great deal of enthusiasm on the part of the then Chief Justice. The then Chief Justice's submissions are found from page 40 of the report. Hon Wayne Martin, who was at the time the Chief Justice, was invited by the joint standing committee to provide a submission to the inquiry. He was also later requested to comment on the submission provided by the parliamentary inspector at the time, who at the time was the late Hon Michael Murray, QC, and subsequently provided a supplementary submission to the inquiry. Members can familiarise themselves with that. Certainly, Hon Justice Wayne Martin was not enthusiastic about it and it led to finding 21, which was —

> The Chief Justice and the Chief Judge do not support the inclusion of serving judicial officers in the appointment process …

Has either the current Chief Justice or Chief Judge been consulted on their ongoing involvement in this process, which will now involve, of course, the deputy commissioner?

Committee interrupted, pursuant to standing orders.

[Continued on page 564.]