

PROCEDURE AND PRIVILEGES COMMITTEE

Eleventh Report — “Closing the Oversight Gap: Joint Standing Committee on the Corruption and Crime Commission — Terms of Reference” — Tabling

MS W.M. DUNCAN (Kalgoorlie — Deputy Speaker) [10.01 am]: I present for tabling the eleventh report of the Procedure and Privileges Committee of the thirty-ninth Parliament, titled “Closing the Oversight Gap: Joint Standing Committee on the Corruption and Crime Commission — Terms of Reference”.

[See paper 4852.]

Ms W.M. DUNCAN: For the benefit of members I will provide some context for this report. On 2 December 2014 the Western Australian Parliament passed the Corruption and Crime Commission Amendment (Misconduct) Bill 2014. The aim of this bill, as the Leader of the House explained when introducing the bill, was to amend the Corruption and Crime Commission Act to transfer the oversight of minor misconduct by public officers in this state from the Corruption and Crime Commission to the Public Sector Commissioner. The CCC’s misconduct prevention and education function would also be transferred to and exercised by the Public Sector Commissioner. As well as freeing the CCC up to focus on serious misconduct, this transfer of functions seemed a sound move because, as the Leader of the House underlined, the Public Sector Commissioner already had a strong presence and role in advising, educating and training on disciplinary matters in the Western Australian public sector.

The new act came into force on 1 July 2015 and section 5 of the act renamed the Corruption and Crime Commission Act, the Corruption, Crime and Misconduct Act. Immediately prior to these legislative changes coming into force, the Joint Standing Committee on the Corruption and Crime Commission tabled its twenty-first report, “Recent Amendments to the Corruption and Crime Commission Act 2003: Some Implications for Western Australia’s Integrity Framework”. In this report, the joint committee noted that its terms of reference, as laid out in both houses’ respective standing orders, had not been amended by the new legislation, but remained as framed by the Parliament following the enactment of the Corruption and Crime Commission Act 2003. Under both houses’ standing orders the joint committee is authorised to monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission—authority which had enabled the joint committee, for more than a decade, to oversee the CCC’s handling of all matters of misconduct, serious and minor. Following the amendments to the legislation, however, the committee did not have the authority to oversee the Public Sector Commissioner’s handling of the minor misconduct function. The joint committee, with its extensive experience and expertise in this area, believed that this omission has caused a gap in oversight with the potential to affect adversely Western Australia’s integrity framework. The joint committee accordingly recommended that both houses’ procedure and privileges committees inquire into amending the joint committee’s standing orders so that it would be expressly empowered to oversee the activities of the Public Sector Commissioner in relation to the transferred functions it would have responsibility for in the Corruption, Crime and Misconduct Act 2003.

On 17 September 2015 the government tabled its response to this recommendation, which was that it considered the existing oversight of the activities of the Public Sector Commissioner by both the executive and the Parliament was adequate and that no additional oversight of the Public Sector Commissioner by the joint committee was warranted. Following the tabling of this response, the chair of the joint committee, Hon Nick Goiran, wrote to the chairs of both houses’ procedure and privileges committees to apprise the committees of the JSCCCC’s twenty-first report and its recommendation for amending the joint committee’s standing orders. Given that any amendment to the standing orders governing a joint parliamentary committee’s terms of reference would need to be ratified by both houses, the Procedure and Privileges Committee resolved that its chair, Hon Michael Sutherland, should consult with the Chair of the Legislative Council Standing Committee on Procedure and Privileges, Hon Barry House, to investigate the most effective way the committees could conduct their investigations into the referred matter. Such a conferral of committees, although not common, is provided for in the standing orders of both houses. The upshot was that the two PPCs resolved to conduct a joint hearing at which members of both committees could question relevant witnesses.

This hearing took place on 20 June 2016 with the Public Sector Commissioner, Mr Mal Wauchope, and the Attorney General, Hon Michael Mischin, providing evidence. Hon Nick Goiran, as both the chair of the JSCCCC and a member of the Legislative Council PPC, provided his testimony in a private session to both committees following this hearing. At the hearing the Public Sector Commissioner made an opening statement on the prospect of the joint committee’s terms of reference being amended to provide for oversight of his newly acquired minor misconduct function, and he advised that —

... it is a matter for Parliament, and we will obviously work with whatever Parliament decides. We do not necessarily take the view that it is necessary but, as I said, we would work with whatever Parliament considers is necessary.

The Public Sector Commissioner then informed the committees about how he deals with minor misconduct referrals. Essentially, he makes a determination whether a matter has reached the minor misconduct threshold and this means, in practical terms, whether someone could have his or her employment terminated. As the Public Sector Commissioner underlined, “minor misconduct is not that minor”. If the matter is judged to reach the threshold the Public Sector Commissioner does not get involved in the process but sends the matter back to the agency from which it originated. The agency is required to provide advice to the Public Sector Commissioner of the outcome once it has dealt with the matter, and from time to time it is required to produce a report on what it has done. Noting the Public Sector Commissioner’s observation that “minor misconduct is not that minor” and that allegations of minor misconduct were almost always dealt with at agency level, members of both PPCs sought clarification of how robust and transparent the agency inquiry process was. Committee members were not persuaded that there was a transparent and easy process by which Parliament could check that the Public Sector Commissioner had been able to satisfy himself that agency investigations have been both fulsome and forensic.

Committee members then questioned the Public Sector Commissioner about any right of appeal mechanism with respect to the handling of the minor misconduct function. Although confirming that in broad terms he was subject to oversight by the Auditor General and the Ombudsman, the Public Sector Commissioner conceded that —

In relation to the actual treatment of a minor misconduct complaint, I could not give you a definitive answer.

He also confirmed that he did not believe that those who had a complaint about how their minor misconduct matter had been handled were given notification of the complaint options available to them.

The Attorney General’s opening statement at the hearing reaffirmed the government’s view that the current parliamentary and executive oversight of the Public Sector Commissioner’s activities was adequate and that no additional oversight by the JSCCC was warranted. The Attorney General explained the government’s rationale for this view, and I will quote from his opinion —

The point of creating a joint standing committee of Parliament, I would suggest, is because of the extraordinary powers that were vested by the then Corruption and Crime Commission Act on the Corruption and Crime Commissioner—powers that indeed go well beyond the sorts of powers available to the Public Sector Commissioner and heads of the public service; powers that indeed go beyond that of the police commissioner in many respects. It is a body that was established with enormous compulsive powers—the ability, and indeed the necessity in many respects, to operate covertly, and to exercise powers and functions that are not amenable to oversight by any other body other than establishing the Parliamentary Inspector of the Corruption and Crime Commission, who exercises some oversight, but then, knowing that this person, or both of them, are in a sense working outside the ordinary public service system and the ordinary means of oversight because of the sensitivity of the matters that they are dealing with, and the enormous powers that they carry, need some watching of the watchers.

The Attorney General also expanded on his view that there was adequate existing oversight of the Public Sector Commissioner’s activities by the Parliament and various statutory officers, including the Auditor General and the Ombudsman. Notwithstanding reaffirming the government’s position, the Attorney General conceded at the hearing that it was ultimately open to both houses of Parliament to agree to extend the joint standing committee’s functions to embrace oversight of the Public Sector Commissioner’s activities in dealing with minor misconduct.

Following the taking of evidence, the PPC considered the range of positions that had been presented during the course of the inquiry. The joint committee’s contention was that following the transfer of the minor misconduct function to the Public Sector Commissioner, there was a gap in oversight and that this should be closed by extending the committee’s terms of reference. The Public Sector Commissioner’s position was that although he did not think it was necessary that the joint committee exercise oversight of his minor misconduct function, he accepted that this matter was one for Parliament alone to determine and that he would work with whatever Parliament decided. The government’s consistent view has been that the Public Sector Commissioner was already subject to adequate oversight by Parliament and the executive.

The PPC concluded that given the joint committee was of the firm view that the current lack of oversight of the minor misconduct function has the potential to adversely affect the state’s integrity framework and that the Public Sector Commissioner expressed no objection to the joint committee having oversight of this function, it would be a wise precaution for the Parliament to close this oversight gap. The committee is particularly of this view given observations by the Public Sector Commissioner that minor misconduct is not necessarily that minor.

Accordingly, the PPC recommends that the Legislative Assembly amend standing order 289 to extend the joint committee's oversight function to include the Public Sector Commissioner in exercising the functions transferred to him under the Corruption, Crime and Misconduct Act 2003. I conclude by noting that the Legislative Council's Standing Committee on Procedure and Privileges' report on this matter also came to a similar conclusion and made a similar recommendation. I commend the report to the house.

MR J.R. QUIGLEY (Butler) [10.13 am]: I would also like to speak on the eleventh report of the Procedure and Privileges Committee, but I will be brief. As the member for Kalgoorlie pointed out, the committee took evidence in a joint session. The committee heard evidence from not only the Public Sector Commissioner, but also the Attorney General. It was quite evident from the Attorney General's evidence that he was not drawn to the conclusions that the committee settled upon. Although this is evident from the report because there is no dissent, I rise only to join those across the chamber, as it were, in bilateral unity with the member for Kalgoorlie to say that Labor is very committed to the report findings presented to the chamber today. Labor will continue to pursue this matter. Obviously, it will not be dealt with in the life of this Parliament, but I, as the shadow Attorney General, and other members of the Labor opposition will pledge to pursue this matter after the state election if in government and, if that does not pan out, in opposition. This is not an ideological Labor–Liberal–National Party standpoint; this is to do with the good governance of Western Australia and the process of accountability. Very sound reasons are proffered in this report for the conclusion that minor misconduct oversight should ultimately have a resting place with the committee.

Mr C.J. Barnett: Why?

Mr J.R. QUIGLEY: I will let the Premier speak to the report. The Public Sector Commissioner identified that minor misconduct is not always minor; it can actually lead to dismissal. We only have to look at the conduct of public servants following the messy affair involving the former member for Vasse to know that minor misconduct should ultimately have a final repository, in terms of accountability, with the Procedure and Privileges Committee. The Premier poses the question why, so I invite him to talk on this report; or will he remain silent again, as he did on mandatory sentencing and as he did on all those other contentious issues when he posed the question but failed to speak? He failed to speak on the no body, no parole bill and he failed to speak on all the other important legislation in the law and order space. He has ducked the issue. He has interjected on me, so I invite the Premier now to rise to his feet and put the countervailing argument, if the government is opposed to the recommendations contained in this report.

MR F.A. ALBAN (Swan Hills) [10.16 am]: I will make a brief contribution to the tabling of the eleventh report of the Legislative Assembly's Procedure and Privileges Committee titled "Closing the Oversight Gap: Joint Standing Committee on the Corruption and Crime Commission — Terms of Reference".

As a former member of the Joint Standing Committee on the Corruption and Crime Commission and a current member of the Procedure and Privileges Committee, I have followed the recent amendments to the Corruption and Crime Commission Act, now renamed the Corruption, Crime and Misconduct Act, with some interest. I consider that the main purpose of the amending legislation, which was to reassign the minor misconduct function from the Corruption and Crime Commission to the Public Sector Commissioner, was a sound move as it allows the CCC to concentrate its resources and extensive powers where it should concentrate them—on serious criminal and corrupt behaviour. Last year I noted with some concern the twenty-first report of the Joint Standing Committee on the Corruption and Crime Commission, which made it quite clear that its inability to oversight the Public Sector Commissioner's minor misconduct function had led to a gap in oversight. The joint committee contended that this gap could adversely affect the state's integrity framework.

Given that running the risk of undermining Western Australia's integrity framework can never be a good idea and given that the Public Sector Commissioner repeatedly said in his evidence at the joint hearing of the Legislative Assembly's Procedure and Privileges Committee and the Legislative Council's Standing Committee on Procedure and Privileges that extending parliamentary committee oversight over his minor misconduct function was entirely a matter for Parliament and that he would work with whatever the Parliament decides, I cannot see any cogent reason for not extending the oversight. It is up to the Parliament to decide. Even the Attorney General, during debate on the amending legislation in the other place, acknowledged that when he said —

... it is ultimately open to both houses of Parliament to agree to extend the joint standing committee's functions to embrace oversight of the Public Sector Commissioner's activities in dealing with minor misconduct under the CCM act ...

That is the Corruption, Crime and Misconduct Act.

The procedure and privileges committees of both houses recommends that the house take this action and I hope the Assembly will adopt the recommendation.