

**MEMBER FOR KALAMUNDA — PROCEDURE AND PRIVILEGES COMMITTEE**

*Motion*

**MR Z.R.F. KIRKUP (Dawesville)** [4.02 pm]: I move —

That —

- (1) this house requests the Procedure and Privileges Committee to investigate, consider and report to the house at the earliest opportunity —
  - (1A) whether the member for Kalamunda, in publishing a Facebook post that appeared on his Facebook page, screenshots of which were tabled in the Legislative Council on Friday, 17 April 2020 —
    - (a) disclosed confidential deliberations of the Joint Standing Committee on the Corruption and Crime Commission—JSCCCC—without the authority of the JSCCCC;
    - (b) in a manner inconsistent with his position as a member of the JSCCCC —
      - (i) criticised the processes of the JSCCCC;
      - (ii) criticised the decision of a member of the JSCCCC; and
      - (iii) engaged in commentary on the failure of the JSCCCC to recommend the reappointment of John McKechnie as the Commissioner of the Corruption and Crime Commission;
  - (1B) whether such actions amount to a breach of privilege or contempt of Parliament; and, if so, what action should be taken.
- (2) the Legislative Council be acquainted of this resolution.

The opposition does not move this motion today lightly. This is a serious and substantial request that we are seeking from the Procedure and Privileges Committee. In our motion, we go to the foundations of this institution that we all serve and seek a better understanding about whether or not the member for Kalamunda has breached the privileges conferred upon him and whether or not his actions amount to contempt of this place.

The wordiness of the motion itself does not prejudge the member for Kalamunda; instead, we are seeking to have the member's two Facebook posts looked at by the Procedure and Privileges Committee to form an opinion and to report back to this house with its view. This clarity that we are seeking will allow all members in this place to better understand whether what the member for Kalamunda has done represents an acceptable action or whether it is, instead, a breach of standing orders, a breach of privilege and a contempt of this house. Furthermore, only the Procedure and Privileges Committee can establish whether the member for Kalamunda, in his posts, has revealed the deliberations of one of the most important committees of this house.

Before I go to the detail of the motion, I would like to take this opportunity to outline to this place the deliberate and considered approach that the opposition has taken with this matter. Following Hon Nick Goiran's contribution in the other place, we know that members of the government had prepared for an immediate suspension of standing orders on the following sitting day. As history shows, of course, we did not undertake to do that. The opposition considers the conduct of the member for Kalamunda to be a grave and serious one. It is one that should not be dealt with with high emotion, but rather, with a sense of diligence and consideration that reflects not only the importance of the institution that we serve, but also the role that we as parliamentarians play in our democratic society.

As part of our approach, we thought it necessary not to immediately raise this as a matter of privilege, as we are entitled to do under the standing orders, nor to move a suspension. Instead, we gave notice of this motion weeks ago because we thought it important that the member for Kalamunda be given the courtesy of knowing that we would later be debating a complaint against him. This is an established procedure so that members here can be present in the chamber to hear complaints and the substance of motions moved against them, and hear complaints about their actions.

Furthermore, undoubtedly, the government, in its response to this, will try to make this matter relate to the appointment of Hon John McKechnie, QC, as the Commissioner of the Corruption and Crime Commission. This motion does not deal with that reappointment process, and I urge the government to offer maturity and consideration in its reply that deals with the issues pertaining to the member for Kalamunda, and not to try to draw extensions to this argument and somehow reassert that this is solely about the appointment process of the commissioner.

Several members interjected.

**The SPEAKER:** Members!

**Mr Z.R.F. KIRKUP:** This motion is not that issue, and legislation before the house will deal with that at the appropriate time. Therefore, I reiterate —

**Mr B.S. Wyatt** interjected.

**The SPEAKER:** Treasurer!

**Mr Z.R.F. KIRKUP:** — that this is a straightforward, considered motion without any conferred judgment, a motion without hubris, a motion that does not seek to cast aspersions on the member and his actions associated with his Facebook posts of 14 and 16 April 2020. I will go into those posts shortly; however, I thought it was important that we remind members why it is a must that this matter be looked into and why it is important that we establish whether we, as a chamber, accept that it is now the standard and acceptable practice to reveal deliberations of committees, or whether it is something that should be investigated with an eye towards whether this action breaches the privileges that underpin our democratic institution and, in so doing, whether or not the member is in contempt of this Parliament.

This is not an unimportant or trivial matter, and it is not something that should not go without further investigation. Even if the member for Kalamunda sought to resign his tenure from the joint standing committee, this is still an issue that requires investigation by the Procedure and Privileges Committee, because matters concerning privilege go to the heart of the institution that we serve. In the twenty-first edition of Erskine May's *Parliamentary Practice*, privilege is defined as —

... the sum of the peculiar rights enjoyed by ... Members of each House individually, without which they could not discharge their functions,

Furthermore, the *Canadian House of Commons Procedure and Practice*, published in January 2000, defines breach of privilege as —

... any action which, ... tends to obstruct or impede the House in the performance of its functions; obstructs or impedes any Member or Officer of the House in the discharge of their duties; or is an offence against the authority or dignity of the House, such as a disobedience of its legitimate commands or libels upon itself, its Members or its Officers.

Furthermore, in that same volume of Erskine May, “contempt” is defined as —

... any act ... which obstructs or impedes any Member ... in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt even though there is no precedent of the offence.

We bring the motion to the house because we believe the actions of the member for Kalamunda that I am about to outline may have breached privilege, and that, in so doing, he may stand in contempt of the house. Although this issue may have little bearing outside this place, with communities coming to bear with the impacts of matters like COVID-19, the reality is that if one member breaches privilege, it impacts upon the ability of all members to discharge their functions and duties to the people who have elected us to this place; that is to say, a breach of privilege by one impacts upon us all, and in so doing compromises our capacity to fight for our communities in this place and strikes at the heart of our democratic institution. There can be no more egregious act than a member injuring our collective ability to represent the Western Australian community. That is why this motion is serious and why this issue warrants nothing short of investigation by the Procedure and Privileges Committee. However, all of this is only my assertion; it is only my reflection on the conduct of the member for Kalamunda. I remind members that I am only one member of this place, but that ultimately does not matter for the Procedure and Privileges Committee to investigate and report on this, which is what the motion seeks to achieve.

Let me remind members exactly what we are dealing with. We are talking about two Facebook posts made by the member for Kalamunda on his Facebook page on Tuesday, 14 April at 9.18 pm, which was edited three times and then replicated in large part at 10.39 am on Thursday, 16 April. As at 1.00 pm this afternoon, between those two posts, it was liked some 49 times; had 17 comments, some of which were the member himself replying to comments made by others; and shared five times. The substance of the post that I will be reading from is dated Thursday, 16 April. As I said, though, aside from the edits, it is effectively the final post as well. I will quote the post in full from the member for Kalamunda. It states —

In the midst of the community's focus on responding to the COVID-19 pandemic, it is not surprising that other matters of great importance escape the notice of the public. The needless delay in the reappointment of the CCC Commissioner is one such matter.

The Corruption, Crime and Misconduct Amendment Bill 2020 will be introduced into State Parliament this week. The Bill provides for the reappointment of CCC Commissioner John McKechnie QC for a period of five years commencing on April 28, 2020. Why is this necessary? You might well ask.

The McGowan Government is taking the unprecedented step of introducing legislation that would reappoint Commissioner John McKechnie QC to Western Australia's premier integrity agency because the Parliament's Joint Standing Committee on the Corruption and Crime Commission failed to achieve bipartisan agreement to concur with the advice received by the Premier from the independent nominating committee chaired by the Chief Justice of Western Australia that John McKechnie QC be reappointed for a further term.

These are the facts:

Mr McKechnie's term as the head of the Corruption and Crime Commission (CCC) expires on April 28, 2020. Mr McKechnie is the only Commissioner to serve a full term and the first to seek reappointment.

Mr McKechnie was the outstanding candidate of the three eligible nominees identified by the nominating committee, which was chaired by the Chief Justice of Western Australia, the Hon. Peter Quinlan SC.

However, the parliamentary Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) was unable to provide majority and bipartisan support for his reappointment.

What bothers me, as a member of the JSCCCC, is that there was no requirement for the dissenting voice on the JSCCCC to provide documented justification for that dissent. In my opinion the unwillingness to concur with the recommendation of an independent nominating committee, which has been forwarded by the Premier-of-the-day as required by the Act, requires clear and rigorous justification, as much as it would have been expected of the Premier-of-the-day had he or she decided to make a recommendation for the appointment of a candidate other than the candidate recommended by the nominating committee.

This unjustified dissent, and the resulting failure to achieve majority and bipartisan support, has left the re-appointment in limbo, leaving Parliament and the community to speculate why this position was arrived at. This outcome surely cannot rest simply on the solitary whim of the dissenting member. The appointment of a Commissioner of the CCC is an important affair of State.

The Government will be seeking the support of the Parliament to deal with the Bill expeditiously this week.

If the Bill is passed, it will ensure bipartisan and majority support of the whole of Parliament, not just the JSCCCC, for Mr McKechnie's reappointment to this important role.

This is, I believe, a straight forward test of the leadership of Liza Harvey, the Leader of the Opposition. There is an incredible lack of coherent leadership on this matter by the Opposition. If the Opposition is not able to give bipartisan support to the reappointment of Mr McKechnie, then the Leader of the Opposition needs to tell Western Australians why that support was not and is not forthcoming.

Beyond the current remedy, it is clear the Act needs to be amended to ensure this situation is never repeated.

It was immediately obvious to me on reading that post that the member may have breached privilege and may be in contempt of this place. At the very least, this appears to be a breach of standing orders 270 and 271, which require that deliberations of committees are private and that evidence before committees is not to be disclosed by any member. That, in and of itself, warrants further investigation.

The government in reply may rest upon the notion that this does not need to be referred to the Procedure and Privileges Committee because, in large part, the information posted by the member for Kalamunda was already public, and reflected correspondence from the joint standing committee to the Premier and subsequent correspondence from the Premier to the Leader of the Opposition. I have listened to every press conference the Premier has given during the COVID-19 state of emergency, so I can say with confidence that, yes, while the Premier and Attorney General did speak to many of these issues prior to the member for Kalamunda's Facebook post, the member went further than those public statements. The difference between the commentary of the Premier and the Attorney General and the comments of the member for Kalamunda in his posts is that these cabinet ministers made a series of assumptions about the circumstances surrounding the reappointment process of Hon John McKechnie, QC, and in particular made a series of assumptions about the actions of members serving on that committee. This is where the member for Kalamunda went further. As he stated in his post, he is a member of the Joint Standing Committee on the Corruption and Crime Commission and represented his views akin to that capacity. He then sought to validate many of the statements made by the Premier. However, beyond that, and most critically, the member for Kalamunda used certain language, which I will quote with added emphasis. He said —

What bothers me, as a member of the JSCCCC, is that there was no requirement for the dissenting voice on the JSCCCC to provide documented justification for that dissent.

Furthermore, he said —

This unjustified dissent ...

And finally —

This outcome surely cannot rest simply on the solitary whim of the dissenting member.

The member for Kalamunda has effectively used his position on the joint standing committee to back up his Premier and reinforce the Premier's political posturing. In so doing, the member for Kalamunda has on my count alone, firstly, seemingly reflected on the deliberations of the committee on matters that only a member of the committee could know; secondly, compromised all his fellow members of the committee, who have no capacity to respond, defend, confirm or deny these assertions lest they, too, breach privilege; thirdly, potentially breached the standing orders on the deliberations of committees and disclosure of evidence; fourthly, possibly gone against his own committee's resolution, which may have delegated the member for Girrawheen as the only member who could offer public comment on the committee and its work; fifthly, levelled imputations of improper motivations on all his fellow members of the committee by asserting that a vote was taken, and because of the nature of the committee operations, we are not to know whether the member for Kalamunda was correct in his representations in that Facebook post; and, sixthly, appears to have broken the long-held tradition of not discussing committee business and has thrown into doubt the enduring operations of one of the most important and confidential committees of this Parliament. Beyond those concerns, there are ramifications of the conduct of the member for Kalamunda that, if they go without investigation by the Procedure and Privileges Committee, may throw into doubt the entire operations of our proud committee system and cause a chilling effect whereby members will no longer know whether things said or done in confidence on a committee will actually stay that way. I submit to this chamber that these actions by the member for Kalamunda have been egregious and have potentially undermined the important processes, procedures and protocols of this institution. Ultimately, his posts may be wrongful and, regardless of their motivations, they deserve to be investigated by the Procedure and Privileges Committee.

With that in mind, I now turn directly to the member for Kalamunda. The opposition has deliberately afforded him an adequate period to be able to respond to this motion. We thought it just and right that he was given satisfactory notice that we would be moving this motion here today. This would ensure that the member, as I quoted from the same volume of Erskine May's *Parliamentary Practice* previously, may have the opportunity to —

... be heard in explanation or exculpation as soon as the question on the motion founded upon the complaint is proposed ...

Obviously, we expect to hear from the member for Kalamunda, as to the nature of this motion. More than that, the media and his community expect to hear from him. Indeed, we should all be given the opportunity, as members in this place, to reflect on his actions and how he responds to the motion.

I do not embellish when I say that history will judge the member for Kalamunda, because right now through his actions I suspect that he is stuck in an unenviable position. I hope, and indeed expect, that the government will vote with the opposition to maintain the integrity of the Parliament and allow proper and due process to proceed, including providing natural justice to the member for Kalamunda. After all, this is one of the most serious and important procedures of our Parliament, and for very good reason. The Parliament is the highest court in the land and has the solemn responsibility of policing itself through our exclusive cognisance in the best interests of the community. With the enormous power that parliamentary privilege provides comes the enormous responsibility that must be upheld, particularly during these stressful and testing times.

If the member for Kalamunda's peers believe he did the right thing and that his statements are nothing to be worried about, they would not take issue with the Procedure and Privileges Committee investigating him because they would be confident of an outcome that would exonerate his position and his actions. In preparation for my contribution here today, I have read every one of the speeches delivered by the member for Kalamunda in this place thus far. From what I have read, he is an individual who believes in fairness, justice and equality. In his inaugural speech on 17 May 2017, he said —

... every member of the community is in fact a leader and that we do not abrogate responsibility for actions by simply following others.

The member for Kalamunda should consider that last part of his contribution before presenting here today—that we do not abrogate responsibility for actions by simply following others.

We must now let due process take its course and be the ultimate judge of the case we have outlined. If the member for Kalamunda were to resign his post from the joint standing committee, that would be appropriate if he recognises that his behaviour was unbecoming of his position on the committee. However, that course of action would not negate the imperative to have this matter investigated by the Procedure and Privileges Committee. Due process and the rule of law must not only be done, but also be seen to be done, and in no place is that more important than

the Parliament of Western Australia. We set the standard for the rule of law and this matter must go through the proper process to maintain the integrity of this place. To allow an investigation by the Procedure and Privileges Committee would allow the member to outline his position and fully explain the circumstances, and let a dedicated committee make the call. I hope members can appreciate that we have not sought to overplay this in our motion today. We have not sought to add hubris or exaggeration. These are simply the facts. The member for Kalamunda's Facebook posts, as I have outlined, may have breached privilege and in so doing he may stand in contempt of this place.

It is now out of our hands; it is up to this chamber and ultimately up to the government to decide whether the member for Kalamunda should be referred to the Procedure and Privileges Committee. This should not be dismissed as an issue surrounding some peculiar tradition. The ancient concept of privilege is core to our being elected members of this place. A breach of privilege impedes us all. Disclosure of committee deliberations impacts our ability to effectively represent our communities and effectively robs Western Australians of the confidence that elected members can fairly advocate for them in this place. Any such breach—alleged or actual—warrants investigation in order to protect this institution and protect all Western Australians, whom we have been elected to represent.

I commend the motion to the house.

**MR J.R. QUIGLEY (Butler — Attorney General)** [4.24 pm]: I am the lead speaker for the government on this motion that has been presented to the chamber by the member for Dawesville. I would like to compliment him on the delivery of his speech. Regrettably, it lacked substance—the style was good but it lacked guts.

**Mr B.S. Wyatt** interjected.

**The SPEAKER:** Members, this is serious—please.

**Mr J.R. QUIGLEY:** It is serious. The member rightly pointed out that this is a grave motion for the chamber to refer one of its own to the Procedure and Privileges Committee; I agree. This motion should not embark upon a fishing trip. If there is some evidence before the chamber that the member for Kalamunda has breached standing orders, perhaps there is a case to refer. However, first of all it has to be demonstrated to this chamber that there is a prima facie case—something to answer before the privileges committee. The gravamen of the motion is that the member for Kalamunda revealed deliberations of the committee. The member for Dawesville did not identify what particular deliberation of the committee the member for Kalamunda revealed in his Facebook post of 14 April, which was edited and reposted on 16 April. He did not particularise what part of the Facebook post revealed any part of the deliberations. This will take just a little while. I quote —

In the midst of the community's focus on responding to the COVID-19 pandemic, it is not surprising that other matters of great importance escape the notice of the public. The needless delay in the reappointment of the CCC Commissioner is one such matter.

We can give that the tick; it does not reveal anything. The Facebook post continues —

The Corruption, Crime and Misconduct Amendment Bill 2020 will be introduced into State Parliament this week. The Bill provides for the reappointment of CCC Commissioner John McKechnie QC for a period of five years commencing on April 28, 2020. Why is this necessary? You might well ask.

That does not reveal anything. It continues —

The McGowan Government is taking the unprecedented step of introducing legislation that would see the reappointment of Commissioner John McKechnie QC to Western Australia's premier integrity agency because the Parliament's Joint Standing Committee on the Corruption and Crime Commission failed to achieve bipartisan agreement to concur with the advice received by the Premier from the independent nominating committee chaired by the Chief Justice of Western Australia that John McKechnie QC be reappointed for a further term.

We can tick that, members. It does not reveal any deliberation. It continues —

These are the facts:

That does not reveal any deliberation. The next paragraph reads —

Mr McKechnie's term as the head of the Corruption and Crime Commission (CCC) expires on April 28, 2020. Mr McKechnie is the only Commissioner to serve a full term ...

We can tick that; it does not reveal any deliberation. It continues —

Mr McKechnie was the outstanding candidate of the three eligible nominees identified by the nominating committee, which was chaired by the Chief Justice of Western Australia, the Hon. Peter Quinlan SC.

That does not offend; I am sure members will agree with that.

**The SPEAKER:** Attorney General, for everyone else in the chamber to hear what you are saying, do not hurry.

**Mr J.R. QUIGLEY:** It continues —

However, the parliamentary Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) was unable to provide majority and bipartisan support for his reappointment.

**The SPEAKER:** Attorney General! Slow down a bit so that everybody in the chamber can hear.

**Mr J.R. QUIGLEY:** It continues —

However, the parliamentary Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) was unable to provide majority and bipartisan support for his reappointment.

That does not reveal any deliberation because the letter from the JSCCCC to the Premier said exactly that. We then get to the paragraph that is concerning the member for Dawesville. I quote —

What bothers me, as a member of the JSCCCC, is that there was no requirement for the dissenting voice on the JSCCCC to provide documented justification for that dissent.

That concerns the member for Dawesville. It continues —

In my opinion the unwillingness to concur with the recommendation of an independent nominating committee, which has been forwarded by the Premier-of-the-day as required by the Act, requires clear and rigorous justification, as much as it would have been expected of the Premier-of-the-day had he or she decided to make a recommendation for the appointment of a candidate other than the candidate recommended by the nominating committee.

That could not possibly reveal anything of deliberation; we can strike that out. That leaves us with the first sentence of the next paragraph —

This unjustified dissent, and the resulting failure to achieve majority and bipartisan support, —

He says “unjustified” —

has left the reappointment in limbo ...

That does not reveal anything of the deliberations because that is contained in the letter of the chairwoman to the Premier. It continues —

This outcome surely cannot rest simply on the solitary whim of the dissenting member. The appointment of a Commissioner of the CCC is an important affair of State.

That does not reveal deliberations; it casts an opinion as to the satisfactoriness of the process. It continues —

The Government will be seeking the support of the Parliament to deal with the Bill expeditiously this week.

If the Bill is passed, it will ensure bipartisan and majority support of the whole of Parliament, not just the JSCCCC, for Mr McKechnie’s reappointment to this ... role.

That does not reveal any of the deliberations. It continues —

This is, I believe, a straight forward test of the leadership of Liza Harvey, the Leader of the Opposition. There is an incredible lack of coherent leadership on this matter by the Opposition. If the Opposition is not able to give bipartisan support to the reappointment of Mr McKechnie, then the Leader of the Opposition needs to tell Western Australians why that support was not and is not forthcoming.

We can strike that out as having any relevance to revealing deliberations. It continues —

Beyond the current remedy, it is clear the Act needs to be amended to ensure this situation is never repeated.

I have gone through that Facebook post line by line, as did the member for Dawesville, and I come back to one sentence, which is —

What bothers me, as a member of the JSCCCC, is that there was no requirement for the dissenting voice on the JSCCCC to provide documented justification for that dissent.

That is true. However, it does not reveal deliberations; it says that there is no requirement for anyone who dissents to justify their dissent. How do we know that there was dissent? It is not because of this sentence in this Facebook post—not at all. We know that by reason of correspondence to the Premier of Western Australia from the chair of the committee, dated 25 March 2020, in which she advised —

The Joint Standing Committee on the Corruption and Crime Commission met on 25 March 2020. We considered your recommendation that the Hon John McKechnie QC be re-appointed as Commissioner of the Corruption and Crime Commission.

The Committee has been unable to achieve bipartisan and majority support ...

That is a public letter; it is the letter that the Premier has referred to publicly. It does not reveal any deliberation that the committee itself did not determine was appropriate to reveal to the Premier of Western Australia. I seek to table that letter of 25 March 2020.

[See paper [3389](#).]

**Mr J.R. QUIGLEY:** There was nothing in that Facebook post. The only sentence that we can distil it down to is —

What bothers me, as a member of the JSCCCC, is that there was no requirement for the dissenting voice on the JSCCCC to provide documented justification for that dissent.

The member for Kalamunda did not reveal dissent; the chair of the committee signed off on notifying the Premier of that dissent.

I would now like to go to the concluding remarks of the member for Dawesville. They were spot on. The member for Dawesville said that he had read all the member for Kalamunda's speeches in this chamber and said that the member for Kalamunda believes in fairness, honesty and integrity, and that history will judge him for his comments. History will judge him and judge him most favourably. We, as members of this Parliament, carry a duty to protect and further the interests of not only the community but also this institution. The member for Kalamunda pointed out in his Facebook post that he is bothered by the fact that a veto vote can be cast in the JSCCCC without a requirement to ever record the basis upon which the dissent was made.

There has been a lot of speculation in the media and other places about what could be behind that dissent. What was behind that dissent? We know from a further letter to the Premier of WA from the chairperson of the committee that the committee was unable to achieve bipartisan support for the appointment and that there had been the usual process of interviewing each of the three nominees who had been put forward by the Premier. That happened on 25 March. It was at the conclusion of that meeting of the JSCCCC on 25 March that majority and bipartisan concurrence was unable to be achieved. Since then, of course, there has been a lot of speculation in the newspaper about the basis of that. One of the bases of that was the Parliamentary Inspector of the Corruption and Crime Commission. I now turn to an article published on Saturday, 2 May, by the opinion writer, Mr Paul Murray, which states —

But in the absence of the committee providing a full explanation about its deliberations—which might still happen—the public deserves to know as much as can be found about the possible reasons.

The member for Kalamunda did not reveal those reasons. He kept shtum; he kept the reasons to himself because he knew his obligations. Mr Murray could not refer to those reasons, but someone on that committee, other than the member for Kalamunda, has been the source of Mr Murray's article dated, as I said, 2 May. This must have come from someone in the committee; it is certainly not Mr Hughes. I repeat —

But in the absence of the committee providing a full explanation about its deliberations—which might still happen—the public deserves to know as much as can be found about the possible reasons.

Mr Murray goes on —

One of those “third parties” was the CCC's parliamentary inspector, Michael Murray, who retired from the job on March 30, just days after the committee's first consideration of McKechnie's reappointment.

As it happens, Mr Murray, QC, a former Supreme Court judge, must have been troubled by the assertion that he was one of the third parties, if not the third party. On the same day that article was published, 2 May—bear in mind Mr Murray has been a splendid public servant for 25 years, crown prosecutor and a Supreme Court judge before becoming the parliamentary inspector—Mr Murray was so troubled by that assertion in Mr Paul Murray's article, he was moved to email John McKechnie, private citizen, and state —

The email to the JSC is forwarded herewith. You should have it in view of the contrary publicity. There is no other communication to the Committee.

We know that what follows is the parliamentary inspector's only communication to the committee on the subject of Mr McKechnie's reappointment, which states —

Ms M M Quirk, MLA,

...

Dear Ms Quirk,

Thank you so much for your kind note on behalf of the Committee, marking my retirement as Parliamentary Inspector. I very much appreciated your thoughts and would ask that you convey my thanks to the other members of the Committee.

It occurs to me that I owe you an explanation for my decision after entering upon the eighth year in the office following my retirement from the Supreme Court. I would have gladly continued, ...

The email is then redacted because, sadly, he then sets out the detail of his physical condition. I undertake to the chamber that I have only redacted from there that which goes to his personal health. He continues in his email to Ms Quirk —

I tell you this, not seeking sympathy, but to make it clear that throughout my term I have received every assistance and courtesy from the members of this and the previous Committee and I do not retire as a result of any dissatisfaction with the work, which has at times been challenging.

I should add that I have always received appropriate consideration from the Hon McKechnie QC and the other members of his team, although we have by no means always agreed upon the correct outcome of a particular problem. You will notice that I have not copied this email to him.

He subsequently did. I seek to table a copy of those two emails.

[See papers [3390](#) and [3391](#).]

I will repeat the last paragraph of his letter, which states —

I should add that I have always received appropriate consideration from the Hon McKechnie QC and the other members of his team, although we have by no means always agreed upon the correct outcome of a particular problem. You will notice that I have not copied this email to him.

Of course there must be disagreement between the Parliamentary Inspector of the Corruption and Crime Commission and the Corruption and Crime Commission. We never intended the parliamentary inspector to operate as a rubber stamp but to critically review the work of the commission, which Hon Michael Murray did a splendid job at as the parliamentary inspector. But what does he mean when he says “we have by no means always agreed upon the correct outcome of a particular problem”? I was tempted to contact Hon Michael Murray, QC, to seek a further explanation of that, but refrained from doing so because of his health. I was surprised to learn, however, that the member for Kalamunda did email Hon Michael Murray, QC, but I will leave it to the member for Kalamunda to put his emails before the chamber. They are not mine—neither the email to Hon Michael Murray, QC, nor the reply that came back.

Most unfortunately, someone on that committee—I do not know which of the other three members it is—has chanced their arm in a most dangerous way. They have misled Paul Murray. He will be about the task now of finding out who misled him and why they misled him, because Mr Paul Murray has put his name to the fact that one of the third parties was Mr Michael Murray. We know beyond reasonable doubt—this is the criminal lawyer coming out in me—that when the Joint Standing Committee on the Corruption and Crime Commission convened on 25 March to consider the Premier’s nomination, which had come from the Chief Justice’s nominating committee, its members could not have even considered Mr Murray’s email—could I see the tabled paper again, please, Clerk? I think I tabled both copies—and whatever that last paragraph meant because they met on 25 March. Mr Murray did not email the committee until 17 April. We can exclude beyond reasonable doubt that Mr Murray’s email was before the committee or that there was another email from Mr Murray before the committee on 25 March, because he specifically said on 2 May, the date that the article was published in *The West Australian*, that —

There is no other communication to the Committee.

In his article Mr Paul Murray states —

One of those “third parties” was the CCC’s parliamentary inspector, Michael Murray, who retired ...

We know that Mr Paul Murray is 100 per cent wrong. I hasten to add that I do not blame Mr Paul Murray; he is only as good as his sources. On this occasion his sources were bad; we know that beyond reasonable doubt. Paul Murray goes on in his article to say —

The public doesn’t know what effect Murray’s views had on the committee’s attitude to McKechnie—if any—but I understand he sent an unsolicited letter raising issues.

One issue he raised was that he and Mr McKechnie had different views on some matters but that Mr McKechnie was good to work with. The other issue he raised was that he is in poor health and he would not have retired otherwise. The public knows what the views of Mr Michael Murray, QC, were. Mr Paul Murray now knows because the documents are tabled and were previously published in the paper. Yesterday I was asked by my counterpart, the shadow Attorney General, who sent the letters of Mr McKechnie to *The West*; who was responsible for that publication. The short answer is the Attorney General. Today I was asked a further question on notice: who sent the Michael Murray emails to *The West*? The Attorney General did. I was asked a further question: did I seek permission from Mr McKechnie or Mr Murray to send any of this correspondence to *The West*? No, I did not. The Attorney General does not go around seeking permission of people to publish material. That is ridiculous. These people have forwarded material to me and I took it upon myself to publish it in the public interest.

Mr Paul Murray said in his article —

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The public doesn't know what effect Murray's views had on the committee's attitude to McKechnie ... We know zero because it did not arrive until nearly three weeks after the committee met and rejected the nomination. That clears that one up for Mr Paul Murray and I hope it helps.

I will correct one thing that I said earlier about the letter to the Premier in which the chairwoman revealed that the committee had interviewed each of the nominees. That detail was not found in the letter but in the press release, which I will come to in a moment. In the press release from the member for Girrawheen, she states —

As has been the previous practice, the Committee interviewed all persons on the list ...

The committee members had Mr McKechnie sitting opposite them. The committee put out a press release saying that they had information from third parties and confidential material affecting the operation of the CCC. Who did they have sitting opposite them? Was it John McKechnie, private citizen? No, at that time he was the Corruption and Crime Commissioner. We know that people in public office have a duty under the act to report matters to the CCC. The Corruption and Crime Commissioner was present in the room but it appears that no-one on the committee bothered or thought fit to put to Mr McKechnie what they had for his comment. We know that subsequently Mr McKechnie wrote to the committee after this adverse conclusion had been drawn. He wrote to me by way of complaint. His letter states —

Dear Attorney General

...

I note the Committee's release says "The nature of those discussions is not detailed because it includes information provided by third parties".

In any other tribunal or committee this would offend the requirement for procedural fairness.

I have been given no notice of any adverse material and been provided no opportunity to explain ...

Mr Paul Murray—to get the Murrays right—says —

The public doesn't know what effect —

Michael —

Murray's views had on the committee's attitude to McKechnie ... but I understand he sent an unsolicited letter ...

Not even Mr McKechnie knows what that is. They would not give, and declined to give, Mr McKechnie what the member for Dawesville has accorded the member for Kalamunda. He made great moment of that, and I acknowledge what he did. He did not move the motion as a matter of urgency; he gave the member for Kalamunda time to prepare his response and meet the charge—meet the complaint. The committee did not do that to Mr McKechnie. It did not afford him procedural fairness. He is a person who has served this community for over 45 years as a Crown prosecutor, the inaugural Director of Public Prosecutions, a senior Supreme Court judge for over a decade and, even on the Leader of the Opposition's given testimonial, he has been an outstanding Corruption and Crime Commissioner. Everyone agrees with that; it is the method of reappointment that the opposition takes issue with, not his performance in office. The committee would not afford this man the opportunity to comment on what it was holding against him, as the member for Dawesville accorded the member for Kalamunda, and as we accord every criminal who enters the dock—that is, the right to hear the charge. At the end of a case, as in the Edwards case—we have all seen it on TV; the judge said, "Stand up Mr Edwards; is there anything you want to say?"—the accused hears the whole charge and is afforded the opportunity of reply. The committee did not do that to Mr McKechnie, QC. It did not accord him the opportunity to reply. Of course, it could not have given him the opportunity to reply to this email written by Mr Murray because, as already noted, that did not arrive until nearly three weeks after it had made a decision. What is it?

On the 23 April, the Joint Standing Committee on the Corruption and Crime Commission wrote to the Premier again, on a request by the Premier for reconsideration, refusing to confirm the nomination. The letter states —

A media statement to this effect will be issued later today ... It does not specify the exact nature of those discussions because —

Those discussion —

... provided by third parties in confidence and matters which may impact on the operational performance of the Commission.

We know that the third party could not have been—it would be impossible—the Parliamentary Inspector of the Corruption and Crime Commission. How can we make this referral if we have not seen either the report of the committee or its minutes? That is because, no doubt, if a third party had put in a submission contrary to

Mr McKechnie's and contrary to the Premier's nomination, that would surely be recorded in those minutes. I have not seen those minutes, but the committee and the committee chairwoman should move to table those minutes so that we, as members, can make an objective judgement on whether there has been a prima facie disclosure of deliberations. We have only that one sentence that we drilled down to. Let us see what was written to the Premier—that is, that it will be in the press release, that there was confidential information received by third parties and that there was other confidential material adverse to the operations of the commission itself. Of course, Mr McKechnie in his second letter to the committee, in which he asks for details of the adverse matters that have been withheld, notes that the committee never put anything before him by the parliamentary inspector or anybody else, so he has been denied natural justice.

This is not the way that this Parliament is meant to operate. Under the standing orders, if a committee is going to make an adverse comment about anyone, it shall advise that person and give that person the right to reply before the report is tabled. This was not a report. A report may come and Mr McKechnie may yet get the opportunity, but this was not a report; this was an adverse finding arrived at after Mr McKechnie was denied natural justice, procedural fairness and the right to reply. In other words, Mr McKechnie was the victim of a kangaroo court. That the allegation was not put to him and he was not given the right of reply fits the definition of a kangaroo court. Then a press release came out saying that a third party supplied confidential information, but the committee cannot tell us what that is. One of those committee members or someone associated with that committee went out and misled Mr Paul Murray. They said one of those third parties was Mr Michael Murray. We know that is 100 per cent false. It is false, false, false because Mr Michael Murray did not put his matter to the committee until the seventeenth, and in that regard he was only complimentary.

We have a duty to public servants and those who serve in high office to hold them to account and to deal with them fairly. We all know that a draft adverse finding by the Corruption and Crime Commission—I was the subject of one, member. That was in the Mallard matter. It was that I had improperly put pressure on a policeman to tell the truth. I realised with respect to that police officer that it was an impossible task, as subsequently revealed in the High Court. When the commission served me with an adverse notice for acting improperly by trying to get this policeman to tell the truth, I sent that adverse finding off to Mr Bret Walker, SC. He is one of the finest counsel in Australia and is currently doing the *Ruby Princess* inquiry—we have all seen him on TV. He wrote a letter back to the commissioner and they backflipped and praised me, and said, “We realise he was only trying to get a policeman to tell the truth when he wouldn't.” I only raise that because of the process. When the commission itself is about to make an adverse finding against anyone in this chamber, it affords us natural justice and gives us notice and the chance to respond. The committee did not see fit to do that with a person who has served this community so faithfully and as well as Hon John McKechnie, QC. He has been the subject of a kangaroo court.

We cannot talk about the deliberations because I do not know about the deliberations, but think of the consequences of this motion. We will oppose the motion for the reasons that I have said; that is, that it is only that one sentence. The virtue of the motion is this. This motion could not be considered by the Procedure and Privileges Committee unless it had before it the deliberations of the Joint Standing Committee on the Corruption and Crime Commission, because it would never know unless it had the deliberations of the joint standing committee whether the member for Kalamunda had revealed anything. Now we go to the standing orders. How does that happen? Does the JSCCCC just post it off by email or snail mail to the Procedure and Privileges Committee, and none of the members of this chamber see it? Does it send off the transcript or minutes of the proceedings before the JSCCCC to privileges, and privileges then makes a judgement? There is no provision in the standing orders of Parliament for that to happen. The only place that the JSCCCC can communicate with is the chambers of the house, which it has chosen not to do thus far. When we get it, if there appears to be a breach of something, then we can send it off to privileges. But this notion that it will go off to privileges, as the member for Dawesville said, to conduct an investigation—how can it conduct an investigation? It is not allowed to see the deliberations of the JSCCCC because it is in camera. The JSCCCC is not able, under the standing orders, to keep it secret from us and pass it under Mr Speaker's door for privileges to consider without us knowing. In any event, if it did that, it would still have to report back to this Parliament. The Procedure and Privileges Committee has to report back to this Parliament, report on the deliberations of the JSCCCC and how grave its finding might be on that. If there was to be any virtue in this, it would split open the deliberations of the JSCCCC. It had to undoubtedly do that, and we will all see whether there was any other third party besides Hon Michael Murray, QC, sending his letter, which was complimentary of Mr McKechnie, I must say. We are not going into the issue of whether or not he should be appointed; we are examining the motion. When we say, “Well, then you've got to look not just at your motion”, that invites the chamber to refer not only on the basis of disclosing a deliberation, but also in subsequent paragraphs to the motion that his general conduct criticised the processes of the JSCCCC. The government says, “Good on you.” We support that. We criticise the process of the JSCCCC when a person like Hon John McKechnie, QC, is denied procedural fairness. That is open to fair criticism and fair public criticism.

In a manner inconsistent with this, a member of the JSCCCC criticised the processes. That is his duty. If someone is not offered natural justice and given the right to reply in advance of an adverse report back to the Premier, it is

his duty to speak up. He is not revealing a deliberation. What the member is saying, and no more, is that the process was crook. The man was not offered procedural fairness. He did not criticise the decision of a member of the JSCCCC, no. He said he should put in reasons for dissent. There is nothing wrong with that. We praise a member for making those sort of constructive criticisms of the processes of a committee of this Parliament. Engaged in the commentary on the failure of the JSCCCC to appoint John McKechnie as the Commissioner of the Corruption and Crime Commission, his commentary was not on that. It was on the process, which, as I said, resulted in a kangaroo court. Whether such actions amount to a breach of privilege or contempt of Parliament and what action should be taken, we cannot send anything off to privileges because we do not know what the deliberations were. Everyone in this chamber is both blind and deaf as to what happened in that committee. We know nothing. How can this chamber vote to refer the member for Kalamunda for breaching standing orders by divulging a deliberation? We do not have any idea what those deliberations were, and nor does the Procedure and Privileges Committee; nor can it find out without a report coming from the JSCCCC to this chamber as to exactly what happened. Then we might be in a position to examine it.

The member for Dawesville invited us to vote with the opposition's motion, but before Parliament could do that it needs to have the minutes of the committee meetings of the twenty-seventh and the eighteenth before it. It is our committee for heaven's sake, and under the standing orders this Parliament can call for them. It is our committee. The Legislative Assembly is the mother lode. The committee is just a little reef off to the side. This is the mother lode. The committee in all senses is a child of this Parliament, and it is regrettable that our child—our committee—behaved in the way that it did in denying procedural fairness to one of the most distinguished jurists that Western Australia has produced. It is regrettable in the extreme. We will not be supporting this motion to refer him. The government commends the member for Kalamunda for having the courage and the integrity to criticise a process that he regarded as flawed; to criticise a process that I rightly characterised as a kangaroo court. The government will not support this motion.

**MS M.M. QUIRK (Girrawheen)** [5.06 pm]: Before I make my comments, I would like to acknowledge the long service of the Parliamentary Inspector of the Corruption and Crime Commission, Hon Michael Murray, who has been in that position since 2013. As we have heard from the Attorney General, he is retiring due only to ill health. His contribution to the oversight of the CCC has been invaluable. I wish him well in his retirement, and I hope that it is a happy one and is not too impacted upon by ill health.

There has been a number of matters canvassed both here and in the media on how parliamentary committees work. I would like to address some of those issues and try to dispel some of the myths. I think we all accept that parliamentary committees do very valuable work. They largely operate in a bipartisan fashion and with consensus. As we have heard, under the Legislative Assembly standing orders, which the committee is governed by, standing order 270 makes clear that all deliberations are to be conducted in closed session. The reason for this is self-evident. It is so that robust and comprehensive discussions without fear or favour can occur. Yes, it is true that the committee can report on its deliberations from time to time. However, the content of such a report to Parliament or otherwise needs to be agreed by committee. If it cannot be agreed, then there is provision in standing order 274 for a dissenting report to be published. Although not explicit, the committee needs to observe procedural fairness—that is, by putting propositions to interviewees or witnesses to give them the opportunity to answer and to canvass such assertions or propositions. It is arguable that this may not need to extend to identifying the source of those assertions.

If a report is published, as we have heard the Attorney General say, anyone whose reputation is adversely affected has a right to request of the Assembly that this response be incorporated into *Hansard*, and that falls under standing order 114. Despite having this right of reply, it may be arguable that airing in public adverse views about an individual may deter suitable persons from applying to such positions in the future.

Of note, I am of the view that the deadlock of the Joint Standing Committee on the Corruption and Crime Commission is not the same as a veto. The lack of veto power of the committee has generally been conceded in a range of reports, including the statutory review of the act by the then barrister Gail Archer, SC, in 2008. It has generally been held that the JSCCCC does not have the power of veto and, accordingly, the present impasse should not be treated as being a de facto veto. In fact, in a submission to the previous committee in 2016 by Commissioner McKechnie, he recommended, amongst other things, removal of the nominating committee but, more relevantly, on the issue of veto, in paragraph 54 at page 12 of his submission, he said —

The Commission recommends that the JSCCCC be given the power of veto regarding the appointment of a Commissioner, and that the passing of a resolution of appointment require a majority support of the JSCCCC.

The next paragraph states —

The Commission recommends consideration of provisions similar to those set out in subsections 21(1)–(3) IBAC Act.

That is the New South Wales legislation. The next paragraph states —

As a joint standing committee of Parliament, the JSCCCC is representative of both house of Parliament and must be comprised of two members of the Legislative Assembly and two members of the Legislative Council. At present, the JSCCCC is comprised of four members with each major political party (Liberal and Australian Labor Party) represented in equal numbers. The current Legislative Assembly Standing Orders and membership of the JSCCCC already ensure that no one political party may dominate consideration of a resolution to support an appointment of a Commissioner under the CCM Act.

That is the Corruption, Crime and Misconduct Act. The next paragraph states —

A requirement that the JSCCCC hold the power of veto by majority resolution in relation to a recommended nominee will ensure that the requirement for bipartisan support is maintained.

We have heard reference to the Independent Commission Against Corruption in New South Wales. Those laws were enacted before the Western Australian act and in there is a specific reference to the parliamentary committee having the express right to veto. Similarly, the Victorian Independent Broad-based Anti-corruption Commission rules give the committee a similar power, but this is limited in time, as it is in South Australia and in a 2014 amendment in Queensland. However, no such power is conferred on the committee in Western Australia. As a fundamental principle of statutory interpretation, such a power, and the serious consequences it entails, is not the kind that would be inferred. The power of veto needs to be expressly stated in the act for that to take effect.

There has been much discussion about, firstly, how the joint standing committee did not recommend Commissioner McKechnie for reappointment and, secondly, the fact that the committee was deadlocked. The effect of the deadlock means that the requirement under section 9 of the Corruption, Crime and Misconduct Act 2003 that the committee needs to give both majority and bipartisan support could not be achieved.

The role of the nominating committee headed by the Chief Justice is qualitatively different from the role of the standing committee. The latter has an ongoing oversight role and thus frequent dealings with the Corruption and Crime Commission, the parliamentary inspector, members of the public sector, senior police and so on. The standing committee analyses and examines reports and also conducts hearings. The standing committee reports to Parliament on its findings. Access to this broader range of matters is not, by definition, something of which the nominating committee is apprised.

The act is silent on what should transpire should a deadlock occur. From a report of the Joint Standing Committee on the Corruption and Crime Commission in the last Parliament, it seems that such an issue may have previously occurred, but as the matter was not prosecuted in the media, this was not widely known. The details and circumstances of that matter are unknown, as the standing orders that require that deliberations remain confidential were strictly complied with. We cannot even inquire of the past chair or committee members what transpired.

It has been opined by one of the most senior legal advisers to government that the views of the standing committee have to be given effect. It is arguable that such an opinion would be of assistance if, with bipartisan and majority support, the committee nominated an alternative candidate on the list. However, in the present case, there are no views expressed to give effect to that. I stress that the committee has only four members and there is no casting vote by the chair. Moreover, parliamentary debate on the CCC legislation does not give guidance on the mischief of the section. However, an article by Peter Kennedy in *Business News Western Australia* of 29 April 2020 sought the opinion of former Attorney General Jim McGinty, who was the architect of the CCC legislation in 2003. It was reported that Mr McGinty said —

... the joint standing committee was meant to be a surrogate for the views of both major parties. It was not there for individual viewpoints.

I have been asked on numerous occasions to give reasons why the committee did not support Mr McKechnie's reappointment. More accurately, it could not form a concluded view that met the statutory threshold, which begs the question: if there is no veto power, what is the nature of the failure to gain bipartisan and majority support? Rhetorically speaking, what are the constraints from proceeding to reappoint Mr McKechnie?

From the foregoing, I hope it is better understood that the issues that the committee confronted were not cut and dried. The details of the limited precedent that existed were not available for guidance. That same report recommended amendments to the act and, in particular, section 9, which deals with consultation with the committee over a proposed appointment. In 2017, that recommendation for amendment was agreed to by the government but has not yet been introduced or enacted. Although the concerns with section 9 did not address or even contemplate the current situation, it may have stimulated broader reflection on its efficacy and whether the intent of the provision was adequately represented in the existing section.

On that thought, I conclude by observing that the whole reason for the appointment process in the act is to remove venal politics and guarantee integrity in an important independent role. Instead, a distinguished person who has served

the state over many years and has been a significant player in criminal justice and the judiciary has had the indignity of having his affairs publicly canvassed.

Today's motion does not absolve me from maintaining the confidentiality of the nature of these internal deliberations. It does, however, give me the public opportunity to express my personal but general opinion on the suitability of Mr McKechnie's reappointment. The case for Mr McKechnie is compelling, because, in the CCC, there is a need for continuity. That might strike members as faint praise, but it is a crucial factor when one considers the history of the CCC before Mr McKechnie. In April 2015, shortly before Mr McKechnie took up his appointment, acting commissioners Neil Douglas and Christopher Shanahan, SC, tabled a report on the functions of the CCC. That report is more concisely known as "The Repositioning Report".

The background to the report was to reflect on the first 10 years of the CCC's operation to explain a more strategic targeted intelligence-led approach and inform a newly configured business model and outline organisational changes implemented for internal governance and conduct challenging. In its first three years there were three commissioners—Kevin Hammond, AO, between December 2003 and March 2007; Hon Len Roberts-Smith, QC, from June 2007 to January 2011; and Roger Macknay, QC, from November 2011 to April 2014. For the year following, the position of commissioner was vacant. That undesirable outcome has been the subject of comment about the glacial speed of the recruitment process by the previous Joint Standing Committee on the Corruption and Crime Commission. Also within the first 10 years, the executive director, and later CEO, Mike Silverstone, resigned, leaving the organisation even more bereft of leadership and corporate knowledge. This followed a period of two years in which police investigated a number of allegations against commission officers, including those relating to misappropriation, public sector impropriety, bullying and lying to the Australian Taxation Office.

In 2015 the Parliamentary Inspector of the Corruption and Crime Commission, Hon Michael Murray, tabled a report on the CCC's surveillance division, decrying it as having a disturbing culture of unaccountability and systemic management failure. In the climate of low morale and questions being raised about the integrity and direction of the organisation and failure of leadership, Commissioner McKechnie took on what must have been universally considered a poisoned chalice.

Added to those challenges were those identified in the repositioning report—an exponential increase in the number of allegations; ongoing debate about whether the commission should be tasked with an organised crime function; the growing privatised service delivery of government services; a tightening fiscal environment; the need to engage and participate in the WA integrity sector and with interstate counterparts; internal governments and conduct challenges, some of which I have already detailed; growing expectations of the parliamentary JSCCCC and the parliamentary inspector; and recent High Court decisions that related to the admissibility and prosecutions of coerced evidence. The growth in allegations was addressed by legislative amendment, which transferred allegations of minor misconduct in the public sector to the Public Sector Commission. It also transferred the function of integrity in the anticorruption education to that agency.

The other matters identified in the repositioning report fell squarely within the responsibility of incoming Commissioner McKechnie to address. We must give him considerable credit for exercising leadership to turn the organisation around. I remember only too well the bad old days of the CCC. Central to my support for his reappointment is the need for stability. With Mr McKechnie continuing at the helm, the ship was heading in the right direction and was no longer taking on water.

**MR M. HUGHES (Kalamunda)** [5.23 pm]: Before I begin I would like to thank the member for Dawesville for the opportunity to give consideration to the notice of motion to refer me to the Procedure and Privileges Committee. I note, of course, that in terms of the press release that was provided by his leader that there were calls for my sacking almost instantly that Hon Nick Goiran had recourse to look at my Facebook page. There has been a bit of distance between the hiatus in the other place and Hon Nick Goiran's capacity to stand on the high moral ground, even though at times is it not as high as a molehill, but I know how well he can churn out the perturbation if he chooses to. When the decision—if I can call it a decision—or rather the outcome of the Joint Standing Committee on the Corruption and Crime Commission was not able to achieve bipartisanship, I wondered what the Leader of the Opposition's view was of that. I am very pleased she is in a position to be able to say that she had all confidence in the current commissioner. She did point out in the cut and thrust of debate that of course she is not a member of that committee, so it was not her veto. However, we find ourselves in a situation in which the most effective member of the commission, the commissioner, is greatly acknowledged. Without divulging the contents of the deliberations of the committee, even the chair acknowledged the considerable work that man has done.

The member for Dawesville is the youngest member of Parliament elected and, arguably, I think I was the oldest member of Parliament elected. When I was elected I took an oath of office; that was to swear to always act in the best interests of the people of Western Australia. Without divulging the contents of the deliberations that took place on 25 March, I can say that I was shocked—I was shocked. I made my feelings known to the chair. On 26 March I said that I was contemplating resignation from the committee. Members have to ask themselves the question:

**Extract from Hansard**

[ASSEMBLY — Wednesday, 13 May 2020]

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Mr Zak Kirkup; Mr John Quigley; Ms Margaret Quirk; Mr Matthew Hughes; Mr Mark McGowan

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why would an old codger like me be placed in that predicament? They would be quite right to wonder. I think the standard that you walk past is that standard that you accept. I think this Parliament deserves the best possible standard in the deliberations of the committee and the basis on which those decisions are made. When I referred to “justified” on my Facebook page, there was no justification given in the letter to the Premier; it was unjustified. No justification was given. I did not say “unjustifiable”. That would be my making a qualitative assessment of the debate; I would stray into that. If I did stray into the debate of providing disclosure, when on 9 April the chair indicated that she had been approached by Gareth Parker to make comment on the outcome of the committee, I readily acknowledge that so concerned was I about what had happened that I indicated to her that if I were to speak to him, and if I strayed into breaching privilege, I would bear the consequences. I did not. I thought the best job I could do was to try to explain to people in my constituency why the government was in the position in which it had to seek to bring the bill forward to change legislation in order to overcome the unexplained reasons Hon John McKechnie was not made commissioner. Everyone in this chamber, including the opposition, believes that that person is the right person for the job.

I turn now to my notes. I will see how far I get before members want to interfere in what I have to say. I think it is unfortunate for the public of Western Australia that the standard of the reappointment process of the Corruption and Crime Commissioner has reached the position it has. I know from the communications I have had from my electorate that the public is confused and dismayed by the fact that this state’s most successful commissioner has not been reappointed, even though he received bipartisan support in 2015. He has exposed staggering corruption in the public service and is midway through the examination of an MP’s expenses—that is a fact—but he has not been reappointed, given that under the provisions of the act a serving commissioner is eligible to hold office for a further five-year period, but no more. I think there is a substantial difference between a new appointment and a person who seeks to be reappointed. Regarding the advice provided by Hon Nick Goiran about the circumstances he faced, they were never facing the reappointment of an existing commissioner; they were always looking at new appointments. Whatever information was available so that the committee felt it was providing sound advice to the government of the day that the recommendation to the Governor General should be someone else, we will never know what the basis was, but I would argue that there would have to be substantial grounds for the reappointment not to occur. That is the whole basis of the commentary in my Facebook post. The member is quite right that a few edits went on, trying to keep things in such a way that I pointed the finger at no-one in particular. As we know from the current composition of the committee, there has to be one dissenting member. As it stands, given that there is no justification, it can be at whim; we would never know. We would never know because there is no disclosure.

The remarks I made on the Facebook page relating to the outcome of the meeting on 25 March of the Joint Standing Committee on the Corruption and Crime Commission were an attempt to give some explanation and understanding to the public about this matter of great interest and importance of why it had become necessary for the government, in the face of an unexplained deadlock, to introduce legislation to facilitate Mr McKechnie’s reappointment. The public and this Parliament deserve an explanation about why bipartisan concurrence could not be achieved. They deserve some justification from the committee, which, through not publishing its reasons, it did not provide. I do not reveal the deliberations or processes of the committee. That should be done by the committee itself by publishing its minutes or a report so the public can see what happened. I would welcome those minutes being published or a report. I think the public deserves to see those minutes and to truly know what happened and why it happened. Mr McKechnie and the public of Western Australia deserve to know how the committee has gone about its duty in this task to serve the people of Western Australia in what is a matter of great public importance. As members have heard, it is open to the committee to resolve to do this, should it choose. Without straying too far, I suggest that it might help the process if the committee was prepared to do that.

Without revealing the contents of the committee’s deliberations, I can advise the house of what was not included in the deliberations. This concept is interesting, because we have this odd relationship between the act, which says nothing, and the committee, which is not bound to say anything, so we could never know unless the committee was prepared to divulge and unless this Parliament said, “You will provide us with the information.” I hope that this Parliament at some stage chooses to do just that. Without revealing the contents of the deliberations, I can advise the house of what was not included in the deliberations. I can advise the house of what did not happen and what I did not support. There was never anything put before me, either at the meeting of 25 March or the meeting of 22 April, that would preclude the reappointment of John McKechnie as commissioner. I did not support the letter sent from the committee chair to the Premier on 23 April, or the assertions within it, to which the media statement referred. If members read both, I could not concur with the letter and I could not concur with the media release. I table an email sent to the committee at 6.12 pm on 22 April recording that I did not support the observations made in the letter and I lay it on the table.

[The paper was tabled for the information of members.]

**Mr M. HUGHES:** I will read the email, since I brought it in. I will not say who I referred it to. It is the senior research person. The email reads —

I made my position clear in discussion this morning. I do not support the majority view with regard to observations made in this letter.

I followed up the email and said to the principal research officer in a telephone call that in particular I did not support the assertion made public in the form of a media release that the committee resolved unequivocally to reject any suggestion that the motivation for members not supporting the appointment recommendation was the Corruption and Crime Commission's focus on parliamentary electoral allowances. It makes it unequivocal. The media release used the word "resolved". I did not support that statement, I did not agree with it and I still do not agree with it. There was also the assertion that discussions included information provided by third parties in confidence and matters that may impact on the operational performance of the commission. I did not support that statement in the media release, which resulted in several media reports that cast unfair suspicion over Mr McKechnie's fitness to be reappointed.

Given this motion against me today and given the public interest in the matter fuelled by the media release, the record needs to be set right. I need to set the record straight. In the articles appearing in *The West Australian* on Wednesday, 29 April, and Saturday, 2 May, it was asserted that all four members of the committee had put their names to the media statement. I did not. I have no knowledge of any confidential information from third parties averse to the reappointment of John McKechnie as commissioner or matters that may impact on the operation and performance of the commission, and no such material was presented to the committee. If such weighty information exists, I have not been provided with it. An article on Saturday, 2 May, titled "Get over it, Mr Premier" from the Paul Murray school of journalism asserted that the third party information referred to in the media release was unsolicited correspondence from the former Parliamentary Inspector of the Corruption and Crime Commission, Hon Michael Murray, who has also unfortunately been drawn into this sorry saga. Given that the article implied that the committee of which I am a member had vetoed Mr McKechnie because of something the parliamentary inspector had given it, I contacted Mr Murray to ascertain whether he had provided the committee with any material that I was not aware of. I asked Mr Murray about the assertion that he was the source of the third party confidential information and he gave me permission to inform the house of his reply on 5 May. I have the text on my phone and I am prepared to table it, if members like. I will table my phone! His reply was that the article was without foundation and that he had only written to the chair of the joint standing committee with a general reference to the quite ordinary dealings between the parliamentary inspector, the commissioner and senior staff. That is what the parliamentary inspector has given me and he gave me permission to inform the house. I asked him whether I could and he thanked me for asking for his permission.

The motion moved by the member for Dawesville—not Warnbro but Dawesville!—wants me to be referred to the Procedure and Privileges Committee for revealing committee deliberations and criticising the process of the committee. I have done none of that. As the Attorney General has said, how can I be referred for these things if the committee's minutes are not made public? We do not know.

I am confident, though, that the tabling in this chamber of the minutes of the committee meeting on 25 March, from which all of this unfolded, would conclusively solve the mystery of whether the committee, when considering the nomination of the Premier of Mr McKechnie contained in his letter of 5 March 2020, had before it, as described in the media release, information provided by third parties in confidence and matters that may impact on the operation and performance of the commission. The member for Dawesville would like to know that and the public would like to know that, but I am not able to tell them. How can the house judge the process of the committee if the minutes of what happened and the process are not known? The house and the public should know the answer to the question of why it was not possible to achieve bipartisan agreement, given the thirty-ninth Parliament had and we had a very successful commissioner. We have to ask the question: why? I could make some suggestions later in my speech about why, but I probably will not.

As I said at the beginning of my speech, I entered Parliament quite late on in life to serve the public. I could be in retirement.

[Member's time extended.]

**Mr M. HUGHES:** I entered Parliament quite late in life. Everything I have done in this place as a member of Parliament and as a member of that committee for over two and a half years was done in the spirit of bipartisanship. I thought I was coming into an arena where there were seasoned members of Parliament—that is not to say that I am not seasoned but in terms of their experience here—on the government side and the opposition side and I thought I would learn something. As it turned out, there was a Greens member, and that is another story; I know we upset this place in doing that. Without divulging the business of the committee, I have been disappointed—sorely disappointed. I swore just over there on that spot in May almost three years ago that I would faithfully serve the people of Western Australia as a member of this Legislative Assembly. My principal and clear overriding duty, without getting upset about this, is to the people of Western Australia. I promised I would not do this, but there we go!

At the beginning of this sorry saga, I considered resigning from the committee and made this known to the chair on 26 March, but I decided not to do so. I will serve the interests of the people of Western Australia in this place, in

this chamber and on the committee. I have one last comment, member for Dawesville. I will put it this way: when we have seen and heard something, we cannot un-see it and we cannot un-hear it. We need to be a chamber that shines a light on the truth and uphold the principles of justice and fair play. That is why I posted my Facebook post.

**MR M. McGOWAN (Rockingham — Premier)** [5.43 pm]: I have a few things to say. Firstly, I want to make it absolutely clear that the government will not be supporting this motion by the member for Dawesville for a range of reasons. I want to be really clear with people about this. I am pleased, actually, that the member gave us this opportunity to explain some of these matters. We will have another opportunity to speak when the legislation comes forward to reappoint Mr McKechnie to his role, which he has performed in an outstanding way, as the head of the Corruption and Crime Commission. However, I want to explain why we do not support this motion.

I want to say at the outset that I think the member for Kalamunda has done nothing wrong. He is a man of principle and a decent person. This motion is directed directly at his integrity. Members have to understand that when they do things like that, they can deeply impact people. For some people, these things are debating points like at university—a bit of fun. For other people, like the member for Kalamunda, these things are deeply hurtful. Over his three years here, he has shown himself as being that sort of individual. He has come to political life relatively late in life with a very successful career in education, full of integrity and decency. He ran very significant schools. He was never a political player, a political staffer or a person who comes up with points to give to their minister or Premier in the Parliament, then goes home and thinks up a whole bunch more the next day. He is a person of integrity and substance who has done important things in his life. I think we heard in his address just then how meaningful and important this matter is to him, and how hurtful and, in some ways inappropriate, the motion put forward is.

The motion put forward by the member for Dawesville is all about a Facebook post by the member for Kalamunda. The central tenet of the Facebook post was this: he wants a clear and rigorous justification of the failure of the committee to reach an agreement that allowed for the reappointment of Mr McKechnie. That is what he was asking for. In effect, the word is “transparency”. He is asking for transparency in a Facebook post. For that, the member for Dawesville came in here with this long and detailed motion. He read every speech the member ever made. He came before the chamber with all the attitude of a Perry Mason to put forward his case about a Facebook post. He then said how many comments and likes were made on the Facebook post. It is as though some grievous injustice has been done as part of what the member for Kalamunda has done. It is as though there was a grievous injustice or an amazing transgression of parliamentary privilege because he posted that he wanted transparency in one of the most important appointments in the state. He had some likes on the post. Does that strike members as a slight overreaction on the member for Dawesville’s behalf? Does that strike members as a little too strong of a reaction to a Facebook post about these matters?

As the Attorney General outlined, the member for Kalamunda’s post did not transgress the standing orders. I will not go through it all again, but it was a gross overreaction on the member for Dawesville’s behalf and a gross overreaction in the language he used in the motion he moved against a person of the stature, background and integrity of the member for Kalamunda.

I want to take members through what this is all about. While the member for Dawesville was speaking, my colleagues and I were using some common phraseology, including, “Don’t mention the war!” and “He’s not dealing with the elephant in the room.” We all know what this is about. This is about the reappointment of the head of the Corruption and Crime Commission—Mr John McKechnie, QC. The member said he would not mention him, then he mentioned him in his statement, so I will mention him. I am going to say what this is all about and I will say it again when the bill comes on. So members are aware, I received a letter from the Chief Justice of Western Australia, Honourable Justice Peter Quinlan, about the appointment of the CCC commissioner. The letter came in around 23 February 2020. It was a letter following deliberation by the Chief Justice of Western Australia, Honourable Justice Peter Quinlan, plus the Chief Justice of the District Court, the Honourable Kevin Sleight, plus a committee member who was appointed. Her name is Ms Audrey Jackson, a former senior person in education. That committee deliberated on nominees and provided a nomination to the government for the commissioner of the CCC. The committee unanimously recommended the reappointment of Mr McKechnie—none other than the Chief Justices of both senior courts of Western Australia and a senior and respected member of the community, Audrey Jackson.

In a letter to me, Mr Quinlan said —

While it is a matter for you which nominee is recommended for appointment, in the Committee’s view, the Hon John McKechnie QC is the outstanding nominee for the position. He has extensive experience and a demonstrated capacity in the role, which he has carried out independently and with great integrity. Indeed, this appointment is required only because of Mr McKechnie’s current term expiry. His reappointment will also provide continuity in the position.

That is what the Chief Justice of Western Australia said about Mr McKechnie. I assumed that that was pretty good evidence for his reappointment. In fact, I did not think much about it at all. It was so obvious. Who should be appointed to this position was staring any right-thinking person in Western Australia in the face. Therefore, the

department generated a letter for me, which I sent to the chair of the Joint Standing Committee on the Corruption and Crime Commission on or about 5 March, or a little after I had received the previous letter. I assumed it was a formality. It was what I was required to do under the act. I had to write to the chair of the committee seeking endorsement, approval or support for the reappointment for Mr McKechnie. It did not even play on my mind. I did not think anything about it because it was so obvious. It was what is commonly known these days as a no-brainer, to appoint someone of that nature.

I signed the letter and sent it to the chair of the committee and then all hell broke loose, of course. We all became aware—maybe it was already in place at that point in time—of the COVID-19 pandemic and the state of emergency and crisis that was confronting Western Australia and the rest of the world. Obviously, my mind, thoughts and actions were elsewhere. Subsequently, I received a letter from the committee stating, from memory—I do not have it before me—that the reappointment of Mr McKechnie did not have majority and bipartisan support. There are four members on the committee: two government members, one Liberal member and one Green. After I received that letter I wrote to the Leader of the Opposition seeking her support on this matter. I received a very, very testy reply.

**Mrs L.M. Harvey** interjected.

**Mr M. McGOWAN:** Just so that members are aware, I followed the exact processes under the law for the reappointment of Mr McKechnie. Had I gone outside those processes, the Leader of the Opposition would have said that I had done the wrong thing. I followed the process. As I said, I never even imagined it would be a matter of dispute or a matter of contention that Mr McKechnie would be reappointed. I never imagined that people would have the lack of understanding, even a lack of foresight or sheer inability, to understand where this might lead and that they would ignore his reappointment.

As a number of speakers have said prior to me, including the member for Girrawheen, the Attorney General and the member for Kalamunda, Mr McKechnie is the outstanding candidate. I do not know Mr McKechnie well. I expect that I have probably met him fewer than three or four times in my life. I have read about him. Prior to my becoming a member of Parliament, I remember he was the Director of Public Prosecutions. He was the DPP of Western Australia; not someone who worked there but the Director of Public Prosecutions. I think that position was created in 1991. He became the DPP of Western Australia. I remember seeing him on television, prosecuting cases. He was a highly respected and very bright individual. He then became a Supreme Court judge, I think, appointed—but I am not sure—by a Liberal government in the 1990s. Maybe I am wrong about that, but he was appointed—a man of the highest of integrity.

Then he was appointed by Colin Barnett to head the Corruption and Crime Commission. Members know that then, as the member for Girrawheen pointed out, the CCC became—I think her words were—a ship heading in the right direction, with Mr McKechnie at the head of it. Members will remember that prior to his appointment, the CCC was a body that had not worked effectively. It had had a range of people in charge, had not fulfilled its role properly, and had drifted on like that for years. There had been acting commissioners, a failure to deliver, and court challenges against its rulings—all those sorts of things. It drifted on for years and years. Of course, we would expect a body that was created in 2003 to have teething problems, but we did not think that those teething problems would go on for 13 years. He was appointed—a man of his capacity, having run the DPP with hundreds of staff, a Supreme Court judge of the highest integrity—and he took on that role and responsibility. I say what a great thing. Then, suddenly, after years of instability, the CCC started to get huge results. We have heard about some of those cases in recent months. There have been huge results.

Then what happened? His reappointment was universally supported, but a committee of both houses had the capacity—one person—to stop his reappointment. The act says that the appointment of the Corruption and Crime Commissioner needs bipartisan support. Clearly, the act is flawed because, basically, despite the nominee the government puts forward, one member of that committee can veto it. Despite whichever government is in power, the CCC can be rudderless forever because only one member of that committee needs to say no. Even when we have put in place and recommended a person who has been achieving huge results—let us face it, what has been uncovered in recent investigations has been absolutely breathtaking—one person of that committee can stop it. As has been said, the decision needs to be bipartisan. We have heard the remarks of the member for Girrawheen about Mr McKechnie. We have heard the remarks of the member for Kalamunda about Mr McKechnie. Who do we think it is? One does not have to be a rocket scientist to work that out. I do not think that I have ever spoken to Mr Chown, an upper house MP who represents a region—I am not sure which one. Obviously, he is a member of the upper house. Who did Mr McKechnie investigate? He investigated upper house opposition members. That is what has occurred.

**Dr D.J. Honey** interjected.

**The ACTING SPEAKER:** Member for Cottesloe!

**Mr M. McGOWAN:** Members do not have to be geniuses to work out what has gone on.

The Leader of the Opposition wrote to me on 14 April and said this about Mr McKechnie —

I regard Commissioner McKechnie as a person of the highest integrity. His career spanning over thirty years as the state’s Director of Public Prosecutions, as a judicial officer to the Supreme Court of Western Australia and in his current role as a Commissioner of the Corruption and Crime Commission categorises him, in my view, as an outstanding candidate to continue in the role of Commissioner.

I support his re-appointment unequivocally.

We are at an impasse because we are unable to get a member of an upper house committee to agree to the reappointment of the most outstanding corruption fighter the state has ever seen.

A few weeks ago, Mr Barnett said this, and I quote —

“John McKechnie is an outstanding person, and in my view, should be reappointed as commissioner of the CCC,” ...

“And I think most members of Parliament would agree with that. There should be an explanation to the Parliament and therefore the public as to why this issue has basically stalled.”

...

“John McKechnie is undertaking a number of investigations,” ...

“They need to be concluded and I think if you’re not going to reappoint someone of his standing you really have to give an explanation. It’s not good enough to say the committee can’t decide and is tied. If it’s tied then let’s break the tie.”

Colin Barnett, a former Premier of Western Australia, has said exactly the same as the member for Kalamunda.

Then we have the real problem, in a public policy sense, with what has occurred. I will quote Mr McKechnie from an interview he did on 23 April. The interview transcript states —

“Why anybody would think it’s a good idea to decapitate the Corruption Commission when it’s in the middle of about seven or eight major investigations, I do not know.

...

“I have been in public service in various roles since 1976. I have had the enormous privilege of serving as DDPP and judge and Commissioner. I have seen some strange political things in my time and this probably would be up there as a gold medal contender.”

The motion today about criticising the member for Kalamunda for a Facebook post, whilst we have this enormous failure because a single member of an upper house committee will not agree to the reappointment of Mr McKechnie, is an abomination. It is the greatest red herring in history. Firstly, it is an example of people trying to take attention away from the real issue—that Mr McKechnie should be reappointed to his role. Secondly, there should be transparency in relation to that committee. Mr McKechnie is not reappointed to that role because of some grounds that no-one knows about, including him. It is a shocking thing that the Liberal Party is doing.

We will persist with Mr McKechnie’s reappointment because he is the right person for the job. Some decisions need to be made by the opposition to ensure that Mr McKechnie can be reappointed to that very important role that he performs, otherwise people will be able to rightfully say that the best corruption investigator in the history of Western Australia has been vetoed by members of the Liberal Party.

*Division*

Question put and a division taken, the Acting Speaker (Terry Healy) casting his vote with the noes, with the following result —

Ayes (15)

Mr I.C. Blayney  
Ms M.J. Davies  
Mrs L.M. Harvey  
Mrs A.K. Hayden

Dr D.J. Honey  
Mr P.A. Katsambanis  
Mr Z.R.F. Kirkup  
Mr S.K. L’Estrange

Mr R.S. Love  
Mr W.R. Marmion  
Mr D.C. Nalder  
Mr K.M. O’Donnell

Mr D.T. Redman  
Mr P.J. Rundle  
Mr A. Krsticevic (*Teller*)

**Extract from *Hansard***  
[ASSEMBLY — Wednesday, 13 May 2020]  
p2621a-2638a

Mr Zak Kirkup; Mr John Quigley; Ms Margaret Quirk; Mr Matthew Hughes; Mr Mark McGowan

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Noes (31)

Dr A.D. Buti	Mr F.M. Logan	Mr J.R. Quigley	Mr C.J. Tallentire
Mr J.N. Carey	Mr M. McGowan	Ms M.M. Quirk	Mr D.A. Templeman
Ms J.M. Freeman	Ms S.F. McGurk	Mrs M.H. Roberts	Mr P.C. Tinley
Ms E.L. Hamilton	Mr S.A. Millman	Ms C.M. Rowe	Mr R.R. Whitby
Mr T.J. Healy	Mr Y. Mubarakai	Ms R. Saffioti	Ms S.E. Winton
Mr M. Hughes	Mrs L.M. O'Malley	Ms A. Sanderson	Mr B.S. Wyatt
Mr W.J. Johnston	Mr P. Papalia	Ms J.J. Shaw	Mr D.R. Michael ( <i>Teller</i> )
Mr D.J. Kelly	Mr S.J. Price	Mrs J.M.C. Stojkovski	

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Pairs

Mr J.E. McGrath	Mr R.H. Cook
Ms L. Mettam	Mrs R.M.J. Clarke
Mr V.A. Catania	Ms L.L. Baker
Dr M.D. Nahan	Mr M.P. Murray

Question thus negatived.